

## BEFORE THE INDIAN CLAIMS COMMISSION

KLAMATH AND MODOC TRIBES AND	)	
YAHOSKIN BAND OF SNAKE INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 100-B-1
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: January 21, 1977

FINDINGS OF FACT ON COMPROMISE SETTLEMENTPreliminary Statement

This matter is now before the Commission for approval of a joint motion for entry of final judgment in the amount of \$18,000,000.00 in favor of the plaintiff tribe, with a waiver of review or appeal by both parties.

The claims which are the subject of this compromise settlement involve plaintiff's claims against defendant for mismanagement of its funds and properties but do not include the claims presented in Docket 100-B-2.

The entry of final judgment in the amount of \$18,000,000.00 shall finally dispose of all rights, claims or demands which the plaintiff has asserted or could have asserted against the defendant in Docket 100-B-1 under the provisions of Section 2 of the Indian Claims Commission Act, 25 U.S.C. § 70a.

The claims in this case arise under section 2 of the Indian Claims Commission Act, 25 U.S.C. § 70a. The original petition of the Klamath

Tribe was filed March 9, 1951. It contained two causes of action, one relating to the territory aboriginally owned by plaintiff and ceded to the United States by the Treaty of 1864, and the other to the Agreement of June 21, 1906, relating to a cession of a portion of plaintiff's reservation.

An amended petition was filed on August 10, 1951, amending earlier allegations and adding a claim for a general accounting. This claim demanded a general accounting of defendant's administration of plaintiff's tribal funds and properties which defendant had controlled and managed over the years.

By order of January 11, 1955, this Commission separated the causes of action alleged in the petition of August 10, 1951, assigning Docket 100 to the aboriginal title claim, Docket 100-A to the claim under the Agreement of June 21, 1906, and Docket 100-B to the accounting claims for mismanagement of the Tribe's funds and properties.

By order of May 29, 1958, this Commission severed the causes of action filed in the petition of August 10, 1951, and directed each cause be filed in a separate petition bearing the docket numbers assigned by the prior order of January 11, 1955.

Defendant filed the first of its accounting reports on January 11, 1961, this first such report being prepared by the General Accounting Office. The second accounting report, prepared by the General Services Administration, was filed on January 12, 1970. Plaintiff filed exceptions

to defendant's accounting on July 31, 1970. Defendant responded to these exceptions on December 23, 1970. Plaintiff replied to defendant's response on January 19, 1971.

By order of March 1, 1972, this Commission subdivided Docket 100-B into Docket No. 100-B-1 and Docket No. 100-B-2. Docket 100-B-2 involves plaintiff's claims against defendant for mismanagement of its forest resources. Docket 100-B-1 involves plaintiff's claims against defendant for mismanagement of its funds and all other properties except for the claims presented in Docket 100-B-2.

During the preparation for trial of this case and after pretrial conferences before the Commission, negotiations for settlement were commenced with the consent and agreement of both parties. As a result of these negotiations, a compromise was reached in which the parties agreed to a final settlement of the claims in this docket for \$18,000,000.00.

A hearing on the proposed compromise settlement was held before the Commission on January 6, 1977, in the main hearing room of the Commission in Washington, D. C. Appearing to testify on behalf of plaintiff tribe were Mr. Elnathan Davis, Chairman of the Klamath Tribal Executive Committee; Mr. Joseph Ball, Vice Chairman of said Committee; and Messrs. Morris Jimenez and John Green, both members of said Committee. In addition, the Commission heard the testimony of Mr. John W. Weddell, Tribal Operations Officer, Portland Area Office, Bureau of Indian Affairs, as well as statements of Mr. Angelo A. Iadarola, attorney of record for

the plaintiff tribe. Mr. Iadarola also summarized for the record the affidavit of Ms. Marie Norris, another member of the Tribal Executive Committee (see P. Ex. 1).

Mr. Davis first testified as to the jurisdiction of the Klamath Tribal Executive Committee to supervise tribal claims, to consider and approve settlements of tribal claims, and as to the particular procedure adopted in this instance whereby General Council ratification of the Tribal Executive Committee's action was obtained. Mr. Davis also testified to the effect that the Executive Committee members were kept fully informed at all times by the claims counsel of the proceedings respecting every phase of the proposed settlement. He concluded his testimony with a statement indicating that all members of the tribe attending and participating in the two meetings held to consider the proposed settlement (viz. the ones of December 3, 1976 and December 4, 1976) fully understood the terms of the proposed settlement and the proceedings regarding its approval. Mr. Ball, Mr. Jimenez and Mr. Green testified on the same matters regarding these proceedings and also concluded their testimony with a statement indicating that they as well as all members of the Tribal Executive Committee fully understood the terms of the proposed settlement and further that those in attendance at the General Council meeting likewise understood the terms and effect of the proposed settlement. All four tribal witnesses identified and testified as to the accuracy of pertinent documents relating to the settlement which documents were introduced into evidence by counsel.

Mr. John W. Weddell, BIA representative, testified first as to his duties concerning the plaintiff tribe, indicating that part of his administrative functions includes supervision of litigation funds, and approval of attorney contracts. He also testified as to his knowledge of the preliminary proceedings regarding the settlement herein and the fact that he was an official observer to the December 3 and December 4, 1976 meetings for the purpose of seeing that the proposed settlement was well-explained to the Klamath Tribal Executive Committee and the Klamath General Council respectively. Mr. Weddell also testified that he made a report to the Commissioner of Indian Affairs regarding these meetings. He concluded his testimony with a statement indicating that the plaintiff tribe fully understood the terms of the proposed settlement.

The Commission having heard the testimony and examined the evidence introduced at the hearing makes the following findings of fact:

1. Plaintiff, Klamath and Modoc Tribes and Yahooskin Band of Snake Indians (hereinafter referred to as "Klamath Tribe"), is an American Indian Tribe, and as such has the capacity to maintain suits in this forum consonant with section 2 of the Indian Claims Commission Act, as amended, 25 U.S.C. § 70a. Prior to final termination of federal supervision over the Klamath Tribe on August 13, 1961, plaintiff maintained a tribal organization duly recognized by the Secretary of the Interior as having authority, inter alia, to represent said Tribe for purposes of prosecuting claims before this Commission. By provision of the Klamath Termination Act, 25 U.S.C. § 564t, an exception was effectively made to section 10

of the Indian Claims Commission Act (25 U.S.C. § 70i), allowing as respects plaintiff the continued right to maintain and prosecute the instant claim among others, notwithstanding that there no longer existed a tribal organization subject to recognition by the Secretary of the Interior. Klamath & Modoc Tribes v. United States (Docket No. 100), 13 Ind. Cl. Comm. 41 (1964). However, as the details of final termination were worked out, provision was actually made by the Secretary of the Interior for continued supervision of the prosecution of tribal claims and the Klamath Tribal Executive Committee was designated by the Secretary as the body authorized to act on behalf of the tribe with respect to the future prosecution and resolution of tribal claims. By resolution of the Tribe's General Council dated August 21, 1952, the Tribal Executive Committee was established as the duly authorized representative of the Tribe and granted authority to exercise the powers of the General Council as enumerated in the tribal Constitution and By-Laws, including by implication dealings with the claims attorneys and supervision of the claims litigation. This authority was delegated pursuant to article V, section 11, of the tribal Constitution. Confirmation of the authority of the Klamath Tribal Executive Committee to act in the matters respecting these proceedings is contained in this Commission's findings of fact made October 31, 1975 (37 Ind. Cl. Comm. 2, 5-6) and in correspondence from the Commissioner of Indian Affairs dated October 21, 1975 (id. at 20-23).

2. In preparation for the trial of Docket 100-B-1, plaintiff retained the services of an accounting firm, an anthropologist, a grazing and

range management firm and several professional foresters to assist the claims attorneys in examining the financial records of the defendant and historical and archival documents pertinent to the claims asserted by plaintiff. The attorneys and the experts investigated the factual context of the claims. The attorneys also researched and analyzed the legal issues in the case as they applied to the facts. In the course of said preparation, the claims attorneys determined that there were several claims within Docket 100-B-1 which should be actively pursued and prosecuted on behalf of the Klamath Tribe. These claims were:

- A. Mismanagement of the Tribe's grazing and agricultural lands (including irrigation) (referred to as "grazing claim").
- B. Certain rights-of-way conveyed by the United States through tribal lands for less than their market value (referred to as "rights-of-way claim").
- C. Interest earned or which should have been earned on tribal funds held by the Klamath Agency and/or deposited in local banks pending their delayed deposits to the United States Treasury (referred to as "delayed deposits claim").
- D. Tribal funds wrongfully expended by the United States which expenditures should be disallowed as being improperly made (referred to as "disallowed claim").

3. While preparing for trial, the parties also entered into extensive negotiations on possible settlement of the claims. As a result of these negotiations, a compromise was finally reached in the latter half of 1975 whereby the parties agreed to a final settlement of the grazing claim for \$750,000 and of the rights-of-way claim for \$35,000. With respect to the remaining two claims in Docket 100-B-1 (the delayed deposits

claim and the disalloweds claim), although a final settlement could not be reached, certain basic facts were stipulated between the parties. The stipulation provided that those disbursements made out of tribal funds, as set forth in the GAO and GSA reports, which should be deemed "disalloweds" (i.e., improper expenditures) totaled \$4,667,500; that the total amount of the delayed deposits claim should be \$150,000, representing interest earned (but not credited to tribal accounts) on tribal monies deposited in local banks pending late deposit in the Federal Treasury; and that both amounts were to be included in a restatement of accounts. The 1957 compromise settlement and stipulation also involved claims asserted by the Klamath Tribe in Docket No. 389-72 in the United States Court of Claims and provided that all claims in Docket No. 389-72 should be waived (as settled elsewhere), except that claim generally referred to as the "harvest" claim which has been tried before this Commission in Docket 100-B-2.

4. The 1975 compromise settlement and stipulation was the subject of a hearing before this Commission on October 23, 1975. Subsequent thereto, on October 31, 1975, the Commission subdivided Docket 100-C, comprised of the "grazing" claim and the "rights-of-way" claim, out of Docket 100-B-1 so as to facilitate entry of final judgment as to these two claims fully settled. Klamath & Modoc Tribes v. United States, 37 Ind. Cl. Comm. 1 (1975). On the same date, the Commission entered an order for final award of \$785,000 to plaintiff in Docket 100-C (37 Ind. Cl. Comm. 38) and, by further order, approved of the stipulation between the parties



(2) The compromise and settlement herein shall be a final settlement by stipulation for entry of final judgment in the Indian Claims Commission, no review to be sought or appeal to be taken by either party.

(3) The stipulation for entry of final judgment shall finally dispose of all claims and demands which plaintiff has asserted or could have asserted against defendant under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049) with the exception of those which have been tried, and are now being briefed in Docket 100-B-2, and all claims, or offsets, which defendant has asserted or could have asserted against plaintiff under these provisions.

(4) The settlement and stipulation for entry of final judgment set out herein will not affect any issue now pending in Klamath Tribe v. United States, Indian Claims Commission Docket 100-B-2. Plaintiff waives all claims in the suit pending before the United States Court of Claims, Klamath Tribe v. United States, Docket No. 389-72, subject to the reservation concerning the "harvest claim" as heretofore agreed to between the parties and stated in clause (8) of the prior stipulation (quoted 37 Ind. Cl. Comm. at 8). To the extent that plaintiff can present the so-called harvest claim in the United States Court of Claims if jurisdiction is lacking in the Indian Claims Commission, that right is preserved. In addition, the parties are aware that there is now pending in the United States District Court for the District of Oregon, the case of United States v. United States National Bank of Oregon, Docket 74-894, which involves the taking by the United States under the power of eminent domain, of certain real property known as the Klamath Forest. The settlement and stipulation set out herein in no way affect that claim. The settlement and stipulation set out herein will not affect any claims now pending or which may be brought before the United States Court of Claims or other competent judicial body on behalf of plaintiff Tribe accruing from any transaction or event after August 12, 1961, the date of termination of federal supervision over the plaintiff Tribe, it being understood that such reservation shall not be construed to waive the right of the United States to raise in the Court of Claims, or other court of competent jurisdiction, any procedural or substantive defenses to any such claim or claims including the statute of limitations.

(5) The stipulation for entry of final judgment shall not be construed as an admission by any party as to any issue for purposes of any other case.

(6) This offer, in the event that it is acceptable to your Department, shall be subject to the approval of the Klamath Tribe, the Secretary of the Interior or his authorized representative and the Indian Claims Commission.

(7) This offer shall remain open for thirty (30) days, until November 3, 1976. If not accepted by that date, the offer shall automatically stand withdrawn. If the offer is accepted, we agree to make all reasonable efforts to obtain the approval of the Klamath Tribe, represented by or through its appropriate governing body, and the Secretary of the Interior or his authorized representative. It is further agreed that the responsible officials and representative members of the Klamath Tribe shall be present to testify on behalf of the Tribe, if necessary, on the compromise settlement and stipulation before the Indian Claims Commission. In the event of such approval, we will be pleased to cooperate with appropriate representatives of your Department in preparing and submitting the necessary stipulation, motions, and other documents necessary to accomplish the settlement and stipulation set out herein.

Respectfully yours,

WILKINSON, CRAGUN & BARKER

/s/

By: Angelo A. Iadarola  
Attorney of Record for the  
Klamath Tribe,  
Docket 100-B-1

7. By letters dated November 2, 1976, and November 15, 1976, plaintiff's attorney of record extended the time during which said offer, as described above in Finding 10, would remain open. (See Joint Exhibits 2 & 3.)

8. By letter dated November 17, 1976, defendant through Assistant Attorney General Peter R. Taft replied to plaintiff's attorney of record, accepting the above-described offer of compromise settlement in Docket 100-B-1 subject to certain conditions, namely the approval of the proposed compromise settlement by the Klamath Tribe through its governing

body (the Klamath Tribal Executive Committee), approval of same by the Secretary of the Interior or his authorized representative, and approval by the Indian Claims Commission. The letter states:

Wilkinson, Cragun and Barker  
1735 New York Avenue, N.W.  
Washington, D. C. 20006

Attention: Angelo A. Iadarola, Esquire

Dear Mr. Iadarola:

Your letter of October 4, 1976, offers to settle and finally dispose of all claims and demands which plaintiffs have asserted or could have asserted against the defendant under the provisions of section 2 of the Indian Claims Commission Act (60 Stat. 1049) with the exception of those which have been tried and are now being briefed in Docket 100-B-2, and all claims or offsets which defendant has asserted or could have asserted against plaintiffs under those provisions in Klamath and Modoc Tribes, et al., v. United States, Docket No. 100-B-1, before the Indian Claims Commission. Your offer is accepted on the terms set out in your letter of October 4, 1976, subject to the following conditions:

1. That the proposed settlement be approved by appropriate resolution of the governing body of the plaintiff tribes.
2. That the approval of the settlement, as well as the resolution of the tribes, be secured from the Secretary of the Interior, or his authorized representative.
3. That a copy each of such resolution and the approval of the terms of the settlement by the Department of the Interior be furnished to this Department.
4. That responsible officials and representative members of both tribes be present and testify before the Indian Claims Commission concerning the proposed settlement.
5. That the judgment entered into pursuant to this settlement shall finally dispose of all claims or demands which the plaintiffs have asserted or could have asserted under the provisions of section 2 of the Indian Claims Commission Act (60 Stat. 1049) in Docket No. 100-B-1, before the Indian Claims Commission with the exception of those which have been

tried and are now being brief in Docket No. 100-B-2.

6. That the United States will waive any and all claims for offsets which have been asserted or could have been asserted against the plaintiff tribes under the provisions of section 2 of the Indian Claims Commission Act (60 Stat. 1049) up to June 30, 1975.

7. That the Indian Claims Commission shall approve of this settlement and the stipulation for entry of final judgment in their entirety before judgment is entered.

8. The final judgment to be entered herein shall be by way of compromise and settlement and shall not be construed as an admission by either party, for the purpose of precedent or argument, in any other case.

The Department of Justice will be pleased to work out with you the terms of the stipulation for entry of final judgment and the appropriate motions and orders necessary to carry into effect the offer of settlement subject to the conditions specified herein.

Sincerely,

/s/

Peter R. Taft  
Assistant Attorney General  
Land and Natural Resources  
Division

9. The record herein establishes that the Klamath Tribal Executive Committee, plaintiff's authorized governing body with respect to all tribal claims litigation, was kept informed of the foregoing preliminary negotiations concerning the proposed compromise settlement. On November 23, 1976, plaintiff's attorney of record, upon request and approval of the Chairman of the Klamath Tribal Executive Committee, sent notices by "mailgram" (Joint Exhibit 5) and by letter with return receipt requested (Joint Exhibit 6) to all members of the said Executive Committee notifying them of a meeting scheduled for December 3, 1976, for the purpose of considering and voting on the proposed settlement of Docket 100-B-1.

10. The meeting of the Klamath Tribal Executive Committee was held as scheduled on December 3, 1976, at Klamath Falls, Oregon. The record, which includes excerpts of the minutes of that meeting (see Joint Exhibit 11), establishes that nine members of the Executive Committee attended the meeting; the tenth position on the Committee presently is vacant as the result of the death of Donald Schonchin. Those members present were Elnathan Davis, Joseph Ball, Dibbon Cook, Irwin Crume, Sylvan Crume, John Green, Morris Jimenez, Irwin Weiser, and Marie Norris. Also present at the meeting were the claims attorneys for the plaintiff tribe; Mr. John W. Weddell, Tribal Operations Officer, Bureau of Indian Affairs, Portland Area Office; and several members of the Tribe. Excerpts of the minutes, certified by the Bureau of Indian Affairs representative, indicate that the claims attorneys presented a full and detailed explanation of all the terms and conditions of the proposed settlement.

Informational packets and a written report prepared by the claims attorneys were distributed to each member of the Executive Committee, to the Bureau of Indian Affairs representative, and all tribal members and guests present at the meeting. The distribution of this material was followed by a discussion and a complete explanation of the nature of all the claims in Docket 100-B-1 and what the proposed settlement is intended to accomplish. After open discussions and a question and answer period respecting the terms of the settlement, the Klamath Tribal Executive Committee adopted, by unanimous vote, the following resolution:

## KLAMATH TRIBAL EXECUTIVE COMMITTEE

R E S O L U T I O N

WHEREAS, pursuant to resolution of the Klamath General Council adopted on August 21, 1952 in accordance with the Constitution and By-laws of the Klamath General Council (Art. V, Cl. 11) approved October 12, 1950, the Klamath Tribal Executive Committee is empowered to act for and on behalf of the Klamath Tribe; and

WHEREAS, pursuant to resolution of the Executive Committee adopted August 2, 1961 and approved by the Secretary of the Interior on August 30, 1961, the Klamath Tribal Executive Committee is authorized to represent the Tribe in consultation with the claims attorneys and to approve proposed settlement of any claim; and

WHEREAS, the Klamath Tribe is and has been prosecuting a claim before the Indian Claims Commission identified as Docket No. 100-B-1, and a claim before the United States Court of Claims identified as Docket No. 389-72, which involve accounting claims arising from, among other things, the government's mismanagement of Klamath funds, and for interest earned on tribal funds held in local banks pending their delayed deposit in the Treasury; and

WHEREAS, the claims in Docket No. 100-B-1 have been partially settled and stipulations reached, as reported in Klamath Tribe v. United States, 37 Ind. Cl. Comm. 2 (1975), such partial settlement finally resolving the Klamath Tribe's grazing claim and rights-of-way claim in the total amount of \$785,000, which portion of the settlement was severed by the Indian Claims Commission into Docket No. 100-C, in order to obtain a final judgment and appropriation of said funds, which has been done; and

WHEREAS, the aforementioned stipulations, involving the government's mismanagement of the Tribe's funds claim and delayed deposits claim, were in the amount of \$4,677,500, representing the total of the improper expenditures made by the government out of Klamath tribal funds ("disalloweds"), and \$150,000, representing the total of the interest earned on tribal funds held in local banks pending their delayed deposit in the United States Treasury, both amounts to be subject to restatement; and

WHEREAS, the earlier partial settlement and stipulations provided that finalization of those claims not fully settled (but as to which controlling stipulations were reached) would be conditioned upon resolution of two cases then pending on appeal in order to determine restatement of the so-called "dis-allowed" and the "delayed deposits" claims; and

WHEREAS, one of those appeals, United States v. Mescalero Apache Tribe, 207 Ct. Cl. 369, 518 F.2d 1309 (1975), cert. denied, 44 U.S.L.W. 3560 (April 5, 1976), now has been concluded; and

WHEREAS, the other case, United States v. Fort Peck Indians of the Fort Peck Reservation, 207 Ct. Cl. 1045 (1975), was remanded by the United States Court of Claims to the Indian Claims Commission for further determinations in light of that court's decision in the Mescalero Apache case, cited above, the remand of the Fort Peck case leaving certain issues relevant to the instant claims not fully concluded; and

WHEREAS, due to pronouncements of law in the Mescalero Apache case and in other Indian accounting cases, both the Tribe and the government renewed settlement negotiations in light of the legal guidelines already established and, after consideration of these legal precedents and after long and detailed negotiations, the tribal attorneys have recommended a compromise settlement of the remaining Klamath claims in Docket No. 100-B-1, which settlement has been accepted by the government; and

WHEREAS, at a special and open meeting of the Klamath Tribal Executive Committee, called for the purpose of considering a report both written and oral by Glen A. Wilkinson, Angelo A. Iadarola, and Philip A. Nacke of Wilkinson, Cragun & Barker, claims attorneys for the Klamath Tribe, with respect to the settlement of the aforesaid remaining claims in Docket No. 100-B-1, said settlement was fully discussed by the attorneys for the Klamath Tribe and the members of the Klamath Tribal Executive Committee; and

WHEREAS, it was explained that settlement of all remaining claims in Docket No. 100-B-1 before the Indian Claims Commission would be for the total amount of \$18,000,000 payable to the Klamath Tribe; and

WHEREAS, it was also explained that claims similar to those involved in Docket No. 100-B-1 before the Indian Claims Commission are also before the United States Court of Claims, Docket No. 389-72, such claims being presented in

the Court of Claims because of a jurisdictional defense the government arguably has which may preclude those claims arising after August 13, 1946, from being prosecuted before the Indian Claims Commission; and

WHEREAS, it was explained that the settlement of the claims remaining in Docket No. 100-B-1 is based upon such claims to the date of termination in 1961, and constitutes settlement of these claims which are presented before both the Indian Claims Commission, Docket No. 100-B-1, and the United States Court of Claims, Docket No. 389-72; and

WHEREAS, it was further explained that settlement of the claims in Docket No. 100-B-1 would not affect the Klamath Tribe's right to pursue its remaining claims in Docket No. 100-B-2; and

WHEREAS, a full and complete opportunity for discussion and questions from members of the Tribal Executive Committee and other interested tribal members was given and a discussion was held with respect to the possible advantages and disadvantages to be realized from further prosecuting these claims as compared to accepting the proposed settlement; and

WHEREAS, a representative of the Bureau of Indian Affairs, Department of the Interior, has been present at this meeting of the Klamath Tribal Executive Committee and has observed the discussion and presentation concerning the proposed settlement and the questions and answers thereto; and

WHEREAS, the Klamath Tribal Executive Committee believes that it is fully informed in the premises and that a settlement of these claims for the final amount of \$18,000,000 is advisable under all the circumstances and that it is a fair and reasonable settlement of said claims; and

WHEREAS, the Klamath General Council will be holding a meeting on December 4, 1976, to also be advised of the present settlement in Docket No. 100-B-1, such meeting to include a presentation by the Klamath Tribe's claims attorneys so that the Klamath members can be fully informed regarding such settlement and given an opportunity to ask questions; and

WHEREAS, the Klamath Tribal Executive Committee, although it has full powers acting alone to approve or disapprove said settlement, will submit said settlement to the Klamath General Council, along with notification of the Tribal Executive



Committee's action thereon and a recommendation to the General Council requesting General Council ratification of that action, so that all members of the Klamath Tribe present can express their views regarding said settlement.

NOW, THEREFORE, BE IT RESOLVED, that the proposed settlement of the claims, as outlined above and as explained by the claims attorneys for the Tribe, is believed to be a fair and reasonable settlement of the claims in Docket No. 100-B-1 and the Klamath Tribal Executive Committee hereby approves same; and

BE IT FURTHER RESOLVED, that the Klamath Tribal Executive Committee favorably recommends said settlement to the Klamath General Council and requests that the General Council ratify and confirm the Tribal Executive Committee's approval; and

BE IT FURTHER RESOLVED, that subject to ratification of Tribal Executive Committee approval of said settlement by the Klamath General Council, the Chairman and the Secretary of the Klamath Tribal Executive Committee are hereby authorized to execute on behalf of the Klamath Tribe, a formal stipulation for settlement of the claims in Docket No. 100-B-1; and

BE IT FURTHER RESOLVED, that the Secretary of the Interior or his duly authorized representative, the Indian Claims Commission and the United States Court of Claims, are hereby requested to approve the stipulation for entry of final judgment in Docket No. 100-B-1 in favor of the Klamath Tribe, plaintiffs therein, and against the government, the United States of America, in the amount of \$18,000,000.

#### CERTIFICATION

I certify that the foregoing resolution was adopted by the Klamath Tribal Executive Committee on the 3d day of December 1976, at a meeting held in Klamath Falls, Oregon, by a vote of [9] FOR and [0] AGAINST, a quorum being present; such action being taken in accordance with the Constitution and By-laws of the Klamath Tribe, approved October 12, 1950; the delegated powers of the Klamath Tribal Executive Committee thereunder; and the authority contained in the amendment and approval to the Claims Attorney Contract effective August 2, 1961 (Ref. A-61-1158.9a).

/s/ Elnathan Davis, Chairman  
Klamath Tribal Executive  
Committee

## ATTESTS:

/s/ Dibbon Cook, Secretary  
Klamath Tribal Executive Committee

AUTHENTICATION OF SIGNATURES

I certify that the foregoing signatures of the Chairman and the Secretary of the Klamath Tribal Executive Committee are genuine, that the resolution was approved by the Klamath Tribal Executive Committee and certified to in my presence, and that the said meeting occurred in my presence.

/s/ John W. Weddell  
Tribal Operations Officer  
Bureau of Indian Affairs  
Portland Area Office  
Department of the Interior

11. As set forth above, the Tribal Executive Committee resolution, approving the compromise settlement, also provided for submission of the compromise settlement to a special meeting of the Klamath General Council. Although the Tribal Executive Committee possesses full powers acting alone to approve or disapprove of any settlement, the Committee sought General Council ratification of its action. Thus, the following day, December 4, 1976, the proposed settlement and notification of the Tribal Executive Committee's approval thereof were submitted to the Klamath General Council.

The record indicates that notice of this meeting had been sent by mail to each living tribal member whose name appears on the Final Roll, published in the Federal Register of November 21, 1957 (approximately 1,600 individuals). Additional notice was provided in newspapers and in radio

and television broadcasts. (Joint Exhibits 7 & 8; P. Ex. 1.)<sup>1/</sup>

The December 4, 1976 meeting of the Klamath General Council likewise was held in Klamath Falls, Oregon. The record, which includes excerpts of the minutes of that meeting (see Joint Exhibit 13), established that well in excess of the required quorum amount of 100 were in attendance when the meeting commenced. Additional tribal members arrived as the meeting progressed. The claims attorneys for plaintiff and Mr. Weddell were also present. Mr. Elnathan Davis, Chairman of the Tribal Executive Committee, presided over the meeting as Special Acting Chairman. Excerpts of the minutes, certified by the Bureau of Indian Affairs representative, indicate that the claims attorneys again presented a full and detailed explanation of all the terms and conditions of the proposed settlement.

After study of a written report distributed to each individual present, discussion and explanation of the settlement, a question and answer period, and the reading of the resolution adopted the previous night by the Tribal Executive Committee, the Klamath General Council adopted, by a vote of 334 for and 4 against, the following resolution:

KLAMATH GENERAL COUNCIL

R E S O L U T I O N

WHEREAS, the members of the Klamath Tribe, pursuant to notice, have met at the Altamont Elementary School in Klamath

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<sup>1/</sup> Plaintiff's Exhibit 1 is a sworn affidavit of Marie Norris, member of the Klamath Tribal Executive Committee. Ms. Norris supervised mailing of the notices (Joint Exhibit 7) to those on the Final Roll and, further, took care of publicizing the General Council meeting through the media (see Joint Exhibit 8). Illness prevented Ms. Norris from appearing at the settlement hearing held January 6, 1977, and in lieu of her testimony, counsel for plaintiff inserted in the record without objection her affidavit.

Falls, Oregon, this 4th day of December 1976; and

WHEREAS, they have heard the reading of the resolution adopted by the Klamath Tribal Executive Committee, dated December 3, 1976, approving the settlement of Docket No. 100-B-1 before the Indian Claims Commission; and

WHEREAS, said settlement has been fully explained by the claims attorneys, both in written report (dated December 3, 1976) and orally, and members of the Tribe have been afforded adequate opportunities to ask questions and obtain answers from the attorneys; and

WHEREAS, they believe themselves to be fully informed in the premises and that the final settlement of all issues in Docket No. 100-B-1 before the Indian Claims Commission (including all issues merged therein from Docket No. 389-72 in the United States Court of Claims, excepting only the so-called harvest claim) for a total of \$18,000,000 is fair and reasonable.

NOW, THEREFORE, BE IT RESOLVED, by the members of the Klamath Tribe acting in General Council this 4th day of December 1976, that the action of the Klamath Tribal Executive Committee in approving the proposed settlement, recommending its adopting by the withdrawing and remaining members of the Tribe, and in all other respects, be ratified and confirmed, and that the claims attorneys be implored to take all necessary steps to finalize the settlement substantially as explained to and approved by the Klamath Tribal Executive Committee and members of the Klamath Tribe, this 4th day of December 1976.

#### CERTIFICATION

I hereby certify that the foregoing resolution was duly adopted at a special meeting of the Klamath General Council on the 4th day of December 1976, by a vote of [334] FOR and [4] AGAINST, a quorum being present.

/s/ Elnathan Davis  
Special Acting Chairman  
Klamath General Council

ATTESTS:

/s/ Dibbon Cook  
Special Acting Secretary  
Klamath General Council

AUTHENTICATION OF SIGNATURES

I certify that the foregoing signatures of the Special Acting Chairman and the Special Acting Secretary of the Klamath General Council are genuine, that the resolution was approved by the Klamath General Council and certified to in my presence, and that the said meeting occurred in my presence.

/s/ John W. Weddell  
Tribal Operations Officer  
Bureau of Indian Affairs  
Portland Area Office  
Department of the Interior

12. On the basis of information on the merits of the proposed compromise settlement supplied to the Commissioner of Indian Affairs by the attorneys for plaintiff tribe, and the Bureau of Indian Affairs representative, the Department of the Interior, by the following letter dated December 23, 1976, assented to the compromise settlement. The letter reads:

Angelo A. Iadarola, Esquire  
Wilkinson, Cragun and Barker  
1735 New York Avenue, N. W.  
Washington, D. C. 20006

Dear Mr. Iadarola:

On December 9, 1976, you requested our approval of a proposed compromise to settle Klamath accounting claims in the sum of \$18,000,000 before the Indian Claims Commission in Docket 100-B-1.

The claims to be settled in this case involve an accounting for monies of the Klamath Tribe (more formally referred to as the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians; hereinafter, the tribe) for the period October 14, 1864, to April 15, 1961, the date that Federal supervision over the tribe, its properties and its members was terminated pursuant to the Act of August 13, 1954, 68 Stat. 718.

This compromise represents the conclusion of a complex case which was the subject of a previous partial settlement approved by Morris Thompson, Commissioner of Indian Affairs, on October 21, 1975, and identified in the Indian Claims Commission as Docket 100-B-1 with related claims in the United States Court of Claims identified as Docket 389-72. That partial settlement was approved by the Indian Claims Commission in a decision reported as Klamath Tribe v. United States, 37 Ind. Cl. Comm. 2 (1975). It concerned two claims in Docket 100-B-1 wherein the tribe sued for mismanagement of tribal grazing lands and for inadequate compensation for tribal lands granted as rights-of-way.

This proposed settlement will not affect any of the claims now being litigated on behalf of the tribe in Docket 100-B-2 before the Indian Claims Commission.

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

Contract of March 12, 1941, between the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians and Ernest L. Wilkinson, was approved on March 29, 1941, for a period of ten years from the date of approval. The contract expired by its own terms on March 28, 1951.

Contract No. I-1-ind. 42642, dated November 2, 1951, between the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians and Ernest L. Wilkinson, was approved on March 25, 1952, for a period of five years from the date of approval.

Contract 14-20-650 No. 530 dated April 8, 1957, an extension of the original contract between the Klamath and Modoc Tribes and Yahooskin Band of Snake Indians and Ernest L. Wilkinson, was approved on November 22, 1957, for a period of five years beginning March 25, 1957. The contract was amended and extended on April 15, 1958, for a period ending March 24, 1967, which amendment was approved on June 6, 1958. It was further amended on May 15, 1961 (approved June 19, 1961); on August 2, 1961 (approved August 30, 1961), and on August 6, 1974 (approved October 9, 1974).

By agreement dated May 12, 1961, and May 23, 1961, Attorney Ernest L. Wilkinson assigned his interest in the above-mentioned contract to Wilkinson, Cragun & Barker, which assignment was approved by the tribe by resolution dated May 10, 1961.

The contract was extended for additional periods of two years each as follows: from March 25, 1967-March 24, 1969 (approved December 23, 1966); from March 25, 1969-March 24, 1971 (approved March 26, 1969); from March 25, 1971-March 24, 1973 (approved March 24, 1971); from March 25, 1973-March 24, 1975 (approved January 26, 1973); and from March 25, 1975, March 24, 1977 (approved April 3, 1975).

The contract between the Klamath and Modoc Tribes and the Yahooskin Band of Snake Indians and Wilkinson, Cragun and Barker is still in full force and effect.

On October 4, 1976, Attorney Angelo A. Iadarola, the attorney of record for the tribe in Docket 100-B-1, made an offer to the Assistant Attorney General by letter to settle this claim by an entry of final judgment in the sum of \$18,000,000. Your offer of settlement was accepted by Assistant Attorney General Peter R. Taft on November 17, 1976, subject to certain conditions, including the approval of the proposed settlement by the tribe through its governing body, and approval of the proposed settlement by the Secretary of the Interior or his authorized representative and by the Indian Claims Commission.

Two Klamath meetings were held for the consideration of this proposal, namely December 3 and December 4: On December 3, 1976, the proposed compromise settlement was submitted to the Klamath Tribal Executive Committee (the tribal governing body for purposes of prosecution of tribal claims) at a meeting specially called and convened for this purpose. Proper notice of the meeting was sent at the request of Chairman Elnathan Davis through your office, the notice having been sent by mailgram and by mail, return receipt requested. You have provided for the record a copy of that notice.

John W. Weddell, Tribal Operations Officer of the Portland Area Office and our Bureau representative, attended this session. Mr. Weddell in his statement of December 8, 1976, reports that Attorneys Glen A. Wilkinson, Angelo A. Iadarola and Philip A. Nacke of your law firm attended the meeting. Mr. Weddell reports that prior to the meeting a written explanatory report dated December 3, 1976, summarizing the claim in Docket 100-B-1 and explaining the issues involved in the proposed settlement was distributed to each member of the Klamath Tribal Executive Committee.

Attorney Angelo A. Iadarola carefully explained the compromise settlement and reviewed the December 3, 1976, explanatory memorandum and reported how items in the proposed settlement were negotiated. Attorney Iadarola assured the committee that the proposed settlement in no way affected the tribal claim pending in Indian Claims Commission Docket 100-B-2. He provided an analysis by use of a blackboard between compromising the claim now for \$18,000,000 and going ahead with further litigation.

After a full discussion was had, the committee again reviewed the report of December 3, 1976. Only a few questions were raised which were fully and carefully answered by the claims counsel. A resolution accepting and approving the compromise settlement for the sum of \$18,000,000 was adopted unanimously by the tribal executive committee. In the resolution, the committee also recommends that the Klamath General Council ratify and confirm the committee's approval of the proposed settlement.

Notices of the general council meeting scheduled for December 4, 1976, were sent to each member of the tribe whose addresses were known, and news releases were given to local newspapers and radio stations throughout the State of Oregon and Northern California. Mr. Weddell reports the General Council meeting of December 4, 1976, was held at the Altamont School in Klamath Falls, Oregon, for the purpose of considering the action taken by the Executive Committee on December 3, 1976, in approving the proposed compromise settlement. A quorum count was taken with 253 tribal members in attendance whose names appear on the Klamath Tribe's final roll pursuant to Section 3 of the Klamath Termination Act of August 13, 1954. Additional members came to the meeting after the quorum count was taken. The meeting was chaired by Mr. Elnathan Davis who is also Chairman of the Executive Committee.

Attorneys Wilkinson and Iadarola followed the same method in explaining the tribal claim in Docket 100-B-1 and the proposed compromise settlement as was done at the tribal executive committee meeting of December 3, 1976, and the same handout of December 3, 1976, was given and explained to the tribal members. After a full discussion was had concerning the proposed settlement, only three tribal members asked questions which were fully and carefully answered by Attorney Iadarola. Attorney Philip Nacke read to the general council the resolution which was adopted by the tribal executive committee on December 3, 1976, approving the compromise.



settlement. The general council then adopted by a vote of 334 for and four against a resolution ratifying and confirming the action of the Klamath Tribal Executive Committee in approving the proposed settlement and imploring the claims counsel to take all necessary steps to finalize the settlement as explained to and approved by the tribal executive committee on December 3, 1976, and by the general council on December 4, 1976. Both resolutions state that the Klamath people feel that the proposed settlement is fair and reasonable.

The resolution of the tribal executive committee was signed by Mr. Elnathan Davis as Chairman and by Mr. Dibbon Cook as Secretary. The resolution of the general council was signed by the same tribal officials. Mr. Weddell has certified the signatures to be genuine. The resolutions are hereby approved.

We are satisfied that the executive committee meeting was duly called and that the general council meeting was well publicized and that the tribal members 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. Weddell believes that a very full explanation was given to the Klamath people and that they 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 of the claim in Docket 100-B-1 is fair and just. The proposed settlement is hereby approved.

Sincerely yours,

/s/ Theodore C. Krenzke  
Acting Deputy Commissioner  
of Indian Affairs

13. Upon conclusion of the preliminary proceedings discussed above, counsel for the parties jointly prepared and executed a "Stipulation for Entry of Final Judgment" (incorporated as part of a joint motion for entry of final judgment) in Docket 100-B-1. The stipulation which reads as follows was filed with the Commission on January 3, 1977:

Before the  
INDIAN CLAIMS COMMISSION

KLAMATH AND MODOC TRIBES AND	)	
YAHOSKIN BAND OF SNAKE INDIANS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 100-B-1
	)	
UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

STIPULATION FOR ENTRY  
OF FINAL JUDGMENT

It is hereby stipulated by the parties, through their counsel, as follows:

1. All claims asserted in Indian Claims Commission Docket No. 100-B-1 shall be settled by entry of final judgment in the Indian Claims Commission in the amount of \$18,000,000.

2. It is understood that the claims settled herein, Docket No. 100-B-1, to the extent they are included or could have been included in the United States Court of Claims Docket No. 389-72, are also settled.

3. This settlement shall not affect in any way any issue now pending in Klamath Tribe v. United States, Indian Claims Commission Docket No. 100-B-2, a pending lawsuit in the United States District Court for the District of Oregon, United States v. United States National Bank of Oregon, Docket No. 74-894, or any claims now pending or which may be brought before the United States Court of Claims or other competent judicial body on behalf of plaintiff Tribe accruing from any transaction or event after August 12, 1961, the date of termination of federal supervision over plaintiff Tribe, it being understood that such reservation shall not be construed to waive the right of the United States to raise in the United States Court of Claims or other court of competent jurisdiction any procedural or substantive defenses to any such claim or claims including the statute of limitations.

4. The final judgment shall be in favor of the Klamath Tribe, and against the United States of America, defendant, no review to be sought or appeal to be taken by either party.

5. With the exception of the claims not affected by this settlement listed in paragraph 3 supra, entry of final judgment in said amount of \$18,000,000 shall finally dispose of all rights, claims, or demands which plaintiff has asserted or could have asserted against the defendant in this case under the provisions of section 2 of the Indian Claims Commission Act (60 Stat. 1049), and of all claims, counter claims, or offsets which defendant has asserted or could have asserted against plaintiff under the provisions of section 2 of the Indian Claims Commission Act (60 Stat. 1049).

6. The stipulation for entry of final judgment set out herein, shall not be construed as an admission of any party as to any issue for purposes of precedent in any other case or otherwise.

Respectfully submitted,

/s/ Peter R. Taft  
Assistant Attorney General

/s/ A. Donald Mileur  
Attorney for Defendant

/s/ James E. Clubb  
Attorney for Defendant

/s/ Angelo A. Iadarola  
Attorney of Record for Plaintiff  
Klamath Tribe of Indians

Approved and Joined in by:

KLAMATH TRIBE OF INDIANS

/s/ Elnathan Davis, Chairman  
Klamath Tribal Executive Committee

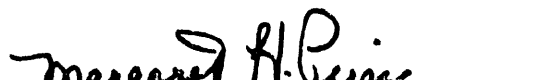
/s/ Dibbon Cook, Secretary  
Klamath Tribal Executive Committee

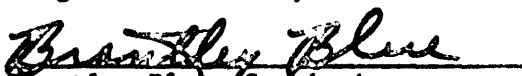
14. On the basis of the entire record, including testimony presented at the hearing of January 6, 1977, the Commission finds that the steps and procedures adopted by the Klamath Tribal Executive Committee relating to the consideration and approval of the compromise settlement herein both by the Committee and by the General Council, as outlined in the foregoing findings, were properly conducted and in conformity with the

authority and power vested in that Committee. The Commission further finds that the terms of the settlement were fully and fairly explained to the said authorized representatives of the plaintiff tribe and to the General Council and that each body was sufficiently informed to make an intelligent choice on the proposed settlement and that each did make such a choice in approving and in ratifying approval of said compromise settlement respectively.

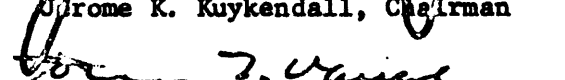
15. On the basis of the entire record in these cases, the testimony of the witnesses, the representation of counsel, and all other pertinent factors before us, the Commission finds that the proposed compromise settlement in Docket 100-B-1 is fair to the plaintiff and has been freely entered into by it and duly approved by its governing body respecting tribal claims (Klamath Tribal Executive Committee), said approval being ratified by the Klamath General Council, and duly approved by the authorized representative of the Secretary of the Interior in Indian matters, the Commissioner of Indian Affairs.


The Commission hereby approves the proposed compromise and settlement in Docket 100-B-1, and will enter a final judgment in favor of the plaintiff tribe in the amount of \$18,000,000 in settlement of the plaintiff's claims in Docket 100-B-1 and all claims of the defendant, in accordance with and subject to the terms and provisions set forth in the stipulation for entry of final judgment.

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner