

BEFORE THE INDIAN CLAIMS COMMISSION

THE LIPAN APACHE TRIBE and bands thereof,)	
ex rel., Pedro Mendez and Philemon Venego;)	
)	
THE MESCALERO APACHE TRIBE and bands thereof,)	
ex rel., Solon Sombrero, Fred Pellman,)	
Eric Tortilla and Victor Dolan;)	
)	
THE APACHE TRIBE OF THE MESCALERO RESERVATION)	
on behalf of, or as successor to, the)	
Lipan Apache Tribe and bands thereof, and)	
the Mescalero Apache Tribe and bands thereof,)	
)	
Plaintiffs,)	Docket No. 22-C
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: February 19, 1976

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 docket in the total amount of \$10,000,000. The Lipan Apache Tribe shall recover \$5,000,000, and the Mescalero Apache Tribe shall recover \$5,000,000..

The claims in Docket 22-C were brought by the Apache Tribe of the Mescalero Reservation to recover compensation from the United States, on behalf of the Lipan Apache Tribe and the Mescalero Apache Tribe, for the taking of the ancestral lands within Texas which belonged respectively to the Lipan Apache Tribe and the Mescalero Apache Tribe.

The Commission heretofore determined on March 14, 1975, in 36 Ind. Cl. Comm. 7, the extent and boundaries of the lands in Texas to which each, the Lipan Apache Tribe and the Mescalero Apache Tribe, held Indian title. The Commission further determined in that decision that the

United States, without the payment of any compensation, extinguished the title of the Lipan Apache Tribe to its aboriginal lands in Texas on November 1, 1856, and extinguished the title of the Mescalero Apache Tribe to its aboriginal lands in Texas on May 27, 1873. The Commission directed that the case proceed to a determination of the acreage and values of the Lipan and Mescalero award areas as of their respective dates of extinguishment.

On June 13, 1975, the plaintiffs filed a motion for rehearing requesting the Commission to reconsider its findings relative to the boundaries of the aboriginal lands in Texas of the Mescalero Apache Tribe and the manner and date of the extinguishment of the Indian title of the Mescalero Apache Tribe to such lands.

Agreement was subsequently reached by the plaintiffs and the defendant on a compromise settlement of the Lipan and Mescalero claims in this case. A hearing having been held before the Commission on February 10, 1976, on the proposed compromise settlement, the Commission makes the following findings of fact which are supplemental to the previous findings nos. 1 through 16.

17. On January 27, 1976, the plaintiffs and the defendant, pursuant to a stipulation of settlement, filed in this case a joint motion for entry of a final judgment in favor of the plaintiff, Apache Tribe of the Mescalero Reservation, of which \$5,000,000 shall be on behalf of the Lipan Apache Tribe and \$5,000,000 shall be on behalf of the Mescalero Apache Tribe, with no review to be sought or appeal to be taken by the parties to the stipulation.

18. The parties also filed 12 exhibits, identified as S-1 through S-12 in support of the proposed settlement. These exhibits are hereby received in evidence.

19. On September 18, 1975, counsel for the plaintiffs in Docket 22-C submitted a letter to Acting Assistant Attorney General Walter Kiechel, Jr., offering to compromise and settle the claims therein for a final judgment in favor of the plaintiff, Apache Tribe of the Mescalero Reservation, in the net amount of \$5,000,000 on behalf of the Lipan Apache Tribe and in the net amount of \$5,000,000 on behalf of the Mescalero Apache Tribe, with no review to be sought or appeal taken by the parties (Exhibit S-1).

20. By letter dated October 17, 1975, Acting Assistant Attorney General Walter Kiechel, Jr., on behalf of the Department of Justice, accepted the offer of settlement, subject to certain conditions, including (a) that the proposed settlement be approved by appropriate tribal resolutions, and (b) that approval of the settlement, as well as the tribal resolutions, be secured from the Secretary of the Interior or his authorized representative (Exhibit S-2).

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

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated by the plaintiffs and defendant, through their attorneys, as follows:

1. The claims in Docket No. 22-C shall be settled by the entry of final judgment, no review to be sought or appeal to be taken by the parties to this stipulation.

2. Final judgment against defendant shall be entered in Docket No. 22-C in favor of the plaintiff, Apache Tribe of the Mescalero Reservation, of which \$5,000,000 shall be on behalf of the Lipan Apache Tribe, and \$5,000,000 shall be on behalf of the Mescalero Apache Tribe.

3. The final judgment shall dispose of all claims or demands which the plaintiffs and any of them have asserted or could have asserted against defendant in Docket No. 22-C. The final judgment shall also dispose of all claims, demands, payments on the claim, counterclaims or offsets which defendant has asserted or could have asserted against plaintiffs or any of them in Docket No. 22-C for the period up to and including June 30, 1951.

4. It is agreed that defendant shall not be barred by this stipulation or by the final judgment entered pursuant thereto from claiming in any other action offsets accruing after June 30, 1951.

5. Plaintiffs hereby withdraw their motion for rehearing filed with the Commission in Docket No. 22-C on June 13, 1975, said withdrawal to be effective coincident with the entry of final judgment herein.

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

7. The plaintiffs and defendant agree to execute and file with the Commission a joint motion for entry of final judgment pursuant to this stipulation, submitting a proposed form of final judgment for the approval of the Commission.

22. A general meeting of the members of the Apache Tribe of the Mescalero Reservation and all Indians of Mescalero Apache descent and of Lipan Apache descent was scheduled for Saturday, December 6, 1975, at 11:00 a.m., at the Community Center on the Mescalero Reservation, New Mexico. The time, place, and purpose of the meeting were set forth in a

notice issued by the President of the Apache Tribe of the Mescalero Reservation (Exhibit S-3), The Secretary of the Apache Tribe of the Mescalero Reservation has certified that a copy of that notice was mailed, prior to November 20, 1975, to the last known address of all enrolled adult members of the Apache Tribe of the Mescalero Reservation, and that the notice of the meeting was also posted at various places on the Mescalero Reservation, including the Tribal Store, the Post Office, the Tribal Office, and the Office of the Bureau of Indian Affairs (Exhibits S-3 and S-5). Further, notice of the meeting was publicized by publication of the notice in the November 26 and December 3, 1975, issues of the following newspapers of general circulation: Albuquerque Tribune, Albuquerque Journal, Daily Oklahoman, Arizona Republic, and Houston Chronicle (Exhibit S-6).

23. The general membership meeting was held, as scheduled, on December 6, 1975. Copies of the proposed settlement, the reply of the Department of Justice thereto, and a written report prepared by the tribal claims attorneys setting out the history of the claims, the litigation before the Commission, and the terms of the settlement, were made available to those in attendance. The tribal members were given an opportunity to read the settlement and report, and the report was explained in English and interpreted and explained in the Apache language. Following discussion, during which tribal members were invited to ask questions and to express their views on the proposed settlement, three resolutions were presented:

the first, a resolution approving the settlement which was adopted by the adult enrolled members of the Apache Tribe of the Mescalero Reservation by a vote of 142 for and 0 against (Exhibit S-7); the second, a resolution approving the settlement which was adopted by the Indians of Mescalero descent by a vote of 116 for and 0 against (Exhibit S-8); and the third, a resolution approving the settlement which was adopted by Indians of Lipan descent by a vote of 61 for and 0 against (Exhibit S-9).

24. On that same day, December 6, 1975, after approval of the proposed settlement by the tribal membership, the Tribal Council of the Apache Tribe of the Mescalero Reservation unanimously adopted a resolution approving the proposed settlement (Exhibit S-10).

25. On the basis of the report of the proceedings of December 6, 1975, submitted by Mr. Wilbur Parker, Acting Superintendent of the Mescalero Agency, as well as information on the proposed settlement supplied by the attorneys for the plaintiffs, the Department of the Interior approved the proposed settlement by letter of January 22, 1976, addressed to Weissbrodt and Weissbrodt, counsel to plaintiffs in Docket 22-C, as follows (Exhibit S-12):

You requested our approval of a proposed compromise to settle the claims in Docket No. 22-C before the Indian Claims Commission for a net final judgment of \$10,000,000 to be entered in favor of the Apache Tribe of the Mescalero Reservation, of which sum \$5,000,000 shall be on behalf of the Mescalero Apache Tribe and \$5,000,000 shall be on behalf of the Lipan Apache Tribe.

Your firm and associate attorneys, Jay H. Hoag and Rodney J. Edwards, entered into two contracts on January 17, 1968, with the Apache Tribe of the Mescalero Reservation, for the prosecution of the claims in Docket 22-C. These contracts are currently in force and effect. The first of said contracts (Symbol 8MC1420C0359) pertains to services relative to claims

for compensation for the taking of certain lands in Texas aboriginally occupied and used by the Mescalero Apache Tribe; and the second contract (Symbol 8MC1420C0360) pertains to services relative to claims for the taking of certain lands in Texas aboriginally occupied and used by the Lipan Apache Tribe. Each of these contracts was approved by the Bureau of Indian Affairs on January 11, 1968, for a period of 10 years, effective from and after January 17, 1968. Each of the contracts provides that any compromise or settlement of the matters in controversy in Docket 22-C shall be subject to the approval of the governing body of the Apache Tribe of the Mescalero Reservation and the Secretary of the Interior or his authorized representative.

You submitted a letter dated September 18, 1975, to the Assistant Attorney General to settle the claims in Docket 22-C for a net final judgment of \$10,000,000 to be awarded to the Apache Tribe of the Mescalero Reservation, of which \$5,000,000 is to be on behalf of the Mescalero Apache Tribe and \$5,000,000 on behalf of the Lipan Apache Tribe. No review is to be sought and no appeal is to be taken by the parties.

Your offer was accepted by the Department of Justice by letter of October 17, 1975, with conditions. Among the conditions were that the proposed settlement be approved by appropriate resolutions of the governing bodies of the plaintiff tribes and that approval of the settlement, as well as the resolutions of the tribes, be obtained from the Secretary of the Interior or his authorized representative.

Entry of judgment in Docket 22-C pursuant to the settlement will finally dispose of all claims or demands which the plaintiff tribes have asserted or could have asserted against the United States in this case. It will also dispose of all claims for offsets which the United States has asserted or could have asserted against the plaintiff tribes under Section 2 of the Indian Claims Commission Act up to June 30, 1951.

For the purpose of presenting the proposed settlement for the consideration and vote of the tribal members, a meeting was scheduled and held on December 6, 1975, at the Community Center on the Mescalero Indian Reservation. A representative of the Bureau of Indian Affairs was present at the meeting.

The time, place and purpose of the meeting were set forth in a notice issued by the President of the Apache Tribe of the Mescalero Reservation. The tribal secretary who supervised the

mailing of the notice has certified that a copy thereof was mailed prior to November 20, 1975, to the last known addresses of all members of the Apache Tribe of the Mescalero Reservation, of voting age, and that copies of the notice were posted at several places, including the Post Office, Tribal Store and Tribal Office on the Reservation and at the office of the Bureau of Indian Affairs, Mescalero. Further, the notice was published on November 26 and December 3, 1975, in newspapers of general circulation in New Mexico, Oklahoma, Texas and Arizona.

At the general membership meeting, a report prepared by you, which explained the claims and the terms of the settlement, was distributed and read. Then, the report was interpreted and explained orally in the Apache language by President Wendell Chino. Claims Attorney Abe W. Weissbrodt was present. The tribal members discussed the settlement and asked questions and all were answered.

After the discussion period and the question and answer period, three votes were taken on acceptance or rejection of the proposed settlement. First, a resolution approving the settlement was adopted by the enrolled members of the Apache Tribe of the Mescalero Reservation of voting age by a vote of 142 for and 0 against. Second, a resolution approving the settlement was adopted by the Indians of Mescalero descent of voting age by a vote of 116 for and 0 against. Third, a resolution approving the settlement was adopted by Indians of Lipan descent of voting age by a vote of 61 for and 0 against. Minutes of the meeting were recorded and they also reflect the conduct of the meeting and the results of the voting. The resolutions and minutes were signed by the President and Acting Secretary of the Tribal Council of the Apache Tribe of the Mescalero Reservation. Their signatures were certified to be genuine.

The Tribal Council of the Apache Tribe of the Mescalero Reservation also met on December 6, 1975, after the general meeting had ended. The Council considered the proposed settlement and adopted a resolution approving the settlement by a vote of 7 for and 0 against. The resolution was signed by the President and Acting Secretary. Their signatures were certified as genuine.

Acting Superintendent Wilbur Parker of the Mescalero Agency, who represented the Bureau at the meeting of December 6, 1975, has certified as correct the minutes of the proceedings of the general council meeting as recorded by Mrs. Lillian Lester of the

Branch of Social Services. The minutes indicate that the tribal members were well informed concerning the compromise settlement, and judging from their comments, they considered the proposal as presented by the claims counsel to be a fair and equitable settlement.

We are satisfied that the general membership meeting held on December 6, 1975, was well publicized and that the tribal members had an opportunity to attend. The meeting was satisfactorily conducted with the balloting conducted after the members had the opportunity to consider the proposed compromise. The meeting of the Tribal Council of the Apache Tribe of the Mescalero Reservation was also satisfactorily called and conducted with the resolution approving the settlement being duly adopted in the usual manner. The resolutions reflect the views of the tribal membership. The four 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 Docket 22-C is fair and just. The proposed settlement is hereby approved.

26. At a hearing before the Commission held on February 10, 1976, Mr. Wendell Chino, President of the Apache Tribe of the Mescalero Reservation testified regarding the approval of the settlement at the general tribal membership meeting and at the Tribal Council meeting held on December 6, 1975. He testified that the proposed settlement and the stipulation for entry of final judgment had been fully and clearly explained at the general membership meeting, and that the tribal members were given the full opportunity to ask questions concerning the settlement and to comment thereon. He also expressed the opinion that the tribal members understood the settlement and considered the settlement to be fair and equitable. Further, he expressed the opinion that the members of the Tribal Council understood the settlement and considered it to be fair and equitable.

27. Based on the entire record, the Commission finds that the proposed compromise settlement as set forth in the stipulation for entry of final judgment, filed on January 27, 1976, is fair and just to both parties and will eliminate additional litigation expenses as well as delay in payment of the final award, and that said stipulation should be approved.

The Commission hereby approves the proposed compromise and settlement and will enter final judgment in Docket 22-C in favor of the plaintiff the Apache Tribe of the Mescalero Reservation, for and on behalf of the Lipan Apache Tribe, in the amount of \$5,000,000, and for and on behalf of the Mescalero Apache Tribe, in the further amount of \$5,000,000, subject to the terms and provisions set forth in the stipulation for entry of final judgment.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner