

BEFORE THE INDIAN CLAIMS COMMISSION

NORTHERN ARAPAHO TRIBE OF INDIANS)	
OF THE WIND RIVER RESERVATION,)	
)	
Petitioner,)	
)	
v.)	Docket No. 329-D
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided : June 27, 1963

ADDITIONAL FINDINGS OF FACT ON COMPROMISE SETTLEMENT OF
OFFSETS AND ENTRY OF FINAL JUDGMENT IN DOCKET NO. 329-D

50. On December 6, 1961, the Commission entered its Findings of Fact (Findings Nos. 1 through 49), Opinion and Interlocutory Order in Docket Nos. 329 and 348 consolidated for purposes of trial. On August 6, 1962, the Commission entered orders amending the Findings of Fact, Opinion and Interlocutory Order of December 6, 1961. On November 13, 1962, the Commission entered an order amending the amended interlocutory order of August 6, 1962, which in pertinent part is as follows:

IT IS THEREFORE ORDERED AND ADJUDGED:

(a) That the said Southern Cheyenne and Arapaho Tribes above named and the defendant may submit evidence of the value of the lands set apart by executive order of the President of August 10, 1869.

(b) That the Northern Cheyenne Tribe and the Northern Arapaho Tribe, above named, jointly shall have and recover of and from the defendant the sum of \$11,606,650.00 in which total sum the 25.32 percent interest of the Northern Cheyenne Tribe is \$5,950,200.00 and the 24.07 percent interest of the Northern Arapaho Tribe is \$5,656,450.00, and from their respective shares shall be deducted the consideration paid, that is \$589,313.81 to the Northern Cheyenne Tribe under the 1868 Treaty and \$572,702.60 consideration paid under said treaty to the Northern Arapaho Tribe; and less allowable offsets of each tribe to be determined in later proceedings.

(c) That each of said tribes, Northern Cheyenne Tribe of Indians of the Tongue River Reservation, Montana, and Northern Arapaho Tribe of Indians of the Wind River Reservation, Wyoming, shall from this date proceed separately, the one independently of the other, whereby the offsets chargeable to each respectively shall be separately determined and judgments entered separately with respect to each of said tribes, and in all subsequent proceedings said tribes shall be assigned Docket numbers as follows:

Southern Cheyenne and Arapaho Tribes, Docket No. 329-B

Northern Cheyenne Tribe, Docket No. 329-C

Northern Arapaho Tribe, Docket No. 329-D

Pursuant to aforesaid order, the claim of the Northern Arapaho Tribe was assigned Docket No. 329-D.

51. On June 10, 1963, the Northern Arapaho Tribe, petitioner in Docket No. 329-D, and the defendant filed with the Commission a joint motion for Entry of Final Judgment in Docket No. 329-D, based upon a Stipulation filed with said motion and made and executed by John M. Schiltz, Attorney of Record for petitioner and Ramsey Clark, Assistant Attorney General and John D. Sullivan, attorneys for defendant; that said Stipulation is set forth in words and figures as follows:

STIPULATION TO COMPROMISE AND SETTLE OFFSETS
AND FOR ENTRY OF FINAL JUDGMENT

WHEREAS, on November 13, 1962, the Commission determined that petitioner, the Northern Arapaho Tribe of Indians, was entitled to recover the sum of \$5,083,747.40 "less allowable offsets", (10 Ind. Cls. Com. 1), and

WHEREAS, the parties in said Docket 329-D have, after negotiation and compromise, stipulated that the sum of \$1,853,747.40 shall represent offsets properly to be deducted from the interlocutory award of \$5,083,747.40; and

WHEREAS, the entry into this stipulation by the undersigned attorney of record for the Northern Arapaho Tribe

has been approved by the Northern Arapaho Tribe of Indians (Resolution No. 1081, dated April 23, 1963); by the Commissioner of Indian Affairs by letter dated June 5, 1963, and by the defendant by letter dated May 27, 1963;

NOW, THEREFORE, IT IS STIPULATED AND AGREED:

1. The stipulated sum of \$1,853,747.40 shall be taken to include all counter claims and offsets which defendant has asserted or could have asserted for the period May 10, 1868 to December 31, 1961, but shall be without prejudice to any claim in any other suit or action between the parties relative to a period prior to May 10, 1868 or after December 31, 1961.

2. Final judgment may be entered in favor of the petitioner the Northern Arapaho Tribe of Indians in the amount of \$3,230,000.00 as a full and complete settlement of all claims between the parties hereto as the same are pleaded in the above entitled cause, including a claim and prayer for a general accounting by defendant, and with prejudice to the right of either party to appeal.

3. The compromise of offsets shall not operate to deprive the defendant from exercising its right to collect, pursuant to existing law, moneys expended in the past for irrigation on the Wind River Reservation. The release by the United States shall not affect the right of the United States to collect from the proceeds of timber sales, as authorized by statute, expenses of managing, protecting and selling timber.

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 final judgment for the approval of the Commission.

/s/ Martin Underwood
Authorized member, Northern Arapaho
Tribe of Indians

/s/ John M. Schiltz
John M. Schiltz, attorney of record,
Northern Arapaho Tribe of Indians

/s/ Ramsey Clark
Ramsey Clark
Assistant Attorney General

/s/ John D. Sullivan
John D. Sullivan
Attorney for defendant

The attorneys' contract of employment provides that the attorneys shall be subject to the supervision of the Commissioner of Indian Affairs and that they shall not make any settlement or adjustment of the claims or matters in controversy except with the approval of the Commissioner of Indian Affairs and the tribe.

Filed herein and marked as "Petitioner's Compromise Exhibit A", and received in evidence at the hearing held on this matter, is a properly verified Resolution of the petitioner approving the said Stipulation which provides as follows:

RESOLUTION NO. 1081

WHEREAS, on December 6, 1961, the Indian Claims Commission rendered its decision and made findings of fact in favor of the Northern Arapaho Tribe of Indians, together with the Northern Cheyenne and Southern Cheyenne and Arapaho Tribes of Indians, and against the United States; and

WHEREAS, on August 6, 1962, the Indian Claims Commission amended its order of December 6, 1961, by separating the claim of the Northern Arapaho Tribe of Indians from the claims of the said other two tribes and ordered that the Northern Arapaho Tribe of Indians recover from the United States the sum of \$5,083,747.40 "less allowable offsets to be determined in later proceedings"; and

WHEREAS, by its amended answer the United States has made claim that it is entitled to offsets in the amount of \$8,125,814.69; and

WHEREAS, the claims attorneys for the said Northern Arapaho Tribe have negotiated with attorneys for the United States in an effort to reach a settlement and agreement upon the amount to be allowed as offsets, and the said attorneys have tentatively agreed that (1) \$1,853,747.40 shall be stipulated by the parties as the amount to be allowed; (2) that the accounting claim made by the tribe against the United States be dismissed; (3) that no appeal shall be made to a higher court; and (4) that the compromise of offsets shall not operate to deprive the United States from collecting, pursuant to existing law, moneys expended for irrigation on the Wind River Reservation, nor from collecting statutory fees and commissions for the sale of timber and timber lands on

said Reservation; said tentative agreement being subject however to the approval of the Northern Arapaho Tribe of Indians and the Commissioner of Indian Affairs on the one hand and the Attorney General or his assistant, Ramsey Clark, on the other; and

WHEREAS, the said tribe has been advised by its claims attorneys that \$1,853,747.40 is a fair and just settlement of the claimed offsets together with dismissal of the accounting claim, agreement not to appeal to a higher court, and preservation of the right of the United States to collect irrigation and timber land sales fees;

NOW, THEREFORE, BE IT RESOLVED: That John M. Schiltz, the attorney of record for said tribe in said claims case be, and he hereby is, authorized and directed to stipulate with the attorneys for the United States: (1) that the amount to be allowed as offsets to the United States as defendant in said case be fixed at \$1,853,747.40; (2) that the accounting claim shall be dismissed; (3) that neither side shall appeal to a higher court; (4) that the compromise of offsets shall not operate to deprive the United States from collecting, pursuant to existing law, moneys expended for irrigation on the Wind River Reservation, nor from collecting statutory fees and commissions for the sale of timber and timber lands on said Reservation; and (5) that judgment be entered for the tribe for \$3,230,000.00 and otherwise to do any necessary and proper things to effect such settlement.

BE IT FURTHER RESOLVED, that Martin Underwood, a member of the Northern Arapaho Tribe and Chairman of its Business Council, be authorized to sign such stipulation as might be entered into with the United States to effect such settlement.

We hereby certify that the foregoing Resolution was duly adopted by the Northern Arapaho General Council in regular session sitting at Arapahoe, Wyoming, this 23rd day of April, 1963, by vote of 265 for and none against, a quorum being present.

Lloyd Goggles
Chairman
Northern Arapaho General Council

Attest:

Lorraine M. Faulkner
Secretary
Northern Arapaho General Council

52. The contract of employment of attorneys for the Northern Arapaho Tribe, together with the approval and extension thereof as provided by law, are on file with the Commission. These show that Kenneth R. L. Simmons and Ralph G. Wiggenhorn of Billings, Montana, were the original contract attorneys for the Northern Arapaho Tribe in this case. The said Kenneth R. L. Simmons is now deceased and the sole surviving heirs at law and distributees of his estate are his two adult children, Newton Day Simmons and Sara Simmons Hertz. On May 26, 1954, the said Ralph G. Wiggenhorn assigned all his interest in the attorneys' contract to his law firm of Wiggenhorn, Hutton, Schiltz & Sheehy of Billings, Montana, which assignment was approved by the Commissioner of Indian Affairs, on October 8, 1954.

Filed herein and received in evidence as "Petitioner's Compromise Exhibit B," are Affidavits of Consent to the compromise settlement of the Northern Arapaho Tribe's claim executed by the said Newton Day Simmons and Sara Simmons Hertz, sole surviving heirs at law and distributees of Kenneth R. L. Simmons, deceased; and George J. Hutton on behalf of the law firm of Wiggenhorn, Hutton, Schiltz & Sheehy, contract attorneys for the Northern Arapaho Tribe; and by Donald C. Gormley, who is a duly approved associate attorney as provided in the attorneys' contract.

53. Filed herein and received in evidence as "Petitioner's Compromise Exhibit C", is a duly certified copy of the transcript of the meeting of the Northern Arapaho General Council held at Arapahoe, Wyoming, on April 23, 1963, at which the question of whether to accept or reject the proposed compromise settlement was considered and decided upon by the Indians.

Exhibit C discloses a discussion by the attorney of record for petitioner of the proposed settlement and the action taken by petitioner authorizing the compromise settlement. Said transcript is by reference made a part of this finding. The transcript is certified by Loraine M. Faulkner, Secretary of the Northern Arapaho General Council of April 23, 1963, and secretary of the Northern Arapaho Business Council.

54. Also filed herein and received in evidence as "Petitioner's Compromise Exhibit D," is a copy of "Notice of Arapahoe General Council Meeting" dated April 8, 1963, together with an affidavit of Loraine M. Faulkner that it is a true copy of the notice posted and circulated on the Wind River Reservation prior to the General Council Meeting on April 23, 1963, and showing its distribution on the reservation, and the wide publicity given the notice. The said notice provides as follows:

N O T I C E
of
ARAPAHOE GENERAL COUNCIL MEETING

An Arapahoe General Council meeting will be held April 23, 1963, at the Arapahoe Community Hall, Arapahoe, Wyoming.

This meeting has been called to pass on final settlement of the claims before the Indian Claims Commission. Due to the importance of the matter, this is the only subject to be discussed at this particular meeting.

This meeting will begin promptly at 1:00 P.M. Lunch will be served at 12:00 P.M.

Martin Underwood
Martin Underwood, Chairman
Arapahoe Business Council

Fort Washakie, Wyoming
April 8, 1963.

55. Also filed herein and received in evidence as "Petitioner's Compromise Exhibit E," is a verified copy of a written analysis of the offsets question prepared by John M. Schiltz, attorney of record for the Northern Arapaho Tribe, and distributed to the members of the Northern Arapaho Tribe attending the General Council meeting of April 23, 1963, prior to the meeting, and it is by reference made a part of this finding.

56. Filed herein and received in evidence as "Petitioner's Compromise Exhibit F," is a letter dated May 23, 1963, from Ned O. Thompson, Assistant Area Director, Billings Area Office, Bureau of Indian Affairs, Department of the Interior, addressed to the Indian Claims Commission advising the Commission that in his official capacity he attended the Northern Arapaho General Council Meeting on April 23, 1963, and that in his opinion "Mr. Schiltz's explanation of the proposed compromise was clearly expressed and thoroughly understood by the Northern Arapaho tribal members present at the meeting" and that a resolution approving the proposed compromise was unanimously adopted.

57. Filed herein and received in evidence as "Petitioner's Compromise Exhibit G," is a letter of approval of the said compromise settlement from James E. Officer, Associate Commissioner of Indian Affairs, addressed to petitioner's attorney under date of June 5, 1963. The letter is as follows:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
Washington 25, D. C.

Tribal Operations
2650-63
3815-63

JUN 5 1963

AIR MAIL

Mr. John M. Schiltz
Attorney at Law
Electric Building
Billings, Montana

Dear Mr. Schiltz:

You submitted to us on May 14, 1963, a proposed compromise of offsets at \$1,853,747.40 which, upon final approval by the Indian Claims Commission, would result in an award of \$3,230,000.00 to the Northern Arapaho Tribe of Indians in settlement of Indian Claims Commission Docket No. 329-D. You request approval of the proposed compromise in accordance with the terms of the claims attorney contract under which it is prosecuted.

Claims in Docket No. 329-D have been prosecuted under contract No. I-1-ind. 42043 between the Northern Arapaho Tribe and Attorney Kenneth R. L. Simmons that was approved July 8, 1948, and which was superseded by contract No. 42248 with Attorneys Kenneth R. L. Simmons and Ralph G. W. Wiggernhorn, approved April 13, 1950. The latter contract was extended until February 8, 1963, by approval dated February 24, 1960.

Association of Attorney Donald C. Gormley with Mr. Simmons under contract No. 42043 was approved February 17, 1950, and Mr. Gormley's association with Messrs. Simmons and Wiggernhorn under contract No. 42248 was approved July 7, 1950. Mr. Simmons died April 13, 1953, and later Mr. Wiggernhorn assigned all his interest in the contract to Wiggernhorn, Hutton, Schiltz and Sheehy as approved October 8, 1954.

Section 3 of contract No. 42248 provides that "the said attorneys . . . 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 Tribe."

The proposed compromise provides that offsets which were or could have been claimed covering the period May 10, 1868, to December 31, 1961, be stipulated at \$1,853,747.50 and deducted from the \$5,083,747.40 stated in the order issued by the Indian Claims Commission on August 6, 1962, in Docket No. 329, leaving \$3,230,000.00 to go to the petitioner for which a joint motion of the parties will be entered. The proposed compromise provides that no appeal shall be taken by either party. It also provides that the Tribe's claim for a general accounting of property and funds be dismissed. It further provides that the settlement will not deprive the United States from exercising its rights to collect, pursuant to law, moneys expended in the past for irrigation on the Wind River Reservation, nor its right to collect the statutory fees and commissions for the sale of timber and timber lands on the same reservation.

On May 23, 1963, you sent us a copy of the Attorneys' report to the Northern Arapaho General Council which was distributed prior to convening its meeting on April 23, 1963. That report explained the compromise settlement in considerable detail pointing out the possible amounts of offsets which the Indian Claims Commission might allow. This additional information enhanced that previously supplied and contributed greatly to better understanding of the compromise.

On May 24, 1963, the Executive Secretary of the Shoshone and Arapaho Tribes of the Wind River Agency, Fort Washakie, Wyoming, sent us a copy of the April 23, 1963, General Council meeting of the Northern Arapaho Tribe. The detailed minutes show that Mr. Lloyd Goggles was selected by majority vote to preside as Chairman. It also states that Mr. Ned O. Thompson, Assistant Area Director of the Bureau's Billings Area Office attended the meeting. Attorney Schiltz explained the compromise to the Arapaho Indians and offers were made in Arapaho that the explanation would be translated into the Tribe's language if requested. The Attorney answered several questions asked by the Indians in regard to the compromise. Shortly before adjournment, resolution No. 1081 was presented to the Arapahoe Indians for a vote. The resolution was adopted by a standing vote of 265 for, and none against, acceptance of the compromise settlement. The resolution authorized Mr. Martin Underwood, a member of the Northern Arapahoe Tribe and Chairman of the Business Council, to sign the stipulation to effect settlement for the Tribe in the amount of \$3,230,000.00.

Mr. Thompson, Assistant Area Director, Billings Area Office, wrote to the Commissioner of Indian Affairs on May 23, 1963, transmitting a letter which he addressed to the Indian Claims

Commission on the same day stating that he attended the General Council meeting and that in his opinion, Mr. Schiltz' explanation was clearly expressed and thoroughly understood by the Northern Arapahoe Tribal members present at the meeting. He further stated that the resolution approving the proposed compromise was unanimously adopted.

In the light of the information in documents supplied by you, the Assistant Area Director, and the Executive Secretary of the Shoshone and Arapahoe Tribes and our examination of reports prepared and certified on November 7, 1958, and July 27, 1962, by the General Accounting Office for use in connection with Indian Claims Commission Dockets No. 329 and 348, the compromise is believed to be fair and just to the Tribe. I am approving the compromise settlement which will provide for an award of \$3,230,000.00 to go to the Northern Arapahoe Tribe in settlement of Docket No. 329-D and which specifically provides that (1) offsets be stipulated at \$1,853,747.40, (2) the accounting claim made by the Tribe against the United States be dismissed, (3) no appeal shall be made to a higher court, and (4) that the compromise shall not operate to deprive the United States from collecting, pursuant to existing law, moneys expended for irrigation on the Wind River Reservation, nor from collecting statutory fees and commissions for the sale of timber and timber lands on said Reservation.

Sincerely yours,

James E. Officer

Associate Commissioner

58. The attorney of record for petitioner, John M. Schiltz, and the attorney of record for the defendant, John D. Sullivan, advised the Commission at the hearing held on the motion for approval of the compromise settlement that they had held nine separate conferences on the subject of offsets, as a result of which the stipulation was entered into and each of the attorneys was confident that no further concessions would be made by either side of the controversy; the amount of the award to petitioner was \$5,083,747.40 less allowable offsets. In its amended answer filed with

the Commission, the defendant claimed offsets against the petitioner in the aggregate sum of \$8,125,814.69. The amount agreed upon for the compromise settlement of such claimed offsets is \$1,853,746.40.

59. The recitals in the petitioner's Compromise Exhibits A through G, all of which were received in evidence, are factual and are adopted as such by the Commission.

60. Loraine M. Faulkner, called by the petitioner as a witness, testified that she is the full-time paid secretary of the Northern Arapaho Tribe, and has been for six years; that she is not a member of the Northern Arapaho Tribe; that as secretary she prepared and distributed the notice of the meeting of April 23, 1963; that the notice was posted at various places on the Wind River Reservation in conformance with the by-laws of the Northern Arapaho Tribe, and in addition the Lander and Riverton, Wyoming newspapers and radio stations carried the proposed meeting as a news item; that of her own knowledge the meeting was generally known about and discussed by the members of the tribe; that there were more than twice as many members of the tribe present at the meeting on April 23, 1963, than at any other meeting during her tenure as secretary; that she attended the General Council meeting of April 23, 1963 in her capacity as secretary and made a transcript of the proceedings both by means of stenotype and tape recorder and that petitioner's Compromise Exhibit "C" is the transcript of the meeting, and that it accurately reflects all that was said and done at the meeting; that the attorney, Mr. Schiltz, distributed some 200 copies of a written analysis of the offsets question (Petitioner's Exhibit E) to

those attending the meeting and discussed the analysis and answered questions during the meeting; that virtually all of the Northern Arapaho Indians can understand English, though possibly 1% cannot express themselves in English; nevertheless, Mr. Schiltz at several times during the meeting had an interpreter tell the members in the Arapaho language that if there was anyone who did not understand he should make his question known and the matter would be explained but no one requested an interpretation into Arapaho; that after the offsets question was explained the meeting recessed for twenty minutes for private discussion; and then on resumption of the meeting a Resolution was unanimously passed authorizing their attorney, Mr. Schiltz, to compromise and settle the offsets for \$1,853,747.40 and to dismiss the accounting claim; and further, to stipulate for the entry of judgment in the amount of \$3,230,000.00 with prejudice to the right of either party to appeal.

61. Martin Underwood, called by petitioner as a witness, testified that he is chairman of the Northern Arapaho Business Council on the Wind River Reservation, Wyoming; that he is forty-five years of age and has lived on the Reservation all his life except for time in the U. S. Army; that he has been chairman of the Business Council for three years and a member of the Council for seven years; that the Business Council is composed of six elected members who act in the capacity of a board of directors who meet once a week to handle such matters as the tribe's oil interests, cattle ranch, loan program, welfare program, and law and order, and the extent of the tribe's annual income administered amounts to

around a million dollars; that there are 2464 enrolled members of the Northern Arapaho Tribe; that Mr. Schiltz, as claims attorney, has made written quarterly reports concerning the claims case to the Business Council for the past eight years; that as chairman of the Business Council he did, on April 8, 1963, cause the Notice of General Council Meeting to be given, and identified petitioner's Exhibit D as the notice that was given; that he personally is in favor of the compromise and from what he knows of the attitude of the Northern Arapaho tribal members, the compromise is understood and agreed to by the members of the tribe; that the meeting was generally known about by the Arapaho people; that there was an unofficial meeting called by Scott Dewey, an Arapaho Tribe member, the week preceding the General Council meeting, to discuss the proposed compromise; that the said Scott Dewey made the motion at the General Council meeting to adopt the resolution for final settlement of the case; that so far as he knew there was no pressure of any kind to bring about a favorable vote on the resolution to compromise.

62. Lloyd Goggles, called by petitioner as a witness, testified that he is forty-six years old, a member of the Northern Arapaho Tribe, and has lived on the Wind River Reservation all his life; that he has been a member of the Business Council for four years and was elected chairman of the Northern Arapaho General Council Meeting of April 23, 1963; that he conducted the meeting of April 23, 1963, and that in addition to the members of the Arapaho Tribe and claims counsel, Superintendent Clyde Hobbs, Assistant Area Director Ned Thompson, and General Counsel Glen Wilkinson, were present; that he understands and speaks the Arapaho language, and at

the request of Mr. Schiltz, told the people in Arapaho language that if they had any questions or did not understand anything they should make inquiries in the Arapaho language through an interpreter; that Ben Friday made the same offer in the Arapaho language; that he has read over the transcript made of the April 23, 1963 General Council Meeting, marked petitioner's Exhibit C, and that it is an accurate transcript of the proceedings of the meeting. He testified that he personally thought the compromise was fair and acceptable to the tribe; that he knew of no pressure being exerted by anyone to bring about a favorable vote on the resolution to approve the compromise settlement.

63. The other members of the Northern Arapaho Business Council, Nellie Scott, Arnold Hedley, Ben Friday, Sr., and Jess Miller, all testified to the same effect as Mrs. Faulkner and Messrs. Goggles and Underwood. Their testimony disclosed that they understood and approved the compromise settlement; that from their knowledge of the attitude of the Northern Arapaho people the compromise was favorably accepted by them; and that the resolution in favor of the compromise was passed without any pressure from their attorneys, government officials, or tribal members.

64. John M. Schiltz, attorney of record for petitioner, testified that at the General Council Meeting on April 23, 1963, he told the members present that in his opinion the proposed compromise was fair; and that in view of all the circumstances he recommended that they accept it; that he also advised the General Council that it was the tribe's decision to make which he would cheerfully accept; that there were many categories of

