

BEFORE THE INDIAN CLAIMS COMMISSION

UPPER CHEHALIS TRIBE, ET AL.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 237
)	
THE UNITED STATES,)	
)	
Defendant.)	

Decided: October 7, 1963

ADDITIONAL FINDINGS OF FACT

On March 14, 1960, this Commission entered its amended findings of fact, opinion, and an interlocutory order after this case had been remanded to the Commission by the Court of Claims for further proceedings. As set forth in the interlocutory order and findings, the Commission determined that the plaintiff known as the Confederated Tribes of the Chehalis Reservation and the three individuals named as plaintiffs had the right to maintain this action for and on behalf of the tribes or identifiable groups existing in 1855 known as the Upper and Lower Chehalis Tribes, and that plaintiffs had proven that the Lower Chehalis Tribe held Indian title to the lands described in Finding 23; and the Upper Chehalis Tribe held Indian title to the lands described in Finding 24.

The proposed compromise settlement now before the Commission is for payment for all the lands to which both the Upper and Lower Chehalis Tribes held Indian title, and the settlement of all offsets the defendant has asserted, or could have asserted, for the period from March 3, 1855 through June 30, 1951, and contemplates the entry of one final judgment.

The subject lands described in Findings 23 and 24 are located in southwestern Washington around Gray's Harbor and extending inland from the Pacific coast along the Chehalis River. The Commission determined that said lands were taken by the United States without payment of compensation on and after March 3, 1855 (Finding 25).

The Commission has heretofore made amended findings of fact 1 through 25, and now makes the following additional findings which are supplemental to those already made.

26. On January 7, 1963, the parties herein filed with the Commission a Joint Motion for Entry of Final Judgment based on a Stipulation attached thereto and filed therewith, executed by E. L. Crawford and Joseph W. Creagh, attorneys for plaintiffs, and Ramsey Clark, Assistant Attorney General and Ralph A. Barney, attorneys 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 the parties that the above-entitled case be settled, compromised 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, counterclaims, credits and offsets, a net judgment in favor of plaintiffs and against defendant in the amount of \$754,380.00.
- (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 this claim, 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 said 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 plaintiffs under the provisions of section 2 of the Indian Claims Commission Act (c. 949, 60 Stat. 1049, 25 U.S.C. § 70a), and defendant shall be barred thereby from asserting any such rights, demands, payments on the claim, counterclaims or offsets for the period from March 3, 1855, through June 30, 1951, against plaintiffs in any future action. It is agreed that defendant shall not be barred by this stipulation or by entry of judgment pursuant hereto from claiming in any future action between these same parties offsets arising prior to March 3, 1855, or accruing subsequent to June 30, 1951.

(4) The final judgment entered by the Indian Claims Commission, 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 entered 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, both parties hereby waiving any and all rights to appeal from or otherwise seek review of such final determination.

(6) 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 judgment for the approval of, and entry by, the Commission.

(7) Attached to this stipulation and incorporated herein by reference is a resolution by the Confederated Tribes of the Chehalis Reservation authorizing the attorneys for said tribes to execute this stipulation on the basis outlined in paragraphs 1 through 6 hereof.

Attached to said stipulation is a resolution adopted at a general meeting of the Confederated Tribes of Chehalis Reservation meeting in special session on June 23, 1962, approving the proposed compromise settlement of the claims of the Upper and Lower Chehalis Indians against the United States and authorizing plaintiffs' attorneys to submit such proposed settlement to the United States. The resolution is in words and figures as follows:

RESOLUTION

WHEREAS, the Upper Chehalis Tribe and the Lower Chehalis Tribe are prosecuting a claim for the wrongful taking of their aboriginal tribal lands before the Indian Claims Commission, identified as Docket No. 237, which claim is being prosecuted through the Confederated Tribes of the Chehalis Reservation, and

WHEREAS, an interlocutory order has been entered determining that the Lower Chehalis occupied a total area of 517,700 acres and the Upper Chehalis a total area of 320,500 acres, making a total of 838,200 acres, and which order set the measure of damage for the wrongful taking of such lands as the value thereof as of March 3, 1855, less offsets to which the Government may be entitled under the terms of the Indian Claims Commission Act, and

WHEREAS, it has been indicated to the Confederated Tribes of Chehalis Indians that the Department of Justice would look with favor upon the settlement of this claim for the sum of \$754,380.00 net to the tribes, and

WHEREAS, after due consideration, the Confederated Tribes of the Chehalis Reservation are of the opinion that said offer should be accepted, such figure to be a final one in full settlement of the claim of the Upper Chehalis Indians and the Lower Chehalis Indians for the wrongful taking of their tribal lands and in full settlement of all offsets to which the Government might be entitled and further, that the same be on the basis that no appeal would be taken by either party, and

WHEREAS, there is now no distinction between the Upper Chehalis and the Lower Chehalis Tribes but that the same have become amalgamated as one group and have been such for some generations last past, and are represented as such by the Confederated Tribes of the Chehalis Reservation, now, therefore,

BE IT RESOLVED that an offer be submitted to The United States on behalf of the Upper Chehalis Indians and the Lower Chehalis Indians as an amalgamated group now known as the Chehalis Indians, that their claim against The United States, more fully set forth and described in Docket No. 237, be settled for the sum of \$754,380.00 net to the tribe, this figure to be a final one and in full settlement of the claims and demands of the Upper Chehalis Indians and the Lower Chehalis Indians for the wrongful

taking of their tribal lands, and in full settlement of all offsets to which the Government might be found to be entitled, and on the basis that no appeal would be taken by either party.

BE IT FURTHER RESOLVED that it be expressly stipulated that this offer is for the taking of the Upper Chehalis and Lower Chehalis aboriginal tribal lands only, and in no way or manner releases any rights to reservation lands now held by the Confederated Tribes of the Chehalis Reservation nor any existing rights in the reservation as such nor any trust lands of any individuals or any hunting and fishing rights of the Chehalis Indians or any of them, including commercial fishing rights, and in no way or manner changes any present rights or privileges of the Confederated Tribes of the Chehalis Reservation or any member thereof, but that all such present rights and privileges remain unchanged.

BE IT FURTHER RESOLVED that E. L. Crawford and Joseph W. Creagh, attorneys under contract to the Confederated Tribes of the Chehalis Reservation, be, and they hereby are authorized and directed to submit such proposed settlement to The United States, including but not limited to delivering a copy of this resolution to the Department of Justice.

BE IT FURTHER RESOLVED that the Chairman and the Secretary of the Confederated Tribes of the Chehalis Reservation, with the approval of the tribal council, are hereby authorized to execute and deliver on behalf of the Confederated Tribes of the Chehalis Reservation and on behalf of the Upper Chehalis Tribe and the Lower Chehalis Tribe all instruments and documents which may be necessary to carry this resolution into effect, including but not limited to an appropriate stipulation with The United States.

BE IT FURTHER RESOLVED that said Chairman and Secretary are hereby authorized to appear and testify at any hearing before the Indian Claims Commission on said proposed settlement as may be set by order of the Indian Claims Commission.

BE IT FURTHER RESOLVED that the Secretary of the Interior and the Indian Claims Commission are hereby respectfully requested to approve such proposed settlement.

27. A copy of the contract of employment of attorneys for the Confederated Tribes of the Chehalis Reservation, a plaintiff, and extension thereof, are on file with the Commission. These show E. L. Crawford as the original contract attorney, and an assignment by Crawford of an interest therein to Garland S. Ferguson III and Joseph W. Creagh and a reassignment by Ferguson of his interest to Creagh. The original contract, extension thereof and assignments were all duly approved by the authorized officials acting for the Secretary of the Interior, and the said E. L. Crawford and Joseph W. Creagh, who signed the stipulation, are the contract attorneys for plaintiffs.

28. The attorneys' contract provides that the attorneys shall not make any compromise settlement or other adjustment of the claims unless with the approval of the Commissioner of Indian Affairs and the tribes. An approval in accordance with the attorneys' contract of the proposed compromise settlement is contained in a letter (Compromise Exhibit 8) dated December 13, 1962, from James E. Officer, Associate Commissioner of Indian Affairs, acting pursuant to delegation of authority by the Secretary of the Interior, and addressed to Joseph W. Creagh, one of plaintiffs' attorneys. This letter reviews the request for approval of the compromise settlement as required by the attorneys' contract, and the terms of the settlement as set forth in the resolution adopted June 23, 1962, by the general meeting of the Confederated Tribes of the Chehalis Reservation, and then concludes as follows:

. . . The Superintendent of the Western Washington Indian Agency was present at the general meeting at which the proposed settlement was discussed and adopted by the Chehalis Indians. In view of the apparent understanding

by the Indians of the settlement and the information which you have furnished and the information which we have concerning recoveries by other Indian tribes for apparently comparable lands, the settlement of Docket No. 237 as proposed in the tribal resolution adopted June 23, 1962, is hereby approved.

29. At a hearing before the Commission on February 11, 1963, on the joint motion for approval of the proposed compromise settlement, counsel for plaintiffs, E. L. Crawford, advised the Commission (Tr. pp. 2-11) that in July of 1960, an attorney for the defendant had suggested the possibility of making a net settlement of the claims for \$315,000.00 after estimating the government's allowable offsets at \$100,000.00, which offer Mr. Crawford submitted to plaintiffs but recommended its rejection. He said that after considering the type of land, cost of appraisal and proving value, he had concluded that on a trial basis the recovery would be at least \$500,000.00 but not over \$1,000,000.00 and a fair settlement would be somewhere in between. He said that the Confederated Tribes of the Chehalis Reservation then adopted a resolution on December 19, 1960 (Compromise Exhibit 3) in which they offered to accept \$1,000,000.00 in settlement of their claims and any government offsets, but reserving certain hunting and fishing rights, which offer the government did not accept but made a counter-offer to settle plaintiffs' claims and defendant's offsets for the sum of \$754,380.00 net to the Indians, and this offer was accepted by the Indians. Mr. Crawford stated he had considered a number of comparable sales of lands in the same general area at about the time the subject lands were taken and that under all the circumstances, including settling of defendant's claimed offsets, the compromise was fair to the Indians.

Mr. Craig Decker, counsel appearing for defendant at the hearing, also stated the defendant had carefully considered all the "pros and cons" on this case and concluded that the proposed settlement agreed to was fair and just to both the defendant and to the Indians.

30. Mrs. Helen Mitchell, who appeared as a witness for the plaintiffs at the hearing, testified in substance as follows:

That she now resides near the town of Oakville, Washington, on the Chehalis Reservation where she was born; that she traces her ancestry to the Lower Chehalis Tribe and by ancestry is a member of the Confederated Tribes of the Chehalis Reservation and served as its Secretary from November, 1960 to November, 1962; that she is a graduate of high school and is now public relations officer for the Western Washington Indian Fisheries and Game Commission. She speaks English fluently and says that English is spoken and understood by the members of the Confederated Tribes and proceedings of their meetings are in English.

That she was present at a special meeting of the Confederated Tribes when their attorney discussed with them the first offer to settle their claim for \$315,000.00 suggested by the government, and the question of the Tribes' making a counter-offer to settle for a million dollars, but no formal action was taken at that time. They did discuss the matter of separate judgments for the Upper and Lower Chehalis Tribes and decided there should be no separation because of the intermingling of the members of the Tribes over the years and many could establish they were Chehalis but it would be difficult to trace whether they were Upper or Lower Chehalis.

That on December 19, 1960, she attended a special meeting of the Confederated Tribes, as Secretary, held at Oakville, Washington, at which time a resolution (Compromise Exhibit 3) was unanimously adopted rejecting the government's suggested offer of \$315,000, and authorized the submission of a counter-offer to the government to settle for one million dollars. She stated that later the Tribes' attorney advised them the Department of Justice had rejected their million dollar offer, but had proposed a settlement for \$754,380.00.

That as Secretary of the Confederated Tribes she participated in the calling and arranging of a special meeting of the Tribes held on June 23, 1962, at the Chehalis Tribal Community Hall near Oakville, Washington, to consider and accept or reject the government's proposed settlement of their claims for \$754,380.00. That notice of the meeting was given to all Chehalis Indians living on or near the Chehalis Reservation; notices were placed in newspapers in Aberdeen, Tacoma, and Centralia, Washington; and notices were posted in the Oakville, Washington Post Office, at the Western Washington Indian Agency at Everett, Washington, and at Taholah, Washington, in the Quinaielt Reservation; that she also distributed fifty copies of the proposed resolution to Chehalis Indians living on or near the Chehalis Reservation.

That as Secretary she attended the meeting of the Confederated Tribes on June 23, 1962, when the resolution to authorize settling the claim for \$754,380.00 was presented and adopted. That the Tribes' attorney, E. L. Crawford, was present and made a detailed explanation of the proposed compromise settlement. That there were 27 members

present at the meeting, with 14 voting for and 7 against the resolution. That the dissenting voters were concerned that if the settlement was made they might lose certain hunting and fishing rights and incur taxes on their trust allotted lands.

The Constitution and By-Laws of the Confederated Tribes of the Chehalis Reservation (Pl. Ex. 15) adopted in 1939, provides that the governing body shall be a Community Council, which shall be composed of all the qualified voters of the Reservation, and that a quorum shall consist of 25 legal voters.

31. Percy Youckton, Of Oakville, Washington, who also appeared as a witness for plaintiffs at the hearing, testified in substance as follows:

That he traces his ancestry to the Lower Chehalis Tribe; is 34 years of age; was born on the Chehalis Reservation and lived there all his life except for service in the U. S. Navy from 1947 to 1952; is Chairman of the Confederated Tribes Community Council and has held that office since 1956 and was Vice-Chairman for two years prior to 1956. That he is a graduate of high school and is now a laborer and also a commercial fisherman. He speaks English fluently. He stated that following the first offer of the government to settle the claim for \$315,000.00 a meeting of the Tribes was held on September 27, 1960, with their attorney, Mr. Crawford, present, and after a full discussion of the prospects of their claim, it was determined their next move was to make a counter-offer to settle for a million dollars. That after several later meetings with their attorney, a meeting of the Confederated Tribes was held on December 19, 1960, at which a resolution was

unanimously adopted to submit a counter-offer to the government to settle for a million dollars. He identified the resolution which is Compromise Exhibit 3. Later, after receiving notice from their attorney that the Tribes' million dollar offer of settlement had been rejected but that the government suggested \$754,800 to settle the claim, several meetings of the Confederated Tribes were held at Oakville, with their attorney and certain officials of the Indian Agency present, when the proposed settlement was fully discussed. That the proposed resolution authorizing settlement of the claim for \$754,380.00, which was later adopted, was prepared by the Tribes' attorney and fully explained at said meetings. He said that notices of the meeting to be held on June 23, 1962, for the purpose of passing on the resolution, were sent out and posted by the Secretary, Mrs. Mitchell, as set out in her testimony. He presided at the June 23, 1962 meeting and there were 27 members present which constituted a quorum. The resolution to make the \$754,380.00 settlement was submitted at the meeting and fully explained by Mr. Crawford, and it was discussed at length. The Indians present understood and spoke English. The dissenting voters were not dissatisfied with the amount of the settlement but were concerned about the preservation of their reservation rights. He was personally satisfied the \$754,380.00 settlement was fair to the Indians.

32. At the conclusion of the February 11, 1963 hearing, the Commission advised the parties that it appeared from the Indian Bureau census reports there was a larger group of Chchalis Indians located on.

or near the Quinalt Reservation in western Washington who apparently were not present at the June 23, 1962 meeting; and that the number of Chehalis present at said meeting was hardly sufficient to be truly representative of the wishes of the Chehalis Indians regarding the proposed settlement. The parties agreed that another meeting would be arranged so all Chehalis Indians would have an opportunity to attend and vote on the proposed settlement.

33. On March 8, 1963, plaintiffs' attorney and six members of the Chehalis group conferred with Indian Bureau officials at the Portland, Oregon Area Office and decided that another meeting be held April 27, 1963, so all persons claiming to be Chehalis descent could vote on the proposed settlement. They also agreed the Bureau officials would make a composite list of the names and addresses of individuals of Chehalis blood from their records and from the list furnished by the Chehalis Enrollment Committee, which list was prepared and submitted to Mr. Crawford for him to mail out notices of the April 27, 1963 meeting.

34. The plaintiffs have filed additional Compromise Exhibit Numbers 8 through 19 in support of the proposed compromise settlement of their claim, which exhibits are admitted in evidence and considered by the Commission.

Exhibit 10 is the composite list of names and addresses of individuals of Chehalis blood delivered to Mr. Crawford by the Indian Bureau.

Exhibits 11, 12, 13 and 14 relate to the notice given of the April 27, 1963 meeting. The notice reads as follows:

NOTICE

TO ALL DESCENDANTS OF THE UPPER CHEHALIS TRIBE AND
TO ALL DESCENDANTS OF THE LOWER CHEHALIS TRIBE:

Notice is hereby given that a general meeting will be held of all of the descendants of the Upper Chehalis tribe and of the Lower Chehalis tribe, on Saturday, April 27, 1963, at two o'clock p.m. (Pacific Standard Time) at the Oakville Grange Hall, at Oakville, Washington.

The purpose of the meeting is to consider and either approve or disapprove a compromise settlement of the claims case of the Upper Chehalis tribe and the Lower Chehalis tribe against the United States, being Docket No. 237 before the Indian Claims Commission, which settlement is in the amount of \$754,380.00 in full settlement of all claims of both Upper and Lower Chehalis for the wrongful taking of their aboriginal tribal lands.

It is important that all descendants of the two above mentioned tribes be present at the meeting so the compromise settlement may be fully explained and understood and acted upon by a substantial majority of those interested.

THE CONFEDERATED TRIBES OF CHEHALIS RESERVATION

By Percy Youckton, Chairman

By Helen Mitchell, Acting Secretary

Exhibit 11 is the affidavit of plaintiffs' attorney, E. L. Crawford, with a list attached thereto of the names and addresses of some 260 individuals. He states that on April 8, 1963, he mailed a copy of said notice to each of the persons named on said list.

Exhibit 12 is the affidavit of Helen Mitchell with a list attached thereto of the names and addresses of eleven individuals. She states that she mailed a copy of said notice to each of the persons named on said list.

Exhibit 13 is the affidavit of Helen Mitchell stating that she posted a notice of the meeting in the Oakville, Washington, Post Office; and, in an attached letter to Mr. Crawford dated July 5, 1963, Mrs. Mitchell also stated she had mailed notices for posting to the Indian Affairs Office in Everett, Washington, and a notice for posting in the Taholah Post Office.

Exhibit 14 consists of Affidavits of Publication of the notice of the meeting once a week for three consecutive weeks between April 8 and April 24, 1963 in newspapers located in Tacoma, Aberdeen, and Centralia, Washington.

35. Compromise Exhibit 15 is a list of names and addresses of the 157 individuals who attended the meeting of the descendants of the Upper Chehalis Tribe and the Lower Chehalis Tribe on April 27, 1963, at Oakville, Washington.

Exhibit 16 is a duly certified copy of the minutes of said meeting of April 27, 1963, wherein the compromise settlement, agreed to by the Confederated Tribes of the Chehalis Reservation and the Department of Justice, was discussed at length by plaintiffs' attorney and others present, and by a majority vote of those present of 94 for and 43 against a resolution was adopted approving the compromise settlement. Said minutes by this reference are hereby made a part of this finding. The minutes were signed by Percy Youckton, Chairman of the meeting and Helen Mitchell, Secretary, and their signatures were certified by George M. Felshaw, Superintendent of the Western Washington Indian Agency who was present at the meeting.

Exhibit 17 is a certified copy of the Resolution adopted at the April 23, 1963 meeting approving the proposed compromise settlement and requesting the Indian Claims Commission to approve the same. Said resolution by this reference is also made a part of this finding. The resolution is signed by Percy Youckton, Chairman, and Helen Mitchell, Secretary, and their signatures were also certified by George M. Felshaw, Superintendent.

36. Compromise Exhibit 18 is the sworn statement of Frank F. Pite stating that he is one of the three individual plaintiffs named in Docket No. 237; that the other two individual plaintiffs, Ralph A. Heck and Murphy Secena, are now deceased; that he attended all meetings pertaining to the proposed compromise settlement, fully understands it, believes it is to the best interests of the plaintiffs and joins in the request that the settlement be approved by the Indian Claims Commission.

Compromise Exhibit 19 are certified copies of the death certificates of the two individual plaintiffs, Ralph A. Heck and Murphy Secena.

37. The evidence shows that the compromise settlement is not intended to disturb the existing reservation rights or hunting and fishing rights of the Chehalis Indians.

38. The area of land which the Commission found the Lower Chehalis Tribe held under Indian title comprises 517,700 acres, and the area so held by the Upper Chehalis Tribe comprises 320,500 acres, or a total of 838,200 acres. The proposed compromise settlement is based on a per acre price of 90 cents net for the entire 838,200 acres. It has been agreed to by the parties that a single judgment be entered for plaintiffs.

39. The Commission finds that the proposed compromise settlement of claims of the Upper Chehalis Tribe and the Lower Chehalis Tribe and of the defendant's claim for offsets has been thoroughly and fairly presented and explained to the plaintiff Indians; that they understood the terms of the settlement and it was approved by a substantial majority.

40. The Commission finds that said compromise settlement is fair and just to the plaintiff Indians and we approve and adopt the terms of the Stipulation of Settlement; that a final judgment be entered in favor of plaintiffs for and in behalf of the Upper and Lower Chehalis Tribes in the amount of \$754,380.00 as against the defendant.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner