

BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED SALISH AND KOOTENAI)
TRIBES OF THE FLATHEAD RESERVATION,)
MONTANA,)

Petitioner,)

v.)

Docket No. 61

THE UNITED STATES OF AMERICA,)

Defendant.)

Decided: August 1, 1966

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

Explanatory Statement

This matter is now before the Commission for approval of a compromise final settlement of this case by entry of a final judgment in the amount of \$4,431,622.18, to be conditional upon dismissal of the pending appeal in the Court of Claims, Appeal No. 1-66, and remand by that court to this Commission for entry of said final judgment.

The Commission has heretofore determined in 8 Ind. Cl. Comm. 40 (Findings of Fact Nos. 1-21), that petitioner, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, is the successor-in-interest to the Flathead, Kootenai (Libby-Jennings Band), and Upper Pend d'Oreille Tribes of Indians who held aboriginal title to that land in western Montana which they ceded to the United States by the Treaty of July 16, 1855, 12 Stat. 975. By Interlocutory Order of August 3, 1959, this Commission ordered the case to proceed to a

determination of the acreage of the ceded lands, their value as of March 8, 1859, the effective date of the Treaty and whether the consideration was unconscionable.

On September 29, 1965, further hearings having been held on the latter issues, additional findings of fact were entered, 16 Ind. Cl. Comm. 1 (Findings of Fact Nos. 22-42), in which the Commission found that the lands ceded embodied 7,500,000 acres of timberland, 1,000,000 acres of wasteland, 3,155,000 acres of range land, and 350,000 acres of crop land, and that the total ceded, 12,005,000 acres, had a fair-market value as of March 8, 1859, of \$5,300,000. The Commission also determined that the total consideration paid was \$593,377.82, and that the difference between the fair-market value and the consideration, \$4,706,622.18, was unconscionable and that petitioner was entitled to recover from the defendant that amount, less whatever offsets, if any, defendant was entitled to under the Indian Claims Commission Act.

On November 30, 1965, defendant filed an amended answer claiming offsets in the amount of \$4,316,090.31. Petitioner filed an appeal from our interlocutory order on December 29, 1965 (App. No. 1-66, United States Court of Claims). Counsel thereafter commenced discussions concerning settlement of claimed offsets, and ultimately agreed that offsets would be compromised and settled for \$275,000, conditioned upon approval of the proposed settlement by petitioner's governing body, the Bureau of Indian Affairs, and this Commission, and conditioned upon the dismissal of the pending appeal and remand to this Commission for

entry of a final judgment in favor of petitioner in the amount of \$4,431,622.18.

A hearing having been held in Washington, D. C. on July 26, 1966, on the aforesaid proposed offer to compromise and settle, the Commission makes the following findings of fact which are supplemental to the previous Findings Nos. 1-42, inclusive, made herein:

43. Petitioner herein, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, was organized under the Indian Reorganization Act, Act of June 18, 1934, 48 Stat. 984, pursuant to a Constitution and Bylaws approved by the Secretary of the Interior on October 28, 1935.

44. Pursuant to Article III of the approved Constitution, the governing body of the petitioner is the Tribal Council, an elected body composed of representatives from geographic districts within the reservation, each elected for a term of four years. The Tribal Council has been the sole governing authority of the petitioner since October 28, 1935.

45. Pursuant to the approved Bylaws, Article I, Section 7, as amended, the Tribal Council must hold regularly scheduled meetings on the first Friday of January, April, July, and October, at 9:00 A. M., at the Flathead Agency.

46. By letter of June 16, 1966, the defendant accepted an offer to compromise and settle the claimed offsets of \$4,316,090.31, in the amount of \$275,000, subject to approval by the governing body of petitioner, the Bureau of Indian Affairs, and this Commission, and conditioned upon the dismissal of the pending appeal (Court of Claims,

App. 1-66), and the remand of the case to this Commission for entry of final judgment in the amount of \$4,431,622.18. On June 17, 1966, the Secretary of the Tribal Council issued a notice concerning the proposed offer of compromise and settlement. The notice explained that an offer to compromise and settle this case in the amount of \$4,431,622.18, would be presented to the Tribal Council for its consideration and action at the regularly scheduled meeting (required by the Bylaws of the Tribes), of the first Friday of July, July 1, 1966, at the Flathead Agency, at 10:00 A.M. The notice explained briefly the proposed settlement and urged that all attend the meeting in order to express their views; it specifically urged all who could not attend the meeting and were opposed to the proposed compromise and settlement to "send your written reason for opposition to settlement to the Tribal Council by mailing it to the Secretary at Dixon, Montana, prior to the meeting of July 1, 1966."

The notice in its entirety reads as follows:

THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION

Dixon, Montana

June 17, 1966

NOTICE OF PROPOSED SETTLEMENT OF ABORIGINAL TITLE CLAIM,
INDIAN CLAIMS COMMISSION, DOCKET NO. 61, TO BE PRESENTED
AT CONSTITUTIONAL MEETING OF JULY 1, 1966.

Subject to Tribal and Indian Claims Commission approval, the Tribal Council has been advised by your Claims Attorneys that the United States is willing to compromise and settle your Aboriginal Title Claim in the Indian Claims Commission, Docket No. 61, for a net amount (after offsets) of \$4,431,622.18. Approval is recommended by your Claims Attorneys.

The Indian Claims Commission awarded a judgment of \$4,706,622.18 on your claim. This amount was subject to offsets claimed by the United States. The United States claim offsets in the amount of \$4,316,090.31. After negotiations between your attorneys and the attorneys for the United States, the latter are willing to compromise and to settle offsets for a total of \$275,000. The pending appeal of this case by the Tribes to the United States Court of Claims would be dismissed. If this offer is accepted, by the Tribal Council, the net judgment awarded to the Tribes will be \$4,431,622.18, before deductions for attorneys' fees and expenses. Attorney fees are contingent on recovery and can not exceed ten per cent (10%) of the net judgment. The Tribes have paid nearly all expenses as the case progressed.

Details pertaining to this claim have been set out in the minutes of the Constitutional Meeting of the Tribal Council of April 1, 1966.

Your attorneys will present the proposed settlement to the Tribal Council, with full explanations and recommendations, for acceptance or rejection at the Constitutional Meeting to be held at the Agency on Friday, July 1, 1966, at 10:00 o'clock a.m.

You are urged to be in attendance at that meeting. However, if in the event you are unable to attend and are opposed to accepting this settlement you should send your written reason for opposition to settlement to the Tribal Council by mailing it to the Secretary at Dixon, Montana, prior to the meeting of July 1, 1966.

It is too early to speculate on just when the net judgment, if approved by the Tribal Council, will be appropriated by Congress, although the Tribal Attorneys hope it will be appropriated before Congress adjourns late this summer or early this fall. When appropriated it will bear interest, credited to Tribal account, at four percent (4%) a year. Because of current restrictions on expenditures of judgment money, your attorneys are unable to estimate how, or in what manner, the money may be paid to or used for the members. The sole question to be considered at the meeting of July 1, is whether the Tribes are willing to make final settlement of this one claim for \$4,431,622.18.

/s/ Kenneth R. Martin
Kenneth R. Martin, Tribal Secretary

47. On June 17, 1966, the notice was mailed by personnel of the Tribal Council office to all enrolled members of the Confederated Salish and Kootenai Tribes, 21 years of age or older, according to the most recent tribal roll, revised and updated as of June 30, 1965. A total of 2,877 of the notices were mailed to individual members of the Tribes:

48. By June 20, 1966, the notice had been posted in each of the ten post offices located in the Flathead Reservation, in the Elmo Community Hall and in the Tribal Commodity Office and in the post office in Missoula, Montana. Posting at these locations is a customary way of giving official notices by the Tribes.

49. The notice was also published in the following newspapers on the following dates, each a newspaper of general circulation:

- (1) Spokesman-Review, Spokane, Washington, published on June 22, and June 27, 1966.
- (2) Flathead Courier, Polson, Montana, published on June 23, and June 30, 1966.
- (3) Billings Gazette, Billings, Montana, published June 22, and June 27, 1966.
- (4) Great Falls Tribune, Great Falls, Montana, published June 21, and June 27, 1966.
- (5) Missoulian-Sentinel, Missoula, Montana, published June 21, and June 27, 1966.
- (6) Ronan Pioneer, Ronan, Montana, published June 23, and June 30, 1966.

50. By July 1, 1966, of the 2,877 notices mailed by the Tribal Office, only 97 had been received back from the post-office as undelivered for various reasons.

51. By July 1, 1966, the Tribal Office, in response to the notices mailed, had received 28 telephone calls from tribal members all expressing approval of the proposed settlement. By the same date, a total of 117 letters were received, of which 95 expressed approval of the proposed settlement, 6 expressed disapproval, and 16 were not susceptible of a determination of approval or disapproval. All of the foregoing information was conveyed to the Tribal Council at its meeting of July 1, 1966, before it voted on accepting or rejecting the proposed offer to compromise and settle.

52. The proposed offer to compromise and settle was presented to the Tribal Council at its regularly scheduled meeting of July 1, 1966. The meeting was attended by at least 257 adult enrolled members of the Tribes. At the meeting, approximately 210 copies of a detailed and complete attorneys' report on the claim and proposed settlement were handed out. In addition, the attorney of record made a full explanation of the proposal and gave his recommendation that the proposed offer be accepted. After his presentation, the meeting was opened for questions and numerous members asked questions, which were answered either by the attorney of record or the Chairman of the Tribal Council. When there were no more questions from the floor, the Tribal Council members asked questions and the attorney of record responded and when there

were no more questions from among members of the Tribal Council, a straw vote of the tribal members present was taken, and at least 255 voted to accept the settlement and two voted against it. Thereafter, by appropriate resolution, the Tribal Council voted in open meeting to accept the proposed settlement, 8 in favor, none opposed, all present voting.

53. The resolution of the Tribal Council reads as follows:

RESOLUTION
OF THE GOVERNING BODY OF THE
CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD RESERVATION

An Indian Chartered Corporation

No. 1977

RESOLUTION APPROVING AND ACCEPTING
THE OFFER TO GOMPROMISE AND SETTLE
THE ABORIGINAL TITLE CLAIM OF THE
CONFEDERATED SALISH AND KOOTENAI
TRIBES, CONFEDERATED SALISH AND
KOOTENAI TRIBES OF THE FLATHEAD
RESERVATION, MONTANA v. UNITED
STATES, DOCKET NO. 61, INDIAN
CLAIMS COMMISSION (APPEAL DOCKET
NO. 1-66, UNITED STATES COURT OF
CLAIMS), IN THE AMOUNT OF \$4,431,622.18.

WHEREAS, the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, have a claim against the United States under the Indian Claims Commission Act, entitled Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana v. United States, Docket No. 61, Indian Claims Commission (App. No. 1-66, United States Court of Claims), which claim seeks an additional sum of money for the lands ceded to the United States by the predecessors in interest of the Confederated Salish and Kootenai Tribes pursuant to the Treaty of Hell Gate of July 16, 1855, 12 Stat. 975; and

WHEREAS, by decision of August 3, 1959, the Indian Claims Commission determined that pursuant to the Treaty of Hell Gate, a total of 12,005,000 acres of land were ceded to the United States; and

WHEREAS, by decision of September 29, 1965, the Indian Claims Commission held the ceded lands had a value of \$5,300,000 as of March 8, 1859, the date of ratification of the Treaty of Hell Gate, and that the total consideration received by the Confederated Salish and Kootenai Tribes from the United States for the land ceded was \$593,377.82, and, because of the disparity between the consideration paid for the lands ceded and their value at the time the Treaty was ratified, entered an award of \$4,706,622.18, before offsets, in favor of the Confederated Salish and Kootenai tribes; and

WHEREAS, on December 1, 1965, the United States filed a claim of offsets against the judgment entered in favor of petitioner totalling \$4,316,090.31, which claimed offsets, if allowed, would leave a net judgment of \$390,531.87; and

WHEREAS, the attorneys representing the Confederated Salish and Kootenai Tribes noted an appeal from the decision of the Indian Claims Commission to the Court of Claims, to preserve the rights of the Confederated Tribes, and thereafter commenced negotiations with attorneys for the Department of Justice representing the defendant on the question of offsets; and

WHEREAS, by letter of June 16, 1966, the defendant agreed to compromise and settle the claimed offsets from July 16, 1855, to June 30, 1965, for a total of \$275,000, with a final, net judgment to be entered by the Indian Claims Commission in favor of the Confederated Salish and Kootenai Tribes in the amount of \$4,431,622.18, with the appeal to be dismissed from the Court of Claims, and the Indian Claims Commission judgment to become final and binding on the parties; and

WHEREAS, the attorneys representing the Confederated Salish and Kootenai Tribes in this litigation have kept the Tribal Council informed of any and all developments from the commencement of this suit, to and including the present day; and

WHEREAS, on June 17, 1966, the Secretary of the Tribal Council sent notice to all adult members of the Tribes concerning this proposed settlement, said notice stating that the proposed compromise and settlement would be presented and considered at the Constitutional Meeting to be held at the Agency on July 1, 1966; and urged that all adult members attend the Constitutional Meeting of July 1, 1966, and in the event any person could not attend and opposed the proposed settlement, he advise the Council in writing prior to July 1, 1966; and

WHEREAS, the claims attorneys appeared at the Constitutional Meeting of the Tribes held at the Agency on July 1, 1966, and explained the settlement in detail and answered all questions presented on the proposal; and

WHEREAS, the Tribal Council of the Confederated Salish and Kootenai Tribes has considered all of the facts of the case and the proposed offer to compromise and settle, including the views expressed by members of the Tribes and the recommendations of their attorneys;

NOW, THEREFORE, BE IT RESOLVED, That the Tribal Council of the Confederated Salish and Kootenai Tribes hereby approves and accepts the offer to compromise and settle the aboriginal title claim of the Confederated Salish and Kootenai Tribes against the United States in an amount of \$4,431,622.18, which offer is contained in the letter of June 16, 1966, signed by Edwin L. Weisl, Jr., Assistant Attorney General, attorney for the defendant, a copy of which is attached and made a part hereof; and

BE IT FURTHER RESOLVED, That the Chairman of the Tribal Council and E. W. Morigeau and Patrick Lefthand, are hereby authorized to appear and testify before the Indian Claims Commission in favor of said settlement and the Chairman is further authorized to sign any and all appropriate stipulations and documents necessary to conclude the settlement on the terms above stated, as submitted to them by the attorneys for the Confederated Salish and Kootenai Tribes; and

BE IT FURTHER RESOLVED, That the Tribal Council of the Confederated Salish and Kootenai Tribes hereby requests the approval of the proposed compromise and settlement by the Secretary of the Interior and the Indian Claims Commission.

CERTIFICATE

The foregoing resolution was adopted by the Tribal Council of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, organized under a Constitution approved October 28, 1935, pursuant to Section 16 of the Indian Reorganization Act of June 18, 1934, 48 Stat. 984, as amended, the authority for this resolution being found in Article VI, Section 1(a), (c), (f), and (u), by a vote of 8 for, 0 against, and 0 not voting, this 1st day of July, 1966.

/s/ Lyman Trahan
Lyman Trahan, Chairman

ATTEST:

/s/ Kenneth R. Martin
Secretary

APPROVED:

/s/ P. T. LaBreche
Superintendent

7/1/66

[attached as part of fore-
going resolution]

ASSISTANT ATTORNEY GENERAL
LAND AND NATURAL RESOURCES
DIVISION

DEPARTMENT OF JUSTICE
Washington

June 16, 1966

Wilkinson, Cragun & Barker
Attorneys at Law
1616 H Street, N. W.
Washington, D. C. 20006

Attention: Mr. Barker

Dear Sirs:

The offer to settle the claim of the Confederated Salish and Kootenai Tribes against the United States represented in Docket No. 61 before the Indian Claims Commission, as outlined in your letters of April 21 and April 25, 1966, is accepted subject to the following conditions:

1. That the proposed settlement be approved by appropriate Resolutions of the governing bodies of the Salish and Kootenai Tribes of the Flathead Reservation, Montana.
2. That the approval of the settlement, as well as the Resolutions by the tribes, be secured from the Secretary of the Interior, or his authorized representative.
3. That a copy of such Resolutions and of the approval of the terms of the settlement by the Department of the Interior be furnished to this Department.
4. That the appeal from the decision of the Indian Claims Commission now pending in the Court of Claims as Appeal No. 1-66 be dismissed before any final judgment is entered by the Indian Claims Commission on the basis of this compromise agreement.

The Department of Justice will be happy to work out with you the terms of the stipulation and the appropriate actions and orders necessary to carry into effect the offer of settlement subject to the conditions specified herein.

Very truly yours,

/s/ Edwin L. Weisl, Jr.
Edwin L. Weisl, Jr.,
Assistant Attorney General

54. The parties have entered into a stipulation, made a part of the record herein, which reads:

Before the
INDIAN CLAIMS COMMISSION

THE CONFEDERATED SALISH AND KOOTENAI)	
TRIBES OF THE FLATHEAD RESERVATION,)	
MONTANA,)	
)	
)	Petitioner,
)	
v.)	
)	Docket No. 61
THE UNITED STATES OF AMERICA,)	
)	
)	
)	Defendant.

STIPULATION FOR ENTRY OF FINAL JUDGMENT

It is hereby stipulated and agreed between counsel for the parties that the above-entitled case shall be settled and disposed of by entry of final judgment in the Indian Claims Commission, subject to the following terms and conditions:

1. The Indian Claims Commission shall be asked to approve this stipulation and settlement conditional upon the dismissal of the pending appeal in the Court of Claims (Appeal No. 1-66) and upon such approval by the Commission, the pending appeal shall be dismissed by the Court and the case remanded for entry of final judgment consistent with this stipulation.

2. The offsets asserted in said case shall be compromised and settled in the amount of \$275,000.00. After dismissal of the pending appeal, a final judgment shall be entered in favor of the petitioner against the defendant in the amount of \$4,431,622.18, no review to be sought by either party.

3. The judgment shall finally dispose of all claims or demands which petitioner has asserted or could have asserted in this case against defendant, and petitioner shall be barred from asserting all such claims or demands in any future action.

4. The judgment shall finally dispose of all offsets, claims or demands, which defendant has asserted or could

have asserted against petitioner in this or in any other case from and after July 16, 1855, to and including June 30, 1965, under the provisions of Section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049), or Section 6 of the Act of June 30, 1946 (60 Stat. 715), or Section 2 of the Act of August 12, 1935 (49 Stat. 511, 596).

5. The judgment shall not operate to deprive the defendant of exercising its right to collect from the proceeds of timber sales (as authorized by statute), any expenses of managing, protecting and selling timber as authorized by the Act of February 14, 1920, as amended (25 U.S.C. § 413), nor shall it affect any right of the Confederated Salish and Kootenai Tribes to have credited to their trust funds all or a portion of such administrative deductions by reason of such trust funds having borne expenses of management, protection and sale of timber to the extent provided by 25 U.S.C. § 413.

6. Nothing connected with this compromise may be construed as an admission of either party as to any issues for purposes of precedent in any other case.

/s/ Robert W. Barker
Robert W. Barker

ATTORNEY OF RECORD FOR PETITIONER

/s/ Edwin L. Weisl, Jr.
Edwin L. Weisl, Jr.
Assistant Attorney General

/s/ John D. Sullivan
John D. Sullivan
Attorney, Department of Justice
ATTORNEYS FOR DEFENDANT

APPROVAL OF ATTORNEYS

The foregoing stipulation for compromise and settlement is hereby approved on behalf of Wilkinson, Cragun & Barker, contract claims attorneys for the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana,

WILKINSON, CRAGUN & BARKER

By: /s/ Robert W. Barker
A Partner

APPROVAL OF ADMINISTRATRIX CTA OF
ESTATE OF GEORGE M. TUNISON, DECEASED

WHEREAS, a contract between the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana, and George M. Tunison, Esq., Omaha, Nebraska, was entered into on the 13th day of February, 1941, approved on the 9th day of May, 1941, which contract was extended by Agreement of April 16, 1947, approved May 5, 1947, and which contract provided that Mr. Tunison should represent the Confederated Salish and Kootenai Tribes in their claims, which claims included that filed in Docket No. 61; and

WHEREAS, Mr. Tunison died testate on December 3, 1954, and the estate of said attorney is still open, and Nellie Manoli is the Administratrix CTA;

NOW, THEREFORE, on behalf of the estate of George M. Tunison, I do hereby approve the foregoing settlement stipulation on this 7th day of July, 1966.

/s/ Nellie Manoli
Nellie Manoli, Administratrix

STATE OF NEBRASKA)
 : ss
COUNTY OF DOUGLAS)

On this 7th day of July, 1966, before me, a notary public in and for the County of Douglas, in the State of Nebraska, personally appeared Nellie Manoli, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and fixed my notarial seal the day and year above written.

/s/ G. W. Becker
Notary Public in and for Douglas
County in the State of Nebraska

My Commission Expires:

May 22, 1971.

APPROVAL
 CONFEDERATED SALISH AND KOOTENAI TRIBES,
 FLATHEAD RESERVATION, MONTANA

The foregoing stipulation is approved, pursuant to authorization of the Tribal Council this 1st day of July, 1966.

/s/ Lyman Trahan
 Chairman

ATTEST:

/s/ Kenneth R. Martin
 Secretary

CERTIFICATION OF SIGNATURES

I hereby certify the foregoing signatures are genuine and are those of the Chairman and Secretary of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, Montana.

/s/ P. T. LaBreche
 Superintendent

APPROVAL OF SOLE LEGATEES AND
 DISTRIBUTEES OF THE LATE
 CHARLES J. KAPPLER

In so far as there is any interest in this matter in the estate, heirs, legatees or distributees of Charles J. Kappler, deceased, by reason of employment of George M. Tunison and Charles J. Kappler as attorneys for the Confederated Salish and Kootenai Tribes, under a contract entered into on February 13, 1941, approved May 9, 1941, and services rendered by the late Mr. Kappler, the undersigned, being the sole surviving heirs, legatees and distributees (administration and probate of his Will, District of Columbia Administration No. 66,743, Docket No. 141, having been closed) of the late Charles J. Kappler, jointly and severally approve the foregoing stipulation.

7/24/66

/s/ Susanne Kappler Palmer
 Susanne Kappler Palmer

7/22/66

/s/ Charles T. Kappler
 Charles T. Kappler

55. The record discloses that the Superintendent of the Flathead Agency, Mr. P. T. LaBreche, and the Assistant Director of the Billings Area Office of the Bureau of Indian Affairs, attended the July 1, 1966 meeting and submitted reports to the Commissioner of Indian Affairs. On July 18, 1966, the Associate Commissioner of Indian Affairs, James O. Officer, approved the settlement by a letter to Wilkinson, Cragun and Barker, counsel for petitioner (Settlement Exhibit 7). After reviewing the background of the claim, the terms of the proposed settlement, and the procedure for voting thereon, the Associate Commissioner made the following statements:

"The Confederated Salish and Kootenai Tribes of the Flathead Reservation are organized under the Indian Reorganization Act with an approved constitution and bylaws. The governing body is the Tribal Council."

* * *

"We are satisfied that the meeting July 1, 1966 was duly noticed and held and that the members were given the opportunity to attend and express their views. We are also satisfied that those members who were present understood the proposed compromise and settlement, that they reasonably represented the Confederated Salish and Kootenai Tribes, that their views were representative of the membership, and that Resolution No. 1977 reflects the acceptance and approval of the proposed settlement by the Indians. Resolution No. 1977 is hereby approved."

* * *

"In light of the information which you have supplied us, that furnished by our field offices, and that obtained from other sources, we believe the proposed compromise and settlement of Docket No. 61 for a net judgment of \$4,431,622.18 to be fair to the Indians. The proposed compromise and settlement is hereby approved under Section 11, Secretarial Order 2508 (27 F.R. 11560)."

56. A hearing was held by the Commission on July 26, 1966, on the proposed offer to compromise and settle. Testimony of three witnesses was received, in addition to statements of counsel and exhibits received. The witnesses were: Lyman Trahan, Chairman of the Tribal Council of the Confederated Salish and Kootenai Tribes, and Mr. E. W. Morigeau, and Mr. Patrick Lefthand, members of the Tribal Council.

57. Lyman Trahan. Mr. Lyman Trahan, as Chairman of the Tribal Council of the Confederated Salish and Kootenai Tribes, had signed the stipulation for the compromise settlement. He testified concerning the procedure for giving notices to the members of the meeting of July 1, 1966, the presentation to the Tribal Council, the advisory vote taken of the tribal members, and the vote by the Council itself. Mr. Trahan, 41 years old, represents the St. Ignatius District of the Tribes. He has been on the Council for seven years and was elected Tribal Council Chairman in January, 1966. Mr. Trahan testified that the claims attorneys for the Tribes made a full presentation of all of the issues concerning the settlement and that all of the members were permitted to ask any and all questions concerning the proposed settlement and that these questions were satisfactorily answered by the claims attorneys. He stated that the members of the Tribal Council were also permitted to ask any questions they desired to ask; that these questions were likewise satisfactorily answered by the claims attorneys. In the opinion of Mr. Trahan, the members of the Tribes

that were present and the members of the Council had understanding and knowledge of the facts concerning the settlement and that they believed the settlement would be in the best interests of the Tribes. He stated that the vote reflected the true feelings of the members of the Tribes. He testified that he felt similarly the vote by the Tribal Council on Resolution No. 1977 truly reflected the Council's desire to approve the settlement.

58. E. W. Morigeau. Mr. Morigeau has been a member of the Tribal Council for over 17 years. During this time he has served as Tribal Council Chairman. He represents the Polson District and testified that in his 17 years as a member of the Tribal Council he and other members of the Council have received, in that capacity, numerous written and oral reports concerning the status and progress of this case. In addition, on several occasions over the past years, he has been a delegate to Washington and at that time he and other delegates have conferred with the attorneys concerning the status of this case. He stated that on each occasion, upon return to the Council the delegates made full reports, which reports are embodied in the Tribal Council Minutes which are mailed to the members of the Confederated Tribes. Mr. Morigeau testified generally concerning the notice of the proposed meeting and stated that in his 17 years on the Tribal Council, the July 1, 1966 meeting was the largest meeting he had ever attended. Mr. Morigeau was in favor of the proposed settlement and felt it was in the best interests of the Tribes and testified that in his opinion

the members of the Tribes who voted to show their approval of the proposed settlement understood the issues involved; that this settlement would finally conclude their aboriginal possession case, and felt that the settlement should be approved. He said he felt the members of the Tribal Council also demonstrated that view in adopting the resolution accepting the proposed settlement.

59. Patrick Lefthand. Mr. Lefthand, 27 years of age, was first elected to the Tribal Council for a term commencing in January, 1966. His testimony confirmed the facts concerning the notices and the July 1, 1966 meeting related by Messrs. Trahan and Morigeau. He personally favored the proposed settlement and felt that it was in the best interests of the Tribes and that it be accepted. He also felt that the vote taken by the tribal members represented their understanding of the implications of the settlement and their desire to voice their opinion that its acceptance would be in the best interests of the Confederated Tribes. He was certain that the Tribal Council also understood the nature of the settlement and freely and knowingly adopted the resolution approving the proposed settlement.

60. Mr. Robert W. Barker, attorney of record for petitioner, stated to the Commission at the hearing on the settlement that in his judgment the proposed settlement was a good compromise for his clients; that the dismissal of the pending appeal (on issues of value and consideration) and the compromise settlement of claimed offsets for \$275,000 were, under all of the circumstances of this case, in the

interest of the petitioner. Mr. Barker stated that the law firm of Wilkinson, Cragun & Barker, the contract attorneys for petitioner, and counsel experienced in Indian claims litigation, had recommended to the petitioner and to the Commissioner of Indian Affairs that the proposed settlement be approved.

61. Considering all of the circumstances, the record in all of the stages of this litigation, the testimony of the witnesses who have appeared before us in this settlement proceeding and the representations of counsel for the parties, the Commission specifically finds that the meeting at which the proposed compromise and settlement was presented to the Tribal Council was a regularly scheduled meeting pursuant to the Bylaws of the Tribes; that the meeting was duly noted and that the members were given full notice in advance of the meeting with a full opportunity to attend and express their views on the proposed offer to compromise and settle, or to express their views by either mail or phone if attendance was impossible; that approximately 259 people attended the meeting and of those present, 257 expressed a view that the proposed settlement should be accepted; that in addition, prior to the meeting, by telephone or mail communications, 95 other members expressed an opinion favoring the proposed settlement and six expressed an opinion against it; that the duly authorized governing body of the petitioner, the Tribal Council, by appropriate resolution, voted to accept the proposed offer to compromise and settle and authorized the signing of the appropriate stipulation.

62. The Commission finds, based upon the testimony of said witnesses, the record at all stages of this litigation, the representations of counsel and all other pertinent factors before us that the proposed compromise settlement is fair to the parties and has been freely entered into by them and duly approved by the Commissioner of Indian Affairs.

63. The Commission hereby approves the proposed compromise and settlement and will enter a final judgment in favor of petitioner in the amount of \$4,431,622.18, upon dismissal of the appeal in the Court of Claims, Docket No. App. 1-66, and remand by that Court to the Commission for the purpose of entering said final judgment.

Arthur V. Watkins
Chief Commissioner

Wm. M. Holt
Associate Commissioner

T. Harold Scott
Associate Commissioner