

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOHOMISH TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.) Docket No. 125
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: March 30, 1967

ADDITIONAL FINDINGS OF FACT

The Commission has heretofore made findings of fact numbered 1 through 41 herein, and findings of fact numbered 1 through 14 in the consolidated cases of Upper Skagit Tribe of Indians, et al., (which included Docket No. 125) v. The United States of America, 13 Ind. Cl. Comm. 583-590, and now makes the following additional findings of fact which are supplemental to those already made.

42. The Commission has heretofore found in 7 Ind. Cl. Comm. 768, 781 that the lands of petitioner ceded to defendant under the Treaty of January 22, 1855, had a fair market value of \$180,700.00, and also found in 13 Ind. Cl. Comm. 583, 590 that the total consideration paid petitioner under said treaty of said lands was \$44,534.21, or a difference of \$136,165.79. On April 29, 1965, the Commission entered a third interlocutory order in the above-entitled case, which in pertinent parts is as follows:

* * * the Commission concludes as a matter of law that the petitioner, the Snohomish Tribe of Indians, is entitled to recover from the defendant the sum of \$136,165.79, less such gratuitous offsets as may be chargeable against the Snohomish Tribe of Indians under the provisions of the Indian Claims Commission Act.

The defendant was also ordered to file its amended answer setting forth allowable gratuitous offsets against the petitioner tribe.

43. On September 13, 1966, the parties herein by their attorneys of record filed with the Commission their "Joint Motion for Entry of Final Judgment" proposed in favor of the petitioner and to be in the net amount of \$136,165.79. In support of said Joint Motion the parties filed contemporaneously therewith a "Stipulation For Entry of Final Judgment," which Stipulation is set forth in words and figures as follows, to-wit:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated between counsel for the parties that the above-entitled case shall be settled, compromised, and finally disposed of by entry of final judgment as follows:

1. There shall be entered in the case a net judgment for petitioner in the amount of \$136,165.79.
2. Entry of final judgment in said amount shall finally dispose of all rights, claims or demands which the petitioner has asserted or could have asserted under the provisions of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049).

This stipulation for entry of final judgment shall also finally dispose of all claims, demands, payments on the claim, counterclaims and offsets which the defendant has asserted or could have asserted against said petitioner under the provisions of section 2 of said Act for all disbursements, transactions and occurrences from January 22, 1855, to and including June 30, 1951.

3. The entry of final judgment pursuant hereto shall not operate to deprive the defendant of exercising its right to collect from the proceeds of the sale of timber, as authorized by statute, expenses of managing, protecting and selling timber, as authorized by the Act of February 14, 1920 as amended (25 U.S.C. § 413).

45. A hearing was held before the Commission on March 16, 1967, on the joint motion for approval of the proposed compromise settlement of petitioner's claim at which petitioner's Exhibits C-1 through C-6 were offered and received in evidence and three members of the Snohomish Tribal Council testified in support of the compromise settlement.

46. The status of the Snohomish Tribe's claim, including the amount the Indian Claims Commission had found as the value of the land when ceded (\$180,700.00), the consideration found to have been paid for it by the defendant (\$44,534.21), and the matter of the claim of the Government for gratuitous offsets, was presented and explained at the regularly scheduled annual meeting of the Snohomish Tribe held on September 20, 1964. After a "lengthy discussion" of the matter, the members by a vote of 50 for and 38 against adopted a resolution accepting the determination of the value of their land, the amount paid for it and authorized the Tribal Council to work with the tribe's attorney in concluding the case for the best interest of the tribe. A copy of the minutes of said annual meeting (Pet. Ex. C-1) is signed by the Secretary and attested by the Chairman, Hank Hawkins. Mr. Hawkins stated at the hearing on March 16, 1967, that notice of the annual meeting to be held on September 20, 1964, advising that the status of the tribe's claim would be considered, was mailed to every enrolled member of the tribe, and that said notice was also published in a newspaper in four different cities located in the area in western Washington State.

47. The Resolution adopted by the Snohomish Tribe at the annual meeting held September 20, 1964 (Pet. Ex. C-2) reads as follows:

RESOLUTION OF THE SNOHOMISH TRIBE OF INDIANS

At its annual meeting held on the Tulalip Reservation on September 20, 1964, the Snohomish Tribe of Indians considered the Snohomish claims judgment award of \$180,700 and the offsets of \$44,534.21.

The members of the Tribe believe that the award is too small and the offsets excessive; but after discussion at the meeting with the Tribe's attorney, they, by a small representation of the members of the Snohomish Tribe, voted to accept the award.

Therefore, the Tribe has resolved to approve the judgment, less the offsets, with the provision that the claims attorney first try to reduce the offsets before closing the case and requesting that the funds be appropriated.

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

I, Kathleen Bishop Turner, Secretary of the Snohomish Tribe of Indians, certify that the above Resolution was approved at the duly called annual meeting of the Snohomish Tribe of Indians held September 20, 1964, at which a quorum was present, by a vote of 50 for and 38 against.

/s/ Kathleen Bishop Turner
Secretary

Attest:

/s/ Hank Hawkins
Chairman

48. The record discloses that pursuant to the instructions contained in the aforesaid resolution adopted by the tribe, the attorney entered into negotiations with the U. S. Department of Justice which resulted in his submission to that Department on August 23, 1965, of an offer to make a final and complete compromise settlement of the claim for a net sum of \$136,165.79 with the defendant waiving its claim for gratuitous offsets and with parties waiving their right of appeal; that by letter to the tribe's attorney dated March 25, 1966, the

Assistant Attorney General agreed on behalf of the Government to accept the proposed offer of settlement subject to certain conditions. The conditions were that nothing shall preclude the Government in any subsequent litigation from claiming offsets prior to January 22, 1859, or subsequent to June 30, 1951; that nothing shall prevent the Secretary of the Interior from exercising his authority to charge the Snohomish Tribe for the expenditures heretofore made for the expense of the sale and management of timber under the Act of February 14, 1920, and acts amendatory thereof; that an appropriate resolution be secured from the governing body of the Snohomish Tribe accepting the terms of the settlement; that the approval of the said resolution and the settlement by the Secretary of the Interior or his authorized representative be obtained and furnished the Department of Justice, after which the terms and conditions of the settlement agreed upon be incorporated into a formal stipulation of settlement.

49. The proposed offer to compromise and settle the claim in Docket No. 125 was presented to the Snohomish Tribal Council at a meeting of said Council with all members present on May 22, 1966. Pursuant to the authority granted said Council by the Snohomish Tribe at its annual meeting on September 20, 1964 to conclude the matter for the best interest of the Tribe, the said Council adopted an appropriate resolution accepting the proposed compromise settlement.

The resolution (Pet. Ex. C-3) reads as follows:

RESOLUTION OF SNOHOMISH TRIBAL COUNCIL

THIS RESOLUTION of the Snohomish Tribal Council adopted the day below written at Everett, Washington,

WITNESSETH:

WHEREAS, the Snohomish Tribe of Indians at its annual meeting held September 20, 1964, considered settlement and compromise of its claim against the United States for the sum of the judgment entered in its favor by the Indian Claims Commission in the sum of \$180,700.00 less the sum of \$44,534.21 allowed the United States as a credit on account of consideration paid by the United States to the Tribe under the Treaty of Point Elliott, and

WHEREAS, the Tribe resolved to settle and compromise its claim for said amount, or the net sum of \$136,165.79, and

WHEREAS, the Tribe authorized the Council at said meeting to conclude the said matter for the best interest of the Tribe, and

WHEREAS, at the time the Department of Justice was asking an additional credit on account of gratuitous payments the United States may have paid to the Tribe, and

WHEREAS, by letter dated March 25, 1966 the Department of Justice has agreed to waive its claim of credit on account of gratuitous payments the United States may have paid to the Tribe,

NOW, THEREFORE, IT IS HEREBY RESOLVED, that the Tribe's attorney be, and he hereby is authorized to carry out the aforesaid resolution of the Tribe adopted September 20, 1964 by compromising and settling its claim for the net sum of \$136,165.79 by entering into a stipulation with the Department of Justice for the entry of final judgment in said amount, all subject to the conditions set forth in the letter to the Tribe's attorney, Frederick W. Post, from the Department of Justice dated March 25, 1966, signed by Mr. Edwin L. Weisl, Jr., Assistant Attorney General, as follows:

- "1. That nothing shall preclude the Government in any subsequent litigation from claiming offsets prior to January 22, 1855, or subsequent to June 30, 1951.

2. That nothing shall prevent the Secretary of the Interior from exercising his authority to charge the Snohomish Tribe for the expenditures heretofore made for the expenses of the sale and management of timber under the Act of February 14, 1920, and acts amendatory thereof.
3. That an appropriate resolution be secured from the governing body of the Snohomish Tribe accepting the terms of the settlement.
4. That the approval of both the resolution of the Tribe and of the settlement itself by the Secretary of the Interior, or his authorized representative, be secured.
5. That copies of such resolution showing the approval by the Secretary of the Interior, or his authorized representative, of the resolution and of the settlement be furnished this Department.
6. That the terms and conditions of the settlement as agreed upon be incorporated into a formal stipulation of settlement."

DATED at Everett, Washington, this 22nd day of May, 1966.

/s/ Hanford T. Hawkins
Chairman

/s/ Alfred B. Cooper
Secretary

50. The proposed compromise settlement and the resolution adopted on May 22, 1966 by the Tribal Council of the Snohomish Tribe accepting the proposed settlement and authorizing the Tribe's attorney to compromise and settle the tribe's claim for the net sum of \$136,165.79 by entering into a stipulation for the entry of final judgment in said amount, subject to the conditions requested by the Department of Justice, were submitted to the Secretary of Interior for approval. The resolution of the Tribal Council and the proposed compromise settlement of the claim for

a net judgment of \$135,165.79 was approved by an authorized representative of the Secretary of the Interior in a letter (Pet. Ex. C-5) dated August 11, 1966, addressed to Frederick W. Post, attorney for the Snohomish Tribe.

51. The three members of the Snohomish Tribal Council who testified at the hearing on March 16, 1967, were:

Mr. Hank Hawkins, who is Chairman of the Snohomish Tribe and the Tribal Council. He testified concerning the procedure for giving the notice to the members of the annual meeting of the tribe held September 20, 1964. He has been on the Council for the past ten years, and presided at both the annual meeting and the Tribal Council meeting held on May 22, 1966. Mr. Hawkins testified that at the annual meeting on September 20, 1964, the claims attorney made a full presentation of the status of the claim and the remaining problem of claimed offsets and that in his opinion the members present understood it. He stated that a full discussion was had by the members before a vote was taken on the resolution (Pet. Ex. C-2) adopted by the tribe. He stated that the claims attorney assured the members he would again attempt to have the offsets reduced and that the Tribal Council was authorized to work with the attorney to conclude the case to the best interest of the Tribe and that it was on the strength of this that the Council itself later adopted the resolution (Pet. Ex. C-3) in final acceptance of the compromise settlement. He also stated that the Tribe's constitution and by-laws provide that the Tribal Council can act with full authority for the tribe as a whole. He stated that when the claims attorney presented the proposed settlement agreed to by

the Department of Justice to the Tribal Council it was fully considered and understood by the Council members and the resolution (Pet. Ex. C-3) was adopted authorizing settling the case for a net judgment of \$136,165.79.

Mr. E. J. Kidder, who is a member of the Tribal Council, stated that his great grandfather signed the Treaty of 1855 involved here. He testified that he is entirely familiar with the proposed compromise settlement and that in his opinion it is the concensus of the members of the tribe that this should be done.

Mr. Clifford Allen, who is a member of the Tribal council, affirmed the testimony of the other two council members.

52. Mr. Walter J. Muir, attorney for the Government, stated at the hearing that the Department of Justice considers that the compromise settlement is just and reasonable, fair and honest to the Indians, and should be approved.

53. The Commission finds that, based on the entire record in this case, the proposed compromise settlement is fair to the parties and was freely entered into by them and duly approved by an authorized representative of the Secretary of the Interior. Therefore, the Commission approves and adopts the terms of the stipulation filed by the parties for entry of final judgment in favor of the petitioner in the amount of \$136,165.79 against the defendant.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOHOMISH TRIBE OF INDIANS,)
)
 Petitioner,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 125

FINAL JUDGMENT

Upon the joint motion of the parties for entry of final judgment in the above Docket No. 125, pursuant to a stipulation of compromise settlement filed herein on the 13th day of September, 1966, which stipulation is hereby incorporated by reference into and made a part of this judgment; and the Commission having on the 16th day of March, 1967, held a hearing on said motion; and evidence both oral and written has been received and considered; and findings of fact and an opinion having this day been made and entered in said matter; and it further appearing that said compromise settlement was found to be fair and just to said parties; and that final judgment should be entered herein in accordance with said stipulation, findings of fact and opinion,

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the joint motion of the parties for final judgment be, and the same is hereby granted; that the petitioner herein, the Snohomish Tribe of Indians, shall recover from the defendant the sum of \$136,165.79; and accordingly that judgment be, and is hereby entered in favor of the petitioner against the defendant for the sum of \$136,165.79.

Dated at Washington, D. C., this 30th day of March, 1967.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

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Petitioner,)	
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v.)	Docket No. 125
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THE UNITED STATES OF AMERICA,)	
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Defendant.)	

Decided: March 30, 1967

Appearances:

Frederick W. Post, Attorney of Record
for Petitioner

Walter J. Muir, with whom was Mr.
Assistant Attorney General,
Edwin L. Weisl, Jr.,
Attorneys for Defendant

O P I N I O N

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

This case is now before the Commission for consideration of the joint motion of the parties seeking approval of a proposed compromise settlement of petitioner's claim and the claimed gratuitous offsets of defendant and the entry of a final judgment.

The petitioner tribe joined with a number of other Indian tribes in the Treaty of January 22, 1855 (12 Stat. 927) in the cession of a large tract of land in what is the present State of Washington. It was necessary to determine what part of the ceded tract was held by the petitioner under original Indian title at the time of the cession. This issue was determined by the Commission in 4 Ind. Cl. Comm. 549, to be

164,265 acres. The Commission then determined in 7 Ind. Cl. Comm. 768, 781 that the 164,265 acres had a fair market value of \$180,700.00 when ceded by petitioner under the 1855 treaty. It was also necessary to determine what portion of the consideration provided in the 1855 treaty for the entire cession by all the signatory tribes was chargeable to the petitioner, since the treaty provided for the payment of a certain sum to be paid to the signatory tribes but did not provide that the payments should be made in specific proportions to the respective signatory tribes. This was accomplished by consolidating Docket No. 125 with ten separate cases of other signatory tribes to the 1855 treaty for the limited purpose of determining all issues as to consideration paid or allowable to each petitioner in said cases under the 1855 treaty. In these consolidated cases, 11 Ind. Cl. Comm. 447, the Commission determined that the Snohomish Tribe was chargeable with consideration received under the 1855 treaty in the sum of \$44,534.21.

After deducting the consideration of \$44,534.21 paid petitioner from the \$180,700.00 found as the value of petitioner's land when ceded, the Commission entered a third interlocutory order on April 29, 1965, holding that petitioner was entitled to recover the sum of \$136,165.79, less any gratuitous offsets chargeable to petitioner.

The proposed compromise settlement which is now before the Commission was entered into by the parties in order to settle the issue of any offsets which the defendant could claim against the sum it owes for the petitioner's land. The stipulation provides that the net amount of the final judgment to be entered in favor of the petitioner and against

the defendant is \$136,165.79. It is further stipulated that entry of final judgment on this basis shall finally dispose of all claims, demands, payment on the claim, counterclaims and offsets which the defendant has asserted or could have asserted against the petitioner for the period from January 22, 1855, through June 30, 1951. In effect it amounts to a waiver by defendant of offsets claimed. It is further stipulated that entry of the final judgment shall constitute a final determination of said case by the Commission and shall become final on the day it is entered, with both parties waiving any and all rights to appeal from such final determination.

The Commission has found that the petitioner tribe and its Tribal Council have been fully advised of the terms of the proposed settlement, understand its terms, and have approved the same.

We are of the opinion that all the formal requirements of the Commission which were adopted with respect to proof of a valid approval of a compromise settlement by the petitioner and defendant have been substantially complied with by the parties.

The approval of the compromise settlement was recommended to the petitioner by its attorney and has been approved by the Department of Justice on behalf of the defendant. Also the settlement has been approved by an authorized representative of the Secretary of the Interior.

Based upon the entire record in this case, we are of the opinion that the compromise settlement is fair and just to both the petitioner and the defendant, and the joint motion of the parties for the entry of

a final judgment is granted. Accordingly, a final judgment will be entered in favor of petitioner and against the defendant in the sum of \$136,165.79.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOHOMISH TRIBE OF INDIANS,)	
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Petitioner,)	
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v.)	Docket No. 125
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THE UNITED STATES OF AMERICA,)	
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Defendant.)	

Decided: March 31, 1967

FINDINGS OF FACT ON PETITION FOR ALLOWANCE OF ATTORNEY FEE AND REIMBURSABLE EXPENSES

The Commission makes the following findings of fact:

1. We have for consideration the application filed herein for the allowance of an attorney fee and reimbursable costs and expenses of the litigation paid or incurred by the attorney.

Attorney Fee

2. The attorney's contract between the Snohomish Tribe and attorney Frederick W. Post under date of April 21, 1951 was approved by the Commissioner of Indian Affairs on June 19, 1951, for a period of five years beginning June 19, 1951. A renewal contract between Frederick W. Post and the Snohomish Tribe under date of August 17, 1956, was approved by the Commissioner of Indian Affairs on December 18, 1956, for a period of ten years beginning June 19, 1956, which contract was extended for a period of two years beginning June 19, 1966, and is currently in effect.

3. The approved attorney's contracts, as extended, provide that the compensation to be received by the attorneys shall be wholly contingent

