

BEFORE THE INDIAN CLAIMS COMMISSION

SHOSHONE TRIBE OF INDIANS OF THE)
WIND RIVER RESERVATION, WYOMING,)
))
Petitioner,)
))
v.) Docket No. 157
))
THE UNITED STATES OF AMERICA,)
))
Defendant.)

Decided: February 24, 1965

FINDINGS OF FACT ON COMPROMISE OF THE CLAIM SET FORTH IN DOCKET NO. 157

1. On July 24, 1951, petitioner, the Shoshone Tribe of Indians of the Wind River Reservation, filed a petition setting forth certain claims against the defendant which was assigned Docket No. 157. The first cause of action alleged that between 1868 and 1874 white miners invaded the Shoshone Reservation and removed large quantities of gold therefrom, and that the United States was responsible therefor, and demanded judgment in the amount of \$1,106,750.00. The second cause of action alleged that the Court of Claims in its decision of June 1, 1937, 85 C. Cls. 331, a prior action between the same parties as hereto, had erroneously deducted certain offsets from the amount found due petitioner and demanded judgment in the amount of \$1,536,380.00.

2. On September 28, 1951, the defendant filed a motion for summary judgment on the grounds that the two causes of action were barred by res judicata, namely, the decision of the Court of Claims in Docket No. 219, 82 C. Cls. 23 and 85 C. Cls. 331; and by the terms

of the jurisdictional act of 1927, under which petitioner had previously proceeded in that case. On November 8, 1954, this Commission ruled that the first cause of action on the gold claim was not barred, but that the second cause of action regarding offsets should be dismissed and it was dismissed.

3. On January 26, 1965, the parties herein filed with the Commission a Joint Motion for Entry of Final Judgment in the above-entitled case based upon a Stipulation attached thereto and marked Exhibit A made and executed by Robert W. Barker, Attorney of Record for the petitioner, and Ramsey Clark, Assistant Attorney General and Daniel G. McGrath, attorneys for defendant; said Stipulation is in words and figures as follows:

STIPULATION TO COMPROMISE AND SETTLE

WHEREAS, on July 24, 1951, the Shoshone Tribe of Indians of the Wind River Reservation filed a petition in Docket No. 157, alleging that between 1868 and 1874 white miners invaded the Shoshone Reservation and removed large quantities of gold therefrom, and that the United States was responsible; and whereas defendant filed a motion for summary judgment on September 29, 1951, which was denied on November 8, 1954 (3 Ind. Cl. Com. 380); and whereas the parties have engaged mineral experts and carefully studied the facts of the case;

NOW, THEREFORE, the parties agree that:

1. The claim shall be compromised and settled by stipulation and entry of the final judgment in the Indian Claims Commission, no review to be sought or appeal taken by either party.

2. Judgment shall be entered in favor of petitioner against defendant in the amount of \$120,000. This amount represents a stipulated value of gold of \$195,000, less a stipulated amount of offsets of \$75,000.

3. The judgment shall finally dispose of all claims or demands which petitioner has asserted or could have asserted in this case against defendant, and petitioner shall be barred from asserting all such claims or demands in any future action.

4. The judgment shall finally dispose of all offsets, claims or demands to and including December 31, 1963, which defendant has asserted or could have asserted against petitioner in this or any other case under the provisions of Section 2 of the Indian Claims Commission Act of 1946.

5. The judgment shall not operate to deprive the defendant of exercising its right to collect from the proceeds of timber sales, as authorized by statute, expenses of managing, protecting and selling timber.

6. Nothing connected with this compromise may be construed as an admission of either party as to any issue for purposes of precedent in any other case.

7. The stipulation is subject to the condition that the Tribal Council or other governing body of the Shoshone Tribe of Indians of the Wind River Reservation, Wyoming, adopt an appropriate resolution containing all the provisions of the agreement of settlement and that the defendant be furnished a copy of such resolution; and that the resolution of the Tribal Council or other governing body of the Tribe be approved by the Commissioner of Indian Affairs, and that the Commissioner of Indian Affairs advise the defendant in writing that he approves the settlement.

Attached to the Stipulation (Exhibit A, pp. 4, 5 and 6) is the properly signed and executed approval of the Business Council of the petitioner tribe of said stipulation in the form of a resolution, adopted December 9, 1964, which is as follows:

BUSINESS COUNCIL OF THE SHOSHONE TRIBE OF
INDIANS OF THE WIND RIVER RESERVATION, WYOMING

Resolution 1317

WHEREAS, the United States has agreed to settle the claim of the Shoshone Tribe of the Wind River Reservation, Wyoming, pending before the Indian Claims Commission, Docket No. 157, for the sum of \$120,000; and

WHEREAS, the background of the claim and all aspects of the proposed settlement have been fully and freely explained by the Tribe's claims attorneys, and discussed by the members here assembled, so that the members of the Business Council are fully informed in the premises;

NOW, THEREFORE, BE IT RESOLVED, that the proposed final settlement of the Tribe's claim, which reads as follows:

1. The claim shall be compromised and settled by stipulation and entry of the final judgment in the Indian Claims Commission, no review to be sought or appeal taken by either party.
2. Judgment shall be entered in favor of petitioner against defendant in the amount of \$120,000. This amount represents a stipulated value of gold of \$195,000, less a stipulated amount of offsets of \$75,000.
3. The judgment shall finally dispose of all claims or demands which petitioner has asserted or could have asserted in this case against defendant, and petitioner shall be barred from asserting all such claims or demands in any future action.
4. The judgment shall finally dispose of all offsets, claims or demands to and including December 31, 1963, which defendant has asserted or could have asserted against petitioner in this or any other case under the provisions of Section 2 of the Indian Claims Commission Act of 1946.
5. The judgment shall not operate to deprive the defendant of exercising its right to collect from the proceeds of timber sales, as authorized by statute, expenses of managing, protecting and selling timber.

6. Nothing connected with this compromise may be construed as an admission of either party as to any issue for purposes of precedent in any other case.

7. The stipulation is subject to the condition that the Tribal Council or other governing body of the Shoshone Tribe of Indians of the Wind River Reservation, Wyoming, adopt an appropriate resolution containing all the provisions of the agreement of settlement and that the defendant be furnished a copy of such resolution; and that the resolution of the Tribal Council or other governing body of the Tribe be approved by the Commissioner of Indian Affairs, and that the Commissioner of Indian Affairs advise the defendant in writing that he approves the settlement.

IS HEREBY APPROVED; and the Chairman is hereby authorized to sign the settlement stipulation on behalf of the Tribe. It is understood the settlement is conditioned on approval by the Commissioner of Indian Affairs.

BE IT FURTHER RESOLVED, that the Chairman and Tribal Secretary are authorized to proceed to Washington, D. C., to testify at a hearing before the Indian Claims Commission on 31 December, 1964, or such other time as the Commission may fix. In the event of inability of one or both of said officers to testify, the Chairman is authorized to appoint other members of the Business Council to testify in their place.

C E R T I F I C A T I O N

I, the undersigned, hereby certify:

1. That the Business Council is composed of 6 members of whom 6 were present, a quorum, at a special and duly noticed session, convened and held this 9th day of December, 1964;

2. That the background of the claim and all aspects of the proposed settlement were fully explained;

3. That the foregoing resolution approving the settlement was duly adopted by vote of 5 members for, 0 members against, and Chairman not voting.

/s/ Robert N. Harris Sr.
Robert N. Harris, Chairman
Shoshone Business Council

ATTEST:

/s/ Lucille McAdams
Lucille McAdams, Tribal Secretary

The foregoing resolution of the Shoshone Business Council approving the settlement was ratified at a special meeting of the General Council of the Shoshone Tribe also held on December 9, 1964, by a vote of 290 for and none against, as shown by the Certificate of Ratification by Membership of the Tribe (Exhibit A at p. 7). Said certificate reads as follows:

GENERAL COUNCIL OF THE SHOSHONE TRIBE OF
INDIANS OF THE WIND RIVER RESERVATION, WYOMING

CERTIFICATION OF RATIFICATION
BY MEMBERSHIP OF TRIBE

I, the undersigned, as Chairman of the General Council of the Shoshone Tribe of Indians of the Wind River Reservation, Wyoming, hereby certify:

1. That the voting membership of the Tribe comprises approximately 641 members, of whom 310 were present at a special meeting to which all members were invited, convened and held this 9th day of December, 1964;
2. That the background of the claims and all aspects of the proposed settlement were fully explained;
3. That the foregoing resolution of the Business Council approving the settlement was read to the members assembled and duly ratified by a vote of 290 members for, and 0 members against.

/s/ Robert N. Harris Sr.
Robert N. Harris, Chairman
Shoshone General Council

ATTEST:

/s/ Lucille McAdams
Lucille McAdams, Tribal Secretary

Pursuant to the resolution, the Chairman of the Shoshone Business Council on December 9, 1964, signed the approval of the stipulation (Exhibit A at p. 3) on behalf of the petitioner tribe. The approval reads as follows:

APPROVAL OF THE SHOSHONE TRIBE OF
THE WIND RIVER RESERVATION

WHEREAS, by vote of the Business Council of the Shoshone Tribe of the Wind River Reservation, Wyoming, on December 9, 1964, ratified by vote of the General Council of the Shoshone Tribe of the Wind River Reservation, assembled on the same date, the Shoshone Tribe of the Wind River Reservation approved a final settlement of its claim against the United States in Docket No. 157 before the Indian Claims Commission in the amount of \$120,000, and the Chairman of the Business Council was authorized to sign the approval of the foregoing settlement stipulation on behalf of the Tribe;

NOW, THEREFORE, in the name of the Shoshone Tribe of the Wind River Reservation, Wyoming, I do hereby set my hand in approval of the foregoing settlement stipulation, this 9th day of December, 1964.

/s/ Robert N. Harris Sr.
Robert N. Harris, Chairman
Shoshone Business Council

ATTEST:

/s/ Lucille McAdams
Lucille McAdams, Tribal Secretary

The signature of the Chairman of the Shoshone Business Council and of the Shoshone General Council, Robert N. Harris, attached to the said resolution, the Certificate of Ratification by the Membership and to the approval of the stipulation, was duly attested by the Tribal Secretary, Lucille McAdams; and the signatures of said Chairman and Tribal Secretary were duly attested by Clyde W. Hobbs, Superintendent of the Wind River Agency (a division of the Bureau of Indian Affairs of the Department of Interior) who was present at the meetings of the Business Council and the General Council on December 9, 1964.

Exhibit "D" is a copy of the notice given of the Shoshone General Council meeting that was held on December 9, 1964. Said notice reads as follows:

SUPPLEMENTAL

N O T I C E

of

SHOSHONE GENERAL COUNCIL MEETING

A SHOSHONE GENERAL COUNCIL MEETING will be held DECEMBER 9, 1964, at the Fort Washakie Community Hall, Fort Washakie, Wyoming. This meeting will begin promptly (sic) at 1:00 P.M.

The main topic of discussion will be whether the tribes will accept the settlement of the Gold Claim. The Attorneys recommend that it be accepted.

All members of the tribe are urged to be present. If there are not enough people present the Indian Claims Commission will not permit the case to be settled.

Lunch will be served at 12:00 Noon.

Wind River Indian Agency
Fort Washakie, Wyoming
November 24, 1964

4. A copy of the contract of employment of the attorneys for petitioner, together with an assignment of interest therein and extension of said contract to January 25, 1966, are on file with the Commission, all of which are duly approved by the authorized officials acting for the Secretary of the Interior. These show George M. Tunison as the original contract attorney, and the assignment by Mr. Tunison of an interest to the law firm of Wilkinson, Cragun & Barker. Mr. Tunison died on December 3, 1954, and his will was admitted to probate in the County Court of Douglas County, Nebraska, and Nellie Manoli was duly appointed by that Court as administratrix with will annexed (Exhibit "B").

The stipulation of settlement has been approved by the law firm of Wilkinson, Cragun & Barker, by Charles A. Hobbs, a partner in said firm, and by Nellie Manoli on behalf of the estate of Mr. Tunison, her signature being duly notarized.

5. Exhibit C, received in evidence, is a letter of approval of the settlement from James E. Officer, Associate Commissioner of Indian Affairs, addressed to petitioner's attorneys under date of January 22, 1965. The letter is as follows:

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

January 22, 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 claims of the Shoshone Tribe of Indians of the Wind River Reservation, Wyoming, in Indian Claims Commission Docket No. 157 at \$120,000.00.

Authority to prosecute the case appears in two approved claims attorney contracts.

Contract No. I-1-ind. 18374, dated July 10, 1947, between the Shoshone Tribe of Indians of the Wind River Reservation, Wyoming, and Attorney George M. Tunison, was approved on February 17, 1948, for a period of five years from the date of approval. It was extended for a period of two years beginning on February 17, 1953.

Mr. Tunison died on December 3, 1953.

Contract, Symbol 14-20-650 No. 240, dated January 26, 1955, between the Shoshone Tribe of the Wind River Reservation in Wyoming and the law firm of Wilkinson, Boyden, Cragun and Barker (now Wilkinson, Cragun and Barker) was approved on April 1, 1955, for a term of five years beginning on January 26, 1955. It has been extended several times, the last extension being for a period of two years ending on January 25, 1966. The contract provides that the attorney shall not make any compromise of the matters in controversy unless with the approval of the Tribe and the Commissioner of Indian Affairs.

You made an offer to the Department of Justice by letter dated September 28, 1964, to settle Indian Claims Commission Docket No. 157 with a judgment to be entered in favor of the petitioner Shoshone Tribe of the Wind River Reservation in the amount of \$120,000.00. No appeal is to be taken by either party. The judgment shall finally dispose of all claims or demands which the petitioner has asserted or could have asserted in the case and shall also finally dispose of all offsets, claims or demands to December 31, 1963, which the defendant has asserted or could have asserted against the petitioner in this or any other case under Section 2 of the Indian Claims Commission Act. By letter dated October 30, 1964, the Department of Justice accepted the offer provided the Tribal Council or other governing body of the Shoshone Tribe of the Wind River Reservation adopt an appropriate resolution, that the resolution be approved by the Commissioner of Indian Affairs and that the Commissioner of Indian Affairs advise the Department of Justice in writing that he approves the settlement.

A member of your firm took the terms of the proposed settlement to the Indians to obtain their views on acceptance or rejection of the proposed settlement. All members of the Tribe were requested to meet in general council on December 9, 1964, by notice dated November 24, 1964, which stated that the main topic would be whether they would accept the settlement of their gold claim. Notices were also posted in conspicuous places and announcements of the meeting were made over the local radio station in order that all members would have notice of the meeting and would have the opportunity to attend.

The General Council met on December 9, 1964, as scheduled, with 310 of the 641 eligible voting members of the Tribe present. Also in attendance were the Tribe's claims attorney and the Superintendent of the Wind River Agency who represented the Bureau. At the beginning of the meeting the Indians

selected two interpreters who translated the remarks and comments in the Indians' language. Our representative reports that the claims attorney gave a short history of the claim, stated the basis for compromise, and explained the terms of the proposed settlement in detail. Questions asked by the Indians were answered by the attorney and the Chairman of the meeting. Every Indian was given the opportunity to have all points of the compromise satisfactorily clarified.

A recess was called near the end of the meeting to give the Business Council of the Tribe the opportunity to convene and give its views on the settlement. It convened with a quorum present, discussed the proposed compromise, and by a vote of 5 for and none against adopted a resolution accepting the proposed compromise settlement. The members of the General Council then reconvened and in the customary manner took a standing vote by which they adopted a resolution by a vote of 290 for and none against ratifying the resolution adopted by the Business Council. The 290 voting members are considered to be representative of the Shoshone Tribe of the Wind River Reservation and their votes reasonably expressed the views of the membership of the Tribe.

The Superintendent of the Wind River Agency certified that the Chairman and Secretary of the Tribal Business Committee and of the Shoshone Tribe affixed their signatures to the respective resolutions in his presence and that they are genuine. He further certified that, in his opinion, the approval of the settlement was intelligent and voluntary, both by the Business Council and the General Council. The resolutions are hereby approved.

In the light of the information which you have supplied, that submitted by our field offices, and that which has been obtained from other sources, we believe the proposed settlement of Docket No. 157 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

6. Counsel for petitioner, Charles A. Hobbs, a member of the law firm of Wilkinson, Cragun & Barker, advised the Commission at the hearing

held on the motion for entry of final judgment (Tr., pp. 4, 5) that after the case was set for trial the attorneys for both parties engaged mineral experts to prepare opinions of value of the gold removed from the reservation, in accordance with the standards of valuation followed by this Commission in the case of Williams, et al., v. United States, Docket 180-A, 2 Ind. Cl. Comm. 193; that during the course of preparation for trial the attorneys for the parties conferred with each other and concluded that the claim could be compromised and settled, and that a fair award to petitioner representing the value of the gold removed, less offsets properly chargeable against such a judgment, would be \$120,000.00.

7. Mr. Robert N. Harris, called by petitioner as a witness at the hearing, testified that he is the Chairman of the Business Council of the Shoshone Tribe of Indians of the Wind River Reservation and has held that office for about eighteen years (Tr., p. 8); that the Business Council consists of six Shoshone members who are elected by the General Council every two years for staggered four-year terms; that the Shoshone Tribe has no constitution or by-laws, and operates by custom and the wishes of the General Council (Tr., p. 9); that the General Council consists of all adult members of the Tribe; that there are 1,924 members of the Tribe, including minors; that the adult membership residing on the reservation is approximately 640 persons; that approximately 290 additional adult members reside outside the reservation, some in the near vicinity of the reservation; that notice of the General Council

meeting of December 9, 1964, was given in accordance with the customary procedure of the Tribe by radio, T.V., in newspapers, on bulletin boards around the reservation, and by word of mouth (Tr., pp. 11, 14, 15, 23, 42); and that in his opinion possibly all adult members of the Tribe knew about this meeting (Tr. 13); that 310 adult members were present at the General Council meeting of December 9, 1964, which was one of the largest meetings he had seen for this Tribe, the average size of a meeting being around 145 to 160 persons (Tr., pp. 14, 19, 22); that a number of the Indians living off the reservation were present at the meeting (Tr., pp. 17, 31); that the meeting began with an explanation of the claim and all aspects thereof by the attorney, Mr. Hobbs, whose remarks were interpreted into the Shoshone language, followed by a question and answer period; that the questions did not indicate any opposition to the settlement or the amount of the settlement (Tr., p. 33); that the Business Council then went into session before the assembled members of the Tribe and passed a resolution approving the proposed settlement; that the General Council then unanimously approved this resolution by a vote of 290 to 0 (Tr., pp. 32-34); that in his opinion everyone at the meeting understood the question to be decided and that the decision represented the sense of the entire Tribe (Tr., pp. 34,36); that since the meeting he had not heard any expressions of dissatisfaction with the settlement by any member (Tr., p. 37); that so far as he knew there was no pressure of any kind on the Tribe to bring about a favorable vote on the settlement (Tr., p. 36); that he is

Confident that there is no dissident group which objects to the settlement (Tr., p. 40); and that he thinks it is a good settlement and should be approved (Tr., p. 36).

8. Mrs. Lucille McAdams, called by petitioner as a witness, testified that she is a member of the Shoshone Tribe and is employed full time as a paid secretary of the Business Council of the Shoshone Tribe; that she was present at the meeting on December 9, 1964; that she heard the testimony of Mr. Harris and that her testimony would be substantially the same as his if asked the same questions (Tr., pp. 41-44). She identified the signatures of herself and Mr. Harris on the approval of the Shoshone Tribe (p. 3 of Ex. A), the Resolution of the Business Council (p. 6 of Ex. A), the Certificate of Ratification by the General Council (p. 7 of Ex. A) and the signature of Superintendent Clyde W. Hobbs (p. 8 of Ex. A).

9. The Commission finds that the proposed compromise settlement of the claim of petitioner and of the defendant's claim for offsets has been thoroughly and fairly presented and explained to the petitioner Indians; that they understood the terms of the settlement and it was unanimously approved.

10. The Commission finds that said compromise settlement is fair and just to the petitioner Indians and to the defendant and we approve and adopt the terms of the Stipulation of Settlement; that the joint

motion of the parties for Entry of Final Judgment, filed January 26,
1965, should be granted.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner