

## BEFORE THE INDIAN CLAIMS COMMISSION

PAPAGO TRIBE OF ARIZONA,	)	
	)	
Plaintiff,	)	Docket No. 102
	)	
v.	)	Docket No. 345
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	
Decided: July 21, 1976		

FINDINGS OF FACT ON COMPROMISE  
SETTLEMENT

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Preliminary Statement

This matter is now before the Commission for approval of a compromise settlement of Docket 345 and Docket 102 and for entry of a final judgment in the net amount of \$26,000,000 in favor of plaintiff tribe. The two claims which form the subject of this compromise settlement are plaintiff's land and trespass claim asserted in Docket 345 and a claim for a general accounting asserted in Docket 102. For purpose of this proposed settlement, these dockets have been consolidated by order of the Commission issued this date.

Plaintiff's aboriginal title claim in Docket 345 arose under section 2 of the Indian Claims Commission Act (60 Stat. 1049, 1050). The petition in that docket was filed on August 11, 1951. In addition to the land title claim, the petition of the Papago Tribe also included claims for the loss of certain subsurface rights within the tribe's lands and for trespasses upon its lands prior to the date its ownership interests were extinguished. The defendant filed its answer on May 13, 1959.

Hearings in Docket 345 were held on the title question (liability phase) on February 24 and 26-28, 1964. On September 10, 1968, the Commission issued an interlocutory order determining, among other things, that the Papago Tribe held aboriginal title to the tract of land described in finding 25, 19 Ind. Cl. Comm. 394, 423. By its order of October 1, 1969, the Commission determined that plaintiff's Indian title to the surface area of the subject tract was, with one minor exception (the Baca Float grant), extinguished on January 14, 1916. Mineral lands outside the Papago (Sells) Reservation were to be valued as of January 14, 1916, or the dates of patent, whichever was earlier. Mineral lands within the Reservation were to be valued as of May 27, 1955, or the date of patent, whichever was earlier. See 21 Ind. Cl. Comm. 403 (1969). The net award area totalled 6,338,113 acres.<sup>1/</sup>

The trial on valuation in Docket 345 was held February 8-10, 1971. Pursuant to Rule 26 of the Commission's General Rules of Procedure, 25 CFR §503.26(b), a preliminary report of the Commissioner was entered on February 22, 1971, concluding that the fair market value of the subject tract and certain prevaluation trespass damages did not exceed \$27,189,000. Thereafter both parties submitted extensive findings of fact and briefs on the valuation issue.

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<sup>1/</sup> Plaintiff's proposed findings herein state that the net acreage is 6,339,113 acres. The gross acreage of the Papago aboriginal area delineated in finding 25, 19 Ind. Cl. Comm. 394 (1968), is in excess of 9 million acres, less the Papago Indian Reservation, the San Xavier del Bac Reservation, and confirmed Spanish and Mexican land grants. Additional findings entered in 1969, 21 Ind. Cl. Comm. 403, identified five such grants. In all, the excluded acreage totaled 2,893,186 acres which was deducted from the gross acreage in the aboriginal tract. The difference of 1000 acres between the parties net acreage conclusions resulted from a mathematical error. The correct acreage is 6,338,113 acres.

In the case of Docket 102, the defendant filed a G.S.A. report on August 21, 1970, in response to plaintiff's demand for a general accounting. Exceptions to the G.S.A. report were filed by plaintiff on December 9, 1970, and the defendant responded on April 5, 1971. Following additional filings, the Commission issued an order on November 16, 1971, directing the defendant to supplement its accounting report. 26 Ind. Cl. Comm. 365. On June 21, 1974, the defendant filed supplemental data and on November 1, 1974, moved for summary judgment. The Commission denied the government's motion. 35 Ind. Cl. Comm. 316 (1975).

Negotiations for the settlement of the claims asserted in Dockets 345 and 102 were commenced with the consent and agreement of both parties. Thereafter, the trial set for March 15, 1976, in Docket 102, was cancelled by Commission order of March 10, 1976, and further consideration of the value issue in Docket 345 was suspended pending the outcome of the settlement proposals. As a result of the settlement negotiations, a compromise was reached whereby the parties agreed to a final settlement of both claims for \$26,000,000. The specific details of the settlement are set out in the following findings of fact.

A hearing having been held before the Commission in Washington, D. C., on June 30, 1976, on the offer to compromise and settle the land and accounting claims asserted in Dockets 345 and 102, respectively, the Commission makes the following findings of fact:

1. Offer of Compromise. By letter dated December 22, 1975, Royal D. Marks, attorney of record for plaintiff tribe submitted to the Attorney

General of the United States, Hon. Edward H. Levi, a formal offer to compromise and settle the land and trespass claim in Docket 345 and the general accounting claim in Docket 102. The full text of the letter states as follows:

In the light of recent discussions between our associate counsel, Arthur Lazarus, Jr., and members of your staff, we are submitting this formal offer to compromise and settle the two Papago cases pending before the Indian Claims Commission -- Papago Tribe of Arizona v. United States, Docket Nos. 102 (accounting) and 345 (land and trespass) -- on the following terms and conditions:

(1) For purposes of settlement, Docket Nos. 102 and 345 will be consolidated. The parties jointly will file in the consolidated cases a stipulation of compromise and settlement calling for the entry of a final judgment in the amount of Twenty-Six Million Dollars (\$26,000,000) in favor of the Papago Tribe against the United States, and further providing that no appeal shall be taken or other review be sought by either party.

(2) The stipulation and entry of final judgment shall dispose for all time of (a) any and all claims and demands, including the demand for an accounting, which the Papago Tribe has asserted or could have asserted against the defendant in Docket Nos. 102 and 345, and (b) any and all claims, demands, payments on the claim, counterclaims and offsets which the United States has asserted or could have asserted against the petitioner in Docket Nos. 102 and 345, under the provisions of section 2 of the Indian Claims Commission Act, 25 U.S.C. §70a, from the beginning of time to June 30, 1951, inclusive.

(3) The stipulation and entry of final judgment shall not be construed as an admission by either party as to any issue involved in Docket Nos. 102 and 345 for purposes of precedent in any other case.

(4) This offer, if acceptable to you, is subject to approval by the Papago Tribe and the Secretary of the Interior or his authorized representative. Counsel for the petitioner agrees to make all reasonable efforts to obtain such approvals in accordance with procedures established by the Commission.

The offer shall remain open to February 16, 1976, at which time the offer automatically will stand withdrawn, unless extended in writing by the undersigned or his associate counsel. If accepted, we will be pleased to cooperate with the appropriate representatives of your Department in preparing and submitting the stipulation, a joint motion for entry of final judgment and such other documents as may be necessary to accomplish the settlement.

Respectfully submitted,

MARKS AND MARKS

By Royal D. Marks

Royal D. Marks

Attorney of Record for the Papago Tribe  
of Arizona in Docket Nos. 102 and 345

2. Defendant's Conditional Acceptance. By letter dated February 19, 1975, the defendant, by Assistant Attorney General Peter R. Taft, accepted the offer to compromise and settle subject to the following conditions stated in the letter (Plaintiff's Ex. No. 2):

1. That the proposed settlement be approved by the resolution of the governing body of the Tribe and passed by vote of the membership of the Papago Tribe.
2. That approval of the settlement, as well as approval of the resolutions, be secured from the Secretary of the Interior, or his authorized representative.
3. That a copy of the resolutions and the approval of the settlement by the Department of the Interior be furnished to this Department.
4. That the judgment entered into pursuant to this settlement shall finally dispose of all claims or demands which the plaintiff has asserted or could have asserted in Docket Nos. 102 and 345 before the Indian Claims Commission.
5. That the United States will waive any and all claims for offsets which it could have asserted against the plaintiff up to June 30, 1951.
6. That the settlement is conditioned on the entry of final judgment for both dockets in the total amount of \$26,000,000.

7. That the Commission shall approve this settlement and the stipulation before final judgment is entered.

3. Notice and Information to Papago Tribe. The record herein establishes that the Papago Tribal Council was kept informed of the foregoing preliminary negotiations concerning the proposed compromise settlement. In March 1976 plaintiff's attorney of record formally presented the matter to the Tribal Council and by resolution No. 10-76 the Council authorized the submission of the proposed settlement to the tribal membership. (See Tr. 5, 6, June 30, 1976.)

Pursuant to said resolution No. 10-76, counsel for the tribe prepared the following notice of general meetings of the Papago membership to discuss and vote on the proposed settlement:

NOTICE OF MEETINGS ON FINAL SETTLEMENT  
OF THE PAPAGO TRIBE OF INDIANS  
BEFORE THE INDIAN CLAIMS COMMISSION

YOU ARE HEREBY NOTIFIED that there will be meetings of the membership of the Papago Tribe of Indians at the following locations and at the times as set forth below:

<u>May 19, 1976, 10:00 A.M.,</u>	Santa Rose School
<u>May 20, 1976, 10:00 A.M.,</u>	Papago Community Building Sells, Arizona
<u>May 21, 1976, 10:00 A.M.,</u>	San Xavier Community Building

The meetings will be for the purpose of considering approval of a proposed final settlement for the sum of \$26,000,000.00 of the claims filed on behalf of the Papago Tribe against the United States still pending before the Indian Claims Commission. The claims included within the proposed settlement are Docket No. 345 (Land) and Docket No. 102 (Accounting).

A complete explanation of the proposed final settlement will be given by the Claims attorneys at the meetings, followed by a question and answer session in which members of the Papago Tribe will be encouraged to participate. At the end of each

meeting, a vote will be taken on the question of whether to accept an award of \$26,000,000.00. To be effective, the proposed settlement also must be approved by the Papago Tribal Council.

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THE ABOVE MEETINGS AND SUBSTANTIAL ATTENDANCE BY TRIBAL MEMBERS ARE REQUIRED BY RULES OF THE INDIAN CLAIMS COMMISSION. THE APPROVAL OF THE COMMISSION IS ESSENTIAL BEFORE THE SETTLEMENT CAN BE EFFECTIVE. ALL ADULT MEMBERS OF THE PAPAGO TRIBE, THEREFORE, ARE STRONGLY URGED TO ATTEND AND VOTE AT THE MEETING.

/s/ Royal D. Marks  
Royal D. Marks, Attorney of Record  
Docket Nos. 345 and 102  
114 West Adams, Suite 310  
Phoenix, Arizona 85003

Evidence submitted by counsel which includes a report to the Commissioner, Bureau of Indian Affairs from the B.I.A. Superintendent of the Papago Agency, Sells, Arizona (Plaintiff's Exhibit PSE-4), indicates that notices of the scheduled tribal meetings were mailed to all registered voters of the Papago Tribe and were posted in public buildings. Publication of the notices were also made in weekly and daily newspapers of the area and broadcast over local radio and television. (See Plaintiff's Exhibits 6 and 7).

4. Meetings of the Papago Tribe. The official public meetings of the Papago Tribe membership were held as scheduled on May 19, 20, 21, 1976. Transportation was furnished to all villages. (Plaintiff's Exhibit PSE-8). The Santa Rose School meeting was chaired by Vice-Chairman, Max Morris with Royal D. Marks and Arthur Lazarus, Jr., plaintiff's counsel, and Superintendent Edward Emmons, B.I.A., representative in attendance. Approximately 1200 tribal members were present. The meeting at Sells was chaired by Tribal

Chairman Cecil Williams. Approximately 1,000 tribal members were present. The third meeting at San Xavier had approximately 250 members in attendance.

At each meeting a copy of the stipulation for final judgment and a draft resolution was given to each person in attendance. After brief opening remarks by the presiding officers, Royal D. Marks presented a statement outlining the history of the litigation in these dockets and the events leading up to the proposed settlement. Arthur Lazarus, Jr., explained the various consideration which led the attorneys to recommend the \$26 million settlement figure. (See Plaintiff's Exhibits PSE-9 and 10). After open discussions and a question and answer period, the following resolution was voted upon and adopted by vote of 1,658 in favor and 87 against. The same resolution was approved on June 4, 1976, by the Papago Tribal Council by a vote of 770.5 for and 63.5 against and by the Papago Business Council by a vote of 20 to 1.

RESOLUTION NO. 28-76

WHEREAS, the Papago Tribe of the Papago Reservation, Arizona, has been prosecuting a case before the Indian Claims Commission to obtain compensation for land in the present State of Arizona originally owned and occupied in Indian fashion by the Papago Tribe and taken by the United States on January 14, 1916, without payment therefor, which case is identified as Docket No. 345; and

WHEREAS, the Commission, on September 10, 1968, entered an interlocutory order in Docket 345 declaring that the Papago Tribe exclusively occupied in Indian fashion a tract of land described as:

Commencing at a point on the International Boundary in the Tinajas Altas Mountains which divides the eastern and western drainage of those mountains (T13S, R17W, Gila and Salt River Meridian); thence northwest on a line down the crest of the Tinajas and Gila Mountains to the 3141 foot peak on the border of the Yuma land as found in Docket No. 319; thence east to the Mohawk Mountains peak of 2900 feet in T10S, R13, Gila and Salt River Meridian; thence northwest along the crest of the Mohawk Mountains to Mohawk Pass; thence east to the present town of Gila



Bend; thence east southeast on a line through Lost Horse Tank to the peak of Table Top Mountains in T8S R2E; thence east to the northwest corner of the Papago Indian Reservation in R3E; thence east along the northern border of that reservation to its northeast corner in T7S; thence on a line east southeasterly to Picacho Peak and to Red Rock, Arizona; thence east to the peak of Oracle; thence in a southerly direction on a line following the ridge dividing the waters which flow into the San Pedro River from the waters which flow into the Santa Cruz River to the International Boundary Line; thence west and northwest along the International Boundary Line to the point of beginning,

from which were excluded:

- a. The San Xavier del Bac Reservation.
- b. The Papago Indian Reservation as enlarged by the post-1917 additions enumerated in Finding No. 24.
- c. Confirmed Spanish and Mexican land grants; and

WHEREAS, the Papago Tribe has been prosecuting a case before the Commission seeking an accounting of funds wrongfully used by the United States, which case is identified as Docket No. 102, in which case considerable briefing has been done by both sides but no trial has been held; and

WHEREAS, in order to expedite settlement the attorneys for the tribe felt it for the best interests of the tribe to begin negotiations toward a possible settlement of the claims filed and did obtain from the Attorney General of the United States approval of a settlement of \$26,000,000.00 which settlement is conditioned upon formal approval of the Papago Council and vote of the members of the Papago Tribe; and

WHEREAS, ROYAL D. MARKS, one of the attorneys representing the Papago Tribe, requested the authority of the Papago Council to proceed with the proposed settlement by having it submitted to members of the Papago Tribe, and the Papago Council, by Resolution No. 10-76, authorized the submission of the proposed \$26,000,000.00 settlement of the Papagos' claims pending before the Indian Claims Commission to the members of the tribe; and

WHEREAS, at meetings of the Papago Tribe called for the purpose of considering the terms of the foregoing settlement and at which meetings the proposed final settlement was fully discussed by the attorneys for the Papago Tribe and members of the Papago Tribe were given full opportunity to enter into said discussions and ask questions concerning all phases of the claims; and

WHEREAS, a representative of the Department of Interior was present during said meetings and observed the proceedings; and

WHEREAS, the members of the Papago Tribe are fully informed regarding the proposed settlement and with the proposed Stipulation For Entry of Final Judgment, the same having been distributed to the members, read in the aforementioned meetings, and explained by the attorneys for the Papago Tribe,

NOW, THEREFORE, BE IT RESOLVED that the proposed final settlement of all claims and offsets in Dockets Nos. 345 and 102 in the amount of \$26,000,000.00 be, and the same are, hereby approved; it being understood that by this approval the attorneys for the Papago Tribe are authorized to execute said proposed Stipulation For Entry of Final Judgment; and

BE IT FURTHER RESOLVED that the Chairman or other authorized representative of the Papago Tribe is hereby authorized to execute the proposed Stipulation and to appear and testify at a hearing before the Indian Claims Commission with respect to the proposed settlement and the action taken by the Papago Tribe with respect thereto; and

BE IT FURTHER RESOLVED that the Secretary of the Interior or his duly authorized representative and the Indian Claims Commission are hereby requested to approve the proposed settlement and Stipulation For Entry of Final Judgment as described above.

5. Approval of the Secretary of the Interior. On June 7, 1976, counsel for the Papago Tribe addressed a letter to the Honorable Morris Thompson, Commissioner of Indian Affairs, requesting Secretarial approval of the proposed settlement. Under date of June 23, 1976, Commissioner Thompson did grant approval to the settlement. The Commissioner's letter reads as follows:

Dear Mr. Marks:

By letter dated June 7, Attorney Arthur Lazarus, Jr., confirmed his telephone conversation with the appropriate members of the Bureau staff advising that counsel for the Papago Tribe and the United States have agreed upon a settlement of the Papago tribal claims pending before the Indian Claims Commission in Dockets 102 and 345 for the sum of \$26,000,000, and that they are requesting approval of the compromise settlement by the Secretary of the Interior.

In Docket 102 the Papago Tribe seeks damages for mismanagement of tribal funds by the Federal Government, and in Docket 345 the tribe seeks fair payment for lands in Arizona taken subsequent to the 1848 Treaty of Guadalupe Hidalgo, the date of such taking having been fixed as January 14, 1916. Dockets 102 and 345 are consolidated for purposes of settlement. The defendant has offered to pay the Papago Tribe the sum of \$26,000,000 in settlement of the claims in both dockets, such offer being contingent upon the tribe's acceptance of the offer of settlement. The terms of the proposed settlement of claims in Dockets 102 and 345 are set out in the proposed Stipulation For Entry of Final Judgment that has been executed by the Papago Tribe and awaits execution by the United States.

Authority to prosecute the Papago tribal claims before the Indian Claims Commission is governed by the following contracts, extensions and amendments:

Contract I-1-ind. 42425 dated July 14, 1950, was entered into by the Papago Tribe with Attorneys Barnett E. Marks and Royal D. Marks of the law firm of Marks & Marks of Phoenix, Arizona. This contract, which was to run for a period of ten years beginning with its date of approval, was approved on November 29, 1950, by Commissioner D. S. Meyer. This contract superseded an amended contract dated July 31, 1959, which extended the term of the contract for another ten years from and after November 29, 1960. It was again amended to extend the period for another ten years from and after November 28, 1970 (Contract No. I-1-ind. 5276). Therefore, Contract I-1-ind. 42425, now designated as Contract No. I-1-ind. 5276, is currently in full force and effect.

On December 22, 1975, Attorney Royal D. Marks, sent a letter to the Honorable Edward H. Levi, Attorney General of the United States, offering to compromise and to settle the Papago claims in Dockets 102 and 345 by entry of final judgment in the amount of \$26,000,000. This offer of settlement was accepted on February 23, 1976, by Assistant Attorney General Peter R. Taft, subject to certain conditions, namely, that the proposed settlement be approved by resolution of the governing body of the tribe and passed by vote of the membership of the Papago Tribe, that approval of the settlement as well as approval of the resolutions, be secured from the Secretary of the Interior, or his authorized representative, and that a copy of the resolutions and the approval of the settlement by the Department of the Interior be furnished to the Department of Justice.

#### Tribal Approval of the Settlement

The proposed settlement was submitted to the Papago tribal members at reservation district meetings held on May 19, 1976, at Santa

Rosa; on May 20, 1976, at Sells; and on May 21, 1976, at San Xavier. Notices of the meetings were mailed to all registered tribal voters and posted in trading posts within the area and in tribal community buildings. The notices were also published in the following newspapers: Ajo Copper News, Ajo, Arizona; Casa Grande Dispatch, Casa Grande, Arizona; Gila Bend Herald, Casa Grande, Arizona; The Arizona Republic/The Phoenix Gazette, Phoenix, Arizona; Arizona Daily Star, Tucson, Arizona; and the Tucson Daily Citizen, Tucson, Arizona. Notice of the meetings were also carried on local radio and television stations announcing the purpose, time, place and date of the meetings.

Mr. Edward Emmons, Superintendent of the Papago Agency, attended all the district meetings with Claims Counsel Royal D. Marks of the law firm of Marks & Marks; Associate Counsel Arthur Lazarus, Jr.; the tribal enrollment committee, and the tribal secretaries. Superintendent Emmons advises in his detailed report of June 4, 1976, that at each meeting a copy of the proposed stipulation for final judgment, as well as the proposed resolution approving the proposed settlement, was given to each tribal attendee and that Messrs. William Joaquin and Henry Ramon assisted in the explanations through interpretations into the Papago language. Superintendent Emmons reports that he feels the claims attorneys gave a full presentation to the Papago people, that a question and answer session was held at each meeting, and that ample opportunity was provided to permit those tribal members in opposition to present their remarks and arguments, and that the resulting vote on the proposed settlement of 1,658 in favor and 87 against, with 51 rejected votes, is a representative expression of the wishes of the Papago tribal voters.

Superintendent Emmons has transmitted two resolutions (both numbered 28-76): one formalizing the action taken by the tribal members to accept the proposed settlement and signed by the tribal members who chaired the three district meetings, and the other resolution, which was adopted on June 4, 1976, by the Papago Tribal Council. The resolutions approve the proposed settlement for the sum of \$26,000,000, authorize the tribal chairman and claims counsel to execute the proposed Stipulation For Entry of Final Judgment, and request that the proposed settlement be approved by the Secretary of the Interior, or his authorized representative. The Superintendent has certified the signatures of the tribal officials as being genuine and that the documents were signed in his presence.

We are satisfied that the general tribal meetings were well publicized and that the tribal members had an opportunity to attend and to express their views. The meetings were satisfactorily conducted with the voting held after the members had

an opportunity to consider the proposed settlement. The meeting of the Papago Tribal Council was also satisfactorily called and conducted with the resolution approving the settlement being duly adopted. The resolutions discussed herein are hereby approved.

In light of the information which you have furnished 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 the claims in Dockets 102 and 345 is fair and just. The proposed settlement is hereby approved.

Sincerely yours,

/s/ Morris Thompson  
Commissioner of Indian Affairs

Identical letter sent to Arthur Lazarus, Jr., Esquire

6. Stipulation for Entry of Final Judgment. Upon conclusion of the proceedings discussed above, counsel for the parties jointly prepared and executed a Stipulation for Entry of Final Judgment. The stipulation, which reads as follows, was filed with the Commission on June 22, 1976.

STIPULATION FOR ENTRY OF FINAL JUDGMENT

Counsel for the parties hereby stipulate that the above-entitled claims shall be consolidated for all purposes, and shall be settled, compromised and finally disposed of by entry of final judgment as follows:

1. There shall be entered in the consolidated case, after all allowable deductions, credits and offsets, a net judgment for Petitioner in the amount of TWENTY-SIX MILLION DOLLARS (\$26,000,000).
2. 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 before the Indian Claims Commission, and petitioner shall be barred thereby from asserting any such right, claim or demand against defendant in any future action.
3. 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 the beginning of time 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 after June 30, 1951.

4. 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 either party, for the purposes of precedent or argument, in any other case.

5. 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, and shall become final on the day it is entered, all parties hereby waiving any and all rights to appeal from or otherwise seek review of such final determination.

6. 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.

7. Attached to this stipulation and incorporated herein by reference is a resolution approving the settlement adopted by the Papago Council, petitioner's governing body, and a resolution adopted at meetings of the Papago Tribe of Indians held at Santa Rosa, Arizona, on May 19, 1976, Sells, Arizona, on May 20, 1976, and San Xavier, Arizona, on May 21, 1976, both authorizing counsel for petitioner to enter into this stipulation on the basis set forth in paragraphs 1 through 6 thereof, and a copy of a letter approving the settlement of this litigation by the Secretary of the Interior or his authorized representative.

7. Hearing before the Commission. A hearing on the proposed compromise settlement was held before the full Commission on June 30, 1976, in Washington, D. C. Appearing to testify on behalf of the plaintiff tribe was Mr. Cecil Williams, Chairman of the Papago Tribe. Mr. Williams stated that he has been Chairman since May 1975 and has been familiar

with the claims presented in these dockets and with all the proceedings respecting the proposed settlement. He identified and testified as to the accuracy of the pertinent documents relating to the settlement which were introduced in evidence by counsel. Mr. Williams, who chaired the meetings at Sells and St. Xavier, testified that the proposed settlement was carefully explained and interpreted to the membership. Mr. Williams concluded his testimony by stating that the Papago Tribe fully understood the terms of the proposed settlement, the proceedings regarding its approval, and that the settlement was intended to finally dispose of all claims of the tribe before the Commission. (See, generally, Tr. 6-21, 25-28, June 30, 1976.

At the conclusion of the hearing, counsel for plaintiff submitted a fully executed stipulation for entry of final judgment in the form set forth above (Finding 6), and a fully executed joint motion for consolidation and entry of final judgment as follows:

JOINT MOTION FOR CONSOLIDATION AND  
ENTRY OF FINAL JUDGMENT

Pursuant to the "Stipulation for Entry of Final Judgment" filed on this date, the petitioner and the defendant, by their attorneys, jointly move for the consolidation of Docket Nos. 345 and 102 and for the entry of final judgment in Docket Nos. 345 and 102 consolidated in the amount of TWENTY-SIX MILLION DOLLARS (\$26,000,000).

Dated this 30th day of June 1976.

Respectfully submitted,

PETER R. TAFT  
Assistant Attorney General

By: /s/ A. Donald Mileur  
A. DONALD MILEUR  
Attorney

/s/ Royal D. Marks  
ROYAL D. MARKS  
Attorney of Record for  
Petitioner in Docket No. 345

/s/ Dean K. Dunsmore  
 DEAN K. DUNSMORE  
 Attorney  
 Attorneys for Defendant

/s/ Arthur Lazarus, Jr.  
 ARTHUR LAZARUS, JR.  
 Attorney of Record for Petitioner  
 in Docket No. 102

8. Commission's Conclusions. On the basis of the entire record, including testimony presented at the hearing of June 30, 1976, and documents submitted in evidence, the Commission finds that the procedures taken by the Papago Tribal Council relating to the consideration and approval of the compromise settlement herein were properly and fairly conducted. The Commission further finds that the terms of the settlement and stipulations were fully and carefully explained to the tribal membership and that they were sufficiently informed and accorded ample and fair opportunity to make an intelligent choice on the proposed settlement and that they did make such a choice in approving the proposed settlement by ballot.

On the basis of the entire record in these dockets, the testimony of Mr. Williams, the representation of counsel, and all other pertinent factors before us, the Commission finds that the proposed settlement in Dockets 345 and 102 is fair to the plaintiff and has been fully entered into by the tribe and duly approved by the membership and the Tribal Council and by the authorized representative of the Secretary of the Interior.

In consideration of the foregoing, the Commission hereby approves the proposed compromise settlement in these cases and will enter a final judgment in favor of the plaintiff in the amount of \$26,000,000 in settlement of the plaintiff's land and trespass claims (Docket 345) and

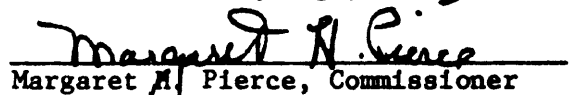


the general accounting claim (Docket 102) and all claims of the defendant in accordance with and subject to the terms and provisions set forth in the stipulation for entry of final judgment of June 22, 1976. The Commission also approves the joint motion for consolidation of these dockets.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret M. Pierce, Commissioner

  
Brantley Blue, Commissioner