

BEFORE THE INDIAN CLAIMS COMMISSION

PYRAMID LAKE PAIUTE TRIBE OF THE)	
PYRAMID LAKE RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 87-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 11, 1976

FINDINGS OF FACT ON ATTORNEYS' FEE

Upon consideration of the petition for award of attorneys' fee filed on November 11, 1975, by I. S. Weissbrodt, attorney of record for the plaintiff in this case, the statement in support thereof, and the entire record herein, the Commission makes the following findings of fact:

1. The Award. On July 23, 1975, the Commission entered its final judgment, directing that the plaintiff, Pyramid Lake Paiute Tribe, recover from the defendant the sum of \$8,000,000.00 on its claim in Docket 87-B (36 Ind. Cl. Comm. 256, 270). Funds to pay said award have been appropriated by Congress pursuant to Public Law 94-157, approved December 18, 1975 (89 Stat. 826).

2. The Petition for Attorneys' Fee. On November 11, 1975, I. S. Weissbrodt, attorney of record in the above entitled docket, filed a petition pursuant to Section 15 of the Indian Claims Commission Act

(60 Stat. 1049) on behalf of all contract attorneys having an interest in the fee in this case for an allowance of attorneys' fee in the amount of \$800,000, being 10 percent of the final award in this case.

3. Notices. On November 12, 1975, the Clerk of the Commission mailed copies of the subject petition for attorneys' fee to the plaintiff tribe, inviting comments or information the Commission should consider. Copies of the petition were also forwarded to the Commissioner of the Bureau of Indian Affairs, Department of the Interior, and to the Department of Justice.

4. Responses. The Clerk of the Commission received a letter from Mr. Allen Aleck, Chairman of the Pyramid Lake Paiute Tribal Council, together with a certified resolution of the Tribal Council, dated December 5, 1975, objecting to the award of an \$800,000 attorneys' fee as excessive and requesting a hearing on the petition. The Commission subsequently received a certified resolution of the Pyramid Lake Tribe, adopted on February 6, 1976, whereby the Tribal Council rescinded its resolution of December 5, 1975, withdrew its objection to allowance of the fee petition filed by its tribal claims attorneys, and withdrew its request for a hearing on said petition.

On December 23, 1975, the Commission received the defendant's response to the petition for award of attorneys' fee. Enclosed therein was a letter from the Assistant Solicitor for Indian Affairs, Department of the Interior, dated December 17, 1975, and a memorandum from the

Commissioner of Indian Affairs, Department of the Interior, dated December 11, 1975. The memorandum of the Commissioner of Indian Affairs and the letter of the Assistant Solicitor for Indian Affairs concluded with the statement that, since the Department of the Interior did not participate in the case, it lacked sufficient information to enable it to make a recommendation as to the amount of compensation earned by the tribal claims attorneys. The Department of Justice took no position with respect to the amount of fees which should be awarded.

5. Contracts. The contract with the Pyramid Lake Paiute Tribe, which, as extended, is currently in force and effect, is identified in the records of the Bureau of Indian Affairs as symbol 14-20-0450, contract No. 4883. This contract succeeded several earlier contracts which are described hereinafter. The current contract with the Pyramid Lake Paiute Tribe, as well as the predecessor contracts with that tribe, provide that the compensation of the attorneys for their services is to be determined by the Commission in an amount equitably due, but in no event in excess of 10 percent of the recovery.

The existing contract was made as of June 14, 1964, with attorneys I. S. Weissbrodt, Abe W. Weissbrodt, Jay H. Hoag, Rodney J. Edwards, and Morton Liftin, and was approved by the Bureau of Indian Affairs on June 14, 1964. The contract provided that it would continue in effect until June 13, 1969, except that, with the consent of the parties, subject to the approval of the Secretary of the Interior or his authorized representative, the term of the contract may be extended for additional periods of three years each. By consent of the parties and with the

approval of the Bureau, the term of the contract was extended three times, first from June 13, 1969, to June 13, 1972, then from June 13, 1972, to June 12, 1975, and then from June 13, 1975, through June 12, 1978.

Two earlier attorney contracts had been entered into with the Pyramid Lake Paiute Tribe. One of these was a contract with Jay H. Hoag, Rodney J. Edwards, Clarence G. Lindquist, David Cobb, and I. S. Weissbrodt, which was entered into as of March 5, 1954, and was approved on June 14, 1954 (symbol 14-20-650, contract No. 157). The other contract had been made with James E. Curry on October 1, 1948, and was approved by the Acting Commissioner of Indian Affairs on September 22, 1949 (symbol I-1-ind. 42197). This contract was terminated on June 14, 1954, and superseded by the aforesaid contract No. 157 approved on June 14, 1954.

5. Nature of Services. The final judgment in Docket 87-B in the amount of \$8,000,000.00, in favor of the Pyramid Lake Paiute Tribe, was entered on the claim for damages suffered by the tribe as a result of its not having received all of the water to which it was entitled under rights reserved for the Pyramid Lake Indian Reservation. This claim, hereinafter referred to as the "water" claim, was one of several claims originally presented to the Commission in a petition filed in Docket 87 in December 1950. The initial petition in Docket 87 was filed on behalf of the Northern Paiute Nation and six present-day tribes, including the Pyramid Lake Paiute Tribe. The petition set forth various claims, including land claims, water claims, trespass claims, and accounting

claims--some of them being historic joint claims of the aboriginal Northern Paiute groups and others being several claims of one or another of the present-day organized Northern Paiute tribes.

An amended petition in Docket 87 was filed in August 1951. Subsequently, pursuant to order of the Commission entered April 24, 1957, a second amended petition was filed in Docket 87 and several claims, including the Pyramid Lake water claim, were separated from Docket 87 and set forth in a new docket designed as Docket 87-A. On July 17, 1975, the water claim of the Pyramid Lake Tribe was separated from Docket 87-A and assigned to Docket 87-B. Simultaneously, the Commission entered its final award in Docket 87-B on the said Pyramid Lake water claim.

During the course of the litigation in Docket 87-A, the Commission entered two interlocutory decisions favorable to the Pyramid Lake Paiute Tribe, pertaining to the water claim. On February 16, 1972 (27 Ind. Cl. Comm. 39), the Commission determined, inter alia, that the Pyramid Lake Indian Reservation was established on November 29, 1859. On April 25, 1973 (30 Ind. Cl. Comm. 210), the Commission determined that implicit in the creation of the Pyramid Lake Reservation on November 29, 1859, by reason of the application of the Winters doctrine, was the reservation of sufficient water from the Truckee River for the maintenance of the lower reaches of the Truckee River and Pyramid Lake as a natural spawning ground for fish and for other needs of the inhabitants of the reservation such

as irrigation and domestic use. We further decided that an obligation on the defendant was established thereby with regard to the preservation of the Pyramid Lake waters and fisheries.

The water claim was set for trial on January 27, 1975. The tribal claims attorneys investigated, researched, and analyzed the damages and related issues, and prepared for trial on those issues. The attorneys searched through a large volume of historical records and selected, analyzed, and assembled a set of documents which they proposed to offer as exhibits at trial. The claims attorneys also engaged the services of four experts, a hydrologist, a fish biologist, a resource economist, and a historian, for purpose of consultation, further investigation, preparation of reports, and testifying as expert witnesses at trial.

During the course of preparing for trial, the tribal claims attorneys entered into negotiations with the Government attorneys for the purpose of seeking a compromise settlement of the water claim. These negotiations continued over a period of several months. On Friday, January 24, 1975, an agreement was reached between the attorneys for the parties as to a proposed amount of \$8,000,000.00 to be paid by the United States to the tribe in settlement of the water claim. At the request of the attorneys for the parties, the Commission postponed the trial. During the following weeks, other terms of the proposed compromise settlement were negotiated and embodied in a stipulation for entry of final judgment which was signed by the attorneys for the parties in final form on March 26, 1975.

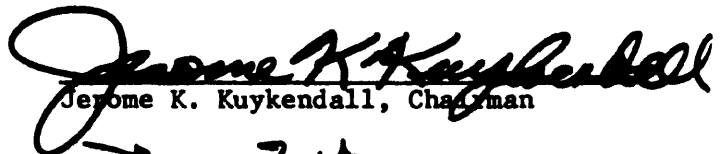
The stipulation included, inter alia, an express statement that both the Pyramid Lake Paiute Tribe and the United States are convinced that the water rights that were reserved for the benefit of the tribe had not been diminished or lost by anything that has happened or been done from the time of establishment of the reservation to the present, and that the suit was solely for damages suffered by the tribe by reason of not having received all of the water to which it was entitled under such rights.

Following the execution of the stipulation of settlement by the attorneys for the parties, the tribal claims attorneys prepared and submitted to the tribe a report on the history of the litigation of the water claim and an analysis of the terms of the settlement; arrangements were made for meetings of the members of the tribe and of the Pyramid Lake Tribal Council, the governing body of the tribe, for purpose of considering the terms of the settlement and voting thereon; such meetings were attended by the tribal claims attorneys, and, after full discussion, the members of the tribe and the Tribal Council approved the settlement; the tribal claims attorneys then presented the settlement to the Department of the Interior and obtained the approval thereof by the Commissioner of Indian Affairs as the duly authorized representative of the Secretary of the Interior.

After a hearing held on July 17, 1975, the Commission concluded that the proposed settlement was equitable and just to both parties, and entered its final judgment on July 23, 1975.

6. Conclusion. The attorneys for the Pyramid Lake Paiute Tribe undertook serious responsibilities and complex litigation under a contract which made the payment of compensation wholly contingent upon recovery. Although no trial was conducted herein, it was necessary for plaintiff's attorneys to prepare fully for trial, at the same time they were conducting settlement negotiations. In determining the amount of fee to be allowed, the Commission has considered the contingent nature of the fee, the extremely difficult problems of fact and law involved, the size of the award achieved through the efforts of the contract attorneys, and the factors pertinent to the determination of attorneys' fees established by prior decisions of the Indian Claims Commission.

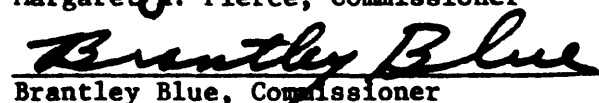
The Commission finds that I. S. Weissbrodt, attorney of record for plaintiff, on behalf of all contract attorneys having an interest herein, rendered valuable legal services to the plaintiff and is entitled to an award of attorneys' fee in the sum of \$800,000.00. Payment to Mr. I. S. Weissbrodt of the sum herein awarded as attorneys' fee will represent payment in full for all claims for legal services rendered in this docket.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner