

BEFORE THE INDIAN CLAIMS COMMISSION

| | | |
|--|---|------------------|
| THE CONFEDERATED TRIBES OF THE GOSHUTE |) | Docket No. 326-B |
| RESERVATION SUING ON ITS OWN BEHALF |) | |
| AND ON BEHALF OF THE GOSHUTE TRIBE, |) | |
| |) | |
| GOSHUTE TRIBE OR IDENTIFIABLE GROUP, |) | Docket No. 326-J |
| REPRESENTED BY THE CONFEDERATED |) | (Consolidated) |
| TRIBES OF THE GOSHUTE RESERVATION, |) | |
| |) | |
| Plaintiffs, |) | |
| |) | |
| v. |) | |
| |) | |
| THE UNITED STATES OF AMERICA, |) | |
| |) | |
| Defendant. |) | |

Decided: November 5, 1975

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission on a Joint Motion For Entry of Final Judgment under the above-captioned consolidated dockets in the total amount of \$7,300,000. A hearing having been held before the Commission on November 4, 1975, on the proposed compromise settlement, the Commission makes the following findings of fact:

1. The Commission has previously determined that the Confederated Tribes of the Goshute Reservation have the right to maintain this suit for and on behalf of the members and descendants of members of the aboriginal Goshute Tribe or Identifiable Group. See Order accompanying findings of fact and opinion at 11 Ind. Cl. Comm. 387 (1962).

2. The claims herein were originally filed on August 10, 1951, as part of the petition under Docket 326. One claim sought an

accounting by the United States for funds of the Goshute Indians held by the United States for their benefit. The second sought additional compensation for the taking of lands previously held by the Goshute under aboriginal title until such title was extinguished without adequate compensation and damages for minerals removed from those lands prior to extinguishment of Indian title. Ultimately, the accounting claim was denominated Docket 326-B and the land claim Docket 326-J.

3. With respect to the land claim, this Commission, on October 16, 1962, found that the Goshute Tribe or Identifiable Group had established aboriginal title to an area of approximately 5,952,000 acres located in the States of Nevada and Utah (11 Ind. Cl. Comm. 387, 413 (1962)). The Commission subsequently found that Indian title had been extinguished as of January 1, 1875, and that the plaintiffs were entitled to compensation of \$5,980,122 under Clause 4, Section 2 of the Indian Claims Commission Act for extinguishment of aboriginal title and \$1,273,000 for damages under Clause 5, Section 2 of the Act for ores mined from the Goshute lands prior to January 1, 1875, making a total award of \$7,253,122, less credits for any payments or offsets (31 Ind. Cl. Comm. 225, rehearing denied, 32 Ind. Cl. Comm. 230 (1973)). The Court of Claims affirmed the Commission's decision on March 19, 1975. See 206 Ct. Cl. 401 (1975). In the offset phase of Docket 326-J, on July 18, 1973, the defendant filed its amended answer alleging that it should be entitled to deductions from any judgment

for payments made by the United States, i.e., offsets. No trial on offsets has ever been held.

In the accounting case, Docket 326-B, wherein the Goshute sought to charge the United States for its failure as a trustee to account properly and to invest properly the funds of the Goshute in its possession and custody, there has been no trial.

4. While preparing for trial on the offsets issue in Docket 326-J and the accounting issues involved in Docket 326-B, the parties also negotiated the possible settlement of these claims. As a result of these negotiations, a compromise was finally reached by the parties agreeing to consolidate Dockets 326-B and 326-J for the purpose of settling the outstanding claims in both of these dockets for a net final judgment of \$7,300,000.

5. By letter dated July 16, 1975, to the Honorable Wallace H. Johnson, then Assistant Attorney General of the United States, plaintiffs, through counsel, offered to compromise and settle the claims in Docket 326-B and 326-J in one consolidated docket. The letter reads:

On August 9, 1973, the Indian Claims Commission rendered a decision in Docket No. 326-J holding that the plaintiff is entitled to recover the amount of \$7,253,122, less allowable offsets. The case had been fully tried on the issues of liability and valuation.

Following the decision of the Commission in No. 326-J, the defendant appealed certain of the issues to the Court of Claims, and decision on that appeal was rendered in favor of the Plaintiff Group on March 19, 1975. See 512 F.2d 1378 (1975).

The claims asserted in Docket 326-B have not been tried. This is a general accounting claim. However, the

issues and evidence bearing thereon have been the subject of extensive investigation by attorneys and accountants for both parties.

Following the August 9, 1973 interlocutory decision on liability in Docket 326-J, the defendant amended its answer to assert offsets in the amount of \$232,421.00.

Following the decision of the Court of Claims in Docket 326-J, government counsel and representatives of this firm have carried on discussions relative to terminating all of the claims in both of these dockets at this stage, by compromising offsets and the claims asserted in the general accounting claim. It has been proposed that this compromise agreement would include mutual waiver of the right to appeal or otherwise seek review of the Commission's decision in Docket No. 326-J as a part of the compromise agreement and that Counsel for plaintiff would file a motion to consolidate the two dockets and request the entry of a final judgment in the amount of \$7,300,000. This amount includes any and all offsets assertable by the United States through June 30, 1951, which is the date of the report of the General Accounting Office filed in this case.

We now understand that your Department is in a position to advise us whether it would accept the offer of compromise settlement of the two cases as described above, in the total amount of \$7,300,000, provided such offer is approved by the Goshute Identifiable Group and by the Secretary of the Interior, or his authorized representative, as required under the terms of the attorney contract under which we represent the Plaintiff Group, and provided that your Department be furnished with documents showing approval of a stipulation for entry of final judgment, together with all other documents required by the Indian Claims Commission.

In the event you accept the offer made herein, we shall promptly seek the necessary approvals of the Department of the Interior and appropriate tribal governing bodies.

Since it is in the best interests of our client, considering the fact that an early termination of the cases will enable the judgment to become final and, following appropriation of it by the Congress, to bear interest, we respectfully request your determination on the offer on or before August 18, 1975, at which

time this offer for settlement of the two cases at the above-stated figure shall stand automatically withdrawn unless then or earlier accepted by you in writing.

In view of the foregoing, specifically plaintiff offers to compromise and settle, finally, the above-entitled dockets on the following terms and conditions:

- (1) The dockets would be consolidated, and would be compromised and settled by stipulation and entry of one final judgment in the Indian Claims Commission in the consolidated Docket, no review to be sought or appeal to be taken by either party.
- (2) The amount of the judgment in the consolidated case, against defendant, after offsets, shall be \$7,300,000.
- (3) The stipulation and entry of final judgment in the consolidated case shall finally dispose of all claims or demands which plaintiff has asserted, or could have asserted, against defendant in either of the cases, and all claims, demands, payments on the claims, counterclaims, or offsets which the defendant has asserted, or could have asserted, against the plaintiff in either of the cases, under the provisions of Section 2 of the Indian Claims Commission Act. The claims, demands, payments on the claim, counterclaims and offsets referred to above, shall specifically include all those up to and including June 30, 1951.
- (4) The stipulation and final judgment would be a compromise and settlement and shall not be construed as an admission of either party, for purposes of precedent or argument in any other case.
- (5) Nothing in this letter or in your reply thereto shall be taken as an admission by the plaintiff or defendant in any future litigation in these cases or in any other case.

We shall be glad to cooperate with counsel for the defendant in the preparation of a Motion to Consolidate, Stipulation For Entry of Final Judgment, Joint Motion for Entry of Final Judgment, Final Judgment and such other documents as may be necessary.

6. By letter to plaintiffs' counsel dated August 21, 1975, Assistant Attorney General Wallace H. Johnson accepted the proposal, subject to certain conditions. The letter stated as follows:

The offer to settle the claims in Goshute Tribe or Identifiable Group, et al. v. United States, Docket Nos. 326-B and 326-J, before the Indian Claims Commission, for the sum of \$7,300,000, as outlined in your letter of July 16, 1975, is accepted subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution of the governing body of the Goshute Tribe.

2. That the approval of the settlement be secured from the Secretary of the Interior, or his authorized representative.

3. That a copy of the tribal resolution and the approval of the terms of the settlement by the Department of the Interior be furnished to this Department.

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

In drawing the Joint Motion for Entry of Judgment, please list the documents which will be introduced in support of the settlement, such as (1) the stipulation, (2) the tribal resolution or resolutions, (3) the letter of approval of the settlement by the Department of the Interior and (4) such other papers as will be offered in evidence at the hearing on the settlement. Copies of these papers shall also be furnished to the defendant.

7. Pursuant to the offer and acceptance, a stipulation for compromise settlement and entry of final judgment was signed by representatives of the Goshute Tribe and attorneys for the parties. The stipulation reads:

STIPULATION FOR COMPROMISE SETTLEMENT
AND ENTRY OF FINAL JUDGMENT

WHEREAS, there are now pending before the Indian Claims Commission two claims on behalf of the Goshute Tribe or Identifiable Group, represented by the Confederated Tribes of the Goshute Reservation, plaintiff; and

WHEREAS, the claim in Docket 326-B is for a general accounting of all funds and property of the plaintiff, held and accountable for by the defendant; and

WHEREAS, the claim in Docket No. 326-J is a claim for compensation for lands held by aboriginal Indian title and taken without adequate compensation and for damages for minerals removed from those lands prior to the taking thereof; and

WHEREAS, following entry by the Indian Claims Commission of an Interlocutory Judgment dated August 9, 1973 in Docket No. 326-J in the amount of \$7,253,122, prior to such credits for payments and for offsets to which the United States may be entitled, and

WHEREAS, after extensive negotiations by the attorneys for both parties with respect to said offsets and payments in Docket No. 326-J, and on the merits of all claims asserted in Docket No. 326-B;

IT IS HEREBY STIPULATED AND AGREED BY THE PARTIES AS FOLLOWS:

1. Docket Nos. 326-B and 326-J shall be consolidated for all purposes, including entry of a single judgment, as herein provided, to be designated as Docket Nos. 326-B and 326-J Consolidated.

2. All of the claims asserted in said Consolidated Docket shall be compromised and settled by entry of a single final judgment in the Indian Claims Commission in the amount of \$7,300,000, against the United States of America and in favor of plaintiffs in Consolidated Docket Nos. 326-B and 326-J, with no review or appeal to be sought by any party.

3. No other claims asserted in any other docket numbers by the Bands of Shoshone Indians other than the Goshute Identifiable Group or Tribe shall be affected by this Stipulation, except to the extent that claimed offsets or payments on the claims asserted in the cases pertain to any of the claims otherwise pending.

4. The Stipulation and Entry of Final Judgment shall finally dispose of all claims or demands which any of the plaintiffs, represented in Docket Nos. 326-B and 326-J, have asserted or could have asserted against defendant in any of said cases, either before or after consolidation, and plaintiffs and each of them shall be barred from asserting all such claims or demands in any further action.

5. This Stipulation and Entry of Final Judgment pursuant thereto shall finally dispose of all offsets, counterclaims, or payments on the claim which defendant has asserted or could have asserted in Docket Nos. 326-B and 326-J, Consolidated, or in either of said cases prior to consolidation, against the Goshute Tribe or any of the bands, groups or members thereof, and which have arisen since the Treaty of October 12, 1863 up to and including June 30, 1951.

6. This Stipulation and Entry of Final Judgment in said consolidated cases shall not be construed as an admission of any party as to any issue for purposes of precedent in any other case.

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

/s/ Dean K. Dunsmore

Attorneys for Defendant

/s/ Robert W. Barker
Attorney of Record for Plaintiffs

Approved and joined in by:

Representatives of the Goshute
Tribe or Identifiable Group

By: /s/ Robert Steele

/s/ Rosa Naranjo

/s/ Richard Bear

/s/ Bert Wash

8. The proposed compromise settlement was submitted to the Goshute Tribe or Identifiable Group, consisting of members and affiliates of the Confederated Tribes of the Goshute Reservation and the Skull Valley Band of Goshute Indians, at a meeting specially called and duly convened for this purpose on September 27, 1975. Notices of the meeting were mailed by certified mail, return receipt requested, on September 12, 15, and 16, 1975, to all identifiable members of the Confederated Tribes of the Goshute Reservation and the Skull Valley Band of the Goshute Indians. Return receipts indicated that 126 out of 136 of the members of the Confederated Tribes of the Goshute Reservation received notice of the meeting, and 30 of 34 of the Skull Valley Band of Goshutes received notice of the meeting. Public postings of the meetings were made on September 15, 1975, in numerous public buildings and other prominent places throughout the area of the Ibapah and Skull Valley Reservations, including post offices, Bureau of Indian Affairs offices, and tribal offices. Publications of the notices were also made in the weekly and daily newspapers of the area. An official copy of the "Notice of Special Meeting" was published in the Salt Lake Tribune on September 19, 20, 21, and 22 and the Deseret News on September 19, 20, and 22. These newspapers are published in Salt Lake City, Utah, and have general circulation in the Utah-Nevada areas concerned. There were other notices and news articles in both Utah and Nevada newspapers. News broadcasts prior to the meeting were carried on KUTV, Channel 2, Salt Lake City, announcing the time and place of the meeting.

9. An organizational meeting was conducted on the morning of September 27, 1975, attended by all the members of the Business Council of the Confederated Tribes of the Goshute Reservation, all the governing officials of the Skull Valley Band of Goshutes, Messrs. Ernest L. Wilkinson and Robert W. Barker, representing the Wilkinson, Cragun & Barker law firm, John S. Boyden, Sr., and Stephen Boyden, representing the Boyden, Kennedy, Romney & Howard law firm, Superintendent Norris M. Cole of the Eastern Nevada Agency (which has jurisdiction over the Confederated Tribes of the Goshute Reservation) and William F. Streit, Superintendent of the Uintah and Ouray Agency (which has jurisdiction over the Skull Valley Reservation), together with several other Bureau of Indian Affairs employees, who, at the request of tribal leaders, took the minutes of the proceedings and assisted in the organizational procedures. Mr. Bruce Parry, Utah State Director of Indian Affairs, was also present as an observer. A Chairman, Vice Chairman, and Secretary were elected for the day by secret ballot of a majority of all elected tribal officials, representing both groups, for the purpose of presiding over the later meeting to consider the proposed claim settlement. At the organizational meeting, procedures for registration and voting at the later general meeting were agreed upon. An agenda for the meeting was also established. After explanation by counsel of the proposed settlement and full discussion, the governing bodies of both bands unanimously approved these procedures and they were adopted and implemented.

10. The general meeting of the Goshute Tribe or Identifiable Group was held on the afternoon of September 27, 1975. The meeting was attended by approximately 250 Indian people, 104 of whom were Goshutes and therefore eligible to vote. The remaining Indians present were from other tribes and ineligible to vote. Copies of counsel's written report to the Tribe, reviewing the history of the claims, the scope of the settlement, and the means of arriving at the settlement figure, were distributed at the meeting to all those in attendance. Mr. Robert W. Barker then presented the proposed settlement, explained the meaning of the settlement, and advantages and disadvantages of its acceptance. Mr. Barker's presentation was translated into the Goshute language. A lengthy discussion of the proposed settlement followed, during which Mr. Barker was asked numerous questions, all of which were answered. The question and answer session was also translated into Goshute. Also present and answering questions were Ernest L. Wilkinson, John S. Boyden, and Stephen Boyden. The two Superintendents responsible for the two agencies concerned and other representatives of the Bureau of Indian Affairs also attended the meeting, and, along with representatives of the Goshute Tribe or Identifiable Group, assisted in supervising the registration and voting.

11. After a lengthy discussion of the proposed settlement in which any persons who opposed the proposal were given ample time to be heard, the Goshute Indians adopted a resolution by a vote of 98 to 4 accepting

the settlement and authorizing tribal representatives to act on behalf of the Goshute Indians in executing the above-mentioned stipulation for settlement. There were 77 Confederated Goshutes and 25 Skull Valley Goshutes in attendance who registered to vote. The resolution reads as follows:

RESOLUTION OF THE GOSHUTE TRIBE
OR IDENTIFIABLE GROUP
APPROVING SETTLEMENT
OF DOCKET NO. 326-B AND DOCKET NO. 326-J,
BEFORE THE INDIAN CLAIMS COMMISSION

WHEREAS, the Goshute Tribe or Identifiable Group, through the Confederated Tribe of the Goshute Reservation, is prosecuting two cases before the Indian Claims Commission, identified as Docket Nos. 326-B and 326-J; and

WHEREAS, claims attorneys for the Goshute Tribe or Identifiable Group, have recommended compromising and settling the claims in said Docket Nos. 326-B and 326-J, after consolidating for a net judgment (after all offsets and deductions), of \$7,300,000; and

WHEREAS, the Members of the Goshute Tribe or Identifiable Group, including the Members and Affiliates of the Confederated Tribes of the Goshute Reservation and the Skull Valley Band of Goshute Indians, have met to consider said proposal which was fully explained by counsel;

NOW, THEREFORE, BE IT RESOLVED:

1. The proposed settlement of Docket Nos. 326-B and 326-J, Consolidated by entry of a final judgment in the net amount of \$7,300,000, is hereby approved and Robert Steele, Richard Bear, Rosa Naranjo and Bert Wash are hereby authorized and directed to sign a Stipulation for Compromise Settlement and Entry of Final Judgment, in the form attached hereto as Exhibit 1 [set forth above], and file the same with the Indian Claims Commission.

2. That the persons mentioned in paragraph 2 [paragraph 1] above are hereby authorized and directed to sign and execute such stipulations or other documents as may be necessary and proper to the proper entry of said Compromise Settlement before the Indian Claims Commission.

3. That Robert Steele, Richard Bear, Rosa Naranjo and Bert Wash are hereby authorized to appear before the Indian Claims Commission to testify in any hearing which may be held on said settlement and take such action as is necessary to complete said settlement in accordance with Rules of the Indian Claims Commission, and decided cases of that Commission in connection with such settlements or compromises.

FURTHER RESOLVED, that the authorized representatives of the Secretary of the Interior and the Indian Claims Commission are hereby requested to approve said settlement in the amount of \$7,300,000.

Certification as to General Meeting

The foregoing resolution was duly adopted at a meeting of the Goshute Tribe or Identifiable Group at Wendover, Utah on September 27, 1975, by a vote of 98 for and 4 against, a quorum being present.

/s/ Robert Steele
Chairman of the Meeting

ATTEST:

/s/ Bert Wash
Secretary of the Meeting

CERTIFICATION AS TO BUSINESS COUNCIL
OF THE CONFEDERATED TRIBES OF THE
GOSHUTE RESERVATION

The foregoing resolution was duly adopted at a meeting of the Business Council of the Confederated Tribes of the Goshute Reservation at Wendover, Utah, on September 27, 1975, by a vote of 5 for and 0 against, a quorum being present.

/s/ Robert Steele
Chairman

ATTEST:

/s/ Rosa S. Naranjo
Secretary

Authentication of Signatures

I certify that the foregoing signatures of the Chairman and the Secretary of the meeting of the Goshute Tribe or Identifiable Group and of Chairman and Secretary of the Business Council of the Confederated Tribes of the Goshute Reservation are genuine and that the resolutions were approved in my presence in accordance with the recitals therein.

Dated Sept. 27, 1975.

/s/ Norris M. Cole
Superintendent
Eastern Nevada Agency
Bureau of Indian Affairs

12. On September 27, 1975, the Skull Valley Tribal Council voted to approve the proposed settlement by a vote of 3 in favor and 0 against, a quorum being present.

13. The Superintendents of the Eastern Nevada Agency and the Uintah and Ouray Agency of the Bureau of Indian Affairs attended the meeting of September 27, 1975, and submitted a report to the Bureau of Indian Affairs. On the basis of that report, minutes of the meeting mentioned above, as well as information on the merits of the proposed settlement supplied to the Commissioner of Indian Affairs by the attorneys for the plaintiff, the Honorable Morris Thompson, Commissioner of Indian Affairs, as authorized representative of the Secretary of the Interior, approved the proposed settlement by letter dated October 24, 1975, to Wilkinson, Cragun & Barker, attorneys for plaintiffs. In pertinent part, the Commissioner's letter states:

We are satisfied that the general tribal meeting of September 27, 1975, was well publicized, that the interested adult voting members had an opportunity to attend, and that

the meeting was satisfactorily conducted with the balloting held after the members had an opportunity to consider the proposed compromise. The general tribal resolution and the resolutions of the Goshute and the Skull Valley Tribal Councils reflect the position of the tribal members who voted and results reflect their views. The resolutions are hereby approved.

In light of the information which you have furnished to us, that which has been submitted by our field offices, and that obtained from other sources, we are satisfied that the proposed settlement of the claims in Dockets 326-B and 326-J as set forth in the Stipulation for Entry of Final Judgment is fair and just. The proposed compromise settlement is hereby approved.

14. A hearing was held by the Commission on November 4, 1975, with regard to the proposed settlement. At the hearing, Mr. Robert W. Barker (attorney of record for plaintiffs) gave his opinion that the settlement was just, fair, and beneficial to the Goshute Indians and recommended its approval. Mr. Dean K. Dunsmore, attorney for defendant, stated that he considered the settlement fair to both plaintiffs and defendant and recommended approval. Both Mr. Barker and Mr. Dunsmore stated that, under the language of paragraph 3 of the Stipulation for Compromise Settlement and Entry of Final Judgment, no offsets or payments on the claims claimed under Docket 326-J in the defendant's Amended Answer of July 18, 1973, would be claimed in any other dockets now pending before this Commission involving bands of Shoshone Indians as plaintiffs.

15. The following witnesses testified at the hearing concerning notices of the Goshute Tribal meeting on September 27, 1975, the events which occurred at the two meetings on that date, and the presentation and voting on the proposed settlement at the meetings.

(1) Robert Steele, Chairman of the Confederated Tribes of Goshutes and Chairman of the General Meeting;

(2) Richard Bear, Chairman of the Skull Valley Band of Goshutes and Vice Chairman of the General Meeting;

(3) Bert Wash, Secretary of the Skull Valley Band of Goshutes and Secretary of the General Meeting;

(4) Rosa Naranjo, Secretary of the Confederated Tribes of the Goshutes and interpreter at the General Meeting;

(5) Superintendent Norris M. Cole of the Eastern Nevada Agency of the Bureau of Indian Affairs; and

(6) William F. Streitz, Superintendent of Uintah and Ouray Agency of the Bureau of Indian Affairs.


These witnesses testified that the settlement proposal had been fully and clearly explained to the Tribe at the meeting of September 27, 1975, by the claims attorneys, that members of the Tribe asked numerous questions which were all answered by the attorneys, and that, after the discussion ended, the Tribe voted overwhelmingly to accept the settlement. Each of the first four witnesses listed above acknowledged his signature which appears on the Stipulation for Compromise Settlement and Entry of Final Judgment and testified that the resolution approving the settlement represents the wishes of the majority of the members of the Goshute Tribe or Identifiable Group present at the September 27, 1975, meeting.

16. The Commission finds, based upon the testimony of the witnesses, the record at all stages of the litigation, the representations of

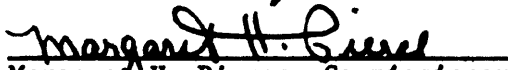
counsel, and all other pertinent factors before us, that the proposed compromise settlement of all claims under consolidated Dockets 326-B and 326-J is fair to the parties and has been freely entered into by the Goshute Tribe or Identifiable Group, including the Members and Affiliates of the Confederated Tribes of the Goshute Reservation and the Skull Valley Band of Goshute Indians, and duly approved by the Commissioner of Indian Affairs.

The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in Dockets 326-B and 326-J, consolidated, in favor of the plaintiffs therein, the Confederated Tribes of the Goshute Reservation suing on its own behalf and on behalf of the Goshute Tribe, and the Goshute Tribe or Identifiable Group, Represented by the Confederated Tribes of the Goshute Reservation, in the amount of \$7,300,000.00, subject to the terms and provisions set forth in the Stipulation for Compromise Settlement and Entry of Final Judgment.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner