

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE COLVILLE)	
RESERVATION as the representative of)	
the JOSEPH BAND OF THE NEZ PERCE TRIBE,)	
)	
CHARLES E. WILLIAMS, JOSEPH REDTHUNDER AND)	
HARRY OWHI, as the representatives of)	
the JOSEPH BAND OF THE NEZ PERCE TRIBE,)	
)	
THE CONFEDERATED TRIBES OF THE COLVILLE)	
RESERVATION, as successor to the claims)	
of the JOSEPH BAND OF THE NEZ PERCE TRIBE,)	
)	
Plaintiffs,)	Docket No. 186
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 31, 1974

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission for approval of a compromise final settlement in Docket 186 and the entry of final judgment therein in the amount of \$725,000.00, in favor of the plaintiffs, with a waiver of review or appeal by either party.

The claims in this suit are asserted on behalf of the Joseph Band of the Nez Perce Tribe, by the Confederated Tribes of the Colville Reservation, and by Charles E. Williams, Joseph Redthunder, and Harry Owhi, as the representatives of the Joseph Band.

Docket 186 presented two claims: one, a claim for the withdrawal by the Executive Order of June 10, 1875, I Kappler 895, of the Wallowa Reservation, which had been created by the Executive Order of June 16,

1873, I Kappler 894; the other, a claim for damages to the Joseph Band arising out of dislocation, imprisonment, and dispersal of the members of the Band, after the Band was deprived of the Wallowa Reservation.

After trial on issues of liability, the Commission issued its opinion and interlocutory order of March 26, 1971, 25 Ind. Cl. Comm. 99, 144. Therein the Commission dismissed the plaintiffs' claim for damages to the Joseph Band arising out of the dislocation, imprisonment, and dispersal of members of the Band as being beyond its jurisdiction. The Commission concluded, however, that the Government was liable for the loss to the Joseph Band of the Wallowa Reservation, and ordered that proceedings take place to determine the value of the interest of the Band in the Wallowa Reservation as of June 10, 1875.

Before those proceedings took place, the parties advised the Commission that the attorneys for the parties had negotiated a settlement subject to approval of the plaintiffs and appropriate officials of the Department of Justice. Accordingly, the Commission ordered that a hearing on the proposed compromise settlement take place on October 31, 1974.

Said hearing having been held, the Commission now makes the following findings of fact:

1. On October 22, 1974, the parties filed (a) a joint motion for entry of a final judgment in this case in the amount of \$725,000.00 in favor of the plaintiffs, for and on behalf of the Joseph Band of the Nez Perce Tribe, and (b) a stipulation for entry of final judgment.

2. The parties also filed eight exhibits, identified as S-1 through S-8, in support of the proposed settlement. These exhibits are hereby received in evidence.

3. On May 16, 1974, counsel for the plaintiffs in Docket 186 submitted a letter to Assistant Attorney General Wallace H. Johnson, offering to compromise and settle the plaintiffs' claims therein for a net final judgment of \$725,000.00 in favor of the plaintiffs, for and on behalf of the Joseph Band, with no review to be sought or appeal taken by either party (Exhibit S-1).

4. By letter dated June 17, 1974, Assistant Attorney General Wallace H. Johnson, on behalf of the Department of Justice, accepted the offer of settlement which had included the waiver of review or appeal by either party, subject to certain conditions, including (a) that the proposed settlement be approved by appropriate tribal resolutions, and (b) that approval of the settlement, as well as the tribal resolutions, be secured from the Secretary of the Interior, or his authorized representative (Exhibit S-2).

5. The terms of the settlement are set forth in the stipulation for entry of final judgment entered into by counsel for the parties and filed with the Commission, which reads as follows:

STIPULATION FOR ENTRY OF FINAL JUDGMENT

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

1. All claims asserted by plaintiffs in Indian Claims Commission Docket No. 186 shall be settled by the entry of a final judgment in the amount of Seven Hundred and Twenty Five Thousand Dollars (\$725,000.00) in favor of the Confederated Tribes of the Colville Reservation for and on behalf of the Joseph Band of the Nez Perce Tribe.

2. Entry of final judgment in said amount shall finally dispose of all rights, claims and demands which plaintiffs have asserted or could have asserted against defendant in this case, and plaintiffs shall be barred thereby from asserting any such rights, claims or demands against defendant in any other or future action. Entry of such final judgment shall also dispose of all claims, demands, payments on the claim, counterclaims, or offsets which the defendant has asserted or could have asserted against plaintiffs under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049) in this case.

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

6. A general meeting of the members of the Confederated Tribes of the Colville Reservation was scheduled for September 7, 1974, at the Nespelem Grade School, Nespelem, Washington. The time, place, and purpose of the meeting were set forth in a notice issued by the Chairman of the Colville Business Council (Exhibit S-5). The Executive Director of the Colville Business Council has certified that a copy of that notice was mailed, on August 23, 1974, postage prepaid, to the last known address of all enrolled adult members of the Confederated Tribes of the Colville Reservation, and that notice of the meeting was also publicized by publication of the notice in the August 1974 issue of the Tribal Tribune and in a special edition of the Tribal Tribune, as well as publication in newspapers of general circulation and announcements on local radio and television stations (Exhibit S-7).

7. The general meeting of the members of the Confederated Tribes of the Colville Reservation was held, as scheduled, on September 7, 1974. Copies of the proposed settlement, the reply of the Department of Justice

thereto, and a written report (Exhibit S-8) prepared by the tribal claims attorneys setting out the history of the claims, the litigation before the Commission, and the terms of the settlement, were distributed to those in attendance. The tribal members were given an opportunity to read the settlement and report, and the report was explained in English and in two local dialects. Following several hours of discussion, during which tribal members were invited to ask questions and to express their views on the proposed settlement, a resolution, accepting the proposed settlement, was adopted by a vote of 219 in favor and 5 against (Exhibit S-3).

8. On that same day, September 7, 1974, after the approval of the proposed settlement by the tribal membership, the Business Council of the Confederated Tribes of the Colville Reservation unanimously adopted a resolution approving the proposed settlement (Exhibit S-4).

9. On the basis of the report of the proceedings of September 7, 1974, submitted by Mr. Michael P. Whitelaw, Acting Superintendent of the Colville Agency, as well as information on the proposed settlement supplied by the attorneys for the plaintiffs, the Department of the Interior approved the proposed settlement by letter of October 11, 1974, addressed to Weissbrodt and Weissbrodt, counsel to plaintiffs in Docket 186, as follows (Exhibit S-6):

You submitted to the Commissioner of Indian Affairs for approval a proposed compromise to settle the claims in Docket No. 186 for a net judgment of \$725,000.00 in favor of the Confederated Tribes of the Colville Reservation for and on behalf of the Joseph Band of the Nez Perce Tribe.

The claims in Docket No. 186 were filed and prosecuted by the Confederated Tribes of the Colville Reservation on behalf of the Joseph Band of the Nez Perce Indians pursuant to Contract No. I-1-42442, dated November 28, 1949, between the Confederated Tribes of the Colville Reservation and Attorneys James E. Curry and I. S. Weissbrodt, with Lyle Keith as Associate Attorney. It was approved on April 13, 1951, for a term of ten years beginning with the date of approval. An amendment to the contract relieving Mr. Curry of any obligations and responsibilities under the contract and adding Attorneys David Cobb and Patrick H. Winston was approved on December 23, 1955. An agreement to amend the contract to add Attorney Abe W. Weissbrodt; to associate Attorney Rolla R. Shwartz (now deceased) with Messrs. Cobb, Weissbrodt and Weissbrodt; and to extend the contract until August 18, 1964, was approved on December 31, 1959. An agreement to add Attorney Mortin Liftin as an additional attorney under the contract, to relieve Attorney David Cobb of further duties and obligations under the contract, and to extend the contract for a period of five years beginning on August 18, 1964, was approved on January 4, 1965. An extension of the contract until August 18, 1974, was approved on October 2, 1969. Another extension of the contract beginning August 19, 1974, to run until August 18, 1979, was approved on October 3, 1974.

You made an offer to the Assistant Attorney General on May 16, 1974, to settle the claims in Docket No. 186 for a net judgment of \$725,000.00 in favor of the Confederated Tribes of the Colville Reservation for and on behalf of the Joseph Band of the Nez Perce Tribe. No review is to be sought and no appeal is to be taken by any of the parties.

Entry of final judgment in Docket No. 186 based on the settlement will dispose of all rights, claims, and demands which have been asserted or could have been asserted against the United States in that case. It will also dispose of all rights, claims, demands or offsets which the United States has asserted or could have asserted against the plaintiffs.

Your offer was accepted by the Assistant Attorney General by letter dated June 17, 1974, with conditions. Two of the conditions were that the proposed settlement be approved by appropriate tribal resolutions and that approval of the settlement as well as the tribal resolutions be obtained from the Secretary of the Interior or his authorized representative.

For the purpose of presenting the proposed settlement for the consideration and vote of the members of the Confederated Tribes of the Colville Reservation, a general meeting was scheduled and held on September 7, 1974, at the Nespelem Grade School, Nespelem, Washington.

The time, place, and purpose of the meeting were set forth in a notice issued by the Chairman of the Colville Business Council. The Executive Director of the Colville Business Council certified that a copy of the notice of the meeting was mailed, on August 23, 1974, postage prepaid, to the last known address of all enrolled adult members of the Confederated Tribes of the Colville Reservation. Also, notice of the meeting was widely publicized by other methods including the publication of the notice in the August 1974 issue of the Tribal Tribune and in a Special Edition of the Tribal Tribune, as well as publication in newspapers of general circulation and announcements on local radio and T.V. stations.

More than 250 persons attended the meeting at the Nespelem Grade School on September 7, 1974. Also, Claims Attorneys Abe W. Weissbrodt and Patrick H. Winston attended the meeting. Mr. Michael P. Whitelaw, Acting Superintendent of the Colville Agency attended the meeting as the representative of the Bureau of Indian Affairs and reported on it.

Copies of the settlement offer of May 16, 1974, and the reply of the Department of Justice of June 17, 1974, were presented at the meeting. Copies of a written report by the Claims Attorneys were distributed at the meeting. It gave the history of the claims, the litigation before the Indian Claims Commission, and the terms of the settlement. The tribal members were given the opportunity to read the report and the report was explained and discussed at the meeting.

A full explanation of the claims and the proposed settlement was made by Claims Attorney Abe W. Weissbrodt. The tribal members were given the opportunity to ask questions. Also the members were given full opportunity to comment and express their views on the proposed settlement. Then, a vote of the members was taken on accepting or rejecting it. It was accepted by a vote of 219 in favor and 5 against.

This vote is shown in the minutes of the meeting signed by the Chairman of the Colville Business Council with an attached copy of a certified resolution adopted by the tribal members at the general meeting.

The proposed settlement was also presented at a meeting of the Business Council of the Confederated Tribes of the Colville Reservation held on September 7, 1974, following the general membership meeting at the Nespelem Grade School, Nespelem, Washington. This meeting was called pursuant to a written notice issued by the Chairman of the Tribe. At the meeting, the members of the Business Council unanimously approved the proposed settlement by a vote of 10 in favor and none against. This vote is shown in a certified copy of the minutes of the meeting signed by the Chairman of the Colville Business Council with an attached copy of a certified resolution adopted by the Business Council at the meeting. The signatures of the tribal officials that were affixed to the resolutions were certified as genuine by a representative of this Bureau.

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

In the light of the information which you have supplied to us, that which has been submitted by our field offices, and that obtained from other sources, we are satisfied that the proposed settlement of Docket No. 186, as set forth in your offering letter of May 16, 1974, is fair and just. The proposed settlement is hereby approved.

10. At a hearing before the Commission held on October 31, 1974, the following witnesses testified regarding the approval of the settlement at the general meeting of the adult members of the Confederated Tribes of the Colville Reservation held on September 7, 1974:

Harvey Moses, a former Chairman of the Business Council
and descendant of members of the Joseph Band

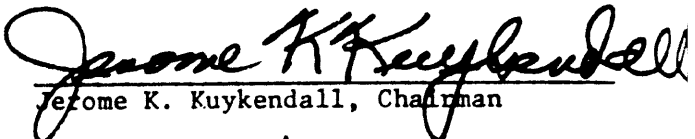
Lucy Covington, Chairman, Claims Committee of the Business
Council

Shirley Palmer, Secretary of the Business Council

The witnesses testified that the proposed settlement and the stipulation for entry of final judgment had been fully and clearly explained at the meeting, and that the tribal members were given the full opportunity to ask questions concerning the settlement and to comment thereon. The witnesses also expressed their opinion that the tribal members understood the settlement and considered the settlement to be fair and equitable.


11. Based on the entire record, including the approvals of the settlement by resolutions of the Confederated Tribes of the Colville Reservation and the Colville Business Council, and by the duly authorized representative of the Secretary of the Interior, the Commission finds that the proposed compromise settlement as set forth in the stipulation for entry of final judgment, filed on October 22, 1974, has been freely approved by the members of the Confederated Tribes of the Colville Reservation and that said proposed compromise settlement is fair and just to both parties and will eliminate additional litigation expenses as well as delay in payment of the final award, and that said stipulation should be approved.

The Commission hereby approves the proposed compromise and settlement and will enter final judgment in Docket 186 in favor of the plaintiffs, for and on behalf of the Joseph Band of the Nez Perce Tribe, in the amount of \$725,000.00, subject to the terms and provisions set forth in the stipulation for entry of final judgment.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner