BEFORE THE INDIAN CLAIMS COMMISSION

THE SNOHOMISH TRIBE OF INDIANS, 

Petitioner, 

v. 

THE UNITED STATES OF AMERICA, 

Defendant. 

Docket No. 125

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 18, 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).
4. The final judgment entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission by either party, for the purposes of precedent or argument, in any other case.

5. The final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination by the Commission of the above-captioned case, and shall become final on the day it is entered, all parties hereby waiving any and all rights to appeal from such final determination.

6. The parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final judgment for the approval of said Commission.

7. Incorporated herein by reference is a resolution of the Snohomish Tribal Council, adopted by the Tribal Council on May 22, 1966, authorizing counsel for petitioner to enter into this stipulation on the basis set forth in paragraphs 1 through 6 hereof, and a copy of a letter approving the settlement of this litigation by the Secretary of the Interior or his authorized representative, both of which have been filed with the Indian Claims Commission.

/s/ Frederick W. Post                   Date: September 6, 1966
Frederick W. Post
Counsel of Record for Petitioner

/s/ Edwin L. Weisl, Jr.                  Date: September 9, 1966
Edwin L. Weisl, Jr.
Assistant Attorney General

/s/ Walter J. Muir                      Date: September 12, 1966
Walter J. Muir
Attorney for Defendant

44. Contracts of employment of Frederick W. Post as attorney for the Snohomish Tribe of Indians, together with the approval and extension thereof to June 19, 1968, are on file with the Commission. The said contracts provide that the attorney shall not make any compromise, settlement, or other adjustment of the matters in controversy except with the approval of the Commissioner of Indian Affairs and the Tribe.
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.

CERTIFICATION

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 consensus 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