

BEFORE THE INDIAN CLAIMS COMMISSION

THE UINTAH UTE INDIANS OF UTAH,)	
)	
Plaintiffs,)	
)	Dockets Nos. 44 and 45
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

June 13, 1960

FINDINGS OF FACT AS TO PROPOSED COMPROMISE SETTLEMENT OF DOCKETS 44 and 45

The Commission has previously in the above numbered Dockets made and entered Findings of Fact which were numbered as follows:

With respect to No. 44, Findings number 1 to 23 inclusive, on the 21st day of February, 1957;

With respect to No. 45, Findings number 1 to 13 inclusive, on the 21st day of February, 1957;

A hearing on the above numbered dockets, on the merits of the claims filed was held jointly by agreement of counsel for petitioner and for defendant, for the reason that the same evidence would be applicable in each of said dockets. By agreement of the parties, approved by the Commission, separate findings, opinions and interlocutory orders were to be entered in each of the said docket numbers, and this was the procedure followed. Because separate findings of fact have been made and entered in each of said docket numbers the Commission now makes separate findings in the present proceeding numbered as follows:

1. That on May 23, 1960, the parties herein filed with the Indian Claims Commission a Joint Motion for Entry of Final Judgment based upon a Stipulation for Entry of Final Judgment in the above-entitled dockets made and executed by Ernest L. Wilkinson, Attorney

of Record for Plaintiffs; Perry W. Morton, Assistant Attorney General; and Keith Browne, Attorney for Defendant. Said Stipulation is set forth in words and figures as follows to-wit:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

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

1. There shall be entered in the above-entitled cases after all allowable deductions, credits and offsets, a net judgment of \$7,700,000.00.

2. Entry of final judgment in said amount shall finally dispose of all rights, claims or demands which plaintiffs have asserted, or could have asserted, with respect to the subject matter of the claims asserted in either or both of said claims, and plaintiffs 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 plaintiffs under the provisions of Section 2 of the Indian Claims Commission Act (26 U.S.C. § 160 Stat. 1049), and defendant shall be barred thereby from asserting in any future action any such rights, claims, demands, payments on the claims, counterclaims or offsets for the period June 8, 1865 through June 30, 1959, against plaintiffs, Uintah Ute Indians of Utah, also known as the Uintah Band. 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 June 8, 1865, or accruing subsequent to June 30, 1959. It is expressly understood and agreed that neither the stipulation and entry of final judgment herein nor the stipulation and entry of final judgment in the Court of Claims cases Uintah and White River Bands of Ute Indians v. United States, Nos. 47568, 47569, 47570, 47571 and 47572, shall be a bar to the assertion by defendant in future litigation of a claim against plaintiffs Uintah Band for any funds which the Court of Claims may find in Confederated Bands of Ute Indians v. United States, No. 47567, now pending before that court, were erroneously paid

to the Uintah Band. It is further understood that nothing contained in this stipulation shall constitute any admission of the correctness of any such claim or any liability of the plaintiffs Uintah Band therefor.

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 by the Commission of each of the above-captioned cases, and said determination 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) resolutions of each of the following bodies authorizing counsel for plaintiffs to enter into this stipulation on the basis outlined in paragraphs one through five hereof:

- (1) The General Council of the Ute Indian Tribe of the Uintah and Ouray Reservation;
- (2) The Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation;
- (3) The membership (stockholders) of the Affiliated Ute Citizens of Utah;
- (4) The Board of Directors of the Affiliated Ute Citizens of Utah;
- (5) The General Council of the Uintah Band or Uintah Ute Indians of Utah;

(b) approval of the terms of the settlement by the Secretary of the Interior or his authorized representative.

Attached to said Stipulation were properly signed and executed approvals by the officials in said Indian organizations named in the body of said Stipulation. The signature on the said authorizations of

the Indian organizations were duly authenticated by M. M. Zollar, Superintendent, Uintah and Ouray Agency, Bureau of Indian Affairs, Department of Interior.

2. At an open hearing before the Commission on May 25, 1960, oral and documentary evidence was received showing approval of the said Stipulation for Entry of Final Judgment by the Plaintiffs and attorneys Robert W. Barker, Glen A. Wilkinson, and F. M. Goodwin, Associate Counsel of Record for Plaintiffs named as such in the contracts of employment entered into between Ernest L. Wilkinson, attorney, and the Uintah Ute Indians of Utah, which said contracts with proper extensions thereof are now on file with the Commission.

Duly signed and authenticated resolutions (and supporting data) of the following named governing bodies of plaintiffs to-wit:

- (1) The General Council of the Ute Indian Tribe of the Uintah and Ouray Reservation;
- (2) The Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation;
- (3) The membership (stockholders) of the Affiliated Ute Citizens of Utah;
- (4) The Board of Directors of the Affiliated Ute Citizens of Utah;
- (5) The General Council of the Uintah Band or Uintah Ute Indians of Utah;

were filed with the Commission as exhibits attached to the Stipulation for Entry of Final Judgment and the Joint Motion for Entry of Judgment and were received in evidence attached to said Stipulation and said Motion, the exhibits being identified as: 1-A, 1-B, 1-C, 1-D, 1-E, 1-F, 1-G, 1-H, 1-I, 1-J, 1-K, 1-L, 1-M, 1-N, 1-O, 1-P, 1-Q, 1-R, 1-S, 1-T, 1-U, and 1-V, (1-V is a statement filed by Robert W. Barker, F. M. Goodwin,

and Glen A. Wilkinson approving the Compromise Settlement.)

3. Attorneys contracts of employment provide that the attorneys shall be subject to the supervision of the Secretary of the Interior or his duly authorized representative and they shall make no settlement or other adjustment of such claims, or matters of controversy, except with the approval of the tribe; and as a matter of actual practice also with the approval of the Secretary of the Interior or his duly authorized representative acting in his behalf.

An approval in accordance with the attorneys employment contract - and also as required by the Commission, of the proposed Stipulation for Entry of Final Judgment is contained in a letter, (Exhibit 1-U) dated May 24, 1960, from George W. Abbott, Solicitor for the Department of the Interior, acting for the Secretary of the Interior, and addressed to Wilkinson, Cragun, and Barker, Attorneys at Law, Washington, D. C. This letter reviews the efforts put forth to acquaint the Ute Indians with the terms of a compromise settlement of said numbered dockets for a net judgment of \$7,700,000.00 and concludes as follows:

Upon full consideration of the information made available to this office by your firm and the Bureau of Indian Affairs and in the light of the approvals given the proposed compromise by the Ute Indians and the recommendation for approval by the Commissioner of Indian Affairs, we hereby approve on behalf of the Secretary of the Interior the settlement of the cases entitled The Uintah Ute Indians of Utah v. United States, Docket Nos. 44 and 45, before the Indian Claims Commission, as proposed in your letter of February 10 to the Assistant Attorney General and his reply of February 12 and as amended by subsequent correspondence between your two offices.

4. Counsel for the plaintiffs explained the current situation with respect to the record status of the two docket numbers and expressed

their opinions that the judgment was fair and equitable to both the Indian plaintiffs and to the defendant, and was the best that could be obtained under the circumstances.

Attorney Keith Browne, counsel for the defendant concurred in the statements made by the plaintiffs' counsel and expressed his opinion that the settlement was a good one.

5. Ernest L. Wilkinson, Robert W. Barker, and Glen A. Wilkinson of counsel for the plaintiffs met with the Uintah Ute Indians of Utah and their affiliated and internal groups at Fort Duchesne on April 21 and 22, 1960 and explained to a mass meeting of the Ute tribe the proposed settlement, and how it effected their rights. Following the attorneys statements there was a long discussion by members of the tribe with the attorneys. Questions were asked and answers and other statements which had been made were translated into the Ute language by an interpreter and repeated to the non-English speaking Utes. On the other hand, the statements made by Utes who did not speak the English language were translated into English so that there was a full opportunity for an exchange of views and explanations on any parts of the settlement which were not understood by the Indians. The general meeting and the group meetings occupied the better part of the two days mentioned. All voting was unanimous except in one case where two Ute Indians voted against the proposed settlement.

Attorneys Robert W. Barker and Glen A. Wilkinson, who appeared before the Commission, expressed the positive opinion that the Indians fully understood the proposed compromise settlement and expressed their views freely and without any pressure of any kind being exerted upon them.

Mr. John Bouden, attorney of Salt Lake City, Utah, and general counsel for the Uintah Ute Indians of Utah, and their affiliated groups, was present at the meetings held in Fort Duchesne, Utah, to advise his clients with respect to matters connected with the proposed compromise settlement. He approved the settlement and advised his clients to accept it. Mr. Boyden also appeared before the Commission and participated in a discussion about how the final judgment should be drawn with respect to the proposed compromise settlement. He expressed no opposition to the approval of the compromise settlement.

6. Preston Allen of Altonah, Utah, testified that he was a Ute Indian of mixed blood, 46 years old, and President of the Board of Directors of the Affiliated Ute Citizens, which is an organization of Ute Indians that have been separated from the Ute Indian tribe by virtue of Public Law 671 of the 83rd Congress. This organization consists of members or former members of the Ute tribe having 1/2 or less of Indian blood. Mr. Allen said he was a high school graduate; that his present occupation aside from his work with the Affiliated Ute Citizens of Utah, is a livestock raiser. He appeared pursuant to authorization of the membership of the Citizens group and its Board of Directors. He was present at the mass meetings at Fort Duchesne, Utah, of the Uintah Ute Indians of Utah on April 21 and 22, 1960; that there were three meetings in which he was directly involved. One was meeting of the Board of Directors of the Affiliated Ute Citizens on April 21; another was a meeting of the general membership of the Ute Indian tribe and Affiliated Ute Citizens on April 22; then there was still another meeting of the Board of Directors of the Affiliated Ute Citizens on April 22; that at the general meeting he attended, that

of the Ute tribe and the Citizens group on April 22, there was a separate vote by the Uintah Band and the Uintah Band is a part of the Uintah tribe; that Ernest L. Wilkinson, Robert W. Barker, and Glen A. Wilkinson were present at the meetings and made explanations to the group; that these explanations were also interpreted into the Ute language. There were questions raised and some discussion utilizing the Ute language. When this occurred there was an interpretation from the Ute language into the English and from the English into the Ute language. There were many questions asked. It was a long meeting lasting nearly all day. There was a large attendance.

On the basis of the explanations the witness said he understood pretty well what was involved. He has personally followed the litigation closely throughout its history. He formed the judgment that the Ute Indians should accept the proposed settlement; that the settlement was fair and equitable. He believed that all of the people who were present at the meeting understood the major factors involved in the proposed settlement. No pressure of any kind was exerted on the Indians to secure their approval. As directed by the Board of Directors of the Affiliated Ute Citizens, who authorized him to represent them at the meeting, he approved the settlement.

The witness said that all of the mixed blood Indians understood the English language; they read it and spoke it.

At the general meeting of the Ute tribe both full blood and mixed blood Indians had the right to vote and to participate in the meetings. Later there were separate meetings held for the separate groups within the Ute tribe. Part of the voting was done separately by each of the groups named in these proceedings.

"I am fairly well acquainted with practically all of the members of the Ute tribe and the Ute Citizens group and have heard the compromise settlement discussed by various Ute Indians. I have not heard of any opposition from any of the groups. There are no adverse factions of the Ute Indians opposed to the settlement."

7. Mr. Joseph Workman of Roosevelt, Utah, testified that he was 50 years old, a member of the Affiliated Ute Citizens of Utah and a member of the Ute Indian tribe; that he was Vice President of the Board of Directors of the Citizens group; that he is a Ute Indian of one-fourth blood; that his formal education consisted of studies to the 8th grade, some of which was public schools in Ogden, Utah; that at present his occupation is a full time employee of the Affiliated Ute Citizens.

He appeared before the Commission pursuant to the authorization of the Affiliated Citizens and their Board of Directors at their meeting on April 21, 1960. He heard the explanations made by the attorneys, at the general meeting of the Ute Indian tribe and at the separate meetings. There were something in excess of 225 people at the general meeting of the tribe.

He said Mr. Jason Cuch was elected to serve, and did serve, as Chairman of the Ute tribe meeting. He heard the full discussion; there was a lot said about the pros and cons of the settlement. He was present during the entire meeting; testified that interpretations were made from English to Ute language and vice versa as was testified to by Mr. Allen. "I formed the opinion that the Indians should accept the settlement as proposed by the attorneys. I know personally many of the full blood Ute Indians and they were generally favorable to the proposed compromise settlement."

He was duly authorized by the Affiliated Ute Citizens to sign the Stipulation of Settlement and to appear at Washington, D. C. in favor of the proposed settlement. The vote of the Affiliated Ute Citizens was unanimous in favor of accepting the compromise settlement. He knew of no opposition at the meetings to the proposed settlement but had heard some Indians outside of the meetings who had discussed the matter but there was no organized opposition to it. He knew of no distressed people who were pressured into approving the agreement.

He testified that at the special general council meeting on April 22, 1960, he estimated that there were 178 full blood and 130 mixed blood Indian members present and this estimate accorded with the minutes of the meeting.

8. Mr. Harvey Natchess testified that he lived at Randelette, Uintah County, Utah, was 40 years old; that he is a member of the Business Committee of the Ute Indian tribe; that the Business Committee was composed of six members; that he is an Indian of the full blood; that he is a graduate from the public high school at Roosevelt, Utah; that he is a farmer and lives on the Indian reservation. He farms 120 acres of inherited land.

"I am here as a representative of the Uintah Band, one of the Bands of the Uintah Ute Indians of Utah. I was present at the general meeting of the tribe and also at the Affiliated Citizens of Utah," said Mr. Natchess.

He acted as an interpreter at those meetings. He understands the Ute Indian language. He heard the statements made by the three claims attorneys who were there and he interpreted those explanations into the Ute language,

and also interpreted questions or statements made in the Ute language, into the English language. "I personally think that the settlement is a settlement that is coming to us. We should have it and make the best use of it I believe it is better to make a settlement than to continue the litigation," he said.

"The legal problems were explained to the Indians by the attorneys and it was pointed out that with continuing the litigation there was some danger that there might be a reversal or a cutting down of the area. There are a lot of reasons why it might be advisable to settle and I agreed with the reasons for settlement. The vote was almost unanimous, something like 78 to 2."

He testified he had discussed the settlement with the full bloods; the majority of the full bloods understand the English language. At the meetings the full bloods did not ask questions. They seemed to understand what was said and his interpretation of it. Most of the full bloods have been to school. He has heard no criticism of the settlement since the meeting.

9. Charles Atwine of Neola, Utah, called as a witness by plaintiffs testified in substance as follows:

That he is 58 years old and occupies an official position with the Ute Indian tribe as its Chief. His formal schooling extended to the 9th grade. He had heard all the previous witnesses testifying in this hearing, and he was present at a general meeting of all the Ute groups on April 22nd this year. He heard the explanations of the plaintiffs attorneys; he speaks the Ute language as well as the English language, and felt that the Indians were getting a good explanation of what was involved. There were not many questions asked by the Indians. He heard the explanation of the

attorneys of what the appraisers, who had been hired by the plaintiffs to appraise the property felt, in their best judgment, the tribe could look forward to if the litigation was continued without a compromise settlement. On the basis of that explanation he came to the conclusion that the compromise settlement should be accepted. He attended this hearing as an official representative of the Uintah Band, a part of the Ute Indian tribe of Utah; that as a result of the explanation made at this meeting with the attorneys the Uintah band voted to direct the witness and Harvey Natchess to sign the stipulation.

The witness is a farmer at Neola, Utah. When he said he was chief he meant chief of the Uintah Band of the Utes. Before the reorganization under the Wheeler-Howard Act the Ute Indians had chiefs. His father was a chief and his grandfather was a chief.

He knows most of the full blood Ute Indians, both those on and off the reservation. He heard them discussing the settlement and that they wanted to go through with it. They seemed to understand it very well. The explanation made by the attorneys satisfied him to the point where he and others were in full agreement in favor of the settlement.

10. Jason Cuch, called as a witness in behalf of the plaintiffs testified in substance as follows:

He lives at Fort Duchesne, Utah, is 36 years old, and is a member of the Business Committee of the Ute Indian tribe. At the April 22nd meeting he was the acting chairman. He graduated from high school and had one year and a half of commercial training in a business college in Salt Lake City, Utah, and also attended school in Kansas. He believes the Indians have a reasonable grasp of what is involved one way or another in the

proposed settlement. He heard rumors that some of the Indians were claiming the settlement should be for 17 million dollars; that the rumor was traceable to one group known as The Independent Utes. This group has been sponsored and solidified by a person who is a non-member of the Ute tribe. This person created quite a bit of a agitation on the reservation but this group is very small. Some of the original members have left the group. It has always agitated on problems not connected with the proposed compromise settlement. There was one lady who stated that the settlement should have been for 100 million dollars, but when the vote was taken all persons present at the general meeting voted to approve the proposed compromise settlement. No pressure of any kind was used to influence the members of the tribe. He is an authorized delegate of the Ute Indian tribe and a member of its council. The Ute Indian tribe voted unanimously for the proposed settlement.

The witness is a full time clerk of the tribe with his office at Fort Duchesne, Utah. The Independent group he mentioned had taken no formal opposition to the proposed settlement, but participated in the proceedings held to consider the proposed settlement. Some were critical of the tribal administration on other matters. Witness said he was payroll clerk for the tribal employees who consisted of from 300 to 400 people. They are engaged in building a division fence between the full blood Utes and the mixed blood Utes.

When asked how he felt personally about the settlement he said that it would be a benefit and it would be one means of getting developments which the Indians needed. He said, "Probably we should ask for more

money". During the examination of the witness by Commissioner Holt the following occurred:

Commissioner Holt: What do you base your remark upon that you think they should have more? Just a guess at it or do you have any facts or anything in your own mind why they should have more in a settlement? You don't do you?

The Witness: Well, I meet these Indians and some of them say that, well, why couldn't it be more, and I feel the same way. If we could have more, all the better, but on the other hand, it was explained to us by the claims attorneys where several questions are involved, so we couldn't have more, and I feel that rather than delaying and prolonging the claim that it may be a good thing to settle for this amount.

Commissioner Holt: And, therefore, it is satisfactory?

The Witness: Yes.

Commissioner Watkins: Well, you realize that this compromise settlement means that you couldn't have everything that you feel you ought to have. In other words, you have to give some in order to get a settlement.

The Witness: Yes.

11. Ouray McCook, on behalf of plaintiffs testified in substance as follows:

That he was a member of the Uncompahgre River Band Indians, one of the units of the Ute Tribe. He is 43 years of age and lives in Fort Duchesne, Utah which is the location of the Uintah Ouray Indian Agency and is the same place where the meetings to consider the compromise settlement were held. Witness went to boarding school and is a member of the Ute Business Committee and also a member of the Uncompahgre Band. This Band together with the White River and the Uintah Bands constitute the Ute Indian tribe. The Business Committee is composed of six members from the three bands, two from each band. He was present on the April 22nd meeting we have discussed. He felt that the Indians understood what was said and that

he personally got enough of the explanation to enable him to decide whether or not he should vote for or against the proposed compromise settlement. He said he was satisfied with the settlement. He also testified that he was delegated by the Business Committee to represent it at this hearing and the Business Committee voted unanimously for approval of the settlement. There was no pressure used to get any one to sign the stipulation or take any other action. When queried with respect to any opposition to the proposed settlement he said the Uncompragrah band had experience, "in these things and judgments." The groups primary concern was to find how the judgment was to be used after it was obtained rather than asking questions about whether or not it should be accepted.

Queried with respect to his formal education, the witness said he went to school during the time they had boarding schools and had studied up to and including the 8th grade at White Rocks Indian School. He said he had served on the Indian Board of Education as Chairman of the Board. He is also Vice President of the tribal Farm Organization and has supervision of some of its farm activities.

12. During the course of the litigation of Docket Nos. 44 and 45 and prior to the hearing on the proposed compromise settlement, the Commission received a great deal of evidence, both written and oral, and heard at length counsel for the parties, both on legal and factual issues involved in the subject matter of the claims against the United States; and by reason thereof became familiar with the merits of said claims; with the lands involved; and to certain extent with uses to which said lands were susceptible when used under either Indian or white occupation.

13. Interlocutory orders, based on Findings and Opinions rendered in each of said Docket numbers, favoring plaintiffs were made and entered on the 21st day of February, 1957; and said Interlocutory Orders are hereby referred to and by this reference made a part of these Findings.

14. With respect to lands involved in Docket No. 44, the time of taking of said lands by the defendant is not fixed. The Commission, in its Interlocutory Order entered on February 21st, 1957, found that the defendant is liable to plaintiffs for the value of all the lands within the boundaries of the area fixed in Finding No. 3 which plaintiffs may hereafter prove were disposed of or acquired by defendant. It was also ordered that a time hereafter will be set for a hearing of such proof as may be offered by either party, that touches on the deprivation of plaintiffs of the lands in said area and the various off-sets. It has provided that the hearings as to the value of such land shall not be had until there has been a determination of the lands the plaintiffs have been deprived of and the dates of such deprivation. The Commission finds that no hearings have been held for the purpose of taking evidence on when said lands were disposed of or were acquired by the defendant so that as of this time no established date has been determined when said lands were taken by the defendant from the plaintiffs.

The Commission takes judicial notice of the fact that there is a considerable acreage of said land, the title to which remains in the United States, which is being more or less used for public purposes.

On March 12, 1959, a written Stipulation on Acreage, signed and executed on February 6, 1959, by Ernest L. Wilkinson, Attorney of Record

