

BEFORE THE INDIAN CLAIMS COMMISSION

THE LOWER PEND D'OREILLE OR)	
KALISPEL TRIBE OF INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 94
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: March 21, 1963

Appearances:

WILKINSON, CRAGUN AND BARKER:
By Glen A. Wilkinson and
Charles A. Hobbs, Attorneys
for the Petitioner.

John D. Sullivan, with whom was
Mr. Assistant Attorney General
Ramsey Clark, Attorneys for
the Defendant.

OPINION OF THE COMMISSION

Watkins, Chief Commissioner delivered the opinion of the Commission.

This case is now before the Commission for consideration of a joint motion of the parties seeking approval of a proposed compromise settlement of the claim of the petitioner.

On the issue of title and the taking of lands by the defendant from the petitioner, this Commission found in favor of the petitioner. Findings of Fact, an Opinion and an Interlocutory Order were entered on June 9, 1958.

In a subsequent stipulation, upon which an additional finding was based, it was agreed that the average taking date of the lands, which were acquired by the defendant gradually over a period of years, was July 1, 1903.

It was also stipulated that the acreage taken by the defendant comprised 2,247,000 acres more or less.

The compromise settlement now before us for approval was entered into in order to settle the issues of the value of the lands taken for which the defendant would be liable, and the offsets, if any, which the defendant could claim as a credit against any sum it would owe the petitioner. The settlement also determined that neither party would seek a review or take an appeal.

We have found that the petitioner and its members have been fully advised of the terms of the proposed settlement, the reasons why it was entered into, and that they understand its terms; and that they have given their unanimous approval of it at a tribal meeting, duly and properly called to consider the settlement.

We have also found that all the formal requirements of the Commission which were adopted with respect to proof of a valid approval of a compromise settlement by the petitioner and the defendant, have been substantially complied with, so that the only matter left for us to discuss in this opinion is our reason for our finding that the compromise settlement is fair and just to the parties.

The tract of country which we have found to have been immemorially in the exclusive possession and use of petitioner is located along the Pend D'Oreille River in what are now the States of Washington and Idaho and along the Clark Fork River in the western part of what is now the State of Montana.

The area is mountainous and its principal value in 1903 was the timber growing on it. There was very little if any land adapted to farming according to one of the Indian witnesses who testified at the hearing. The subject tract had been taken from the Indians at various times over a period of years between 1890 and 1920, so that on the stipulated taking date of July 1, 1903, there had probably been already harvested considerable mature timber from the area.

The subject area comprised 2,247,000 acres of land plus 126,000 acres of water. No evidence was produced or suggested that the area under water was of any special value.

The stipulated settlement was \$3,000,000 for the land. Whatever offsets the defendant might have claimed were absorbed in the settlement. They were of slight consequence and had little weight in determining the amount of the settlement.

Counsel for the petitioner advised the Commission that the petitioner had experts appraise the subject tract, and that in addition petitioner had taken into consideration awards the Commission had made in cases where the areas were comparable. They said the \$1.34 per acre allowed in the instant settlement is in between the other awards they studied.

Counsel for defendant said the defendant's appraiser had valued the subject tract at 61¢ per acre and that he believed that the award of \$3,000,000 for 2,247,000 acres certainly should be fair to the Indians.

Under all the circumstances we are of the opinion that the compromise

settlement is fair and just to the petitioner and the defendant, and therefore, the joint motion of the parties that the settlement be approved should be granted.

Accordingly, an order and judgment to that effect will be entered.

Arthur V. Watkins
Chief Commissioner

We concur:

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner