

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: June 13, 1960

Appearances:

Ernest L. Wilkinson, with whom were Robert W. Barker, F. M. Goodwin, and Glen A. Wilkinson, Attorneys for the Plaintiffs.

Keith Browne, with whom was, Mr. Assistant Attorney General, Perry W. Morton, Attorneys for Defendant.

OPINION OF THE COMMISSION

Watkins, Associate Commissioner, delivered the opinion of the Commission

The above numbered Dockets are now before the Commission for consideration of a Joint Motion of the parties seeking approval of a proposed compromise settlement of the claims of the plaintiffs.

In prior determinations, after a joint hearing on the issue of liability, this Commission found in favor of the plaintiffs in both cases. Separate findings of fact, opinions and interlocutory orders were entered in each Docket number.

The purpose of the proposed compromise stipulation is to make a lump settlement of the two claims, and all matters involved in them, by the entry of judgment in the sum of \$7,700,000.00 against the defendant and in favor of the plaintiffs.

We have found that the said plaintiffs have been fully advised of the terms of said proposed settlement and the reasons for it; that their officers and membership apparently understand it; they have given their unqualified approval of the document entitled "Stipulation for Entry of Final Judgment," which is set out in full in our Findings herewith.

All the formal requirements the Commission has previously adopted with respect to the proof of a valid approval of a compromise settlement by the plaintiff and defendant have been substantially complied with. No hearings on value have been held on either of said Dockets.

The only matter left for consideration is the question of the fairness of the proposed settlement.

In Docket No. 44 the Commission found that the plaintiffs had original Indian title to a certain area of land in central Utah, the boundaries of which were fixed in Finding No. 3 of the original findings and it concluded as a matter of law that, "Defendant is liable to plaintiffs for the value of all lands within the boundaries of said area which plaintiffs may hereafter prove were disposed of or acquired by defendants." The Order went on to provide, "That a time will hereafter be set for a hearing of such proof as may be offered by either party to this case touching on the deprivation of plaintiffs of the lands in said area and the value thereof; provided, however, that the hearing as to the value of such lands 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 Order was dated the 21st day of February, 1957.

In connection with this order we have found in Finding No. 14 herewith, that the area described in said Finding No. 3, supra contains

6,369,280 acres based on a stipulation of the parties to that effect. Also we have found that the provisions of the interlocutory order, for the holding of hearings to determine when lands within the subject area had either been disposed of or acquired by the defendant, and to determine the dates when disposals or acquisitions had taken place, had not been carried out. Without these hearings and the determinations which would result therefrom, there is very little direct evidence in the record bearing on the value of the tracks which were actually taken by defendant out of the subject tract. Also, there is a limited amount of evidence on acreages taken and the dates when they were taken.

However, on these matters the Commission in its opinion on the issue of liability made this explanation and conclusion:

The other theory is that the Indians were deprived of their lands when the defendant disposed of part to settlers and others under the public land laws of the United States and converted parts of the area to its own use. Such deprivation necessarily extended over a period of many years and the plaintiffs at the time of the hearing were not prepared to show all disposition of their lands by defendant but did show disposition of a substantial part of the area described in Finding No. 3 and it was agreed by counsel (Trans., p. 310) for the parties that insofar as the interlocutory determination of liability was concerned, the showing of such disposition by plaintiffs was sufficient, leaving to the plaintiffs the right to offer proof at a later hearing of other disposition of lands within the area described in Finding No. 3 should the Commission hold defendant liable.

We therefore, are of the opinion, and so hold, that the defendant is liable to plaintiffs for the value of such part of the lands within the area described in Finding No. 3 as the plaintiffs may hereafter prove to have been disposed of or converted to its own use by defendant, the time of such deprivation to be determined when the proof thereof has been submitted.

The original Findings made by the Commission on the issue of liability shows that the plaintiffs had established Indian title to 6,369,280

acres as of February 23, 1865, the date the so-called Spanish Fork treaty was signed by the plaintiffs and the defendant.

The treaty failed to be ratified by the Senate so the title to the lands, which were to be ceded by the plaintiffs to the defendant by virtue of the treaty, did not go to the defendant by that instrument.

The theory of our interlocutory order was that the defendant actually took parts of the area in question from time to time. When and how much were facts to be determined in hearings which have never been held.

In view of such a situation we think we should, in this proceeding, assume that if the case were litigated to a conclusion, that the plaintiffs would recover the surface and sub-surface value of the said 6,369,280 acres based on one or more taking dates beginning with February 23, 1865, and ending with the last taking. Ordinarily the later the taking date the higher the market value of the lands would be.

This is a highly speculative situation, we admit, which makes for uncertainty as to the amount of recovery in a fully litigated case.

The matter we have just discussed, together with the views of some members of the plaintiffs tribe who believed they should have had a larger settlement, has induced us to review at some length the compromise settlement which we have found to be fair.

First of all it should be remembered that Utah is a semi-arid state and that successful agricultural development except for a few dryland grain areas, is impossible without irrigation. The Mormon pioneers soon found that they had to provide adequate irrigation systems at heavy cost before they could have successful farm enterprises. So important was water that irrigation rights

in most areas of the state were worth several times as much as the lands on which they were used, and that continues to be true. This is so because even with all the waters of the state fully developed, it is estimated that only about 4 percent of the area of Utah can be placed under cultivation.

Most of the area of the state is mountainous and much of it lies in areas far from the limited supply of water which the state possesses.

The early Mormon pioneers were very poor. They had to flee from their homes without realizing anything from them or their personal property. The area that Brigham Young and his followers selected for their new homes was considered at that time the least desirable of any of the vast lands in Western America which were open to colonization.

For many years after the arrival of the pioneers in Utah, the new settlers who adopted Utah as their home were members of the dominant church; many of them from northern Europe. The new immigrants were even poorer than the pioneers. They had very little money to buy lands or anything else in those early years. Barter was the common means of doing business and at one time there was a local form of money established because of the lack of United States currency. Later, but within the early development period, minerals were discovered and a successful mining industry followed which brought in many new settlers and helped to relieve the economic and financial situation.

The policy of Brigham Young and the other Mormon leaders was to send out colonizing groups throughout the then Territory of Utah, which was much larger than the present State of Utah - to establish settlements in areas where both water and land were available. This policy did not do down the demand for lands within the central part of Utah as it would take potential buyers out of the market.

The area in Docket 44 is located in the central part of Utah which is now a center of intensive agricultural and industrial development. Comparatively speaking, it is one of the best watered areas in the state; but even so, there is not nearly enough water in the area to irrigate all of the lands susceptible to irrigation.

The early settlers built irrigation systems along the water courses of the streams in the area. Years later additional lands would be brought under cultivation further away from the streams, until the water supply was exhausted. Storage of flood water for later use was not in the 1800's a common practice in the Territory of Utah.

The valley lands in Utah, Juab, San Pete and Millard Counties, all within the subject area, were very fertile and produced large crops of vegetables, hay, grain, and in some areas, fruits. These were considered the best lands in the subject area. Most of the area was made up of rugged mountains, deserts, and wastelands. The high mountain areas were forested and received a greater rainfall, and were highly regarded for grazing livestock during the summer season. Other lands not under cultivation were used for grazing of livestock in the fall and winter seasons. Prior to the establishment of national forests and grazing districts these lands were open to the public under a system of common use.

The market for the commodities raised in the central Utah area during the period in question was largely within the state because of the high transportation costs to markets on the outside, but the west bound travelers in the California gold rush bought heavily of the products of the area. This was a source of considerable revenue to the people of Utah at a time when it was badly needed.

With respect to Docket No. 45, the Commission found and concluded that the plaintiffs were entitled to, and were in the rightful and exclusive Possession of the Uintah and Ouray Indian Reservation lands in the Uintah River valley in the then Territory of Utah, and that the defendant in placing the Band of White River Utes thereon, without the consent of the plaintiffs, and without compensating them therefor, is liable to plaintiffs for the value of an undivided one-half interest in the lands of said reservation.

The Commission entered its Interlocutory Order that the plaintiffs should recover from defendant the value of an undivided one-half interest in the lands of said reservation as of August 15, 1882, less such off-sets and counterclaims or other demands as are allowable under the Indian Claims Commission Act.

The Uintah and Ouray Reservation lands are located in northeastern Utah in the Uintah River valley now known as the Uintah Basin. This is also a comparatively well watered area. Its principal streams have their sources in the high Uintah mountains and enter the valley area through deep canyons. Along the river courses irrigation systems can be constructed at reasonable cost. But to irrigate the higher bench lands which are extensive, very costly reclamation projects are necessary. These larger projects are now authorized for construction under the Colorado River Storage Project. There are thousands of acres of low grade land susceptible to irrigation for which no water will be available.

Farming and stockraising are the highest and best uses for which this area could have been used in 1882.

At the taking date of this area (1882) by the defendant it was remote and largely isolated from the rest of the Territory of Utah. Transportation

to the areas outside the Uintah Basin was principally by horse drawn vehicles over unimproved highways and through high mountain passes, closed for the most part during the winter months. Farmer's crops were largely sold in the Basin area to livestock growers and to non-farming residents

The climate is typical of the Rocky Mountain areas of similar elevation and latitude.

Since none of the subject area was for sale in 1882, the taking date, there were few comparable sales on which to form a judgment on market values of that date.

These are only some of the important factors which would have had some bearing on land values in that area when the White River Band of Utes were moved on to the reservation, then owned and in the possession of the Plaintiffs.

Also, matters relating to the history of the settlement of Utah and its early economic development heretofore recounted are applicable in some respects to valuation of the subject area in Docket 45.

In passing on the fairness of the proposed settlement as it affects Docket No. 45, we are taking into consideration that under the rulings of the Supreme Court the plaintiffs contentions that they would be entitled to interest on the value of an undivided one-half interest in the reservation lands taken by the defendant for the use of the Band of White River Utes for the years 1882 to 1960 are valid (U.S. vs. Creek Nation 295 U. S. 103, 97 L ed 1331; Shoshone Tribe of Wind River vs. United States 299 U. S. 476).

Within a few days after the hearings had been held we received a telegram from a faction of Ute Indians objecting to the appearance before

the Commission of some of the witnesses for the plaintiffs who testified at the hearing on the Motion. The telegram did not object to the compromise settlement. The testimony received by the Commission showed that some of the persons sending the telegram were present at the meetings of the tribe where the compromise settlement was considered, and that these same Indians voted for the compromise or at least did not vote against it. There was no evidence offered in the telegram which would disqualify any of the witnesses who appeared before us in behalf of the plaintiffs.

In arriving at our decision we have taken into consideration the values we fixed on lands in other states in other cases which have been before us. We found as the work of the Commission proceeded that each case must be considered on its own merits, and that there can be no standard of values adopted which will fit the specific situations that occur in each claim before us.

Previously we have referred to the views of some of the members of the plaintiff tribe that the Ute Indians should receive more than the proposed compromise settlement provides. We have taken into consideration these views. We have considered the records made in the two docket numbers under consideration. We have also taken judicial notice of many facts and factors that bear on the valuation of the subject lands. We have great respect for the very able counsel who have represented the plaintiffs and defendant in these cases. It is their judgment that the compromise settlement is fair. Plaintiff's counsel should surely know better than anyone else the merits of their claims; the costs of carrying them to a final litigation; and also the benefits which would have to their clients if the cases were compromised and settlement was made at once.

The compromise settlement is certainly not unconscionable. On balance we feel that under all the circumstances probably the settlement is more favorable to the Indians than to the defendant. In any event it is a settlement that should not be denied approval.

Let final judgment be entered in accordance with our Findings and this Opinion.

s/ Arthur V. Watkins
Associate Commissioner

s/ Wm. M. Holt
Associate Commissioner

We concur:

s/ Edgar E. Witt
Chief Commissioner