

BEFORE THE INDIAN CLAIMS COMMISSION

THE LOWER SIOUX INDIAN COMMUNITY	)	
IN MINNESOTA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 363, Second Claim
	)	(1867 Treaty and 1872 Agreement)
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: September 8, 1977

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter came before the Commission on September 8, 1977, on a joint motion for approval of a settlement, for entry of judgment of \$13,129,661 and for severance of a claim for \$255,273, all conditioned on the dismissal of Appeal No. 2-76 in the Court of Claims.

On the same date a hearing on the proposed settlement was held before the Commission in Washington, D. C. Evidence, both documentary and oral, was received. The Commission being duly advised in the premises makes the following findings of fact which are in addition to the previous findings of fact numbered 1 through 14.

15. Prior decision. On September 25, 1975, the Commission entered its interlocutory determination that the "Sisseton-Wahpeton Bands who entered into the agreement of September 20, 1872, as modified and accepted by the United States and the Bands" were the owners of and ceded the land defined in Article 2 of the Treaty of February 19, 1867,

15 Stat. 505, excluding the Devils Lake and Lake Traverse reservations, and that the Sisseton Band was the owner and by the 1872 agreement ceded the land identified as the "southern triangle" in the Commission's findings, conclusions and opinion. (36 Ind. Cl. Comm. 472, Findings 3, 4, 485-486, conclusion, 494-495, 497.)

16. Plaintiffs' offer to compromise and defendant's conditional acceptance. By letter dated May 31, 1977, to the Attorney General, the attorney of record for the plaintiffs, subject to certain conditions set out in the letter, offered to settle all lands claims in this docket, for \$1.50 per acre, leaving only claims for the accounting for money only and misuse or mismanagement of money. By letter dated July 11, 1977, as modified by letter dated August 4, 1977, Acting Assistant Attorney General James W. Moorman, on behalf of the United States, accepted the offer in settlement, on certain conditions, including that the settlement be approved by appropriate resolutions of the governing bodies of the Sisseton and Wahpeton Bands of Sioux Indians and that such resolutions and the settlement be approved by the Secretary of the Interior or his authorized representative.

17. Stipulation of the parties. The terms of the settlement are set forth in the stipulation for settlement and for the entry of judgment, entered into by the attorneys of record for the parties, reading as follows:

STIPULATION FOR SETTLEMENT AND FOR  
ENTRY OF JUDGMENT

The attorneys for the parties in the above-captioned docket, hereby stipulate as follows:

1. The parties have agreed that there shall be deducted from \$13,929,661, the agreed value of the land, the sum of \$800,000 representing the consideration recited in Article "Second" of the Agreement of September 20, 1872, 2 Kappler 1057, with the understanding that if the Court of Claims should affirm without qualification the decision of the Indian Claims Commission on the cross-appeal of the United States in Prairie Band of Pottawatomi, et al. v. United States, Appeal No. 6-76, \$544,727 should be deducted from the \$13,929,661 instead of \$800,000. Otherwise, the full \$800,000 shall be deducted from the agreed land valuation. The cross-appeal raises the propriety of disallowing as a payment on the claim expenditures for food rations and provisions.

To permit a judgment to be entered on the settlement sufficiently before the present session of Congress ends so as to allow the judgment to be included in the supplemental appropriation without awaiting the decision of the Court of Claims in the Pottawatomie case, the parties agree (a) that, with the permission of the appropriate tribunal, the claim for \$255,273, representing the difference between the recited consideration of \$800,000 and \$544,727, may be severed, and (b) that, without awaiting the decision of the Court of Claims in Appeal No. 6-76, judgment may be entered for \$13,129,661 (\$13,929,661 less \$800,000), provided, that if the Court of Claims, without qualification, should affirm the decision of the Indian Claims Commission on the cross-appeal of the United States in Appeal No. 6-76, a judgment for \$255,273 may thereafter be entered on the severed claim, but if the Court of Claims does not affirm, without qualification, the decision of the Indian Claims Commission on the cross-appeal of the United States in Appeal No. 6-76, it is hereby stipulated and agreed that the severed claim for the \$255,273 will be automatically dismissed with prejudice.

2. The petitioners will join the United States in moving the Court of Claims to dismiss Appeal No. 2-76.

3. There shall be entered in Docket No. 363, subject to the provisions of Paragraph No. 1 of this stipulation, a final judgment for \$13,129,661, in favor of the Sisseton-Wahpeton Bands who entered into the agreement of September 20, 1872, as modified and accepted by the United States and the Bands.

4. The parties have not bargained for gratuitous offsets, thus it is agreed that they are reserved for further proceedings in the accounting phase of this case.

5. Subject to the provisions of Paragraph No. 1 of this stipulation, the entry of final judgment as described in Paragraph No. 3 above, shall finally dispose of all rights, claims, or demands which the plaintiffs have asserted, or could have asserted in Docket No. 363, except claims for an accounting for money and for the misuse or mismanagement of money.

6. Upon the entry of judgment for \$13,129,661, the only remaining claims in Docket No. 363 will be claims for an accounting for money and for the misuse or mismanagement of money and the severed claim for \$255,273, described in Paragraph No. 1 of this stipulation, dependent on the outcome of the cross-appeal in Appeal No. 6-76.

7. The judgment in this docket, and the dismissal of Appeal No. 2-76, entered pursuant to this stipulation of settlement, shall be by way of compromise and settlement and shall not be construed as an admission for the purpose of precedent or argument in this or any other case.

8. Attached to this stipulation, and incorporated herein by reference, are resolutions adopted on August 9, 1977 by the governing body of the Sisseton and Wahpeton Sioux Tribe of North Dakota and adopted on August 10, 1977 by the governing body of the Sisseton and Wahpeton Sioux Tribe of the Lake Traverse Reservation, approving the settlement and authorizing counsel for the Bands to enter into this Stipulation on the basis set forth herein, and a copy of a letter approving the settlement of this litigation by the Secretary of the Interior, or his authorized representative.

9. The final judgment of the Indian Claims Commission, pursuant to this Stipulation, shall constitute a final determination by the Commission of all remaining claims in

Docket No. 363, except those expressly reserved in paragraph 6 above, and shall become final on the day it is entered, all parties hereby waiving any and all rights to appeal from, or otherwise seek, review of such final determination.

This Stipulation executed in counterpart this 31 day of August 1977.

/s/ Marvin J. Sonosky

Marvin J. Sonosky  
2030 M Street, N. W.  
Washington, D. C. 20036

Attorney of record for the petitioners  
in Docket No. 363

/s/ James W. Moorman

James W. Moorman  
Assistant Attorney General  
Department of Justice  
Washington, D. C.

/s/ A. Donald Mileur

A. Donald Mileur  
Chief, Indian Claims Section

/s/ Bernard M. Sisson

Bernard M. Sisson  
Department of Justice  
Washington, D. C.

Attorneys for the Defendant

18. Acreage of land involved. The parties, through their attorneys, based on data furnished by the Bureau of Land Management, have agreed that the acreage of the land covered by the settlement is 9,286,441 acres of which 565,000 acres are in the "southern triangle." This agreement was confirmed in open session of the Commission.

19. Notice of meeting of Sisseton-Wahpeton Tribe of North Dakota. The Chairman of the Sisseton and Wahpeton Sioux Tribe of North Dakota called a

general meeting of the members of the Tribe for August 9, 1977, to consider the proposed settlement. Notice of the meeting was published (a) in a display advertisement in the July 29, and the August 5, 1977, issues of the Devils Lake Daily Journal, a daily newspaper of general circulation on the reservation, (b) as the front page of the August issue of the E Yanpaha, the tribal newspaper, and (c) by posting, commencing on July 15, 1977, in at least 12 different places where Indian people congregate on the Devils Lake Reservation. In addition, the local newspapers and radio gave general publicity to the meeting.

20. Meeting of Sisseton-Wahpeton Tribe of North Dakota, approval of compromise settlement. On August 9, 1977, the scheduled general meeting of the Tribe was held at the tribal Community Center in Fort Totten, North Dakota. Each eligible voter-member of the Tribe was registered upon entrance into the meeting room. 146 Indians registered, of whom 132 were eligible voters. A copy of a detailed report of the claims attorneys was furnished to each person registered. The report consisted of nine pages, three exhibits, and a map. The report has been examined by the Commission but because of its confidential nature, is not included in the record.

Marvin J. Sonosky, the attorney of record, and Emerson Hopp, a contract attorney, were present at the meeting. The attorney of record read the report aloud at the meeting and each person registered had the opportunity to follow the reading in the registrant's copy of the report.

The letters of offer and acceptance attached to the report also were read aloud. The meeting was then opened for questions. Questions were propounded and answered by the attorney of record. When there were no more questions, the attorneys left the meeting room to permit discussion by the members among themselves. The report was summarized in the Sioux language. Thereafter a vote was taken by secret ballot. The result of the vote was 120 for the settlement, 2 against.

21. Approval of settlement by Tribal Council of Sisseton-Wahpeton Tribe of North Dakota. Immediately following the general meeting of the Tribe, the Sisseton and Wahpeton Sioux Tribal Council of North Dakota, the governing body of the Tribe, held a meeting, attended by a quorum, all of whom had been present at the general meeting. The attorney of record read aloud the proposed resolution approving the settlement. The members of the Council already had the report that had been read at the general meeting, the letters expressing the offer and acceptance and the map. The Tribal Council adopted the resolution accepting the proposed settlement by a vote of four in favor, none opposed.

22. Representative of Commissioner of Indian Affairs present at North Dakota tribal meeting and Tribal Council meeting. The Commissioner of Indian Affairs was represented both at the general tribal meeting and the Tribal Council meeting by Earl J. Azure, Claims, Enrollment and Indian Rights Officer, Aberdeen Area Office, and by Wayne Trottier, Acting Superintendent of the Fort Totten Indian Agency.

23. Notice of meeting of Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation. The Chairman of the Sisseton and Wahpeton Sioux Tribe of the Lake Traverse Reservation called a general meeting of the members of the Tribe for August 10, 1977, to consider the proposed settlement. Notice of the meeting was published (a) in a display advertisement in the August 4 and the July 28, 1977, issues of the Sisseton Courier, a weekly newspaper of general circulation on the reservation, and (b) by posting in public places throughout the reservation.

24. Meeting of Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation. On August 10, 1977, the scheduled general meeting of the Tribe was held on the reservation at the school auditorium in Peever, South Dakota. Each eligible voter-member of the Tribe was registered upon entrance into the meeting room and furnished with a copy of the claims attorneys' report plus the exhibits and map referred to in Finding 20. 399 Indians registered.

Marvin J. Sonosky, the attorney of record, and Emerson Hopp, a contract attorney, were present at the meeting. The attorney of record read the report aloud at the meeting and each person registered had the opportunity to follow the reading in the registrant's copy of the report. The meeting was then opened for questions. Many questions were propounded and answered by the attorney of record. When there were no more questions, the attorneys left the meeting room to permit discussion by the members among themselves.



25. Approval of settlement by Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation. The special representative of the Commissioner of Indian Affairs who was present at the meeting, Earl J. Azure, reported that during the period after the attorneys left the meeting, there was considerable discussion of participation in the award by lineal descendants. The meeting had commenced with lunch at noon and at about 4:00 p.m., while the lineal descendency discussion was going on, a number of people began to leave. The Commissioner's representative reported that it was not clear whether the topic of lineal descendants' participation was a contributing factor to the departures. After the discussion during the absence of the attorneys was completed, a vote was taken by secret ballot. 200 voted for the settlement, 49 opposed, 1 abstained.

26. Approval of settlement by Tribal Council of Sisseton-Wahpeton Sioux Tribe of Lake Traverse Reservation. Immediately following the general meeting of the Tribe, the Tribal Council of the Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation, the governing body of the Tribe, held a meeting. Fourteen members, much more than a quorum, were present and all had attended the general meeting. The attorney of record read aloud the proposed resolution approving the settlement. The members of the Council already had the report that had been read at the general meeting and the letters expressing the offer and acceptance. The Tribal Council adopted the resolution accepting the proposed settlement by a vote of 14 in favor, none opposed.

27. Representative of Commissioner of Indian Affairs at Lake Traverse tribal meeting and Tribal Council meeting. The Commissioner of Indian Affairs was represented both at the general tribal meeting and the Tribal Council meeting by Earl J. Azure, Claims, Enrollment and Indian Rights Officer, Aberdeen Area Office, and by J. Kenneth Adams, Superintendent of the Sisseton Indian Agency.

28. Summary of testimony of witnesses and other evidence before Commission. The testimony of the witnesses and the attendance at the meetings confirm that there was advance notice and publicity concerning the settlement and the dates and purpose of the general meetings on the settlement; that the proposed settlement, the recommendations of the claims attorneys and the reasons in support of the recommendations were carefully explained in writing and orally at the general meetings; that there was full and free discussion at the meetings; that the officials and members of each tribe at the meetings understood the settlement and understood that the entry of final judgments would constitute a final determination of the claims.

29. Approval of settlement by Commissioner of Indian Affairs. By letter dated August 31, 1977, to Marvin J. Sonosky, the attorney of record for plaintiffs, the Acting Deputy Commissioner of Indian Affairs approved the settlement. The pertinent portions of that letter read as follows:

Dear Mr. Sonosky:

On July 15, 1977, you requested our approval of a proposed final settlement of all Sisseton-Wahpeton land claims, and Sisseton-Wahpeton claims for the mismanagement of land by the United States, in United States v. Lower Sioux Indian Community in Minnesota, et al., Appeal No. 2-76, before the United States Court of Claims, for \$1.50 an acre for the land identified in Findings 3 and 4, 36 Ind. Cl. Comm. 472, 485-486 (Docket 363). The case involves the taking of about 8.7 million acres of land under an agreement of September 20, 1872, confirmed by the Act of February 14, 1873, 17 Stat. 437, 456.

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

Contract No. 10, Symbol 14-20-650, Sisseton and Wahpeton Sioux Tribe, South Dakota. The contract between the Sisseton and Wahpeton Sioux Tribe of South Dakota and Attorneys Emerson Hopp and Marvin J. Sonosky was approved December 31, 1952, by the Commissioner of Indian Affairs for a period of ten years from the date of its approval. It was extended for a period of ten years beginning January 1, 1963, by the Area Director of the Aberdeen Area Office, Aberdeen, South Dakota, on May 3, 1963. This contract which expired on December 31, 1972, was renewed and approved on June 12, 1975, for a period of five years as of January 1, 1973.

Contract No. 11, Symbol 14-20-650, Sisseton and Wahpeton Sioux Tribe of North Dakota. The contract between the Sisseton and Wahpeton Sioux Tribe of North Dakota and Attorneys Emerson Hopp and Marvin J. Sonosky was approved December 31, 1952, by the Commissioner of Indian Affairs for a period of ten years from the date of its approval. It was extended for a period of ten years beginning January 1, 1963, and approved May 1, 1963, by the Area Director of the Aberdeen Area Office, Aberdeen, South Dakota.

This contract which likewise expired on December 31, 1972, was renewed for a period of five years beginning January 1, 1973, and ending December 31, 1977. The above contracts (contracts No. 10 and 11) are in full force and effect.

You, the attorney of record for the plaintiffs in this case, made an offer to the Attorney General by letter dated May 31 to settle this claim in the case entitled United States v. Lower Sioux Indian Community in Minnesota, et al., Appeal No. 2-76, before the United States Court of Claims for \$1.50 per acre subject to certain conditions enumerated in your letter of offer. Your offer of settlement was accepted by the Acting Assistant Attorney General on July 11, 1977, as amended by letter dated August 4, 1977, subject to the approval by appropriate resolution of the governing body of the "Sisseton and Wahpeton Bands of Sioux Indians who entered the Agreement of September 20, 1872, as modified and accepted by the United States and the bands," and subject further that the settlement and the resolutions be approved by the Department of the Interior.

Earl J. Azure, Claims, Enrollment and Indian Rights Officer of the Aberdeen Area Office, reports in his memorandum of August 18, 1977, that he was the Bureau's observer at the individual general tribal meetings in which the Sisseton-Wahpeton Sioux of the Devils Lake Reservation in North Dakota and the Sisseton-Wahpeton Sioux of the Sisseton Reservation, South Dakota, considered the proposed compromise settlement. He further reports that Claims Attorneys Marvin J. Sonosky and Emerson Hopp attended the meetings, furnished to each tribal attendee a copy of a detailed report covering the history of the claims at issue and the nature of the proposed compromise, and carefully answered all questions raised by the tribal attendees.

Mr. Azure also states that the claims attorneys used a large detailed map of the land area involved in the case so that the tribal attendees might follow the explanations closely and readily. After the claims attorneys made a full report about the proposed settlement and had provided ample opportunity to the tribal people concerned to ask questions, they left the meeting halls to allow the tribal members an opportunity to debate the proposal among themselves.

#### Sisseton-Wahpeton Sioux, North Dakota

The Sisseton-Wahpeton Sioux of the Devils Lake Reservation considered the proposed settlement at a general meeting held on August 9, 1977. The meeting was chaired by Carl McKay, the tribal chairman. Frank Myrick, the vice-chairman, summarized the claims counsel's report in the

Sioux language. Secret ballots were given to each of the 132 eligible tribal voters in attendance at the meeting. (There are approximately 300 eligible voters in the tribe.) The proposed settlement was accepted by a vote of 120 for, and 2 against. Ten eligible tribal voters did not participate in the balloting.

The Devils Lake Sioux Tribal Council met following the general tribal meeting to consider the proposed settlement. The council adopted a resolution approving the proposed settlement for the sum of \$13,929,661 less the amount the United States paid the Sioux for the land, either \$800,000 or \$544,727, depending upon the outcome of the case entitled Prairie Band of Pottawatomí, et al. v. United States, Appeal No. 6-76. The council also authorized Attorney Sonosky to sign and execute an approval of a stipulation and all papers necessary to carry out the settlement, the entry of final judgment, and payment of the judgment. The resolution was adopted by a vote of four in favor, none against, with one abstaining.

Notice of the general tribal meeting of August 9 was published in the Devils Lake Journal, a local newspaper, and notices were liberally posted in public places on the reservation.

#### Sisseton-Wahpeton Sioux, South Dakota

On August 10, 1977, the Sisseton-Wahpeton Sioux of the Sisseton Reservation in South Dakota met in a general tribal meeting at the school auditorium, Peever, South Dakota, to confer with the claims counsel concerning the proposed settlement. An official count showed that 399 tribal members were in attendance at the meeting. After pros and cons of the proposal were fully discussed and questions raised and answered, a vote by secret ballot was taken with the result that 200 voted in favor of the proposed settlement and 49 voted against. Mr. Azure reports that after two hours' discussion of the proposed settlement, some tribal members left the meeting and did not return to vote on the acceptance or rejection of the proposal.

On the same day, August 10, 1977, the Sisseton-Wahpeton Sioux Tribal Council at a duly convened meeting adopted a resolution approving the proposed compromise settlement for the sum of \$13,929,661 less the amount the United States paid the Sioux for the land, either \$800,000, or \$544,727, depending upon

the outcome of the case entitled Prairie Band of Pottawatomi, et al. v. United States, Appeal No. 6-76. The resolution also authorized Attorney Sonosky to sign and execute an approval of the stipulation and all other papers necessary or appropriate to carry out the settlement, the entry of final judgment and payment of the judgment. The resolution was adopted by a favorable vote of 14 to nothing.

Notice of the general tribal meeting of August 10 was published in the Sisseton Courier, a local newspaper. It was also widely posted over the reservation area.

Mr. Azure has certified that the signatures appearing on the resolution of the Sisseton-Wahpeton Sioux of North Dakota, as well as that of the Sisseton-Wahpeton Sioux of South Dakota, are those of the tribal officials who are the signatories, and that they are genuine. The resolutions are hereby approved.


We are satisfied that the general tribal meetings of both Sisseton-Wahpeton Sioux groups were well publicized and that the tribal members of each group had an opportunity to attend and to express their views. Both meetings were satisfactorily conducted with the voting held after the members had an opportunity to consider the proposed settlement. Mr. Azure feels that a full explanation was given to each tribal group and that the tribal attendees at the meetings understand the proposed compromise settlement.

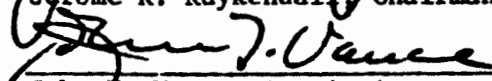
In light of the information which you have furnished to us, that which has been submitted by our field office, and that obtained from other sources, we are satisfied that the proposed settlement is fair and just. The proposed settlement is hereby approved.

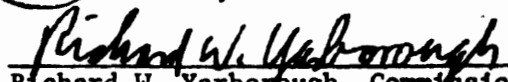
Sincerely,


/s/ Raymond V. Bulter  
Acting Deputy Commissioner of  
Indian Affairs


30. Conclusion. The Commission finds that the settlement in compromise is fair and just to the plaintiffs and to the defendant and approves the same and the terms and conditions of the stipulation for settlement, for severing the claim for \$255,273, and for the entry of judgment.

  
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Jerome K. Kuykendall, Chairman

  
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John T. Vance, Commissioner

  
\_\_\_\_\_  
Richard W. Yarborough, Commissioner

  
\_\_\_\_\_  
Margaret H. Pierce, Commissioner

  
\_\_\_\_\_  
Brantley Blue, Commissioner