

BEFORE THE INDIAN CLAIMS COMMISSION

UTE INDIAN TRIBE OF THE UINTAH AND)	
OURAY RESERVATION, AN INDIAN REOR-)	
GANIZATION ACT CORPORATION, FOR)	
AND ON BEHALF OF THE UNCOMPAGRE)	
BAND OF UTE INDIANS,)	
)	
Petitioner,)	
)	
v.)	Docket No. 349
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 18, 1965

FINDINGS OF FACT ON THE STIPULATED SETTLEMENT
OF CLAIMS AND OFFSETS

The Commission makes the following findings of fact:

1. Docket No. 349 involves the claim of the Ute Indian Tribe on behalf of the Uncompahgre Band of Ute Indians set forth in detail in the petition filed August 11, 1951. In substance, it is claimed that defendant has failed to provide the Uncompahgre Band with a reservation in Colorado or in Utah and that defendant was required to do so under an agreement between the United States and the Confederated Bands of Ute Indians, ratified June 15, 1880 (21 Stat. 199), and that subsequent acts of defendant constituted unfair and dishonorable dealings. It is the contention of the petitioner that the Uncompahgre Band is the only band of the Ute Indians that did not receive a reservation under the 1880 Agreement. In its petition, petitioner seeks compensation for the value

of the reservation it claims was promised the Uncompahgre Band, but denied it. Defendant contends that it had no obligation to furnish such a reservation.

2. Petitioner is an organized tribe located on the Uintah and Ouray Reservation, Utah. It consists of the Uncompahgre and White River Bands of Ute Indians (formerly residents of Colorado) and the Uintah Band of Ute Indians (of Utah). The claim in Docket No. 349 is managed jointly by petitioner's Tribal Business Committee and the Ute Distribution Corporation which represents former members of the tribe, over whom federal supervision has been terminated, pursuant to Public Law 671, 83rd Cong., approved August 27, 1954 (68 Stat. 868). ^{1/}

3. The claim was argued to the Commission on defendant's motion for summary judgment which was denied on September 30, 1960. When the defendant asserted in Docket No. 327, ^{2/} a claim by the Confederated Bands of Ute Indians (which include the Uncompahgre Band) certain offsets that could have been asserted against petitioner in this Docket No. 349, counsel for both parties, by negotiation, arrived at a compromise settlement of all issues in Docket 349 including offsets, subject to the approval of the Indians, the Commissioner of Indian Affairs and this Commission. The proposed settlement was initiated by an offer in writing by counsel for petitioner that was accepted by the Department of Justice.

^{1/} Pet. Ex. 37, p. 1

^{2/} Involving a claim on behalf of the Confederated Bands of Ute Indians for certain land in Colorado

4. There is now pending before this Commission a motion by petitioner for the entry of a final judgment in accordance with an agreed stipulation of compromise and settlement filed by the parties. In substance the stipulation provides for a final judgment in favor of petitioner, after all offsets, of \$300,000.00. The stipulation in full is as follows:

It is hereby stipulated and agreed between counsel for the parties that the above-entitled case shall be settled and finally disposed of by entry of final judgment, from which no appeal or review will be taken by either party, as follows:

1. There shall be entered in the above-entitled case, after all allowable deductions, credits and offsets, a net judgment of \$300,000.

2. The entry of a final order in the above-entitled case shall finally dispose of all claims or demands which the petitioner has asserted or could have asserted against the defendant in that case and petitioner shall be barred from asserting all such claims or demands in any further action.

3. The entry of the final order in the above-entitled case shall finally dispose of all offsets, claims or demands under the Act of August 13, 1946, 60 Stat. 1049, which the defendant has asserted or could have asserted against the petitioner in that case for all disbursements and transactions from June 15, 1880 to and including June 30, 1962, so far as the Uncompahgre Band of Ute Indians is concerned, and defendant shall be barred from asserting all such offsets, claims or demands against the Uncompahgre Band in any future action.

4. The stipulation and the final judgment to be entered in the above-entitled case shall be by way of compromise and settlement and shall not be construed as an admission of either party for purpose of precedent in any other case.

5. It shall be expressly agreed that defendant shall not assert any claim against the Confederated Bands of Ute Indians or the Uintah, White River, Uncompahgre, Southern Ute, or Ute Mountain Ute Bands of Ute Indians on account of or

arising out of any final judgment entered in the above-entitled case or any payment made pursuant to this stipulation and the entry of a final judgment as herein provided.

/s/ Robert W. Barker
Attorney of Record for Petitioner

/s/ Ramsey Clark, 1-25-65
Assistant Attorney General

Jan. 22, 1965

/s/ Braxton Miller
Attorney, Department of Justice

Approved on behalf of the Ute Indian Tribe of the Uintah and Ouray Reservation and the Uncompahgre Band of Ute Indians.

/s/ Harvey Natchees
Harvey Natchees, Chairman Business Committee of the Ute Indian Tribe

Approved on behalf of the Ute Distribution Corporation.

/s/ Lena D. Sixkiller
Lena Sixkiller, President

I certify that the signatures of the Chairman of the Tribal Business Committee and of the President of the Ute Distribution Corporation, respectively, are genuine.

/s/ B. A. Narcho
Acting Superintendent Uintah & Ouray Reservation

Approved on behalf of the law firm of Wilkinson, Cragun & Barker, contract attorneys.

/s/ Robert W. Barker
Robert W. Barker, A Partner

5. Following acceptance by the defendant of the offer of compromise and settlement in this docket, counsel reported on the offer to the Indian groups in the following meetings: ^{3/}

3/ Tr. 27-34; Pet. Ex. 10, 12, 13, 14, 16, 19

(1) Board of Directors of the Ute Distribution Corporation, a Utah corporation representing former members of the Ute Indian Tribe, at Fort Duchesne, Utah, on October 3, 1964. Federal supervision over these former Ute Indians was terminated by the Act of August 27, 1954, 68 Stat. 868.

(2) Tribal Business Committee of the Ute Indian Tribe at Fort Duchesne, Utah, on October 3 and December 12, 1964.

(3) General Council of the Ute Indian Tribe at Fort Duchesne, Utah, on October 17, 1964.

(4) General Council of the Uncompahgre Band at Randlett, Utah, on November 5 and 11, and December 12, 1964.

6. All of the general council meetings were called pursuant to written notice to the tribal or band membership, posted at usual places on the respective reservations concerned mailed to the individual adult members at the addresses shown on the official rolls of the respective tribes or band, through publication in local newspapers. The evidence received by the Commission on this proposed settlement includes copies of the notices sent to individual members and testimony of tribal officers as to the steps taken to give the widest possible notice of the meetings called to consider the proposed settlement. ^{4/}

A representative notice publishing the consideration of the proposed

^{4/} Pet. Ex. 2, 6, 7, 8

settlement is the notice of the Ute Indian Tribe's general council meeting of October 17, 1964, as follows: ^{5/}

You are hereby notified that there will be a meeting of the general membership of the Ute Indian Tribe of the Uintah and Ouray Reservation, as well as a meeting of the membership of the White River Band and the Uncompahgre Band, at the Community Building, Fort Duchesne, Utah, commencing at 10:00 A.M., October 17, to consider (1) a proposed settlement of offsets in the case of the Confederated Bands of Ute Indians v. United States, Indian Claims Commission Docket No. 327; (2) whether there should be any appeal from the final judgment of the Indian Claims Commission in such case; (3) a proposal to compromise and finally settle all issues in the case of the Ute Indian Tribe on behalf of the Uncompahgre Band of Ute Indians v. United States, Indian Claims Commission Docket No. 349; and (4) to consider and adopt necessary resolutions and releases to permit the sharing by all bands in the proceeds of said claims, as in all past claims.

/s/ Harvey Natchees
Harvey Natchees, Chairman
Tribal Business Committee

7. The Commission's records also include a copy of the notice sent to the Directors of the Ute Distribution Corporation and testimony from the corporation's president and secretary concerning the personal notice received by each of the directors of the meeting called to consider the proposed settlement. ^{6/}

8. The Board of Directors of the Ute Distribution Corporation, under Article IX of the Articles of Incorporation, is empowered as follows: ^{7/}

5/ Pet. Ex. 2

6/ Pet. Ex. 17

7/ Pet. Ex. 37

The Board of Directors shall exercise the corporate powers of the corporation, and, subject to such supervision by the Secretary of the Interior as is otherwise required by law, shall manage jointly with the Tribal Business Committee of the full-blood members of the Ute Indian Tribe of the Uintah and Ouray Reservation, Utah, all unadjudicated or unliquidated claims against the United States, all gas, oil and mineral rights of every kind and all other assets not susceptible to equitable and practicable distribution under said Public Law 671 shall divide with said full-blood members the net proceeds therefrom as provided in said Public Law 671, and shall distribute or cause to be distributed the share of the mixed-blood members to the stockholders hereof, and shall do any and all things that may be necessary for the pursuit of the business and affairs of the corporation.

9. As a result of the meetings set forth in Finding 5, supra, each of the Indian groups involved and the Board of Directors of the Ute Distribution Corporation adopted resolutions approving the proposed settlement. The evidence received by the Commission at the hearing on the proposed settlement includes the resolutions of each of the Indian groups and of the corporation approving the settlement signed by the tribal and corporate officers. ^{8/} The resolutions are identical in pertinent part and each provides as follows:

WHEREAS, the Ute Indian Tribe of the Uintah and Ouray Reservation on behalf of the Uncompahgre or Taibequache Band of Ute Indians filed a claim against the United States in the Indian Claims Commission identified as Docket No. 349; and

WHEREAS, following extensive investigation and preparation of the claim, claims counsel have now proposed to the tribe that the claim be settled for a net judgment after all offsets and counterclaims of \$300,000 to the petitioner:

^{8/} Pet. Ex. 38

NOW, THEREFORE, BE IT RESOLVED by the full-blood members of the Uncompahgre or Tabeguache Band of Ute Indians, meeting in general council at the Uintah and Ouray Reservation, that the proposed settlement of Docket No. 349 in the Indian Claims Commission on a basis which will result in a judgment in favor of the petitioner in the net sum of \$300,000, is hereby approved and that the Chairman of the Tribal Business Committee and counsel for the petitioner are authorized to sign a stipulation in accordance with the form of stipulation attached hereto as Exhibit A.

BE IT FURTHER RESOLVED, that the Secretary of the Interior or his duly authorized representative and the Indian Claims Commission are requested to approve said settlement.

Some of the resolutions contain language, omitted here because it is not material to this settlement, for the guidance of the Secretary of the Interior and Congress in the future division of the judgment to be entered in this case.

10. All of the resolutions were adopted without a dissenting vote with the exception of the resolution of the Ute Indian Tribe.

The voting at the meetings on the settlement was as follows:

	<u>In Favor</u>	<u>Against</u>
Ute Indian Tribe of the Uintah and Ouray Reservation	36	1
Uncompahgre Band	47	0
Board of Directors, Ute Distribution Corporation	4	0
Business Committee, Ute Indian Tribe, Uintah and Ouray	4	0

Thus, only one dissenting vote was cast against the proposed settlement in all of the meetings held for the Indians to consider the settlement.

The Commission was advised, through testimony at the hearing, that at

some of the meetings held to consider this proposed settlement and a settlement of Docket No. 327 there was opposition to a proposal that the shareholders of the Ute Distribution Corporation share in the judgments in the two cases but it is evident from the testimony and the voting on the resolutions that this settlement was approved by the Indians.^{9/}

11. Mr. Robert W. Barker, a partner in the firm of Wilkinson, Cragun & Barker, counsel for the petitioner in this docket, advised the Commission at the hearing on January 19, 1965, of the method of presenting the proposed settlement to each of the Indian groups and the directors of the Ute Distribution Corporation. The procedures outlined by Mr. Barker and testified to in detail by the witnesses were substantially as follows: following negotiation of the settlement, the claims attorneys submitted a written report evaluating the basis for settlement of all issues including offsets. The written report was received by the tribal leaders and studied by them prior to the various meetings. Copies were distributed to the members at the various meetings and were available for reference during the discussions. At each meeting the attorneys explained the proposed settlement and the pros and cons of litigating the issues. The proposed resolutions and stipulation, prior to their adoption, were read and explained by the attorneys. Throughout the meetings, questions were encouraged from the Indians and answered by the attorneys until, in the opinion of the

^{9/} Tr. 31-33; 133-144; 166-176

attorneys and the Indian leaders, the Indians understood the decision they were being asked to make and understood the factors they had to take into consideration in making it. The attorneys were assisted from time to time by interpretation of the questions and answers in the Ute language for the assistance of all individuals present at the meetings who could not speak or understand English. The proceedings were interpreted at the general council meetings. Leaders who attended each of the meetings testified that all concerned understood what they were being asked to vote on. ^{10/}

12. Voting on the proposed settlement was conducted by tribal officers at each of the meetings of the Indian groups. Each meeting was attended by the superintendent or assistant superintendent of the Uintah and Ouray Indian Agency and their signatures appear on the resolutions adopted at the meetings and received in evidence in this proceeding. ^{11/}

13. The evidence received by the Commission on the proposed settlement also includes the minutes of each of the meetings held to consider the settlement. The minutes show the number in attendance at the meetings, the conduct of the meetings and voting on the resolution. The minutes are signed by the secretaries of the respective Indian groups and the Corporation. ^{12/}

14. The proposed settlement was approved by the Bureau of Indian Affairs by a letter of January 18, 1965, that reads as follows: ^{13/}

^{10/} This is the substance of all the testimony

^{11/} Pet. Ex. 38, 43, 44, 45

^{12/} Pet. Ex. 10, 12, 13, 14, 16, 19

^{13/} Pet. Ex. 35

In reply refer to:
Tribal Operation

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20240

JAN 18, 1965

Wilkinson, Cragun and Barker
Attorneys at Law
1616 H Street, N. W.
Washington, D. C.

Gentlemen:

You submitted to this Bureau for approval a proposed compromise to settle the case of the Uncompahgre Band of Ute Indians, Indian Claims Commission Docket No. 349, at \$300,000.00.

Authority to prosecute the case is provided in Contract No. I-1-ind. 42189, dated February 13, 1935, between the Ute Tribe of the Uintah and Ouray Reservation and Attorney Ernest L. Wilkinson, a member of the present law firm of Wilkinson, Cragun and Barker. The contract was approved on July 25, 1949, for a period of five years from the date of approval. It has been extended several times, the last extension being for a period of two years beginning July 25, 1964.

The contract provides that the attorney shall not make any compromise, settlement, or other adjustment of such claim or matter in controversy unless with the approval of the Tribe.

By letters dated January 8, 1964, and April 1, 1964, you sent an offer to the Attorney General to compromise the claims in Docket No. 349 at \$300,000.00 after offsets and that no review will be sought or appeal taken by either party. The final order in the case will dispose of all claims or demands which the petitioner has asserted or could have against the United States in the case, and will dispose of all offsets, claims or demands under the Indian Claims Commission Act of August 13, 1946, which the United States has asserted or could have asserted against the petitioner for all disbursements and transactions from June 15, 1880, to and including June 30, 1962, so far as the Uncompahgre Band is concerned. The Department of Justice, by letter dated May 15, 1964, accepted the offer provided the settlement be accepted and approved in writing by the Ute bands or tribes involved and by the Secretary of the Interior or his authorized representative.

You took the terms of the compromise to settle claims in Docket No. 349 to the Indian groups.

The mixedblood members of the Ute Indian Tribe of the Uintah and Ouray Reservation in Utah, in accordance with the Act of August 27, 1954 (68 Stat. 686), as amended, incorporated as the Ute Distribution Corporation. The Board of Directors of the Ute Distribution Corporation met on October 3, 1964, in accordance with the articles of corporation and adopted a resolution by a vote of 4 for and none against acceptance of the compromise. The signatures of the President and Secretary of the Board of Directors were affixed to the resolution in the presence of the Superintendent of the Uintah and Ouray Agency who certified that the signatures are genuine.

A meeting was duly noticed to the members of the Ute Tribe of the Uintah and Ouray Reservation and a meeting was held on October 17, 1964, to obtain their views on the proposed compromise of claims in Docket No. 349. The claims attorney explained the terms of the compromise and answered questions asked by the Indians. An interpreter was present. He gave a general explanation in the Indian language. The Indians had the opportunity to discuss the matter among themselves. A vote was then taken by ballot which resulted in 36 votes for, 1 against, with 42 abstaining, by which a resolution was adopted accepting the terms of the compromise. The meeting was attended by the Acting Superintendent of the Uintah and Ouray Agency who certified that the signatures of the Chairman and the Secretary of the general council of the Ute Indian Tribe were affixed in his presence and are genuine.

A meeting of the Uncompaghre Band of Ute Indians was duly noticed and held on November 11, 1964, at which 34 members attended. The claims attorneys explained the terms of the compromise of claims in Docket No. 349. The comments and explanations were interpreted in the Indian language. Different members of the Band talked in Indian. The Indians did not wish to make a hasty decision on the proposed compromise and decided to adjourn the meeting and meet at a later date. A special meeting of the Uncompaghre Band was later duly noticed and held on December 12, 1964. Some members spoke in Indian and an interpreter was chosen by the Indians present. The Band's claims attorney agreed to the procedure. The attorney explained the terms of the compromise at this meeting and answered questions asked. Discussion was also had among the Indians themselves. A resolution was then adopted by a vote of 46 for and none against acceptance of the compromise. The Acting Superintendent of the Uintah and Ouray Agency certified that the signatures of the

Chairman and Secretary of the general council of the Uncompaghre Band were affixed to the resolution in his presence and that they are genuine.

The Tribal Business Committee of the Ute Indian Tribe of the Uintah and Ouray Reservation also met on December 12, 1964, to express its views on the proposed settlement of claims in Docket No. 349. By a vote of 4 for and none against, it adopted a resolution to accept the proposed compromise. The Acting Superintendent of the Uintah and Ouray Agency certified that the signatures of the Chairman and Secretary of the Tribal Business Committee were affixed to the resolution in his presence and are genuine.

The resolutions adopted by the various groups, as certified by a representative of this Bureau, are hereby approved.

A representative of the Bureau attended each of the meetings held on the proposed compromise. They report that the claims attorney presented and discussed the proposed compromise in detail and that discussions and explanations were interpreted in the Ute tongue. The meetings were duly noticed and every member was given the opportunity to attend one of the meetings and express his views. Ample time was given the Indians for discussion and to understand the terms of the compromise and, as in the case of the Uncompaghre Band, a second meeting was held at the request of the Indians. Our representatives at the meetings report that a sufficient number of Indians were in attendance at the meetings, that the numbers in attendance were equal to that when previous action was required of them of similar business, and that they reasonably represented their respective groups. We believe that the Indians attending the meetings reasonably understood the terms of the proposed compromise and that the voting expressed the views of the membership of the respective groups.

In the light of the information supplied by you, that supplied by our field offices, and that which has been obtained from other sources, we believe that the proposed settlements of claims in Docket No. 349 at \$300,000.00 is fair and just to the Indians. The proposed settlement is hereby approved pursuant to the authority granted by Section 11, Secretarial Order 2508 (27 F.R. 11560).

Sincerely yours,

/s/ James E. Officer
Associate Commissioner

15. It appears from defendant's amended answer filed in Docket 327, of which we take judicial notice, that the claimed offsets involved in this settlement for gratuitous payments alleged to be for the benefit of the Uncompahgre Band are in excess of \$686,500 and might be as much as \$1,480,721. The judgment of \$300,000 would be after satisfaction of the claimed offsets. The compromise has been reached after long, hard negotiations and careful study by the parties of the terms of the Ute 1880 Agreement, upon which the claim is based, and of factors affecting the size and value of the reservation which it is claimed should have been provided, as well as other matters asserted in the petition.

16. Counsel for both parties are experienced in the complicated field of Indian claims litigation. Most of them have been parties to settlements of other cases before this Commission. The Commission believes that their joint opinion and the opinion of the Associate Commissioner of Indian Affairs--that this is a fair settlement--is entitled to great weight.

17. Five witnesses were called on behalf of the petitioner to testify as to the manner of presentation of the settlement to the Indians at the series of meetings set forth in finding 5, supra. (They also testified as to the presentation to their respective groups the settlement in Docket No. 327). The witnesses were:

(1) Mrs. Lena Sixkiller, President of the Ute Distribution Corporation, who presided at the Fort Duchesne meeting of the Corporation's Board of Directors. ^{14/}

(2) Mrs. Lula Murdoch, Secretary of the Ute Distribution Corporation, who also attended the Board of Directors' meeting and authenticated the minutes of that meeting. ^{15/}

(3) Harvey Natchees, Chairman of the Tribal Business Committee of the Ute Indian Tribe, who presided over the Committee's meetings over the general council meeting of the Ute Indian Tribe, called to consider the settlement. Mr. Natchees also served as interpreter at the general council meetings of the Tribe and of the Uncompahgre and White River Bands. He also authenticated minutes of all of the meetings of the Ute Indian Tribe and the Uncompahgre Bands. ^{16/}

(4) Ouray McCook, Chairman of the Uncompahgre meetings which were called to consider the settlement. ^{17/}

(5) Francis McKinley, member of the Tribal Business Committee of the Ute Indian Tribe and a leader of the Uncompahgre Band, who was present at the first meeting of the Tribal Business Committee and the last Uncompahgre Band meeting. ^{18/}

18. Each witness was questioned as to his position of responsibility in the government of the Indian groups involved or of the Ute

^{15/} Tr. 113

^{16/} Tr. 123

^{17/} Tr. 157

^{18/} Tr. 166

Distribution Corporation, his occupation and his educational background. Without repeating all that was said by way of testimony, in summary, the Commission is satisfied that the witnesses were mature adults of at least an eleventh or twelfth grade education, elected by their people as leaders and in a position to speak with authority as to the feelings of their people on the proposed settlement. On the merits of the settlement and the manner of its presentation to the Indians, the witnesses testified, in summary, that the settlement was considered fair by the Indians and that its presentation to the Indians was full and complete, that all questions asked were fairly answered, and that interpreters were used to insure that the settlement was understood by those who did not understand the English language. In addition, Mr. McKinley, who is a leader of the Uncompahgres and a teacher at Arizona State University, testified that the Uncompahgre Band was not opposed to the settlement and that the only controversy during the considerations of the settlement concerned the feelings of some that the terminated Indians represented by the Ute Distribution Corporation should not share in the judgment. ^{19/}

19. Taking into consideration the evidence received at the hearing, both oral and documentary, the approval of the settlement by the Associate Commissioner of Indian Affairs and the representations of counsel for both parties that the proposed settlement of offsets is

^{19/} Tr. 167-173

