

BEFORE THE INDIAN CLAIMS COMMISSION

THE OSAGE NATION,	)	
	)	
Petitioner,	)	Docket Nos. 105, 106,
	)	107 and 108
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: September 3, 1970

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

Explanatory Statement

This matter is now before the Commission for approval of a compromise final settlement of the above entitled cases by entry of a final net judgment in the amount of \$13,250,000.00 in favor of the Osage Nation, petitioner, to be conditional upon dismissal of the pending appeals in the Court of Claims, Appeal Nos. 9-69, 10-69 and 11-69, and remand by that Court to this Commission for entry of said final judgment in favor of petitioner herein.

In Docket No. 105 the Commission by interlocutory order dated December 3, 1962 concluded that the Osage Nation, petitioner, had aboriginal title to an area of land in Missouri and Arkansas (a portion of Royce's Cession 67), ceded by the Osage Nation to the United States by Treaty of November 10, 1808 (7 Stat. 107, 2 Kapp. 95), and the Commission fixed the date of taking to be April 28, 1810, the date of the ratification of said treaty (11 Ind. Cl. Comm. 733). By interlocutory order of the Commission dated June 18, 1969, the

subject tract was determined to contain 12,113,000 acres with a value of \$7,000,000.00. The Commission found that \$56,833.79 was paid by the United States to the Osage Nation under said Treaty of 1808, and awarded judgment to petitioner in the net amount of \$6,943,166.21, less any allowable offsets. (21 Ind. Cl. Comm. 67).

In consolidated Docket Nos. 106-107, on September 20, 1968, the Commission determined that the Osage Nation, petitioner, had aboriginal title to an area of land in Missouri, Arkansas, Oklahoma and Kansas (Royce's Cession 97, and a portion of Cession 123), ceded by the Osage Nation to the United States by Treaty of September 25, 1818 (7 Stat. 183, 2 Kapp. 167), ratified and proclaimed on January 7, 1819; and by Treaty of June 2, 1825 (7 Stat. 240, 2 Kapp. 217), ratified and proclaimed December 30, 1825; and directed that these cases proceed with the production of evidence to show the acreage of lands therein described, the value of same as of the dates of ratification of the said treaties, and the value of the consideration received therefor by the respective petitioners. (19 Ind. Cl. Comm. 447). Trial on these issues is pending, as are trials on offsets on Docket No. 105 and consolidated Dockets 106-107.

Docket No. 108 is a case to recover attorney fees and expenses paid from Osage funds to prevent ratification of an allegedly fraudulent Drum Creek Treaty of 1865, in the total amount of \$55,669.34. This case was tried on June 13, 1968, and briefed, and is awaiting a Commission decision.

On December 1, 1969 the defendant filed its Notice of Appeal to

the Court of Claims from the findings and opinions of the Commission in Docket Nos. 105, 106 and 107, and the appeals are now pending in that Court as Appeal Nos. 9-69, 10-69 and 11-69, respectively.

Plaintiff initiated exploration for a suitable settlement in February, 1970, when members of the Osage Tribal Council came to Washington, D. C., and held a conference with counsel for defendant concerning the possibility of a settlement of the Osage claims cases pending before the Commission and on appeal to the Court of Claims. (Trans. Hearing Aug. 6, 1970, R. 2, 29). Following this conference, attorneys for the plaintiff continued negotiations, and the parties have agreed upon a settlement of the Osage claims cases, subject to the approval of the Commission.

A hearing having been held before the Commission in Washington, D. C., on August 6, 1970, on the aforesaid proposed compromise settlement, the Commission makes the following findings of fact thereon:

1. Petitioner herein, the Osage Nation of Indians of the state of Oklahoma, is a recognized Indian Nation of American Indians, having a Principal Chief, and a tribal council of 7 members, elected by the eligible voters of the Osage Nation by secret ballot. The Osage Tribal Council, presided over by the Principal Chief, is the governing authority of the Osage Nation, and has been recognized as such governing authority since the Act of June 28, 1906, 34 Stat. 539, the Osage Allotment Act.

2. Pursuant to negotiations beginning in February, 1970, counsel for the parties arrived at an agreement under which counsel for

defendant agreed to recommend to the Attorney General the settlement of Osage claims cases, Docket Nos. 105, 106, 107, and 108, for the net amount of \$13,250,000, provided the Osage Nation first expressed its willingness to accept such a settlement. (Tr. R. 2, 3).

On March 23, 1970 the Osage Tribal Council passed by a vote of six for, none against, one abstaining, a resolution No. 22-157 in furtherance of said agreement of counsel containing the following provisions (Ex. 2(a)):

RESOLVED,

1. That the Osage Tribal Council hereby calls a special election of eligible voters of the Osage Tribe to vote on the question: Shall the qualified electors of the Osage Tribe of Indians accept a proposed settlement of \$13,250,000 in full payment of the Osage Claims, Dockets 105, 106, 107, and 108,

2. That the eligible voters of the Osage Tribe of Indians are those members who are or will be 21 years of age or over on April 13, 1970, and whose names appear on the March 1970 quarterly annuity roll at the Osage Agency. Each such voter shall be entitled to cast one ballot and each ballot shall have exactly the same value as the voter's headright interest shown on the March 1970 Osage quarterly annuity roll. Any fraction of a headright, however, shall be valued as to the first two decimals only unless such interest is less than one one-hundredth of a share, then it shall have its full value,

3. That the Superintendent, Osage Agency, is hereby requested to have a sufficient number of ballots printed, showing the voter's headright interest, and mailed to each eligible voter, together with a report from the Tribal Claims Attorneys outlining the basic facts involved in considering this matter, a copy of this resolution, and a letter concerning the election signed by the Principal Chief,

4. That the ballots shall be retained in a special locked ballot box marked "X" at the Post Office, Pawhuska, Oklahoma, and that the deadline for returning said ballots shall be 9 a.m., Monday, April 13, 1970,

5. That at the end of the voting period, the Principal Chief and all members of the Osage Tribal Council, together with the Superintendent and his staff shall cause said ballots to be examined and the headright share represented by each to be tabulated, and

6. After the tabulation has been completed and the results posted, the proposed settlement shall stand accepted or rejected by the Osage Tribe by a majority of the headright shares voted by the members eligible to vote at said election and as certified by the Osage Tribal Council and Superintendent, Osage Agency.

3. As directed by this Resolution, the Osage Tribal Council forwarded a letter, dated March 28, 1970 (Ex. 2), to each eligible voter of the Osage Nation advising them of the offer of settlement, and requesting that each voter cast his vote indicating whether the Osage Tribal Council should or should not accept the proposed settlement of the Osage claims cases, enclosing in the letter the following material:

- A. Osage Tribal Council Resolution No. 22-157 (Ex. 2 (a));
- B. Osage Claims Report from the Tribal Claims Attorneys outlining the basic facts involved in considering the proposed settlement, (Ex. 2(b) and Ex. 2(d));
- C. Official ballot (Ex. 2(c));
- D. Self-addressed envelope for returning the ballot.

The voters were directed to return their ballots to the Post Office at Pawhuska, Oklahoma, by 9 a.m. Monday, April 13, 1970 (Ex. 2).

4. Ballots were mailed March 27, 1970, to the 2,005 eligible voters of the Osage Tribe owning a total of 1,594.64547 Osage headright shares. Of this number, 12 ballots were undelivered and returned because of lack of proper address, 1 eligible voter died

before receipt of ballot, and 1,481 cast their ballots by the deadline, 9 a.m., April 13, 1970.

5. Tabulations and count of the ballots cast by the 1,481 eligible voters, as certified by Councilman E. E. Cooper and Councilman Francis Drexil, the special appointed Council Committee to supervise the counting of the ballots, resulted in 1,366 "Yes" votes representing 1,162.50 Osage headright shares, 108 "No" votes representing 99.00 Osage headright shares, 6 ballots ruled "Questionable" and not counted, and 1 voter abstaining.

6. The Osage Tribal Council therefore passed by a vote of seven for, none against and one abstaining, a resolution, No. 22-159, on April 13, 1970, accepting the certification of the special Council Committee that a majority of the eligible tribal voters accepted the proposed settlement, and authorizing the Principal Chief to so notify the Tribal Claims Attorneys. (Ex. 2).

The results of the balloting were communicated to the members of the Osage Nation by letter of the Osage Tribal Council, signed by Paul Pitts, Principal Chief, dated April 17, 1970. (Ex. 4).

7. By letter of April 17, 1970 to Paul M. Niebell, Washington, D. C., one of the Osage claims attorneys, Paul Pitts, Principal Chief of the Osage Nation, advised him that as a result of the special referendum of the Osage Nation, the Osage Tribal Council accepted the proposed settlement of the Osage claims cases, Docket Nos. 105, 106, 107 and 108, for the net amount of \$13,250,000.00, and directed the tribal claims attorneys to proceed with the settlement of the Osage

claims on that basis. (Ex. 5).

8. By letter of April 15, 1970 Mr. Niebell submitted to the Attorney General a formal offer of the Osage Nation to settle the Osage claims cases, Dockets 105-108, pending before the Indian Claims Commission and on appeal to the Court of Claims, for a total net amount of \$13,250,000.00. (Ex. 6).

On May 11, 1970, Assistant Attorney General, Shiro Kashiwa, addressed a letter to said Paul M. Niebell, accepting the formal offer of the Osage Nation, subject to the following conditions (Ex. 7):

"1. That the proposed settlement be approved by an appropriate Resolution by the governing body of the Osage Tribe.

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

"3. That a copy of such Resolution and of the approval of the terms of the settlement by the Department of the Interior be furnished to this Department.

"4. That the terms and conditions of the settlement as agreed upon be incorporated into a formal stipulation of settlement.

"5. That responsible officials and representative members of the tribe be present to testify in behalf of the tribe on the compromise settlement before the Indian Claims Commission."

9. Thereafter, Mr. Niebell, for and on behalf of the Osage Nation, addressed a letter to the Commissioner of Indian Affairs, dated May 13, 1970, requesting approval of the settlement and submitting the documents reflecting the action of the Osage Tribal Council relative to the acceptance by the Osage Nation of the proposed

settlement, the formal offer of the Osage Nation to the Attorney General, and the letter of the Assistant Attorney General accepting said formal offer. (Ex. 8).

On July 15, 1970 the Acting Associate Commissioner of Indian Affairs, Anthony P. Lincoln, forwarded a letter to Mr. Niebell, approving the proposed settlement (Ex. 9). The concluding paragraph of the letter is as follows:

"In light of the information which you have submitted to us, that set out in Resolutions Nos. 22-157 and 22-159 of the Osage Tribal Council, that furnished by our field offices, and that obtained from other sources, the proposed settlement of the Indian Claims Commission dockets Nos. 105, 106, 107, and 108, for a net final judgment of \$13,250,000.00 is hereby approved."

10. Thereafter, counsel for the parties entered into a stipulation for entry of final judgment, made a part of the record herein, which reads:

BEFORE THE INDIAN CLAIMS COMMISSION

THE OSAGE NATION, Petitioner	:	
	:	
v.	:	Docket Nos. 105, 106, 107
	:	107 and 108
THE UNITED STATES, Defendant	:	
	:	

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated and agreed between council for the parties that the above-entitled cases shall be settled and disposed of by entry of final judgment in the Indian Claims Commission, subject to the following terms and conditions:

1. The Indian Claims Commission shall be asked to approve this stipulation and settlement conditional upon the dismissal of the pending appeals in the Court of



Claims (Appeals 9-69, 10-69 and 11-69), and upon such approval by the Commission the pending appeals shall be dismissed by the Court and the cases remanded for entry of final net judgment consistent with this stipulation.

2. There are no offset claims to be asserted by the United States in these cases. After dismissal of the pending appeals, a final judgment shall be entered herein in favor of the petitioner and against the defendant in the amount of \$13,250,000.00, no review therefrom to be sought by either party.

3. The judgment shall finally dispose of all claims or demands which petitioner has asserted or could have asserted in the above-entitled cases (Docket Nos. 105, 106, 107 and 108) against defendant, and petitioner shall be barred from asserting all such claims or demands in any future action.

4. The judgment shall finally dispose of all offsets, claims or demands, which defendant has asserted or could have asserted against petitioner in this or in any other case from and after November 10, 1868, to and including the date of final judgment entered herein, under the provisions of Section 2 of the Indian Claims Commission Act, or any other act authorizing the assertion of offset claims against petitioner.

5. Nothing connected with this compromise may be construed as an admission of either party as to any issues for purposes of precedent in any other case.

/s/  
Paul M. Niebell,  
Attorney for Petitioner

/s/  
Shiro Kashiwa,  
Assistant Attorney General

/s/  
Ralph A. Barney  
Attorney, Department of Justice

Attorneys for Defendant.

Approval of Attorneys

The foregoing stipulation for compromise and settlement is hereby approved by Paul M. Niebell for and on

behalf of himself, Warren Watkins, George E. Norvell, and D. E. Martin, contract claims attorneys for the Osage Nation of Indians of the State of Oklahoma.

/s/

Paul M. Niebell

11. A Joint Motion for hearing on the proposed stipulation of settlement was filed on July 24, 1970, to which the above stipulation of settlement was attached. Also on July 24, 1970, counsel for petitioner filed with the Commission Exhibits 1 through 9 in support of said joint motion.

12. On May 14, 1970 Civil Action No. 70-C-154 was filed in the United States District Court for the Northern District of Oklahoma, to enjoin the consummation of said settlement. The action was entitled Osage Nation Organization Council, naming 16 persons as plaintiffs, v. Osage Tribal Council, the Principal Chief of the Osage Nation, John L. Pappan, Superintendent of the Osage Indian Agency, Walter Hickel, Secretary of the Interior, and John Mitchell, Attorney General of the United States. No temporary restraining order was sought in said proceeding. On August 12, 1970 a hearing was held on defendants' motion to dismiss, and United States District Court Judge, Luther Bohannon, dismissed said petition on August 13, 1970 as being an internal tribal dispute over which the Court had no jurisdiction, and enjoined and restrained said plaintiffs from filing any similar action until further order of the Court. (Ex. 10.) No appeal has been taken to date from said order of the Court.

13. At the hearing on August 6, 1970 the Commission heard

testimony on the proposed compromise settlement. The testimony of six witnesses was received in addition to the statements of counsel, and Exhibits 1 through 10 were received in evidence. (Trans. Hearing Aug. 6, 1970). The witnesses were John L. Pappan, Superintendent of the Osage Indian Agency, Mrs. Camille Pangburn, Secretary of the Superintendent of the Osage Indian Agency and Secretary of the Osage Tribal Council, Sylvester J. Tinker, Chief of the Osage Nation, and Ed Red Eagle, Sr., Francis Drixel and John Shaw, members of the Osage Tribal Council.

14. The witnesses testified concerning the foregoing, and included testimony to the following effect: that the Osage Tribal Council was established under the Act of June 28, 1906, 34 Stat. 539, and has served continuously since that time; that it transacts all tribal business of the Osage Nation, and there is no other official or recognized Osage tribal organization of the Osage Nation authorized to transact Osage tribal business; that the regulations governing voting procedures in the Osage Nation are outlined in the Code of Federal Regulations, Title 25, Part 73, governing the election of Osage tribal officials, and these are the only regulations that the tribe has for determining the reaction of the tribe to any question that concerns the general membership; that these regulations set forth the requirements for eligibility of members of the Osage Nation to vote on such matters, and were observed in the secret ballot referendum taken on the proposed settlement; that the list of eligible voters was

a current list, and was prepared about the same time the list of eligible voters for the tribal election was prepared; that the annuity rolls from which the eligible voters were taken was a very accurate record made 2 days prior, and this list of eligible voters was used in the referendum; that the ballots went only to eligible voters; that a secret ballot is the standard method used in all such elections; that the notice of the referendum was mailed out to each eligible voting member of the Osage Nation on March 28, 1970, together with a report of the tribal claims attorneys on the status of the claims cases, and the terms of the proposed settlement, and the voters were instructed to send in their ballots to the Post Office at Pawhuska, Oklahoma, by 9 a.m. on Monday, April 13, 1970, to be counted; that of a total membership of the Osage Nation of 8,514 there were 2,005 eligible voters, and that ballots were sent out to each of said 2,005 eligible voters; that minors under 21 years of age, although members of the Osage Nation with headrights, were not eligible to vote; that of the 2,005 eligible voters, representing 1,594.64 headrights, 1,481 ballots were cast and counted; that there were more voters than actual headrights, because those having fractional headrights can vote; that on April 13, 1970, at the Post Office at Pawhuska, Oklahoma, the ballot box of the referendum was picked up and taken to the Osage Agency and opened under supervision of the election Committee appointed by the Osage Tribal Council; and, that the election Committee supervised the counting of the ballots:

That during the course of the claims litigation the Osage

Tribal Council made periodic reports of the status of the claims cases at regular intervals, and issued new letters over the last 7 or 8 years in which the claims cases were one of the main subjects of report, the last report, issued last year, being a comprehensive one on the claims cases, and was favorably received by the membership of the tribe; that Osage Tribal Council meetings were open to the membership and that the claims cases appeared on the agenda more frequently than any other item; that there was usually a large attendance of members of the tribe at Osage Tribal Council meetings; that there were discussions about the settlement among tribal members and the members of the Osage Tribal Council; that the Council meetings were open to members of the tribe and other members were present at council meetings; that tribal members were familiar with what was involved, and understood this to be a final settlement of all of the Osage claims cases, and wanted to settle them; that only a few, not over 20 to 40 members of the tribe were opposed to the settlement; that the referendum vote on the settlement was an honest and fair vote; that the tribal members were satisfied with the settlement; and that the settlement was fair.

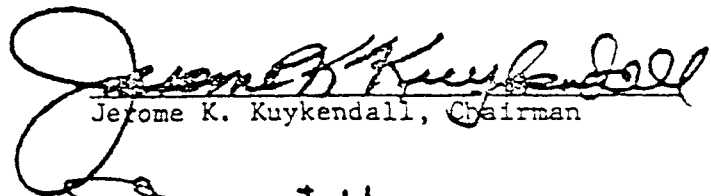
15. Paul M. Niebell, representing all of the claims attorneys for the Osage Nation, advised the Commission that in the judgment of the claims attorneys the proposed settlement of all claims is a fair compromise settlement under all the circumstances and in the best interest of the Osage Nation, noting the dismissal of the pending appeals on the issues of liability and value in Docket Nos. 105, 106 and 107, and the fact that offsets

of the defendant would not be asserted against the petitioner's claims. Mr. Niebell stated that the contract lawyers for petitioner were experienced in Indian claims litigation, and had recommended to the petitioner and to the Commissioner of Indian Affairs that the proposed settlement be approved.

16. Considering all of the circumstances, the record in all of the stages of the litigation, the testimony of the witnesses who have appeared before us in the settlement proceeding and the representations of counsel for the parties, the Commission specifically finds that the balloting directed by the Osage Tribal Council was the usual method used to reach all of the eligible voters of the Osage Nation on all important matters relating to the tribe, including the election of the Principal Chief and Tribal Council members. As the result of the tribal referendum a large majority of the membership of the Osage Nation approved the proposed compromise settlement, and accordingly the Osage Tribal Council accepted the proposed settlement, and directed its claims attorneys to take the necessary steps to consummate the settlement as soon as possible.

17. The Commission finds, based upon the testimony of witnesses, the record at all stages of the litigation in said cases, the representations of counsel and all other pertinent factors before us that the proposed compromise settlement is fair to the parties and has been freely entered into by them and duly approved by the Commissioner of Indian Affairs.

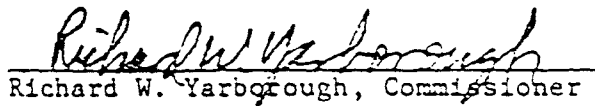
18. The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in favor of the plaintiff in the net amount of \$13,250,000.00, upon dismissal of the appeals in the United States Court of Claims, Appeals Nos. 9-69, 10-69, and 11-69, and the remand by that Court to the Commission for the purpose of entering said final judgment herein.



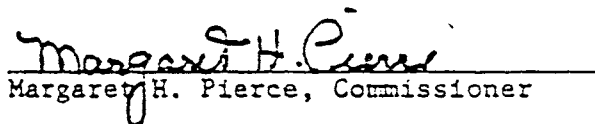
Jerome K. Kuykendall, Chairman



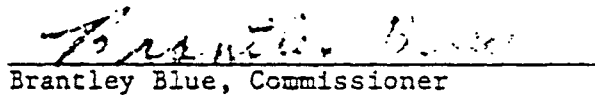
John T. Vance, Commissioner



Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner