

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION,)
as the representative of the COLVILLE, LAKE,)
SAN POEILS, NESPELEM, OKANOGAN, AND METHOW)
TRIBES.)

LOUIE CAMILLE AND PETER J. GUNN, as the repre-)
sentatives of the COLVILLE TRIBE,)

PETE LEMERY AND FLORENCE QUILL, as the representa-)
tives of the LAKE TRIBE,)

ALEX L. COVINGTON AND LEWIS H. RUNNELS, as the)
representatives of the SAN POEILS TRIBE,)

EDDIE YERACOSTCHIN AND ED HILAKAHN, as the rep-)
resentatives of the NESPELEM TRIBE,)

ALEX NICHOLSON AND NARCISSE BROOKS, as the rep-)
resentatives of the OKANOGAN TRIBE,)

SAM MILLER AND MICHEL CHARLEY, as the representa-)
tives of the METHOW TRIBE,)

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVA-)
TION, as successor to the claims of the)
COLVILLE, LAKE, SAN POEILS, NESPELEM, OKANOGAN,)
AND METHOW TRIBE,)

Petitioners,)

v.)

THE UNITED STATES OF AMERICA,)

Defendant.)

Docket No. 181

Decided: March 1, 1960

Appearances:

I. S. Weissbrodt, with whom
were Lyle Keith, David Cobb,
and Abe W. Weissbrodt,
Attorneys for Plaintiffs.

John D. Sullivan, with whom
was Mr. Assistant Attorney
General Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Watkins, Commissioner, delivered the opinion of the Commission.

The matters now before the Commission are a proposed compromise settlement of offsets and the award of attorneys' fees.

Prior to this time, the Commission has handed down two decisions on the merits of the claim asserted in this docket. The first was made on February 29, 1956 with Findings of Fact and Opinion (4 Ind. Cl. Com. 151) and an Interlocutory Order which provided that the defendant was liable to each of the petitioners for the value of the land as of July 2, 1872, which it used and occupied as of that date, as described in certain Findings, less the parts thereof lying within the boundaries of the Colville Reservation. The tribes and Findings referred to are as follows:

San Poil and Nespelem Tribes, Finding 15
Colville Tribe, Finding 23
Lake Tribe, Finding 26
Okanogan Tribe, Finding 37
Methow Tribe, Finding 40.

The Commission found that the Confederated Tribes of the Colville Reservation is an organization recognized by the Secretary of the Interior as having authority to represent the Indians enrolled on the Colville Reservation, being approximately 3,650 Indians, of which approximately 2,790 are members of the six petitioner tribes; that each of the six petitioner tribes is a tribe, band, and identifiable group of American Indians residing in the United States; and that each of the individual petitioners was, at the time of filing the petition in this case, a member of the tribe which he sought to represent.

Subsequent proceedings to determine the value of the five separate tracts as of July 2, 1872 resulted in a second decision made on March 5, 1959. Pursuant to Additional Findings of Fact and Opinion (7 Ind. Cl. Comm. 187), the Commission made and entered a Second Interlocutory Order providing that the descendants of the tribes of the Colville Reservation named below shall recover from the defendant the following sums:

Colville Tribe, \$111,000.00
Sanpoil-Nespelem Tribe, \$436,000.00
Okanogan Tribe, \$237,000.00
Methow Tribe, \$152,000.00
Lake Tribe, \$125,000.00

and that from each of said sums shall be deducted such offsets as the Commission shall determine the defendant is entitled at a later hearing.

We are now asked to approve a proposed compromise settlement of offsets, award attorneys' fees and enter final judgment herein.

COMPROMISE SETTLEMENT OF OFFSETS

This comes on by Joint Motion for Entry of Final Judgment made by the petitioners and the defendant and filed with the Commission on January 19, 1960. It is based on a Stipulation for Entry of Final Judgment filed on the same day, which is set forth in full in the Findings. In addition, the petitioners filed on January 21, 1960 a Petition for Approval of Settlement of Offsets and Entry of Final Judgment.

By their stipulation and motion, the parties propose that there be set off against the interlocutory judgment of March 5, 1959, offsets in the aggregate sum of \$61,000, to be allocated so as to make a final judgment as follows:

Colville Tribe, \$111,000.00 less the offset of
\$6,400.00, that is, the net sum of \$104,600.00;

San Poil-Nespelem Tribe, \$436,000.00 less the offset
of \$25,100.00, that is, the net sum of \$410,900.00;

Okanogan Tribe, \$237,000.00 less the offset of
\$13,600.00, that is, the net sum of \$223,400.00;

Methow Tribe, \$152,000.00 less the offset of \$8,700.00,
that is, the net sum of \$143,300.00;

Lake Tribe, \$125,000.00, less the offset of \$7,200.00,
that is, the net sum of \$117,800.00.

The procedure to be followed in cases of settlement, which has recently been set out by the Commission in our Opinion of February 11, 1960 in Docket No. 225 Consolidated, the Omaha Tribe of Nebraska, et al., petitioners, has been followed in the instant case. A hearing has been held, and oral and documentary evidence received in support of the compromise, as outlined in our Findings of Fact herein. Harvey Moses, Chairman of the Colville Business Council, and Nellie Rima, Secretary, testified for the petitioners. We are satisfied that the proposed settlement of offsets has been carefully and fully presented to the Indians who are petitioners herein, that it has been widely discussed and considered by said Indians, that it is understood by them, and that they have consented to and approved the same both formally through resolutions unanimously adopted at a general tribal meeting and by the Colville Business Council, and by their general consent and lack of opposition thereto.

The stipulation of settlement has been signed and approved by all surviving individual petitioners. There were originally two individual

petitioners representing each of the six named tribes. In only one case, that of the Okanogan tribe, are both of the petitioners now deceased. A son of each of the deceased persons has signed the stipulation. This ordinarily would not be sufficient and a substitution of petitioners would be necessary. However, we will not require such a substitution of petitioners in the instant case because the Okanogan Tribe is also represented by the Confederated Tribes of the Colville Reservation.

As to the reasonableness of the amount of the compromise, we have the assurance of counsel for both the petitioners and defendant that they have examined, analyzed and weighed statements and information from the General Accounting Office showing disbursements by the United States for the Indians of the Colville Reservation between July, 1872 and June 30, 1957 in the total amount of \$2,394,874.00. While the compromise sum of \$61,000.00 appears small when compared to this total, counsel for the parties have reached the conclusion, and it is likewise our opinion, that in view of the applicable and pertinent Statutes of the United States and decisions of this Commission and the United States Court of Claims, a settlement of offsets at the \$61,000.00 figure is fair, reasonable and just. The allocation between the tribes is also fair and proper.

Offsets will therefore be allowed in the sum of \$61,000.00 to be allocated as follows:

Colville Tribe, \$6,400.00
San Poil-Nespelem Tribe, \$25,100.00
Okanogan Tribe, \$13,600.00
Methow Tribe, \$5,700.00
Lake Tribe, \$7,200.00.

Final judgment will be entered in the following net amounts:

Colville Tribe, \$104,600.00
San Poil-Nespelem Tribe, \$410,900.00
Okanogan Tribe, \$223,400.00
Methow Tribe, \$143,300.00
Lake Tribe, \$117,800.00.

ATTORNEYS' FEES

A Petition of Attorney of Record for Award of Attorneys' Fees, by I. S. Weissbrodt, attorney of record for the petitioners, was filed with the Commission on January 21, 1960, together with a Statement in Support of Petition for Award of Attorneys' Fees.

A copy of the Attorneys' Contract, with amendments, with the Confederated Tribes of the Colville Reservation, as approved by the Commissioner of Indian Affairs, is in evidence. The attorneys who are presently parties to said contract are Lyle Keith and Patrick H. Winston of Spokane, Washington, and David Cobb, Abe W. Weissbrodt and I. S. Weissbrodt, of Washington, D. C.

The Attorneys' Contract provides that the attorneys shall receive as compensation a fee of ten percent of the net amount recovered on behalf of the tribes and that there shall be deducted from the fee so calculated the amount of the annual retainers paid to the attorneys under the contract.

Attorneys for the petitioners therefore ask for an award of \$100,000.00 (10% of the total net judgment of \$1,000,000.00), less the sum of \$30,000.00 which has been paid to the attorneys as retainer fees, leaving a net sum payable to said attorneys of \$70,000.00. They further ask that the said \$70,000.00 be allocated and made chargeable against the respective awards

of the named tribes by determining the percentage ratio between the net recovery awarded each named tribe and the aggregate of \$1,000,000.00 in recoveries, and then applying each such percentage ratio to the net amount of \$70,000.00.

It appears to the Commission that this is in accordance with the terms of the Attorneys' Contract and with the resolution of the Business Council of the Confederated Tribes of the Colville Reservation approving such an award and allocation. No objections have been made or filed in this proceeding.

Attorneys for the petitioner will therefore be awarded attorneys' fees as requested, the following net amounts being payable from the respective recoveries of the named tribes:

Colville Tribe	\$ 7,322.00
San Poil-Nespelem Tribe	28,763.00
Okanogan Tribe	15,638.00
Methow Tribe	10,031.00
Lake Tribe	<u>8,246.00</u>
Total	\$70,000.00

Final Judgment will accordingly be entered in conformity with this opinion.

Arthur V. Watkins
Associate Commissioner

We concur:

Edgar E. Witt
Chief Commissioner

Wm. M. Holt
Associate Commissioner