

BEFORE THE INDIAN CLAIMS COMMISSION

THE MESCALERO APACHE TRIBE, ET AL.,)	
)	
Plaintiffs,)	
)	Docket No. 22-B
v.)	
)	Docket No. 22-G
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: April 27, 1967

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter was presented to the Commission on April 27, 1967, for approval of a compromise final settlement of (1) the claims in Docket No. 22-B for compensation for the taking by the United States of the lands of the aboriginal Mescalero Apache Tribe located in the present State of New Mexico and (2) the claims in Count I of the petition (Second Amended Petition) in Docket No. 22-G for damages for trespasses on said lands.

The Commission has heretofore determined in Docket No. 22-B in 17 Ind. Cl. Comm. 100 (Findings of Fact Nos. 1-38) the area of land, as described in Finding of Fact No. 37, which the Mescalero Apache Indians aboriginally used and occupied in New Mexico. The Commission further found that the United States took said lands on May 29, 1873, from the Mescalero Apache Tribe without payment of compensation and that the plaintiffs were entitled to recover, on behalf of the Mescalero Apache Tribe, the fair market value of said lands, less any acreage

therein which the parties may prove were within confirmed Spanish or Mexican land grants, as of May 29, 1873, less such offsets, if any, to which defendant may be entitled under the provisions of the Indian Claims Commission Act.

By Interlocutory Order of July 7, 1966, the Commission directed that the case proceed for the determination of the acreage of the area as set forth in its Finding No. 37 and for the determination of the value of said lands as of May 29, 1873, and what offsets, if any defendant is entitled to under the provisions of the Indian Claims Commission Act.

Counsel for the parties thereafter commenced discussions concerning a final settlement of the said aboriginal land claim in Docket No. 22-B as well as the settlement of the claims brought by the plaintiffs in Count I of their pending petition (Second Amended Petition filed on October 14, 1959) in Docket No. 22-G. In said Count I, plaintiffs claimed damages for trespasses upon their aboriginal lands. In Count II of said petition in Docket No. 22-G, plaintiffs sued for a general accounting with respect to the management and disposition of plaintiffs' funds and other property. However, the accounting claim was not involved in the settlement.

The parties ultimately agreed to a proposed settlement providing for (a) the entry in Docket No. 22-B of a final judgment in the sum of \$8,500,000.00, in favor of the plaintiff, the Apache Tribe of the Mescalero Reservation, on behalf of the Mescalero Apache Tribe, and () the entry of a consent final order (to be filed) with prejudice to

(b) the entry of a consent final order dismissing with prejudice the claims in Count I of the pending petition in Docket No. 22-G.

A hearing having been held in Washington, D. C. on April 27, 1967, on the aforesaid proposed settlement, the Commission makes the following findings of fact which are supplemental to the previous Findings Nos. 1-38, inclusive, made in Docket No. 22-B.

39. By letter dated March 15, 1967, the firm of Weissbrodt and Weissbrodt, attorneys for the plaintiffs, submitted an offer of proposed settlement of the claims in Docket No. 22-B and also the plaintiffs' claims set forth in Count I of the petition pending in Docket No. 22-G (namely the Second Amended Petition filed on October 14, 1959), based on (1) the entry in Docket No. 22-B of a final judgment in the net amount of \$8,500,000 in favor of the plaintiff, the Apache Tribe of the Mescalero Reservation on behalf of the Mescalero Apache Tribe, and (2) the entry of a final consent order dismissing with prejudice the claims in Count I of the petition in Docket No. 22-G.

40. By letter dated April 12, 1967, the defendant accepted the said offer of settlement, subject to the approval of the governing body of the Apache Tribe of the Mescalero Reservation, the Secretary of the Interior or his authorized representative, and this Commission.

41. On April 14, 1967, Dr. Wendell Chino, President of the Apache Tribe of the Mescalero Reservation issued a notice of a meeting of all members of the Mescalero Apache Tribe to be held on April 24, 1967, for the purpose of considering and voting upon the proposed settlement.

Copies of the notice were mailed on April 14, 1967, to all members of the Mescalero Apache Tribe to their last known addresses and were also posted in conspicuous places on the Mescalero Reservation.

42. The notice was also published on April 16, and April 19, 1967, in the Alamogordo Daily News and on April 21, 1967 in the Riudoso News. Further, in a talk on April 17, 1967, on Radio Station KRRR Riudoso, New Mexico, and on April 18, 1967 on Station KALG, Alamogordo, New Mexico, the President of the Tribe gave notice to the members of the Tribe concerning the proposed settlement and the meeting scheduled for April 24, 1967. News accounts concerning the proposed settlement and the scheduled meeting were front page stories in the Riudoso News on April 21, 1967, and in the Alamogordo Daily News on April 17, 1967.

43. The proposed offer of settlement was presented to the members of the Mescalero Apache Tribe at the scheduled meeting held on April 24, 1967, in the Mescalero Community Center, Mescalero, New Mexico. The meeting was attended by 304 members of the tribe. At the meeting a copy of a detailed written report of the attorneys concerning the proposed settlement was distributed to each person and opportunity was offered to read the report in full before discussion of the settlement commenced. The attorney of record then made an oral report on the proposed settlement explaining its terms and recommending that the settlement be accepted by the tribe. A detailed explanation of the terms of the settlement and the background facts was then made in the Apache language by the President of the Mescalero Apache Tribe. The

meeting was then opened for questions which were answered by the attorney. The answers were translated in the Apache language by the President of the Tribe. An opportunity was then given to each of the members of the Mescalero Apache Tribal Council and of the Tribal Claims Committee and to each person present to make comments on the proposed settlement. When there were no further questions or comments, a vote was taken. The result of the vote was 267 in favor of the acceptance of the settlement and none opposed. The meeting lasted over three hours.

44. During the evening of April 24, 1967, pursuant to notice duly given on April 14, 1967, a meeting of the Tribal Council, the governing body of the Apache Tribe of the Mescalero Reservation, was held. All eight members of the Tribal Council attended the meeting. By appropriate resolution, the Tribal Council voted in open meeting to accept the proposed settlement, eight in favor and none opposed. The Resolution of the Tribal Council reads as follows:

RESOLUTION

Be it resolved by the Mescalero Apache Tribal Council, governing body of the Apache Tribe of the Mescalero Reservation.

(1) that the terms of the offer of settlement in Docket Nos. 22-B and 22-G before the Indian Claims Commission, as set forth in a letter dated March 15, 1967, by Claims Attorneys, I. S. Weissbrodt and Abe. W. Weissbrodt, to Assistant Attorney General Edwin L. Weisl, Jr., and as accepted by the letter of Assistant Attorney General Edwin L. Weisl, Jr., dated April 12, 1967, are hereby approved, confirmed and ratified, and

(2) that approval and consent is hereby given to a Stipulation of settlement and for entry of final judgment embodying said terms; and

(3) that Wendell Chino, President, Mescalero Apache Tribal Council, is hereby authorized to sign and execute an approval of the said Stipulation on behalf of the Tribe and to sign and execute any other writing which may be appropriate or required to carry said Stipulation into effect.

CERTIFICATION

The foregoing resolution was duly enacted and adopted on the 24th day of April, 1967, by the Mescalero Apache Tribal Council at which a quorum was present and at which eight members voted in favor and None opposed at a legally called session of the Mescalero Apache Tribal Council.

/s/ Samuel Cooper, Jr.,
 SAMUEL COOPER, JR.
 Secretary, Mescalero Apache
 Tribal Council

This resolution is approved under authority of Article XII Section I, of the Revised Mescalero Apache Tribal Constitution.

/s/ Wendell Chino
 WENDELL CHINO
 President, Mescalero Apache
 Tribal Council

45. The record discloses that the Superintendent of the Mescalero Agency, Paul H. Clements, and Mr. Robert Young, Tribal Operations Officer of the Albuquerque Area Office of the Bureau of Indian Affairs attended the April 24, 1967 meeting. The Superintendent submitted a report to the Commissioner of Indian Affairs. On April 26, 1967, the Acting Commissioner of Indian Affairs, W. Taylor, approved the settlement by a letter (Settlement Exhibit K) to Weissbrodt and Weissbrodt, attorneys for the plaintiffs.

46. The parties have entered into a Stipulation, made a part of the record herein, which reads as follows:

STIPULATION OF SETTLEMENT AND FOR
 ENTRY OF FINAL JUDGMENT

It is hereby stipulated between counsel for the parties in the above-captioned dockets, as follows:

1. There shall be entered in Docket No. 22-B, after all allowable deductions, credits and offsets, a final judgment in the net amount of \$8,500,000.00 in favor of the Apache Tribe of the Mescalero Reservation on behalf of the Mescalero Apache Tribe.

2. Entry of final judgment on said basis in Docket 22-B shall finally dispose of all rights, claims or demands which the plaintiffs in said Docket No. 22-B have asserted or could have asserted, with respect to the subject matter of the case, and said plaintiffs shall be barred thereby from asserting any such rights, claims or demands against defendant in any other or future action or actions.

3. Entry of final judgment on said basis in Docket No. 22-B shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted or could have asserted against said plaintiffs under the provisions of Section 2 of the Indian Claims Commission Act (C. 949, 60 Stat. 1049), and the defendant shall be barred thereby from asserting any such rights, claims, demands, payments on the claim, counterclaims or offsets against plaintiffs, for the period from May 29, 1873 through June 30, 1951, in any other or future action. It is agreed that the defendant shall not be barred by this stipulation or entry of judgment pursuant hereto, from claiming, in any other or future action, offsets arising prior to May 29, 1873, or accruing subsequent to June 30, 1951.

4. The final judgment of the Indian Claims Commission in Docket No. 22-B pursuant to this stipulation shall constitute a final determination of the claims of the plaintiffs in said docket and shall become final on the day it is entered, the parties to the stipulation waiving any right to appeal from, or otherwise seek review of, such determination.

5. The stipulation of settlement shall not affect the right which the United States may have to collect from the proceeds of sales of timber, as authorized by statute, expenses of managing, protecting and selling timber.

6. There shall be entered in Docket No. 22-G a final consent order dismissing with prejudice each and all the claims made by plaintiffs in Count I of the pending petition in said Docket No. 22-G. It is stipulated and expressly understood and agreed that, upon the entry of said final consent order, the only remaining claim in Docket No. 22-G will be the claim in Count II of the petition (Second Amended Petition) for an accounting by the defendant with respect to its management, disposal of, and dealings with plaintiffs' funds, property and financial affairs.

7. The said final judgment in Docket No. 22-B and the said final consent order in Docket No. 22-G, entered pursuant to this stipulation of settlement, shall be by way of compromise and settlement and shall not be construed as an admission for purpose of precedent or argument in these or in any other cases.

WEISSBRODT & WEISSBRODT

By /s/ I. S. Weissbrodt
I. S. Weissbrodt

/s/ Abe W. Weissbrodt
Abe W. Weissbrodt

Attorneys for Plaintiffs in
Docket Nos. 22-B and 22-G

/s/ Edwin L. Weisl, Jr.
Edwin L. Weisl, Jr.
Assistant Attorney General

/s/ Frank DeNunzio
Frank DeNunzio
Attorney for Defendant

APPROVAL OF STIPULATION OF SETTLEMENT
AND FOR ENTRY OF FINAL JUDGMENT

The foregoing Stipulation of Settlement and for Entry of Final Judgment in Docket Nos. 22-B and 22-G is hereby approved by the undersigned, pursuant to Resolution of the Mescalero Apache Tribal Council, governing body of the Apache Tribe of the Mescalero Reservation, duly adopted on the 24th day of April, 1967, approving the said Stipulation and authorizing the undersigned to sign this approval on behalf of the Apache Tribe of the Mescalero Reservation, plaintiff in Docket Nos. 22-B and 22-G.

/s/ Wendell Chino
Wendell Chino
President, Apache Tribe of the
Mescalero Reservation

Attest: /s/ Samuel Cooper, Jr.
Name

Title: Secretary, Mescalero
Apache Tribal Council

APPROVAL BY INDIVIDUAL REPRESENTATIVE PLAINTIFFS

The undersigned, being one of the individual representative petitioners in Docket No. 22-B and in Docket No. 22-G, does hereby consent to and approve the terms of the proposed settlement of claims in said dockets as set forth in the letter dated March 15, 1967, by the Claims Attorneys to Assistant Attorney General Edwin L. Weisl, Jr., Department of Justice, and the letter dated April 12, 1967, by Assistant Attorney General Edwin L. Weisl, Jr., and does also hereby consent to the entry in said dockets of a stipulation of settlement embodying the terms of said proposed settlement.

/s/ Eric Tortilla

/s/ Fred Pellman

Attest:

/s/ Samuel Cooper, Jr.

Title: Secretary, Mescalero
Apache Tribal Council

APPROVAL BY CONTRACT ATTORNEY

The foregoing Stipulation of Settlement and for Entry of Final Judgment in Docket Nos. 22-B and 22-G is hereby approved by the undersigned attorney named as a party to the attorney contracts with the Apache Tribe of the Mescalero Reservation (said contracts being identified by Bureau of Indian Affairs Symbol 14-20-650, Contract No. 679 applicable to Docket No. 22-B and Contract No. 682 applicable to Docket No. 22-G).

/s/ Jay H. Hoag

/s/ Rodney J. Edwards

/s/ David Cobb

47. A hearing was held by the Commission on April 27, 1967, on the proposed settlement. Testimony of ~~two~~ witnesses was received, in addition to the statements of counsel and exhibits received. The witnesses were Wendell Chino, President of the Mescalero Apache Tribe and Berle Kanseah, member of the Mescalero Apache Tribal Council. Mr. Chino is 43 years of age. He has served as President of the tribe for twelve years. He has had college education and is an ordained minister. Mr. Kanseah is 28 years of age. He has had a high school education and served in the Armed Forces of the United States for three years. He is employed in the Branch of Forestry, Bureau of Indian Affairs. The testimony of these witnesses confirms that the terms of the proposed compromise settlement were carefully explained at the meeting of the members of the tribe; that there was a full and free discussion at the meeting, and that the officials and the members of the tribe understood the terms of the proposed settlement and further understood that the entry of the final judgment in Docket No. 22-B and the consent order with respect to the claims in Count I of Docket No. 22-G would constitute a final determination of the claim.

48. The general meeting of the members of the tribe was also attended by attorneys I.S. Weissbrodt and Abe. W. Weissbrodt who made a full explanation of the proposed settlement. Mr. I.S. Weissbrodt, attorney of record for the plaintiffs, stated to the Commission at the hearing on the settlement that in his opinion the proposed settlement was a good compromise for his clients and that under all

the circumstances was in their best interest. Mr. Weissbrodt stated that his firm, which was experienced in Indian Claims litigation, had recommended to the plaintiffs and to the Commissioner of Indian Affairs that the proposed settlement be approved.

49. We find, based on the evidence in the case, that the Mescalero tribal members and officials understand the settlement and voluntarily and freely approve it.

50. The Commission finds that the compromise settlement is fair and just to the tribe and to the defendant, and so approve and adopt the terms of the Stipulation of Settlement and for Entry of Final Judgment.

Arthur V. Watkins
Commissioner

Wm. M. Holt
Commissioner

T. Harold Scott
Commissioner