

BEFORE THE INDIAN CLAIMS COMMISSION

THE KOOTENAI TRIBE OR BAND OF	)	
INDIANS OF THE STATE OF IDAHO,	)	
	)	
Petitioner,	)	
	)	Docket No. 154
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: April 25, 1960

FINDINGS OF FACT AS TO PROPOSED SETTLEMENT OF CLAIM

The Commission in this case previously determined (5 Ind. Cl. Comm. 456-477) that petitioner, The Kootenai Tribe or Band of Indians of the State of Idaho, aboriginally had Indian title to certain lands (described in Finding 8 therein and containing about 1,160,000 acres) in the northeastern part of what is now the State of Idaho and the northwestern part of what is now the State of Montana; that the United States extinguished the Indian title to said lands on March 8, 1859; and that petitioner or the ancestors of its members had never been compensated for the value of said lands (Finding 9 and 10 therein). The Commission now makes the following additional findings of fact which are supplemental to Findings of Fact 1 to 10 inclusive, hereinbefore made:

11. On March 24, 1960, the parties herein filed with the Commission a Joint Motion for Entry of Final Judgment, based upon a Stipulation for Entry of Final Judgment, made and executed by Robert W. Barker, Attorney of Record for Petitioner, Perry W. Morton, Assistant Attorney General, and John D. Sullivan, Attorney for Defendant, which provides as follows:

It is hereby stipulated between counsel for the parties that the above-entitled case shall be settled and finally disposed of by entry of final judgment, as follows:

1. There shall be entered in the above-entitled case, after all allowable deductions, credits and offsets, a net judgment of \$425,000.00.

2. Entry of final judgment in said amount shall finally dispose of all rights, claims or demands which petitioner has asserted, or could have asserted, with respect to the subject matter of this claim, and petitioner shall be barred thereby from asserting any such right, claim or demand against defendant in any future action.

3. Entry of final judgment in the aforesaid amount shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted, or could have asserted against the petitioner under the provisions of Section 2 of the Indian Claims Commission Act (c. 949, 60 Stat. 1049), and defendant shall be barred thereby from asserting any such rights, claims, demands, payments on the claims, counterclaims or offsets for the period March 8, 1859 through June 30, 1951, against petitioner in any future action. It is understood and agreed that the United States shall not be barred by this stipulation or by any judgment pursuant thereto from claiming in any future litigation offsets arising prior to March 8, 1859, or accruing subsequent to June 30, 1951.

4. The final judgment, entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission of either party, for the purposes of precedent or argument, in any other case.

5. The final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination of the case by the Commission, and shall become final on the day it is entered, both parties hereby waiving any and all rights to appeal from or otherwise seek review of such final determination.

6. Counsel for the parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final order for the approval of the Commission.

7. Attached to this stipulation and incorporated herein by reference are (a) a resolution of the Tribal Council of the Kootenai Tribe or Band of the State of Idaho authorizing counsel for petitioner to enter into this stipulation on the basis outlined in paragraphs one through five, hereof, and (b) an

indication of approval of the terms of the settlement by the Secretary of the Interior or his authorized representative.

12. At a hearing before the Commission on April 18, 1960, documentary evidence, satisfactorily certified and authenticated, was received showing approval of the stipulation and proposed compromise by the petitioner, the Solicitor of the Department of the Interior, and the Commissioner of Indian Affairs.

A resolution approving the proposed compromise, which appears to have been unanimously agreed to, was adopted at a general meeting of petitioner tribe at Bonners Ferry, Idaho, on February 11, 1960, called by the Superintendent of the Northern Idaho Agency of the Bureau of Indian Affairs, (Exhibits G and I). The tribal council of the Kootenai Tribe or Band of Indians of the State of Idaho, shown by the Constitution and By-laws (Exhibit K) to be the governing body of this group, also passed a resolution unanimously approving the proposed compromise (Exhibit H.)

13. The stipulation was signed for the law firm of Wilkinson, Cragun, and Barker (formerly Wilkinson, Boyden and Cragun), contract attorneys in Docket No. 154, by the attorney of record. The stipulation was also signed by the living heirs of Kenneth R. L. Simmons, Esquire (deceased), and by the Executor of the estate of Hazel Day Simmons, heir of said Kenneth R. L. Simmons (Exhibit A) with the authorization and approval of Judge Charles B. Sande of the District Court of the Thirteenth Judicial District of the State of Montana in and for the County of Yellowstone (Exhibit D).

14. The contract between petitioner and Kenneth R. L. Simmons, deceased, which contract the firm of Wilkinson, Cragun and Barker (formerly Wilkinson, Boyden and Cragun) through assignment succeeded to, provides that the contract attorney shall be subject to the supervision and direction of the Kootenai Tribal Council of the Kootenai Tribe of Idaho, and shall not make any compromise, settlement, or other adjustment of the matters in controversy unless with the approval of the Commissioner of Indian Affairs and the Kootenai Tribal Council of the Kootenai Tribe of Idaho. Such approval of the proposed compromise herein is contained in a letter (Exhibit E) dated March 18, 1960, from George W. Abbott, Solicitor of the Department of the Interior of the United States, to the law firm of Wilkinson, Cragun, and Barker. The letter reviews the steps taken to effect a compromise settlement of the claim for the net sum of \$425,000.00, and concludes as follows:

Upon full consideration of the information made available to this office and in light of the approvals given the proposed compromise by the Indians and the Commissioner of Indian Affairs, we hereby approve on behalf of the Secretary of the Interior the settlement of the case entitled Kootenai Tribe or Band of Indians of the State of Idaho v. United States, Docket No. 154, before the Indian Claims Commission as proposed in your letter of January 6, 1960, to the Assistant Attorney General and his acceptance of February 3, 1960.

15. Since petitioner was without funds to provide for the appearance of the Tribal Chairman and Tribal Secretary, this Commission submitted written interrogatories to these officials which were answered under oath on the 6th day of April, 1960.

Simon Francis stated that he was Chairman of the Kootenai Tribe of Idaho and a full blood Kootenai Indian. Mr. Francis, who is 68 years old,

has been chairman for 12 years. Although he left school while in the second grade he speaks English as well as the native tongue. The chairman has been employed as an official interpreter, Indian policeman, foreman of CCC projects and school bus driver. He is now a farmer. Mr. Francis replies state that the proposed compromise was fully explained to the adult members of the tribe attending the general meeting, using both the English and Indian languages; that the Indians participated in discussing the Settlement by asking questions and expressing their views; and that he was satisfied the Indians understood the proposed compromise. Mr. Francis believed the settlement is fair and reasonable and stated that the Indians in giving their consent were not under any particular pressure of any kind.

In answer to the interrogatories Moses Isadore, tribal secretary, age 42, stated under oath that he was a full blood Kootenai Indian and had been tribal council secretary for 12 years. Mr. Isadore graduated from the eighth grade of an Indian Mission school and is employed as a farm laborer. The tribal secretary knew of no members of the tribe who opposed the settlement. Mr. Isadore believed the proposed settlement was fully explained at the general membership and tribal council meetings and stated he believed the settlement to be fair and reasonable. Mr. Isadore asserted that the minutes of the general membership meeting and the tribal council meeting, at which the proposed compromise was approved, adequately and accurately report the essence of those meetings.

16. Mr. Robert W. Barker, attorney of record for petitioner, was present at the general membership meeting and the tribal council meeting of petitioner tribe on February 11, 1960, at which the proposed settle-

ment was explained and discussed. Mr. Barkor's law firm also submitted a memorandum regarding the proposed compromise to the Kootenai Tribe and Tribal Council. This memorandum was also furnished to the Department of the Interior of the United States for consideration of that office but was not submitted as an exhibit.

17. At the hearing of April 18, 1960, the attorneys for petitioner and defendant expressed their opinions that the proposed settlement was fair to both the parties. In reaching this conclusion the attorneys indicated they had considered the remote location of the lands, the early date the lands were to be valued, and prior valuation decisions in the region of the country in which the lands were situated.

18. The Commission, taking into consideration the foregoing findings of fact and the record as a whole, finds that the compromise agreement as set out in the Stipulation for Entry of Final Judgment has been carefully and thoroughly presented to the Indians of petitioner tribe and has been freely, voluntarily and formally approved by them, and that said compromise agreement under all the circumstances is fair and just to the petitioner and defendant.

Edgar E. Witt  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

Arthur V. Watkins  
Associate Commissioner