BEFORE THE INDIAN CLAIMS COMMISSION

THE JICARILLA APACHE TRIBE OF THE
JICARILLA APACHE RESERVATION,
NEW MEXICO,

Plaintiff,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 22-A

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."

133. 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,

"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,

"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,

"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,

"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,
"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 and 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
"RESOLUTION NO. 71-133"

"WHEREAS, on January 21, 1971, the Jicarilla Apache Tribal Council authorized attorneys for the Tribe to propose to the Attorney General of the United States that the Tribe accept the sum of $9,153,000 in full settlement of the Land Claim of the Tribe in Docket No. 22-A before the Indian Claims Commission, including the elimination of offsets claimed by the United States, and

"WHEREAS, a meeting of the members of the Jicarilla Apache Tribe was called to be held March 16, 1971 to discuss and consider and to vote upon the said proposed compromise and settlement subject to prior approval of said settlement by the Attorney General of the United States, and

"WHEREAS, on February 12, 1971, the Attorney General of the United States approved said settlement under certain conditions, and

"WHEREAS, on March 16, 1971, the Jicarilla Apache Tribe had a general meeting for the purpose of considering the terms of said settlement, which was fully discussed by the members of the Tribe and by the attorneys representing the Tribe before the Indian Claims Commission, and

"WHEREAS, it appears that the adult members of the Jicarilla Apache Tribe were fully informed and advised regarding the proposed settlement, together with the conditions imposed by the United States, and were fully advised as to the proposed Stipulation for Entry of Final Judgment, a form of which was distributed to the members of the Tribe and read in open tribal meeting and explained by the attorneys, and

"WHEREAS, it appears that notice of said meeting was posted and mailed to each member of the Tribe and published in the Jicarilla Chieftain, a newspaper of general circulation among the Tribe, and

"WHEREAS, the adult members of the Jicarilla Apache Tribe adopted a resolution approving said compromise and settlement by a vote of 264 for and 0 opposed to said resolution;
"NOW, THEREFORE, be it resolved, by the Tribal Council of the Jicarilla Apache Tribe that the proposed compromise and settlement of the land claim be, and hereby is, reaffirmed, approved and ratified, and the proposed Stipulation for Entry of Final Judgment be, and hereby is, approved.

"BE IT FURTHER RESOLVED, that the following individuals be, and hereby are, authorized to testify before the Indian Claims Commission regarding the proposed settlement and the action taken by the adult members of the Jicarilla Apache Tribe:

Charlie Vigil, President
Hubert Velarde, Vice-President
Norman Tecube, Land Claims Committee Member

and,

"BE IT FURTHER RESOLVED, that the attorneys for the Tribe are authorized to execute the proposed Stipulation for Entry of Final Judgment and to take whatever steps are necessary to effectuate said compromise and settlement.

/s/ Charlie Vigil
President

ATTEST:

/s/ Barbara Gonzales
Secretary

"The foregoing resolution is adopted by the Tribal Council of the Jicarilla Apache Tribe, on the 16th day of March, 1971, by a vote of 6 for, 0 opposed, at a duly called meeting at which a quorum of the Tribal Council members were present.

/s/ Charlie Vigil
President

ATTEST:

/s/ Barbara Gonzales
Secretary"
The compromise settlement was approved in a letter to plaintiff's counsel dated April 1, 1971, from Louis R. Bruce, Commissioner of Indian Affairs, the duly authorized representative of the Secretary of the Interior. The letter reads as follows:

"Dear Mr. Nordhaus:

"You requested our approval of a proposed compromise to settle the land claim of the Jicarilla Apache Tribe in Indian Claims Commission Docket No. 22-A for a net final judgment of $9,150,000.00.

"Prosecution of the claim is governed by contract No. I-1-ind 42530, dated March 4, 1951. The contract was entered into by the Jicarilla Apache Tribe with Attorneys Roy T. Mobley and Guy Martin. It was approved on August 1, 1951, for a period of ten years beginning with the date of approval. The contract has been extended several times. The last extension, which was for a period of two years beginning on August 1, 1969, was approved on July 30, 1969. An agreement associating Attorneys Robert J. Nordhaus and Richard M. Davis under the contract was approved on April 29, 1957. The contract provides that the attorneys shall make no compromise of the claims on behalf of the tribe without the approval of the Commissioner of Indian Affairs.

"Members of the Tribal Council of the Jicarilla Apache Tribe had been working with you relative to the negotiation of the proposed settlement and on January 21, 1971, the Tribal Council adopted Resolution 71-104 approving the proposed settlement with the condition that the Attorney General approve it.

"You made an offer to the Department of Justice on January 21, 1971, to settle the land claim in Docket No. 22-A for the sum of $9,150,000.00. Your offer was accepted by the Assistant Attorney General on February 12, 1971, with conditions. Two of the conditions were that the proposed settlement be approved by a resolution of the Jicarilla Tribal Council and that the Secretary of the Interior or his authorized representative approve the settlement and the resolution."
"Entry of final judgment in the amount of $9,150,000.00 for the Petitioner Jicarilla Apache Tribe of Indians will dispose of all rights, claims or demands which the Petitioner has asserted or could have asserted with respect to the land claim in Docket No. 22-A. It will also dispose of all rights, claims, demands, payments on the claims, counter-claims or offsets, which the United States has asserted or could have asserted against the Petitioner for the period February 1, 1887, through June 30, 1951. However, entry of final judgment shall not be a bar against the United States from claiming in any future action, offsets that accrued prior to February 1, 1887, and that accrue after June 30, 1951. The final judgment shall not prejudice Petitioner's continued prosecution of its accounting claim against the United States. All parties waive any and all right to appeal from or to otherwise seek review of the final judgment of the Indian Claims Commission that may be entered pursuant to the terms of the proposed settlement.

"You took the proposed settlement to the Jicarilla Apache Tribe at a General Council of the adult members held at Dulce, New Mexico, on March 16, 1971. The meeting was well publicized. Notices of the meeting with a copy of the Attorney's summary of the proposed settlement were mailed on February 16, 1971, to all adult members of the Tribe. Notices were also posted in several places where they could be seen and read by members of the Tribe.

"You and representatives of this Bureau attended the meeting. One of the Bureau's representatives reported on it. When the meeting opened, about 319 of the 754 eligible voting members of the Jicarilla Apache Tribe were present. The services of an interpreter were used for the benefit of those who did not have a good understanding of the English language. You summarized the claims and explained the proposed settlement in detail. Your explanation covered the decisions already rendered by the Indian Claims Commission on the land claim in Docket No. 22-A, and advised that offsets was the primary matter being compromised, and that the accounting claim in the case would be carried to conclusion separately. The Indians asked questions and you answered them. When there were no more questions, the Chairman of the General Council called for a standing vote on acceptance or rejection of the proposed settlement. The proposed settlement was accepted by a resolution adopted by a vote
of 264 for acceptance and none opposed. The President and Secretary of the General Council signed the resolution and their signatures were certified by a representative of this Bureau as having been affixed in his presence.

"Following the General Council meeting, the Tribal Council convened and adopted Resolution No. 71-133, by a vote of 6 for and none opposed, reaffirming and ratifying acceptance of the proposed compromise.

"We are satisfied that the meetings of the Jicarilla Apache Tribal Council held on January 21, 1971, and March 16, 1971, and the meeting of the General Council of the Jicarilla Apache Tribe held on March 16, 1971, were properly called and satisfactorily held. We are further satisfied that the members in attendance at the General Council meeting reasonably understood the terms of the proposed settlement before voting on it, that those voting were representative of the tribe, and that the views expressed in the resolution adopted reflect the views of the tribal membership. The resolutions are hereby approved.

"In light of the information that you furnished to us, that submitted by our field offices, and that obtained from other sources, the proposed settlement of the land claim in Docket No. 22-A for a net final judgment of $9,150,000.00 in favor of the Jicarilla Apache Tribe as set out in the proposed 'Stipulation for Final Judgment' is hereby approved.

Sincerely yours,

/s/ Louis R. Bruce
Commissioner"

189. After approval of the proposed settlement by the Secretary of the Interior, counsel for defendant in compliance with its conditional acceptance of the terms of the compromised offer executed a Stipulation for Entry of Final Judgment. It was filed with the Commission on April 5, 1971. The Stipulation reads as follows:
"The parties, by and through their respective counsel, hereby stipulate that the above-entitled claim should be settled, compromised, and finally disposed of by entry of final judgment as follows:

I

"There shall be entered in the case, after all allowable deductions, credits, and offsets, a net judgment for Petitioner in the amount of $9,150,000. 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 Land Claim in Docket No. 22-A. Petitioner shall be barred thereby from asserting any further rights, claims or demands against the Defendant, and any future action on said Land Claim.

II

"Entry of final judgment in the aforesaid amount shall finally dispose of all rights, claims, demands payments on the claim, counterclaims or offsets, which the Defendant has asserted or could have asserted against the Petitioner under the provisions of Section 2 of the Indian Claims Commission Act (c. 949, 60 Stat. 1049) from February 1, 1887 through June 30, 1951, and Defendant shall be barred thereby from asserting against Petitioner in any future action, any such rights, demands, payments on the claim, counterclaims or offsets attributable to such period. It is agreed that Defendant shall not be barred by this Stipulation or by Entry of Judgment pursuant thereto from claiming, in any future action, offsets accruing prior to February 1, 1887 or after June 30, 1951.

III

"Final judgment entered herein shall not prejudice Petitioner's continued prosecution of its accounting claim against the Defendant.

IV

"The final judgment entered pursuant to this Stipulation shall be construed to be a compromise and settlement and shall not be construed as an admission by either party for the purposes of precedent or argument in any other case.
V

"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 as to the Land Claim of Petitioner and shall become final on the day it is entered, all parties hereto waiving any and all rights to appeal from or otherwise seek review of such final determination.

VI

"Attached to this Stipulation, incorporated herein by reference, is a resolution approving the settlement adopted by the Jicarilla Tribal Council, Petitioner's governing body, on January 21, 1971, a resolution adopted at a meeting of the adult members of the Jicarilla Apache Tribe held at Dulce, New Mexico on March 16, 1971, and a further resolution ratifying the action of the members and reaffirming the approval of the settlement by the Jicarilla Apache Tribal Council adopted March 16, 1971, all of said resolutions authorizing counsel for Petitioner to enter into this Stipulation, as set forth herein, and a copy of the letter approving the settlement of this litigation by the Department of the Interior or its authorized representative.

"Dated this 5th day of April, 1971.

/s/ Robert J. Nordhaus
Attorney of Record for Petitioner in Docket No. 22-A

/s/ Shiro Kashiwa
Assistant Attorney General

/s/ Bernard M. Newburg
Attorney for Defendant"

190. On April 8, 1971, the Commission held a hearing on the proposed settlement and compromise of plaintiff's Land Claim in Docket No. 22-A. Counsel for plaintiff made a full statement setting forth the background of the settlement and the actions of the Tribal Council at its meeting held January 21, 1971, approving the settlement offer,
and the proceedings at the meeting of members of the Tribe held March 16, 1971. Charlie Vigil, President of the Tribal Council and Chairman of the meeting of March 16, 1971, testified for plaintiff. President Vigil testified, among other matters, that notice of the meeting of March 16, 1971, with a summary of the claim and the settlement proposal prepared by counsel for the Tribe was mailed to the household of each member of the Tribe, also published in the Jicarilla Chieftain, a newspaper circulating to all members of the Tribe, and posted at various public places around the Reservation prior to the meeting. President Vigil stated that more members of the Tribe attended the meeting of March 16, 1971, than had ever attended any meeting in the past; that the terms of the proposed settlement and the proposed stipulation were explained by counsel for the Tribe and translated into the Apache language, discussed fully by members of the Tribe at the meeting, and approved by a vote of 264 to 0 by the adult members of the Tribe voting at the meeting. He stated that, in his opinion, the members of the Tribe understood and were unanimously in favor of the proposed compromise and settlement.

Hubert Velarde, Vice-President of the Tribal Council, and Norman Tecube, a member of the Land Claims Committee of the Tribal Council, testified substantially as to the same matters.

191. On April 20, 1971, counsel for plaintiff and defendant executed and filed an Amended Stipulation for Final Judgment which reads as follows:

"The parties, by and through their respective counsel, hereby amend the Stipulation for Final Judgment hitherto entered in this case as follows:
"WHEREAS, the Government's letter of acceptance dated February 12, 1971 [quoted in Finding No. 183, above], referred to the settlement of all offsets claimed by the United States in its Amended Answer; and

"WHEREAS, in its Amended Answer pleading offsets the Government claimed offsets between August 20, 1883, the valuation date established by the Indian Claims Commission in its decision of November 9, 1966 (17 Ind. Cl. Comm. 338), and June 30, 1951; and

"WHEREAS, the offsets claimed between August 20, 1883, and February 1, 1887, the date upon which the Jicarilla Apache Indians were finally settled upon their present reservation, appear to be entirely removal expenses which, if substantiated, are barred from allowance as offsets by section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 1050; and

"WHEREAS, by reason of this fact the agreement as to settlement between the parties would not appear to be materially affected by changing the initial date in the Stipulation for Final Judgment from February 1, 1887, to August 20, 1883.

"Paragraph II of the said Stipulation is amended to read as follows:

"Entry of final judgment in the aforesaid amount shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets, which the Defendant has asserted or could have asserted against the Petitioner under the provisions of Section 2 of the Indian Claims Commission Act (c. 949, 60 Stat. 1049) from August 20, 1883, through June 30, 1951, and Defendant shall be barred thereby from asserting against Petitioner in any future action, any such rights, demands, payments on the claim, counterclaims or offsets attributable to such period. It is agreed that Defendant shall not be barred by this Stipulation or by Entry of Judgment pursuant thereto from claiming, in any future action, offsets accruing prior to August 20, 1883 or after June 30, 1951."
"In the event that the proposed settlement is not approved by the Commission, nothing contained herein shall be binding upon either party.

"Dated this 20th day of April, 1971.

/s/ Robert J. Nordhaus
Robert J. Nordhaus
Attorney of Record for Petitioner
in Docket No. 22-A

/s/ Shiro Kashiwa
Shiro Kashiwa
Assistant Attorney General

/s/ Bernard M. Newburg
Bernard M. Newburg
Attorney for Defendant"

192. Based on the entire record in these proceedings, including all findings, opinions and orders of the Commission heretofore entered in Docket No. 22-A, the approval of the settlement by counsel for both parties, the Secretary of the Interior and the Jicarilla Apache Tribe, by vote at a general meeting of adult members of the Tribe and by resolution of the Jicarilla Tribal Council, the Commission finds that the proposed settlement of the Jicarilla Apache land claim asserted in Docket No. 22-A was fully and reasonably explained to all adult members of the Jicarilla Apache Tribe and was understood and agreed to by them and that approval of the settlement as set forth in the Stipulation for Final Judgment filed April 5, 1971, as amended by the Amended Stipulation filed April 20, 1971, will eliminate considerable additional litigation expense as well as delay in payment of the final award and should be approved.

Judgment should therefore be entered for plaintiff against defendant for $9,150,000 and all offsets claimed by defendant deemed settled,
excepting such offsets as may be asserted by defendant, in plaintiff's accounting claim or any other future action, accruing prior to August 20, 1883, or after June 30, 1951. The Commission therefore finds that the Joint Motion for Final Judgment as modified by the terms of the Amended Stipulation for Final Judgment filed April 20, 1971, should be granted.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret R. Pierce, Commissioner

Brantley Blue, Commissioner