

BEFORE THE INDIAN CLAIMS COMMISSION

PUEBLO DE ZIA, PUEBLO DE JEMEZ)	
AND PUEBLO DE SANTA ANA,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 137
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: January 10, 1974

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

This matter is now before the Commission for approval of a compromise settlement of this case and entry of final judgment in the amount of \$749,083.75 in favor of the plaintiffs, with a waiver of review or appeal by all parties.

This judgment is to settle and finally dispose of all rights, claims, or demands which the plaintiffs have asserted or could have asserted in this docket against the defendant under the provisions of Section 2 of the Indian Claims Commission Act, 60 Stat. 1049, which arose out of the extinguishment of Indian title at various times during the 20th century to some 282,415.73 acres of land located in New Mexico. Said judgment will also dispose of all rights, claims, demands, payments on the claim, counterclaims, or offsets which the defendant has asserted or could have asserted in this docket against the plaintiffs or any one or more of them under the provisions of Section 2 of the Indian Claims Commission Act for the period up to and including June 30, 1968. This

bar against other or future claims by the defendant for offsets, gratuities and counterclaims allowable under Section 2 of the Indian Claims Commission Act shall not apply to those which accrued or may accrue subsequent to June 30, 1968

This case concerns the plaintiffs' claim for compensation for some 282,415.73 acres of land located in north-central New Mexico, the Indian title to which was extinguished at three different dates during the 20th century: October 12, 1905; 1920 and April 4, 1936. The Commission first dismissed the plaintiffs' petition in this case. See 11 Ind. Cl. Comm. 131 (1962). The Court of Claims partially reversed the Commission's decision and remanded the case. See 165 Ct. Cl. 501 (1964). The Commission then determined that the Indian title to certain lands was extinguished at varying dates between the late 1800's and 1936, and the Commission's findings of fact, opinion, and interlocutory order on title were entered on March 7, 1968. See 19 Ind. Cl. Comm. 56. On August 27, 1968, the plaintiffs and the defendant filed a stipulation with the Commission in which all parties agreed:

(a) That the total acreage to which Indian title was extinguished was 282,415.73 acres, and that is the total acreage to be valued;

(b) That Indian title to 34,900.27 acres of the total acreage was extinguished on October 12, 1905, and that fair market value of this tract should be determined as of that date;

(c) That Indian title to 16,811.74 acres of the total acreage, consisting of privately patented lands, was extinguished at various dates between 1887 and 1934, that 1920 is a fair average date, and that fair market value of these several tracts should be determined as of that date;

(d) That Indian title to the remaining 230,703.72 acres of the total acreage was extinguished on April 4, 1936, and that fair market value of these lands should be determined as of that date.

The Commission accepted the facts set forth in the stipulation in its opinion on the valuation phase of the claim. See 24 Ind. Cl. Comm. 270 (1970).

On December 17, 1970, the Commission issued its opinion, findings and order on the value of the subject lands, determining that the plaintiffs were entitled to recover from the defendant the sum of \$938,000, less allowable offsets. See 24 Ind. Cl. Comm. 270 (1970). On September 15, 1971, the Commission issued its opinion and findings on the allowable offsets, determining that the defendant had allowable offsets in the amount of \$171,063.92. See 26 Ind. Cl. Comm. 218. The Commission also entered its final award for the plaintiffs in the amount of \$766,936.08. See 26 Ind. Cl. Comm. at 264.

The defendant took an appeal to the Court of Claims asserting that it was entitled to \$889,000 more as offsets. The Court of Claims ruled that the defendant was entitled to two additional offsets:

\$252.33 in grazing fees; and an allowance for 3,520 acres of land placed in trust for the Pueblo de Santa Ana under the Act of September 14, 1961, 75 Stat. 500. See 200 Ct. Cl. 601 (1973), as modified by the order of April 27, 1973. On April 18, 1973, before the case was set for retrial to the Commission, negotiations for the settlement of the offset value of this 3,520-acre tract were commenced. A preliminary agreement was ultimately reached in the amount of \$5 per acre (\$17,600) to be allowed to the defendant as an offset. The proposed settlement was conditioned upon approval by the plaintiff Pueblos, and by the Secretary of the Interior or his authorized representative.

In conformance with the decision of the Court of Claims at 200 Ct. Cl. 601 (1973), as modified by the order of April 27, 1973, we will vacate our findings of fact Nos. 56, 70 and 71 and the last paragraph of finding of fact No. 66, previously entered herein on September 15, 1971. See 26 Ind. Cl. Comm. at 248-49, 260, 262-63. We will also redesignate our previously entered findings of fact Nos. 57 through 69 as findings of fact Nos. 56 through 68. In addition we will vacate the Final Award entered on September 15, 1971, at 26 Ind. Cl. Comm. 264.

The Commission now makes the following findings of fact which are supplemental to the previous findings Nos. 1 through 68.

69. On January 7, 1973, the parties filed a joint motion for entry of final judgment in this case in the amount of \$749,083.75, in

favor of the plaintiffs. The parties had previously, on December 26, 1973, filed a Stipulation of Settlement herein. Counsel for the plaintiffs also filed, on January 7, 1973, a motion for waiver of hearing on this settlement.

70. On April 18, 1973, counsel for plaintiffs in Docket 137 submitted a letter to defendant's attorney, Bernard M. Newburg, proposing a settlement by offering to accept the defendant's valuation of \$5.00 per acre for the 3,250 acres determined by the Court of Claims to be a valid offset against the plaintiffs' award, and thereby fixing the plaintiffs' final award as \$749,083.75.

71. By letter dated October 1, 1973, Assistant Attorney General Wallace H. Johnson, 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 resolution of the governing bodies of each of the three Pueblos and (b) that approval of the settlement, as well as the resolutions of the Pueblos, be secured from the Secretary of the Interior, or his authorized representative.

72. The terms of the settlement are set forth in the Stipulation of Settlement entered into by counsel for the parties and filed with the Commission, which reads as follows:

STIPULATION OF SETTLEMENT

It is hereby stipulated between counsel for the parties in the above-numbered docket, that each and all the claims and all the litigation in the above-numbered docket shall be settled and finally disposed of by entry of final judgment, as follows:

1. Final judgment shall be entered by the Indian Claims Commission against the United States of America and in favor of the Pueblo de Zia, the Pueblo de Jemez, and the Pueblo de Santa Ana in Docket No. 137 in the net amount of \$749,083.75.

2. Entry of final judgment on this basis shall finally dispose of all rights, claims or demands which plaintiffs in said docket, or any of them, have asserted or could have asserted, with respect to the subject matters of such case, and plaintiffs or any of them shall be barred thereby from asserting any such rights, claims, or demands against defendant in any other or future action or actions.

3. Entry of final judgment on this basis shall finally dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted or could have asserted against plaintiffs or any of them under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049) for the period up to and including June 30, 1968, and the defendant shall be barred from asserting any said rights, claims, demands, payments on the claim, counterclaims or offsets against plaintiffs or any of them in any other or future action or actions. The bar against other or future claims by the defendant for offsets, gratuities and counterclaims allowable under Section 2 of the Indian Claims Commission Act shall not apply to those which accrued or may accrue subsequent to June 30, 1968.

4. The final judgment entered by the Indian Claims Commission shall be by way of compromise and settlement of all the claims and litigation in said numbered docket before the Indian Claims Commission and shall not be construed as an admission of either party, for the purpose of precedent or argument in any other case.

5. The final judgment entered pursuant to this stipulation shall constitute a final determination by the Commission of all the claims and all the litigation in said numbered docket, and shall become final on the day it is entered, the parties hereto waiving any right to appeal from, or otherwise seek review of such determination.

6. Counsel for the parties shall execute and file with the Commission a joint motion for entry of final judgment.

Dated this 21 day of December 1973.

Respectfully submitted,

/s/ Mark J. Clayburgh
Mark J. Clayburgh
Attorney of Record for Plaintiffs

/s/ Claud S. Mann
Claud S. Mann
Attorney of Record for Plaintiffs

/s/ Wallace H. Johnson
Wallace H. Johnson
Assistant Attorney General

/s/ Ralph A. Barney
Ralph A. Barney
Chief, Indian Claims Section

/s/ Bernard M. Newburg
Bernard M. Newburg
Attorney for Defendant

73. Upon completion of preliminary negotiations for settlement of the amount of the final award in this case and the acceptance by counsel for the parties of the offer to settle, counsel for the plaintiffs presented the proposed settlement to members of each of the tribal councils of the three plaintiff Pueblos.

Previously on March 8, 1973, a meeting had been held at the Southern Pueblo Agency of the Bureau of Indian Affairs in Albuquerque, New Mexico, to explain the proposed offer of settlement. The governors of the three plaintiff Pueblos, members of the claims committees of the three plaintiff Pueblos, plaintiffs' counsel, Claud Mann, and representatives of the Bureau of Indian Affairs were present at the meeting. Plaintiffs' counsel, Claud Mann, explained in detail the terms of the proposed \$749,083.75 settlement to those present. Following this meeting, the governors and claims committee representatives of each of the three Pueblos, with the assistance of agency coordinators, discussed the terms of the proposed \$749,083.75 settlement with the members of each of the three Pueblo tribal councils.

74. On October 5, 1973, a special meeting of the tribal council of the Pueblo de Jemez, duly called by the governor of the tribal council, Mr. Abel Sando, was held for the purpose of determining whether the Pueblo should accept the proposed settlement to be entered in favor of the three plaintiffs in the amount of \$749,083.75.

By unanimous vote, the tribal council at the October 5, 1973 meeting adopted the following resolution directing the Pueblo's attorneys to enter into a stipulation of settlement authorizing entry of final judgment in favor of the three plaintiff Pueblos in the amount of \$749,083.75:

RESOLUTION

At a duly called meeting of the Council of Pueblo de Jemez on the 5th day of October, 1973, the following resolution was adopted:

Be it resolved that the Pueblo de Jemez direct its attorneys, CLAUD S. MANN and M. J. CLAYBURGH to enter into a Stipulation of Settlement authorizing final judgment to be entered by the Indian Claims Commission against the United States of America and in favor of the Pueblo de Zia, Pueblo de Jemez and the Pueblo de Santa Ana in Docket No. 137 in the net and final amount of \$749,083.75 and for that purpose a copy of the proposed Stipulation of Settlement is attached hereto and made a part hereof.

s/ ABEL SANDO

Governor

s/ JOSE L. PECOS

Secretary

CERTIFICATE

The undersigned hereby certifies that a quorum of the Pueblo Council was present at the above meeting and all voted in favor of the resolution and none against.

s/ ABEL SANDO

Governor

75. On October 15, 1973, a special meeting of the tribal council of the Pueblo de Santa Ana, duly called by the governor of the tribal council, Mr. Miguel Amijo, was held for the purpose of determining whether the Pueblo should accept the proposed settlement to be entered in favor of the three plaintiffs in the amount of \$749,083.75.

By unanimous vote, the tribal council at the October 15, 1973 meeting adopted the following resolution directing the Pueblo's attorneys to enter into a stipulation of settlement authorizing entry of final judgment in favor of the three plaintiff Pueblos in the amount of \$749,083.75:

RESOLUTION

At a duly called meeting of the Council of Pueblo de Santa Ana on the 15th day of October, 1973, the following resolution was adopted:

Be it resolved that the Pueblo de Santa Ana direct its attorneys, CLAUD S. MANN and M. J. CLAYBURGH to enter into a Stipulation of Settlement authorizing final judgment to be entered by the Indian Claims Commission against the United States of America and in favor of the Pueblo de Zia, Pueblo de Jemez and the Pueblo de Santa Ana in Docket No. 137 in the net and final amount of \$749,083.75 and for that purpose a copy of the proposed Stipulation of Settlement is attached hereto and made a part hereof.

s/ MIGUEL AMIJO

Governor

s/ PORFIRIO MONTEJO

Councilman

CERTIFICATE

The undersigned hereby certifies that a quorum of the Pueblo Council was present at the above meeting and 25 voted in favor of the resolution and 0 against.

s/ MIGUEL AMIJO

Governor

76. On October 5, 1973, a special meeting of the tribal council of the Pueblo de Zia, duly called by the Governor of the tribal council,

Mr. Gilbert Lucero, was held for the purpose of determining whether the pueblo should accept the proposed settlement to be entered in favor of the three plaintiffs in the amount of \$749,083.75.

By unanimous vote, the tribal council at the October 5, 1973 meeting, adopted the following resolution directing the pueblo's attorneys to enter into a stipulation of settlement authorizing entry of final judgment in favor of the three plaintiff pueblos in the amount of \$749,083.75:

RESOLUTION

At a duly called meeting of the Council of Pueblo de Zia on the 5th day of October, 1973, the following resolution was adopted:

Be it resolved that the Pueblo de Zia direct its attorneys, CLAUD S. MANN and M. J. CLAYBURGH to enter into a Stipulation of Settlement authorizing final judgment to be entered by the Indian Claims Commission against the United States of America and in favor of the Pueblo de Zia, Pueblo de Jemez and the Pueblo de Santa Ana in Docket No. 137 in the net and final amount of \$749,083.75 and for that purpose a copy of the proposed Stipulation of Settlement is attached hereto and made a part hereof.

s/ GILBERT LUCERO
Governor

s/ MANUEL SILAS
Councilman

CERTIFICATE

The undersigned certifies that a quorum of the Pueblo Council was present at the above meeting and 28 voted in favor of the resolution and 0 against.

s/ GILBERT LUCERO
Governor

77. At the request of counsel for plaintiff pueblos, the Assistant Secretary of the Interior through his representative, Raymond V. Butler, approved the proposed settlement by letter dated December 6, 1973, addressed to Mark J. Clayburgh, counsel for the plaintiffs in Docket 137, as follows:

You negotiated a proposed compromise to settle Indian Claims Commission Docket No. 137 with entry of a net final award of \$749,083.75 in favor of the Pueblos de Jemez, Santa Ana, and Zia.

Docket No. 137 is being prosecuted under contract No. I-1-ind. 42427, dated November 30, 1950, entered into by the Pueblo de Jemez, the Pueblo de Santa Ana, and the Pueblo de Zia with Attorneys Dudley Cornell (now deceased) and Claude S. Mann. It was approved on December 14, 1950, for a term of six years beginning with the date of approval. The contract has been extended several times. The last extension which was approved on May 10, 1972, will run until May 9, 1974. An amendment which was approved on June 16, 1964, added Attorney Mark J. Clayburgh as a party to the contract.

The contract provides that the attorneys shall make no compromise of matters in controversy unless with the approval of the Commissioner of Indian Affairs and the Pueblos.

You made an offer to the Assistant Attorney General on April 18, 1973, to compromise the remaining issue (an offset item) and settle Docket No. 137 for a final award of \$749,083.75.

The Assistant Attorney General accepted your offer by letter dated October 1, 1973. Attached to the letter was a draft of a proposed Stipulation of Settlement. The acceptance was with conditions. Two of them were that the proposed settlement be approved by appropriate resolution of the governing bodies of each of the three Pueblos and that you secure from the Secretary of the Interior, or his authorized representative, approval of the settlement as well as the resolutions of the Pueblos.

A meeting was held at the Southern Pueblo Agency of the Bureau of Indian Affairs in Albuquerque, New Mexico, on March 8, 1973, to explain the proposed settlement. The Governors of the Pueblos, members of the claims committees of each Pueblo,

Attorney Mann, and representatives of the Bureau were present. Attorney Mann explained the terms of the proposed settlement. All issues had been determined in the case except the value of 3,520 acres of land which would be deducted from the amount recovered for the Pueblos. The value of the 3,520 acres was negotiated and compromised at \$17,600.00.

The proposed Stipulation of Settlement provides, in part, that entry of final judgment in Docket No. 137 in the amount of \$749,083.75 will dispose of all rights, claims or demands which the plaintiff Pueblos have asserted or could have asserted in the case and will dispose of all rights, claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted or could have asserted against the plaintiffs under Section 2 of the Act of August 13, 1946 (60 Stat. 1049), for the period up to and including June 30, 1968. The parties waive any right to appeal from or otherwise seek review of such entry of final judgment.

Following the meeting of March 8, 1973, the Governors and Claims Committee representatives, with the assistance of Agency Coordinators, discussed the proposed settlement with the respective Pueblo Councils. Each Pueblo Council (governing body) then adopted a resolution without any dissenting votes accepting the proposed compromise settlement. A copy of the proposed Stipulation of Settlement was attached to each resolution. The Council of the Pueblo de Jemez and the Council of the Pueblo de Zia duly adopted their resolutions on October 5, 1973, and the Council of the Pueblo de Santa Ana duly adopted its resolution on October 15, 1973.

Each resolution was duly signed by the Governor and a Councilman of the Pueblo and each was certified by the Governor that a quorum of the Pueblo Council was present. We are satisfied that each meeting was properly called, satisfactorily conducted, that the members of the Pueblo Council understood the issue compromised and the terms of the settlement before adopting the resolution, and that the Council members represented the views of the membership of their Pueblo. The three resolutions are hereby approved.

In light of the information obtained from various sources with regard to the issue compromised and the terms of the proposed settlement as set out in the proposed Stipulation

of Settlement, we are satisfied that the proposed settlement is fair. The terms of the proposed settlement, as set out in the proposed stipulation attached to each of the Pueblos' resolutions, to settle Docket No. 137 for a net final award in the sum of \$749,083.75 are hereby approved.

Sincerely yours,

/s/ Raymond V. Butler
Acting Deputy Commissioner

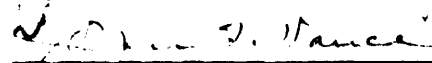
78. Based upon the entire record, including the representations of counsel and the approvals of the settlement by resolutions of the Governor and Council of each of the three Pueblos, counsel for both parties, and the duly authorized representative of the Secretary of the Interior, the Commission finds that approval of the settlement as set forth in the Stipulation of Settlement, filed December 26, 1973, 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.

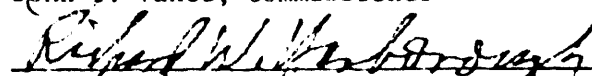
In support of the plaintiffs' motion of January 7, 1973, for waiver of a hearing before the Commission on this settlement, plaintiffs' counsel states that due to the relatively minor sum by which the total allowable offsets have been revised on remand from the Court of Claims, it would cause a financial hardship upon the three plaintiffs to be required to appear before the Commission for a hearing at Washington, D. C. The Commission, having considered the plaintiffs' motion for waiver of

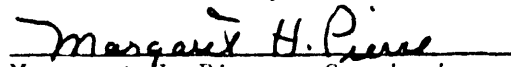
hearing, finds and determines that for the reasons stated in plaintiffs' motion it is appropriate in this case to waive the hearing on this settlement.

The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in Docket No. 137 jointly in favor of the plaintiffs in the amount of \$749,083.75, subject to the terms and provisions set forth in the Stipulation of Settlement.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner