

"Re: The Sioux Tribe of Indians of the Cheyenne River
Reservation, South Dakota v. The United States
Indian Claims Commission Docket No. 114

"Dear Sir:

"Reference is made to our letter of December 20, 1968, in which we offered to compromise the above entitled case for \$1,317,288.63.

"After discussion this date between the undersigned on the one hand and Ralph Barney and A. Willard Carlson on the other, we hereby amend our offer to the figure of \$1,300,000.

"In our previous offer, \$29,917.50 had been deducted from our accounting computations as the share of offsets attributable to this docket. This figure was based upon our erroneous offset total of \$448,762.41, which should have been \$480,818.00.

"Our first unnumbered paragraph, page 3, of our letter dated December 20, 1968, is amended to read as follows:

"Petitioner expressly declares that the proposed compromise amount takes into account a deduction from Petitioner's accounting computations, previously furnished to you, of \$47,206.13. It shall be understood that by so doing, claimed offsets of \$480,818.00 have been compromised at \$47,206.13, for purposes of this Docket (No. 114) only. Defendant may reserve its contentions and claims regarding offsets, if any exist, to the trial in Docket Nos. 74 and 74-B, wherein the same Tribe is one of the Petitioners; provided, however, that any final determination of offsets in Docket Nos. 74 and 74-B, whether by judicial determination or compromise, shall be subject to credit deduction of \$47,206.13 in favor of Petitioner here.

"All other provisions, considerations and recitals of our earlier letter are incorporated in this letter by this reference, except that the effective date for release of all claims in Docket No. 114 shall be the date of this letter.

"The compromise settlement proposal herein contained shall be accepted or rejected, in its entirety, by March 27, 1969, the date upon which the Indian Claims Commission has set the Docket for trial.

"Respectfully submitted,

/s/ William Howard Payne
WILLIAM HOWARD PAYNE

/s/ John M. Schiltz
JOHN M. SCHILTZ

Attorneys for Sioux Tribe of
Indians of the Cheyenne River
Reservation, South Dakota

WHP:avb"

3. On April 2, 1969, Acting Assistant Attorney General Glen E. Taylor accepted the offer on behalf of the defendant, subject to certain conditions. This letter states (Pet. Ex. B):

"DEPARTMENT OF JUSTICE
Washington, D. C. 20530

April 2, 1969

"William Howard Payne, Esquire
National Press Building
Washington, D. C. 20004

"Dear Mr. Payne:

"The offer to settle all claims and demands to and including February 10, 1969, in Sioux Tribe of Indians of the Cheyenne River Reservation v. United States, Docket No. 114, before the Indian Claims Commission, for the amount of \$1,300,000 as outlined in your letters of December 20, 1968 and February 10, 1969 (including a compromise of offsets claimed by the defendant as provided in your letter of February 10, 1969) is accepted subject to the following conditions:

"1. That the proposed settlement be approved by appropriate resolution of the governing body of the Sioux Tribe of Indians of the Cheyenne River Reservation.

"2. That approval of the settlement, as well as the resolution of the Tribe, be secured from the Secretary of the Interior, or his authorized representative.

"3. That responsible officials and representative members of the Tribe be present to testify in behalf of the Tribe at the hearing on the compromise settlement before the Indian Claims Commission.

"The Department of Justice will be happy to work out with you the terms of the stipulation and appropriate motions and orders necessary to carry into effect the offer of settlement subject to the conditions specified herein.

"In drawing the joint motion for entry of judgment, please list the documents which will be introduced in support of the settlement such as (1) the stipulation, (2) the tribal resolution or resolutions, (3) the letter of approval of the settlement by the Department of the Interior, and (4) such other papers as will be offered in evidence at the hearing on the settlement. Copies of these papers shall also be furnished to the defendant.

"Sincerely,

/s/ Glen E. Taylor
Acting Assistant Attorney General"

4. Pursuant to the offer and acceptance, a Stipulation for Entry of Final Judgment was signed by the attorneys for the parties herein on the 8th and 9th and 12th days of May, 1969 (Pet. Ex. C); said Stipulation was approved by plaintiff tribe on April 21, 1969 and is as follows:

"BEFORE THE INDIAN CLAIMS COMMISSION

THE SIOUX TRIBE OF INDIANS OF)	
THE CHEYENNE RIVER RESERVATION,)	
SOUTH DAKOTA,)	
Petitioners,)	
v.)	Docket No. 114
THE UNITED STATES OF AMERICA,)	
Defendant.)	

"STIPULATION FOR ENTRY OF FINAL JUDGMENT

"IT IS HEREBY STIPULATED between the parties, through their respective counsel of record 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 after all allowable deductions, credits and offsets, a net judgment of \$1,300,000 for petitioner.

"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 with respect to the subject matter of the claim, and petitioner shall be barred thereby from asserting any such right, claim or demand against defendant in any future action on said claim to and including February 10, 1969.

"3. Entry of final judgment in the aforesaid amount shall finally dispose of offsets in the amount of \$47,206.13 which the United States might have against the Sioux Tribe of Indians of the Cheyenne River Reservation, South Dakota, and Defendant United States reserves its right to claim offsets against the said Tribe in Docket Nos. 74 and 74-B, Indian Claims Commission. Provided, however, that any final determination of offsets in Docket Nos. 74 and 74-B, whether by judicial determination or compromise, shall be subject to a deduction of \$47,206.13 in favor of said Tribe of Indians as having been already compromised and offset.

"4. 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 or otherwise seek review of such final determination.

"5. 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 order for the approval of said Commission.

"6. This stipulation and entry of final judgment shall not be construed as an admission of either party as to any issue for purposes of precedent in any other case or otherwise.

"7. Attached to this stipulation and incorporated herein by reference is a resolution of the Sioux Tribe of Indians of the Cheyenne River Reservation, South Dakota, adopted at a

meeting shown in the certification thereof, 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.

Date May 8, 1969 /s/ William Howard Payne
WILLIAM HOWARD PAYNE
Attorney of Record for Petitioner

Date May 12, 1969 /s/ Shiro Kashiwa
~~Glen E. Taylor~~, SHIRO KASHIWA
Acting Assistant Attorney General of
the United States

Date May 9, 1969 /s/ A. Willard Carlson
A. WILLARD CARLSON
Attorney for Defendant.

"APPROVAL BY PETITIONER, SIOUX TRIBE OF INDIANS
OF
THE CHEYENNE RIVER RESERVATION OF SOUTH DAKOTA

"The foregoing stipulation for entry of final judgment in Docket No. 114 is hereby approved by the undersigned pursuant to authority vested in them by resolution adopted on the 21st day of April, 1969, by the General Council of the Sioux Tribe of Indians of the Cheyenne River Reservation of South Dakota.

/s/ Frank Ducheneaux
Chairman

/s/ Andrew Le Beau
Secretary, Temporary"

5. The Cheyenne River Sioux Tribal Council, the governing body of plaintiff tribe, having been kept informed of the status of the settlement negotiations, called a special general meeting of the Cheyenne River Sioux Tribe for April 21, 1969, at Eagle Butte, South Dakota, to consider the proposed settlement. The Constitution and By-laws of said tribe do not provide for the calling of a "General Council" but do specifically give authority to the Tribal Council to present and prosecute claims of

the tribe (Pet. Ex. G, p. 3; Tr. p. 18). Notwithstanding this, notices of a special general meeting were mailed to 1,409 enrolled members of the tribe (Pet. Ex. H) on April 14, 1969. In addition, the meeting was widely advertised in local newspapers, on radio and television (Pet. Ex. H).

6. The Commission finds that the members of the Cheyenne River Sioux Tribe received sufficient notice of this meeting to allow all who had an interest in the claim to attend the special general meeting of April 21, 1969, if they so desired.

7. A special general meeting of the Cheyenne River Sioux Tribe was held at Eagle Butte, South Dakota, on April 21, 1969. Five members of the Cheyenne River Sioux Tribe who attended the meeting, including Frank Ducheneaux, Chairman of the Tribal Council, testified at the hearing of the Commission on May 16, 1969.

8. The Chairman, Frank Ducheneaux, testified (Tr. pp. 19-24) concerning the notice given of the meeting. He noted that the attendance and participation were good, with 700 people in the hall at one time or another during the meeting. He testified that the proposed compromise was fully explained to those in attendance by John M. Schiltz and William Howard Payne, the tribe's claims attorneys, and, in Mr. Payne's case, general counsel; that questions and answers concerning the compromise were interpreted in the Indian tongue for those members who so requested; that after a question and answer period and a recess for private discussion, a motion was made that the meeting adopt a resolution in favor of compromising the claim; that voting tellers were furnished by the Bureau

of Indian Affairs who first counted 392 members of the tribe present and 344 eligible to vote; that 323 members eligible to vote voted in favor of the resolution, 8 voted against it, and 13 refrained from voting. Mr. Ducheneaux further testified that in his opinion the vote represented the informed will of the tribe regarding the compromise.

9. Messrs. Ernest Ducheneaux, Reuben Ward, Andrew Le Beau and Benjamin Hawk Eagle, members of the Tribal Council, all testified and agreed with the testimony of Mr. Frank Ducheneaux (Tr. pp. 25-35).

10. The resolution (Pet. Ex. D) adopted by the special general meeting, referred to in Finding No. 8, is as follows:

"RESOLUTION

"WHEREAS the Sioux Tribe of Indians of the Cheyenne River Reservation, South Dakota, have a claim against the United States on file in the Indian Claims Commission for an accounting of Tribal funds administered by the United States from and after June 30, 1925, which said claim was assigned Docket No. 114 by said Commission; and

"WHEREAS in response to said claim the United States prepared and furnished to the Tribe a detailed accounting of its handling of Tribal funds; and

"WHEREAS the attorneys for the Tribe and the attorneys for the defendant United States entered into negotiations for the possible compromise and settlement of the claim, and following successful negotiation have agreed, subject to the approval of the Tribe, the Secretary of the Interior or his authorized representative, and the Indian Claims Commission, to settle and compromise the said accounting claim for the sum of \$1,300,000; and

"WHEREAS the proposed settlement has been fully discussed by the attorneys for the Tribe at a meeting of the Tribe duly and regularly called especially for that purpose and the members of the Tribe having been given full opportunity to enter into said discussion and to ask questions concerning all phases of the claim; and

"WHEREAS representatives of the Department of the Interior have been present during the meeting and have observed the proceedings; and

"WHEREAS the members of the Tribe are fully informed regarding the proposed settlement and compromise, and with the proposed Stipulation for Entry of Final Judgment, the same having been read at the meeting and explained by the attorneys;

"NOW, THEREFORE, BE IT RESOLVED that the proposed settlement of claim in Docket No. 114, by entry of a final judgment by the Indian Claims Commission in the net amount of \$1,300,000 as more specifically set forth in the Stipulation for Entry of Final Judgment, is hereby approved, and the execution of said Stipulation by William Howard Payne is approved.

"BE IT FURTHER RESOLVED that the undersigned chairman and secretary of this Tribal meeting are hereby authorized to execute the Stipulation for Entry of Final Judgment on behalf of the Tribe; and

"BE IT FINALLY RESOLVED that the Secretary of the Interior or a duly authorized representative, and the Indian Claims Commission are hereby requested to approve the proposed settlement and Stipulation for Entry of Final Judgment as described above.

"CERTIFICATION

"We hereby certify that the foregoing Resolution was duly adopted by the Sioux Tribe of Indians of the Cheyenne River Reservation, South Dakota, at a special meeting sitting at Eagle Butte, South Dakota, this 21st day of April, 1969, by a vote of 323 for and 8 against.

/s/ Frank Ducheneaux
FRANK DUCHENEAUX, Chairman
Cheyenne River Sioux Tribal Council

ATTEST:

/s/ Andrew Le Beau, Temporary
HAZEL-GARREAUX, Secretary
Cheyenne River Sioux Tribal Council

"AUTHENTICATION OF SIGNATURE

"I hereby certify that Frank Ducheneaux, Chairman, and Hazel-Garreux, Andrew Le Beau, Temporary Secretary, of the Cheyenne River Sioux Tribal Council, subscribed their names to the foregoing Resolution in my presence on the date indicated.

/s/ O. K. Walkingstick, Representative
O. K. WALKINGSTICK, Representative
Bureau of Indian Affairs
Department of the Interior"

11. O. K. Walkingstick attended the meeting as the representative of the Area Director, Aberdeen Area Office, Bureau of Indian Affairs, and he reported to the Washington Office of the Bureau concerning the meeting (Pet. Ex. F). On the basis of this report, as well as information on the merits of the proposed compromise supplied to the Commissioner of Indian Affairs by attorney for plaintiffs, the Department of the Interior by letter of May 8, 1969 approved the proposed compromise settlement with the following letter (Pet. Ex. E):

"UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20242

May 8, 1969

"Mr. William Howard Payne
National Press Building
Washington, D. C. 20004

"Dear Mr. Payne:

"You have requested our approval of a proposed compromise to settle Indian Claims Commission docket numbered 114 for a net final judgment of \$1,300,000 in favor of the petitioner, the Sioux Tribe of Indians of the Cheyenne River Reservation, South Dakota.

"The case is being prosecuted under contract numbered 14-20-0650-541, dated March 5, 1958, between you and the petitioner tribe, which was approved on May 28, 1958, for a period of ten years beginning on December 23, 1957. The contract was extended for a period of two years beginning on December 23, 1967, and is currently in effect. An assignment by you of an interest in the contract to the law firm of Hutton, Schiltz and Sheehy was approved on November 1, 1968.

"You made an offer to the Department of Justice by letter dated December 20, 1968, as amended by letter of February 10, 1969, to settle docket numbered 114 for a net final judgment of \$1,300,000.00 to the Sioux Tribe of the Cheyenne River Reservation. The Acting Assistant Attorney General accepted

your offer on April 2, 1969, with conditions. Two of the conditions were that the proposed settlement be approved by the governing body of the Sioux Tribe of the Cheyenne River Reservation and that the resolution of the tribe, as well as the settlement, be approved by the Secretary of the Interior or his authorized representative.

"The entry of final judgment will dispose of all rights, claims or demands which the petitioner has asserted or could have asserted regarding the subject matter of the claim to and including February 10, 1969. It will also dispose of offsets in the amount of \$47,206.13 which the United States might have against the Sioux Tribe of the Cheyenne River Reservation but the United States reserves its right to claims offsets against the tribe in Indian Claims Commission docket numbered 74 and 74-B which offsets shall be subject to a deduction of the \$47,206.13. The parties waive any and all right to appeal or seek review from the final determination.

"You took the proposed settlement to the members of the Sioux Tribe of the Cheyenne River Reservation at a special general council meeting held on April 21, 1969, in the school auditorium in Eagle Butte, South Dakota.

"The Acting Secretary of the Cheyenne River Sioux Tribe certified that she mailed 'NOTICE OF SPECIAL MEETING' on April 14, 1969, to 1,409 adult members of the tribe as their names and addresses appeared on the official rolls of the tribe who were then residing off the reservation. The notice stated the purpose of the meeting and the importance of being present on April 21, 1969. Announcements of the meeting were given over several radio and TV stations and notices appeared in various newspapers which serve the area in which most of the tribal members live.

"A representative of this Bureau was present at the meeting and reported on it.

"You and Attorney John M. Schiltz had prepared a detailed statement explaining the proposed settlement. Copies of this statement were distributed to each tribal member who came to the meeting. Approximately 700 persons were in attendance.

"A public address system was used throughout the meeting. An interpreter was present and his services were available upon request.

"You slowly read the prepared statement, explaining and clarifying points as you went along. This presentation of the details and terms of the proposed settlement was followed by a question and answer period. All of the questions asked by the Indians were answered. A recess was then called during which the tribal members discussed the proposed settlement among themselves.

"When the meeting was reconvened, the members were requested by the Chairman of the meeting to vote on acceptance or rejection of the proposed settlement. It was approved by adoption of a resolution by a vote of 323 for and 8 against. The resolution also authorized the Chairman and Secretary of the tribal meeting to execute the Stipulation for Entry of Final Judgment on behalf of the tribe. They executed the copy of the stipulation provided by the claims attorneys. The Bureau's representative certified that the Chairman and temporary Secretary subscribed their names to the resolution in his presence.

"We are satisfied that the meeting was well noticed and publicized to give the adult voting members of the tribe an opportunity to attend the meeting. The members of the tribe who attended and voted appeared to be representative and to reasonably express the views of the membership of the Cheyenne River Sioux Tribe. The resolution adopted at the meeting is hereby approved.

"In light of the information which you have sent to us, that submitted by our field offices, and that obtained from other sources, the proposed settlement of Indian Claims Commission docket numbered 144 (sic) for a net final judgment of \$1,300,000.00 in favor of the petitioner, the Sioux Tribe of the Cheyenne River Reservation, is hereby approved.

"Sincerely yours,

/s/ T. W. Taylor
Deputy Commissioner"

12. That in order to carry out the wishes of the tribe as expressed at the special general meeting of April 21, 1969, and in order to comply with the Constitution and By-laws (Pet. Ex. G) of the tribe and paragraph 1 of plaintiffs' Exhibit B, the Tribal Council of the Sioux Tribe of Indians, Cheyenne River, South Dakota, met on May 9, 1969 and unanimously

passed a resolution approving the proposed compromise settlement (Pet. Ex. I). Said resolution reads as follows:

"RESOLUTION NO. 30-59-CR

"WHEREAS, at a meeting duly called and held at Eagle Butte, South Dakota, on April 21, 1969, the adult enrolled members of the Sioux Tribe of Indians of the Cheyenne River Reservation, South Dakota, did adopt, by a vote of 323 for and 8 against, that certain Resolution (Attached hereto) approving compromise settlement of the Tribe's accounting claim, Docket No. 114 before the Indian Claims Commission, in the amount of \$1,300,000, and

"WHEREAS, all members of the Tribal Council were present and voted on said Compromise at said meeting and are fully informed regarding same and with the proposed Stipulation for Entry of Final Judgment, the same having been read and explained by Tribal Claims Attorneys at said meeting on April 21, 1969;

"NOW, THEREFORE, BE IT RESOLVED, that said Resolution of April 21, 1969, is hereby adopted, ratified and confirmed.

ATTEST:

/s/ Hazel Garreaux
HAZEL GARREAUX, Secretary

/s/ Frank Ducheneaux
FRANK DUCHENEAX, Chairman

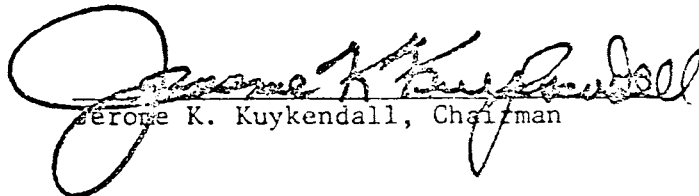
"SECRETARY'S CERTIFICATE

"I have compared the foregoing with a resolution duly adopted by the Cheyenne River Sioux Tribal Council by a vote of 13 for and 0 against, 2 absent, 0 not voting, at a regular meeting held in the Council Room of the Tribe at Eagle Butte, South Dakota, a quorum being present, on May 9, 1969, and I hereby certify that the same is true, correct and complete and that said Resolution has not been amended nor rescinded.

/s/ Hazel Garreaux
HAZEL GARREAUX, Secretary
Cheyenne River Sioux
Tribal Council"

13. Based upon the record in the case, the testimony of the witnesses, the approval by the Bureau of Indian Affairs, the Cheyenne River Sioux Tribal Council, the membership of the Cheyenne River Sioux Tribe, and

representation by tribal counsel that the settlement is fair to the tribe and to the government, the Commission finds that the settlement is fair to both parties and grants the joint motion of the parties for entry of final judgment.


Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner