

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE WARM	)	
SPRINGS RESERVATION OF OREGON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 198
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: October 17, 1973

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission for approval of a compromise settlement of this case and entry of a final judgment in the amount of \$1,225,000 in favor of the plaintiff, with a waiver of review or appeal by both parties.

With an exception noted herein, said judgment is to settle and finally dispose of all claims or demands arising out of the Treaty of June 25, 1855, 12 Stat. 963, which the plaintiff has asserted or could have asserted in this docket against the defendant under the provisions of Section 2 of the Indian Claims Commission Act, 25 U.S.C. § 70a. Said judgment will also dispose of all claims, demands, payments on the claim, counterclaims, or offsets which the defendant has asserted or could have asserted in this docket against the plaintiff under section 2 of our act. The judgment is to have no effect in regard to the claim formerly pending before the Commission as Docket 198-A, said claim having been dismissed

at the plaintiff's request by order of the Commission dated June 30, 1970. The full terms of the compromise settlement stipulated to by both parties are set out in Finding No. 86 herein.

This case concerns the plaintiff's claim for additional compensation for lands ceded to the United States by the Treaty of June 25, 1855, supra. The Commission's findings of fact, opinion, and interlocutory order on title were first entered on June 10, 1960. 8 Ind. Cl. Comm. 557. After oral argument on the plaintiff's motion for rehearing and amendment of findings, the Commission, on June 10, 1963, vacated its 1960 decision, and entered new findings of fact, opinion, and interlocutory order. 12 Ind. Cl. Comm. 664. The plaintiff appealed said decision to the United States Court of Claims and, in an opinion dated October 14, 1966, the court remanded this case to the Commission for reconsideration of the boundaries of the subject area. Confederated Tribes of the Warm Springs Reservation v. United States, 177 Ct. Cl. 184 (1966). On April 4, 1967, the Commission entered a new opinion and order amending certain findings of fact reaffirming the southern boundary of the 1963 decision and adding certain areas to the eastern boundary of subject area. The plaintiff's motion for rehearing was denied by the Commission on August 23, 1968.

The trial on the value phase of this claim was held in Portland, Oregon, on November 10, 1970. On December 18, 1972, the Commission issued its opinion and findings on the value of subject lands, determining that the plaintiff was entitled to recover from the defendant the sum

of \$1,336,317.30, less allowable offsets. 29 Ind. Cl. Comm. 324. On January 17, 1973, the plaintiff filed a motion for rehearing and for partial summary judgment regarding treaty consideration. While said motion was still pending, the Commission, by an order dated February 28, 1973, set this case for a trial on offsets for June 25, 1973. On March 12, 1973, the defendant filed an amended answer setting out offsets in excess of \$1 million. On June 6, 1973, the plaintiff filed a reply to said amended answer. Thereafter negotiations for the settlement of this claim were commenced with the consent and agreement of the parties. A preliminary agreement was ultimately reached on a settlement in the net amount of \$1,225,000. The proposed settlement was conditioned upon approval by the plaintiff tribe, and by the Secretary of the Interior or his authorized representative.

A hearing having been held before the Commission on October 16, 1973, on the proposed offer to compromise and settle this claim, the Commission makes the following findings of fact which are supplemental to the previous findings Nos. 1 through 78, inclusive, entered in this docket.

79. Upon completion of preliminary negotiations for settlement of this claim, and the acceptance by the parties of the offer to settle, subject to approval by the plaintiff tribe, the Secretary of the Interior or his duly authorized representative, and by the Commission, counsel for the plaintiff presented the proposed settlement to members of the Tribal Council of the plaintiff tribe. On July 24, 1973, a special meeting of said Tribal Council was called by the Chairman of the Tribal

Council, Mr. Olney Patt, for July 27, 1973, for the purpose of determining whether the tribe should accept the proposed settlement in the amount of \$1,225,000.

80. The meeting of the Tribal Council was held on July 27, 1973. The record establishes that a majority of the members of the Tribal Council attended the meeting, constituting a quorum to do business pursuant to the Constitution and By-Laws of the plaintiff tribe. Counsel for the plaintiff appeared personally at the meeting and presented a complete history of this claim and a detailed explanation of the terms of the proposed settlement. The meeting was also attended by a representative of the Bureau of Indian Affairs. A question and answer period and an open discussion ensued during which the details of the proposed settlement were fully aired.

By unanimous vote the Tribal Council at the July 27, 1973, meeting adopted a resolution numbered 3860, referring the compromise settlement to a vote of the general membership of the tribe. This procedure was adopted pursuant to Article VI of the Constitution of the Confederated Tribes which directs the Tribal Council to submit a "matter of great importance" to a vote of the people or membership of the tribe. The resolution reads as follows:

Resolution No. 3860

RESOLUTION REFERRING COMPROMISE SETTLEMENT OF LAND CLAIM

WHEREAS The Confederated Tribes of the Warm Springs Reservation of Oregon filed two claims with the Indian Claims Commission which thereafter became designated as Docket No. 198 (the Land Claim) and Docket No. 198A (the 1865 Treaty Claim) and

WHEREAS Docket No. 198 (the Land Claim) has been tried and appealed on the issues of recognized title and original Indian title and on the issue of value and

WHEREAS following extensive investigation of all phases of said claim, including the analysis of the General Accounting Office Reports on Treaty Consideration and Gratuity Offsets, the claims attorneys for The Confederated Tribes of the Warm Springs Reservation of Oregon have unanimously proposed that said Docket No. 198 be compromised and settled for a net judgment of \$1,225,000 on the terms and conditions hereinafter set forth, which settlement is acceptable to The United States Department of Justice and

WHEREAS the Tribal Council has had a complete report from claims attorneys concerning the issues and problems involved in said claim and the progress of settlement negotiations and the reasons for the proposed settlement have been fully explained by said attorneys at meetings attended by representatives of the Secretary of the Interior and Bureau of Indian Affairs and will be the subject of a further General Council meeting in connection with the referendum election described below; now, therefore,

BE IT RESOLVED by the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon (pursuant to Article V, Sections 1(a), (b) and (f) and Section 3 and Article VI of the Constitution of the Confederated Tribes) that the proposed compromise and settlement of said Docket No. 198 on the following terms and conditions is referred to the people for decision as hereinafter provided:

1. The case designated as Indian Claims Commission Docket No. 198 shall be compromised and settled by stipulation and entry of final judgment in the Indian Claims Commission in favor of The Confederated Tribes of the Warm Springs Reservation of Oregon, petitioner, and against The United States of America, defendant, no review to be sought or appeal to be taken by either party.
2. The amount of the judgment against defendant shall be \$1,225,000 which amount is a net judgment after taking into account the consideration paid by The United States and any offsets or counterclaims.
3. Except as stated in this paragraph, the stipulation and entry of final judgment shall finally dispose of all claims and demands which petitioner has asserted or could have asserted against defendant under the provisions of

Section 2 of the Indian Claims Commission Act (60 Stat 1049) relating to the Treaty of June 25, 1855 (12 Stat 963, 2 Kappler 714), or the Indian title rights or claims of the parties to that Treaty. The exception referred to at the commencement of this paragraph is the claim formerly pending before the Indian Claims Commission as Docket No. 198A insofar as it pertained to claims arising in connection with or as a result of the Treaty of November 15, 1865 (14 Stat 751, 2 Kappler 908); said claim was dismissed at petitioner's request by order of the Commission dated June 30, 1970; the new stipulation and entry of final judgment in Docket No. 198 will have no effect whatsoever in regard to said former claim in Docket No. 198A.

4. The stipulation and entry of final judgment shall also finally dispose of all claims, demands, payments on the claim, counterclaims or offsets which defendant has asserted or could have asserted against said petitioner under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat 949). The claims, demands, payments on the claim or counterclaims and offsets referred to shall specifically include all those for the period from June 25, 1855, to and including the date of entry of final judgment.

5. The stipulation and entry of final judgment shall not be construed as an admission of either party as to the correctness or binding nature of any or all of the decisions, orders or other proceedings had in said Docket No. 198 by the Indian Claims Commission or by the United States Court of Claims in the appeal Docket No. 2-64 and shall not be construed as an admission of either party as to any issue for purposes of precedent in any other case or otherwise.

6. The stipulation and entry of final judgment shall not deprive the United States of exercising its right to collect from the proceeds of the sale of timber its expenses of managing, protecting and selling the timber as authorized by statute.

BE IT FURTHER RESOLVED by the Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon that (pursuant to Article VI of the Constitution of The Confederated Tribes) a referendum on said compromise settlement of land claim is hereby called for September 18th, 1973, and the Teen Club at the village of Warm Springs is designated as the special election voting place for the voters of The Confederated Tribes of the Warm Springs Reservation of Oregon to vote on the following question:

'Shall the proposed compromise settlement of land claim for a net judgment in favor of the Tribe in the amount of \$1,225,000 be approved?'

CERTIFICATION

The undersigned, DELBERT FRANK, SR., KENNETH L. SMITH and JAMES D. CORNETT, hereby certify:

THAT they are respectively the Vice Chairman, Secretary-Treasurer (General Manager) of The Confederated Tribes of the Warm Springs Reservation of Oregon and the Superintendent of The Warm Springs Agency, Warm Springs, Oregon;

THAT the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon is composed of eleven members of whom 9 constituting a quorum were present at a meeting hereof duly and regularly called, noticed, convened and held the 27th day of July, 1973;

THAT at said meeting the foregoing Resolution No. 3860 referring compromise settlement of land claim and calling referendum election thereon was passed by the affirmative vote of 8 members, the Chairman not voting; and that said resolution has not been rescinded or amended in any way, except as stated below.

THAT at a meeting of the Tribal Council duly and regularly called and held August 6, 1973, the referendum election date of September 18, 1973 was adopted. The affirmative vote of 8 members, the Chairman not voting.

Dated this 19th day of September, 1973.

s/DELBERT FRANK, SR.  
Delbert Frank, Sr., Vice Chairman  
Tribal Council

s/KENNETH L. SMITH  
Kenneth L. Smith  
Secretary-Treasurer (General  
Manager)

s/JAMES D. CORNETT  
James D. Cornett  
Superintendent of the Warm  
Springs Agency

81. Following a second meeting of the Tribal Council held on August 6, 1973, the Council through its Secretary-Treasurer and General Manager, Mr. Kenneth L. Smith, mailed on August 7, 1973, an informational packet to each tribal member on and off the reservation, containing a copy of the aforementioned Resolution 3860 and an 8-page printed pamphlet containing a full explanation of the case and the compromise settlement and recommendations of counsel. This mailing also included a notice of two scheduled meetings of the membership to be held on August 9 and 23, 1973, for the purpose of discussing the settlement. (Ex. S-4A.) Subsequently, two additional membership meetings were called for September 5 and 11, 1973.

The record establishes that publicity concerning said tribal meetings and the proposed settlement was provided through the means of posters posted at various popular places, through articles and notices published in the tribal newsletter, Tribal Council News, and by newspaper articles discussing the issues involved in the settlement which appeared in the Bend Bulletin, in Bend, Oregon; the Madras Pioneer, in Madras, Oregon; and the Oregonian, in Portland, Oregon. Additionally, a 6-page "fact sheet" containing questions and answers on the subject was mailed to all eligible voters of the tribe on or about September 13, 1973.

82. At each of the general membership meetings cited in Finding No. 81 herein, there were present counsel for the plaintiff and a representative of the Bureau of Indian Affairs, as well as members of the law firm serving as general counsel to the tribe. Summaries of the terms of the settlement, a copy of Resolution 3860, and chronology of the claim were handouts at each of these meetings. Question and answer periods followed



each meeting. Counsel for the plaintiff also explained at these meetings that the entry of judgment in favor of the plaintiff would not determine who would participate in the award in the event of distribution thereof per capita as such questions are not within the jurisdiction of this Commission or the Court of Claims under the Indian Claims Commission Act; and in entering final judgment, the Commission does not intend to determine such questions.

83. The referendum election was held on September 18, 1973. The eligible voters approved the proposed settlement by a vote of 289 in favor and 104 opposed, the number of votes cast being more than one-third of the eligible voters of the tribe, as required by the tribal constitution.

84. On September 19, 1973, the Tribal Council met to approve the election results regarding the proposed settlement. The following resolution, No. 3902, was adopted by the Tribal Council:

Resolution No. 3902

RESOLUTION OF TRIBAL COUNCIL APPROVING  
COMPROMISE SETTLEMENT OF LAND CLAIM

WHEREAS The Confederated Tribes of the Warm Springs Reservation of Oregon filed two claims with the Indian Claims Commission which thereafter became designated as Docket No. 198 (the Land Claim) and Docket No. 198A (the 1865 Treaty Claim) and

WHEREAS Docket No. 198 (the Land Claim) has been tried on the issues of recognized title, original Indian title and value and the extent of land for valuation was previously appealed to the Court of Claims, and

WHEREAS following extensive investigation of all phase of said claim, including the analysis of the General Accounting Office Reports on Treaty Consideration and Gratuity Offsets, the claims attorneys for The Confederated Tribes of the Warm Springs Reservation of Oregon have unanimously proposed that said Docket No. 198 be compromised and settled for a net judgment of \$1,225,000 on the terms and conditions hereinafter set forth, which settlement is acceptable to The United States Department of Justice, and

WHEREAS the Tribal Council and membership of The Confederated Tribes of the Warm Springs Reservation of Oregon have had a complete report from claims attorneys concerning the issues and problems involved in said claim and the progress of settlement negotiations and the reasons for the proposed settlement have been fully explained by said attorneys at meetings attended by representatives of the Secretary of the Interior and Bureau of Indian Affairs and said compromise settlement on the terms hereinafter specified has been approved by the membership of The Confederated Tribes of the Warm Springs Reservation of Oregon as a result of the referendum election held September 18, 1973; now, therefore,

BE IT RESOLVED By the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon (pursuant to Article V, Sections 1(a), (b) and (f) and Section 3 and Article VI of the Constitution of the Confederated Tribes) that the compromise and settlement of said Docket No. 198 is hereby approved and the claims attorneys are authorized to enter into such stipulations as may be necessary to accomplish the same on the following terms and conditions:

1. The case designated as Indian Claims Commission Docket No. 198 shall be compromised and settled by stipulation and entry of final judgment in the Indian Claims Commission in favor of The Confederated Tribes of the Warm Springs Reservation of Oregon, petitioner, and against The United States of America, defendant, no review to be sought or appeal to be taken by either party.

2. The amount of the judgment against defendant shall be \$1,225,000 which amount is a net judgment after taking into account the consideration paid by The United States and any offsets or counterclaims.

3. Except as stated in this paragraph, the stipulation and entry of final judgment shall finally dispose of all claims and demands which petitioner has asserted or could have asserted against defendant under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat 1049) relating to the Treaty of June 25, 1855 (12 Stat 963, 2 Kappler 714), or the Indian Title rights

or claims of the parties to that Treaty. The exception referred to at the commencement of this paragraph is the claim formerly pending before the Indian Claims Commission as Docket No. 198A insofar as it pertained to claims arising in connection with or as a result of the Treaty of November 15, 1865 (14 Stat 751, 2 Kappler 908); said claim was dismissed at petitioner's request by order of the Commission dated June 30, 1970; the new stipulation and entry of final judgment in Docket No. 198 will have no effect whatsoever in regard to said former claim in Docket No. 198A.

4. The stipulation and entry of final judgment shall also finally dispose of all claims, demands, payments on the claim, counterclaims or offsets which defendant has asserted or could have asserted against said petitioner under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat 949). The claims, demands, payments on the claim or counterclaims and offsets referred to shall specifically include all those for the period from June 25, 1855, to and including the date of entry of final judgment.

5. The stipulation and entry of final judgment shall not be construed as an admission of either party as to the correctness or binding nature of any or all of the decisions, orders or other proceedings had in said Docket No. 198 by the Indian Claims Commission or by the United States Court of Claims in the appeal Docket No. 2-64 and shall not be construed as an admission of either party as to any issue for purposes of precedent in any other case or otherwise.

6. The stipulation and entry of final judgment shall not deprive the United States of exercising its right to collect from the proceeds of the sale of timber its expenses of managing, protecting and selling the timber as authorized by statute.

### Certification

The undersigned, DELBERT FRANK, SR., KENNETH L. SMITH AND JAMES D. CORNETT, hereby certify:

THAT they are respectively the Vice Chairman, Secretary-Treasurer (General Manager) of The Confederated Tribes of the Warm Springs Reservation of Oregon and the Superintendent of The Warm Springs Agency, Warm Springs, Oregon;

THAT the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon is composed of eleven members of whom 6 constituting a quorum were present at a meeting thereof duly and regularly called, noticed, convened and held the 19th day of September, 1973:

THAT at said meeting the foregoing Resolution No. 3902 of Tribal Council approving compromise settlement of land claim was passed by the affirmative vote of 6 members, and that said resolution has not been rescinded or amended in any way.

Dated this 19th day of September, 1973.

s/DELBERT FRANK, SR.

Delbert Frank, Sr., Vice Chairman  
Tribal Council

s/KENNETH L. SMITH

Kenneth L. Smith  
Secretary-Treasurer (General Manager)

s/JAMES D. CORNETT

James D. Cornett  
Superintendent of the Warm Springs Agency

[Ex. C attached to stipulation for entry of final judgment]

85. At the request of council for plaintiff, the Assistant Secretary of the Interior, through his representative Mr. Newton Edwards approved the terms of the compromise settlement on September 26, 1973. The approval letter, addressed to council for plaintiff, reads as follows:

Dear Mr. Nash:

You requested our approval of a proposed compromise to settle Indian Claims Commission Docket No. 198 for a net final judgment in the amount of \$1,225,000.00 in favor of the Confederated Tribes of the Warm Springs Reservation of Oregon.

Docket No. 198 is being prosecuted under contract No. I-1-ind. 42649, dated July 10, 1951, between the Confederated Tribes of the Warm Springs Reservation of Oregon and Attorneys Frank E. Nash, T. Leland Brown, and Sam Van Vactor. The contract was approved on April 22, 1952, for a period of ten years beginning with the date of approval. It has been extended for additional periods. The last extension will run until October 14, 1973. Association of the law firm of Wilkinson, Cragun and Barker under the contract was approved on October 15, 1962. The contract provides that the attorneys shall make no compromise of matters in litigation without the approval of the tribal council and the Commissioner of Indian Affairs.

You made an offer to the Attorney General on June 6, 1973, to settle Docket No. 198 with entry of a final judgment in the amount of \$1,225,000.00. On July 19, 1973, the Assistant Attorney General accepted the offer with conditions. Two conditions are that you obtain approval of the proposed settlement by resolution by the governing body of the Confederated Tribes of the Warm Springs Reservation of Oregon and approval of the resolution and the terms of the proposed settlement by the Secretary of the Interior or his authorized representative.

You took the proposed settlement to the Tribal Council of the Confederated Warm Springs Reservation of Oregon at a duly noticed meeting held on July 27, 1973. The tribal council adopted Resolution No. 3860 referring the proposed settlement for consideration by and for a referendum by the voting tribal members. A meeting was called for September 18, 1973, to be held in the Teen Club in the Village of Warm Springs, Oregon. The meeting of July 27, 1973, was attended by a representative of the Bureau of Indian Affairs who reported that the proposed settlement was explained to the tribal council and that matters of such importance are customarily presented to the membership. The Superintendent of the Warm Springs Agency approved Resolution No. 3860.

On August 7, 1973, the General Manager of the Confederated Tribes of the Warm Springs Reservation of Oregon sent notices to the tribal members stating the purpose of the meeting called for

September 18, 1973, and enclosing a pamphlet and information letter explaining the claims and the terms of the proposed settlement. Various newspapers also carried notices of the meeting called for September 18, 1973, and the purpose of the meeting. The newspapers serve the areas in which tribal members live.

The meeting of September 18, 1973, was held as called and a representative of the Bureau of Indian Affairs was present. You explained the claims and the terms of the proposal to settle Docket No. 198. After discussion, a vote was taken. The proposed settlement was approved by a vote of 289 for and 104 opposed. We are satisfied that the number voting, out of a total of 907 members entitled to vote, was representative of the membership and expressed the views of the tribal members on the settlement.

The Tribal Council of the Confederated Tribes of the Warm Springs Reservation of Oregon met on September 19, 1973, and adopted Resolution 3902, approving the proposed compromise based on and in accord with the acceptance of the proposed settlement by the voting membership. We are satisfied that the tribal council meetings and the general meeting were duly called, properly conducted, and that the members understood the claims and the terms of the proposed settlement prior to voting.

Resolution 3902 is hereby approved.

In light of the information that you have furnished to us, that submitted by our field offices, and that obtained from other sources, we are satisfied that the proposed settlement of Docket No. 198 is fair. The terms of the proposed settlement are hereby approved.

Sincerely yours,

For the Assistant to the  
Secretary of the Interior

Mr. Frank E. Nash  
Miller, Anderson, Nash, Yerke  
and Wiener  
900 S. W. Fifth Avenue  
Portland, Oregon 97204

[Ex. D attached to stipulation for entry of final judgment]

86. Upon conclusion of the above preliminary proceedings, counsel for the parties jointly prepared and executed a "Stipulation for Entry of Final Judgment" together with a Joint Motion for the Entry of Final Judgment. These documents were filed with the Commission on October 5 1973. The stipulation reads as follows:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

IT IS HEREBY STIPULATED by the parties, through their counsel, as follows:

(1) The above entitled and numbered case shall be compromised and settled by this stipulation and entry of Final Judgment in the Indian Claims Commission in favor of The Confederated Tribes of The Warm Springs Reservation of Oregon, petitioner, and against The United States of America, defendant, no review to be sought or appeal to be taken by either party.

(2) The judgment against defendant, after all allowable deductions, credits and offsets, shall be in the net amount of \$1,225,000.

(3) Except as stated in this paragraph, this stipulation and entry of Final Judgment shall finally dispose of all claims or demands which The Confederated Tribes of The Warm Springs Reservation of Oregon has asserted or could have asserted against said defendant under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat 1049) relating to the Treaty of June 25, 1855 (12 Stat 963, 2 Kappler 714) or the Indian title rights or claims of the parties to that Treaty. The exception referred to at the commencement of this paragraph is the claim formerly pending before the Indian Claims Commission as Docket No. 198A insofar as it pertained to claims arising in connection with or as a result of the Treaty of November 15, 1865 (14 Stat 751, 2 Kappler 908); said claim was dismissed at petitioner's request by order of the Commission dated June 30, 1970; this stipulation and entry of Final Judgment in Docket No. 198 will have no effect whatsoever in regard to said former claim in Docket No. 198A.

(4) This stipulation and entry of Final Judgment shall also finally dispose of all claims, demands, payments on the claim, counterclaims or offsets which said defendant has asserted

or could have asserted against said petitioner under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat 949). The claims, demands, payments on the claim or counterclaims and offsets referred to specifically include all those for the period from June 25, 1855, to and including the date of entry of the Final Judgment.

(5) This stipulation and entry of Final Judgment shall not be construed as an admission of either party as to the correctness or binding nature of any or all of the decisions, orders, or other proceedings had in said Docket No. 198 by the Indian Claims Commission or by the United States Court of Claims in the appeal Docket No. 2-64 and shall not be construed as an admission of either party as to any issue for purposes of precedent in any other case or otherwise.

(6) This stipulation and entry of Final Judgment shall not deprive the United States of exercising its right to collect from the proceeds of the sale of timber its expenses of managing, protecting and selling the timber as authorized by statute.

(7) Attached to this stipulation and marked respectively Exhibit A, Exhibit B, Exhibit C and Exhibit D are the following, authorizing counsel for petitioner to enter into this stipulation on the foregoing terms:

Exhibit A - Resolution No. 3860 adopted by the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon on July 27 and August 6, 1973, calling referendum election by the membership of the Tribe on the foregoing compromise and settlement.

Exhibit B - Certificate of referendum election held September 18, 1973, on said resolution, Exhibit A.

Exhibit C - Resolution No. 3902 adopted by the Tribal Council of The Confederated Tribes of the Warm Springs Reservation of Oregon on September 19, 1973, approving and authorizing the foregoing compromise and settlement.



Exhibit D - Copy of letter by the Secretary of the Interior and Commissioner of Indian Affairs or other authorized representative approving the settlement of this litigation on said terms and conditions.

s/Frank E. Nash  
 Frank E. Nash, Attorney of  
 Record for Petitioner  
 Dated: 9/26/73

s/Wallace H. Johnson  
 Wallace H. Johnson, Assistant  
 Attorney General  
 Date: 10/1/73

s/Mark C. McClanahan  
 Mark C. McClanahan, of Counsel  
 for Petitioner  
 Date: 9/26/73

s/D. Lee Stewart  
 D. Lee Stewart, Attorney  
 Department of Justice  
 Date: 10/1/73

WILKINSON, CRAGUN & BARKER

By: s/Angelo A. Iadarola  
 Angelo A. Iadarola, Partner,  
 Of Counsel for Petitioner  
 Date: 9/28/73

Attorneys for Defendant

Attorneys for Petitioner

87. a. A hearing was held by the Commission on October 16, 1973, on the proposed offer to compromise and settle. The Commission heard the testimony of five witnesses in addition to statements of counsel. The witnesses were: Kenneth L. Smith, General Manager and Secretary-Treasurer of the plaintiff tribe, Juanita Bourland, Secretary to the Tribal Council, Delbert Frank, Sr., Vice-Chairman of the Tribal Council, Nelson Wallulatum, Chief of the Wasco Tribe, and James D. Cornett, Superintendent of the Warm Springs Reservation.

b. Kenneth L. Smith stated that he was a graduate of the University of Oregon and has filled important accounting and managerial positions in the tribe for the past ten years. He has been General Manager of the tribe since 1971. With regard to submitting substantial and important tribal business to a popular referendum vote in accordance with the tribe's constitution, Mr. Smith testified concerning a number of large financial transactions of recent occurrence which were voted upon by referendum to demonstrate the preferred tribal procedure. He testified that the referendum was the method usually adopted by the tribe in matters involving finances. Because of small attendance at general meetings of the tribe, it was his view that the referendum assured a representative vote of all the tribal members and averted future controversy over the validity of the vote. Mr. Smith also testified as to the conduct and attendance at the meetings preceding the referendum vote herein, and the steps taken to inform the membership on and off the reservation concerning the terms of the proposed settlement. It was his opinion that counsel gave a complete and thorough explanation of the proposed settlement at all the meetings held for this purpose, and that the membership fully understood the terms of the settlement. He further testified that he supervised the distribution of all informational material to the 907 eligible voters of the tribe relating to the election. He stated that results of the referendum vote on the proposed compromise were better than average and representative of the views of the tribal membership. As to the reasons for the negative vote against the

compromise, Mr. Smith testified that it was his belief that a number of tribal members were of the opinion that the tribe was dealt with unfairly on the boundary issues during the title phase of this claim and with the ultimate valuation as determined by the Commission in the earlier decisions. On cross-examination Mr. Smith testified that there were 284 members living off the reservation, each of whom received ballots and all the informational material distributed in connection with the proposed compromise and referendum vote. He also stated his own understanding of the terms of the settlement upon request of Government counsel.

c. Juanita Bourland stated that she is presently employed as Secretary to the Tribal Council and that she had approximately 14 years experience in secretarial work and services. She testified that during her employment with the tribe she had handled the clerical functions involved in two prior referendum elections. She further testified she was present at each meeting preceeding the referendum election on the compromise and that all members present at these meetings appeared to understand the terms of the compromise and counsel's explanations and recommendations thereon. She also testified that she handled all the mailings and postings of printed matter connected with the proposed compromise, prepared fact sheets with the assistance of counsel, kept the minutes of all the meetings involved herein, and was in attendance throughout the balloting on September 18, 1973. She stated that the balloting was properly supervised and that the tally was done by the counting board appointed by the Tribal Council. It was her opinion that

the voter turnout for this election was substantially greater than has been usual in other referendum elections she has witnessed.

d. Delbert Frank, Jr., present Vice-Chairman of the Tribal Council, testified that he has been a member of the Tribal Council in all but three of the past 18 years. Mr. Frank testified concerning his long familiarity with this claim, and that he attended the meetings of August 9 and September 11, 1973, and was of the opinion that the members present at these meetings understood the terms of the proposed settlement as discussed and explained by counsel. He also testified that the referendum method of approval was in accordance with tribal tradition and custom and that, to his knowledge, no pressure was exerted on any member to influence his vote. On cross-examination, Mr. Frank testified concerning his understanding of the meaning of the settlement.

e. Nelson Wallulatum stated that, for the past 15 years, he has been Chief of the Wasco Tribe, one of the three tribal groups included within the plaintiff tribe. Mr. Wallulatum testified concerning his familiarity with this claim and that he attended all the principal meetings of the Tribal Council and the general council meetings at which the proposed settlement was discussed. He further testified that the claims attorneys gave complete and thorough explanations of the compromise and of the reasons for and against it and their recommendations in favor of it; that all questions presented to the claims attorneys were answered fully, and that members of the tribe in attendance at these meetings, in his opinion, understood the settlement; and that although

there were misgivings within the tribe as to the fairness of the original title decision in this claim, most members were willing to make the proposed settlement because they had concluded that it was likely to be the most beneficial settlement that the tribe could obtain under the terms of the Indian Claims Commission Act. He concluded that the proposed settlement generated more debate than any other subject before the Council and was, therefore, fully aired. He was of the further opinion that treaty rights were not being compromised by this settlement.

f. James D. Cornett stated that he has been Superintendent of the Warm Springs Reservation for the past two years and has been employed by the Bureau of Indian Affairs for the past 21 years. He testified that he attended all of the Tribal Council and general council meetings heretofore described. Mr. Cornett testified that he considered the referendum process followed in this settlement well organized and in accordance with tribal custom. It was his opinion that the referendum provided for a representative vote of the entire membership of the tribe. He further testified that the compromise settlement involved an economic decision for the tribe to make at this point and that he had not offered any recommendations at any of the meetings he attended and participated only in the role of an observer. He testified that, to his knowledge, no pressure was exerted on individual tribal members in order to influence their votes and that he was certain that the membership understood the terms and consequences of the settlement.

88. On the basis of the entire record, including the testimony of the witnesses and statements of counsel, the Commission finds that the steps and procedures adopted by the Tribal Council relating to the referendum vote of the tribal membership on the proposed settlement, as outlined in the findings entered herein, were properly conducted in accordance with the constitution and by-laws of the plaintiff tribe and in conformity with tribal custom and practices in matters of great importance to the tribe. The Commission further finds on the basis of the record and the testimony of the witnesses that the referendum vote held on September 18, 1973, and the notices, meetings, and publicity preceding said vote, assured the fullest possible tribal participation in this matter and that the results were therefore representative of the views of the tribe.

89. Considering all of the circumstances, the record of litigation to date, the testimony of the witnesses who appeared before us in this settlement proceeding, and the representation of counsel for the parties, the Commission finds that the members of the plaintiff tribe were fully informed and advised of the proceedings of the Tribal Council respecting the initial stages of the preliminary negotiations for the settlement of this claim conducted between the parties in December 1972 and January and April 1973, and the action of said Council in adopting Resolution 3860 which set forth the terms of the proposed settlement and referring the question of its approval to a referendum of the eligible voters of

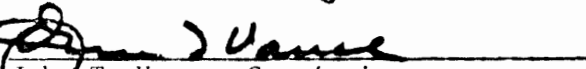
the tribe; that the members were given full notice and ample opportunity to attend four meetings of the general council scheduled for the purpose of explaining and discussing the reasons for said resolution and the proposed settlement; that members present at said meetings were fully and thoroughly informed of the terms of the settlement by counsel and given an opportunity to express their views on the proposed settlement; that all eligible voters on and off the reservation were furnished by mail with the full details of the compromise, copies of pertinent resolutions, the views of counsel, and complete printed explanatory materials prior to the scheduled date of the referendum; that the referendum vote was held on September 18, 1973, and that the notices, meetings, and publicity preceeding said vote assured the full and informed participation of all tribal members including the absentee voters; that the tribal membership has, as a result of the said referendum, voted 289 in favor of the settlement and 104 opposed; and that the Tribal Council of the Confederated Tribes of the Warm Springs Reservation met on September 19, 1973, and adopted Resolution 3902, accepting the proposed settlement and approving the stipulation for entry of final judgment based on and in accord with the acceptance of the proposed settlement by the voting membership of the tribe.


The Commission further 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

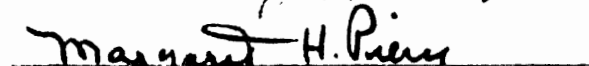
proposed compromise settlement is fair to the plaintiff and has been freely entered into by it and duly approved by its membership in accordance with the tribe's constitution and by the authorized representative of the Secretary of the Interior.

90. The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in favor of the plaintiff in the amount of \$1,225,000 in settlement of all the claims of the plaintiff and all claimed offsets of the defendant in accordance with and subject to the terms and provisions set forth in the stipulation for entry of final judgment of October 5, 1973.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner