

BEFORE THE INDIAN CLAIMS COMMISSION

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| THE COWLITZ TRIBE OF INDIANS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Docket No. 218 |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: April 12, 1973

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission for approval of a compromise final settlement in Docket No. 218 and the entry of a final judgment therein in the amount of \$1,550,000, in favor of the Cowlitz Tribe of Indians.

The Commission heretofore determined on June 25, 1969, in 21 Ind. Cl. Comm. 143, that the Cowlitz Tribe had aboriginal title to a tract of land located in southwestern Washington. The Commission further decided that the United States, without the payment of compensation, extinguished the aboriginal title of the Cowlitz Tribe on March 3, 1855. Upon rehearing, the Commission determined that the title of the Cowlitz Tribe was extinguished on March 20, 1863, rather than March 3, 1855, and directed that the case proceed to a determination of the acreage and the fair market value of the land as of March 20, 1863. See 25 Ind. Cl. Comm. 442, 462-63 (1971), aff'd 199 Ct. Cl. 523, 467 F.2d 935 (1972).

Agreement was subsequently reached by the parties in Docket No. 218 on a compromise settlement of the claim. A hearing having been held

before the Commission on April 7, 1973, on the proposed compromise settlement, the Commission makes the following findings of fact which are supplemental to the previous findings Nos. 1-21.

22. On December 20, 1972, counsel for the plaintiff in Docket No. 218 submitted a letter to the Attorney General offering to compromise and settle the plaintiff's claim therein for a net final judgment of \$1,550,000 with no review to be sought or appeal taken by either party. By letter of January 16, 1973, Assistant Attorney General Kent Frizzell accepted said offer on behalf of the defendant, subject to certain conditions

23. The conditions specified by Assistant Attorney General Kent Frizzell in respect to the offer of settlement were as follows:

1. That the proposed settlement be approved by appropriate Resolution of the governing body of the Cowlitz Tribe of Indians.

2. 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, a copy thereof to be furnished to us.

3. That responsible officials and representative members of the tribe be present to testify in behalf of the tribe on the compromise settlement before the Indian Claims Commission.

24. The exact form of the settlement in Docket No. 218 was embodied in a Stipulation for Entry of Final Judgment entered into by counsel for the parties therein, which reads as follows:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated by the parties, through their attorneys, as follows:

1. All claims asserted by plaintiff in Indian Claims Commission Docket No. 218 shall be settled by the entry of

a final judgment in the amount of One Million Five Hundred and Fifty Thousand Dollars (\$1,550,000.00) in favor of the Cowlitz Tribe of Indians.

2. Entry of final judgment in said amount shall finally dispose of all rights, claims and demands which plaintiff has asserted or could have asserted against defendant in this case, and plaintiff shall be barred thereby from asserting any such rights, claims or demands against defendant in any other or future action. Entry of such final judgment shall also dispose of all claims, demands, payments on the claim, counterclaims, or offsets which the defendant has asserted or could have asserted against plaintiff under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049) in this case for the period from March 20, 1863, to and including December 31, 1957. It is agreed that defendant shall not be barred by this stipulation or by entry of judgment pursuant thereto from claiming in any other or future action offsets accruing before March 20, 1863, or after December 31, 1957.

3. The final judgment entered pursuant to this stipulation shall be by way of compromise and settlement and shall not be construed as an admission by any party as to any issue for purposes of any other case.

4. The parties agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final order for the approval of the Commission.

For the Defendant:

/s/ Kent Frizzell
KENT FRIZZELL
Assistant Attorney General
of the United States

/s/ Mary Ellen Brown
MARY ELLEN BROWN
Attorney for Defendant

For the Plaintiff:

WEISSBRODT & WEISSBRODT

By /s/ I. S. Weissbrodt
I. S. WEISSBRODT

/s/ Abe W. Weissbrodt
ABE W. WEISSBRODT

25. The proposed settlement was presented for the consideration and vote of the Indians of the Cowlitz Tribe at a meeting held in the

Cowlitz Grange Hall, near Toledo, Washington, on March 3, 1973. This general meeting was called and held pursuant to a notice which was issued by Roy I. Wilson, Chairman of the Tribe of Cowlitz Indians of the State of Washington.

26. The Tribe of Cowlitz Indians of the State of Washington is an unincorporated association which was formed by a group of Cowlitz Indians in order to maintain the traditions of the Cowlitz Tribe and to obtain a just settlement of the claims of the Tribe against the United States. In 1950, this organization adopted a Constitution and By-Laws which were received in evidence as Exhibit S-10. The Constitution provides that the membership of the organization "shall consist solely of Cowlitz Indians and their descendants." The By-Laws provide for an Executive Committee which "shall exercise general supervision over the affairs of the Tribe"

No official roll of Cowlitz Indians has ever been prepared by the Bureau of Indian Affairs. The said Cowlitz organization has accepted for listing on its membership roll persons claiming Cowlitz descent.

27. A copy of the said notice of the general meeting to be held on March 3 was received in evidence as Exhibit S-5. The notice was addressed to 'All Cowlitz Indians.' It specified the place, date and hour of the meeting and stated that the purpose of the meeting was to consider and vote upon a proposed final settlement of the land claims of the Cowlitz Tribe in Docket No. 218, which settlement provided for the payment by the United States to the Cowlitz Tribe of the sum of \$1,550,000.

28. The Cowlitz Grange Hall, near Toledo, Washington, was selected as the place of the meeting because it was considered to be a central location most convenient to the majority of Cowlitz Indians who resided in various cities and towns in western Washington and because it was the place at which semi-annual meetings of the aforesaid Cowlitz tribal organization had been held for many years. March 3 was selected as the date of the meeting because it fell on a Saturday and was considered to be a suitable date which would encourage the largest attendance by Indians of Cowlitz descent.

29. A copy of the notice of meeting was mailed by the Secretary of the said Cowlitz organization on February 21, 1973, to 384 persons, including not only all Cowlitz Indians who were heads of households and adults, as shown on a list maintained by the organization, but also all additional persons claiming Cowlitz descent whose names appeared on a list supplied by the Western Washington Agency of the Bureau of Indian Affairs. In addition, other steps were taken to publicize the call of the meeting and to assure, so far as feasible, that all Cowlitz Indians would have notice of the meeting. Copies of the notice of the meeting were sent to twelve newspapers, and seven radio and TV stations, with the request that the call of the meeting be publicized and broadcast. Also, the Western Washington Agency of the Bureau of Indian Affairs sent copies of the notice to various tribal offices and organizations and to various Indian agencies.

30. An estimated 250 to 275 persons attended the meeting held on March 3, 1973. Because of the absence of any complete roll or any approved official roll of Cowlitz Indians, it was determined to permit votes to be cast at the meeting by all persons claiming to be descendants of Cowlitz Indians. All persons present were told by the Chairman that they were on their honor and that no one who was not of Cowlitz descent should vote. Votes were cast at the meeting by 208 persons. The result of the vote was 172 in favor of a resolution approving the proposed settlement and 36 opposed. A certified copy of the resolution and a certified copy of the minutes of the meeting were received in evidence as Exhibit S-3.

Since approximately 25% of the people present abstained from voting and since many of the members of the Cowlitz tribal organization are known to each other, there is a strong presumption that very few, if any, persons who were not entitled to vote did so and there is no evidence which indicates that the result reached by those voting does not represent the expressed wishes of a large majority of those who were entitled to vote.

31. Prior to the voting at the meeting, the terms of the proposed settlement were carefully explained. The letter of the tribal attorneys, dated December 20, 1972, offering the settlement and the letter of the Department of Justice, dated January 16, 1973, conditionally accepting

the settlement, were read aloud at the meeting. Prior to the meeting, copies of a written report prepared by the tribal attorneys were distributed to the Cowlitz Indians, and, also, the report was read aloud, in full, at the meeting. This report described the claims, the history of the litigation in Docket No. 218, the terms of the proposed settlement and set forth the recommendation of the attorneys. Those attending the meeting were afforded the opportunity to request further information, to ask questions, and to comment upon and debate the issues pertaining to approval or disapproval of the settlement.

32. Several persons voiced their objection to the settlement and the procedures in connection with the notice and conduct of the meeting. Thus, objection was expressed on the ground that the amount of the settlement was inadequate because the Cowlitz ancestral land had a current market value many times greater than the proposed payment in the amount of \$1,550,000. It was explained that under established principles of law, the value of the land must be determined as of the date of taking and may not be based on current value. Objection was also expressed that the land should be restored to the Tribe. It was explained that the Commission has no jurisdiction to restore the land. Several objections were made with respect to the procedural matters in connection with the giving of notice of the meeting and the voting

procedure. These objections pertained essentially to issues in connection with the future division or distribution of the award among the Cowlitz Indians. It was explained that the Commission has no jurisdiction as to the division or distribution of the award money.

33. After several hours of discussion, a point came in the meeting when there was a call for the question. In the light of the discussion, comments and debate, a vote was then taken on whether the persons attending the meeting were ready to vote, then and there, on the question of approval or disapproval of the proposed settlement. The result was that 141 persons voted that they were ready to vote on the proposed settlement and 15 voted in opposition. This was then followed by the vote on the proposed settlement, with, as noted, 172 voting in favor of approval and 36 opposed.

34. After the adjournment of the general meeting, a meeting of the Executive Committee of the said Cowlitz organization was held. The Executive Committee comprises 5 persons. At this meeting, a resolution approving the proposed settlement was unanimously adopted by the Executive Committee. A certified copy of the resolution and a certified copy of the minutes of the meeting were received in evidence as Exhibit S-4.

35. Representatives of the Bureau of Indian Affairs attended the general meeting and the meeting of the Executive Committee. On the basis of reports submitted by the representatives of the Bureau as well as information on the merits of the proposed settlement supplied to the Bureau by the attorneys for the Indians, the Department of the Interior approved the proposed settlement by letter dated March 20, 1973, addressed to the law firm of Weissbrodt & Weissbrodt, counsel to the Cowlitz Tribe in Docket No. 218, as follows:

You submitted to the Assistant to the Secretary for Indian Affairs for approval a proposed compromise to settle the claims in Docket No. 218 for a net judgment of \$1,550,000.00 in favor of the Cowlitz Tribe of Indians.

Your firm and associate attorneys, Lyle Keith and Patrick H. Winston, entered into a contract Symbol 14-20-0500 No. 2347, dated July 10, 1963, with the Cowlitz Tribe. The contract was approved by the Bureau of Indian Affairs on July 20, 1965, for a period of ten years beginning June 1, 1965. It provides that any compromise or settlement of the matters in controversy shall be subject to the approval of both the Tribe and the Secretary of the Interior or his authorized representative.

You submitted a letter dated December 20, 1972, to the Attorney General, offering to settle the claims in Docket No. 218 for a net final judgment of \$1,550,000.00. No review is to be sought and no appeal is to be taken by any of the parties. Entry of final judgment in Docket No. 218 will dispose of all rights, claims and demands which the plaintiff has asserted

or could have asserted against the United States in that case. It will also dispose of all rights, claims, demands or offsets which the United States has asserted or could have asserted against plaintiff for the period from March 20, 1863, through December 31, 1957.

Your offer was accepted by the Department of Justice by letter of January 16, 1973, with conditions. Among the conditions were that the proposed settlement be approved by appropriate resolution of the Tribe and that the approval of the settlement and the resolution of the Tribe be obtained from the Secretary of the Interior or his authorized representative.

For the purpose of presenting the proposed settlement for the consideration and vote of the members of the Cowlitz Tribe, a meeting was scheduled and held on March 3, 1973, at the Cowlitz Grange Hall, Toledo, Washington. The time, place and purpose of the meeting were set forth in a notice issued by the Chairman of the Tribe. The Secretary of the Tribe has certified that a copy of the notice of the meeting was mailed on February 21, 1973, to 384 persons, including all Cowlitz Indians shown on a membership list of the Cowlitz Tribe and additional persons appearing on a list supplied by the Western Washington Agency of the Bureau of Indian Affairs. Also, notice of the meeting was widely publicized by other methods, including publication in newspapers of general circulation and announcements on local radio stations.

More than 200 persons attended the meeting at the Cowlitz Grange Hall on March 3, 1973. Also, Claims Attorneys Abe W. Weissbrodt and Patrick H. Winston, and anthropologist Dr. Verne F. Ray, attended the meeting. A representative of the Bureau of Indian Affairs also attended the meeting and has reported on it.

Copies of the settlement offer of December 20, 1972, and the reply of the Department of Justice of January 16, 1973, were presented at the meeting. Copies of a written report by the Claims Attorneys was [sic] distributed at the meeting. It gave the history of the claims, the litigation before the Indian Claims Commission, and the terms of the settlement. The members of the Tribe were given the opportunity to read the report and, also the report was read aloud in full at the meeting.

A full explanation of the claims and the proposed settlement was made by Claims Attorney Abe W. Weissbrodt. The members of

the Tribe were given the opportunity to ask questions. Many questions were asked and all of them were answered. Also, the members of the Tribe were given full opportunity to comment and express their views on the proposed settlement. Then, a vote of the members of the Tribe was taken on accepting or rejecting it. It was accepted by a vote of 172 in favor and 36 against. This vote is shown in a certified copy of the minutes of the meeting signed by the Chairman of the Tribe, with an annexed copy of a certified resolution adopted by the members of the Tribe at the meeting.

The proposed settlement was also presented at a meeting of the governing body of the Cowlitz Tribe, namely the Executive Committee, held on March 3, 1973, at the Cowlitz Grange Hall, Toledo, Washington. This meeting was called pursuant to a written notice issued by the Chairman of the Tribe. At the meeting, the members of the Executive Committee unanimously approved the proposed settlement by a vote of 5 in favor and none against. This vote is shown in a certified copy of the minutes of the meeting signed by the Chairman of the Tribe, with an annexed copy of a certified resolution adopted by the Executive Committee at the meeting.

The signatures of the tribal officials that were affixed to the minutes of the meetings and to the resolutions were certified by a representative of the Bureau of Indian Affairs as genuine.

We are satisfied that the meeting of the members of the Tribe was well publicized and that the members of the Tribe had the opportunity to attend. We are also satisfied that the meeting was satisfactorily held and that the proposed settlement was fairly presented and duly approved by resolution adopted by the members of the Tribe. We are also satisfied that the resolution of the governing body of the Tribe was duly adopted and is representative of the views of the majority of the members of the Tribe. The resolutions are hereby approved.

In the light of the information which you have supplied to us, that which has been submitted by our field offices, and that obtained from other sources, we are satisfied that the proposed settlement of Docket No. 218, as set forth in the said offering letter of December 20, 1972, as unanimously approved by the governing body of the Tribe and as approved by the majority of the members of the Tribe, is fair and just. The proposed settlement is hereby approved.

Sincerely yours,
/s/ W. W. Rogers
Deputy Assistant Secretary
of the Interior

36. By order dated March 28, 1973, the Commission scheduled a hearing on the proposed compromise settlement to be held on Saturday, April 7, 1973, at 10 A.M. in the United States Court House, 11th and A Streets, Tacoma, Washington. Tacoma, Washington, was selected as the place of the hearing, rather than the District of Columbia, so that all Cowlitz Indians who wished to attend the hearing and present testimony would have a reasonably convenient opportunity to do so. Notice of the hearing was mailed to the Chairman of the Cowlitz organization as well as to individual Cowlitz Indians who had sent communications to the Commission and to members of Congress raising objection to the settlement.

37. At the hearing before the Commission on the proposed settlement, held on April 7, 1973, the Chairman, Roy I. Wilson, and the Secretary, Mrs. Evelyn Bashor, of the Cowlitz tribal organization, appeared and were sworn as witnesses. They testified concerning the procedure and conduct of the general meeting and the meeting of the Executive Committee and the votes taken at the meetings. This testimony established that reasonable and adequate steps were taken to give ample advance notice of the general meeting to the Cowlitz Indians; that sufficient explanations were given and sufficient discussion took place at the meeting so as to assure that the Cowlitz Indians understood the proposed settlement before they voted; and that the general meeting and the meeting of the Executive Committee were conducted properly and fairly.

Opportunity to testify before the Commission was also afforded to all other persons who attended the hearing. Nine such other persons, including several who had earlier indicated their opposition to the settlement, expressed their desire to testify and were sworn as witnesses. The testimony of several of these witnesses indicated that they were satisfied that the proposed settlement was equitable to the Cowlitz Indians, but they were concerned about matters pertaining to the future division and distribution of the judgment fund. It was explained that the future division and distribution of the judgment fund were matters within the province of Congress and the Executive Department and were not within the jurisdiction of the Commission.

Several of these witnesses also reiterated objections raised during the March 3, 1973, meeting. These objections were not, however, directed against the fairness of the proposed settlement to the Cowlitz Indians but were related to the notice given of said meeting and the voting procedure. Although evidence was submitted showing that certain Cowlitz Indians did not receive notice of the meeting, there is no reason to suppose, from the evidence, that notice of the meeting failed to reach enough Cowlitz Indians to change the result of the tribal vote.

One or more of the witnesses suggested that the enrollment should be "firmed up" and another meeting should thereafter be called with notice of it going to all the persons on the revised roll. No one explained how the membership roll could be "firmed up". We find that

it is neither feasible nor necessary that a new roll be formulated and conclude from the evidence that there is no probability that such a procedure, even if possible, would bring about a different result in the tribal voting.

38. The Commission finds, based upon the testimony of the witnesses, the record at all stages of the litigation, the representations of counsel, and all other pertinent factors before us, that the proposed compromise settlement in Docket No. 218 is fair to the parties and has been freely entered into by the Cowlitz Indians and duly approved by the Deputy Assistant Commissioner of Indian Affairs.

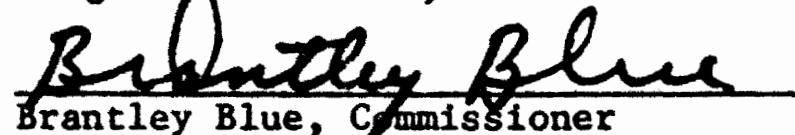
The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in Docket No. 218 in favor of the plaintiff, the Cowlitz Tribe of Indians, in the amount of \$1,550,000, subject to the terms and provisions set forth in the Stipulation for Entry of Final Judgment.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner