

BEFORE THE INDIAN CLAIMS COMMISSION

THE NEZ PERCE TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 175
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 25, 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 \$3,550,000, with a waiver of review or appeal, said judgment to dispose of all claims, demands, payments on the claim, counterclaims 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 June 11, 1855, and ending June 30, 1957.

The Commission has heretofore determined on March 21, 1967, in 18 Ind. Cl. Comm. 1 (Findings of Fact Nos. 1-94), that plaintiff, the Nez Perce Tribe of Indians, residing principally upon the Nez Perce Indian Reservation in the State of Idaho and also on the Colville Indian Reservation in the State of Washington, is an Indian tribe within the meaning of Section 2 of the Indian Claims Commission Act, with a tribal organization duly recognized by the Secretary of the Interior as having

authority to represent the tribe; that on March 8, 1859, the plaintiff had aboriginal title to a tract of land described in Finding of Fact No. 94, located in the present States of Oregon, Washington and Idaho; and that the United States extinguished the plaintiff's aboriginal title by the Treaty of June 11, 1855 (12 Stat. 957), ratified March 8, 1859. The Commission ordered that the case proceed to a determination of the acreage of the plaintiff's aboriginal lands; the market value thereof as of March 8, 1859, the effective date of the treaty; the amount of consideration paid; the amount of permissible offsets, if any; and other relevant issues raised by the pleadings.

Subsequently, on February 18, 1971, the Commission issued an opinion granting in part and denying in part plaintiff's motion for partial summary judgment on issues related to the consideration under the 1855 Treaty (24 Ind. Cl. Comm. 429) and, thereafter, counsel commenced discussions concerning settlement of the claim. Agreement was ultimately reached on a settlement in the net amount of \$3,550,000, which would dispose of all the plaintiff's claims in Docket No. 175 and all claims of offsets by the defendant.

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

A hearing having been held before the Commission on August 24, 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. 1-94, inclusive, made herein:

95. On May 11, 1971, counsel for the Nez Perce Tribe submitted a letter to the Attorney General offering to compromise and settle the plaintiff's claim herein for a net final judgment of \$3,550,000. By letter dated July 6, 1971, to counsel for plaintiff, Assistant Attorney General Shiro Kashiwa accepted the offer to compromise and settle the claim on behalf of the defendant, subject to certain conditions.

96. 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. 175 shall be settled by entry of a final judgment in the Indian Claims Commission in the amount of \$3,550,000.00. In particular, this settlement shall not affect in any way Docket No. 175-B, Docket No. 179-A or Docket No. 186.

(2) The final judgment shall be in favor of the Nez Perce Tribe of Idaho, petitioner, 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 petitioner has asserted or could have asserted against defendant in Docket No. 175. The judgment shall also dispose of all claims, demands, payments on the claim, counterclaims or offsets which defendant has asserted or could have asserted against the petitioner in Docket No. 175 under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049), for the period commencing June 11, 1855, and ending June 30, 1957.

(4) This stipulation for entry of final judgment shall not operate to deprive the defendant from exercising its right to collect from the proceeds of timber sales (as authorized by statute) any expenses of managing, protecting and selling timber as authorized by the Act of February 14, 1920, as amended (25 U.S.C. § 413), nor shall it affect any right of the petitioner to have credited to the trust funds of the tribe, bands or groups represented, all or a portion of such administrative deductions by reason of such trust funds having borne expenses of management, protection and sale of timber to the extent provided by 25 U.S.C. § 413.

(5) 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.

Respectfully submitted,

/s/ Angelo A. Iadarola
Angelo A. Iadarola
Attorney of Record for Petitioner
Nez Perce Tribe of Idaho,
Docket No. 175

/s/ Shiro Kashiwa
Assistant Attorney General of
the United States

/s/ John D. Sullivan
John D. Sullivan
Attorney of Record for Defendant

APPROVAL BY THE NEZ PERCE TRIBE OF INDIANS OF
THE NEZ PERCE RESERVATION, IDAHO, AND THE
CONFEDERATED TRIBES OF THE COLVILLE RESERVATION AS
THE REPRESENTATIVE OF THE JOSEPH BAND OF THE NEZ PERCE TRIBE

The foregoing stipulation for entry of final judgment in Docket No. 175 is hereby approved by the undersigned pursuant to authority vested in them by resolutions adopted on July 7, 8 and 9, 1971, by the Nez Perce Executive Committee and the Nez Perce General Council, and by resolutions adopted on July 10, 1971, by the Business Council of the Confederated Tribes of the Colville Reservation and the General Council of the Confederated Tribes of the Colville Reservation.

THE NEZ PERCE TRIBE OF INDIANS
OF IDAHO

By: /s/ Richard A. Halfmoon
Richard A. Halfmoon, Chairman

By: /s/ Allen P. Slickpoo
Allen P. Slickpoo, Secretary

THE CONFEDERATED TRIBES OF THE
COLVILLE RESERVATION AS THE
RESPRESENTATIVE OF THE JOSEPH
BAND OF THE NEZ PERCE TRIBE

By: /s/ Mel Tonasket

By: /s/ Lucy F. Covington

97. On July 7, 1971, a meeting of the Nez Perce General Council was held at Kamiah, Idaho. The record shows that approximately 74 eligible members of the Nez Perce Tribe were present at that meeting on the proposed settlement. At that meeting, Messrs. Angelo A. Iadarola and R. Anthony Rogers, attorneys with the Wilkinson, Cragun & Barker law firm, Washington, D. C., which firm represents the Nez Perce Tribe of Idaho, gave a full and complete presentation of the proposed settlement, discussing the advantages and disadvantages of accepting the proposed settlement as opposed to continuing litigation. Also present at the meeting was the local general counsel for the Nez Perce Tribe, Robert C. Strom. The Nez Perce members at the hearing held on August 24, 1971, testified that Messrs. Iadarola and Rogers gave a full and complete explanation of the proposed settlement, setting out all the advantages and disadvantages of accepting the settlement or continuing with the litigation. The witnesses also testified that Messrs. Iadarola and

Rogers answered all questions submitted on the proposed settlement by the members of the Nez Perce Tribe and that it was the feeling of the witnesses that the members of the tribe had an understanding of the proposed settlement. The members of the Nez Perce General Council at the July 7, 1971, meeting voted to accept the settlement by a vote of 58 to 3. At the conclusion of that meeting, the meeting was recessed until the following evening, when the General Council meeting was resumed at Lapwai, Idaho, to again present the proposed settlement. The record shows that approximately 84 eligible members of the Nez Perce Tribe were present at the July 8, 1971, meeting and the record further shows that any of the members present at the July 7, 1971, meeting did not participate in the vote on July 8, 1971. Again, Messrs. Iadarola and Rogers, who were present at the meeting, gave a full and complete presentation of the proposed settlement, discussing the advantages and disadvantages of accepting the proposed settlement as opposed to continuing the litigation. Present at the second meeting again was Robert C. Strom, local counsel for the Nez Perce Tribe. In addition, Bill Bryan, Acting Superintendent of the Northern Idaho Agency, Bureau of Indian Affairs, was also present.

The witnesses for the Nez Perce Tribe at the hearing testified that Messrs. Iadarola and Rogers answered all questions submitted on the proposed settlement by the members of the Nez Perce Tribe and that it was the feeling of the witnesses that the members of the tribe had a complete understanding of the proposed settlement. The members of the Nez Perce

General Council at the July 8, 1971, meeting voted to accept the settlement by a vote of 65 to 6. The parties filed as Joint Exhibit No. 7, a resolution passed by the Nez Perce General Council on July 7 and 8, 1971, approving the settlement, and Joint Exhibit No. 8, which contains the Minutes of the Nez Perce General Council held on July 7 and 8, 1971. Mr. Halfmoon testified at the hearing that the total of nine negative votes were cast by members who wished the Nez Perce lands restored to the tribe and felt that settlement of the claim would preclude any possibility of such restoration.

98. A meeting of the Nez Perce Tribal Executive Committee, the governing body of the tribe, was held on July 9, 1971, at Lapwai, Idaho. At the meeting, Angelo A. Iadarola and R. Anthony Rogers explained in detail the terms of the proposed settlement. Also present at that meeting were Robert C. Strom, local counsel for the Nez Perce Tribe and Bill Bryan, Acting Superintendent for the Northern Idaho Agency, Bureau of Indian Affairs. Members of the Nez Perce Tribe testified at the hearing before the Commission on August 24, 1971. The testimony by said witnesses shows that Messrs. Iadarola and Rogers gave a full and complete explanation of the proposed settlement, discussed the advantages and disadvantages of continuing litigation and fully answered all questions proposed by the members of the Nez Perce Tribal Executive Committee. The parties introduced into evidence Joint Exhibit No. 4, which is a resolution passed by the Nez Perce Tribal Executive Committee on July 9, 1971, approving the proposed settlement by a vote of 8 to 0. Also introduced as Joint Exhibit No. 5 are the minutes of the meeting of the Nez Perce Tribal Executive Committee.

99. At the hearing before the Commission on August 24, 1971, Richard A. Halfmoon, Chairman of the Nez Perce Tribal Executive Committee,

testified as to the nature of the notice given and the efforts of the Chairman of the Nez Perce General Council to make it as widespread as possible. Mr. Halfmoon also testified that the attendance and participation at the Nez Perce General Council meetings at both Kamiah and Lapwai, Idaho, exceeded the quorum requirement of 50 voting members and constituted a good attendance. Mr. Halfmoon further testified that the proposed compromise settlement was fully explained to the members at both of the General Council meetings by Messrs. Iadarola and Rogers, and that a written report dated July 6, 1971, prepared by the attorneys for petitioner, was passed out to all members at both General Council meetings entitled "Report to the Nez Perce Tribe of Indians of the Nez Perce Reservation, Idaho, and to the Confederated Tribes of the Colville Reservation as Representative of the Joseph Band of the Nez Perce Tribe", referring to the subject "Proposed Settlement of Docket No. 175". The report was circulated prior to the presentation by the attorneys concerning the settlement and all members had an opportunity to read the letter prior to that presentation. This report was introduced into evidence as Joint Exhibit No. 3, and summarizes the proposed settlement. Mr. Maurice R. Slickpoo, Treasurer of the Nez Perce Tribal Executive Committee, also testified at the hearing supporting Mr. Halfmoon's testimony. The Nez Perce witnesses testified that there was a question and answer session during which questions were asked of the attorneys, Messrs. Iadarola and Rogers. The witnesses testified that they were all satisfied from their knowledge of the Nez Perce people and from the

questions and answers, and from the discussions at the meeting and thereafter, that the vote by the General Council meetings of July 7 and 8, 1971, to accept the settlement reflects the informed desires of the Nez Perce members.

100. The Colville General Meeting was held on July 10, 1971, at Nespelem, Washington, to consider the proposed settlement. The record shows that at least 152 eligible members of the Colville Tribe voted on the proposed settlement. Mr. Abe W. Weissbrodt, of Weissbrodt & Weissbrodt, a law firm in Washington, D. C., attorneys for the Colville Tribe, was present at that meeting. Also present were Lyle Keith of Spokane, Washington, local claims attorney, Angelo A. Iadarola and R. Anthony Rogers, of the Wilkinson, Cragun & Barker law firm of Washington, D. C. Also present was W. Sherwin Broadhead, Superintendent of the Colville Indian Agency, Bureau of Indian Affairs. At that meeting, Mr. Rogers read the entire written report dated July 6, 1971, which was passed out to all the members at the General Meeting prior to commencement of the meeting, and which report explained the proposed settlement. After the reading of the report by Mr. Rogers, he and Mr. Weissbrodt summarized the proposed settlement and explained the advantages and disadvantages of accepting it as opposed to continuing litigation. The Colville member at the hearing of August 24, 1971, Miss Lucy F. Covington, Secretary of the Colville Business Council, testified that after Mr. Rogers read the report and after Mr. Weissbrodt summarized and explained the proposed settlement, including all of the advantages and disadvantages of accepting

the settlement now or continuing with litigation, there was a question and answer period where Mr. Weissbrodt answered all of the questions proposed by the members. During the presentation, a short recess was taken so that members could discuss the settlement among themselves. During the recess, the members also approached the attorneys asking questions in connection with the settlement. After the recess, there was a further question and answer period and other aspects of the proposed settlement were discussed. Miss Covington testified that the attorneys answered all questions submitted on the proposed settlement by the members of the Colville Tribe and that it was her feeling that the members of the tribe had a good understanding of the proposed settlement. The members of the Colville Tribe voted to accept the settlement by a vote of 144 to 8. The parties filed as Joint Exhibit No. 12, a resolution passed by the General Meeting of the Confederated Tribes of the Colville Reservation on July 10, 1971, approving the settlement and Joint Exhibit No. 13, which contains excerpts of the Minutes of the General Meeting of the members of the Confederated Tribes of the Colville Reservation, held on July 10, 1971. Miss Covington testified that the eight negative votes were cast by some members who wished the Nez Perce lands restored and by others who felt that the division of judgment proceeds between the Nez Perce Tribe and the Confederated Tribes of the Colville Reservation pursuant to the Act of April 24, 1961 (75 Stat. 45), was not satisfactory.

101. On the same date, July 10, 1971, immediately after the General Meeting of the Confederated Tribes of the Colville Reservation, the Colville

Business Council held a meeting concerning the proposed settlement. Since all the members of the Business Council were earlier present at the Colville General meeting and since they were all acquainted with the terms of the settlement, the Business Council considered the proposed settlement and voted to accept it by a vote of 13 to 0. Also present at the meeting of the Business Council were the claims attorneys, Messrs. Weissbrodt, Keith, Iadarola and Rogers, who were available to explain the settlement and answered questions concerning the proposed settlement. The parties introduced into evidence Joint Exhibit No. 9, which is a resolution passed by the Colville Business Council on July 10, 1971, approving the proposed settlement, and Joint Exhibit No. 10, which contains the excerpts of the Minutes of the Special Meeting of the Business Council of the Confederated Tribes of the Colville Reservation held on July 10, 1971.

102. Representatives of the Bureau of Indian Affairs attended both the Nez Perce General Council meeting and the Colville General Meeting. On the basis of reports submitted by the representatives of the Bureau of Indian Affairs, as well as information on the merits of the proposed settlement supplied to the Commissioner of Indian Affairs by the attorneys for the Nez Perce Tribe, the Department of Interior, by letter of August 12, 1971, approved the proposed settlement by letter addressed to counsel reading as follows:

You submitted to this Bureau for approval a proposed compromise to dispose of claims in docket No. 175 for a net final judgment of \$3,550,000.00 in favor of the Nez Perce Tribe.

The Nez Perce Tribe entered into contract 14-20-0650 No. 977, dated November 12, 1960, with your law firm. It was approved on

October 16, 1971 [sic], for a period of ten years beginning on January 7, 1961. An extension of this contract until January 7, 1973, was approved on October 13, 1970. The contract provides that the attorney shall not make any compromise of the matters in controversy unless with the approval of the Tribe and the Secretary of the Interior or his authorized representative.

The Joseph Band of the Nez Perce Tribe left the main body of the Nez Perce Tribe many years ago and joined other tribes on the Colville Reservation. The Confederated Tribes of the Colville Reservation entered into contract I-1-ind. 42442, dated November 28, 1949, with James E. Curry, I. S. Weissbrodt and Lyle Keith for a period of five years beginning on August 18, 1964. An extension of this contract until August 18, 1974, was approved on October 3, 1969.

You submitted an offer to the Attorney General on May 11, 1971, to settle the claims in docket No. 175, for a net final judgment of \$3,550,000.00 in favor of the Nez Perce Tribe. Your offer was accepted on July 6, 1971, with conditions. Two of the conditions were that the proposed settlement be approved by appropriate resolutions of the governing body of the Nez Perce Tribe and that the approval of the settlement, as well as the resolution of the tribe, be secured from the Secretary of the Interior or his authorized representative.

Entry of final judgment will finally dispose of all claims and demands which the petitioner has asserted or could have asserted against the United States in docket No. 175. The final judgment shall also dispose of all claims, demands, payments on the claim, counterclaims or offsets which the United States has asserted or could have asserted against the petitioner covering the period commencing June 11, 1855, and ending June 30, 1957. No review is to be sought and no appeal is to be taken by either party.

You presented the proposed settlement to the Nez Perce Tribe of Idaho. Wide publicity was given so that the members would receive notice and have an opportunity to attend the General Council meeting called for July 7 and 8, 1971. A representative of this Bureau attended and reported on the meeting. The General Council of the Nez Perce Tribe of Idaho met in the Tribal Community Building at Kamiah, Idaho, the evening of July 7, 1971, with a quorum of qualified tribal members present. The attorneys for the Nez Perce Tribe and

the Confederated Tribes of the Colville Reservation jointly prepared a report explaining the history of the claims and the proposed settlement. Copies of this report were given to each member who attended the meeting. An attorney of your law firm clearly explained the claims case and the proposed settlement in detail. Questions were asked by the Indians and all were answered. When there were no more questions, the members were asked to either accept or reject the proposed settlement. A resolution was adopted by the eligible voting members present at the July 7 meeting, by a vote of 58 for and 3 against, accepting the proposed settlement. The meeting was then recessed to be continued the following evening, July 8, 1971, in the Tribal Community Building at Lapwai, Idaho. A quorum was also present at the July 8 meeting. The same procedure was repeated as at the meeting of July 7 except that the services of an interpreter were used at the July 8 meeting. Also, before balloting at the July 8 meeting, the members present were told that any person who voted at the previous meeting at Kamiah was not to vote again at the Lapwai meeting. A resolution was then adopted on July 8, by a vote of 65 for and 6 against, accepting the proposed settlement. The Nez Perce Executive Committee met on July 9 and adopted a resolution by a vote of 8 for and 0 against, accepting the proposed settlement. The three resolutions were signed by the appropriate tribal officials and their signatures were certified by a representative of this Bureau as being genuine.

An attorney from the law firm of Weissbrodt and Weissbrodt presented the proposed settlement to the members of the Confederated Tribes of the Colville Reservation as representatives of the Joseph Band of Nez Perce Indians. A representative of this Bureau attended the meeting and reported on it. Wide publicity was also given to the calling of the members to a General Council meeting to be held on July 10, 1971, in the school gymnasium in Nespelem, Washington. Notices were posted in various places, items appeared in various papers, and announcements were made over TV and radio stations. A total of 152 tribal members, including all 14 members of the Business Council, were present at the July 10 meeting.

Copies of the joint report on the case and the proposed settlement were given to those attending. The claims counsel then clearly and thoroughly described the proposed settlement. Clear and direct answers were given to questions asked and all

were afforded the opportunity to ask questions and make comments. Then, the members voted by a showing of hands. The voting resulted in adoption of a resolution, by a vote of 144 for and 8 against, approving the proposed settlement. The Business Council of the Confederated Tribes of the Colville Reservation then convened the same day and adopted a resolution, by a vote of 13 for and 0 against, accepting the proposed settlement. The resolutions adopted were signed by the appropriate tribal officials and a representative of this Bureau certified that their signatures were genuine.

We are satisfied that all of the meetings were well publicized and that the members of the tribe had an opportunity to make arrangements to attend. Also, we are satisfied that the meetings were satisfactorily held, that the members at the general council meetings reasonably understood the terms of the proposed settlement before voting, and that the resolutions adopted were duly adopted and representative of the views of their respective tribal memberships. The resolutions are hereby approved.

Based on the information which you have furnished to us, that submitted by our field offices, and that obtained from other sources, the proposed settlement of Docket No. 175 as set out in the 'Proposed Stipulation for Entry of Final Judgment' for a net final judgment of \$3,550,000.00 in favor of the Nez Perce Tribe is hereby approved.

Sincerely yours,

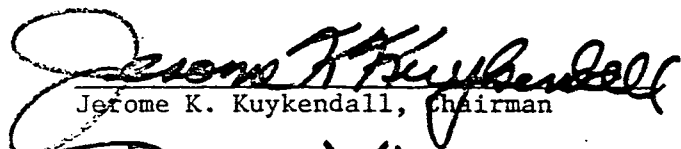
/s/ Harold D. Cox
Acting Deputy Commissioner

103. 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 representatives of counsel for the parties, the Commission finds that the members of the plaintiff tribe were given full notice in advance of the meetings of the Nez Perce General Council on July 7 and 8, 1971, and of the General Council of the Confederated Tribes of the Colville Reservation on July 10, 1971; that the members were given

a full opportunity to attend said meetings and express their views on the proposed offer to compromise and settle; that the members present at said meetings approved the settlement; and that the duly authorized governing bodies of plaintiff, the Nez Perce Executive Committee and the Business Council of the Confederated Tribes of the Colville Reservation, have by appropriate resolutions voted to accept the proposed offer to compromise and settle and have approved the Stipulation for Entry of Final Judgment.

104. 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 Acting Deputy 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 \$3,550,000.00 in settlement of all 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 H. Pierce, Commissioner



Brantley Blue, Commissioner