

BEFORE THE INDIAN CLAIMS COMMISSION

THE JICARILLA APACHE TRIBE OF THE)	
JICARILLA APACHE RESERVATION,)	
NEW MEXICO,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 22-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: April 21, 1971

ADDITIONAL FINDINGS OF FACT

On August 26, 1963, the Commission issued findings of fact, opinion and interlocutory order herein, holding that the Jicarilla Apache Tribe held original Indian title to an area of land lying mainly in northeast New Mexico and southeast Colorado as more particularly described in Finding No. 60 in this cause. The Commission, in its order of that date, directed that the cause should proceed for determination of (1) the acreage contained within the area described in Commission's Finding No. 60, (2) all relevant matters concerning Spanish and Mexican land grants within that area and (3) for the purpose of valuation, the time or times said area was acquired by the United States.

On November 9, 1966, the Commission entered its opinion, findings of fact and interlocutory order holding that the gross acreage of the area to which the Jicarilla Apache Tribe held original Indian title was 14,026,000 acres, of which 4,807,467.23 acres within that area

were confirmed Spanish and Mexican land grants; that the confirmed Spanish and/or Mexican land grants within the claimed area never became a part of the public lands of the United States and therefore the value thereof must be excluded from any award made to the plaintiff; that the net acreage to be valued in further proceedings was 9,218,532.77 acres; and that the United States extinguished the Indian title of the Jicarilla Apache Tribe to the lands described in Finding No. 60 on August 20, 1883.

It was ordered that the matter proceed to determine the fair market value of the area described in Finding No. 60, less the aforesaid Spanish and Mexican land grants as of August 20, 1883, less such offsets as the defendant may be entitled to under the provisions of the Indian Claims Commission Act. 17 Ind. Cl. Comm. 338.

On December 2, 1970, the Commission entered its additional findings of fact, opinion and interlocutory order, finding that the fair market value of the award area was \$9,950,000 and ordered that the case proceed to a determination of the gratuitous offsets, if any, allowable under the Indian Claims Commission Act. 24 Ind. Cl. Comm. 123.

The Commission now makes the following findings of fact supplemental and additional to the previous Findings Nos. 1 through 180 herein.

181. Counsel for the plaintiff and the defendant entered into negotiations for the purpose of a compromise settlement and, on January 21, 1971, the Tribal Council of the Jicarilla Apache Tribe adopted a resolution (No. 71-104) authorizing and directing the tribal

attorneys to propose to the Attorney General that the Tribe will accept said sum of \$9,150,000 in full settlement of the land claim under said Docket No. 22-A, including the elimination of offsets claimed by the United States, but without prejudice to the further prosecution of the accounting claim by the Tribe against the United States.

182. Pursuant to said resolution, counsel for the plaintiff sent the following letter to the defendant:

"Mr. Bernard M. Newburg
Indian Claims Section
Land & Natural Resources Division
Department of Justice
Washington, D. C. 20530

"Re: Jicarilla Apache Tribe vs. the United States of America, Docket No. 22A, Indian Claims Commission

"Dear Mr. Newburg:

"The Jicarilla Apache Tribe, claimant in Docket No. 22A, Indian Claims Commission, has authorized me as one of the counsel for the Tribe, acting for Guy Martin, attorney of record, to negotiate a compromise settlement of the land claim of the Jicarilla Apache Tribe in Docket No. 22A, Jicarilla Apache Tribe vs. the United States of America, for the sum of \$9,150,000. This sum is to settle the land claim of the Tribe, which includes compensation for the loss of lands, minerals and timber, and further compromises and settles the offsets claimed by the United States of America against the Tribe. The proposed compromise and settlement does not include, and is without prejudice to further prosecution by the Tribe, of the accounting claim against the United States of America, which has been separated from the land claim by order of the Indian Claims Commission.

"This offer of settlement is subject to acceptance by the Attorney General on behalf of the United States of

America within thirty days of the date of this letter (subject to the usual conditions imposed by the Attorney General on settlements of Indian land claims).

Very truly yours,

/s/ Robert J. Nordhaus
for Guy Martin,
Attorney of Record

"Dated: January 21, 1971."

183. On February 12, 1971, the Assistant Attorney General on behalf of the defendant, accepted the settlement offer subject to certain conditions. The acceptance letter addressed to Guy Martin, Esq., 1701 Pennsylvania Avenue, N. W., Washington, D. C. 20006, states as follows:

"Dear Mr. Martin:

"This letter is in response to the offer to compromise and settle the land claim of the Jicarilla Apache Tribe, as alleged in Docket No. 22-A before the Indian Claims Commission, made by Robert J. Nordhaus, acting for you, by virtue of Resolution of the Jicarilla Tribal Council No. 71-04 [sic], dated January 21, 1971. The offer, to settle for the net sum of \$9,150,000, the land claim of the Tribe, which includes compensation for the loss of lands, minerals and timber, as well as the settlement of all offsets claimed by the United States in its Amended Answer, is accepted, subject to the conditions set forth below. It is understood that the compromise and settlement do not include, and are without prejudice to further prosecution by the Tribe, of the accounting claim against the United States of America, which, it is understood, will be separated from the land claim by order of the Indian Claims Commission. It is also understood that the United States may assert in such accounting claim any offsets which it may have or claim against the Tribe accruing after June 30, 1951, none of which are pleaded in its Amended Answer.

"The conditions are:

"1. That the proposed settlement be approved by appropriate resolution of the Jicarilla Tribal Council;

"2. That the settlement and the resolution of the Jicarilla Tribal Council be approved by the Secretary of the Interior or his authorized representative;

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

"The Department of Justice will be happy to work out with you the terms of the stipulation and the 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 letters 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.

Very truly yours,

/s/ Shiro Kashiwa
Assistant Attorney General."

184. In accordance with the resolution of the Tribal Council dated January 21, 1971, approving the compromise and settlement offer, and directing that notice be given to the adult members of the Jicarilla Apache Tribe to vote on said settlement, at a general meeting of the adult voters of the Tribe on March 16, 1971 (said meeting to be held only in the event of approval of the settlement offer by the Attorney General on behalf of the United States), notices were posted in conspicuous places on the Reservation and at the Post Office. Notice of the meeting, together with a summary of the negotiations and a discussion of the settlement

prepared by the attorneys for the Tribe, were mailed to each member of the Tribe and published in the Jicarilla Chieftan, a newspaper circulating to all members of the Tribe, on February 22, 1971. At the meeting of March 16, 1971, additional copies of the summary, describing the compromise and settlement, were available to individual members present. Most members of the Tribe live on the Jicarilla Apache Reservation.

185. At 10:00 a.m., on Tuesday, March 16, 1971, in the gymnasium at the Public School in Dulce, New Mexico, on the Jicarilla Reservation, a general meeting of the adult members of the Jicarilla Tribe was held for the purpose of considering and voting upon the proposed settlement in this matter. The meeting was attended by more than 300 adult members. Also present were: Robert J. Nordhaus, one of the claims attorneys for the Tribe; Walter O. Olson, Director, Albuquerque Area Office, Bureau of Indian Affairs, Albuquerque, New Mexico; Robert W. Young, Area Tribal Operations Officer, Albuquerque Area Office; Walter Koslowsky, Superintendent Jicarilla Agency, Dulce, New Mexico; and Thomas O. Olson, Albuquerque, New Mexico, general counsel for the Tribe. Mr. Charlie Vigil, President of the Tribal Council, served as Chairman of the meeting.

186. After opening remarks by President Charlie Vigil, Robert J. Nordhaus, one of the claims attorneys for the Tribe, gave a detailed presentation on the scope and history of the Jicarilla Apache claim: the length of time and effort expended to take the case to judgment; the possible delays that could occur if litigation should continue; the background, terms, consequences and considerations in favor of and against the proposed settlement.

This was explained in English and in the Jicarilla Apache language. The meeting was made open to questions, answers, and discussion. After a 20-minute recess, to give the members of the Tribe an opportunity to discuss the settlement proposal among themselves, the meeting was reconvened at 11:30 o'clock. After another opportunity for further questions to be presented, the matter was put to a vote. It was determined that 264 voted for approval of this settlement; that no votes were cast against the settlement. These figures were entered in the Resolution which was then executed by the President and the Secretary and authenticated by Robert W. Young, representative of the Bureau of Indian Affairs, U. S. Department of Interior. The Resolution adopted states as follows:

"JICARILLA APACHE TRIBE GENERAL MEETING
RESOLUTION NO.

"WHEREAS the Jicarilla Apache Tribe has been prosecuting a claim before the Indian Claims Commission entitled Jicarilla Apache Tribe versus United States of America, Docket No. 22-A, and

"WHEREAS the Indian Claims Commission on August 26, 1963 entered an interlocutory order in said Docket No. 22-A that the Jicarilla Apache Tribe held original Indian title to an area of land in northeast New Mexico and southeast Colorado, later determined to contain an acreage of 9,218,532.77 acres, and

"WHEREAS by an interlocutory order entered November 9, 1966 the Commission held that the United States extinguished Indian title to said land on August 20, 1883, and ordered that the matter proceed to determine the fair market value of the area as of said date, and

"WHEREAS on December 2, 1970 the Commission held that the fair market value of said tract was \$9,950,000 as of August 20, 1883, including minerals and timber, and that the Plaintiffs had received no consideration for said award area. It was

further ordered that the case be pursued to a determination of the gratuitous offsets, if any, allowable under the Indian Claims Commission Act, and

"WHEREAS the Tribal Council of the Jicarilla Apache Tribe, at a special meeting held on December 16, 1970 authorized Robert J. Nordhaus as one of the claim's attorneys and other counsel and entered into negotiations with attorneys representing the United States to seek an early compromise between the Tribe and the United States of the land claim of the Tribe, and

"WHEREAS on January 14 and 15, 1971 the claim's attorneys for the Tribe, accompanied by three members of the Tribal Council, negotiated with Mr. Ralph Barney and Mr. Bernard M. Newburg, the Office of the Attorney General of the United States, the compromise and settlement of offsets in Docket No. 22-A, and

"WHEREAS the negotiating parties agreed to settle the land claim in Docket No. 22-A, including offsets, but without prejudice to the accounting claim of the Tribe and without prejudice to the right of the United States to assert offsets in the accounting claim accruing after June 30, 1951 for the sum of \$9,150,000, and

"WHEREAS the Tribal Council of the Jicarilla Apache Tribe fully debated and considered the proposed offer of settlement of offsets to the land claim and approved said settlement by resolution adopted January 21, 1971, and

"WHEREAS considerable time will be taken to finally hear and determine the question of offsets, if litigated, and considerable additional expense will be incurred with the possibility of appeals and further delays before a final judgment could be entered, and

"WHEREAS the Jicarilla Apache Tribe, at a general meeting of members of the Tribe for the purpose of considering the terms of such settlement, which was fully discussed by the attorneys, the Land Committee of the Tribe, the Tribal Council and adult members of the Jicarilla Apache Tribe; and Robert J. Nordhaus, one of the attorneys prosecuting the land claim for the Tribe, appeared before the general meeting and fully explained and evaluated the proposed compromise and settlement and answered questions of the members of the Tribe, and

"WHEREAS a representative of the Department of Interior, Bureau of Indian Affairs, was present during said meeting and observed proceedings, and

"WHEREAS the adult members of the Jicarilla Apache Tribe are fully informed and advised regarding the proposed settlement, together with the proposed Stipulation for Entry of Final Judgment, a copy of which was distributed to the members of the Tribe and read in the open Tribal meeting and explained by the attorneys,

"NOW, THEREFORE, BE IT RESOLVED by the adult members of the Jicarilla Apache Tribe assembled that the proposed final settlement of the land claim in Docket No. 22-A, in the sum of \$9,150,000, after all claims and offsets, be, and it hereby is, approved, and it being understood that the settlement is without prejudice to the further prosecution of the accounting claim by the Tribe against the United States, and without prejudice to offsets claimed by the government accruing after June 30, 1951, which may be asserted in said accounting claim; and it being further understood that this approval authorizes the attorneys to execute the proposed Stipulation for Entry of Final Judgment; and

"BE IT FURTHER RESOLVED that the Chairman and Secretary of this meeting are authorized to execute the proposed Stipulation, and that the members of the Tribal Council and Land Committee designated by the Tribal Council are authorized to appear and testify before the Indian Claims Commission regarding the proposed settlement and the action taken by the adult members of the Jicarilla Apache Tribe, and

"BE IT FURTHER RESOLVED that the Secretary of the Interior and the Indian Claims Commission are hereby requested to approve the proposed settlement and Stipulation for Entry of Final Judgment.

/s/ Charlie Vigil
President

ATTEST:

/s/ Barbara Gonzales
Secretary

/s/ Thomas O. Olson

Witness -

(Tribal Attorney)

/s/ Louis Vigil

Witness

"I hereby certify that at a duly called meeting of the adult members of the Jicarilla Apache Tribe, held March 16, 1971, notice of which was duly posted and published according to the election rules of the Tribe and mailed to each member of the Tribe, the foregoing Resolution was adopted by a vote of 264 for an 0 opposed.

"Dated this 16th day of March, 1971.

/s/ Charlie Vigil
President

ATTEST:

/s/ Barbara Gonzales
Secretary

"I hereby certify that Charlie Vigil, and Barbara Gonzales, personally known to me, subscribe their names to the foregoing Resolution in my presence and that the foregoing Resolution was adopted by a vote of 264 FOR and 0 OPPOSED.

"Dated this 16th day of March, 1971.

/s/ Robert W. Young
Representative
Bureau of Indian Affairs
U.S. Department of the Interior"

187. The Tribal Council of the Tribe met at 2:00 p.m., March 16, 1971, pursuant to regular notice of said meeting, for the purpose of certifying results of the meeting of the Tribe and reaffirming and ratifying the compromise and settlement agreement. At said meeting of the Tribal Council, at which 6 members of the Council were present and 4 were absent, the following Resolution was adopted by a vote of 6 FOR and 0 OPPOSED:

"JICARILLA APACHE TRIBE
RESOLUTION OF THE
TRIBAL COUNCIL

"JICARILLA LAND CLAIMS - DOCKET 22A

