

## BEFORE THE INDIAN CLAIMS COMMISSION

KLAMATH AND MODOC TRIBE AND	)	
YAHOSKIN BAND OF SNAKE INDIANS,	)	
	)	
Plaintiff,	)	
	)	Docket No. 100-C
v.	)	
	)	Docket No. 100-B-1
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: October 31, 1975

FINDINGS OF FACT ON COMPROMISE SETTLEMENTPreliminary Statement.

This matter is now before the Commission for approval of a compromise settlement of Docket 100-C and entry of a final judgment in the net amount of \$785,000 in favor of plaintiff tribe, with a waiver of review or appeal by both parties.

The claims which are the subject of this compromise settlement include plaintiff's grazing and rights-of-way claims which were formerly asserted in Docket 100-B-1. By order of the Commission issued this date, the grazing and rights-of-way claims have been severed from Docket 100-B-1 and placed in Docket 100-C. The entry of final judgment herein is to have no effect with regard to the remaining claims and issues in Docket 100-B-1, the issues pending in Docket 100-B-2, and other pending matters described more fully in paragraphs 2 and 3 of the stipulation for entry of final judgment filed in this docket. (See finding 11, infra.)

The entry of final judgment in the amount of \$785,000 shall finally dispose of all rights, claims, or demands which plaintiff has asserted or could have asserted against the defendant in Docket 100-C, and all claims, counterclaims, or offsets which defendant has asserted or could have asserted in said docket against the plaintiff under the provisions of Section 2 of the Indian Claims Commission Act, 25 U.S.C. § 70a.

The claims in Docket 100-C arise under section 2 of our act. The original petition of the plaintiff tribe, filed on March 9, 1951, was amended on August 10, 1951, to include, among other things, a claim for a general accounting. By order of the Commission dated January 11, 1955, the alleged causes of action contained in the amended petition were separated into Dockets 100, 100-A, and 100-B. In relation to the matter before us, the January 11, 1955, order assigned to Docket 100-B the accounting claims for the alleged mismanagement of the tribe's funds and properties. A subsequent Commission order dated May 29, 1958, severed the causes of action filed in the August 10, 1951, petition and directed that each cause be filed in separate petitions carrying docket numbers assigned by the order of January 11, 1955.

Accounting reports were filed by the defendant on January 11, 1961, and on January 12, 1970. Plaintiff filed exceptions to the defendant's accounting on July 31, 1970. Defendant's responses to the exceptions and to plaintiff's reply thereto were filed on December 23, 1970, and on January 19, 1971, respectively.

By order of March 1, 1972, the Commission subdivided Docket 100-B into Dockets 100-B-1 and 100-B-2. Docket 100-B-2 involves plaintiff's claims for the alleged mismanagement of its forest resources. Docket 100-B-1, a portion of which as noted above is the subject of this compromise settlement, involves claims for the alleged mismanagement of plaintiff's funds and all other properties (except for claims in Docket 100-B-2).

During the preparation for trial of Docket 100-B-1 and after several pretrial conferences before the Commission, negotiations for the settlement of the claims asserted in that docket were commenced with the consent and agreement of both parties. As a result of these negotiations, a compromise was reached whereby the parties agreed to a final settlement of the grazing claims for \$750,000 and of the rights-of-way claims for \$35,000, or a total settlement of \$785,000. The parties did not agree on the final settlement of two remaining claims in Docket 100-B-1. These two remaining claims, subject of a separate stipulation (see finding 12, infra), are denoted by the parties as the "delayed deposits" claim and the "disalloweds" claim.

A hearing having been held before the Commission in Washington, D. C., on October 23, 1975, on the offer to compromise and settle the grazing and rights-of-way claims originally asserted in Docket 100-B-1, the Commission makes the following findings of fact:

1. Plaintiff, Klamath and Modoc Tribes and Yahooskin Band of Snake Indians, is an American Indian tribe and, as such, has the capacity to

maintain suits consonant with Section 2 of the Indian Claims Commission Act (60 Stat. 1049). Plaintiff's formal tribal organization was ended by the provisions of the so-called Termination Act, enacted by Congress in 1954 (68 Stat. 718, 25 U.S.C. § 564. et seq.). In that act, an exception was effectively made to section 10 of our act permitting plaintiff to continue litigating its claims before the Commission notwithstanding that its tribal organization no longer existed. (See Klamath and Modoc Tribes v. United States, Docket 100, 13 Ind. Cl. Comm. 41, 74-75 (1964).)

2. The Klamath Tribal Executive Committee is plaintiff's authorized governing body with respect to the supervision, prosecution, and resolution of all tribal claims. Subsequent to the passage of the Klamath Termination Act, supra, provisions were made by the Secretary of the Interior for continued supervision of the prosecution of tribal claims, and the above-designated Executive Committee was named by the Secretary of the Interior as the body authorized to act on behalf of the tribe with respect to the future prosecution and resolution of tribal claims.

By resolution of the tribe's General Council dated August 21, 1952, the Tribal Executive Committee was established as the duly authorized representative of the tribe and granted authority to exercise the powers of the General Council as enumerated in the Tribal Constitution and By-Laws, including by implication dealings with the claims attorneys and supervision of the claims litigation. This authority was delegated

pursuant to Article V, Section 11, of the tribal constitution. Confirmation of the authority of the Klamath Tribal Executive Committee to act in the matters respecting these proceedings is contained in the letter of approval of the compromise settlement signed by the Commissioner of Indian Affairs and dated October 21, 1975. (See finding 9, infra.)

3. By letter dated June 20, 1975, plaintiff's attorney of record, Angelo A. Iadarola, submitted to Assistant Attorney General Wallace H. Johnson a proposal offering, inter alia, to compromise and settle the grazing and rights-of-way claims, with the understanding that both parties would move to have these claims severed from Docket 100-B-1 and placed in a new docket, Docket 100-C, so that entry of final judgment could be facilitated, and to stipulate certain basic facts with respect to the two claims that would remain in Docket 100-B-1. The letter states:

Following preliminary discussions we have had with A. Donald Mileur, Esquire, James E. Clubb, Esquire, and Bernard Sisson, Esquire, Department of Justice attorneys with the Indian Claims Commission Section, Lands Division, concerning the possible settlement and stipulation of certain issues in the above-referenced case which involves several accounting claims, we offer to compromise and to stipulate certain claims and/or issues on the following terms and conditions:

(1) The so-called grazing claim is compromised and settled by stipulation for entry of final judgment in the amount of \$750,000.

(2) The so-called rights-of-way claim is compromised and settled by stipulation for entry of final judgment in the total amount of \$35,000.

(3) The amounts compromised and settled in paragraphs 1 and 2 above shall be a final settlement by stipulation for entry of final judgment in the Indian Claims Commission, no review to be sought or appeal to be taken by either party as to these two

claims. These two claims will be severed from Docket 100-B-1 and placed in a new docket or dockets so that a final judgment may be entered and the judgment appropriated for immediate payment to plaintiff. The final judgment in this new docket or dockets, which shall be awarded to the plaintiff Tribe, will total \$785,000.

(4) As to certain disbursements made out of tribal funds, as set forth in the GAO Report dated January 11, 1961, and the GSA Report dated January 12, 1970, a stipulation shall be entered that those disbursements which shall be deemed "disalloweds" (i.e., improper expenditures) totals \$4,677,500. A schedule of the amounts of disalloweds for each category is attached hereto as Attachment A. These disalloweds will be included in a restatement of the accounts in accordance with the provisions set out in paragraph 6 of this letter.

(5) A stipulation will also be entered in the total amount of \$150,000 for the so-called delayed deposits claim. The \$150,000 represents interest earned (but not credited to the tribal accounts) on tribal monies due to the late deposits claim. Attachment B to this letter sets out the amounts which should have been deposited to the credit of the plaintiff Tribe and the year in which such amounts should have been deposited for purposes of the restatement of accounts, as set forth in paragraph 6 of this letter.

(6) The amount of the judgment in Docket 100-B-1 after taking into account the total disalloweds set out in paragraph 4 and the total delayed deposits set out in paragraph 5 shall be ascertained by a restatement of the accounts to the date of judgment after a final decision on the interest issues is rendered in two pending Indian Claims Commission cases now on appeal before the United States Court of Claims: United States v. Mescalero Apache Tribe, et al., Ct. Cl. Docket No. 2-74, 10-74, 12-74; United States v. Fort Peck Indians of the Fort Peck Reservation, Ct. Cl. Docket No. 18-74. It is contemplated that the parties to these two cases may seek review of these cases by the United States Supreme Court.

It is also agreed that if either party believes that the application of the principles enunciated in these two cases is not clear, then either party may apply to the Indian Claims Commission for clarification. If a party disagrees with the Commission's determination as to the application of the rules enunciated in those cases, then either party may take appropriate appeals.

It is also agreed that if the parties disagree as to the method of restatement of the accounts, the restatement issue may also be presented to the Indian Claims Commission by either party for clarification and such party may preserve its right to appeal.

(7) The settlements and stipulations set out in paragraph 1 (the grazing claim in the total amount of \$750,000), in paragraph 2 (the rights-of-way claim in the total amount of \$35,000), in paragraph 4 (the disalloweds claim in the amount of \$4,677,500 subject to restatement), and in paragraph 5 (the delayed deposits claim in the amount of \$150,000 subject to restatement) shall, with the exceptions noted above and the exceptions set out in paragraph 8, infra, finally dispose of all claims and demands which plaintiff has asserted or could have asserted against defendant in this case, and all claims or offsets which defendant has asserted or could have asserted against plaintiff under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049).

(8) The settlements and stipulations set out herein will not affect any issue now pending in Klamath Tribe v. United States, Indian Claims Commission, Docket No. 100-B-2. In addition, plaintiff waives all claims in the claim before the United States Court of Claims, Klamath Tribe, et al. v. United States, Docket No. 389-72, except that it specifically reserves its right to bring the so-called "harvest" claim, which is also set out in Docket 100-B-2 now before the Indian Claims Commission, if the Indian Claims Commission determines that, as to that claim, it lacks jurisdiction to entertain that claim. To the extent that plaintiff can present the so-called harvest claim in the United States Court of Claims if jurisdiction is lacking in the Indian Claims Commission, that right is preserved. In addition, the parties are aware that there is now pending in the United States District Court for the District of Oregon, the case of United States v. United States National Bank of Oregon, Docket No. 74-894, which involves a taking by the United States under its power of eminent domain, of certain real property known as the Klamath Forest. The settlements and stipulations set out herein in no way affect that claim. The settlements and stipulations set out herein will not affect any claims now pending or which may be brought before the United States Court of Claims or other competent judicial body on behalf of plaintiff Tribe accruing from any transaction or event after April 15, 1961, the date of termination of federal supervision over plaintiff Tribe, it being understood that such reservation shall not be construed to waive the right of the United States to raise in the Court of Claims or other court of competent jurisdiction any procedural or substantive defenses to any such claim or claims, including the statute of limitations.

(9) The stipulations herein and the stipulations for entry of final judgment shall not be construed as an admission by any party as to any issue for purposes of any other case.

(10) This offer, in the event that it is acceptable to your Department, shall be subject to the approval of the Klamath Tribe, the Secretary of the Interior or his authorized representative, and the Indian Claims Commission.

(11) This offer shall remain open for 30 days, until July 21, 1975. If not accepted by that date, the offer shall automatically stand withdrawn. If the offer is accepted, we agree to make all reasonable efforts to obtain the approval of the Klamath Tribe, represented by or through its appropriate governing body, and the Secretary of the Interior or his authorized representative. It is further agreed that responsible officials and representative members of the Klamath Tribe shall be present to testify on behalf of the Tribe, if necessary, on the compromise settlement and stipulations before the Indian Claims Commission. In the event of such approval, we will be pleased to cooperate with appropriate representatives of your Department in preparing and submitting the necessary stipulations, motions and other documents necessary to accomplish the settlements and stipulations set out herein.

Respectfully yours,

WILKINSON, CRAGUN & BARKER

/s/

By: Angelo A. Iadarola  
Attorney of Record for the  
Klamath Tribe, Docket No.  
100-B-1

Attachments (A & B) <sup>\*/</sup>

4. By letters dated July 16, 1975, August 1, 1975, and August 15, 1975, plaintiff's attorney of record extended the time during which said offer, as described above in finding 3, would remain open. (See Joint Ex. 4.)

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\*/ These attachments are included in Joint Exhibit No. 1 filed in Docket 100-B-1.



5. By letter dated August 22, 1975, the defendant through Assistant Attorney General Wallace H. Johnson replied to plaintiff's attorney of record, accepting the above-described offer of compromise settlement and stipulation subject to certain conditions as indicated in the letter.

The letter states:

Dear Mr. Iadarola:

Your letter of June 30, 1975 offers to settle and finally dispose of all claims or demands which plaintiff has asserted or could have asserted in Klamath and Modoc Tribes, et al. v. United States, Docket No. 100-B-1, before the Indian Claims Commission. Your letter also offers to settle all claims before the United States Court of Claims in Klamath and Modoc Tribes, et al., v. United States, Docket No. 389-72, with one exception specifically set out. Your offer is accepted on the terms set out in your letter of June 30, 1975, subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolutions of the governing body of the plaintiff tribes.
2. That the approval of the settlement, as well as the resolutions of the tribes, be secured from the Secretary of the Interior, or his authorized representative.
3. That a copy of each of such resolutions and the approval of the terms of the settlement by the Department of the Interior be furnished to this Department.
4. That the judgments entered into pursuant to this settlement shall finally dispose of all claims or demands which the plaintiffs have asserted or could have asserted in Docket No. 100-B-1 before the Indian Claims Commission and Docket No. 389-72 in the United States Court of Claims, with the exception of the so-called "harvest" claim in Docket No. 389-72, as more fully set out in your letter of June 30, 1975.
5. That the United States will waive any and all claims for offsets which have been asserted or could have been asserted against the plaintiff tribes under the provisions of section 2 of the Indian Claims Commission Act up to June 30, 1975.

6. That both the Indian Claims Commission and the trial judge to whom the case is assigned in the Court of Claims shall approve of this settlement and stipulation in its entirety before the first judgment is entered.

The Department of Justice will be pleased to work out with you the terms of the several stipulations and the appropriate motions and orders necessary to carry into effect the offer of settlement subject to the conditions specified herein.

Sincerely,  
/s/  
Wallace H. Johnson  
Assistant Attorney General  
Land and Natural Resources Division

6. The record herein establishes that the Klamath Tribal Executive Committee, plaintiff's authorized governing body with respect to all tribal claims litigation, was kept informed of the foregoing preliminary negotiations concerning the proposed compromise settlement. On September 22, 1975, plaintiff's attorney of record, upon request and approval of the Chairman of the Klamath Tribal Executive Committee, sent notices by "mailgram" (Joint Ex. 6) and letter with return receipt requested (Joint Ex. 7) to all members of the said Executive Committee notifying them of a meeting scheduled for October 1, 1975, for the purpose of considering and voting on the proposed partial settlement of Docket 100-B-1.

7. The meeting of the Klamath Tribal Executive Committee was held as scheduled on October 1, 1975, at Klamath Falls, Oregon. The record, which includes excerpts of the minutes of that meeting (see Joint Ex. 12), establishes that all 10 members of the Executive Committee attended the meeting. These members are Elnathan Davis, Joseph Ball, Dibbon Cook, Irwin Crume, Sylvan Crume, John Green, Morris Jimenez, Donald Schonchin,

Irwin Weiser, and Marie Norris. Also present at the meeting were the claims attorneys for the plaintiff tribe; Mr. John W. Weddell, Tribal Operations Officer, Bureau of Indian Affairs, Portland, Oregon area office; and several members of the tribe. Excerpts of the minutes, certified by the Bureau of Indian Affairs representative, indicate that the claims attorneys presented a full and detailed explanation of all the terms and conditions of the proposed settlement.

Informational packets and a written report prepared by the claims attorneys were distributed to each member of the Executive Committee, to the Bureau of Indian Affairs representative, and all tribal members and guests present at the meeting. The distribution of this material was followed by a discussion and a complete explanation of the nature of all the claims in Docket 100-B-1 and what the proposed settlement and stipulations are intended to accomplish. After open discussions and a question and answer period respecting the terms of the settlement, the Klamath Tribal Executive Committee adopted, by unanimous vote, the following resolution:

#### KLAMATH TRIBAL EXECUTIVE COMMITTEE

#### R E S O L U T I O N

WHEREAS, pursuant to resolution of the Klamath General Council adopted on August 21, 1952 in accordance with the Constitution and By-laws of the Klamath General Council (Art. V, Cl. 11) approved October 12, 1950, the Klamath Tribal Executive Committee is empowered to act for and on behalf of the Klamath Tribe; and

WHEREAS, pursuant to resolution of the Executive Committee adopted August 2, 1961 and approved by the Secretary of the Interior on August 30, 1961, the Klamath Tribal Executive Committee is authorized to represent the Tribe in consultation with the claims attorneys and to approve proposed settlement of any claim; and

WHEREAS, the Klamath Tribe is and has been prosecuting a claim before the Indian Claims Commission identified as Docket No. 100-B-1, and a claim before the United States Court of Claims identified as Docket No. 389-72, which involve accounting claims arising from, among other things, the government's mismanagement of Klamath funds, Klamath grazing and agricultural land, irrigation and claims for rights-of-way conveyed by the government through tribal land for less than their market value, and for interest earned on tribal funds held in local banks pending their delayed deposit in the Treasury; and

WHEREAS, after consideration of the evidence that has been assembled in these claims and the legal precedents applying to them, and after long and detailed negotiations with attorneys for the government, the Tribal Attorneys have recommended a compromise settlement of the Klamath grazing-agriculture-irrigation (hereinafter simply referred to as "grazing claim") and rights-of-way claims in conjunction with a stipulation regarding the Klamath mismanagement of funds claim and delayed deposits claim; and

WHEREAS, at a special and open meeting of the Klamath Tribal Executive Committee, called for the purpose of considering a report both written and oral by Angelo A. Iadarola and Philip A. Nacke of Wilkinson, Cragun & Barker, claims attorneys for the Klamath Tribe, with respect to the settlement of the aforesaid grazing and rights-of-way claims (in conjunction with the aforesaid stipulation), said settlement was fully discussed by the attorneys for the Klamath Tribe and the members of the Klamath Tribal Executive Committee; and

WHEREAS, it was explained that the grazing and rights-of-way claims would be severed from the Docket No. 100-B-1 and placed in a new docket or dockets so that a final judgment could be entered and funds appropriated for immediate payment to the Klamath Tribe; and

WHEREAS, it was further explained that settlement of the grazing claim in the aforesaid manner would result in immediate payment to the Klamath Tribe of \$750,000, and that settlement of the rights-of-way claim would result in immediate payment to the Klamath Tribe of \$35,000; and

WHEREAS, it was also explained that claims similar to those involved in Docket No. 100-B-1 before the Indian Claims Commission are also before the United States Court of Claims, Docket No. 389-72, such claims being presented in the Court of Claims because of a jurisdictional defense the government arguably has which may preclude those claims arising after August 13, 1946, from being prosecuted before the Indian Claims Commission; and

WHEREAS, it was explained that the settlement of the grazing and rights-of-way claims considered and is based upon such claims to the date of termination in 1961, and constitutes a settlement of these claims which are presented before both the Indian Claims Commission, Docket No. 100-B-1 and the United States Court of Claims, Docket No. 389-72; and

WHEREAS, it was further explained that severance and settlement of these two claims would not affect the Klamath Tribe's right to pursue its remaining claims in Docket No. 100-B-1 for mismanagement of tribal funds and delayed deposits, except as agreed to in the stipulation concerning these remaining claims which is the subject of a separate resolution of the Klamath Tribal Executive Committee; nor would it in any way affect the Klamath claims in Docket No. 100-B-2; and

WHEREAS, a full and complete opportunity for discussion and questions from members of the Executive Committee and other interested tribal members was given and a discussion was held with respect to the possible advantages and disadvantages to be realized from further prosecuting these claims as compared to accepting the proposed settlement; and

WHEREAS, a representative of the Bureau of Indian Affairs, Department of the Interior has been present at this meeting of the Klamath Tribal Executive Committee and has observed the discussion and presentation concerning the proposed settlement and the questions and answers thereto; and

WHEREAS, the Klamath Tribal Executive Committee believes that it is fully informed in the premises and that a severance of the grazing and rights-of-way claims from Docket No. 100-B-1, and settlement of these claims for the final amount of \$785,000 is advisable under all the circumstances and that it is a fair and reasonable settlement of said claims.

NOW, THEREFORE, BE IT RESOLVED, that the proposed settlement of the grazing and rights-of-way claims, as outlined above and explained by the claims attorneys for the Tribe, is hereby approved; and

BE IT FURTHER RESOLVED, that the Chairman and Secretary of the Klamath Tribal Executive Committee are hereby authorized to execute on behalf of the Klamath Tribe a formal stipulation for settlement of the grazing and rights-of-way claims to be severed from Docket No. 100-B-1 and placed in a new docket; and

BE IT FURTHER RESOLVED, that the Secretary of the Interior, or his duly authorized representative, the Indian Claims Commission and the United States Court of Claims are hereby requested to approve the stipulation for entry of final judgment in the grazing and rights-of-way claims (which are to be severed from Docket No. 100-B-1 and placed in a new docket) in favor of the Klamath Tribe, plaintiff therein, and against defendant, the United States of America, in the amount of \$785,000.

#### CERTIFICATION

I certify that the foregoing resolution was adopted by the Klamath Executive Committee on the 1st day of October 1975, at a meeting held in Klamath Falls, Oregon, by a vote of [10] FOR and [0] AGAINST, a quorum being present; such action being taken in accordance with the constitution and by-laws of the Klamath Tribe, approved October 12, 1950; the delegated powers of the Klamath Executive Committee thereunder; and the authority contained in the amendment and approval to the Claims Attorney Contract effective August 2, 1961 (Ref. A-61-1158.9a).

/s/ Elnathan Davis, Chairman  
Klamath Tribal Executive Committee

ATTESTS:

/s/ Dibbon Cook, Secretary  
Klamath Tribal Executive Committee

#### AUTHENTICATION OF SIGNATURES

I certify that the foregoing signatures of the Chairman and Secretary of the Klamath Tribal Executive Committee are

genuine, that the resolution was approved by the Executive Committee and certified to in my presence, and that the said meeting occurred in my presence.

/s/ John W. Weddell  
 Tribal Operations Officer  
 Bureau of Indian Affairs  
 Portland Area Office  
 Department of the Interior

8. Following the discussion and approval of the resolution set out in finding 7, supra, a resolution regarding the stipulation dealing with the remaining claims in Docket 100-B-1 (delayed deposits and disalloweds) to be entered in that docket was also read, fully explained, and discussed at the October 1, 1975, meeting. The resolution, which reads as follows, was adopted by the Klamath Tribal Executive Committee by unanimous vote:

KLAMATH TRIBAL EXECUTIVE COMMITTEE

R E S O L U T I O N

WHEREAS, pursuant to resolution of the Klamath General Council adopted on August 21, 1952 in accordance with the Constitution and By-laws of the Klamath General Council (Art. V, Cl. 11) approved October 12, 1950, the Klamath Tribal Executive Committee is empowered to act for and on behalf of the Klamath Tribe; and

WHEREAS, pursuant to resolution of the Executive Committee adopted August 2, 1961 and approved by the Secretary of the Interior on August 30, 1961, the Klamath Tribal Executive Committee is authorized to represent the Tribe in consultation with the claims attorneys and to approve proposed settlement of any claim; and

WHEREAS, the Klamath Tribe is and has been prosecuting a claim before the Indian Claims Commission identified as Docket No. 100-B-1, and a claim before the United States Court of Claims identified as Docket No. 389-72, which involve inter alia accounting claims arising from the government's mismanagement of Klamath funds, Klamath grazing and agricultural lands, irrigation and claims for rights-of-way conveyed by the government

through tribal land for less than their market value, and for interest earned on tribal funds held in local banks pending their delayed deposit in the Treasury; and

WHEREAS, after consideration of the evidence that has been assembled in these claims and the legal precedents applying to them, and after long and detailed negotiations with attorneys for the government, the Tribal Attorneys have recommended that the Tribe approve a stipulation of facts in the claims for mismanagement of funds and for interest earned on delayed deposits, and that in conjunction therewith, the Tribe accept a compromise settlement of the claims relating to grazing-agriculture-irrigation (hereinafter simply referred to as "grazing claim") and rights-of-way; and

WHEREAS, at a special and open meeting of the Klamath Tribal Executive Committee, called for the purpose of considering a report both written and oral by Angelo A. Iadarola, and Philip A. Nacke, of Wilkinson, Cragun & Barker, claims attorneys for the Klamath Tribe with respect to the stipulation regarding the mismanagement of funds claim and delayed deposits claim (in conjunction with the aforesaid settlement of other claims), said stipulation was fully discussed by the attorneys for the Klamath Tribe and the members of the Klamath Tribal Executive Committee; and

WHEREAS, it was explained that the grazing and rights-of-way claims would be severed from Docket No. 100-B-1 and placed in a new docket or dockets so that a final judgment could be entered and appropriated for immediate payment to the Klamath Tribe, this settlement being the subject matter of a separate resolution of the Klamath Tribal Executive Committee; and

WHEREAS, it was further explained that the recommended stipulation regarding the claims based upon mismanagement of funds would consist of an agreement between attorneys for the Tribe and attorneys for the government that for purposes of restatement of the accounts as between the government and the Tribe, \$4,677,500 shall represent the total of the improper expenditures made by the government out of Klamath Tribal funds ("disalloweds"), which amount will be subject to restatement, and that no further proof is required by either party on this issue; and

WHEREAS, it was similarly explained that the recommended stipulation regarding the late deposits claim would consist of an agreement between the attorneys for the Tribe and attorneys for the government that for purposes of restatement of the accounts as between the government and the Tribe, \$150,000



shall represent the total of the interest earned on tribal funds held in local banks pending their delayed deposit in the United States Treasury, which amount also will be subject to restatement, and that no further proof is required by either party on this issue; and

WHEREAS, the attorneys explained that that part of the stipulation which provides that \$4,677,500 and \$150,000 will be subject to restatement means that for purposes of correcting any mismanagement in the expenditure of the funds, as recognized by law, these amounts will be treated as if they were deposited and/or redeposited to the appropriate tribal accounts on the appropriate dates and managed thereafter in accordance with recognized and appropriate legal standards and principles (including the payment of interest thereon, if any); and

WHEREAS, it was further explained that the basis for the determination of interest and the method by which the restatement shall be prepared are issues left unresolved by the present stipulation, the interest issue to be resolved in accordance with the final determination of cases now pending before the United States Court of Claims, and the method of restatement to be resolved by proceedings before the Indian Claims Commission and possible appeal thereafter if the parties disagree as to the method of restatement of the accounts to be used; and

WHEREAS, it was further explained that the stipulation set out herein will not affect any issue in the Klamath claims in Docket No. 100-B-2 now pending before the Indian Claims Commission; and

WHEREAS, it was further explained that by agreeing to the stipulation the government is withdrawing its contention that the jurisdictional defense against claims arising after August 13, 1946 (date of enactment of the Indian Claims Commission Act) applies to mismanagement of Klamath tribal funds for the period 1947 to 1961, and since the parties recognize substantial duplication between the Klamath claims in Docket No. 389-72 before the United States Court of Claims for mismanagement of tribal funds and properties from 1947-1961 and the claims for mismanagement of tribal funds and properties in Docket No. 100-B-1 before the Indian Claims Commission asserted for the same period under the "continuing wrong" doctrine, the present stipulation includes a waiver of all tribal claims in Docket No. 389-72, these claims to be pursued in and included in Docket No. 100-B-1 instead; except that the Tribe specifically

reserves its right to pursue the so-called "Harvest" claim included in Docket No. 100-B-2 in the Court of Claims if the Indian Claims Commission determines, as to that claim, that it lacks jurisdiction to entertain the claim (this claim having already been litigated before the Indian Claims Commission); and

WHEREAS, a full and complete opportunity for discussion and questions from members of the Executive Committee and other interested tribal members was given and a discussion was held with respect to the possible advantages and disadvantages to be realized from accepting the stipulation as compared to rejecting the stipulation and litigating all issues involved; and

WHEREAS, a representative of the Bureau of Indian Affairs, Department of the Interior, has been present at this meeting of the Klamath Tribal Executive Committee and has observed the presentation and discussion concerning the proposed stipulation and the questions and answers thereto; and

WHEREAS, the Klamath Tribal Executive Committee believes that it is fully informed in the premises and that in the continued litigation of Docket No. 100-B-1, a stipulation setting \$4,677,500 as the amount of improper tribal expenditures by the government, or "disalloweds", and \$150,000 as the amount of interest earned or which should have been earned on certain delayed deposits of tribal funds, is advisable under all the circumstances and that it is a fair and reasonable stipulation which will expedite the final determination of the claims which it affects.

NOW, THEREFORE, BE IT RESOLVED, that the proposed stipulation is hereby approved; and

BE IT FURTHER RESOLVED, that the Chairman and the Secretary of the Klamath Tribal Executive Committee are hereby authorized to execute on behalf of the Klamath Tribe a formal stipulation regarding the amounts of improper expenditures of tribal funds and interest earned on tribal monies due to late deposits claimed in Docket No. 100-B-1; and

BE IT FURTHER RESOLVED, that the Secretary of the Interior, or his duly authorized representative, the

Indian Claims Commission, and the United States Court of Claims are hereby requested to approve the above-described stipulation.

CERTIFICATION

I certify that the foregoing resolution was adopted by the Klamath Executive Committee on the 1st day of October 1975, at a meeting held in Klamath Falls, Oregon, by a vote of [10] FOR and [0] AGAINST, a quorum being present; such action being taken in accordance with the constitution and by-laws of the Klamath Tribe, approved October 12, 1950; the delegated powers of the Klamath Tribal Executive Committee thereunder; and the authority contained in the amendment and approval to the Claims Attorney Contract effective August 2, 1961 (Ref. A-61-1158.9a).

/s/ Elnathan Davis, Chairman  
Klamath Tribal Executive Committee

ATTESTS:

/s/ Dibbon Cook, Secretary  
Klamath Tribal Executive Committee

AUTHENTICATION OF SIGNATURES

I certify that the foregoing signatures of the Chairman and Secretary of the Klamath Tribal Executive Committee are genuine, that the resolution was approved by the Executive Committee and certified to in my presence, and that the said meeting occurred in my presence.

/s/ John W. Weddell  
Tribal Operations Officer  
Bureau of Indian Affairs  
Portland Area Office  
Department of the Interior

9. On the basis of information on the merits of the proposed compromise settlement and stipulation supplied to the Commissioner of Indian Affairs by the attorneys for plaintiff tribe, and the Bureau of Indian Affairs representative, the Department of the Interior, by the

following letter dated October 21, 1975, assented to the compromise settlement and stipulation. The letter reads:

Gentlemen:

You have requested our approval of a proposed compromise to settle a claim before the Indian Claims Commission identified as Docket 100-B-1 for a final net judgment of \$785,000 in favor of the Klamath and Modoc Tribe and Yahooskin Band of Snake Indians.

The claims in this case involve an accounting for funds and properties of the Klamath Tribe for the period October 14, 1864, to April 15, 1961, the date that Federal supervision over the Klamath Tribe, its properties and members was terminated.

The subject claims are being prosecuted under the following contracts, extensions and amendments:

Contract of March 12, 1941, between the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians and Ernest L. Wilkinson, was approved on March 29, 1941, for a period of ten years from the date of approval. The contract expired by its own terms on March 28, 1951.

Contract No. I-1-ind. 42642, dated November 2, 1951, between the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians and Ernest L. Wilkinson, was approved on March 25, 1952, for a period of five years from the date of approval.

Contract 14-20-650 No. 530 dated April 8, 1957, an extension of the original contract between the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians and Ernest L. Wilkinson, was approved on November 22, 1957, for a period of five years beginning March 25, 1957. The contract was amended and extended on April 15, 1958, for a period ending March 24, 1967, which amendment was approved on June 6, 1958. It was further amended on May 15, 1961 (approved June 19, 1961); on August 2, 1961 (approved August 30, 1961), and on August 6, 1974 (approved October 9, 1974).

By agreement dated May 12, 1961, and May 23, 1961, Earnest [sic] L. Wilkinson assigned his interest in the above-mentioned contract to Wilkinson, Cragun & Barker, which assignment was approved by the tribe by resolution dated May 10, 1961.

The contract was extended for additional periods of two years each as follows: from March 15, 1967-March 24, 1969 (approved December 23, 1966); from March 25, 1969-March 24, 1971 (approved March 26, 1969); from March 25, 1971-March 24, 1973 (approved March 24, 1971); from March 25, 1973-March 24, 1975 (approved January 26, 1973); and from March 25, 1975-March 24, 1977 (approved April 3, 1975).

The contract between the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians and Wilkinson, Cragun and Barker is still in full force and effect.

On June 20, 1975, your firm made an offer to the Assistant Attorney General by letter to settle the Klamath claims in Indian Claims Commission Docket 100-B-1, by an entry of final judgment as to a portion of its claim in favor of the Klamaths in the amount of \$785,000. This portion of the settlement is to be severed into a separate docket (Docket 100-C) so that entry of final judgment can be made. Other portions of the claim were stipulated since they could not be finally settled because both your firm and the Federal Government disagree as to the pending law concerning what is called the "restatement of accounts." Your offer of settlement was accepted by the Assistant Attorney General on August 22, 1975, subject to certain conditions. Two of the conditions were that the proposed compromise settlement, as well as the resolution of the tribe, be approved by the Secretary of the Interior or his authorized representative.

The proposed compromise settlement, the Stipulation for Entry of Final Judgment and a Stipulation setting out the settlement of the grazing and rights-of-way claims in the sum of \$785,000 and stipulating the disalloweds claim for \$4,677,500 and the delayed deposits claim for \$150,000 were submitted to the Klamath Tribal Executive Committee at a meeting specially called and convened for that purpose of October 1, 1975. Notice of the meeting was sent out by your law firm at the request of Chairman Elanthan [sic] Davis of the Klamath Tribal Executive Committee. The notice was sent by mailgram and by mail, return receipt requested, to each member of the tribal executive committee.

In attendance at the meeting were Attorneys Angelo A. Iadarola and Phillip [sic] A. Nacke of your firm, all members of the Klamath Tribal Executive Committee (representing all factions within the Klamath Tribe) as well as Tribal Operations Officer John W. Weddell of the Bureau's Portland Area Office. Prior to the meeting a written report to the tribe dated October 1, 1975, was distributed to the members of the tribal executive

committee. After a complete reading of the written report and a full discussion concerning the advantages and disadvantages of accepting the settlement and stipulation now rather than resolving issues by litigation, a resolution regarding the "Stipulation for Entry of Final Judgment" in the sum of \$785,000 was read and fully explained. The resolution was adopted un-animously by a vote of ten to nothing. The resolution authorized the Chairman and the Secretary of the tribal executive committee to execute the "Stipulation for Entry of Final Judgment" on behalf of the Klamath Tribe. The Resolution was signed by the Chairman and Secretary of the tribal executive committee. Tribal Operations Officer John W. Weddell has certified the signatures to be genuine. The resolution is hereby approved.

Federal supervision over the affairs of the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians and the tribal membership was terminated on April 15, 1961, pursuant to the Act of August 13, 1954 (68 Stat. 718). The Klamath Tribal Executive Committee is fully empowered by the Tribal General Council to approve proposed claims settlements involving the Klamath Indians after termination. We note, however, that a meeting was not held to obtain the views of the tribal members concerning the proposed compromise settlement. We understand that the Executive Committee, in view of the authority given it by the general membership of the Klamath Tribe, concluded it was unnecessary to obtain the specific concurrence of the general membership in the Committee's approval of the settlement.

In the light of the information on file in this office and that obtained from other sources, we are satisfied, that the proposed settlement of Docket 100-B-1 as set forth in the offer and the proposed Stipulation for Settlement and Entry of Final Judgment have been adequately presented to the Klamath Tribal Executive Committee and that the acceptance of the settlement is a proper action taken in behalf of the tribe. Because the compromise offer was not considered in a general meeting of Klamath Indians, we are unable to make our customary conclusions about a general tribal membership's understanding and acceptance of a proposed compromise settlement of its claim. Nevertheless, as our information indicates that the proposed settlement is fair and just, and as we have no reason to believe the Executive Committee does not adequately and accurately represent the views of the Klamath Indians, the settlement is hereby approved.

Sincerely yours,  
/s/  
Morris Thompson  
Commissioner of Indian Affairs

10. On October 22, 1975, the parties herein filed with the Commission a "Joint Motion to Sever Claims" in Docket 100-B-1. That motion, reads as follows:

JOINT MOTION TO SEVER CLAIMS

Come now the parties in the above-entitled case, by their attorneys of record, and move the Commission to sever the so-called "grazing" and "rights-of-way" claims in Docket No. 100-B-1 into a separate docket designated Docket No. 100-C.

In support of this motion, the parties respectfully submit as follows:

1. On August 22, 1975, attorneys for the parties entered into a partial settlement of Docket No. 100-B-1 whereby it was agreed to compromise and finally settle the grazing and rights-of-way claims.

2. The parties did not agree on final settlement of the remaining claims in Docket No. 100-B-1 at that time. However, they did agree to a Stipulation of facts involved in the remaining claims. Therefore, a final judgment of all claims in Docket 100-B-1 cannot be concluded at this time. The parties have agreed that the partial settlement and Stipulations are conditioned upon plaintiff's right to obtain an immediate final judgment on the settled amount (\$785,000) in order that this amount may be finally approved and submitted as soon as practicable to Congress for appropriation.

3. On October 1, 1975, the Klamath Tribal Executive Committee approved the partial settlement and Stipulation by appropriate resolutions and authorized their Chairman and Secretary to execute a Stipulation for Entry of Final Judgment in the grazing and rights-of-way claims which it was understood would be severed from Docket No. 100-B-1 and placed in a new Docket No. 100-C in order to have the Commission enter a Final Judgment as to this settlement in the amount of \$785,000.

4. The Stipulation for Entry of Final Judgment on the grazing and rights-of-way claims entered into by the parties provides as follows:

"This settlement shall not affect in any way the remaining claims involved in Docket No. 100-B-1 before the Indian Claims Commission. In

particular, this settlement shall not affect in any way the claims involving mismanagement of tribal funds (i.e., improper expenditures of [sic] 'disalloweds') and interest earned (but not credited to tribal accounts) on tribal monies deposited in local banks pending late deposit in the Federal Treasury ('delayed deposits'). It is understood that these claims, remaining in Docket 100-B-1, are the subject of a separate stipulation between the parties."

5. Since the parties have agreed to settle part of the claims in Docket No. 100-B-1, while continuing to litigate the other claims therein, the Commission should allow a severance of the settled claims.

WHEREFORE, the parties respectfully move that the Commission sever the grazing and rights-of-way claims from Docket No. 100-B-1 and place them in a new docket, designated as Docket No. 100-C.

Respectfully submitted,

/s/ Walter Kiechel, Jr.  
Acting Assistant Attorney General

/s/ A. Donald Mileur  
Attorney for Defendant

/s/ James E. Clubb  
Attorney for Defendant

/s/ Angelo A. Iadarola  
Attorney of Record for Plaintiff  
Klamath Tribe of Indians

11. Upon conclusion of the preliminary proceeding discussed above, counsel for the parties jointly prepared and executed a "Stipulation for Entry of Final Judgment" (incorporated as part of a joint motion for entry of final judgment) in Docket 100-C. The stipulation which reads as follows was filed with the Commission on October 22, 1975:



STIPULATION FOR ENTRY OF FINAL JUDGMENT

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

1. All claims asserted in Indian Claims Commission Docket No. 100-C, which includes the Klamath grazing and rights-of-way claims formerly included in Docket No. 100-B-1 but which are now severed from that Docket, shall be settled by entry of final judgment in the Indian Claims Commission in the amount of \$785,000, of which \$750,000 is in settlement of the grazing claim and \$35,000 is in settlement of the rights-of-way claim.

2. This settlement shall not affect in any way the remaining claims involved in Docket No. 100-B-1 before the Indian Claims Commission. In particular, this settlement shall not affect in any way the claims involving mismanagement of tribal funds (i.e., improper expenditures or "disalloweds") and interest earned (but not credited to tribal accounts) on tribal monies deposited in local banks pending late deposit in the Federal Treasury ("delayed deposits"). It is understood that these claims, remaining in Docket 100-B-1, are the subject of a separate stipulation between the parties. It is further understood that the claims settled herein, Docket No. 100-C, to the extent they are included or could have been included in United States Court of Claims Docket No. 389-72 are also settled.

3. This settlement shall not affect in any way any issue now pending in Klamath Tribe v. United States, Indian Claims Commission, Docket No. 100-B-2, the remaining issues in Indian Claims Commission, Docket No. 100-B-1, a pending lawsuit in the United States District Court for the District of Oregon, United States v. United States National Bank of Oregon, Docket No. 74-894, or any claims now pending or which may be brought before the United States Court of Claims or other competent judicial body on behalf of plaintiff Tribe accruing from any transaction or event after April 15, 1961, the date of termination of federal supervision over plaintiff Tribe, it being understood that such reservation shall not be construed to waive the right of the United States to raise in the United States Court of Claims or other court of competent jurisdiction any procedural or substantive defenses to any such claim or claims, including the statute of limitations.

4. The final judgment shall be in favor of the Klamath Tribe, and against the United States of America, defendant, no review to be sought or appeal to be taken by either party.

5. With the exception of the claims not affected by this settlement listed in paragraphs 2 and 3 supra, entry of final judgment in said amount of \$785,000 shall finally dispose of all rights, claims, or demands which plaintiff has asserted or could have asserted against the defendant in this case, and all claims, counter claims, or offsets which defendant has asserted or could have asserted against plaintiff under the provisions of section 2 of the Indian Claims Commission Act (60 Stat. 1049).

6. The stipulation for entry of final judgment, set out herein, shall not be construed as an admission of any party as to any issue for purposes of precedent in any other case or otherwise.

Respectfully submitted,

/s/ Walter Kiechel, Jr.  
Acting Assistant Attorney General

/s/ A. Donald Milleur  
Attorney for Defendant

/s/ James E. Clubb  
Attorney for Defendant

/s/ Angelo A. Iadarola  
Attorney of Record for Plaintiff  
Klamath Tribe of Indians

Approved and Joined in by:

KLAMATH TRIBE OF INDIANS

/s/ Elnathan Davis, Chairman  
Klamath Tribal Executive Committee

/s/ Dibbon Cook, Secretary  
Klamath Tribal Executive Committee

12. The stipulation in Docket No. 100-B-1 was incorporated as part

of a joint motion for approval of stipulation filed by the parties on

October 22, 1975. The stipulation reads:

STIPULATION

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

1. The so-called grazing and rights-of-way claims in Indian Claims Commission Docket No. 100-B-1 shall be severed from that Docket and placed in a new Docket, Docket No. 100-C, so that a final judgment by way of compromise and settlement of the said two claims may be entered for plaintiff in the amount of \$785,000.
2. As to certain disbursements made out of tribal funds, as set forth in the GAO Report dated January 11, 1961, and the GSA Report dated January 12, 1970, those disbursements which shall be deemed "disalloweds" (i.e., improper expenditures) totals \$4,677,500. These disalloweds will be included in a restatement of the accounts in accordance with the provisions set forth in paragraph 4 hereof.
3. The total amount of the so-called delayed deposits claim shall be \$150,000, representing interest earned (but not credited to tribal accounts) on tribal monies deposited in local banks pending late deposit in the Federal Treasury. This amount will also be included in the restatement of accounts in accordance with the provisions of paragraph 4 hereof.
4. The amount of the final judgment in Docket No. 100-B-1 after taking into account the total disalloweds set out in paragraph 2 and the total delayed deposits set out in paragraph 3 shall be ascertained by a restatement of the accounts to the date of judgment after a final decision on the interest issues is rendered in two pending Indian Claims Commission cases now on appeal before the United States Court of Claims: United States v. Mescalero Apache Tribe, et al., Ct. Cl. Docket Nos. 2-74, 10-74, 12-74; United States v. Fort Peck Indians of the Fort Peck Reservation, Ct. Cl. Docket No. 18-74. It is contemplated that the parties to these two cases may seek review by the United States Supreme Court. It is also agreed that if either party believes that the application of the principles finally enunciated in these two cases is not clear, then either party may apply to the Indian Claims Commission for clarification. If a party disagrees with the Commission's determination as to the application of the rules so enunciated in those cases, then either party may take appropriate appeals.

It is also agreed that if the parties disagree as to the method of restatement of the accounts, the restatement issue may be presented to the Indian Claims Commission by either party for clarification with right in either party to appeal.

5. The amount of the final judgments as set out in paragraphs 1-4 herein shall finally dispose of all rights, claims, or demands which plaintiff has asserted or could have asserted against the defendant in Docket 100-B-1, and all claims, counter claims, or offsets which defendant has asserted or could have asserted against plaintiff under the provisions of section 2 of the Indian Claims Commission Act (60 Stat. 1049).

6. Plaintiff waives all claims now pending in the proceedings before the United States Court of Claims, Klamath Tribe, et al. v. United States, Docket No. 389-72, except that claim generally referred to as the "Harvest" claim -- this claim having been litigated before the Indian Claims Commission but which claim is or may be challenged by the government on jurisdictional grounds (a post-1946 claim over which, the government contends the Indian Claims Commission lacks jurisdiction). If the Indian Claims Commission should determine in Docket No. 100-B-2 that it lacks jurisdiction to entertain the so-called "Harvest" claim which is pending both before the Commission in that Docket and before the United States Court of Claims in Docket No. 389-72, plaintiff may pursue that claim in Docket No. 389-72.

7. The settlements and stipulations set out herein will not affect any issue now pending in Klamath Tribe v. United States, Indian Claims Commission, Docket No. 100-B-2.

8. The parties are aware that there is now pending a claim entitled United States v. United States National Bank of Oregon, Docket No. 74-894, before the United States District Court for the District of Oregon, which involves a taking by the United States under its power of eminent domain, of certain real property known as the Klamath Forest. The settlements and stipulations set out herein in no way affect that claim.

9. The stipulations set out herein will not affect any claims now pending or which may be brought before the United States Court of Claims or other competent judicial body on behalf of plaintiff Tribe accruing from any transaction or event after April 15, 1961, the date of termination of federal supervision over plaintiff Tribe, it being understood that such reservation shall not be construed to waive the right of the United States

to raise in the United States Court of Claims or other court of competent jurisdiction any procedural or substantive defenses to any such claim or claims, including the statute of limitations.

10. The stipulations set out herein shall not be construed as an admission of any party as to any issue for purposes of precedent in any other case or otherwise.

Respectfully submitted,

/s/ Walter Kiechel, Jr.  
Acting Assistant Attorney General

/s/ A. Donald Mileur  
Attorney for Defendant

/s/ James E. Clubb  
Attorney for Defendant

/s/ Angelo A. Iadarola  
Attorney of Record for Plaintiff  
Klamath Tribe of Indians

Approved and Joined in by:

KLAMATH TRIBE OF INDIANS

/s/ Elnathan Davis, Chairman  
Klamath Tribal Executive Committee

/s/ Dibbon Cook, Secretary  
Klamath Tribal Executive Committee

13. On October 22, 1975, the parties hereto filed in Docket No. 389-72 in the United States Court of Claims a "Joint Motion for Approval of that Portion of Settlement and Stipulation Concerning Certain of Plaintiff's Claims Before the Indian Claims Commission Affecting Court of Claims Docket No. 389-72" and certain accompanying documents as set forth in said motion. That motion reads:

JOINT MOTION FOR APPROVAL OF THAT  
PORTION OF SETTLEMENT AND  
STIPULATION CONCERNING CERTAIN OF  
PLAINTIFF'S CLAIMS BEFORE THE  
INDIAN CLAIMS COMMISSION  
AFFECTING COURT OF CLAIMS  
DOCKET NO. 389-72

Come now the parties in the above-entitled case, by their attorneys of record, and move the Court for approval of that portion of the settlement and Stipulation concerning certain of plaintiff's claims before the Indian Claims Commission affecting Court of Claims Docket No. 389-72 pursuant to:

1. Stipulation that disbursements out of Tribal Funds which shall be deemed "disalloweds" (i.e., improper expenditures) total \$4,677,500, and the total amount of the so-called "delayed deposits" claim shall be \$150,000, both amounts to be subject to restatement of accounts, and that all claims in Docket No. 389-72 before the United States Court of Claims shall be waived, except that claim generally referred to as the "Harvest" claim; and Stipulation for Entry of Final Judgment for grazing and rights-of-way claims in favor of the Klamath Tribe in the amount of \$785,000. The compromise settlement and Stipulation were submitted to the defendant by a letter dated June 20, 1975, and accepted by letter dated August 22, 1975, subject to the conditions that the proposed compromise settlement and Stipulation be approved by the governing body of the Klamath Tribe; that the Secretary of the Interior, or his authorized representative, approve same; that a copy of the tribal resolutions and Department of the Interior approval be furnished to the Department of Justice; that the plaintiff Tribe enter into a Stipulation for Entry of Final Judgment of the grazing and rights-of-way claims which were to be severed from Indian Claims Commission Docket No. 100-B-1 and placed in a new docket and into a Stipulation regarding those claims remaining in Docket No. 100-B-1 not finally compromised in the proposed settlement and in certain claims before the United States Court of Claims in Docket No. 389-72; and that both the Indian Claims Commission and the Trial Judge to whom the case is assigned at the Court of Claims shall approve the settlement and Stipulation in its entirety before the first judgment is entered.

2. The resolution of the Klamath Tribal Executive Committee, the authorized governing body of the Klamath Tribe, adopted at a meeting held on October 1, 1975, approving the proposed Stipulation and authorizing their Chairman and Secretary to sign the aforementioned Stipulation on behalf of the Klamath Tribe and file same with the Indian Claims Commission.

3. The resolution of the Klamath Tribal Executive Committee, adopted at a meeting held on October 1, 1975, approving the proposed settlement of the grazing and rights-of-way claims and authorizing their Chairman and Secretary to sign the Stipulation for Entry of Final Judgment therein and file the same with the Indian Claims Commission.

4. A letter from the authorized representative of the Secretary of the Interior approving the proposed settlement and Stipulation.

In support of said motion, the parties offer the following joint exhibits, together with confirming evidence of their authority:

1. Letter of Offer to Compromise and to Stipulate certain claims and/or issues, to Assistant Attorney General Wallace H. Johnson from Angelo A. Iadarola, dated June 20, 1975.
2. Letter to Assistant Attorney General Wallace H. Johnson from Angelo A. Iadarola, dated July 16, 1975, extending date to accept Offer to August 5, 1975.
3. Letter to Assistant Attorney General Wallace H. Johnson from Angelo A. Iadarola, dated August 1, 1975, extending date to accept Offer to August 15, 1975.
4. Letter to Assistant Attorney General Wallace H. Johnson from Angelo A. Iadarola, dated August 15, 1975, extending date to accept Offer to August 22, 1975.
5. Letter from Assistant Attorney General Wallace H. Johnson to Wilkinson, Cragun & Barker (Attention: Angelo A. Iadarola), dated August 22, 1975, accepting Offer to Compromise.
6. Mailgram, dated September 22, 1975, from Angelo A. Iadarola, to each member of the Klamath Tribal Executive Committee scheduling a special meeting of said Committee for October 1, 1975.
7. Memorandum of September 22, 1975, to all members of the Klamath Tribal Executive Committee from Angelo A. Iadarola scheduling a special meeting of said Committee for October 1, 1975.

8. Resolution of Klamath Tribal Executive Committee, adopted October 1, 1975, approving settlement of grazing and rights-of-way claims in total amount of \$785,000.
9. Stipulation for Entry of Final Judgment for grazing and rights-of-way claims in total amount of \$785,000.
10. Resolution of Klamath Tribal Executive Committee, adopted October 1, 1975, approving the stipulations for the disalloweds claim for \$4,677,500 and the delayed deposits claim for \$150,000, both subject to restatement.
11. Stipulation setting out the settlement of the grazing and rights-of-way claims in the total amount of \$785,000 and stipulating the disalloweds claims for \$4,677,500 and the delayed deposits claim for \$150,000, the latter two amounts being subject to restatement.
12. Excerpts of Minutes of a special meeting of the Klamath Tribal Executive Committee of October 1, 1975.
13. Letter from authorized representative of the Secretary of the Interior approving the settlement.

WHEREFORE, the parties respectfully move the Court to enter an Order approving that portion of the settlement and Stipulation concerning certain of plaintiff's claims before the Indian Claims Commission affecting Court of Claims Docket No. 389-72.

Respectfully submitted,

/s/ Walter Kiechel, Jr.  
Acting Assistant Attorney General

/s/ A. Donald Mileur  
Attorney for Defendant

/s/ James E. Clubb  
Attorney for Defendant

/s/ Angelo A. Iadarola  
Attorney of Record for Plaintiff  
Klamath Tribe of Indians



Subsequent thereto, on October 22, 1975, Trial Judge Louis Spector, to whom Docket No. 389-72 is assigned, issued a memorandum order granting said motion. The memorandum order reads:

IN THE UNITED STATES COURT OF CLAIMS  
Trial Division

No. 389-72

(Filed: October 22, 1975)

KLAMATH AND MODOC TRIBES AND YAHOOSKIN  
BAND OF SNAKE INDIANS, ET AL

v.

THE UNITED STATES

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ORDER ON JOINT MOTION FOR APPROVAL BY  
TRIAL JUDGE OF THAT PORTION OF SETTLE-  
MENT AND STIPULATION CONCERNING CERTAIN  
OF PLAINTIFF'S CLAIMS BEFORE THE INDIAN  
CLAIMS COMMISSION AFFECTING COURT OF  
CLAIMS DOCKET NO. 389-72

On the parties' joint motion of October 22, 1975, requesting dismissal of those issues described in said motion on the grounds that they duplicate issues pending before the Indian Claims Commission which have now been settled, said joint motion is hereby allowed.

/s/

Louis Spector  
Trial Judge

14. A hearing on the proposed compromise settlement was held before the Commission on October 23, 1975, in the main courtroom of the United States Court of Claims in Washington, D. C. Appearing to testify on behalf of plaintiff tribe were Mr. Elnathan Davis, Chairman of the Klamath Tribal Executive Committee, Mr. Joseph Ball, Vice-Chairman of said Committee, and Mr. John Green, a member of said Committee. The Commission

also heard the testimony of Mr. John W. Weddell, Tribal Operations Officer, Portland, Oregon Area Office, Bureau of Indian Affairs, as well as statements of Mr. Angelo A. Iadarola, attorney of record for the plaintiff tribe.

Mr. Davis first testified as to the jurisdiction of the Klamath Tribal Executive Committee to supervise tribal claims, contract with claims attorneys and other experts, and to consider and approve settlements of tribal claims. Mr. Davis also testified to the effect that the Executive Committee members were kept fully informed at all times by the claims counsel of the proceedings respecting every phase of the proposed settlement. He concluded his testimony with a statement indicating that all members of the tribe participating in the settlement negotiations and those present at the October 1, 1975, meeting of the Executive Committee fully understood the terms of the proposed settlement and the proceedings regarding its approval. Mr. Ball and Mr. Green testified on the same matters regarding these proceedings and also concluded their testimony with a statement indicating that they as well as all members of the Executive Committee fully understood the terms of the proposed settlement and related stipulations. All three tribal witnesses identified and testified as to the accuracy of pertinent documents relating to the settlement which documents were subsequently introduced in evidence by counsel.

Mr. John W. Weddell, BIA representative, testified first as to his functions vis-a-vis the plaintiff tribe indicating that part of his administration functions includes supervision of litigation funds,


and approval of attorney contracts. He also testified as to his knowledge of the preliminary proceedings regarding the settlement herein and the fact that he was an official observer to the October 1, 1975, meeting for the purpose of seeing that the proposed settlement was well-explained to the Klamath Tribal Executive Committee. Mr. Weddell also testified that he made a report to the Commissioner of Indian Affairs regarding the negotiations. He concluded his testimony with a statement indicating that the plaintiff tribe fully understood the terms of the proposed settlement and the related stipulations.

14. On the basis of the entire record, including testimony presented at the hearing of October 23, 1975, the Commission finds that the steps and procedures adopted by the Klamath Tribal Executive Committee relating to the consideration and approval of the compromise settlement herein, as outlined in the foregoing findings, were properly conducted and in conformity with the authority and power vested in that Committee. The Commission further finds that the terms of the settlement and stipulations were fully and fairly explained to the said authorized representatives of the plaintiff tribe and that they were sufficiently informed to make an intelligent choice on the proposed settlement and stipulation and that they did make such a choice in approving said compromise settlement and stipulation.

16. On the basis of the entire record in these cases, the testimony of the witnesses, the representation of counsel, and all other pertinent factors before us, the Commission finds that the proposed compromise settlement in Docket 100-C, and the stipulation in Docket 100-B-1 are fair to the plaintiff and have been freely entered into by it and duly approved

by its governing body respecting tribal claims (Klamath Tribal Executive Committee) and by the authorized representative of the Secretary of the Interior in Indian matters, the Commissioner of Indian Affairs.

The Commission hereby approves the proposed compromise and settlement in Docket 100-C, and will enter a final judgment in favor of the plaintiff in the amount of \$785,000 in settlement of the plaintiff's grazing and rights-of-way claims 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 October 27, 1975. The Commission also approves the stipulation in Docket 100-B-1, and will issue an order to that effect.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret A. Pierce, Commissioner

  
Brantley Blue, Commissioner