

BEFORE THE INDIAN CLAIMS COMMISSION

|                                 |   |                |
|---------------------------------|---|----------------|
| CABAZON BAND OF MISSION INDIANS | ) |                |
| OF CALIFORNIA,                  | ) |                |
|                                 | ) |                |
| Plaintiff,                      | ) |                |
|                                 | ) | Docket No. 148 |
| v.                              | ) |                |
|                                 | ) |                |
| THE UNITED STATES OF AMERICA,   | ) |                |
|                                 | ) |                |
| Defendant.                      | ) |                |

Decided: June 16, 1971

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission for approval of a compromise final settlement of this case and entry of a final judgment in the amount of \$100,000.00, with a waiver of review or appeal, said judgment to dispose of all claims and demands which plaintiff has asserted or could have asserted against defendant in Docket No. 148 and said judgment also to dispose of all claims, demands, payments on the claim, counter-claims or offsets which defendant has asserted or could have asserted under the provisions of Section 2 of the Indian Claims Commission Act (25 U.S.C. §70a), for the period commencing December 11, 1914, and ending June 30, 1962.

The Commission has heretofore determined on June 18, 1969, in 21 Ind. Cl. Comm. 119 (Findings of Fact Nos. 1-13), that plaintiff, the Cabazon Band of Mission Indians of California, is an Indian tribe, band, or other identifiable group of American Indians within the contemplation of Section 2 of the Indian Claims Commission Act and as such, has the

statutory capacity to bring and maintain a suit before this Commission; that on May 15, 1876, the plaintiff had aboriginal title to Section 24, Township 5 South, Range 7 East, San Bernardino Meridian, and to Section 19, Township 5 South, Range 8 East, San Bernardino Meridian; and that by the Executive Order of May 15, 1876, said Sections were made a part of the Cabazon Indian Reservation; and that on December 11, 1914, the defendant took the said Section 24 and 5/8 of the said Section 19 without just compensation and alienated the said property for the exclusive benefit of the Torres-Martinez Mission Band. The plaintiff received no benefit from the transaction. The Commission ordered that the instant suit proceed to determination of the sum due to the plaintiff from the defendant as just compensation for the taking of said lands.

Thereafter, counsel commenced discussions concerning settlement of the Cabazon claim and ultimately agreed on a settlement in the net amount of \$100,000.00, which would dispose of all of plaintiff's claims in Docket No. 148 and all claims of offsets by the defendant.

The proposed settlement was conditioned upon approval by the Cabazon Band, the Secretary of the Interior or his authorized representative, and this Commission.

A hearing having been held in Los Angeles, California, on April 7, 1971, on the proposed offer to compromise and settle, the Commission makes the following findings of fact which are supplemental to the previous findings Nos. 1-13, inclusive, made herein:

14. The Cabazon Band is governed by Articles of Association adopted on January 31, 1965. The band has 22 members, 12 of whom were 21 years of age or older on September 27, 1970, at which time the resolution hereinafter described was adopted. Fifty per cent of the qualified voters constitute a quorum.

15. By letter of June 26, 1970, the defendant accepted an offer to compromise and settle the claims of the Cabazon Band in Docket No. 148 for a net final judgment of \$100,000.00.

16. The exact form of the settlement was ultimately embodied in a stipulation for entry of final judgment entered into by counsel for the parties, which reads as follows:

#### STIPULATION FOR ENTRY OF FINAL JUDGMENT

IT IS HEREBY STIPULATED by the parties, through their counsel, as follows:

1. All claims asserted in Indian Claims Commission Docket No. 148, shall be settled by entry of a final judgment in the Indian Claims Commission in the amount of \$100,000.00.
2. The final judgment shall be in favor of the CABAZON BAND OF MISSION INDIANS, plaintiff, and against THE UNITED STATES OF AMERICA, defendant, no review to be sought or appeal to be taken by either party.
3. This judgment shall finally dispose of all claims and demands which plaintiff has asserted or could have asserted against defendant in Docket No. 148. The judgement shall also dispose of all claims, demands, payments on the claim, counterclaims, or offsets which defendant has asserted or could have under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049) for the period commencing December 11, 1914 and ending June 30, 1962.

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

17. On May 3, 1970, before any formal settlement proposal was presented to the defendant, counsel for plaintiff appeared before the annual meeting of the General Council of the Cabazon Band and explained the proposed settlement to the Council. At that meeting the Council voted to approve the proposed settlement and directed counsel to present the offer of settlement to the defendant, 8 members of the band being present and voting unanimously in favor of the proposed settlement.

18. After counsel had presented the proposed settlement offer to the defendant and the defendant had accepted the offer, a meeting of the General Council of the Cabazon Band was held in Indio, California, on September 13, 1970, with 7 members present. All favored acceptance of the proposed settlement, but since counsel was not present at the meeting, another meeting was called for September 27, 1970.

19. At the meeting of the General Council held on September 27, 1970, one of the claims counsel for the Cabazon Band, Mr. R. J. Kilpatrick, and a representative of the Bureau of Indian Affairs, Mr. Frank L. Haggerty, Jr., were present. Five members of the band were present in person, and a sixth member was consulted by telephone. Counsel explained the terms of the proposed settlement and answered the questions asked by the Indians. A resolution was adopted by the members, all 5 members who were present voting to accept the proposed settlement and the sixth

member, to whom the proposed resolution was explained by telephone, voting also to accept the proposed settlement. The resolution adopted at said meeting read as follows:

WHEREAS, the annual meeting of the General Council of the Cabazon Band of Mission Indians was duly held on May 3, 1970, and at that meeting Mr. Robert J. Kilpatrick, one of the attorneys of record for the Cabazon Band in its claim against the United States of America filed with the Indian Claims Commission and numbered as Docket #148, appeared before the Council and presented to the Council a full explanation of the status of the claim, advising the Council that an interlocutory judgment had been rendered in favor of the Band decreeing that the United States was liable for the wrongful taking of Section 24 and most of Section 19 of the Cabazon Reservation land in the City of Indio; that the advice of appraisers obtained by the attorneys of record for the Band was that the value of said sections at the time of the taking was approximately \$150,000.00; that the United States would be entitled to an offset against that amount for the value of Sections 30 and 32, constituting a present part of the Cabazon Reservation; that a settlement of the Cabazon claims had been reached between the attorneys of record for the Band and the Department of Justice on the basis of a net judgment in favor of the Band, including all offsets, and subject only to attorneys' fees and costs, in the amount of \$100,000.00; and that Mr. Kilpatrick and Mr. Simpson, as attorneys of record for the Band, recommended that the Council accept this proposed settlement; and

WHEREAS, at said meeting the proposed \$100,000.00 settlement was fully discussed, and the General Council voted unanimously, a quorum of the Council voting, in favor of the settlement, the members voting being: J. R. Benitez, Susie Benitez, John James, William Callaway, Remeijo Callaway, Leroy Alvarez, Arthur Welmas, and Eugene Welmas; and

WHEREAS, at the regular meeting of the General Council of the Cabazon Band held on September 13, 1970, without either a representative of the Bureau of Indian Affairs or one of the attorneys of record for the Band being present, the matter was again discussed, and the Council membership again voted unanimously in favor of the settlement, the following members, constituting a quorum of the Council, voting: J. R. Benitez, Susie Benitez, John James, William Callaway, Remeijo Callaway, Arthur Welmas, and Eugene Welmas; and

WHEREAS, a special meeting of the General Council of the Cabazon Band was duly called by the Business Committee for September 27, 1970, and notice thereof was duly given to all members of the Band; said meeting was attended by Mr. Frank L. Haggerty, Jr. of the Bureau of Indian Affairs and by Mr. Robert J. Kilpatrick, as counsel for the Band, and at said meeting the Council, after a full explanation of the proposed settlement by Mr. Kilpatrick, voted to adopt a formal resolution accepting the proposed settlement;

NOW THEREFORE, BE IT RESOLVED: That the General Council of the Cabazon Band of Mission Indians, a quorum of the members of the Council voting, does hereby approve, accept, and ratify the settlement of the claims of the Cabazon Band of Mission Indians against the United States, as set forth with the Indian Claims Commission in Docket No. 148, on the basis of the entry of a judgment for the Cabazon Band in the net amount, including all offsets and subject only to attorneys fees and costs, of \$100,000.00;

FURTHER RESOLVED: That Messrs, Robert J. Kilpatrick and Raymond C. Simpson, as attorneys of record for the Band in Docket No. 148, be and they hereby are authorized and directed to take all necessary action to implement this resolution and to consummate the settlement of the Cabazon claims in Docket No. 148 on the basis hereinabove set forth.

20. Following the adoption of the foregoing resolution at the meeting of September 27, 1970, a true copy thereof was circulated to every recognized eligible voting member of the Cabazon Band, attached to a statement approving the resolution, which read as follows:

## APPROVAL OF RESOLUTION

Each of the undersigned voting members of the Cabazon Band of Mission Indians hereby certifies that he has read the foregoing resolution adopted by the General Council of the Cabazon Band at a duly called special meeting held on September 27, 1970; that he received both written and oral notice of said meeting; that he understands the terms of the settlement described in the foregoing resolution; and that he approves said settlement and approves the foregoing resolution.

Each of the 12 recognized eligible voters of the Cabazon Band duly executed the foregoing Approval of Resolution.

21. Following the foregoing actions of the General Council of the Cabazon Band and of each recognized voting member thereof in approving the settlement, a full report of the actions of counsel and of the Cabazon Band was submitted to the Bureau of Indian Affairs by letter of October 8, 1970. A report of Mr. Frank L. Haggerty, Jr., Acting Area Field Representative, was made in writing to the Commissioner of Indian Affairs on November 27, 1970. On December 23, 1970, the Commissioner of Indian Affairs approved the proposed settlement in writing, by letter addressed to counsel reading as follows:

You have requested our approval of a resolution adopted by the Cabazon Band of Mission Indians and also the approval of a proposed compromise to settle the Band's claim in Indian Claims Commission Docket No. 148 for a net final judgment of \$100,000.00.

Docket No. 148 is being prosecuted under contract, Symbol 14-20-0650 No. 1656, dated January 3, 1968, between the Cabazon Band of Mission Indians and Raymond C. Simpson and attorneys associated with him. The contract was approved on February 13, 1968, for a period of five years beginning with the date of approval. It provides that any compromise of the matter in controversy

shall be subject to the approval of both the General Council of the Cabazon Band and the Secretary of the Interior.

You made an offer to the Assistant Attorney General on April 17, 1970, as modified on May 25, 1970, to settle Docket No. 148 for a net final judgment of \$100,000.00 in favor of the Cabazon Band. Your offer was accepted on June 26, 1970, with conditions. Two of the conditions were that the proposed settlement be approved by a resolution of the Cabazon Band and also that the resolution and the proposed settlement be approved by the Secretary of the Interior or his authorized representative.

Entry of final judgment in accord with the proposed settlement shall finally dispose of all claims and demands which the petitioner Band of Indians has asserted or could have asserted in Docket No. 148. Entry of final judgment will also dispose of all claims, demands, payments on the claim, counterclaims or offsets which the United States has asserted or could have asserted under Section 2 of the Act of August 13, 1946 (60 Stat. 1049), for a period beginning December 11, 1914, and ending June 30, 1962. No review is to be sought or appeal taken by either party.

The Cabazon Band is governed by Articles of Association adopted on January 31, 1965. The Band has 22 members, 12 of which being 21 years of age or older make up the General Council. Fifty percent of the qualified voters constitute a quorum.

You took the terms of the proposed settlement to the Cabazon Band. A General Council meeting was held in Indio, California, on September 13, 1970, with seven members present. All favored acceptance of the proposed settlement. However, neither their claims counsel nor a representative of this Bureau was present and the members decided to call another meeting for September 27.

You and a representative of this Bureau were present at the meeting held on September 27, 1970, at Coachella, California, at which five members of the Band were present. You explained the terms of the proposed settlement and answered the questions asked by the Indians. A resolution was adopted by the members, all five voting to accept the proposed settlement. The views of other members who were



not present at the meeting were solicited. This resulted in a certification of the resolution over the signatures of 12 eligible voting members of the Band. We are satisfied that the meetings were duly noticed with the members being informed of the purpose of the meetings and that they were properly held. The Indians appeared to understand the terms of the proposed settlement before voting to accept it and certifying the resolution adopted on September 27, 1970. We are also satisfied that the resolution, as certified by the twelve members, was duly adopted and that it reasonably expressed the views of the membership of the Cabazon Band. The resolution is hereby approved.

In light of the information which you have submitted to us, that supplied by our field offices, and that obtained from other sources, the proposed settlement of Docket No. 148, as set out in the "Stipulation for Entry of Final Judgment", is hereby approved.

Sincerely yours,

s/Louis R. Bruce

Commissioner

22. A hearing was held by the Commission on April 7, 1971, on the proposed offer to compromise and settle. Testimony of eight witnesses was received: William R. Callaway, Assistant Chairman, and John A. James, Secretary of the General Council of the Cabazon Band; Remeijo Callaway, Arthur Welmas, Eugene Welmas, and Susie Benitez, members of the Cabazon Band; Robert J. Kilpatrick, claims counsel; and Frank L. Haggerty, Jr., representing the Bureau of Indian Affairs.

23. Mr. John A. James, Secretary of the General Council of the Cabazon Band, testified concerning the procedure he followed in giving notices to the members of the meetings of September 13, 1970, and September 27, 1970, the presentation to the General Council, and the

vote of the Council. He testified that the claims attorney for the band made a full presentation of all of the issues concerning the settlement and that all of the members were permitted to ask any and all questions concerning the proposed settlement and that these questions were satisfactorily answered by counsel. Mr. James stated that in his opinion the members of the General Council who were present had understanding and knowledge of the facts concerning the settlement and believed that the settlement would be in the best interests of the band. He stated that the vote reflected the true feelings of the members of the band. He testified that in his opinion all 12 recognized voting members of the band understood the settlement and executed their approval of the settlement resolution with full understanding of the settlement and in the belief that the settlement was in the best interests of the band. He testified that in his opinion the entire band desired to approve the settlement. He stated that he knew of no Indian who was eligible for membership in the Cabazon Band or who was a descendant of a member of the Cabazon Band in 1914 who was not a member today.

24. Mr. William R. Callaway, Assistant Chairman of the band, testified as to the procedure for sending out notices and as to the notices that were sent for the meetings of September 13 and September 27, 1970. He testified that in his opinion all of the members of the band, both those present at the meetings of the General Council and the remaining members who signed the approval of the resolution, understood the proposed settlement, desired that it be approved, and felt that it

would be in the best interests of the band. He corroborated Mr. James' testimony in all other respects.

Remeijo Callaway, Arthur Welmas, Eugene Welmas, and Susie Benitez, testified that they understood and were in favor of the settlement, that all members of the band favored it, and that they corroborated Mr. James' testimony.

25. Mr. Robert J. Kilpatrick, one of the attorneys of record for plaintiff, testified that in his judgment the proposed settlement was a good compromise for plaintiff; that the payment of the net sum of \$100,000.00, in settlement not only of all of the claims of the plaintiff but of all claimed offsets by defendant was, under all the circumstances of this case, in the best interests of plaintiff. He stated that both he and Mr. Raymond C. Simpson, being the contract attorneys for plaintiff, and being counsel experienced in Indian Claims litigation, had recommended to plaintiff and to the Commissioner of Indian Affairs that the proposed settlement be approved.


26. Mr. Haggerty gave testimony confirming that at the meeting of September 27, 1970, Mr. Kilpatrick had thoroughly explained the settlement, that all members of the band favored it, that as recently as February, 1971, at a meeting of the General Council of the Cabazon Band, attended by 10 adult members, all had expressed themselves again as favoring the settlement, and that the Bureau of Indian Affairs recommended approval of the settlement.

27. Considering all of the circumstances, the record of litigation to date, the testimony of the witnesses who have appeared before us in this settlement proceeding, and the representations of counsel for the parties, the Commission specifically finds that the meeting at which the proposed compromise and settlement was presented to the General Council was a duly noticed meeting pursuant to the Articles of Association of the band; that the members were given full notice in advance of the meeting and a full opportunity to attend and express their views on the proposed offer to compromise and settle; that the members present at the meeting of September 27, 1970, unanimously approved the settlement; that subsequently the views of all 12 recognized voting members of the band were solicited and all 12 unanimously approved the settlement in writing; that the duly authorized governing body of plaintiff, the General Council, has by appropriate resolution voted to accept the proposed offer to compromise and settle and authorized the signing of the appropriate stipulation and that all of the recognized voting members of the band have confirmed and approved that action.

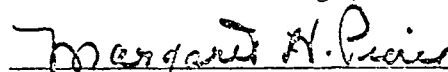
28. The Commission finds, based upon the testimony of the witnesses, the record at all stages of this litigation, the representations of counsel, and all other pertinent factors before us, that the proposed compromise settlement is fair to the parties and has been freely entered into by them and duly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

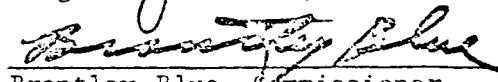
The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in favor of plaintiff in the amount of \$100,000.00 in settlement of all of the claims of plaintiff and all claimed offsets of defendant, subject to the terms and provisions set forth in the stipulation.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

  
Margaret A. Pierce, Commissioner

  
Brantley Blue, Commissioner