

BEFORE THE INDIAN CLAIMS COMMISSION

THE SKOKOMISH TRIBE OF INDIANS,	)	
	)	
Petitioner,	)	
	)	
v.	)	Docket No. 296
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 24, 1963

FINDINGS OF FACT IN THE MATTER OF THE JOINT MOTION OF THE PETITIONER AND DEFENDANT IN THE ABOVE ENTITLED DOCKET NO. 296 FOR THE APPROVAL OF A PROPOSED COMPROMISE SETTLEMENT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 through 28, inclusive, heretofore made herein:

29. Findings of Fact No. 1 through 10, inclusive, together with an Opinion and Interlocutory Order were entered in the above entitled docket by the Commission on March 6, 1958. Thereafter, Finding of Fact No. 9 was amended by order of the Commission on June 18, 1959, to clarify an ambiguous boundary description.

The Interlocutory Order dated March 6, 1958, entered upon said findings provided as follows:

Wherefore this cause came on for hearing before the Commission and having been fully advised upon the issues presented and submitted therein for determination, the Commission finds:

- (1) The petitioner is an identifiable group of American Indians within the meaning of section 2 of the Indian Claims Commission Act (60 Stat. 1050), having the capacity and right to maintain this suit; and

(2) The petitioner is the successor in interest to that group of Indians who held original Indian title to those lands described in Finding 9 and ceded under the provisions of the Point-No-Point Treaty of 1855 (12 Stat. 933).

(3) That said land was acquired by the defendant on March 8, 1859, the date of ratification of the Point-No-Point Treaty.

Therefore, upon the findings of fact this day filed herein, which are made a part of this order, it is ORDERED:

That this case proceed to a determination of the acreage of the aforementioned land; the consideration paid for said land by the defendant; the value thereof as of March 8, 1859, less such part petitioner may have acquired under the Point-No-Point Treaty and subsequent to 1859, if any.

/s/ Edgar E. Witt  
Chief Commissioner

/s/ Louis J. O'Marr  
Associate Commissioner

/s/ Wm. M. Holt  
Associate Commissioner

30. Additional Findings of Fact No. 11 through 28, inclusive, together with an Opinion and Second Interlocutory Order were subsequently entered in this cause by the Commission on June 30, 1961.

The said Second Interlocutory Order provided as follows:

Upon consideration of the additional findings of fact, numbered 11 to 28, inclusive, which are this day filed herein and made a part of this order, the Commission concludes as a matter of law:

1. That the tract of land which petitioner held under original Indian title and ceded to the United States under the Treaty of January 26, 1855, consisted of 355,800 acres; and

2. That said 355,800 acres of land had a fair market value on March 8, 1859, the effective date of the treaty,

of \$426,960.00, or an average per acre value of approximately \$1.20.

IT IS THEREFORE ORDERED, That the case shall proceed with proof of the consideration paid to the Skokomish Tribe, if any, under the provisions of the Treaty of January 26, 1855, and to determine whether such consideration so paid was unconscionable; proof as to the interest retained by the Skokomish Tribe in the Skokomish Reservation set aside by Article 3 of the 1855 Treaty for petitioner and other Indians; and proof, if necessary, of what offsets are chargeable against said Skokomish Tribe of Indians under the provisions of the Indian Claims Commission Act.

Dated at Washington, D. C., this 30th day of June, 1961.

/s/ Arthur V. Watkins  
Chief Commissioner

/s/ Wm. M. Holt  
Associate Commissioner

/s/ T. Harold Scott  
Associate Commissioner

31. On April 18, 1963, the parties hereto filed their "Joint Motion for Entry of Final Judgment" proposed in favor of the petitioner and to be in the net amount of \$373,577.00.

In support of the aforesaid "Joint Motion" the parties attached thereto and filed therewith in this Docket No. 296 "Stipulation for Entry of Final Judgment", and that said stipulation is 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 final judgment in the net amount of \$373,577.00.

2. Entry of final judgment on this basis 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 case, 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 on this basis 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 petitioner under the provisions of Section 2 of the Indian Claims Commission Act (c. 949, 60 Stat. 1049) for the period March 8, 1859 to December 31, 1957, inclusive and defendant shall be barred thereby from asserting any such rights, claims, demands, payments on the claim, counterclaims or offsets against petitioner in any future action. The bar against future claims by the United States for offsets, gratuities and counterclaims allowable under Section 2 of the Indian Claims Commission Act shall not apply to those which may have occurred prior to March 8, 1859, or to those which may accrue subsequent to December 31, 1957.

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 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, the parties hereto hereby waiving any right to appeal from or otherwise seek review of, such determination.

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

Weissbrodt, Weissbrodt & Liftin  
By /s/ Abe W. Weissbrodt  
Attorney of Record for Petitioner

/s/ Ramsey Clark  
Assistant Attorney General

/s/ Ralph A. Barney  
Attorney for Defendant

Attached to the "Joint Motion for Entry of Final Judgment," in addition to the said Stipulation marked "Exhibit A" are the following documents:

Exhibit A-1

Approval of Stipulation of Settlement by the Skokomish Indian Tribe by its Tribal Council, executed by Catherine Cooper, Chairman, Elizabeth Byrd and Archie Adams, members, and attested by Bennett Cooper, Secretary.

Exhibit A-2

Approval of the Stipulation by Contract Attorneys of the Skokomish Indian Tribe (Contract No. 118, Symbol 14-20-650 as amended) and signed by attorneys Lyle Keith and Patrick H. Winston.

Exhibit A-3

Approval of the Stipulation by Contract Attorneys I. S. Weissbrodt and Abe W. Weissbrodt (Contract No. 118, Symbol 14-20-650 as amended).

Exhibit A-4

Approval of the Stipulation by Contract Attorney David Cobb (Contract No. 118, Symbol 14-20-650 as amended).

Exhibit A-5

Approval of the Stipulation by the recited heirs of Kenneth R. L. Simmons, deceased, and Hazel Day Simmons, deceased, and signed by Newton Day Simmons and Sara Margueritte Simmons Hertz.

Exhibit B

Resolution by the Skokomish Tribal Council approving, confirming, and ratifying the terms of settlement proposed by letters of counsel of respective parties and as the terms of same are embodied in the stipulation of settlement. The resolution is certified as adopted on March 29, 1963, by signatures of the Chairman of the Skokomish Tribal Council and attested by the Secretary, with "Authentication of Signatures" signed by Honorable George M. Felshaw, Superintendent Western Washington Indian Agency.

Exhibit C

Certificate of Minutes of the meeting of the Skokomish Tribal Council on March 29, 1963, and signed by the Chairman and Secretary, Catherine Cooper, and Bennett Cooper, respectively.

Attached to said Certificate of Minutes are the Minutes setting forth the adoption of the proposed settlement of subject claim embodied in the terms set forth in the recited "Stipulation for Settlement".

Exhibit D

Certificate of the Minutes of Meeting of Members of Skokomish Indian Tribe of March 29, 1963, with the Minutes of said meeting at the Skokomish Community Hall attached and reporting the approval and ratification by the tribal membership of the Skokomish Indian Tribe by a vote of 59 for, and 16 against, settlement of the claim in Docket No. 296 before the Indian Claims Commission. The certificate and minutes of said meeting are accompanied by an Authentication of Signatures by the said Superintendent of the Western Washington Indian Agency.

Exhibit E

A Resolution of the Skokomish Tribal Council dated March 29, 1963, designating members Theodore Pulsifer and John Miller to be tribal representatives before the Indian Claims Commission on April 22, 1963, in Washington, D. C., at the hearing scheduled to hear the proposed compromise settlement of the claims in Docket No. 296.

Exhibit F

Copy of "Notice of Meeting of Members of the Skokomish Indian Tribe" publishing notice of the March 29, 1963, meeting of the tribal membership to consider a proposed settlement of offsets, waiver of appeal, and entry of final judgment in the case of the Skokomish Tribe, Docket No. 296, before the Indian Claims Commission and signed by the Tribal Council Chairman.

Attached to said notice is a signed certification of same, together with a "Certificate of Posting of Notices", setting forth said notice was published in six prominent business places, including three post offices in the Shelton or Hoodspout area.

Exhibit G

"Certificate of Mailing" of said notice of Tribal membership meeting to three named newspapers in the respective cities of Shelton, Tacoma and Seattle, Washington, on or about March 15, 1963. Said certificate is signed by the Tribal Operations Officer of the Western Washington Indian Agency.

Exhibit H

Waiver of Notice of Tribal Council Meeting to be held on March 29, 1963, is signed by the four members thereof and the Chairman.

Exhibit I

Certificate of the Superintendent of the Western Washington Indian Agency with copy of the Constitution and By-Laws of the Skokomish Indian Tribe adopted May 3, 1938, that same have not been amended and are now in full force and effect.

Exhibit J

Letter of the Associate Commissioner of Indian Affairs, the Honorable James E. Officer, dated Washington, D. C., April 10, 1963, and addressed to "Weissbrodt, Weissbrodt and Liftin", therein acknowledging receipt by the Bureau of Indian Affairs of the proposed terms of the settlement and approving same.

32. Said Exhibit J is set out in full as follows:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
Bureau of Indian Affairs  
Washington 25, D. C.

In reply refer to:  
Tribal Operations

April 10, 1963

Weissbrodt, Weissbrodt and Liftin  
908 Que St., N. W.  
Washington 9, D. C.

Gentlemen:

On April 3, 1963, you sent us a copy of a proposed compromise to settle all claims of the Skokomish Tribe in Indian Claims Commission Docket No. 296 at \$373,577.00.

Claims in Docket No. 296 were prosecuted by attorneys under contract 14-20-650 No. 118 approved by the Commissioner of Indian Affairs on December 2, 1953. The contract provides that the attorneys shall not make any compromise settlement of any claim unless with the approval of the Commissioner of Indian Affairs and the Skokomish Tribal Council.

The proposed compromise is for entry of a final judgment in the amount of \$373,377.00 which will dispose of all claims and all demands against the defendant in any future action with respect to the subject matter of the case, that it will be a bar from asserting in future action any demands from claims or offsets against the petitioner which accrued during the period March 8, 1959, to December 31, 1957, and that the parties to the case waver all right to appeal or review of the final judgment.

Previously on June 30, 1961, the Indian Claims Commission issued Findings and an Opinion that the Skokomish Tribe of Indians had aboriginal title to 355,800 acres, exclusive of 2,000 acres of inland waters. The tract had a value on March 8, 1959, the effective date of the Point No Point treaty of January 26, 1855 (12 Stat. 933), of \$426,960.00. Therefore, the difference between \$426,960.00, the value of the land, and \$373,577.00, the proposed net settlement, is \$53,383.00 which we consider here under the compromise as composed of considerations already paid by the United States and of other deductions which may have been allowed had the case been fully litigated by trial on the issues.

The General Accounting Office issued a report, certified on April 18, 1960, showing disbursements made pursuant to the Point No Point treaty and of amounts disbursed from other than treaty appropriations either directly or jointly for the benefit of the Skokomish Indians. The report includes the following items:

Expenditures made where the vouchers and documents indicate the payment was for the benefit of the Indians, parties to the Point No. Point treaty.

Part II, Section C	\$198,945.54
Part II, Section G	15,428.47
Part III, Section C	25,836.13
Part III, Section E	14,557.93
Part III, Section F	16,781.78

Disbursements made for the Indians under the Cushman Agency from other than treaty appropriations:

Part III, Section G	3,603.92
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Disbursement made for the Skokomish Indians from other than treaty appropriations:

Part III, Section V	7,441.30
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The Commissibner of Indian Affairs' Report for the year 1873, states that the Indians, parties to the Point No Point Treaty, totalled 921. It further states that the population of the Skokomish Tribe was 275. We also find that there were four different tribal groups that participated in the treaty. For the purposes of our examination of the proposed compromise, it appears that the Skokomish Tribe comprised about one-fourth of the Indians who came under the treaty.



It is apparent that one-fourth of the possible allowable amounts as set forth in the General Accounting Report which would be chargeable to the Skokomish Tribe would exceed \$53,383.00.

Previously, you sent us a letter on February 14, 1963, and mentioned that the Department of Justice stated that the considerations paid for the land ceded under the Point No Point treaty total \$66,315.18 and that disbursements from other than treaty appropriations which the Department of Justice desires to have allowed amount to \$20,665.89 for a total of \$88,671.92.

Accompanying the stipulation of settlement which you sent us are certified copies of the minutes of the meeting of the Skokomish Tribe held on March 29, 1963, and of the Skokomish Tribal Council held on March 29, 1963. The minutes of the meeting of the Skokomish Tribe show that 59 votes were cast for acceptance of the compromise and that 16 voted against it. It is estimated that 75 Skokomish Indians comprise about one-half of the Tribe and are a representative tribal group. One of the Tribe's claims attorneys explained the compromise to the Tribe and discussed it with them in the meeting which lasted four hours. A representative of the Bureau was present and certified the minutes and resolution.

The minutes of the Skokomish Tribal Council meeting held on March 29, 1963, show that the Assistant Attorney General approved the compromise on February 8, 1963.

The resolution adopted by the Tribal Council on March 29, 1963, authorized Theodore Pulsifer and John Miller to represent the Tribe at the hearing scheduled by the Indian Claims Commission on the compromise for April 22, 1963.

In the light of the opinions of the Indian Claims Commission issued in Docket No. 269, the report of the General Accounting Office, the minutes of the General Council and Tribal Council meetings of the Skokomish Tribe on March 29, 1963, and the resolutions considered and adopted at those meetings, the explanation of the compromise to the Indians by the Tribe's claims attorney, and the statement of the Department of Justice, the proposed "Stipulation for Entry of Final Judgment" to settle all claims of the Skokomish Tribe of Indians in Indian Claims Commission Docket No. 296 at \$373,577.00 is believed to be fair and just to the Skokomish Indians and is hereby approved.

Sincerely yours,

/s/ James E. Officer  
Associate Commissioner

33. Each of the above described Exhibits A, A-1 through A-5, and B through J was received in evidence without objection at an open hearing in Docket No. 296 on April 22, 1963.

34. Two members of the Skokomish Tribe appeared as witnesses for the petitioner at the hearing. They were Mr. Theodore Pulsifer, Vice Chairman of the tribe and Mr. John Miller, member of the tribe, each having been authorized by resolution of the tribe to appear and testify at the hearing. The testimony of these witnesses confirms that the terms of the proposed compromise settlement were carefully explained at the meeting of the members of the tribe and that there was a full and free discussion at the meeting, and that the officials and members of the tribe understood the terms of the proposed settlement and further understood that the entry of final judgment based on the stipulation would constitute a final determination of the claims presented in this case.

35. The general meeting of the members of the tribe was also attended by attorney Lyle Keith who made a full explanation of the proposed settlement. Also copies of a written report by the attorneys, explaining the proposed settlement, were distributed at the meeting.

36. We find, based on the evidence in the case, that the Skokomish tribal members and officials understand the settlement and voluntarily and freely approve it.

37. The Commission finds that the compromise settlement is

fair and just to the tribe and to the defendant, and we approve  
and adopt the terms of the Stipulation for Entry of Final Judgment.

/s/ Arthur V. Watkins  
Chief Commissioner

/s/ Wm. M. Holt  
Associate Commissioner

/s/ T. Harold Scott  
Associate Commissioner