BEFORE THE INDIAN CLAIMS COMMISSION

THE YAKIMA TRIBE, Petitioner, v. THE UNITED STATES OF AMERICA, Defendant. THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION et al., Intervenor	)	Docket No. 161

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION As the Representatives of the Palouse Band, et al.	)	Docket No. 222
THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION As the Representatives of the Moses Band, et al., Petitioners, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket No. 224

Decided: April 5, 1965

Appearances:

Paul M. Niebell, Attorney for
Petitioner in Docket No. 161

Weissbrodt, Weissbrodt & Lifton,
with whom was the firm of Keith,
Winston & Repsold, Attorneys for
the Intervenor

John D. Sullivan, with whom was
Acting Assistant Attorney General,
J. Edward Williams,
Attorneys for Defendant

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

This matter is now before the Commission for consideration of the joint motion of the parties seeking approval of a compromise settlement of the issues of acreage, valuation and offsets. The parties have also submitted the subject cases for entry of final judgment on all claims of the petitioners in the matter of the subject dockets.

The cause of action presented in this matter concerns lands in the State of Washington which had been exclusively used and occupied by certain Indian tribes or bands. By the Treaty of June 9, 1855, those tribes or bands became confederated under the name Yakima Nation and ceded their lands to the United States. By decision of this Commission on July 29, 1963, we found the areas of land which had been exclusively used and occupied by the eleven tribes or bands, and it was ordered that the case proceed for the purpose of determining the acreage of the lands involved, the market value thereof as of March 8, 1859, and the consideration paid. The proposed stipulation disposes of these issues as well as the matter of the gratuitous expenditures.

We have in our findings entered herein set forth in detail the procedures which petitioners have followed in entering into the proposed stipulation of settlement. The parties have complied with the basic requirements and steps which we have prescribed for such compromise settlements. We have carefully reviewed and considered all of the evidence presented on this question, including the objections presented

by certain Indians associated with the Colville group. We have concluded that all of the procedures taken by petitioners in approving and entering into the proposed compromise settlement were proper; that the proposed compromise was voluntarily approved by the petitioners after a full and complete presentation of the facts; that no improper pressure or influence of any kind was used to have the members of the petitioning organizations vote in favor of or against the proposed settlement; and that the proposed settlement is fair and just to all the parties involved. We have accordingly found that the joint motion should be approved.

The constituent tribes or bands of the Yakima Nation ceded lands, excluding the reservations set apart pursuant to the 1855 Treaty, aggregating 8,176,000 acres. The fair market value on March 8, 1859, of the aggregate 8,176,000 acres, at an overall average value of fifty cents per acre, was $4,088,000.00. The total consideration paid pursuant to the provisions of the Yakima Treaty of June 9, 1855, was $593,000.00. We have concluded that the consideration totaling $593,000.00 paid by defendant to the Yakima Nation for the cession of lands having a fair market value of $4,088,000.00 was so grossly inadequate as to make the consideration unconscionable. Accordingly, petitioners are entitled to a recovery of $4,088,000.00 less the sum of $593,000.00 paid on the claim and less a total sum of $48,300.00 gratuitously expended for the benefit of the petitioners. This results in a net recovery of $3,446,700.00.

At the time when the stipulation of settlement was being negotiated and approved, the attorneys for the respective petitioners contemplated further arguments concerning the question of the tribe or tribes in whose name and for whose benefit the judgment should be entered. However, at the hearing on March 15, 1965, the attorneys advised that they had nothing further to present on this issue and that, with the approval of the stipulation of settlement, the case would be ripe for entry of final judgment. The attorneys for petitioners recognized that the Commission had, in its decision of July 29, 1963, set forth the form in which it was anticipated that any ultimate award should be entered. And at the hearing on March 15, 1965, all parties concerned expressed their willingness to accept the Commission's indicated determination on this question.

We have one additional factor which we believe must first be considered at this time. In the recent decision of the United States Court of Claims in The Peoria Tribe of Indians of Oklahoma and Amos Robinson Skye on behalf of The Wea Nation v. The United States, Appeal No. 12-63, decided March 12, 1965, the Court ruled that the Commission's award styled, "The Peoria Tribe of Indians of Oklahoma and Amos Robinson Skye on behalf of the Wea Nation as constituted at the time of the October 2, 1818 treaty (7 Stat. 186)" was not proper. The Court modified that form by deleting the phrase "as constituted at the time of the October 2, 1818 treaty (7 Stat. 186)" since such language might "well connote that only the descendants of members of the Wea Nation at that time can participate in the award" Slip Op. 2. The Court elaborated on this point as follows:

> "How the award is to be paid and precisely who can participate in an award to the Peoria Tribe on behalf of the Wea Nation are questions for Congressional and administrative determination /cases cited/. We do not decide whether or not the Treaty of May 30, 1854, supra, made the consolidated Peoria Tribe the full and only successor to claims of the Wea Nation arising out of events prior to that treaty; nor do we decide, on the other hand, that only descendants of Weas can benefit from the award in this case. These and like issues we leave open for decision by the legislative and executive branches" Slip Op. 2, 3.

Does this decision require that the Commission change its decision on the issue of the identity of the parties entitled to the award in this case? We think not. The question concerning the successor or successors' claims arising from the Yakima Treaty of June 9, 1855, must be judicially decided. It is not an administrative matter to be left to the legislative and executive branches. In this case the treaty of cession included an agreement by some 14 separate aboriginal tribes or bands to confederate under the name Yakima Nation. And that confederation, by agreement of the separate tribal groups, became the successor in interest to the rights of the former separate entities. The Indian title which each of the separate tribal entities had held was ceded to the United States, and the newly created Yakima Nation received the stipulated consideration for the cession. That consideration, we have held, was an unconscionable amount for defendant to have paid for the lands to which the Indians held title. The award in this case represents the amount required to fully compensate the Indians for the value of the lands ceded by them. It is in effect an additional payment for the lands ceded to render the total consideration equal to the fair value of the lands.

To accomplish this the award should be for the benefit of the Yakima Nation which was created in 1855.

The Yakima Nation which was wronged by the 1855 Treaty does not exist today. The Yakima Tribe (of the Indians of the Yakima Reservation in the State of Washington) is not synonymous with nor the successor to the Yakima Nation which was created in 1855. In fact, as we have previously found, neither the petitioning Yakima Tribe nor the Confederated Tribes of the Colville Reservation is the full successor to the Yakima Nation. The Indians who were, in 1855, members of that Nation subsequently became located at and associated with various Indian reservations and at other localities. Specifically a significant number of Indians from the Chelan, Entiat, Wenatchee, Columbia and Palus tribes (all part of the original Yakima confederation) became located on the Colville Reservation. Those Indians' interests are represented under Docket Nos. 222 and 224. The Yakima Tribe petitioner (Docket No. 161) does not represent those Indians and in fact sought specifically to exclude such Indians from participation in this case. We have in the previous phases of this case considered the arguments concerning successorship to the claims and alleged relinquishment of rights under the Yakima Treaty. Determination of these issues of fact and law regarding ownership of the claim involved had to be made by this Commission if a proper and complete disposition of the subject cases were to be made.

In conclusion we believe that the Court of Claims decision must be limited to the situation involved in the Peoria case. Our decision in the instant case does not purport to determine precisely which specific

individuals should share in any benefits of the award. We have previously determined that the award in this case must as a matter of law and fact be entered for petitioners for the benefit of the Yakima Nation as it was created by the Yakima Treaty of June 9, 1855, and we will enter final judgment accordingly. The means employed to effect ultimate payment of this award including any question of a division of the funds and other related matters are beyond our jurisdiction, and we have not and do not intend by this judgment to in any way restrict or dictate to either the legislative or executive branches on these issues.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner