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BEFORE THE INDIAN CLAIMS COMMISSION

THE WASHOE TRIBE OF THE STATES	)
OF NEVADA AND CALIFORNIA,	)
	)
Plaintiff,	)
	)
v.	)
	)
THE UNITED STATES OF AMERICA,	)
	)
Defendant.	)

ORDER ALLOWING ATTORNEYS' FEE

Having considered the petition for allowance of attorneys' fee for services to the Washoe Tribe of the States of Nevada and California, plaintiff herein, the reponse of the defendant, and the evidence in support of the petition, including the entire record and all proceedings in this case, the Commission makes the following findings of fact:

1. Award. On December 2, 1970, the Commission entered a final award in favor of the plaintiff in the net sum of \$4,959,350. 24 Ind. Cl. Comm. 107, 121. The award became final on March 2, 1971, and has been certified to the Treasury Department and reported to the Congress.

2. Attorney contract. Plaintiff's claim was prosecuted under Contract No. I-1-ind. 42017, dated July 30, 1948, and approved by the Commissioner of Indian Affairs, acting for the Secretary of the Interior, on October 19, 1948. The original term of the contract was for 10 years following the date of approval. It has been extended several times. The last extension, for a period of two years beginning October 20, 1970, was approved on February 3, 1971, and is currently in force.

3. Attorneys' agreed compensation. Contract No. I-1-ind. 42017 provides for an attorneys' fee for services rendered in the prosecution of the claim in an amount not to exceed 10% of the plaintiff's recovery. The compensation to the attorneys is entirely contingent upon recovery by the plaintiff. The attorneys, on March 24, 1971, filed a petition for allowance of a fee in the amount of 10% of the net award, that is to say, in the sum of \$495,935.

4. Response of the defendant. The Department of Justice, as well as the Department of the Interior, after examining the attorneys' petition for allowance of fee, make no recommendations with respect to the fee which should be awarded.

5. Notice to tribe. A notice of the filing of the attorneys' petition for allowance of fee was mailed to the Chairman of the Washoe Tribe on April 13, 1971. No response has been received.

6. Parties to the attorney contract. Contract No. I-1-ind. 42017 originally was between the Washoe Tribe of the States of Nevada and California and only one attorney, George F. Wright. The additional attorneys, C. T. Busha and John Lewis Smith, Jr., were associated by an agreement dated May 16, 1949, approved by the Commissioner of Indian Affairs on July 25, 1949. Two more attorneys, Ross P. Eardley and Nicholas E. Allen were associated by an agreement dated April 30, 1962, and approved October 11, 1962. Mr. Busha died May 16, 1956. Mr. Smith became a United States District Judge on November 14, 1966, and discontinued representing the plaintiff.

7. Attorneys' services. At the outset and for many years following the filing of the petition, the plaintiff's allegation of aboriginal title and of the right to prosecute this claim were sharply disputed not only by the defendant but by the Indians of California (Docket Nos. 31 and 37). For almost four years, from August 1951 to July 1955, the Washoes' contract attorneys engaged in preparing for trial on the issues of capacity to sue, right of recovery, aboriginal title area, and dates of taking. Extensive investigation and research were necessitated by reason of the lack of previous historical research on the Washoe Tribe. In briefing these issues Washoe counsel were required to be familiar with the trial records in related cases, particularly the Indians of California and the Northern Paiute (Docket No. 87), inasmuch as those cases involved adjacent land areas and certain common problems. More than 300 exhibits were submitted in evidence for the plaintiff, and testimony was taken over a period of three days at a trial held in July 1955 in San Francisco. The Government's defense was presented over a period of two days in September 1955, also in San Francisco. The valuation trial, held at Washington, D. C., extended over a period of nearly three weeks from April 29 to May 17, 1963. The record consisted of 2,091 pages of transcript and hundreds of exhibits. Prompted by the dissenting opinion of one judge of the Court of Claims in the United States v. Northern Paiute Nation, 183 Ct. Cl. 321, 393 F.2d 786 (1968), defendant's attorneys moved, on September 8, 1968, to set aside the Nevada "taking date" in the Washoe case, requiring the Washoe attorneys

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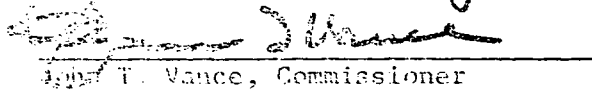
to prepare and file an extensive brief. The Commission denied the motion on June 6, 1969. Thereafter, on October 31, 1969, the Commission issued its valuation decision, awarding the plaintiff \$5,053,350. Thereafter plaintiff's attorneys briefed, argued, and on September 24, 1969, tried, the question of offsets asserted by the defendant. The Commission on December 2, 1970, decided that the defendant was entitled to credit for \$94,000 in offsets.

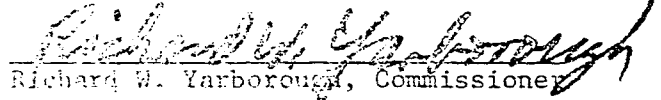
Tested by the standards fixed in Section 15 of the Indian Claims Commission Act (25 U.S.C. 70n), including those obtaining for prosecuting similar claims in courts of law, and considering the complex and contingent nature of the claims and the result obtained, the petitioner and his associated attorneys have performed valuable legal services and earned, and are entitled to, an attorneys' fee of \$495,935, representing ten percent (10%) of the net award to the plaintiff.

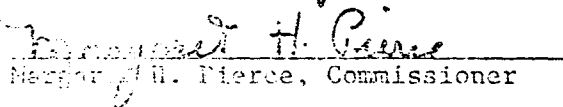
IT IS THEREFORE ORDERED that out of the funds appropriated to pay the final award entered herein on December 2, 1970, in favor of the plaintiff tribe, there shall be disbursed to Nicholas E. Allen, attorney of record, as payment in full of all claims for legal services rendered in the prosecution of this case, the sum of \$495,935.00 for distribution by him of the amount due each of the participating attorneys in accordance with their respective interested therein.

Dated at Washington, D.C., this 1st day of July 1971.

  
Jerome K. Krykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

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Branley Blue, Commissioner