

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE YAKIMA TRIBE OF INDIANS, |) | Docket No. 47 |
| |) | |
| THE YAKIMA TRIBE OF INDIANS, |) | Docket No. 147 |
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| THE YAKIMA TRIBE OF INDIANS, |) | Docket No. 160 |
| |) | |
| THE YAKIMA TRIBE OF INDIANS, |) | Docket No. 164 |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: November 14, 1968

STATEMENT AND ADDITIONAL FINDINGS OF FACT
ON COMPROMISE SETTLEMENT OF CLAIMS OF THE
YAKIMA TRIBE OF THE STATE OF WASHINGTON

The Yakima Tribe of the State of Washington, petitioner herein, now has pending before the Commission four claims entitled Docket Nos. 47, 147, 160 and 164.

The petition in Docket No. 47, filed before the Commission on June 21, 1949, presented claims for just compensation for four separate areas contiguous to the present reservation boundaries and designated as Tracts A, B, C and D, which the petitioner alleged had been excluded from the Yakima Reservation, reserved to the Yakima Tribe by Treaty with the United States dated June 9, 1855 (12 Stat. 951, 2 Kapp. 698). An additional claim was included in the petition for lands patented to white settlers within

the present boundaries of the Yakima Reservation in an area known as Cedar Valley, which were confirmed to said settlers by Act of December 21, 1904 (35 Stat. 595).

By decision of the Commission, dated May 29, 1953 (2 Ind. Cls. Comm. 433), as amended by decision of November 6, 1953 (2 Ind. Cls. Comm. 481), recovery was denied for Tracts A, B and D, and recovery was allowed for a portion of Tract C, and 27,647.71 acres patented and confirmed to white settlers within the Cedar Valley Area of the Yakima Reservation.

By amended and supplemental findings of fact and opinion, dated November 29, 1957 (5 Ind. Cls. Comm. 636), the Commission fixed the value of the 27,647.71 acres of Cedar Valley lands awarded at \$2.50 an acre, or \$69,119.28 as of December 21, 1904; determined the area within Tract C awarded by the Commission to be 17,669.10 acres, and fixed the value of said 17,669.10 acres of Tract C lands at \$1.25 an acre, or \$22,086.38 as of 1923, and allowed interest on said values as thus fixed as part of just compensation at the rate of 5% per annum from the several dates of taking to 1934, and 4% per annum thereafter until entry of final award.

Petitioner appealed from the findings and opinions of the Commission on liability and value. On October 3, 1962, in Appeals Case No. 4-61 (158 C. Cls. 672), the United States Court of Claims affirmed the determinations of the Commission on liability and value on the Cedar Valley and Tracts A and C areas, and reversed and remanded the issue of liability on the Tracts B and D areas.

On June 18, 1965 the claim for the Tract C area, made final by the decision of the United States Court of Claims on appeal, was separately docketed as Docket No. 47-A, and on June 25, 1965 a final award was entered therein in favor of the Yakima Tribe in the total amount of \$61,991.40 (15 Ind. Cls. Comm. 456), which sum has been paid to the Yakima Tribe.

On the remand of the United States Court of Claims further proceedings were held by the Commission on the issues relative to Tracts B and D areas, and additional evidence on these issues was presented by both parties. Thereafter, on February 25, 1966, the Commission entered its additional findings of fact and opinion denying recovery for the Tract B area, and upholding the claim of petitioner for the Tract D area (16 Ind. Cls. Comm. 536).

As a result of further proceedings before the Commission, on June 19, 1967 the Commission entered the following Order (18 Ind. Cls. Comm. 426):

"Upon consideration of the motion of defendant for an Order directing further proceedings, filed herein on April 28, 1967, and the answer of plaintiff thereto, and defendant's reply, and the oral argument thereon by counsel for the parties at a hearing on said motion held before the Commission on June 8, 1967,

"IT IS HEREBY ORDERED, that the agreement between counsel for the parties that the area designated as Tract D herein contains an area of 121,465.69 acres is hereby approved by the Commission.

"IT IS FURTHER ORDERED that as agreed by the parties, the total acreage of the unpatented lands within said Tract D with respect to which there has been no 'taking' is eliminated from the claim and will be deducted from the total area of Tract D to be valued.

"IT IS FURTHER ORDERED that the patented lands included within said Tract D shall be valued by the parties on the dates of the patents issued to said patented lands; or, in the alternative, a fair approximation or average of values, over the period during which said patents were issued, may be adopted to avoid burdensome detailed computation of value as of the date of disposal of each separate tract.

"IT IS FURTHER ORDERED that the issues relative to lands within Tract D included within the National Forest, or otherwise set aside by the United States for other uses, and whether said uses constitute a 'taking' are reserved for decision by the Commission upon the presentation of evidence relative to said lands; and in making their respective appraisals the parties may value said lands in accordance with their separate contentions with respect thereto."

The Commission is advised that soon after the oral argument before the Commission on June 8, 1967 on defendant's motion for an Order directing further proceedings, counsel for the parties began negotiations looking toward the settlement of Docket No. 47 issues and the other Yakima claims cases, Docket Nos. 147, 160 and 164, pending before the Commission, then in various stages of preparation for trial. Negotiations continued through the following months until finally consummated by the settlement agreement of the parties, set out in Finding No. 73, infra.

Therefore, the Commission makes the following additional findings of fact:

ADDITIONAL FINDINGS OF FACT

69. After negotiations covering a period of more than a year, an agreement was reached between counsel for the Yakima Tribe, petitioner, and the United States, defendant, on July 12, 1968, which provided in substance that an area estimated to contain 21,008.66 acres of the 121,465.69 acres within Tract D, Docket No. 47, be severed from that case and be

redocketed as a separate claim to be designated as Docket No. 47-B and disposed of as provided in said agreement; that the remaining issues in Docket No. 47 be then consolidated with Docket No. 164, and that a final judgment be entered in said consolidated Docket Nos. 47 and 164 in favor of the Yakima Tribe, petitioner, and against the United States, defendant, in the amount of \$2,160,000.00, less a credit of \$60,000.00 which the parties agreed was the amount due the United States under paragraph 8 of a stipulation of settlement filed in consolidated Docket Nos. 161, 222 and 224 (15 Ind. Cls. Comm. 196, 198, 200-201), making the net final judgment to be entered in said consolidated Docket Nos. 47 and 164 in favor of the Yakima Tribe and against the United States in the amount of \$2,100,000.00; and that Docket Nos. 147 and 160 be dismissed with prejudice.

The parties further agreed that the vacant and unpatented lands of Tract D, Docket No. 47, which the Commission held were still a part of the Yakima Reservation reserved to the Yakima Tribe and not taken by the United States and for that reason were eliminated from the area for which compensation was allowed under Order of the Commission dated June 19, 1967 (18 Ind. Cls. Comm. 426), constituted 2,548.06 acres, more or less, as set forth on list attached to the Stipulation of Settlement and marked "Joint Exhibit No. 1".

70. The proposals as above generally outlined and agreed to by counsel were accepted by formal letter of August 30, 1968 of Assistant Attorney General Clyde O. Martz, acting for the United States, subject to the following conditions (Joint Exhibit A-12):

"1. That the proposed settlement be approved by appropriate resolutions of the Yakima Tribal Council and the Yakima General Council.

"2. That the approval of the settlement be also secured from the Secretary of the Interior or his authorized representative."

Accordingly, counsel for petitioner proceeded to secure the consent of the Yakima Tribe to the provisions of said settlement agreement.

On August 22, 1968 a special meeting of the Yakima Tribal Council was held pursuant to notice, at the Yakima Indian Agency, Toppenish, Washington, with 13 of the 14 members present. The minutes of said meeting show that a motion was made that the report of the Yakima tribal claims attorney, Paul M. Niebell, who was present, outlining the terms of said settlement, and a resolution then under discussion, be approved for recommendation to the Yakima General Council and favorable action by it at the meeting of said General Council to be held on August 24, 1968. This motion was seconded and approved by said Yakima Tribal Council by a vote of ten for and two against (Joint Exhibit A-7).

71. On Saturday, August 24, 1968, a Yakima General Council meeting was held at the Satus Longhouse on the Yakima Reservation. Notice of this meeting was mailed to all members of the Yakima Tribe at least 30 days prior to the meeting from a current list of said members in the tribal enrollment office. A copy of this notice is set forth as follows (Joint Exhibit A-1):

"P. O. Box 632, Toppenish, Washington, July 22, 1968

"TO ALL ENROLLED MEMBERS OF THE YAKIMA TRIBE:

"The Yakima Tribal Council has referred to the Yakima General Council for its consideration and decision the counter-offer of the United States for the settlement of the Yakima Tribal claims cases now pending before the Indian Claims Commission which differs in some respects from the original offer approved by the General Council resolution of November 30, 1967.

"This meeting has been set for 1 p.m. August 24, 1968 (Saturday) at the Satus Longhouse on the Yakima Reservation. SINCE THIS IS A MATTER THAT IS SO IMPORTANT TO THE YAKIMA NATION AND A FULL QUORUM OF 250 WILL BE REQUIRED, PLEASE MAKE EVERY EFFORT TO ATTEND THIS MEETING.

"REMEMBER THE DATE, PLACE AND TIME.

/s/ Kelly Tennewash, Vice-Chairman,
Yakima General Council

APPROVED:

/s/ Charles S. Spencer
Superintendent, Yakima Agency"

This same notice was posted in all post offices on and near the Yakima Reservation. A notice of the meeting was carried in the August 21, 1968 issue of the Yakima Herald-Republic, the most widely circulated daily newspaper in the Yakima Reservation area (Joint Exhibit A-2); and also in the August 22, 1968 issue of the Toppenish Review, a weekly newspaper widely distributed over the Yakima Reservation (Joint Exhibit A-3). Notice of this meeting was also carried in the August issue of the Yakima Reservation News, a mimeographed publication mailed to all Yakima families by the Yakima Indian Reservation Section of the Washington State Extension Service (Joint Exhibit A-4). Similar timely news releases were broadcast over four radio stations and the two television stations which cover the Yakima Reservation area (Joint Exhibit A-9).

A quorum of 250 members was necessary before the Yakima General Council could transact business. Pursuant to notice the members began assembling at 1:00 p.m. on August 24, 1968. At 4:00 p.m. a quorum of 251 members was reached. The Yakima General Council was called to order by the Vice-Chairman at 4:00 p.m., August 24, 1968, with 251 voting members present. The tribal claims attorney, Paul M. Niebell, who was present at the meeting, was called upon and orally made a report and outlined the terms of the proposed settlement. A written copy of the report was also distributed to all members present. A question and answer period was then declared. A few questions were asked and answered to the satisfaction of the Indians. Copies of the proposed resolution approving the settlement, as approved and recommended by the Yakima Tribal Council at its meeting on August 22, 1968, were distributed and read. A motion was made and seconded to accept the resolution approving the settlement of the Yakima claims cases, and thereafter a discussion from the floor continued for one-and-one-half hours in an orderly manner. Questions were asked of the tribal claims attorney and others, which were satisfactorily answered. At 6:05 p.m. a motion was made and seconded to close the discussion, and carried by a vote of 176 for and 11 against. The resolution was then reread and interpreted into the Yakima language. A count of the tribal members eligible to vote revealed 274 members present. A vote was then taken, and the resolution was carried by a vote of 172 for and 23 against. The meeting was then adjourned.

All the talks, reports, etc., were interpreted into the Yakima language for the benefit of those present who did not readily understand

English. A member of the firm of Hovis, Cockrill & Roy, of Yakima, Washington, tribal attorneys (general counsel for the Yakima Tribe), was present (Joint Exhibit A-9).

The Superintendent of the Yakima Indian Agency, Charles S. Spencer, was present throughout the Yakima General Council meeting. In his report to the Commissioner of Indian Affairs, he stated in part as follows (Joint Exhibit A-9):

"I am fully satisfied that this meeting was called and conducted in a regular manner, that at all times there was a quorum present as stipulated in Tribal Resolution T-38-56 and that there was no undue influence present or pressure used to influence the outcome of the voting on this Resolution.

"I am further fully satisfied that all present at the meeting fully understood the terms of the compromise before voting and further that those not attending were furnished sufficient information to make them knowledgeable of the situation with a minimum of effort. All discussions at the meeting were aired in both the English and Yakima language through competent and official interpreters selected by the General Council."

A copy of the resolution of the Yakima General Council, the governing body of the Yakima Tribe, approving said settlement is as follows (Joint Exhibit A-6):

"BE IT HEREBY RESOLVED by the Yakima General Council meeting in special session, called pursuant to proper notice on August 24, 1968, a quorum being present, that the resolution of the Yakima General Council, approved on November 30, 1967 (No. T-30-68) be and hereby is amended to read as follows:

'That the proposed settlement of the Yakima Tribal Claims cases, Docket Nos. 47, 147, 160, and 164, as set forth in the report of Paul M. Niebell, Yakima Claims Attorney, be and the same is hereby approved; and said attorney and the Yakima Tribal Council be and are hereby authorized and directed to work out the details of said settlement with the United States

Department of Justice, the Commissioner of Indian Affairs, and the Indian Claims Commission so that the final judgment in consolidated Docket Nos. 47 and 164, in favor of the Yakima Tribe, Plaintiff, may be entered by the Indian Claims Commission in the amount of at least Two Million One Hundred Thousand Dollars (\$2,100,000.00) as soon as possible in order that said judgment fund may begin to draw interest at the rate of four per cent (4%) per annum in the United States Treasury.'

"BE IT FURTHER RESOLVED that said Paul M. Niebell be and he is hereby authorized on behalf of the Yakima Tribe, to execute a stipulation with attorneys for the Department of Justice to carry out the provisions of the proposed settlement.

"DONE AND DATED on this 24th day of August, 1968 at the Satus Longhouse on the Yakima Indian Reservation by the Yakima General Council by a vote of 172 for and 23 against.

/s/ Kelly Tennewash, Vice-Chairman,
Yakima General Council

ATTEST:

/s/ Joe Jay Pinkham, Secretary,
Yakima General Council"

"AUTHENTICATION OF SIGNATURES

"I hereby certify that the foregoing signatures on attached General Council Resolution adopted by a vote of 172 for and 23 against on August 24, 1968, are authentic. I was present during the entire meeting and witnessed the signing of this Resolution by the Vice-Chairman and Secretary of the Yakima General Council.

/s/ Charles S. Spencer
Superintendent, Yakima Indian Agency"

72. By letter of September 16, 1968 counsel for petitioner wrote the Commissioner of Indian Affairs requesting approval of the compromise settlement, and transmitted therewith the relevant documents pertaining to the negotiations leading to the settlement agreement, as well as its presentation to and approval by the Yakima General Council, the governing body of the Yakima Tribe.

After due consideration, the Secretary of the Interior, acting through Acting Deputy Commissioner of Indian Affairs, J. L. Norwood, approved the compromise settlement by letter of September 20, 1968 as follows (Joint Exhibit A-10):

"Paul M. Niebell, Esquire
1201-19th Street, N. W.
Washington, D. C.

"Dear Mr. Niebell:

"You requested our approval of a proposed compromise to complete claims of the Yakima Tribe in Indian Claims Commission dockets numbered 47, 147, 160, and 164 with entry of a final net judgment of \$2,100,000.00.

"Prosecution of the claims has been governed by two contracts. Contract No. I-1-ing. 42133, dated July 20, 1948, between the Yakima Tribe of Indians of the Yakima Reservation and Attorney Paul M. Niebell, was approved on February 14, 1949, for a period of ten years beginning with the date of approval. Subsequently, the same parties entered into a contract, Symbol 14-20-650 No. 673, dated December 10, 1958, which was approved on February 16, 1959, for a period of ten years beginning on February 14, 1959. The 1958 contract provides that the attorney shall not make any compromise of matters in controversy unless with the approval of the tribe and the Commissioner of Indian Affairs.

"Your offer to compromise the claims was made to the Assistant Attorney General on September 22, 1967, as modified by subsequent letters up to and including the one dated July 12, 1968. The Assistant Attorney General accepted your offer on August 30, 1968, with conditions. Two of the conditions are that the proposed settlement be approved by appropriate resolutions of the Yakima Tribal Council and the Yakima General Council and also by the Secretary of the Interior or his authorized representative.

"The proposed settlement in general provides for dismissal of dockets numbered 160 and 147 and for entry of a net final judgment of \$2,100,000.00 in favor of the Yakima Tribe in dockets numbered 47 and 164, consolidated. The entry of final judgment will satisfy repayment by the Yakima Tribe to the

United States of \$69,000.00 under paragraph 8 of a stipulation filed with the Indian Claims Commission on March 11, 1965, in dockets numbered 161, 222, and 224 (Finding 56; 15 Ind. Cls. Comm. 196, 198). It also provides for removal from docket numbered 47 of a claim based on an estimated 21,008.66 acres of land to a new docket to be numbered 47-B. No gratuitous offsets are involved in the proposed settlement. Also, the parties waive the right of appeal or otherwise to seek review from an entry of final judgment in the dockets.

"The Yakima Tribal Council held a special meeting on August 22, 1968, with 13 members present to consider the proposed settlement. They reviewed the attorneys report and a draft of a resolution to accept the proposed settlement. By a vote of 11 for and 2 against, the Tribal Council approved and recommended them to the Yakima General Council scheduled to meet on August 24, 1968.

"You then took the proposed settlement to the members of the Yakima Tribe for their consideration and acceptance or rejection as scheduled. Notices that a meeting was to be held on August 24, 1968, in the Status Longhouse on the Yakima Reservation for this purpose had been mailed on or about July 22, 1968, to the tribal members at their last known addresses. Notices had been posted on the Post Offices on and near the Yakima Reservation. In addition notices had appeared in three newspapers, and announced over four radio and two TV stations which serve the areas in which most of the Yakima Indians live. We are satisfied that the meeting and its purpose had been widely publicized and that the members of the Yakima Tribe had an opportunity to attend the meeting.

"The meeting was opened on the afternoon of August 24, 1968, with 251 adult voting members present, which number constituted a quorum as provided in tribal Resolution No. T-38-56. You were present at the meeting and the Superintendent of the Yakima Agency attended as the representative of the Bureau of Indian Affairs. The Superintendent reported on the meeting. You had prepared a report on the proposed settlement which was distributed to those present. You proceeded to explain the pros and cons of the proposed settlement in detail and then opened a question and answer

period. The Indians present had a discussion which lasted about one and one-half hours during which you answered all of the questions asked. All talks were interpreted into the Yakima language for the benefit of those who do not readily understand English. A vote was then taken by a raising of the hands. The General Council, by a vote of 172 for and 23 against, adopted a resolution approving the proposed settlement. We are satisfied that the members of the Yakima Tribe who voted reasonably understood the terms of the proposed settlement, were representative of the Yakima Tribe, and that the resolution adopted expressed the views of the membership of the Yakima Tribe. The Superintendent of the Yakima Agency certified that the signatures of the Vice-Chairman and Secretary of the Yakima General Council were affixed to the resolution in his presence and are authentic. The resolution is hereby approved.

"In light of the information which you have furnished to us, that submitted by our field offices, and that obtained from other sources, the proposed compromise settlement which provides for dismissal of dockets numbered 160 and 147 and for entry of a final judgment of \$2,100,000.00 in favor of the Yakima Tribe in dockets numbered 47 and 164, consolidated, is hereby approved.

Sincerely yours,

/s/ J. L. Norwood
Acting Deputy Commissioner"

73. Thereafter, pursuant to the resolution approved by the Yakima General Council, the attorney for petitioner executed a "Stipulation of Settlement" with the attorneys for the United States, embodying the provisions of the settlement agreement, which was filed herein on October 10, 1968, and reads as follows (Attachment A to Joint Motion):

"STIPULATION OF SETTLEMENT

The undersigned attorneys for the parties in the above-captioned dockets hereby stipulate as follows:

1. That there are now pending before the Indian Claims Commission four cases brought by the Yakima Tribe of Indians against the United States, said cases being numbered and identified as Docket Nos. 47, 147, 160 and 164.

2. That as the result of negotiations between the attorney for the petitioner Yakima Tribe and the attorney for the defendant United States, the parties have agreed to a settlement concerning the disposition of all four cases which shall finally dispose of said cases in the manner hereinafter set out, it being understood and agreed that the disposition of each and all of said cases is part and parcel of the settlement herein.

3. That Docket No. 47 (after the severance of the area hereinafter described in paragraph 10) and Docket No. 164 shall be consolidated for all purposes including entry of judgment herein as provided in paragraph 8 hereof.

4. That as part and parcel of said settlement and as part of the consideration for the entry of final judgment in Docket Nos. 47 and 164 as provided in paragraph 8 hereof, the petitioner shall dismiss Docket Nos. 147 and 160 in accordance with paragraph 9 hereof.

5. The parties agree that:

(a) The vacant and unpatented lands of Tract D, Docket No. 47, which are still a part of the Yakima Reservation reserved to the Yakima Tribe and to be eliminated from the area for which compensation is allowed in accordance with the order of the Indian Claims Commission dated June 19, 1967 (18 Ind. Cl. Comm. 426) contain 2,548.06 acres, more or less. The list attached hereto as Joint Exhibit '1' correctly describes the 2,548.06 acres of vacant and unpatented lands of Tract D.

(b) The portion of Tract D to be severed from Docket No. 47 as provided in paragraph 10 and embodied in a new Docket No. 47-B contains an estimated 21,008.66 acres.

(c) After deducting the foregoing acreage, Tract D for the purposes of this settlement contains 97,908.97 acres of land.

6. For the purpose of this settlement it is therefore agreed that the Docket No. 47 claims consist of:

(a) The Tract D claim of the agreed area of 97,908.97 acres for which the United States was found liable by the Indian Claims Commission on February 25, 1966 (16 Ind. Cl. Comm. 536).

(b) The Cedar Valley claim for 27,647.71 acres within the Yakima Reservation for which the Indian Claims Commission awarded the Yakima Tribe the sum of \$69,119.28 with interest in its orders of November 6, 1953 (2 Ind. Cl. Comm. 481) and November 29, 1957 (5 Ind. Cl. Comm. 636).

7. That the claim in Docket No. 164 is for the value of lands allegedly lost to the tribe as a result of allotments of reservation lands by the United States to persons allegedly not members of the tribe, and for reimbursement of tribal funds paid to such allottees.

8. It is agreed that Docket No. 47, consisting of the 97,908.97-acre claim in Tract D, as aforesaid and the Cedar Valley claim of 27,647.71 acres, shall be consolidated for the purpose of judgment with the claim in Docket No. 164 and that final judgment be entered in the two consolidated cases in the total sum of \$2,160,000 less a credit of \$60,000 which the parties agree is the sum due the United States under paragraph 8 of a stipulation of the parties filed March 11, 1965 in Yakima Tribe v. United States, Docket No. 161, and approved by the Indian Claims Commission on April 5, 1965 (15 Ind. Cl. Comm. 196, 200-201), leaving a net final judgment to be entered in favor of the Yakima Tribe in said consolidated Docket Nos. 47 and 164 in the sum of \$2,100,000.

9. That as part and parcel of the agreement for a net judgment of \$2,100,000 as aforesaid, Docket Nos. 147 and 160 shall be dismissed with prejudice.

10. The parties agree that an estimated 21,008.66 acres of vacant and unpatented land in Tract D, Docket No. 47, also within the boundaries of the Gifford Pinchot National Forest shall be severed from Docket No. 47 and be embodied in a separate petition to be filed before the Indian Claims Commission and be designated Docket No. 47-B to enable the Yakima Tribe to seek restoration of these lands to the Yakima Reservation. It is further agreed that if said lands are restored to the Yakima Tribe through administrative or other action of the United States on or before December 31, 1970, Docket No. 47-B shall be dismissed with prejudice before the Indian Claims Commission. If said lands are not so restored and Docket No. 47-B is not dismissed on or before December 31, 1970, Docket No. 47-B shall be deemed set for trial as of said date and said Docket No. 47-B shall proceed to trial of the value of the 21,008.66 acres of national forest land. The 21,008.66 acres of land to be embodied in the new Docket No. 47-B is shown on a plat attached hereto as Joint Exhibit '2' and is specifically described as follows:

Beginning at a point on the Yakima Indian Reservation boundary as shown on the 1906 Campbell-Germand-Long survey where said boundary intersects as the east-west line between Townships 7 and 8 North, Range 12 East, Willamette Meridian, Washington, thence northwesterly along said reservation boundary to Goat Butte; thence northwesterly along said reservation boundary from Goat Butte to the main ridge of the Cascade Mountains as located by the 1926 Pecore survey; thence southwesterly along the main ridge of the Cascade Mountains to the summit or pinnacle of Mt. Adams as shown on the diagram of the Rainier National Forest attached to the Presidential Proclamation of October 23, 1911, 37 Stat. 1718; thence southerly along a divide shown on petitioner's exhibit No. 4, Docket No. 47 (1932 Calvin Reconnaissance Survey Map) to

its intersection with the south boundary of the Gifford Pinchot National Forest in Section 34 Township 7 North, Range 11 East, Willamette Meridian; thence easterly along said National forest boundary to the place of beginning.

11. Entry of final judgment by the Indian Claims Commission pursuant to this stipulation of settlement shall constitute a final determination of all claims asserted or which could have been asserted by the Yakima Tribe in each of the Yakima Docket Nos. 47, 147, 160 and 164, except the claim for 21,008.66 acres of land within the Gifford Pinchot National Forest which is to be set forth in a separate Docket No. 47-B as provided in paragraph 2 of this stipulation, and the parties herein waive all rights of rehearing or appeal from said final judgment or to otherwise seek review of such determination.

12. The stipulated sum in paragraph 8 above shall be taken to include all deductions, credits and offsets which the United States has or could have asserted against and chargeable against or allocable to the Yakima Tribe in Docket Nos. 47, 147, 160 and 164 for the period March 8, 1859 through January 1, 1905, it being agreed that offsets for the period January 1, 1905 through June 30, 1955 were accounted for in Yakima, Docket No. 161 (15 Ind. Cl. Comm. 196, 200), and defendant shall be barred from asserting any such deductions, credits and offsets in any other action. Any further deductions, credits or offsets chargeable to petitioner and accruing after June 30, 1955 shall be asserted in Docket No. 47-B at the trial thereof provided for in paragraph 10 hereof. This stipulation of settlement shall not affect the right, if any, 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.

13. The parties agree that all claims of petitioner for damages to either the vacant and unpatented lands of Tract D or the lands of said tract within the Gifford Pinchot National Forest resulting from encumbrances or conveyances placed or permitted on said lands by the United States are included in the claims to be settled by this stipulation and any liability of the United States for the same shall be extinguished by the entry and satisfaction of a final judgment in Docket Nos. 47 and 164.

14. The Yakima Tribe, petitioner, hereby and herein reserves the right to file a motion before the Indian Claims Commission to amend and correct Finding 66(a), Docket No. 47 (16 Ind. Cl. Comm. 536, 549), to include in Tract D the lands between the Pecore and the Campbell-Germond-Long surveys, inadvertently excluded from Tract D by that finding, or any other findings of the Commission.

15. Counsel for the parties shall execute and file this stipulation with the Indian Claims Commission, along with a joint motion for approval thereof and for entry of final judgment in consolidated Yakima cases, Docket Nos. 47 and 164 and dismissal of Docket Nos. 147 and 160 with prejudice in accordance with this stipulation.

Dated October 11, 1968.

/s/ Paul M. Niebell
Attorney for Petitioner

/s/ Clyde O. Martz
Assistant Attorney General

/s/ Keith Browne
Attorney for Defendant"

74. On October 16, 1968, the Commission held a hearing on the proposed settlement of said Docket Nos. 47, 147, 160 and 164, pursuant to a joint motion filed by the parties herein on October 10, 1968. After statements by counsel for both the parties outlining the background of the settlement, and identification and introduction in evidence of Joint Exhibits A-1 to A-13, in support of said joint motion, the following named persons, members of the Yakima Tribe, appeared and testified as follows:

Mr. Robert Jim, Chairman of the Yakima Tribal Council, testified that at a meeting of the Yakima Tribal Council held on October 22, 1968, pursuant to notice, at which 13 of the 14 members were present, the settlement was fully presented, and after full discussion, the Yakima Tribal Council by a vote of 10 for and 2 against approved the settlement and recommended it for the favorable action by the Yakima General Council called in special session on August 24, 1968, at the Satus Longhouse on the Yakima Indian Reservation; that he attended the Yakima General Council meeting on August 24, 1968; that under the Rules of Procedure of the Yakima General Council a quorum of 250 members must be present before the General Council can be opened, and a quorum of 175 members is necessary thereafter before any vote can be taken on any tribal business; that a quorum of 251 voting members of the Yakima Tribe was present at the beginning of the meeting; that Paul M. Niebell, attorney for the Yakima Tribe fully explained orally the terms of said settlement to the members present, and also presented a written report on same; that all the statements and reports were interpreted in the Yakima language for those who could not readily understand the English language; that he believed that the members present understood the terms of the settlement; that he, and he believed that the other members of the tribe present believed that the settlement was fair to the Yakima Tribe;

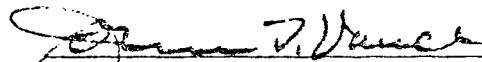
and that a resolution approving said settlement was passed by the Yakima General Council by a vote of 172 for and 23 against.

Messrs. Eagle Seelatsee, Watson Totus, Stanley Smartlowat, all members of the Yakima Tribal Council, corroborated the testimony of Mr. Robert Jim. Mr. Joe Jay Pinkham, Secretary of the Yakima General Council also appeared and corroborated the testimony of Mr. Robert Jim.

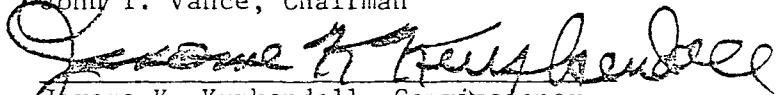
75. The vacant and unpatented lands of Tract D, Docket No. 47, which are still a part of the Yakima Reservation reserved to the Yakima Tribe and eliminated from the area for which compensation is allowed in accordance with the Order of the Commission dated June 19, 1967 (18 Ind. Cl. Comm. 426), amount to 2,548.06 acres, and are listed and specifically described in Joint Exhibit No. 1 to the Joint Motion of the parties filed herein on October 10, 1968, and as set out in Finding No. 73, supra.

76. Based upon the entire record of these proceedings, including prior findings of fact and decisions of the Commission in Docket No. 47, the approval of the settlement by counsel for both parties, the duly authorized representative of the Secretary of the Interior, and the Yakima Tribe by vote of its General Council and the passage of the resolution of said Council approving said settlement on August 24, 1968, the Commission finds that the proposed compromise

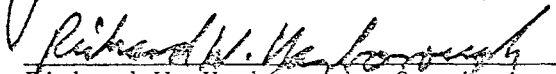
settlement of the claims of the Yakima Tribe asserted in Docket No. 47, and not reserved to the Yakima Tribe in proposed Docket No. 47-B, and those asserted in Docket Nos. 147, 160 and 164, is fair and just to petitioner and to the United States, and is hereby approved; that it has been reasonably explained to the members of the Yakima Tribe and was understood and agreed to by them; that the approval of the settlement will eliminate the need for considerable additional litigation expenses in the claims to be settled, as well as delay in payment of any final award; and that final judgment in said dockets shall be entered in accordance with said stipulation of settlement.



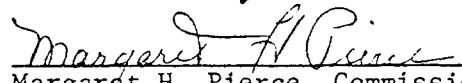
 John T. Vance, Chairman



 Jerome K. Kuykendall, Commissioner



 Richard W. Yarborough, Commissioner



 Margaret H. Pierce, Commissioner

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