

BEFORE THE INDIAN CLAIMS COMMISSION

SHOSHONE-BANNOCK TRIBES, Fort Hall, Idaho,	)	Docket Nos. 326-D,
	)	326-E, 326-F, 326-G
SHOSHONE TRIBE, represented by the Shoshone	)	Docket No. 326-H
Tribe of Indians of the Wind River Reservation,	)	
Wyoming, and the Shoshone-Bannock Tribes,	)	
Fort Hall, Idaho,	)	
	)	
THE BANNACK TRIBE, on the relation of and	)	Docket No. 366
represented by Russell Pokibro, a member of	)	
said Bannack Tribe,	)	
	)	
SHOSHONE NATION OR TRIBE OF INDIANS, on the	)	Docket No. 367
relation of and represented by Edward Queep	)	
Boyer, Joseph "Frank" Thorpe, Jr., and	)	
Jeannette Pocatello Lewis, members of the	)	
Shoshone Nation or Tribe of Indians,	)	Consolidated
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

ORDER ALLOWING ATTORNEYS' REIMBURSABLE EXPENSES

HAVING CONSIDERED the application for allowance of unreimbursed attorneys' expenses filed on June 11, 1969, for the law firm of Wilkinson, Cragun & Barker, attorneys for the above-named plaintiffs, by Robert W. Barker, Esquire, a member of the firm and attorney of record herein for the said plaintiffs; the defendant's response to the application filed on August 26, 1969; the amended application for allowance of unreimbursed attorneys' expenses filed for the same firm by Mr. Barker on December 24, 1969; the defendant's response to the amended application filed on February 16, 1970; the documentation of the claimed expenses that accompanied the original application and the attorneys' expense ledgers and other additional documentation of the claimed expenses submitted for examination in December 1969; the contracts under which the attorneys prosecuted the claims of the said plaintiffs, and the remainder of the record herein, the Commission finds as follows:

1. On February 13, 1968, in consonance with an approved compromise settlement between the parties, the Commission entered a final judgment

herein in favor of the plaintiffs in the amount of \$15,700,000.00 (19 Ind. Cl. Comm. 3 et seq.). Funds to satisfy the judgment were appropriated by the Act of June 19, 1968 (82 Stat. 239).

2. The original application by the attorney of record prayed for an order allowing reimbursement of expenses in the sum of \$10,423.87, but the disbursement schedules in its accompanying exhibits listed unreimbursed expenses totaling \$12,596.08, or \$2,172.21 more than the sum mentioned in the prayer. The amended application incorporates the same exhibits and disbursement schedules and corrects inadvertent omissions in the summary and prayer of the original application by presenting a summary of the claimed expenses in the total sum of \$12,596.08 and praying for reimbursement of that sum.

3. The defendant responded to the original application by a letter dated August 25, 1969, that reads in pertinent part as follows:

"Under date of June 18, 1969, we requested the views of the Solicitor of the Interior regarding his views in connection with an application for attorneys' expenses in the above-entitled proceeding /the proceeding herein/.

"We are enclosing a copy of his response with a copy of a memorandum /dated August 11, 1969/ from the Acting Deputy Commissioner, Bureau of Indian Affairs which indicates that the items claimed appear to be proper for reimbursement.

"We have no objection to the reimbursement of the expenses referred to."

The defendant responded to the amended application by a letter dated February 13, 1970, that enclosed a copy of a letter dated February 6, 1970, from the Associate Solicitor, Indian Affairs, Department of the Interior, and a copy of an accompanying memorandum dated January 30, 1970, from the Acting Associate Commissioner, Bureau of Indian Affairs, and indicated that the Department of Justice had no objection to allowance of the expenses claimed. The second and concluding paragraph of the memorandum from the Acting Associate Commissioner, Bureau of Indian Affairs, reads as follows:

"The original petition, of which the Indian Claims Commission sent us copies on June 12, 1969, claimed expenses in the amount of \$10,423.87. However, the itemized expenses totaled \$12,596.08. Our examination of the petition covered all of the itemized amounts shown in the petition on which we commented in our memorandum of August 11, 1969. Accordingly, we have no further comment on the items and have no objection to the amended petition to correct the total amount of expenses claimed."

The letter from the Associate Solicitor concurred with the statement in the foregoing paragraph from the Acting Associate Commissioner's memorandum.

4. Notices of the filing of the application and the amended application were duly sent, respectively, in September and December of 1969 to the chairmen of the plaintiff bands and tribes with whom the attorneys had contracts. The one response received to these notices was from the general counsel for the Shoshone Tribe of the Wind River Reservation. In a letter dated January 12, 1970, to the Chief Counsel of the Commission, he requested that time be allowed for him to examine the attorneys' contracts and advise the tribe as to what response should be made to the application. Under date of February 10, 1970, he sent a second letter to the Chief Counsel of the Commission which reads in part as follows:

"This is supplemental to my letter of January 12, 1970 concerning the amended petition for allowance of attorneys' expenses. Paragraph No. 4 of the petition for allowance of attorneys' expenses recites that \$2,172.21 in expenses was incurred in prior litigation on behalf of the Northwestern Shoshone Indians, Docket No. M-107 in the Court of Claims. Paragraph No. 4 further recites that by reason of the provisions of the contracts between the attorneys and the Fort Hall Shoshone Bannocks and the Northwestern Shoshone Band of Indians, as conditionally approved by the Commissioner of Indian Affairs, the question of whether such expenses are reimbursable is left for determination by the Commission.

"No comparable provision appears in the contract between the attorneys and the Shoshone Indian Tribe of the Wind River Reservation and the question of whether the Shoshone Indian Tribe of the Wind River Reservation should be charged with such expenses is also left for the determination of the Commission."

5. The contract provisions referred to in the foregoing quoted paragraphs are included in the attorneys' contracts with the Fort Hall Shoshone-Bannock Tribes numbered I-1-ind. 18348 and 14-20-0500-2839, and their contract with the Northwestern Bands of Shoshone Indians numbered 14-20-650-473. These contracts and the other contracts under which the attorneys served the plaintiffs are described in the findings of fact of the award on attorneys' fees entered herein on July 24, 1968 (19 Ind. Cl. Comm. 281, finding No. 7). All of the contracts provide for reimbursement of the attorneys' expenses. Such provision in paragraph 5 of the contract with the Shoshone Tribe of the Wind River Reservation reads in part as follows:

"Regardless of the outcome of any claims prosecuted under this contract, The Attorneys shall be reimbursed out of tribal funds for any and all usual and necessary expenses incurred by The Attorneys in investigating, preparing and prosecuting such claims. . ."

6. The aforementioned expenses totaling \$2,172.21 of the case filed in Docket M-107 in the U. S. Court of Claims were those inadvertently omitted from the prayer of the original application. Mr. Ernest L. Wilkinson and the firm of Moyle and Wilkinson incurred them and were reimbursed for them by the firm of Wilkinson, Cragun and Barker. Although the Northwestern Bands of Shoshone Indians were the only plaintiffs named in the suit in Docket M-107, all of the Shoshone tribal groups involved in the claims herein, including the Shoshone Tribe of the Wind River Reservation, were benefited by the work done and the expenditures incurred in that suit. The decision in Docket M-107 (reported at 95 Ct. Cl. 642) was adverse to the Shoshone plaintiffs, but the labor and expenses of the attorneys in that case resulted in the production of evidence that was used in the proceedings before this Commission. This evidence contributed substantially to the successful conclusion of the Shoshone claims herein, especially the aboriginal land title claim in Docket No. 326-H. All of the land involved in the Shoshone claim of exclusive aboriginal occupancy and use in that docket was included in the area claimed as exclusively occupied and used by the Shoshone Tribe in the prior case in the Court of Claims. The claimed expenses of the prior case should reasonably be regarded as costs involved in the establishment of the Shoshone aboriginal land title claim successfully concluded herein. They are properly included in the attorneys' application.

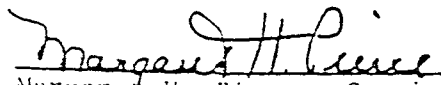
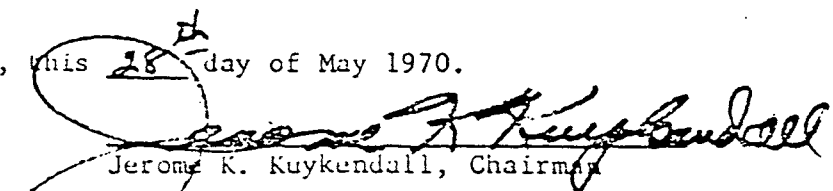

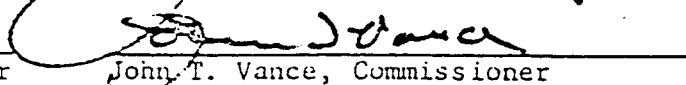
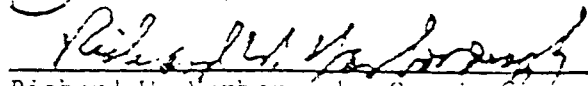
7. The unreimbursed expenses claimed in the amended application are allocated by the attorneys as follows:

To the Shoshone Tribe claim - - - -	\$11,886.20
To the claim in Docket No. 326-E - -	461.10
To the claim in Docket No. 326-F - -	<u>248.78</u>
Total - -	<u>\$12,596.08</u>

All of the expenses included in the total amount of \$12,596.08 are reasonable and properly reimbursable out of the aforementioned award.

IT IS THEREFORE ORDERED that out of the judgment money resulting from the final judgment entered herein on February 13, 1968, there shall be disbursed to the law firm of Wilkinson, Cragun and Barker the sum of \$12,596.08 as payment in full of the firm's claim herein for unreimbursed expenses.

Dated at Washington, D. C., this 28<sup>th</sup> day of May 1970.

	
Margaret H. Pierce, Commissioner	Jerome K. Kuykendall, Chairman
	
Brantley Blue, Commissioner	John T. Vance, Commissioner
	
	Richard W. Yarborough, Commissioner