

adjoining the Colorado River in areas now within the States of California, Nevada, and Arizona which are described in Finding 23(a), (b), and (c), in the Commission proceeding in the title phase of the consolidated dockets herein (7 Ind. Cl. Comm. 219, 240-241 (1959)).

Mohave Indian title to lands in California was extinguished by the United States on March 3, 1853, when said lands became a part of the public domain of the United States pursuant to section 13 of the Act of March 3, 1851 (9 Stat. 631). Title to the Mohave's Arizona and Nevada lands was extinguished on March 3, 1865, with the creation of the Colorado River Indian Reservation. By interlocutory order of March 19, 1959, the Commission ordered the case to proceed to the determination of the value of the lands as of the dates the plaintiffs were deprived thereof. (See Finding 25(a), (b), and (c), Id. at 242-43.)

After a hearing on the value of Mohave lands, additional Findings of Fact Nos. 26 through 43 were entered on May 13, 1970 (23 Ind. Cl. Comm. 87, 93), in which the Commission determined that the Mohave aboriginal title lands in California had a fair market value of \$6,000 as of March 3, 1853, and that the Mohave aboriginal title lands in Arizona and Nevada, including mineral enhancement, had a fair market value of \$594,000 as of March 3, 1865. The Commission also determined (supra, at 92) that no consideration was paid to the Mohave Tribe for the extinguishment of aboriginal title to its lands, and that the plaintiffs were entitled to recover the sum of \$600,000 less offsets, if any, allowable under the Indian Claims Commission Act. (60 Stat. 1049.)

Thereafter, the defendant asserted offsets in a total amount of \$299,038.82, and after a hearing thereon, the Commission entered Findings of Fact Nos. 44 through 67 and an opinion concluding that the defendant should be credited with offsets totalling \$171,641.93, and that the plaintiffs should jointly recover from the defendant a final judgment in the amount of \$428,358.07 (26 Ind. Cl. Comm. 563 (1971)). By order of July 6, 1972 (28 Ind. Cl. Comm. 232), the Commission denied plaintiffs' motion for rehearing.

69. Appeal and Compromise Settlement Proposal. On October 5, 1972, the plaintiffs filed a notice of appeal to the Court of Claims from portions of the Commission's interlocutory orders based on the findings of March 19, 1959 (7 Ind. Cl. Comm. 219), of May 13, 1970 (23 Ind. Cl. Comm. 93), and of December 29, 1971 (26 Ind. Cl. Comm. 563, 570). The record on appeal was filed as Appeal No. 1-73.

Counsel thereafter discussed settlement of the claim, and on September 7, 1973, filed a joint motion for approval of a compromise final settlement and for entry of final judgment with a stipulation for settlement and entry of final judgment in the amount of \$468,358.07,^{1/}

^{1/} The stipulation inadvertently gives \$468,359.07 as the agreed upon amount of final judgment when, in fact, the amount agreed upon was \$428,358.07 plus \$40,000.00, a total of \$468,358.07. The joint motion for approval of the compromise and for entry of final judgment, signed by counsel for both parties and filed on the date of approval of the stipulation, requests entry of final judgment in the amount actually agreed upon, i.e., \$468,358.07. The compromise settlement agreed to by the parties, for entry of final judgment in the amount of \$468,358.07, will be followed here although the Commission order of September 13, 1973, used the total shown in the stipulation without noting that it varied slightly from the amount actually agreed upon by the parties herein.

and documents in support of the motion. Pursuant to Commission order of September 6, 1973, a hearing on the motion was held September 12, 1973, at which Mohaves from the Fort Mohave Reservation were witnesses for the plaintiffs in Docket 295, and Mohave members of the Colorado River Indian Tribes testified for plaintiffs in Docket 283. Documents described below, filed in support of the motion for settlement and entry of final judgment, were admitted as exhibits at the hearing.

Under the compromise settlement the United States agreed to a reduction in allowable offsets from \$171,641.93 to \$131,641.93, and entry of a single final judgment by the Commission in the amount of \$468,358.07,^{*} on the condition of the dismissal with prejudice of Appeal No. 1-73. The entry of said final judgment in the above dockets in favor of the plaintiffs as representatives of the Indians on whose behalf the complaints in these dockets were filed, shall constitute settlement of all claims or demands which any of the plaintiffs may or could have asserted against the defendant. The stipulation provides as follows:

STIPULATION FOR SETTLEMENT AND
ENTRY OF FINAL JUDGMENT

WHEREAS, certain claims were made on behalf of the Mohave Indians, who are members of the Colorado River Indian Tribes, in Docket No. 283 before this Commission and on behalf of the Mohave Tribe of Indians of Arizona, California and Nevada, in Docket No. 295, which dockets have been consolidated for all purposes, including entry of judgment and in both of which the plaintiffs seek compensation or payment for the extinguishment of title to their aboriginal lands, and,

Whereas, the Commission determined on March 19, 1959, that the plaintiffs herein had aboriginal title to 1,006,300 acres located in Arizona, California and

* See note 1, supra.

Nevada, title to which was extinguished in 1853 and 1865, 7 Ind. Cl. Comm. 219 (1959), and,

Whereas, on May 13, 1970, the Commission held that, as of the dates of extinguishment, these lands had a fair market value of \$600,000, 23 Ind. Cl. Comm. 87 (1970), and,

Whereas, the Commission, on December 29, 1971, allowed gratuitous offsets in the amount of \$171,641.93 and ordered that the plaintiffs shall jointly recover of and from the defendant as a final judgment the amount of \$428,358.07 in full satisfaction of the claims in Docket Nos. 283 and 295, 26 Ind. Cl. Comm. 563, 582 (1971), and;

Whereas, the Commission denied plaintiffs' motion for rehearing on July 6, 1972, 28 Ind. Cl. Comm. 232 (1972), and,

Whereas, the plaintiffs filed a notice of appeal on October 5, 1972, from the Commission's decisions filed herein on March 19, 1959, May 13, 1970 and December 29, 1971, and that the record on appeal was filed as Appeal No. 1-73 on January 5, 1973, and,

Whereas, the parties are desirous of entering into a compromise settlement in full satisfaction of all plaintiffs' claims in Docket Nos. 283 and 295,

NOW, THEREFORE, IT IS STIPULATED AND AGREED THAT: [*]

1. The United States, conditioned on the dismissal with prejudice of Appeal No. 1-73, as set forth in paragraph 2 below, agrees to reduce the offsets allowed by the Commission herein by the sum of \$40,000 from \$171,641.93 to \$131,641.93, and it is further agreed by all parties that all of the claims asserted in said consolidated dockets shall hereby be settled by entry of a single final judgment in the Indian Claims Commission in the amount of \$468,359.07 against the United States of America in favor of plaintiffs (as representatives of the tribes, bands, or groups of Indians on whose behalf the said petitions were presented) in Docket Nos. 283 and 295 consolidated, with no further review or appeal thereof to be sought by any party.

[*] [See note 1, supra.]

2. Upon approval of this stipulation and settlement by the Commission, plaintiffs in Docket Nos. 283 and 295, consolidated agree to dismiss with prejudice their appeal before the Court of Claims in Appeal No. 1-73 and that said dockets be remanded to the Commission for entry of final judgment consistent with this stipulation.

3. This stipulation and entry of final judgment shall fully dispose of all claims or demands which any of the plaintiffs represented in either of said dockets may have asserted or could have asserted against defendant in either of said cases, either before of [sic] after any consolidation, and plaintiffs (and all claimants represented thereby) and each of them shall be barred from asserting all such claims or demands in any future action.

4. This stipulation and entry of final judgment shall finally dispose of all offsets, claims or demands which defendant has asserted or could have asserted in either of said dockets, either before or after any consolidation, from March 3, 1853, to and including June 30, 1951.

5. The 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.

6. Nothing herein contained shall be construed as a waiver of the claims asserted by the Mohave Indians or a waiver of any defenses thereto by the United States in Docket No. 295-A currently pending before this Commission.

DATED: Sept. 7, 1973

[Signed by counsel for parties herein.]

70. Mohave Land Claims Committee, Authority to Compromise. On August 27, 1955, at a general Mohave tribal meeting of the Mohave Indians who were enrolled members of the Colorado River Indian Tribes, plaintiffs in Docket 283 herein, a resolution was approved ratifying and confirming the appointment of Jay Gould, Merritt Leffoon, and Norman Scott as the Mohave Land Claims Committee to prosecute land claims against the Government. A statement attached to the resolution indicates that the

Land Claims Committee was authorized to represent and act for the Mohaves of the Colorado River Indian Tribes in the prosecution of all matters connected with Docket 283. Signers of the statement ratified and confirmed all things heretofore or hereafter done by the committee in the prosecution of the claim. The resolution was assented to and signed by approximately 125 members at Parker, Arizona. The resolution and attached statement gave complete authority to the Land Claims Committee to agree to the proposed settlement for the plaintiffs in Docket 283. (Pls. Ex. S-6.)

71. Fort Mohave Tribal Council, Authority to Settle Claim. The Constitution and By-laws of the Fort Mohave Tribe (plaintiffs in Docket 295) were adopted in May of 1957 some years after the tribe initiated the prosecution of the claim in this proceeding. Article V of the Constitution authorizes the Fort Mohave Tribal Council to regulate the uses and disposition of tribal property and funds and to veto the disposition of tribal funds or other tribal assets that may be authorized by any agency or employee of the government. These provisions empower the tribal council to agree to the compromise settlement without further action by the membership of the tribe. However, Article X of the Constitution provides that upon a petition of at least 30 per cent of the eligible voters, or by request of the majority of the Tribal Council, any enacted or proposed ordinance or resolution of the Tribal Council shall be submitted to popular referendum, and the vote of the majority of qualified voters in such referendum determines whether the ordinance or resolution shall continue in effect, providing thirty per cent or more of those eligible to vote

in the referendum do so. Consequently, the consent of the tribal council is not necessarily binding if thirty per cent or more of the eligible voters question the proposed compromise.

72. Notice of and Consent to Compromise Settlement. On April 12, 1973, a meeting was called and conducted at Needles, California, at which the proposed compromise settlement was discussed and explained. The meeting was attended by the chairman and 3 other members (which constituted a majority) of the Tribal Council of plaintiffs in Docket 295, and by other Mohaves, members of plaintiffs in Docket 295. The meeting was also attended by the two surviving members of the Land Claims Committee of the plaintiffs in Docket 283, by two members of the Tribal Council of the Colorado River Indian Tribes who are also members of the Mohave plaintiffs in Docket 283, and by representatives of the Bureau of Indian Affairs from the Colorado River agency. At the meeting, counsel for plaintiffs herein explained the outcome of these cases in the Indian Claims Commission and their status on appeal in the Court of Claims. They discussed what plaintiffs might expect to gain or lose by prosecuting the appeal and what the results would be if the compromise settlement were accepted.

Thereafter, on June 9, 1973, the Fort Mohave Tribal Council passed Resolution No. 73-38 which confirmed its earlier approval of the proposed compromise settlement of the subject dockets under which the award to the plaintiffs would amount to \$468,358.07. The resolution, as received in evidence at the hearing on September 12, 1973, follows:

Resolution No. 73-38R E S O L U T I O N

Fort Mojave Tribal Council

WHEREAS, on June 9, 1973, the Fort Mojave Tribal Council enacted the Resolution No. 73-07 concurring with the Compromise Settlement of Dockets 283 and 295 in consideration of the fund judgment that would increase the settlement to \$468,358.07 through reduction of the off-sets, and

WHEREAS, further explanations were made by C. M. Wright and Raymond C. Simpson, Attorneys for Colorado River and Fort Mohave Reservations respectively on April 12, 1973, now

THEREFORE BE IT RESOLVED that the Fort Mojave Tribal Council hereby confirms its approval of the Compromise Agreement on January 20, 1973, and requests the final determination of the Mojave judgment accordingly as further agreed on April 12, 1973.

C E R T I F I C A T I O N

We the undersigned, as the Chairman and the Secretary of the Fort Mojave Tribal Council, do hereby certify that the Fort Mojave Tribal Council is composed of 7 members of whom 6 constituting a quorum were present at a regular meeting on this 9th day of June, 1973, and that the foregoing resolution was adopted by the affirmative vote of 6 members.

Fort Mohave Tribal Council

/s/ Llewellyn Barrackman
Llewellyn Barrackman, Chairman

/s/ James Jackson
James Jackson, Secretary

(Pls. Ex. S-3.)

In a statement of May 29, 1973, the Land Claims Committee for the Mohaves of the Colorado River Indian Tribes, plaintiffs in Docket 283,

endorsed and approved the compromise settlement as follows:

MOJAVE CLAIMS COMMITTEE
PARKER, ARIZONA

May 29, 1973

TO WHOM IT MAY CONCERN:

This is to certify that we, Jay Gould and Norman Scott, are the surviving members of the Colorado River Land Claims Committee of the Mojave Tribe under Docket No. 283.

We hereby endorse and approve the Compromise Settlement under which the entire appeal will be dismissed in consideration of the increase of \$40,000 in the final judgment of the Mojave Claims.

The approval by this same committee on April 12, 1973 confirms identical action taken on February 12, 1973, at which time Attorneys Raymond Simpson and C. M. Wright fully and clearly explained the situation and answered questions involving the Compromise Settlement and the elimination of the entire appeal.

/s/ Jay Gould
Jay Gould

/s/ Norman Scott
Norman Scott

(Pls. Ex. S-7.)

73. Administrative Action on Compromise Settlement. In transmitting copies of Fort Mohave Tribal Council Resolution 73-38 and the certification of May 29, 1973, by the Colorado River Land Claims Committee by a memorandum of June 25, 1973, to the Assistant Secretary of the Interior for Indian Affairs, the Area Director of the Phoenix Area Office, Bureau of Indian Affairs, also transmitted a statement of the Bureau's superintendent of the Colorado River Agency. The latter statement certified to the correctness of the signatures on the Fort Mohave Tribal

Council Resolution 73-38, the signatures on the certification of May 29th by the Land Claims Committee for the plaintiffs in Docket 283, and that the meeting of April 12, 1973, was properly and satisfactorily held and conducted.

Thereafter, by letter of August 2, 1973, to counsel for the plaintiffs in Docket 295, Deputy Assistant Secretary of the Interior William L. Rogers approved the proposed settlement. (Pls. Ex. S-8.)

74. Hearing on Compromise Settlement. At the hearing before the Commission on September 12, 1973, on the compromise settlement, a question was raised as to the adequacy of notice of the proposed settlement to all members of plaintiffs' organizations.

Mr. Llewellyn Barrackman, who in the past has been vice chairman for five years, and chairman for six years, of the Fort Mohave Tribal Council, testified for the plaintiffs in Docket 295 that it was customary to tell members attending tribal meetings of developments in the subject claims proceeding, and that the appeal and the proposed settlement in this case were discussed in a number of tribal council meetings and general membership meetings. Resolutions 73-07 and 73-38 of the Fort Mohave Tribal Council approving the compromise settlement were approved at tribal council meetings open to all members. Notice of the meetings was sent to all members through the tribal newspaper. According to Mr. Barrackman, on April 12, 1973, at a regular council meeting, a notice of which had been sent to all tribal members, and which was attended by about 75% of the tribal members, the pending appeal in the Court of Claims

was discussed. Members were also contacted personally and told of the proposed settlement. Most Mohaves at Needles understood and approved the proposed settlement and Mr. Barrackman knew of no opposition to settling the case. The compromise settlement was also discussed at Fort Mohave's annual election meeting which was held later in June. All tribal members had notice of this meeting, and those who attended approved the proposed settlement. In addition, the proposed compromise was discussed in personal contacts with members. Mr. Barrackman testified that all members had sufficient notice of the proposed compromise so that if they had wanted to ask for a referendum vote on the proposal, they could have done so. In reply to counsel's question as to whether there had ever been a referendum (presumably referring to a vote under Article X of the Fort Mohave Constitution), Mr. Barrackman answered, no. He testified that there are probably 350 adult Indians in Needles.

Mr. James Jackson, Secretary and member of the Fort Mohave Tribal Council, corroborated the testimony of Mr. Barrackman.

On the basis of the evidence here summarized, we find that the majority of the Mohave Tribe, plaintiffs in Docket 295, have had due notice of and have agreed to the proposed compromise settlement.

Peter Homer, chairman of the Tribal Council of the Colorado River Indian Tribes for five terms between 1955 and 1965, testified for the plaintiffs in Docket 283. His testimony indicated that he understood the terms of the proposed settlement and that a full explanation of the proposal had been given to Mohave members of the Colorado River

Indian Tribes through discussions and through the tribal newspaper. According to Mr. Homer, the proposed settlement is satisfactory to most of the members. He remarked also that the two surviving members of the Land Claims Committee approve the terms of the settlement.

Norman Scott, one of the members of the Land Claims Committee and twice a member of the Tribal Council of the Colorado River Indian Tribes agreed with Witness Homer's testimony regarding the acceptance by Mohave members of the Colorado River Indian Tribes of the proposed settlement. Mr. Scott indicated that he understood the terms of the proposal and testified that he was satisfied that the settlement was fair to the members of the tribe. He agreed with Mr. Homer that the tribal members had notice of the proposal through the tribal newspaper and informal discussion. He testified that he and Jay Gould signed the statement of May 29, 1973, by the Colorado River Land Claims Committee, quoted in Finding 72, approving the compromise settlement.

A third Mohave witness for the Docket 283 plaintiffs, Mr. Dempsey Scott, corroborated the testimony summarized above.

At least two of the witnesses who testified mentioned that one factor in the approval by tribal members of the proposed settlement was the probability that the outcome of the appeal would not be final for a long time, with the overall proceedings continuing for perhaps the next twenty years. These same witnesses regretted that the Mohave aboriginal lands were not found to have had greater value, but were satisfied that the majority of the members approved the compromise settlement.

On the basis of the documents and testimony discussed herein, we conclude that the majority of the Mohaves of the Colorado River Indian Tribes have had notice of, and have consented to, the approval by their Land Claims Committee of the proposed compromise settlement of the claims in Docket 283.

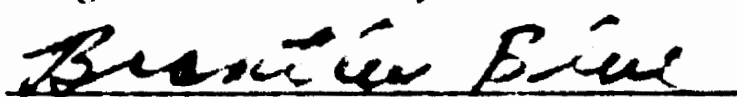
75. Conclusion on Notice and Consent by Plaintiffs to Compromise Settlement. The resolutions of the Fort Mohave Tribal Council for the plaintiffs in Docket 295, and the written approval of the Land Claims Committee for the Mohaves of the Colorado River Indian Tribes in Docket 283, indicate that representative bodies of the plaintiffs herein who have authority to approve and assent to the proposed settlement have done so. (See Findings 70-72.) The testimony at the hearing in this proceeding by representatives of these groups, that there were discussions of and agreement by members to the compromise settlement at a number of meetings open to tribal members, evidenced agreement with and approval by the members of the proposed settlement. The testimony indicated that the settlement was discussed individually in informal contacts with many members in addition to the discussions at group meetings. The evidence at the hearing indicated that ample time and opportunity have been allowed for members to express disapproval of the compromise but no disagreement to the proposed settlement of these claims has been expressed although some disappointment was voiced that the amount of the recovery for the Mohave aboriginal claims was low.

Based upon the entire record in these proceedings including the testimony of the witnesses and other evidence received at the hearing on the compromise settlement and including the approval of the settlement by counsel for the parties, by the duly authorized representative of the Secretary of the Interior, and by the Tribal Council for the plaintiffs in Docket 295 and the approval of the Land Committee for the plaintiffs in Docket 283, the Commission finds that approval of the settlement as set forth in the Stipulation for Settlement and Entry of Final Judgment, filed on September 7, 1973, is fair to both parties and will eliminate additional litigation expenses as well as delay in payment of the final award.

Judgment should therefore be entered for the plaintiffs against the defendant for \$468,358.07, subject to the terms and provisions set forth in the stipulation.* The commission therefore finds that the Joint Motion for the Entry of Final Judgment filed on September 7, 1973, should be granted. Accordingly, an order of final judgment consistent with the findings herein will be entered.

* See note 1, supra.


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner