

BEFORE THE INDIAN CLAIMS COMMISSION

THE JICARILLA APACHE TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 22-K,
)	Accounting
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

The Commission makes the following findings of fact on compromise settlement.

1. Plaintiff, the Jicarilla Apache Tribe, is an American Indian Tribe within the meaning of Section 2 of the Indian Claims Commission Act, as amended, 25 U.S.C. § 70(a) (1970), with a tribal council duly recognized by the Secretary of the Interior as having authority to represent such tribe.

2. The claims in this case arise under Section 2 of the Indian Claims Commission Act, 25 U.S.C. § 70(a) (1970).

3. Plaintiff timely filed this claim on February 3, 1948, as part of Docket 22 entitled "The Apache Nation, ex rel. Fred Pellman, et al., Plaintiffs v. United States of America, Defendant." The petition included a claim for a general accounting of defendant's administration of plaintiff's tribal funds and properties, which defendant had controlled and managed over the years. Pursuant to leave granted by the Commission, an amended petition was filed on

January 3, 1958, for the purpose of separating the claim of the Jicarilla Apache Tribe from claims of other Apache tribes originally filed as part of Docket 22. The amended petition also included a claim for a general accounting of defendant's administration of plaintiff's funds and properties.

4. During the pendency of plaintiff's land claim, Docket 22-A, before the Indian Claims Commission, plaintiff filed its Second Amended Petition (Accounting Claim) and moved to separate its claim for accounting from its land claim.

5. On August 1, 1970, plaintiff filed interrogatories requesting a complete accounting by defendant to the date of the interrogatories, of funds and property of plaintiff, including detailed vouchers, so that determination could be made whether expenditures were for government, tribal, or individual benefits; for an accounting of interest paid on tribal funds; for classification of receipts; for information as to the length of time plaintiff's monies were held in non-interest-bearing accounts and for other information pertaining to plaintiff's property in custody of defendant.

6. On April 5, 1971, a Stipulation for Entry of Final Judgment in plaintiff's land claim was entered into by attorneys for plaintiff and defendant. This Stipulation contained the following provision:

Final judgment entered herein shall not prejudice plaintiff's continued prosecution of its accounting claim against the defendant.

7. Approving the above stipulation, the Commission awarded final judgment in the land claim on behalf of plaintiff against the defendant, and ordered the separation of plaintiff's accounting claim from the land claim. The Commission designated the accounting claim as Docket 22-K.

8. A trial was set in this case before the Commission for February 14, 1974. While preparing for trial, the parties entered into extensive negotiations on possible settlement of the claims. As a result of these negotiations, agreement was reached on a settlement of the claims in the net amount of \$7,000,000.00. The parties were unable to agree on the inclusion of certain claims in the compromise settlement, which claims are set forth in the Stipulation for Entry of Final Judgment and are specifically reserved. They are: claims for mismanagement of oil and gas resources of the Jicarilla Apache Tribe; and claims for water rights of the Jicarilla Apache Tribe to waters of the Navajo River or its underground sources, or claims for damages, if any, by reason of loss of such rights arising from the San Juan-Chama diversion and allocations of water so diverted. The claims that are specifically reserved have arisen since August 13, 1946, and the parties agree that said claims are not within the jurisdiction of the Indian Claims Commission.

9. By letter dated October 30, 1973, plaintiff submitted a proposed compromise settlement of the accounting claims of the Tribe in Docket 22-K to Mr. Bernard M. Newburg of the Indian Claims Section of the Department of Justice. The letter states as follows:

Mr. Bernard M. Newburg
Indian Claims Section
Land and Natural Resources Division
Department of Justice
Washington, D. C. 20530

Re: Jicarilla Apache Tribe v. United States of
America, Docket No. 22-K, Indian Claims Commission

Dear Mr. Newburg:

The Jicarilla Apache Tribe, claimant in Docket 22-K, Indian Claims Commission, has authorized me as attorney of record for the Tribe to negotiate a compromise settlement of the accounting claims of the Tribe in Docket 22-K, Jicarilla Apache Tribe v. United States of America, for the sum of \$7,000,000.00. This sum is to settle accounting claims of the Tribe against the United States pending in Docket 22-K, Indian Claims Commission, and all other claims against the United States by the Tribe for accounting of monies and properties of the Tribe to the date of settlement, not including, however, and without prejudice to, the further prosecution of claims by the Tribe against the United States of America for mismanagement of oil and gas resources of the Tribe, if such claims exist.

This offer of settlement is subject to acceptance by the Attorney General on behalf of the United States of America within forty days of the date of this letter, subject to the usual conditions imposed by the Attorney General on settlement of the Indian Claims cases of this kind. A certified copy of the resolution of the Tribal Council of the Tribe authorizing and directing me to transmit this offer of settlement is enclosed herewith.

Yours very truly,

/s/ Robert J. Nordhaus
Attorney of record
Jicarilla Apache Tribe

10. Enclosed with the letter was a certified copy of resolution

74-90 of the Tribal Council of the Jicarilla Apache Tribe, authorizing
and directing the attorneys for the Tribe to transmit the offer of

settlement. This resolution states as follows:

JICARILLA APACHE TRIBE
RESOLUTION OF THE TRIBAL COUNCIL

Accounting Claims--Compromise Settlement

Resolution No. 74-90

WHEREAS, the Jicarilla Apache Tribe has been prosecuting a claim before the Indian Claims Commission entitled Jicarilla Apache Tribe v. United States of America, Docket No. 22-K; and

WHEREAS, on October 24 and 25, 1973, Robert J. Nordhaus, the claims attorney of record for the Tribe, accompanied by five members of the Tribal Council, including a quorum of the Executive Committee of the Tribal Council, namely, Hubert Velarde, President of the Tribal Council, Everett Vigil, Dale Vigil, Edwin Sandoval, members of the Executive Committee of the Tribal Council, and Leonard Atole, member of the Tribal Council, negotiated with Ralph Barney and Bernard M. Newburg of the office of the Attorney General of the United States, a compromise and settlement of the accounting issues raised in Docket 22-K, Indian Claims Commission, and certain other accounting claims of the Tribe against the United States, and

WHEREAS the negotiating parties agreed to settle all claims of the Tribe against the United States for accounting of monies and properties of the Tribe by the United States, including all claims pending in Docket 22-K before the Indian Claims Commission and all other claims against the United States by the Tribe for accounting of monies or properties of the Tribe up to and including the date of approval of this settlement by the Indian Claims Commission, but not including, and without prejudice to, further prosecution of any claims for mismanagement of the oil and gas resources of the Jicarilla Apache Tribe, for the sum of Seven Million Dollars (\$7,000,000.00), subject to the approval of the Attorney General of the United States, the Tribe at a general election of members of the Tribe, the Secretary of the Interior, and the Indian Claims Commission; and

WHEREAS, the Executive Committee of the Council, a quorum of which committee participated in the settlement negotiations, has recommended to the Tribal Council that said settlement be approved, and

WHEREAS, the Council has fully debated and considered the proposed offer of settlement, and

WHEREAS, considerable time will be taken to finally hear and determine the accounting claim if litigated, and considerable additional expense will be incurred with the possibility of appeals and further delays before the final judgment could be entered, and

WHEREAS, Robert J. Nordhaus and B. Reid Haltom, the attorneys prosecuting the accounting claim for the Tribe, appeared before the Council and fully explained and evaluated the proposed compromise and settlement,

NOW, THEREFORE, BE IT RESOLVED by the Tribal Council of the Jicarilla Apache Tribe that the proposed compromise and settlement of the accounting claims of the Tribe against the United States be and it hereby is approved in the sum of Seven Million Dollars, and that Robert J. Nordhaus, attorney of record for the Tribe be, and he hereby is, authorized and directed to advise the Attorney General of the United States that the Tribe will accept such sum of Seven Million Dollars (\$7,000,000.00) in full settlement of the accounting claims of the Tribe pending before the Indian Claims Commission in Docket 22-K, and all other claims for accounting of monies and property of the Tribe against the United States, up to and including the date of approval by the Indian Claims Commission of the settlement herein, but not including, and without prejudice to, the further prosecution of claims against the United States for mismanagement of oil and gas resources of the Tribe; and

BE IT FURTHER RESOLVED that this offer of settlement be conditioned upon approval of the Attorney General of the United States within forty days of the date this offer is transmitted by the attorneys for the Tribe to the office of the Attorney General of the United States, said offer of settlement to be subject to the approval of the Tribe at a general election of members of the Tribe, the Secretary of the Interior or his authorized representative, and the Indian Claims Commission, and further subject to such other

conditions as are usually imposed by the Attorney General on settlement of Indian accounting claims.

CERTIFICATION

The foregoing resolution was adopted by the Tribal Council of the Jicarilla Apache Tribe, on the 30th day of October, 1973, by a vote of 8 for, 0 against, and 0 abstaining, at a duly called meeting at which a quorum of the Tribal Council members were present.

ATTEST:

/s/ Hubert Velarde
President

/s/ Barbara Gonzales
Secretary

11. Following a series of telephone conversations between the attorneys for the defendant and the claims attorneys for the tribe, the plaintiff, by letter dated November 12, 1973, set forth confirmation of the understanding reached on claims for diversion of water rights that would also be reserved from the settlement of the accounting claims, pursuant to said conversations. This letter states as follows:

Mr. Bernard M. Newburg
Land and Natural Resources Division
Indian Claims Section
Department of Justice
Washington, D. C. 20530

Re: Jicarilla Apache Tribe vs. United States, Docket
No. 22-K, Accounting, Indian Claims Commission

Dear Mr. Newburg:

Referring to my letter of October 30, 1973, this will confirm our understanding reached over the telephone today that the settlement of the accounting claim of the Tribe set forth in the letter of October 30, 1973, will reserve claims for damages, if any, by reason of loss of water rights of the Tribe arising from the San Juan-Chama diversion and allocations of the water so diverted, as set forth in the amended resolution of the Tribal Council enclosed

herewith. It is also understood that claims against the United States reserved from said settlement for mismanagement of oil and gas resources and diversion of water rights, have arisen since August 13, 1946, and are not within the jurisdiction of the Indian Claims Commission.

Yours very truly,

/s/ Robert J. Nordhaus
Attorney of Record
Jicarilla Apache Tribe

On November 9, 1973, the Tribal Council of the Tribe amended the resolution of October 30, 1973, to provide for the reservation of water rights claims as set forth in the above letter.

12. Following a series of telephone conversations in which the Justice Department, through Mr. Ralph Barney, requested an extension of time from the plaintiff for approval of the proposed settlement in Docket 22-K, the plaintiff, by Tribal Council resolution, granted that extension of time.

13. By letter dated December 21, 1973, from Wallace H. Johnson, Assistant Attorney General, the defendant replied, accepting the plaintiff's proposal for compromise and settlement subject to certain conditions. The letter states as follows:

Robert J. Nordhaus, Esquire
610 Simms Building
Albuquerque, New Mexico 87101

Dear Mr. Nordhaus:

The offer to settle the case entitled Jicarilla Apache Tribe v. United States, Docket No. 22-K, before the Indian Claims Commission, for the sum of \$7,000,000, in accordance with your letters of October 30, November 12, and December 13, 1973, is accepted subject to the following conditions:

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

2. That the approval of the settlement, as well as the resolution of the Jicarilla Apache Tribe, be secured from the Secretary of the Interior, or his authorized representative, a copy thereof to be furnished to us.

3. That responsible officials and representative members of the Jicarilla Apache Tribe be present to testify in behalf of the Tribe on the compromise settlement before the Indian Claims Commission.

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 that will be offered in evidence at the hearing on the settlement. Copies of these papers shall also be furnished to the defendant.

Sincerely,

/s/ Wallace H. Johnson
Assistant Attorney General

14. Pursuant to the offer and acceptance, a stipulation for final judgment was signed by the attorneys for the parties and joined in by the President and Secretary of the Tribe. The stipulation reads as follows:

STIPULATION FOR FINAL JUDGMENT

The parties, by and through their respective counsel, hereby stipulate that the above entitled claim should be settled, compromised and finally disposed of by entry of Final Judgment as follows:

I.

There shall be entered in the case a judgment for plaintiff in the amount of \$7,000,000.00. Entry of judgment in said amount shall finally dispose of all rights, claims and demands that plaintiff has asserted or could have asserted with respect to the Accounting Claim in Docket No. 22-K. Plaintiff shall be barred thereby from asserting any further rights, claims or demands against the defendant and any future action on said accounting claim or other claims for accounting of monies or properties of the Tribe up to and including the date of final award herein, except claims for mismanagement of oil and gas resources and diversion of water rights arising since August 13, 1946, and not within the jurisdiction of the Indian Claims Commission, as set forth in paragraph II below.

II.

Final judgment herein shall not prejudice plaintiff's prosecution of claims against the United States for mismanagement of oil and gas resources of the Tribe, or claims for water rights of the Tribe to waters of the Navajo River or its underground sources, or claims for damages, if any, by reason of loss of such rights arising from the San Juan-Chama diversion and allocations of water so diverted, said claims for mismanagement of oil and gas resources and diversion of water rights having arisen since August 13, 1946, and not being within the jurisdiction of the Indian Claims Commission.

III.

Final judgment entered pursuant to this stipulation shall be construed to be a compromise settlement and shall not be construed as an admission by either party for the purpose of precedent or argument in any other case.

IV.

Final judgment of the Indian Claims Commission pursuant to this stipulation shall constitute a final determination by the Commission of the above captioned case as to the accounting claims cognizable by the Indian Claims Commission, and other accounting claims of the plaintiff up to and including the date of the award, except as to claims specifically reserved hereinabove.

V.

Attached to this stipulation, incorporated herein by reference, is a resolution approving the settlement, adopted by the Jicarilla Apache Tribal Council, plaintiff's governing body, on October 30, 1973, a resolution adopted at a meeting of the adult members of the Jicarilla Apache Tribe held at Dulce, New Mexico, on January 18, 1974, and a further resolution ratifying the action of the members and reaffirming approval of the settlement by the Jicarilla Apache Tribal Council, adopted January 18, 1974, all of said resolutions authorizing counsel for plaintiff to enter into this stipulation as set forth herein, and a copy of the letter approving the settlement of this litigation by the Department of the Interior or its authorized representative.

DATED this 5th day of February, 1974.

/s/ Robert J. Nordhaus
Attorney of record for Petitioner
in Docket 22-K

Wallace H. Johnson, Assistant
Attorney General

By /s/ Bernard M. Newburg
Attorney for Defendant

Approved and joined in by:

/s/ Hubert Velarde
President

/s/ Barbara Gonzales
Secretary

15. The Tribal Council of the Jicarilla Apache Tribe, plaintiff's governing body, being informed of the status of the settlement negotiations by its counsel, then called a general meeting of the Jicarilla Apache Tribe for January 18, 1974, to consider the proposed settlement.

16. On January 2, 1974, notices were posted at the meeting place and at other public places on the Jicarilla Apache reservation, as shown on the Affidavit of Publication of Barbara Gonzales, Secretary of the Tribal Council. Notice was published in the Jicarilla Chieftain, a newspaper of general circulation among the Tribe, on December 24, 1973, and republished January 7, 1974, along with a memorandum explaining the proposed settlement, prepared by the claims attorney for the tribe. Both of said issues were mailed to each adult member of the tribe. In addition, announcements of the meeting were broadcast over the television station operated by the tribe and otherwise widely publicized among tribal members.

17. The Commission finds that there was sufficient notice to tribal members of the meeting of January 18, 1974, which notice conformed with the requirements of the tribe's constitution.

18. The meeting of the members of the Jicarilla Apache Tribe was held on January 18, 1974, for the purpose of discussing the proposed compromise settlement of the accounting claim. The meeting was attended by approximately 290 adult members of the tribe, officials of the Bureau of Indian Affairs, and the claims attorneys for the

tribe. Hubert Velarde, President of the Tribal Council, presented a summary of the claim, both in the English language and in the Jicarilla Apache language. Mr. Robert J. Nordhaus, claims attorney, gave a thorough explanation of the claim, the proposed settlement and his recommendations for the acceptance of the proposed settlement. His presentation was also interpreted into the Jicarilla Apache language. Following this presentation, the tribal members were given ample time to raise questions concerning the proposed settlement. Several tribal members raised questions and made suggestions as to how the proceeds of the claim should be used. Prior to the meeting, copies of a memorandum to tribal members, prepared by the claims attorney, presenting the history of the claim and explaining the proposed settlement, were distributed to the voting membership. Copies of the form of Stipulation for Entry of Final Judgment and a draft resolution for acceptance of the proposed settlement were also distributed to the voting membership. Each of these documents was read and its contents explained.

19. The Jicarilla Apache Tribe voted, by vote of 283 to 0, to accept the proposed compromise settlement. Its approval was embodied in the following resolution of the tribe:

RESOLUTION OF THE
JICARILLA APACHE TRIBE

RESOLUTION NO. 74-T-01

WHEREAS, the Jicarilla Apache Tribe has been prosecuting an accounting claim before the Indian Claims Commission,

entitled Jicarilla Apache Tribe vs. United States of America, Docket No. 22-K, and

WHEREAS, on October 24 and 25, 1973, Robert J. Nordhaus, claims attorney of record for the tribe, accompanied by five members of the Tribal Council, including a quorum of the Executive Committee of the Tribal Council, negotiated with Ralph Barney and Bernard M. Newburg of the office of the Attorney General of the United States, a compromise and settlement of the accounting issues raised in Docket 22-K, Indian Claims Commission, and certain other accounting claims of the Tribe against the United States, and

WHEREAS, the negotiating parties agreed to settle all claims of the Tribe against the United States for accounting of monies and properties of the Tribe by the United States, including all claims pending in Docket 22-K before the Indian Claims Commission, and all other claims against the United States by the Tribe for accounting of monies or properties of the Tribe up to and including the date of approval of this settlement by the Indian Claims Commission, but not including, and without prejudice to, the further prosecution of any claims for mismanagement of the oil and gas resources and diversion of water rights of the Jicarilla Apache Tribe, said claims, if any, having arisen since August 13, 1946, for the sum of \$7,000,000.00, subject to the approval of the Attorney General of the United States, the Tribe at a general election of the members of the Tribe, the Secretary of the Interior, and the Indian Claims Commission, and

WHEREAS, the Executive Committee of the Council, a quorum of which committee participated in settlement negotiations, recommended to the Jicarilla Apache Tribal Council that said settlement be approved, and

WHEREAS, the Tribal Council, after due consideration, approved said offer of settlement by resolution dated October 30, 1973, and

WHEREAS, considerable time will be taken to litigate the accounting issues of the claim and prosecution of the claim to final conclusion before the Commission could involve appeals to the Court of Claims, and,

WHEREAS, in order to prepare the evidence for presentation of the claims before the Commission, the Tribe would be obliged to hire additional experts to prepare evidence in great detail, and the preparation for trial and trial could require considerable additional expense by the Tribe, and

WHEREAS, some of the issues settled in the negotiation have not been decided by the Commission, and could be determined adversely to the Tribe, and

WHEREAS, the Jicarilla Apache Tribe at a general meeting of members of the Tribe for purpose of considering the terms of such settlement, notice of which meeting was duly given to the adult members of the Tribe, and at which meeting Robert J. Nordhaus, claims attorney for the Tribe appeared before the general meeting and fully explained and evaluated the proposed compromise and settlement and answered questions of the members of the Tribe, and

WHEREAS, representatives of the Department of the Interior, Bureau of Indian Affairs, were present during the meeting and observed the proceedings, and

WHEREAS, the adult members of the Jicarilla Apache Tribe were fully informed and advised regarding the proposed settlement, together with proposed Stipulation for Entry of Final Judgment, copy of which was distributed to members of the Tribe and read in the open tribal meeting, and explained by the attorney,

NOW, THEREFORE, BE IT RESOLVED by the adult members of the Jicarilla Apache Tribe assembled, that the proposed settlement of the accounting claim, Docket 22-K, in the sum of \$7,000,000.00 be, and it hereby is, approved, it being understood that the settlement is without prejudice to further prosecution of any claims for mismanagement of the oil and gas resources of the tribe, and without prejudice to claims for water rights of the Tribe, to water of the Navajo River or its underground sources, or claims for damages, if any, by reason of loss of such rights arising from the San Juan-Chama diversion and allocation of water so diverted, said claims, if any, having arisen since August 13, 1946; it being further understood that this approval authorizes the attorneys to execute the proposed Stipulation for Entry of Final Judgment, and

BE IT FURTHER RESOLVED, that the Chairman and Secretary of this meeting are authorized to approve the proposed stipulation and that the President, Vice President, or other members of the Tribal Council designated by the Tribal Council, and the following members of the tribe designated by the members of the Tribe at this meeting are authorized to appear and testify before the Indian Claims Commission regarding the proposed settlement and the action taken by the adult members of the Tribe: Richard Tecube and Henry L. Vicenti,

BE IT FURTHER RESOLVED that the Secretary of Interior and the Indian Claims Commission are hereby requested to approve the proposed settlement and Stipulation for Entry of Final Judgment.

CERTIFICATION

I hereby certify that at a duly called meeting of the adult members of the Jicarilla Apache Tribe held January 18, 1974, notice of which was duly posted and published according to the election rules of the Tribe and mailed to each member of the Tribe, at which meeting 290 adult members of the Tribe were present, the foregoing resolution was adopted by a vote of 283 for, and 0 opposed.

Dated this 18th day of January, 1974.

/s/ Hubert Velarde
President

ATTEST:

/s/ Barbara Gonzales
Secretary

/s/ Henry L. Vicenti
Henry L. Vicenti

/s/ Richard Tecube
Richard Tecube

20. Following the meeting of the members of the Jicarilla Apache Tribe, the Tribal Council of the Tribe met and approved and ratified

the proposed compromise and settlement of the accounting claim of the Tribe, approved the proposed Stipulation for Entry of Final Judgment, and authorized certain individuals to testify before the Indian Claims Commission, and authorized the claims attorneys to execute documents required and take the steps necessary to effectuate the compromise and settlement. Resolution No. 74-146 of the Tribal Council reads as follows:

RESOLUTION OF THE JICARILLA
APACHE TRIBAL COUNCIL

RESOLUTION NO. 74-146

WHEREAS, on October 30, 1973, the Jicarilla Apache Tribal Council authorized attorneys for the Tribe to propose to the Attorney General of the United States that the Tribe accept the sum of \$7,000,000.00 in full settlement of the accounting claim of the Tribe in Docket 22-K, and other accounting claims of the Tribe up to and including the date of final award by the Indian Claims Commission, reserving certain claims as set forth in said resolution, and

WHEREAS, on December 21, 1973, the Attorney General of the United States approved said settlement under certain conditions, and

WHEREAS, a meeting of the members of the Jicarilla Apache Tribe was called to be held January 18, 1974, to discuss and consider and to vote upon the said proposed compromise and settlement, and

WHEREAS, on January 18, 1974 the Jicarilla Apache Tribe had a general meeting for the purpose of considering the terms of said settlement, which was fully discussed by members of the tribe and by the attorneys representing the tribe before the Indian Claims Commission, and

WHEREAS, it appears that notice of said meeting was duly posted and published in the Jicarilla Chieftain, a newspaper of general circulation among the Tribe, which

newspaper with the notice therein was mailed to each adult member of the Tribe, and

WHEREAS, it appears that the adult members of the Jicarilla Apache Tribe were fully informed and advised regarding the proposed settlement, together with the conditions imposed by the United States, and were fully advised as to the proposed stipulation for entry of final judgment, a form of which was distributed to members of the Tribe and read in open tribal meeting and explained by the attorneys, and

WHEREAS, the adult members of the Jicarilla Apache Tribe adopted a resolution approving said compromise and settlement by a vote of 283 for and 0 opposed to said resolution.

NOW, THEREFORE, BE IT RESOLVED by the Tribal Council of the Jicarilla Apache Tribe that the proposed compromise and settlement of the accounting claim of the Tribe, be, and it hereby is approved and ratified, and the proposed Stipulation for Entry of Final Judgment be and hereby is approved.

BE IT FURTHER RESOLVED that the following individuals be, and they hereby are, authorized to testify before the Indian Claims Commission regarding the proposed settlement and the action taken by the adult members of the Jicarilla Apache Tribe: The President and the Secretary of the Tribal Council, and Henry L. Vicenti and Richard Tecube or Dale Vigil, and,

BE IT FURTHER RESOLVED that the attorneys for the Tribe are authorized to execute the proposed stipulation for entry of final judgment and take whatever steps are necessary to effectuate said compromise and settlement.

/s/ Hubert Velarde
President

ATTEST:

/s/ Barbara Gonzales
Secretary

CERTIFICATION

The foregoing resolution was adopted by the Tribal Council of the Jicarilla Apache Tribe on the 18th day of

January, 1974, by a vote of 6 for, 0 opposed, 0 abstaining, at a duly called meeting at which a quorum of the Tribal Council members were present.

/s/ Hubert Velarde
President

ATTEST:

/s/ Barbara Gonzales
Secretary

21. The Area Director, Albuquerque Area Office, Bureau of Indian Affairs, attended the meeting of January 18, 1974, and on the basis of his report, 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 Department of the Interior, by the following letter dated January 25, 1974 approved the proposed settlement:

Mr. Robert J. Nordhaus
Nordhaus, Moses and Dunn
Attorneys at Law
610 Simms Building
Albuquerque, New Mexico 87101

Dear Mr. Nordhaus:

You have requested our approval of a proposed compromise to settle the accounting claims in Indian Claims Commission Docket No. 22-K, except claims for mismanagement of oil and gas resources and diversion of water rights as set out more specifically in the Stipulation for Final Judgment which was enclosed with your letter of January 21, 1974, for \$7,000,000 in favor of the plaintiff, the Jicarilla Apache Tribe.

Prosecution of the claims in Docket No. 22-K is governed by Contract No. MOOC14200897, dated October 1, 1971, between the Jicarilla Apache Tribe and Attorneys Robert J. Nordhaus, Guy Martin, and Richard M. Davis. This contract was approved on October 19, 1971, for a term of two years beginning with the date of approval. An extension of the contract, as amended, to October 1, 1976, was approved October 11, 1973.

The contract provides that the attorneys shall make no compromise of the matters in litigation without the approval of the tribe and the Secretary of the Interior or his authorized representative.

You made an offer to the Department of Justice on October 30, 1973, as supplement or modified by your letters of November 12 and December 13, 1973, to compromise the accounting claims in Docket No. 22-K as set out in the Stipulation for Final Judgment for the amount of \$7,000,000 in favor of the Jicarilla Apache Tribe. Your offer was accepted by the Assistant Attorney General on December 21, 1973, with conditions. Two of the conditions were that the proposed settlement be approved by appropriate resolution of the governing body of the Jicarilla Apache Tribe and that the approval of the settlement, as well as the resolution of the tribe, be secured from the Secretary of the Interior or his authorized representative.

You took the proposed compromise settlement to the adult members of the Jicarilla Apache Tribe at a tribal meeting held on January 18, 1974, in the Community Center in Dulce, New Mexico.

The meeting was well publicized. Notices of the meeting and the purpose for which it was being called were published in the December 24, 1973, and January 7, 1974, issues of the Jicarilla Chieftain. Notices were posted at various places frequented by the Indians. Announcements were also made over the local TV station. Copies of both issues of the newspaper were sent to all tribal members. The January 7, 1974, issue carried an explanation of the claims case and the proposed settlement.

The tribal meeting was held as scheduled. You attended as did representatives of the Bureau of Indian Affairs. One of the Bureau's representatives reported on the meeting. There were 777 enrolled adult members of the tribe on January 18, 1974, of which 290 were present at the meeting. The President of the tribe gave a summary of the claims case in English and in the Jicarilla Apache language. You then gave a thorough explanation of the history of the claims and the proposed settlement. Your explanation was interpreted in the Jicarilla Apache language also. Time was given to raise questions and several tribal members took advantage of this opportunity. The questions were

answered. The tribal President then offered to declare a recess to afford the tribal members an opportunity to discuss the proposed settlement with each other before voting to accept or reject it. The tribal President also inquired whether anyone did not understand the purpose of the vote. There was no response. By voice vote, the members elected to vote on the proposed settlement without further discussion. Resolution No. 74-T-01, by a vote of 283 in favor and none opposing, was adopted accepting the proposed settlement. The Jicarilla Apache Tribal Council, following the voting by the adult membership to accept the proposed settlement, adopted Resolution No. 74-146, by a vote of 6 in favor and none against, approving the proposed settlement. The signatures of the tribal officials affixed to the resolutions were certified to be genuine by a representative of the Bureau.

We are satisfied that the meeting was duly called, properly conducted, and that the resolutions were adopted in accordance with tribal law. The two resolutions are hereby approved.

The claims to be disposed of by the proposed settlement are for amounts found or alleged due from an accounting of tribal trust funds. An exact determination as to what is involved in the proposed settlement would require a detailed examination of all of the numerous financial transactions constituting an accounting of this nature, and such a review under the circumstances is obviously not feasible for us to perform. However, from the information that you have furnished to us, and the explanation of the claims and the proposed settlement that you made to the members of the tribe at the meeting of January 18, 1974, we find no reason to believe that the disposition of the claims in Docket No. 22-K, with certain exceptions as set out in the Stipulation for Final Judgment, in return for \$7,000,000 is not just and proper. Accordingly, the proposed settlement is hereby approved.

Sincerely yours,

/s/ Morris Thompson
Commissioner of Indian Affairs

22. At the hearing before this Commission held on February 8, 1974, the following witnesses testified regarding the approval of the settlement by the Jicarilla Apache Tribe at a general meeting of adult members of the tribe held January 18, 1974:

- 1) Hubert Velarde, President of the Jicarilla Apache Tribe,
- 2) Barbara Gonzales, Secretary of the Jicarilla Apache Tribe,
- 3) Henry L. Vicenti, member of the Jicarilla Apache Tribe,
- 4) Richard Tecube, member of the Jicarilla Apache Tribe,
- 5) Roland Johnson, Bureau of Indian Affairs, Albuquerque.

The witnesses testified as to the provisions of the constitution of the Tribe with respect to calling of elections, and that these requirements were satisfied with substantially all adult members of the Tribe receiving notice of the meeting. They also testified that the constitutional provision with regard to referenda provides that thirty per cent or more of qualified voters constitutes a quorum and that 290 adult members of the Tribe, out of 777 adult members were present at the meeting (37%), and of those present, 283 voted unanimously in favor of the settlement. They further testified that an unusually large number of tribal members attended the meeting and voted on the settlement. The witnesses also testified that the proposed settlement and the stipulation for final judgment had been fully and clearly explained to the Tribe at the general meeting; that the explanation of the settlement was translated into the Apache language; and that

members of the Tribe asked questions regarding the settlement. These questions were answered by the claims attorneys or by the President of the Tribal Council, and that after discussion ended, the adult members of the Tribe voted unanimously to accept the settlement. The witnesses expressed their opinion that the Tribal members fully understood the terms of the settlement, they were fully satisfied with the settlement and that the settlement was fair and equitable to the Tribe.

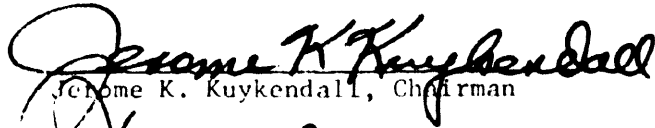
All documents and correspondence submitted by the parties in support of the settlement were received in evidence at the hearing.

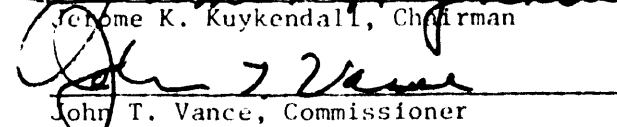
23. From the testimony presented at the hearing on February 8, 1974, and the exhibits admitted into evidence, the Commission finds that the proposed settlement was fully explained to the tribal members in attendance at the meeting of January 18, 1974, and that the members of the Tribe were adequately informed as to the issues involved so that they could make an intelligent choice on the proposed settlement, and that they did express an intelligent choice in approving the settlement.

24. Based on the record in this case and the testimony of witnesses, the approval of the proposed compromise settlement by the Commissioner of Indian Affairs and the Jicarilla Apache Tribe at a meeting of adult members duly called and held to consider the settlement, and representation by counsel for the parties that the settlement is fair to the plaintiff and to the defendant, the Commission finds that the settlement is fair to all parties, it has been freely entered into

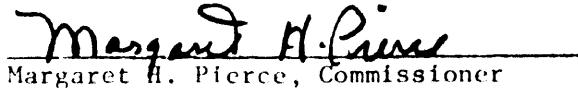
by them, and grants the joint motion of the parties for entry of final judgment. Judgment in the amount of \$7,000,000.00 is granted to the Jicarilla Apache Tribe of Indians.

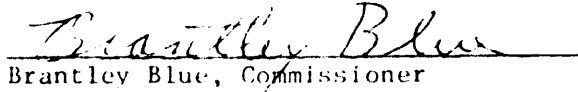
25. The Commission finds that the judgment rendered herein is a final judgment of all of plaintiff's claims for accounting over which this Commission has jurisdiction, and that the parties agree that the claims reserved by the plaintiff, for mismanagement of oil and gas resources and diversion of water rights, arose since August 13, 1946, and are not within the jurisdiction of the Indian Claims Commission. Therefore, judgment herein constitutes final judgment as to all the issues pending before this Commission in Docket 22-K.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarbrough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner