

BEFORE THE INDIAN CLAIMS COMMISSION

CLYDE F. THOMPSON, <u>et al.</u> ,	)	Docket No. 31
	)	
ERNEST RISLING, <u>et al.</u> ,	)	Docket No. 37
	)	
THE BARON LONG, <u>et al.</u> , BANDS OF	)	
MISSION INDIANS OF CALIFORNIA,	)	Docket Nos. 80 & 80-D
	)	
THE PITT RIVER INDIANS OF	)	
CALIFORNIA,	)	Docket No. 347
	)	
Petitioners,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: July 20, 1964

Appearances:

Robert W. Barker  
Donald C. Gormley  
For petitioners in Docket No. 31

Walter M. Gleason  
A. Brooks Berlin  
For petitioners in Docket No. 37

Charles E. Burch, Jr.  
Raymond C. Simpson  
Robert J. Kilpatrick  
For petitioners in Docket Nos. 80 & 80-D

Louis L. Phelps  
For petitioners in Docket No. 347

Ralph A. Barney, with whom was  
Mr. Assistant Attorney General  
Ramsey Clark, Attorneys for Defendant.

OPINION OF THE COMMISSION

INTRODUCTORY STATEMENT

Watkins, Chief Commissioner, delivered the opinion of the Commission.

In this proceeding the matter of the proposed compromise settlement of eight cases by an entry of one final judgment in the sum of \$29,100,000 is before the Commission for approval. The petition or motion to approve the settlement, presented by the attorneys for the Indians and the attorneys for the defendant, is based on a stipulation of the parties and is in accord with section 15 of the Indian Claims Commission Act of 1946 which in part provides as follows:

The Attorney General or his assistants shall represent the United States in all claims presented to the Commission, and shall have authority, with the approval of the Commission, to compromise any claim presented to the Commission. Any such compromise shall be submitted by the Commission to the Congress as a part of its report as provided in section 21 hereof in the same manner as final determinations of the Commission, and shall be subject to the provisions of section 22 hereof.

These Indian groups are all domiciled in California and their claims are based on the taking by the defendant without compensation of lands wholly located in the State of California and claimed by them under aboriginal or Indian title. The groups involved are:

Bands of Mission Indians, Dockets 80 & 80-D  
Yokiah Tribe of Indians, Docket 176  
Yana Tribe of Indians, Docket 215  
Shasta Tribe of Indians, Docket 333  
Pit River Indians, Docket 347  
and the large group designated "The Indians of California"  
Docket Nos. 31 and 37. \*

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\* Later, as the Findings will show, the eight cases were consolidated into three identifiable groups of Indians, the Mission Indians, the Pit River Indians, and the Indians of California.

There are other quasi-California Indian tribes which have similar land claims before the Commission. However, the lands claimed are partly in California and partly in bordering states. Some members of these tribes reside in California and others live in the adjoining states. The tribes, bands, or identifiable groups in this category are:

Northern Paiute Nation, Docket 87  
Southern Paiute Nation, Docket 88  
Mohave Tribe, Dockets 283 and 295  
Washoe Tribe, Docket 288  
Quechan Tribe, Docket 319  
Chemehuevi Tribe, Docket 351  
Klamath and Modoc Tribes, Docket 100  
Shoshone Tribe, Docket 326

None of these tribes, groups, or their members are intended to be, or are entitled to be included in the compromise settlement or its benefits. The matter of their inclusion was decided in proceedings before the Court of Claims wherein the Quechan Tribe petitioned to be intervened with the Indians of California represented by Dockets 31 and 37, then before that court on appeal. The Quechan Tribe was also involved in that appeal.

The Court remanded to this Commission the matter of determining whether or not the Quechan Tribe is "a proper party in the cases of Clyde F. Thompson, et al., as representatives of the Indians of California," (Ind. Cl. Comm. Dockets 31 and 37). On March 3, 1964, we entered an order that the Quechan Tribe was not a proper party in said cases. On appeal to the Court of Claims our order was affirmed in an order (without opinion) by that Court entered on July 8, 1964.

Thus it was settled that the Quechan Tribe, including its members could not participate in the compromise settlement now before us or for

that matter in any other award we might enter for the "Indians of California." The same ruling would apply to all the other tribes in this same category.

Pertinent facts relating to the eight docket numbers or cases involved and included in the proposed compromise settlement, are set forth in considerable detail in our Introductory Statement and in Findings 1 through 10 inclusive. These findings describe the Indian groups involved in each docket number, outline the nature, history, and present status of each claim. We believe these findings are accurate and are sufficiently informative to give reasonably understandable information that will be of use in considering the remainder of our findings.

From here on, where we deem it necessary, we shall comment on the subject matter contained in the headings and in the order in which the subjects occur in the Findings.

PROCEEDINGS LEADING TO APPEAL 2-61 TO THE COURT OF CLAIMS,  
AND THE APPEAL IN 2-61, FINDINGS 11, 12, 13 AND 14.

These findings are historical and explanatory in nature and are not disputed.

This Commission determined that the Indians of California were not an identifiable group empowered to assert a claim under the Indian Claims Commission Act (1 Ind. Cl. Comm. 383). The Court of Claims on appeal held that the Indians of California was such an identifiable group (122 C. Cls. 419). Thereafter, Dockets 31 and 37 (together with the consolidated dockets) were tried on the questions of (1) identity of petitioners

and capacity to assert claims, (2) proof of original Indian title, (3) taking by the United States without compensation to petitioners, and (4) date of taking. Extensive trials on these questions were held in Berkeley, San Francisco and Washington, D. C., in 1954-1956.

Later the Commission decided that the Indians of California did not have the exclusive right to assert claims for the taking of lands in California, but that separate tribal groups might also assert claims (6 Ind. Cl. Comm. 86). Thereafter, we divided the State of California into two areas, Area A and Area B, for procedural purposes (6 Ind. Cl. Comm. 666). Area A was the area in California embracing the claims of the various tribal claimants, other than Dockets 31 and 37 and Dockets 176, 215, and 347. Area B was the remainder of the State of California claimed by petitioners in Dockets 31 and 37 (lying generally west of the summits of the Sierra Nevada Mountains.) Thereafter, the proceedings in consolidated Dockets 31 and 37 proceeded separately from the remainder of the tribal claims to lands in California.

Following hearings in 1956 on the question of title and liability, we made findings of fact and entered an interlocutory order on July 29, 1959, holding that the Pit River Indians, as an over-all identifiable group, had established original Indian title to eleven tracts aggregating approximately 3,386,000 acres of land in parts of Lassen, Shasta, and Modoc Counties, California, which had been used and occupied by eleven autonomous groups or bands and that the original Indian title to that land had been taken by the United States without compensation as of March 3, 1853, by the Act of March 3, 1853 (10 Stat. 244). We directed

the parties to present evidence of the acreage of the tracts concerned and the value as of the date of the taking (7 Ind. Cl. Comm. 815). This docket number has been inactive since said above date until the present proceedings were initiated.

SETTLEMENT NEGOTIATED SUBJECT TO APPROVAL OF INDIAN GROUPS CONCERNED, THE AUTHORIZED REPRESENTATIVE OF THE SECRETARY OF THE INTERIOR AND THE INDIAN CLAIMS COMMISSION, FINDING 15

We find no dispute on this statement of the history of the negotiations, except the charge by some Indian opponents that the negotiations were conducted in secret and the Indians should have been permitted to take part in them and that they were a part of a scheme to defraud the Indians. There was literally no evidence to support these charges. It should hardly be necessary to point out that all the Indian entities involved were ably represented in these negotiations by their duly authorized contract attorneys all in good standing before this Commission; all of this was pursuant to their contracts of employment, and not otherwise.

TERMS OF SETTLEMENT, FINDINGS 16 AND 17

These findings are an accurate and detailed statement of the terms of the settlement together with explanatory matter as to Docket 347 and the reasons why Mr. Louis Phelps, attorney, did not sign the stipulation. Under the circumstances in this proceeding, and more specifically the facts developed at the Pit River hearing, all of which have been made the subject of specific findings, the stipulation is in full force and effect as if it had been signed by Mr. Phelps. He is also fully authorized to sign them as a result of the vote of the Pit River Indians

approving the compromise settlement and by the terms of his contract of employment. So under the circumstances we hold it is not necessary that we enter an order directing him to sign the settlement stipulation.

#### PRESENTATION OF SETTLEMENT TO INDIAN GROUPS, FINDINGS 18-33

We come now to the subject of the presentation of the proposed compromise to the three Indian groups concerned with the settlement. But before entering into a discussion of specific findings relating to each group we believe it would be helpful to a better understanding of what is involved and what has happened during the hearings if we review some of the general matters connected with the subject of compromise settlements and our policy relating to them.

Section 15 of the Claims Commission Act, supra, authorizes the Attorney General to compromise any claim subject to the approval of the Commission. This authorization is a declaration by the Congress, as we interpret it, that it favors generally the policy of compromise of these Indian claims, and we add, under proper safeguards and justifiable circumstances. This puts Congress in harmony with the well known policy of our Federal and State Courts which favor compromises in proper cases.

But Congress did not lay down any procedure or regulations that should be followed by the Commission in consideration of proposed compromises, nor did it require us to do so. However, we do have authority to establish our own procedures and to modify them as circumstances may require, or abandon them altogether as our discretion might indicate.

Prior to the Omaha case, decided by us on February 11, 1960 (8 Ind. Cl. Comm. 392), some minor compromise stipulations had been approved by the Commission on the showing that counsel for the Indians had signed the agreements and that the Secretary of the Interior had also approved them. We are also advised that the Court of Claims has approved stipulations for compromise signed and executed only by the attorneys. For instance, in the famous Ute case, Confederated Bands of Ute Indians, V. United States (17 C. Cls. 433), the largest award ever made to an Indian tribe against the United States, the attorney of record alone signed and executed the compromise stipulation for the Ute Indians upon which the award was based although some 70-odd associate attorneys had helped at various stages in preparing and presenting the case to the Court, which had jurisdiction over the claim under a special Act of Congress. In this case it appears the settlement was also approved by the Secretary of the Interior after the Indian lawyers had secured the approval of their Indian clients. It also appears no Court hearing was held on the compromise settlement.

Since the Commission in the Omaha case, supra, was confronted with its first major compromise settlement, it decided that in order to give the Indians all the protection possible, and to carry out one of the principal purposes of the Indian Claims Commission Act, that these ancient Indian claims should be finally settled for all time, to require a general policy of conferences between the Indians and their counsel where the settlements could be explained to the Indians and their formal approval obtained before the compromise would be considered or approved

by the Commission. Furthermore, the Commission also adopted a policy of having a full-scale, formal hearing on the petitions before the compromise could be approved. The hearing was usually in Washington at which time those opposing the compromise would have a right to present their views. We have considered a considerable number of compromise settlements since we adopted these safeguards in the Omaha case, and these requirements have been faithfully complied with.

Therefore, in the instant proceeding we have followed the same general procedure as far as practical under the circumstances. But we had to depart from some of its provisions because of the chaotic conditions with respect to lack of leadership and organization we found to exist among these three groups of identifiable Indians. None of these groups had tribal organizations which could be recognized by the Secretary of the Interior for the purpose of filing claims with the Commission or for other purposes. The claims were actually filed for the Indians of California and the Pit River Indians by representative individual members for each group pursuant to section 10 of the Claims Act, which provided as follows:

Sec. 10. Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but whenever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission.

The amended claims for the Mission Indians were also filed by several bands of Mission Indians for and in behalf of some 46 bands of identifiable

Mission Indian groups. None of the Mission bands had a tribal organization which the Secretary of the Interior recognized or could recognize. There seems to be no dispute on this point. But the defendant raised in an earlier hearing the objection that not one of these petitioners is an organized group recognized by the Secretary of the Interior, nor is there a single member of these groups acting in the capacity of a petitioner as required by section 10 of the Claims Act (Tr. preliminary hearing, Dkts. 80 and 80-D, Aug. 6, 1962, p. 4). There has been no ruling on this objection and none will be necessary if the compromise settlement is approved.

In the Omaha case, supra, we stated:

\* \* \* unusual and unexpected circumstances may exist, not anticipated at this time which could cause undue hardship to the parties to a compromise agreement, if these procedures were rigidly enforced, \* \* \*

and that,

\* \* \* if any such situation should occur, the Commission will hear counsel for the parties with respect to any modifications that may properly be allowed.

The instant proceeding has unusual and unexpected circumstances in that, among other things, not one of the three Indian groups involved have an overall tribal organization or government, but appear to be divided into contending factions of many years standing, so there are literally no Indian officials who could call meetings of these three Indian groups for the purpose of considering or acting upon the proposed compromise settlement. Under such circumstances it was necessary for the Bureau of Indian Affairs to call the meetings, arrange for and carry out the details and actually conduct the meetings to the point where Indian chairmen

could take over and preside over the meetings. These situations are contrary to the usual situations we have in most of the cases filed with the Commission in which organizations exist with a chief or chairman, and with a tribal council or committee which can act for and in behalf of the tribe in most management matters.

With that in mind in the instant proceedings, counsel for the claimants and for the Government, together with representatives of the Department of Interior held several conferences with the Commission to consider the matter of establishing procedures for the presentation of the proposed settlement to the Indian groups and the voting thereon, which would be in harmony with the general requirements stated in our Omaha opinion, supra, but which would meet at the same time the need for modifications to take care of the special situations as they exist in the three groups of Indians involved in this proceeding.

As a result of these conferences a modified program was worked out which the Commission agreed would satisfy our requirements with respect to proceedings on the consideration and approval or rejection of the compromise settlement. The proceedings would also aid the Secretary of the Interior in making his decision to approve or disapprove the settlement.

The procedures adopted are exemplified in the actual conduct of the conferences and hearings between the attorneys and their Indian clients as set forth in Findings 18 through 33, and will not be repeated here. Suffice it to say that the procedures approved involved the following:

(a) compilation of lists of eligible Indians to receive notices of meetings and to receive ballots for voting, (b) times and locations for meetings of the Mission Indians, the Pit River Indians, and the Indians of California, (c) the mailing of notices of meetings, (d) the conducting of meetings and presentation of the settlement, (e) voting and (f) suitable representatives at any settlement hearings to testify before the Commission. In addition, the possibility of using mail balloting was discussed, and later this method of voting was approved by the Commission so that the views of the majority of the Indian membership could be obtained. Since the proposed settlement was to be a package settlement by entry of one final judgment in the amount of \$29,100,000, it was considered necessary that the proposed settlement have the approval of (a) consolidation of the claims of the Indians of California, the Mission Indians, and the Pit River Indians for the purposes of the settlement and (b) entry of one final judgment in the amount of \$29,100,000. For the settlement to become effective it had to be approved by each of the three groups, i.e., the Mission Indians, the Pit River Indians, and the Indians of California, and the certification by the Bureau of Indian Affairs as to the manner in which the conferences and hearings were called and conducted, the results of the voting at said meetings, and results of the voting of members who voted by mail.

#### MISSION MEETINGS, FINDINGS 19 AND 20

The first conferences under the program adopted between the Indian attorneys and their Indian clients were held with the Mission Indians

in Dockets 80 and 80-D. The requirements we had outlined to counsel for the Indians were all carried out in the four meetings held with this group. Meetings were held at Riverside, Escondido, San Diego, and Los Angeles, California, during September 1963.

Those casting votes at the Mission meetings constituted 56% of the 3,408 eligible Mission Indians with known current addresses to whom notices of the meetings had been sent by the Sacramento Area Office of the Bureau of Indian Affairs. The proposed settlement was approved by a vote of 81.5% of those voting. Because of the large participation in the Mission meetings and the overwhelming approval of the proposed settlement, it was decided there was no need for a mail vote by persons who did not attend the meetings.

#### PIT RIVER MEETINGS AND MAIL BALLOT, FINDINGS 21-26

The meeting between the Pit River Indians and their attorneys and the Bureau of Indian Affairs officials was held at Alturas, California, on September 28, 1963. Again the program we agreed upon was followed as shown in Findings 21 through 26. Notices of the meeting were sent to 750 enrolled Indians. The attendance at the meeting was small as compared with those eligible to vote. The result of the voting was: Against, 105; for 73; spoiled 7, total 185. Since the number who actually took part was less than one-third of the known Pit River Indians entitled to vote, and since a considerable number of Indians who couldn't attend the meeting had informed Judge Charles Lederer,\* their former contract

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\* See Transcript Pit River Hearings, May 22, 1964, Vol. II, p. 100.

attorney, and Mr. Phelps, their present attorney, that they desired to vote, if it could be by mail, it was decided Mr. Phelps should refer the matter to the Commission for advice. In our reply letter to Mr. Phelps' inquiry under date of October 17, 1963, among other things we stated:

"You have directed our attention to the widely scattered residence situation of the Pitt River Indians, and the difficulties encountered in securing attendance of a majority of the members of the tribe at a meeting which was called and held recently for the purpose of considering said compromise. It appears that less than one-third of the tribal members eligible to vote on the compromise attended this meeting, and that in all probability the holding of another meeting would not secure a larger attendance.

"It was also suggested by you that if a vote by mail, under proper safeguards as set out in the Commission's proceedings [sic], of the tribal members were held that a majority of the members might respond either for or against the compromise proposal.

"We see no objection to this procedure or to any proper procedure for securing the wishes of the tribe with respect to the compromise, if proper safeguards are used in securing the vote. In fact, it would seem to be your duty as counsel for the Indians, and also the duty of the Tribal Council and other responsible Indian officials, to see to it that the members are properly informed of the proposal, and their will with respect thereto determined, so that if and when a petition is presented to the Commission for approval, the Commission will know that the tribal membership has been properly advised, and the proposal has been approved by them. Obviously, if the tribe does not approve, no petition in their behalf should be filed with the Commission."

Acting on our letter, and the situation faced by the Indian Bureau and Mr. Phelps, they decided to send ballots to the absentee Indians together with the necessary reports and advice of their attorney, Mr. Phelps, and full and complete instructions on how to use the ballot, etc. (The Findings set forth in detail the entire program. It had then, and has now, our full approval.)

The result was that 221 ballots were returned. The vote was: for 137, against 83, spoiled 1. Thus the total result of the meeting vote and the mail vote was: for the settlement 212, against 188, spoiled ballots 8, with a total of 408 votes cast. This resulted in a majority of 24 votes for the settlement. So in the meeting and mail ballots the views of 760 eligible Pit River Indians were expressed. These results were properly certified by the Sacramento officials of the Indian Bureau, all of which is fully set forth in the findings.

In connection with this matter of objections to our action of approving additional voting in the Pit River Indian case, we call attention to a somewhat similar case, to wit, the Upper Chehalis Tribe of Indians, et al. In that case a meeting was called for the purpose of approving or disapproving the proposed compromise settlement and was attended by 25 Indians. A majority of these Indians voted to approve the settlement. Under the rules of the tribe that was a large enough number to entitle the Indians to take action. However, this number was very much less than a majority of the Indians who would have been entitled to vote on the compromise proposal. We refused to approve the compromise offer at our first hearing here in Washington. With respect to that matter we entered our Finding 32 which reads as follows:

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 Chehalis Indians located on or near the Quinaielt 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. (Upper Chehalis Tribe et al., v. United States, 12 ICC 644)

A mail vote was ruled out because the majority of the Chehalis Indians lived more or less in a group on or near the Quinalt Reservation and could attend a meeting. Another meeting duly called to consider the settlement was attended by 137 Indians, 94 of whom voted for approval of the settlement and 43 voted against it. On this showing the Commission approved the compromise settlement.

However, in the Pit River case it appears from the evidence, that the Pit River Indians, not being reservation Indians, are widely scattered in northern California, in the central part of that state and in Oregon. It is doubtful that another meeting would have resulted in a substantial increase in attendance.

#### INDIANS OF CALIFORNIA AND MAIL BALLOT, FINDINGS 27 THROUGH 31

Fifteen meetings were held with these Indians at the following places:

Hoopa	Redding	Sacramento
Eureka	Salinas	San Francisco
Chico	Los Angeles	Bishop
Ukiah	Bakersfield	Alturas
Yreka	Fresno	Yuma

There was also voting by mail. These activities followed the same general pattern of the Pit River meeting and the vote by mail. They are set forth in the findings so will not be repeated here. The evidence introduced sustains the findings.

The vote of this group of Indians at the meetings and by mail was as follows: At meetings: 4,276 for approval of the settlement; 2,118 against it. Vote by mail: 5,380 for approval; 650 against approval, or a grand total of 9,656 for the settlement and 2,768 against it. Out of

20,873 eligible Indians, 12,424 total votes were cast, which is 59.52% of the eligible Indians.

APPROVAL BY THE AUTHORIZED REPRESENTATIVE OF  
THE SECRETARY OF THE INTERIOR, FINDING 33

After the voting by the Indian groups concerned, the attorneys for the groups submitted a report to the Secretary of the Interior and requested approval of the proposed compromise settlement. On May 7, 1964, the Honorable Philleo Nash, Commissioner of Indian Affairs, approved the settlement by a letter to Wilkinson, Cragun & Barker, one of counsel for the petitioners in Dockets 31 and 37. After reviewing the background of the claims, and the procedure for voting, the Commissioner made the following statement:

"Accordingly, we believe that the determinations of Indians eligible to vote, the procedure followed in scheduling and holding meetings and the measures taken in giving eligible Indians the opportunity to vote at the meetings or by absentee ballot where the meetings of a group did not reflect adequate representation of the group resulted in the participation of members of the three groups (Indians of California, Mission Indians, and Pit River Indians) to the extent that those casting ballots can be said to represent the views of their respective groups and constitute the approval by those groups of the proposed compromise settlement.

"In the light of the information which you have supplied us and which has been submitted by our Sacramento Area Office and obtained from other sources, we believe that the proposed compromise settlement at \$29,100,000.00 of the aboriginal land claims of the Indians of California, the Mission Indians, and the Pit River Indians, in accordance with the proposed Stipulation for Compromise and Settlement and Entry of Final Judgment and the proposed Stipulation of Petitioners as set out in the attorneys' written reports to the Indians, and as desired by the Indian petitioners is fair and just to them. The proposed compromise settlement, therefore, is hereby approved pursuant to the authority granted by Sec. 11 of Order No. 2508 (27 F. R. 11560)." (pp. 4-5)

## COMMISSION'S HEARINGS ON SETTLEMENT, FINDINGS 34 TO 54

A Joint Motion for Consolidation of Hearings and Entry of Final Judgment in Dockets 31, 37, 80, 80-D, and 347, was filed by defendant and all petitioners in said docket numbers, except petitioner in Docket 347, and counsel for the Pit River Indians, Docket 347, indicated no objection to the motion. Accordingly we entered an order for the consolidation and set a hearing on the motion at Los Angeles on May 13, 14, and 15th; at Fresno, on May 18th and 19th; at Eureka, on May 23rd and in Washington, D. C., on June 3rd, all in 1964.

Because the Commission was aware of some opposition to the proposed settlement, we departed from our usual practice of holding settlement hearings in Washington, D. C., in order to accommodate as many as possible of those individuals who desired to testify, without putting them to the heavy expense of coming to Washington.

The Commission on May 1st, 1964, issued a notice of hearings which was mailed to the interested parties of record, and also to all Indian opponents of the settlement who had notified the Commission of their opposition. The notice was also released to all public communication media in California and near-by states.

At the opening of the hearings in Los Angeles, Mr. Phelps, attorney for the Pit River Indians, Docket 347, advised the Commission that he had received a letter from Ike Leaf and Dorothy Goodman, who signed themselves as tribal chairman and tribal secretary, pro tem, of the Pit River Indians stating in substance that "We, the councilmen and members of the Pit River Tribe \* \* \* instruct and request you \* \* \* to commence legal

proceedings immediately for the purpose of setting aside as void and illegal the vote of the approval or disapproval of the proposed settlement of claim cases for \$29,100,000 million dollars."

At Mr. Phelps' request we set an additional day for hearing the Pit River phase of the compromise settlement at Eureka, California on May 22, 1964, to accommodate the Indian opponents of the settlement. All hearings were held on the dates announced.

We have previously discussed the main phase of the Pit River hearings and there will be further discussion of it under the heading "Pit River Issue, Findings 89 Through 101."

The Commission's hearings on the settlement were largely a matter of receiving the evidence of what had occurred in the conferences with these Indian groups, and the formal matters necessary to a proceeding of this kind. The evidence introduced, both oral and written, sustains our findings which contain much detail. Most of it was not controverted by the opposition Indian witnesses.

#### FEDERATED INDIANS, FINDINGS 55-56

Mr. Frederic A. Baker, one of counsel in Docket 31, had refused to join his contract associates, Judge John W. Preston, Jr., and Paul M. Niebell, in recommending the settlement and entering into the stipulations. He stated that while he would not disagree with their views, that this was possibly the best settlement that could be obtained under the Indian Claims Commission Act, he did recommend that the lawsuit be settled by a different process, free from legal technicalities, by negotiated agreement between representatives of the Indians of California

and a special commission set up by the United States to negotiate a fair settlement. This proposal stemmed from his recommendation in the 1930's when he worked for the Attorney General of the State of California in earlier Court of Claims litigation on behalf of the Indians of California. His suggestion was similar to a proposal that had been made in the 1930's to the Congress, but had not received favorable consideration (Baker-Potts, Ex. 2). In Mr. Baker's view, a much larger amount was required to do justice to the Indians, a sum of \$500,000,000 to \$600,000,000 would not be excessive.

While Mr. Baker and Mrs. Marie Potts, who also appeared as a witness, testified that the Federated Indians opposed the settlement, they admitted that there had been no membership meeting of the Federated Indians of California on this question, that the Federated Indians had voted along with the other Indians of California and had not voted separately on the proposal. We expressly find that there had been no separate action by the Federated Indians of California concerning this settlement and none is required.

#### OTHER MISSION WITNESSES AND INDIAN TELLERS, FINDINGS 57-58

Comment on these findings seems unnecessary.

#### INDIAN OPPOSITION OTHER THAN PIT RIVER INDIANS, FINDINGS 59-86

We intentionally scheduled hearings in California so that the spokesmen in opposition to the settlement could be heard. In addition to those who appeared in the separate Pit River Hearing, some 25 individuals were permitted to make a full statement to the Commission of their views on the merits of the settlement and any reasons why they felt the settlement should not be approved.

A number of exhibits, including certain petitions against the settlement, several of them unsigned, were offered by these witnesses and received in evidence despite the fact that they were unauthenticated, self-serving statements by the opponents of the settlement. The Commission has given careful consideration to the testimony given and exhibits offered by these individuals. Because this is a settlement proceeding and the Commission desires to see that the Indian interests are protected, we have considered this evidence, though much of it was hearsay, or irrelevant and immaterial, and not subject to cross examination by counsel for the claimants under our ruling that counsel would not be permitted to cross examine objectors who were members of their own clients. It should be remembered that only Indian entities such as tribes, bands and identifiable groups can maintain claims before the Commission under the Claims Act. Individual Indians cannot file claims in their own behalf, but only in a representative capacity for and in behalf of the entity.

The principal objection of the opponents to the settlement was that not enough money was being paid. Several witnesses protested that the settlement did not take into consideration the Indians' concept and attitude toward their land; that the Indian land cannot be valued in money. Other opponents based their objections on the contention that statutory land prices, for example, \$1.25 per acre, should apply; that certain lands in the 1944 compromise judgment of the Indians of California were offset at the rate of \$1.25 per acre and, therefore, the Indians should now be paid in this case at the same rate. Some

of the opponents objected to the amount because it would not carry out the purpose of the Congress in rehabilitating the Indians, stated in the 1928 Act, and would not meet what they felt was required under the Treaty of Guadalupe Hidalgo. Some objected because the amount per Indian would buy "only a couple of pieces of furniture and a refrigerator"; that the United States was doing more for the people of Japan, Germany, Viet Nam, and other foreign countries under war rehabilitation and foreign aid programs and should, therefore, do more for the California Indians.

The objections stated by the witnesses at the hearing, and in the petitions filed, showed considerable uniformity. One of the petitions filed with the Commission states the objections in part as follows:

(Watson, Ex. 1):

"The proposed agreement was drafted and arranged in secret; we were not given any part in framing its provisions; the settlement proposed is very unjust to the Indians of California in that it will not provide for a judgment sufficient in amount to enable us to obtain better homes, acquire land, engage in industrial pursuits nor enable us to provide higher education for our children; it does not give us our fair share of the wonderful resources of the State of California, Our Homeland, from the enjoyment of which we have been largely excluded for over a Century-all this in open and flagrant violation of our rights under the Treaty between the United States and the Republic of Mexico - the Treaty of Guadalupe Hidalgo which ended the War between that nation and the United States.

"II

"We also protest the manner in which the proposed \$29,100,000 settlement of our Ancestral Lands Claim has been presented to us by certain of our own attorneys. During the meetings at which we were to vote on the proposed settlement, these attorneys completely dominated the meeting and made every effort to prevent us from hearing arguments in opposition. These attorneys presented the proposed settlement in such a manner as to discourage us from voting to reject the ridiculously low compromise settlement. These attorneys have led us to

believe we will personally receive a considerable amount in cash if we vote to accept the proposed settlement. These attorneys have threatened that we will face another fifteen years of litigation, and that we will probably not receive anything in the end if we vote to reject the proposed settlement. These attorneys have changed the very few rules governing the meeting and, in particular, the manner and procedure of voting whenever it suited their purpose."

With reference to the charge of misconduct on the part of the attorneys representing the Indians at the conferences where the settlement was presented to the Indian members of all three of the identifiable groups (the Mission Indians, the Indians of California, and the Pit River Indians) involved in the settlement, we have this comment to make:

The proceedings at these conferences were all taped and the tapes are in evidence. We have listened to some of them from beginning to end; others have been spot checked. The average length of these conferences was approximately 4 hours; they were called by the Bureau of Indian Affairs, so the attorneys could explain the settlement to members of their client organizations, and in all of these meetings Indians presided after the meetings had been started by representatives of the Indian Bureau. The play back of the tapes showed that the attorneys explained carefully the compromise offer, its advantages and its disadvantages. They responded to all questions in the same manner. Many questions were repeated numerous times. Most of the questioners and opponents were courteous and fair; some few were very discourteous. In spite of this conduct and the length of the meetings, the attorneys responded patiently and courteously to all questions no matter how many times they were repeated. It did take some time to explain the

settlement, but it was the duty of the attorneys to explain to their clients this settlement and that explanation was one of the principal purposes of the conference. We believe the attorneys would have been remiss in their duty if they had not brought this settlement to the attention of their clients, and made some kind of a recommendation to them with respect to it. Clearly there was not the slightest evidence of misconduct that we could discover. We would like to have listened to all the tape recordings - some 80 hours of conference proceedings - but that was not feasible because of the time element. The Indian Bureau had staff people prepare summaries of all the tapes. These were very helpful to us.

#### ALLEGED IRREGULARITIES IN PROCEDURE, FINDINGS 87 AND 88

We have found that the charges of irregularities in the voting procedures were for the most part untrue. When the alleged facts were checked against the records kept of the voting, the charges appear to be unfounded. In one instance what appeared to be an irregularity was simply a human error which had no appreciable effect on the voting. Our findings set forth the facts with respect to these charges, the weight of evidence supports the findings which are against the objectors' claims.

As indicated in the findings, officials of the Bureau of Indian Affairs set up the procedures for the conferences and the voting, because the Indian groups were not organized or equipped to do it for themselves. They sent out notices to the Indians on their rolls, conducted the voting with Indian tellers assisting, and certified the results. All this they did fairly and efficiently, notwithstanding many difficulties.

## THE PIT RIVER ISSUE, FINDINGS 89 TO 101

As indicated, a separate hearing was held to hear certain objections which are set out in Finding 34. Eleven Pit River objectors were given ample opportunity to present their objections to the Commission at a hearing at Eureka, California, on May 22, 1964. Our findings cover these objections in detail so that little can be added except to point out that the objections were without foundation and contrary to the weight of evidence presented at this proceeding on the issues raised at this hearing.

## INTEREST OF MEMBERS OF CONGRESS, FINDINGS 102, 103, AND 104

We believe that our findings cover this subject sufficiently so we shall not add further comment except to say we have taken the exhibits offered and the representations made into consideration.

## THE LANDS INVOLVED IN THE SETTLEMENT, FINDINGS 105 AND 106

These findings disclose, among other facts, that the area involved in the Pit River claim is 3,387,000 acres lying mostly in portions of Modoc and Lassen counties in northern California. Claimants Exhibit P 9-A in Docket 347 is a detailed land classification map of the area. It discloses that a very small percentage of the Pit River area is usable for agriculture.

In title and liability proceedings in Docket 347 we found:

"The claimed area is geographically isolated, high and cold; its topography is rough, forbidding, and difficult to traverse."

In much of the area there were large lava deposits as well as some timbered

areas. Our previous findings indicate that the area had not been occupied by white people until long after 1853; that the extreme hostility of the Indians and the rugged and barren topography of the country restricted early traffic in the area and made the area unattractive to possible white purchasers.

We take judicial notice of the fact that there has been a very limited industrial or agricultural development in this area to the present date, even though the defendant terminated Indian title to these areas in 1853, which made it possible for white settlement to begin at that time. Lack of natural resources in the lands in Docket 347 in comparison with land areas in Dockets 31 and 37 is plainly noticeable. No Indian reservations were established in the area at any time. Under the foregoing circumstances it would seem that the consolidated settlement would possibly be more favorable to the Pit River Indians than it would be to the other two groups involved.

The total net acreage in the three claims after deduction of reservation lands previously paid for, and land grants, is 64,425,000 acres. It would have been difficult to find a prospective purchaser for such a large area in California in 1853. In evaluating this settlement, we must take into consideration the fact that if this case were to go to final decision, the burden of the petitioners would be to establish the fair market value of the subject land as of March 3, 1853. That would be a very expensive, time consuming activity.

## RISKS AND EXPENSE OF FURTHER LITIGATION, FINDING 107

The fact that the litigation has not been concluded to the point where a judgment could be entered must be taken into consideration. Dockets 31 and 37 are presently on appeal in the Court of Claims and the appeal has involved Dockets 80, 80-D and 347. Any final judgment in the last three dockets would be subject to appeal. There may be questions of liability which could be decided entirely or in part against the petitioners. For example, in Dockets 31 and 37 we decided in favor of the petitioners and the Court of Claims has now been asked by the defendant to review several issues, including the following:

- (1) Whether petitioners are an identifiable group of American Indians authorized to sue under the Indian Claims Commission Act;
- (2) Whether each of the 500 tribelets in California must present separate suits or, the Indians of California may sue as a class;
- (3) Whether the petitioners have in fact established original Indian title to the area for which an interlocutory recovery was awarded;
- (4) Whether large areas in California had become vacant by reason of the gathering of the Indians at the Missions, and disease and warfare; and
- (5) Whether the failure of the Indians to file claims with the Indians of California Land Claims Commission prior to March 1, 1851, constituted a bar to this litigation, under a prior holding of the Supreme Court.

Loss on one or more of these issues could completely eliminate or greatly reduce recovery. Further litigation would be expensive to the Indians. It has been estimated that the expenses of the valuations in

Dockets 31 and 37 would exceed \$500,000 to \$750,000 on each side. It would take many years to conclude the litigation if it ran its ordinary course, after the present appeal and trials were held on both valuation and offsets, after which additional appeals might be taken.

Counsel for the parties are experienced in litigation before this Commission, the Court of Claims, and other courts. They have negotiated the settlement and recommend it. They have relied in part upon precedents of this Commission in reaching the settlement. Some of the precedents considered by the parties are tabulated below:

Name of Case	Location	Val. Date	Acres	Per Acre Awarded
Cheyenne & Arapahoe	Kansas, Neb., Colo., Wyo.	1865	51,210,000	\$ .45
Crow	Mont., Wyo.	1868	30,000,000	.40
Blackfeet (See Pit River Ex. 4, p. 8 for other cases)	Montana	1874	12,261,750	.50

While we may take these precedents into consideration, the precedents are not controlling because each valuation must be made on the facts and circumstances peculiar to each claim. But they do have some value as guide lines by indicating a rather large area where the valuation may fall between high and low limits.

Also, we must take into consideration in a matter of this kind, that it is possible if the claims are not compromised, but contented to a conclusion, the Indians may win a much higher award. This we have given serious consideration. But all this takes much time. We note Dockets 31 and 37 have been active for nearly 16 years. No one can tell how many more years it might be before a final judgment will be entered, but it will take a long time, possibly 10 years, if the cases follow the

normal course. The other dockets have not been active for the same period, but they were all filed about the same time.

Another practical matter deserving some consideration is the fact that when a final judgment is entered and reported to Congress and the money is appropriated to pay the judgment, that the money is deposited to the credit of the Indians and begins immediately to draw interest at the rate of 4% per annum. By way of illustration only, if the compromise settlement in this proceeding is approved the \$29,100,000 will earn \$1,164,000 per year or \$11,640,000 over a ten year period. It would take a considerable increase in the value per acre to make up for the lost interest, or the loss of the use of the money, if the claims are litigated to a successful conclusion at the end of ten years.

We should note here that in the above illustration we assumed that the judgment fund would remain in the Treasury for 10 years. But if it didn't, and the funds were paid out per capita to the Indians, they would have the use of it that much earlier, which should be equivalent in worth to them of the value of the accumulated interest. (The illustration allows only simple interest).

One last observation we would like to make is this: It appears that the Indian objectors to this settlement have a misconception with respect to the jurisdiction and powers that the Commission is endowed with under the Claims Commission Act. They do not seem to realize that the Commission does not have the authority to redress all the wrongs they claim this country inflicted upon their progenitors and upon themselves; that we can hear only those claims listed and defined in the five categories in the Claims Act upon which recovery may be had. They seem not to realize that

the fair market value of the land as it was at the time of the taking is the measure of damages which may be allowed if the Indians prove their cases and an award in money for land is made to them. Other things which they appear not to be aware of are; that the proceedings before the Commission are strictly judicial in nature; that all claims must be proved unless they are settled by compromise, by the claimants; that the proceedings are adversary in fact; that the Department of Justice is charged by law to defend against all claims prosecuted under the Act; that in passing the Act Congress did not admit that the United States was guilty of any wrongdoing, but each claim must be established by substantial evidence; that the Indians urged that they should have their day in court on their claims and that is what the act purports to give them; that this Commission has no powers to negotiate settlements, only the parties to the lawsuits may do that; but we do have the power to approve or reject the settlements; that all our decisions may be appealed to the Court of Claims, and on to the Supreme Court in cases deemed proper by that Court; that the Commission is bound by the rulings of the two appellate courts named; that proper offsets, as defined in the Claims Act, are allowed to the defendant, and that it is the duty of the Commission to decide what offsets are proper, subject to the right of appeal; that the Commission does not have any authority to direct or make distribution of awards granted because that is strictly the function of Congress and consequently we cannot direct in our judgments the distribution of money to individual Indians but only to Indian entities such as tribes, bands, or identifiable groups of Indians as we have done in this case; and that we neither help hire nor discharge attorneys for Indian entities who have claims before us. These items

are the functions of the Indians themselves and the Secretary of the Interior who has the power to approve or disapprove the attorney's contracts of employment. There are other items that might be added to this list. We feel impelled to make this statement because there seemed to be much misunderstanding with respect to the activities of the Indian Claims Commission.

Considering all of the circumstances, the record in all of the stages of litigation in the dockets concerned, the testimony of the witnesses, the approval by the Commissioner of Indian Affairs, and representations of counsel, the Commission has found that the proposed settlement is fair and just to the Indian litigants concerned and to the United States; that it has been reasonably explained to the members of the Indian groups concerned; that the bona fide members of all the Indian groups concerned have approved the settlement by a majority of those voting, after a reasonable opportunity to examine it and learn of its terms and vote upon its approval or disapproval; that approval of the settlement will eliminate the need for considerable additional litigation and expenses incidental thereto.

In conformity with our Findings of Fact, and Opinion entered today, a Final Judgment will be entered.

Arthur V. Watkins  
Chief Commissioner

We concur:

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner