

BEFORE THE INDIAN CLAIMS COMMISSION

CONFEDERATED TRIBES OF THE)	
UMATILLA INDIAN RESERVATION,)	
)	
Petitioner,)	
)	
v.)	Docket Nos. 264, 264A and 264B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

FINDINGS OF FACT ON COMPROMISE SETTLEMENT

1. On August 9, 1951, petitioner herein, the Confederated Tribes of the Umatilla Indian Reservation, filed a petition with the Commission containing four claims. The petition was designated Docket No. 264. Thereafter, pursuant to order of the Commission dated January 15, 1959, the claim designated in the original petition as Claim Two was separated from the original petition and became designated Docket 264A. Pursuant to an order of the same date, the claim designated in the original petition as Claim Three was separated from the original petition and became designated as Docket 264B. The claims designated in the original petition as Claim One and Claim Four now comprise Docket 264. Hereinafter, references to the docket numbers refer to the respective claims as designated subsequent to such separation.

2. Docket 264 involves the claim of the Confederated Tribes of the Umatilla Indian Reservation for additional compensation for lands ceded to the United States by the Treaty of June 9, 1855, ratified March 8, 1859 (12 Stat. 945; II Kappler, Treaties (2d ed) 694), and for additional lands outside that cession alleged to have been owned by Indian title and to have been taken without compensation. After extensive preparation

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by petitioner and defendant, a trial was had in Washington, D. C., on the issue of title, in March, 1958. The Commission's findings of fact, opinion and interlocutory order on the issues tried were entered June 10, 1960, reported at 8 Ind. Cl. Comm. 513. Petitioner filed a motion for rehearing and amendment of findings with respect to that decision. On September 28, 1964, the Commission vacated the 1960 decision and entered new findings of fact, opinion and interlocutory order, reported at 14 Ind. Cl. Comm. 14. Petitioner then appealed said interlocutory decisions to the United States Court of Claims, Appeal Docket 1-65, which was pending at the time of the hearing of January 20, 1966, mentioned below.

3. Docket 264A has not been tried. It involves the claim that the United States participated in the diversion of the waters of the Umatilla River, constructed diversion dams with inadequate fish-passage facilities, and failed to intervene on behalf of the tribe in state court proceedings in which water rights in the Umatilla River system were adjudicated. It is alleged that as a result of the foregoing the salmon, steelhead and eels runs in the Umatilla River system were destroyed and that, consequently, the fishing rights of the tribe reserved in the Treaty of June 9, 1855, were depreciated in value.

4. Docket 264B likewise has not been tried. It involves the claim that the original survey of the Umatilla Indian Reservation in 1871 erroneously excluded a certain area from the reservation promised and reserved in the Treaty of June 9, 1855. Petitioner seeks compensation for lands taken by the United States as a result of that survey.

5. Based upon stipulation, Dockets 264, 264A and 264B have now been consolidated. There is now pending before the Commission a joint motion of the parties for entry of final judgment in accordance with a stipulation of the parties for the compromise and settlement of all said claims and defendant's offsets. In substance, the stipulation provides for a final judgment against defendant and in favor of petitioner in the net amount of \$2,450,000. The stipulation in full is as follows:

"STIPULATION FOR ENTRY OF FINAL JUDGMENT

"IT IS HEREBY STIPULATED by the parties, through their counsel, as follows:

"(1) The Indian Claims Commission shall be asked to approve this stipulation and settlement on the terms herein provided, conditional upon the dismissal of the presently pending appeal in the United States Court of Claims, Appeals Docket No. 1-65, and upon such approval by the Commission said pending appeal shall be dismissed and said case shall be remanded to the Commission for entry of Final Judgment consistent with said stipulation. Such dismissal of said appeal shall not be intended by either party as an affirmance of the findings or decisions of the Indian Claims Commission, but otherwise shall be with prejudice.

"(2) Upon such remand, the cases designated as Indian Claims Commission Docket Nos. 264, 264A and 264B shall be consolidated for all purposes, including entry of a single judgment, as herein provided.

"(3) Said cases designated as Docket Nos. 264, 264A and 264B shall be compromised and settled by this stipulation and entry of Final Judgment in the Indian Claims Commission in favor of the Confederated Tribes of the Umatilla Indian Reservation, petitioner, and against the United States of America, defendant, no review to be sought or appeal to be taken by either party.

"(4) The judgment against defendant, after all allowable deductions, credits and offsets, shall be in the net amount of \$2,450,000.

"(5) This stipulation and entry of Final Judgment shall finally dispose of all claims or demands which the Confederated Tribes of the Umatilla Indian Reservation have asserted or could have asserted against said defendant under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049). This stipulation and entry of Final Judgment shall also finally dispose of all claims, demands, payments on the claim, counter-claims or offsets which the defendant has asserted or could have asserted against said petitioner under the provisions of Section 2 of said Act for all disbursements, transactions and occurrences from March 8, 1859, to and including December 31, 1958.

"(6) This stipulation, dismissal of the appeal and entry of the Final Judgment shall not be construed as an admission of either party as to any issue for purposes of precedent in any other case or otherwise.

"(7) The Final Judgment shall not deprive the United States of exercising its right to collect from the proceeds of the sale of timber its expenses of managing, protecting and selling timber as authorized by statute.

"(8) Attached to this stipulation and marked respectively Exhibit A, Exhibit B and Exhibit C are the following, authorizing counsel for petitioner to enter into this stipulation on the foregoing terms:

"Exhibit A--Resolution adopted by the General Council of the Confederated Tribes of the Umatilla Indian Reservation December 17, 1965.

"Exhibit B--Resolution adopted by the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation December 17, 1965.

"Exhibit C--Copy of letter by the Secretary of the Interior and Commissioner of Indian Affairs or their authorized representative approving the settlement of this litigation on said terms and conditions."

Frank E. Nash
Frank E. Nash
Attorney of Record for Petitioner

Date January 13, 1966

KING, MILLER, ANDERSON, NASH & YERKE

By Mark C. McClanahan,
Mark C. McClanahan, Partner

Date January 13, 1966

WILKINSON, CRAGUN & BARKER

By Donald C. Gormley
Donald C. Gormley, Partner

Date Jan. 17, 1966

Attorneys for Petitioner

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

Date January 18, 1966

Walter A. Rochow
Walter A. Rochow
Attorney
Department of Justice

Date January 18, 1966

Attorneys for Defendant

The resolution and letter attached to the stipulation are described below.

6. The filing of the above-mentioned joint motion and stipulation was preceded by more than a year of negotiations between counsel which led to a formal offer in writing to the Assistant Attorney General for settlement on the terms described in the stipulation. The offer was

formally accepted, subject to the approval by petitioner, through appropriate resolutions, and by the Secretary of the Interior or his authorized representative.

7. Following said formal acceptance by defendant, the reports by counsel to petitioner included reports at the following meetings:

(1) Meeting of the Board of Trustees of petitioner on November 23, 1965, held at the Tribal Office, Umatilla Indian Reservation.

(2) Meeting of the Board of Trustees of petitioner on December 14, 1965, held at the Tribal Office, Umatilla Indian Reservation.

(3) Meeting of the General Council of petitioner the afternoon of December 17, 1965, held at the Community Hall, Umatilla Indian Reservation.

(4) Meeting of the Board of Trustees of petitioner the evening of December 17, 1965, held at the Tribal Office, Umatilla Indian Reservation.

The Board of Trustees is the governing body of petitioner and the General Council consists of all enrolled members of petitioner 18 years of age or older. The minutes of each of said meetings are included in the evidence received by the Commission on this proposed settlement. At each of the foregoing meetings the Assistant to the Superintendent of the Umatilla Subagency, Harold A. Duck, who is the official in immediate charge of that subagency, was present, and at each of the meetings other than that of December 14, 1965, other representatives of the Secretary of the Interior also were present.¹

8. Included in the evidence received by the Commission on this proposed settlement are the notices of the foregoing meetings.² Each

¹See Exs. S-11, S-12, S-13 and S-14.

²See Exs. S-1, S-2 and S-3.

of them was given in accordance with the applicable provisions of the Constitution and Bylaws of petitioner, approved by the Secretary of the Interior. The notice of the General Council meeting of December 17, 1965, was as follows:

"NOTICE OF MEETING OF GENERAL COUNCIL OF THE CONFEDERATED
TRIBES OF THE UMATILLA INDIAN RESERVATION

"In accordance with Section 4 of Article V of the Constitution and By-Laws of the Confederated Tribes of the Umatilla Indian Reservation, the Board of Trustees has called a meeting of the General Council for 1 p.m. FRIDAY, DECEMBER 17, 1965, at the Community Hall, Umatilla Sub-Agency, Umatilla Indian Reservation for the purpose of considering and voting on the proposal of the tribal attorneys and the United States Department of Justice that the claims of the Confederated Tribes of the Umatilla Indian Reservation heretofore filed in the Indian Claims Commission be compromised and settled by the entry of a final judgment in favor of the Confederated Tribes of the Umatilla Indian Reservation in the amount of \$2,450,000 on the terms and conditions to be explained at said meeting.

"Approval of the settlement by the General Council is necessary and required before it will be approved by the Secretary of the Interior and Indian Claims Commission. Your presence is urgently requested.

"Dated and posted this 24th day of November, 1965

/s/

David S. Hall, Chairman of the
General Council of the Confederated Tribes
of the Umatilla Indian Reservation

/s/

Harold A. Duck
Assistant to the Superintendent
Umatilla Sub-Agency
Umatilla Indian Reservation"

"CERTIFICATE

"David S. Hall and Harold A. Duck certify respectively that David S. Hall is executive secretary of the Confederated Tribes of the Umatilla Indian Reservation and now chairman of the board of trustees thereof and that Harold A. Duck is Assistant to the Superintendent, Umatilla Subagency, Umatilla Indian Reservation, Bureau of Indian Affairs, and

"THAT on November 24, 1965, the foregoing and attached Notice of Meeting of General Council of the Confederated Tribes of the Umatilla Indian Reservation was posted in public places at the Umatilla Indian Agency headquarters and at Cayuse, Thornhollow and Gibbon, Oregon, and was also posted on said date at Grave's Store at Mission, Oregon.

"Dated this 17 day of December, 1965.

/s/
David S. Hall

/s/
Harold A. Duck"

It was posted at the four places on the Umatilla Indian Reservation required by the Constitution and Bylaws and at one other location.³ In addition, it was caused by counsel to be mailed to each member of the General Council at his or her last-known address as disclosed by the official records of petitioner. Accompanying the mailed notice was a printed memorandum from petitioner's attorneys reporting on the proposed settlement.⁴ The East Oregonian, published in Pendleton, Oregon, and

³See Constitution and By-Laws, Ex. S-18, Article V, Section 4, and Resolution 66-7, in Minutes of Board of Trustees meeting held November 23, 1965, Ex. S-11.

⁴See Ex. S-9.

the Walla Walla Union-Bulletin, published in Walla Walla, Washington, The Oregonian and the Oregon Journal, both published in Portland, Oregon, each carried news stories in advance of the meeting, giving the time, place and purpose of the meeting.⁵

9. As a result of the meetings, the General Council and Board of Trustees each adopted a resolution on December 17, 1965, approving the proposed settlement on the terms set forth in the above-mentioned stipulation. The evidence received by the Commission at the hearing on the proposed settlement includes each resolution.⁶ The resolution of the General Council is as follows:

"RESOLUTION OF GENERAL COUNCIL

"WHEREAS the Confederated Tribes of the Umatilla Indian Reservation filed four claims with the Indian Claims Commission and the same now comprise three cases designated in the Indian Claims Commission as Docket 264, consisting of original Claims 1 and 4 (the Land Claim), Docket 264A, consisting of Claim 2 (Umatilla River Fish Run Claim) and Docket 264B, consisting of Claim 3 (Reservation Boundary Claim), and

"WHEREAS Docket 264 has been tried on the issues of recognized title and original Indian title and is presently pending on appeal in the United States Court of Claims, Appeals Docket 1-65, from the decisions of the Indian Claims Commission dated June 10, 1960, and September 28, 1964, and

"WHEREAS following extensive investigation on all phases of said claims and obtaining the advice of expert appraisers as to the value of the lands involved in said Docket 264, the claims attorneys of the Confederated Tribes of the Umatilla Indian Reservation have unanimously proposed that all said

⁵See Exs. S-4, S-5, S-6, S-7 and S-8.

⁶See Stipulation for Entry of Final Judgment (Exs. A and B) and Exs. S-13 and S-14.

claims be compromised and settled for a net judgment of \$2,450,000 on the terms and conditions hereinafter set forth, which settlement is acceptable to the United States Department of Justice, and

"WHEREAS the General Council consists of all members of the Confederated Tribes of the Umatilla Indian Reservation of the age of 18 years or over, and

"WHEREAS the General Council has had a complete report from the claims attorneys concerning the issues and problems involved in said claims, the opinions of said appraisers and the progress of settlement negotiations, and the reasons for the proposed settlement have been fully explained by said attorneys at a meeting attended by representatives of the Secretary of the Interior and Bureau of Indian Affairs and it is the opinion of the General Council that said proposed settlement should be accepted and made; now therefore it is hereby

"RESOLVED by the General Council of the Confederated Tribes of the Umatilla Indian Reservation that the compromise and settlement of all said claims is hereby approved and the claims attorneys are authorized to enter into such stipulations as may be necessary to accomplish the same on the following terms and conditions:

- "1. The cases designated as Indian Claims Commission Docket Nos. 264, 264A and 264B, including United States Court of Claims Appeals Docket No. 1-65, shall be compromised and settled by stipulation and entry of final judgment in the Indian Claims Commission in favor of the Confederated Tribes of the Umatilla Indian Reservation, petitioner, and against the United States of America, defendant, no review to be sought or appeal to be taken by either party.
- "2. The amount of the judgment against defendant shall be \$2,450,000.
- "3. The Indian Claims Commission shall be asked to approve the stipulation and settlement on the terms herein provided, conditional upon the dismissal of the presently pending appeal in the United States Court of Claims Appeals

Docket No. 1-65, and upon such approval by the Commission said pending appeal shall be dismissed and said case shall be remanded to the Commission for entry of final judgment consistent with said stipulation. Such dismissal of said appeal shall not be intended by either party as an affirmance of the findings or decisions of the Indian Claims Commission, but otherwise shall be with prejudice.

- "4. The stipulation and entry of final judgment shall finally dispose of all claims or demands which the Confederated Tribes of the Umatilla Indian Reservation have asserted or could have asserted against said defendant under the provisions of Section 2 of the Indian Claims Commission Act (60 Stat. 1049). Said stipulation and entry of final judgment shall also finally dispose of all claims, demands, payments on the claim, counterclaims or offsets which the defendant has asserted or could have asserted against said petitioner under the provisions of Section 2 of said Act for all disbursements, transactions and occurrences from March 8, 1859, to and including December 31, 1958.
- "5. The stipulation, dismissal of the appeal, and entry of the final judgment shall not be construed as an admission of either party as to any issue for purposes of precedent in any other case or otherwise.
- "6. The final judgment shall not deprive the United States of exercising its right to collect from the proceeds of the sale of timber its expenses of managing, protecting and selling timber as authorized by statute.

It is further

"RESOLVED that said compromise and settlement on the foregoing terms and conditions shall be subject to the prior approval of the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation and of the Secretary of the Interior and Commissioner of Indian Affairs or their authorized representative."

The General Council meeting was attended by 336 of its members. The voting on the resolution was by secret ballot and it was adopted by a vote of 306 in favor of and 16 opposed, with the Chairman not voting and with one ballot spoiled and one blank. Except for the introductory recitals, the resolution of the Board of Trustees is in all material respects identical to that of the General Council; it was adopted by a vote of 8 in favor of and none opposed to, the Chairman not voting.

10. Mark C. McClanahan, a partner in the firm of King, Miller, Anderson, Nash & Yerke, counsel for petitioner, advised the Commission at the hearing of January 20, 1966, of the method of presenting the proposed settlement to petitioner and its members. The procedures outlined by Mr. McClanahan and testified to in detail by the witnesses were substantially as follows:

After the interlocutory decision of September 28, 1964, in Docket No. 264 the claims attorneys in October and November, 1964, made oral and written reports to both the Board of Trustees and the General Council of petitioner in which the status of said case, the possibility of obtaining a reversal upon appeal to the Court of Claims and the possibility of successful settlement negotiations were discussed. Copies of the written report were distributed with the minutes of the General Council meeting of November 5, 1964, which were mailed to a substantial number of the members of the General Council. Thereafter, from time to time oral reports were made to the Board of Trustees concerning the status and problems involved in the three docket numbers here involved and the preliminary appraisal being made with respect to the lands

involved in Docket No. 264. An oral report was made on these subjects to the regular General Council meeting of July 5, 1965. The General Accounting Office reports concerning the Treaty consideration under the Treaty of June 9, 1855, and the gratuity offsets to be claimed by defendant were filed with the Tribal Office for the inspection of any tribal members interested. Copies of four written memoranda analyzing or reporting on various phases of the cases and the Treaty consideration and offsets were furnished the members of the Board of Trustees from time to time and filed with the Tribal Office for the inspection of any member interested. Frequent oral reports concerning the status of settlement negotiations were made to the Board of Trustees and copies of the written offers, modifications and acceptance by counsel for petitioner and defendant were furnished the members of the Board of Trustees. Thereafter, and prior to the Board of Trustees' meeting of November 23, 1965, copies of a proposed resolution of the Board of Trustees embodying each of the numbered paragraphs of the resolutions ultimately adopted on December 17, 1965, were mailed to the members of the Board of Trustees. At each of the meetings of the Board of Trustees held November 23, 1965, and December 14, 1965, and at the General Council meeting of December 17, 1965, the proposed resolutions, prior to their adoption, were read and explained in detail by the attorneys. Questions were encouraged from the members and answered by the attorneys. A printed memorandum of attorneys to the Confederated Tribes of the Umatilla Indian Reservation discussing the reasons the proposed settlement was recommended by the attorneys was mailed to the members

of the General Council (including the members of the Board of Trustees) as above discussed, and the memorandum was discussed in detail and elaborated upon in said meetings. Following the reading and explanation of the proposed resolutions and reasons for recommendations, questions were encouraged from the Indians and answered by the attorneys until, in the opinion of the attorneys and the Indian leaders, the Indians understood the decision they were being asked to make, and understood the factors they had to take into consideration in making it. Each of the members of the Board of Trustees was present at the General Council meeting the afternoon of December 17, 1965, and at the evening meeting of the Board of Trustees held December 17, 1965. The approving resolution of the Board of Trustees was adopted unanimously without further discussion.

11. Five witnesses were called on behalf of the petitioners at the hearing before the Commission on January 20, 1966, three of them were members of the Confederated Tribes of Umatilla, the other two were employees of the Bureau of Indian Affairs.

12. Mr. David S. Hall, age 44, residing at Adams, Oregon, Route #1, is presently Chairman of the Board of Trustees of the subject tribe. He has been Tribal Executive Secretary since 1956 and is a part-time farmer. Mr. Hall has had broad experience and is comparatively well educated. He is a high school graduate, attended two years of business college in Oakland, California, and was enrolled in service schools during his three years in the United States Army. He has resided on the tribal reservation all his life except for the periods when he was

either in the military or attending school. He has held many important tribal offices during the past 18 years including the office of Chairman of the General Council. He has served on many tribal committees. His background includes many years service in non-tribal activities such as membership on the Umatilla County Welfare Commission, Juvenile Advisory Council for the Common Court, and the Governor's Advisory Committee on Indian Affairs.

Mr. Hall testified that from time to time the attorneys for the tribe have given several thorough reports on the various aspects of their cases pending before the Indian Claims Commission and of the progress of the settlement negotiations. He testified that all members of the tribe were notified either by mail or otherwise of the terms of the compromise settlement and of the December 17, 1965 General Council meeting wherein the resolution for acceptance by the tribe of the proposed settlement would be presented for a vote. He further testified that 336 Indians, eligible to vote on the resolution were present at the December 17th General Council meeting; that this was the largest General Council meeting he had ever seen; that all members of the Board of Trustees of the tribe were present; that the tribal attorneys made a complete and thorough explanation of the proposed settlement to the Council members at that time; that all the members present at the General Council meeting understood the terms of the settlement and the reasons for its recommendation when they voted; that they all understood that this was the final settlement for the three claims then pending before the Indian

Claims Commission against the United States; that no attempt was made to coerce any of the tribal members as to how they should vote; that a secret ballot was taken at which only 16 voted against the settlement and none of these spoke against the proposed settlement even though an opportunity was given for anyone to ask questions concerning the proposal; and that officials from the Bureau of Indian Affairs were present during the December 17th General Council meeting.

13. Thelma M. Reick, age 40, residing at Pendleton, Oregon, Route #1, is presently employed by the Confederated Tribes of Umatilla as the tribal lease clerk and has been so employed for the past five years. In this position she has frequent opportunity to come in contact with many members of the tribe. Previous to this she had been employed as a secretary, typist, and stenographer. She is a graduate of Pendleton High School and attended business college in Portland for two years. She has resided on the reservation except for the two years at business college. Mrs. Reick has held a number of important positions in the tribal organizations. She has served as a Member of the Board of Trustees, Secretary to the General Council, Secretary of the Board of Trustees, and has worked on several tribal committees.

The witness testified that she was a member of the Board of Trustees which adopted the resolution for accepting the proposed settlement in their December 14, 1965 meeting by a vote of five to two. Mrs. Reick said she opposed this recommendation by the Board but only on procedural grounds. She testified she was in favor of the settlement itself and

voted for it in the General Council meeting of December 17th. The witness testified that she was present at the December 17th General Council meeting wherein the proposed settlement was presented for a vote and helped with the registration of the eligible voters; that no one who claimed the right to vote was denied this right; that no challenges were made against anyone who was given the right to vote although they were expressly given the opportunity to do so; that she gave all the voters a copy of the proposed resolution; that said resolution was thoroughly explained both to the Board of Trustees and the General Council so that everyone understood it; and that no one has complained since the meeting that they did not understand it. The witness also testified that a small number were opposed to the resolution on the ground that the amount of money was inadequate but that the resolution for the compromise settlement of petitioner's claims was carried by a vote of 306 to 16.

14. Mr. Sam Kash Kash, age 63, lives on the Umatilla reservation near Pendleton, Oregon, where he has lived most of his life. He is presently retired from his occupation as a rancher. At one time he attended the Haskell Institute in Kansas. Mr. Kash has had long and varied experiences as official on the reservation. He is presently serving as a Member of the Board of Trustees and also Chairman of the General Council of the Confederated Tribes of Umatilla, having been elected to that office November 6, 1965. However, he has been Chairman of both the Board of Trustees and the General Council before. Mr. Kash now serves on several tribal committees and has been an official of one kind or another in the tribe since 1936. He has also served as tribal

delegate, interpreter and reservation police officer. He has held several non-tribal positions in the community including membership on the Indian Affairs Council, the City of Pendleton Recreation Committee and the Umatilla Juvenile Advisory Council.

Mr. Kash testified that he had voted against the resolution for settlement proposed at the Board of Trustees meeting held prior to the December 17th Council meeting on procedural grounds but was actually in favor of the resolution itself. However, he said that this recommendation of the Board of Trustees was not mentioned at the General Council meeting at which the proposed settlement was proposed and accepted. The witness testified that individual notices of the Special General Council meeting of December 17th were sent out to all tribal members though this was not usually done; that the turnout for this General Council meeting was the biggest he had ever seen; that as chairman of the meeting he had encouraged questions about the proposal of settlement and some questions were asked; that the attorneys explained the proposed settlement; that no special interpreters were needed for the older Indians because members of their own families explained things to them; that he himself was in favor of the settlement and everyone he had talked to felt the same way; and that to his knowledge there had been no pressure exerted on any of the members to influence their vote one way or another.

15. David Paul Weston, age 46, resides at 13320 North Fremont, Portland, Oregon. He is the tribal operations officer for the Bureau of Indian Affairs office in Portland, Oregon. He has been with the Indian Bureau for

19 years and has served in his present position four years. Mr. Weston serves as an advisor to the Area Director for the Bureau of Indian Affairs covering the states of Washington, Oregon and Idaho on all matters relating to Indian problems. In this capacity Mr. Weston processes all papers relating to compromise settlements of Indian Claims against the United States as they are presented for consideration by the Commissioner of Indian Affairs and the Secretary of the Interior. Mr. Weston makes specific recommendations on these matters to the Commissioner of Indian Affairs.

The witness testified that he attended several of the tribal meetings where the compromise settlement was discussed. He said he was invited there by the Indians and at the request of the Area Director. He testified that he did not make any recommendation as far as the settlement was concerned in any of the meetings but answered questions relating to the processes necessary for the tribe to be able to utilize the funds. He said that a full explanation of the proposed settlement was made at the November 23rd Board of Trustees meeting and that all thoroughly understood it. The witness testified that the settlement terms were read and discussed in detail at the December 17th General Council Meeting which lasted 3½ hours so that everyone there had a good understanding of it. Questions were encouraged. Mr. Weston testified that he circulated among the Indians during this meeting to make sure the registration and voting procedures were proper and to make sure the loudspeaking system was working; that copies of the proposed settlement were passed out to

all eligible voters; that only those who had received ballots voted; that 336 registered to vote with 306 voting for the settlement and 16 voting against it; that the remaining 14 ballots were not cast because some left for other commitments before the ballots were cast; that all the "yes" votes were satisfied with the settlement and the reason for the "no" votes was because the settlement sum was not large enough; that all Indian employees were counseled not to attempt to influence the tribal members one way or another on this issue; and that the majority of the Umatillas are self supporting so that they would not be coerced to vote for the settlement because of economic necessity.

16. Mr. Doyce L. Waldrip, age 41, resides at Warm Springs, Oregon, on the Warm Springs Reservation. He has been Superintendent of the Warm Springs Indian Reservation for the past 6 months and also supervises the Umatilla Indian Reservation. He has worked for the Bureau of Indian Affairs for the past 18 years. Mr. Waldrip testified that he attended the December 17th General Council meeting and observed that the registration and voting was well organized and regular. The witness testified that the resolution for acceptance of the terms of the compromise settlement was presented as a business matter upon which all members of the council were to exercise their own business judgment; that those who voted had a good understanding of the details of the proposed settlement; and that the Umatillas are a comparatively well-educated tribe of Indians and understood clearly that this was a final

settlement of their claims against the United States before the Indian Claims Commission.

17. The proposed settlement was approved by the authorized representative of the Secretary of Interior and Commissioner of Indian Affairs by letter dated January 11, 1966, that reads as follows:⁷

"IN REPLY REFER TO:

Tribal Operations

(SEAL) "UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. XXXXX 20242

January 11, 1966

"King, Miller, Anderson, Nash and Yerke
American Bank Building
621 SW Morrison Street
Portland 5, Oregon

Gentlemen:

⁷See Stipulation for Entry of Final Judgment (Ex. C).

"You submitted for our approval a proposed compromise to settle claims of the Confederated Tribes of the Umatilla Indian Reservation, Oregon, in Indian Claims Commission Dockets Nos. 264, 264-A, and 264-B at \$2,450,000.00.

"The proposed compromise provides that the claims shall be settled by stipulation and entry of final judgment in the amount of \$2,450,000.00, that Appeal No. 1-65 pending before the Court of Claims be dismissed, that the stipulation and entry of final judgment shall finally dispose of all claims which the Tribes have asserted or could have asserted under the Indian Claims Commission Act of 1946, that the entry of final judgment will dispose of all claims, counterclaims or offsets which the United States has asserted or could have asserted against the petitioner under the Indian Claims Commission Act of 1946, specifically to include all those for the period March 8, 1859, to and including December 31, 1958, and that no appeal will be taken by either party from the final judgment. The Department of Justice, in its letter of November 18, 1965, agreed to the terms of the proposed compromise settlement with conditions which include approval of appropriate resolutions of the petitioner and of the settlement itself by the Secretary of the Interior of his authorized representative.

"The Confederated Tribes of the Umatilla Indian Reservation engaged Attorneys Charles F. Luce and Eugene Gressman as claims counsel under contract No. I-1-ind. 42525, dated April 23, 1951. The contract was approved on June 5, 1951, for a term of ten years beginning with the date of approval. The contract as it pertained only to Attorney Gressman was terminated by letter dated November 5, 1956. Subsequently, amendment of the contract to associate the law firm of Wilkinson, Cragun, Barker and Hawkins (now Wilkinson, Cragun and Barker) with attorney Luce was approved on May 28, 1957, with the association to be effective as of September 1, 1956. An assignment by Attorney Luce of his interest in the contract to the law firm of King, Miller, Anderson, Nash and Yerke was approved on February 14, 1961.

"Contract No. 42525 provided that if the Tribes' claims were not all disposed of during the ten-year term of the contract, it could be extended for periods of two years. Accordingly, it has been extended several times, the last being for a period of two years beginning on June 5, 1965.

"With regard to compromise of claims, Contract No. 42525 provides that the attorneys shall not make any compromise, settlement, or other adjustment of the matters in controversy

unless with the approval of the Commissioner of Indian Affairs and the Tribes.

"In accordance with the provision in the claims contract and the conditions of acceptance by the Department of Justice of the proposed settlement, the attorneys took the proposed compromise to the Confederated Tribes of the Umatilla Reservation for consideration.

"You advised that a memorandum was prepared by the claims counsel explaining the claims involved, their status, and reasons for recommending the proposed settlement. Copies of this memorandum were given to the members of the Board of Trustees and mailed to the members of the General Council.

"In accordance with the approved Constitution and Bylaws of the Confederated Tribes of the Umatilla Reservation, the Board of Trustees of the Tribes, on November 24, 1965, called a meeting of the General Council for 1 p.m. Friday, December 17, 1965, at the Community Hall, Umatilla Sub-Agency, Umatilla Reservation, for the purpose of considering and voting on the proposal to compromise and settle the Tribes' claims before the Indian Claims Commission at \$2,450,000. The Chairman of the General Council and the Assistant to the Superintendent of the Umatilla Sub-Agency signed the notice of the meeting and certified that the notice, dated November 24, 1965, was posted at Grove's Store at Mission, Oregon, in public places at the Sub-Agency, and at Cayuse, Thornhollow, and Gibbon, Oregon. The 'East Oregonian' ran articles on November 25 and December 16, 1965, stating that a general tribal meeting would be held on December 17, 1965, to consider and vote on whether to accept the offer to settle the Tribes' claims.

"The General Council of the Confederated Tribes of the Umatilla Reservation met as scheduled on December 17, 1965. The meeting was attended by several Bureau personnel, including the Assistant to the Superintendent of the Umatilla Sub-Agency. He reported that 336 members of the Tribes attended the meeting, that three of the Tribes' claims attorneys explained the compromise to the group very thoroughly, and that members, by secret ballot, adopted a resolution accepting the terms of the proposed settlement by a vote of 306 for and 16 against. The resolution was signed and certified by the Tribes' claims counsel, the Secretary of the General Council, and the Assistant to the Superintendent of the Umatilla Sub-Agency. We are satisfied that the General Council meeting was duly called and held, and that the adult voting members were given the opportunity to attend. The claims attorneys

explained the terms of the proposed compromise thoroughly and the Indians in attendance appeared to understand them. The number of voting members attending the meeting was representative of the Tribes and we are satisfied that the expression of those voting reasonably reflected the views of their membership on the proposed settlement.

"The Board of Trustees met on November 23 and on December 14 and 17, 1965, to consider the proposed compromise. On December 11, 1965, the Chairman of the Board certified that he personally delivered to each member of the Board, on or before December 11, a notice of a meeting of the Board to be held on December 17, 1965, at 7 p.m. to pass on the proposed settlement. The Board passed Resolution No. 66-8 at the December 17 meeting, by a vote of eight for and none against, accepting the proposed compromise. This resolution was signed by the Chairman and Secretary of the Board and also by the Assistant to the Superintendent of the Umatilla Sub-Agency who was present at the meeting.

"The resolutions adopted by the General Council and the Board of Trustees are hereby approved.

"Upon full consideration of information made available to us by the Tribes' Claims Counsel, that supplied by our field offices, and that obtained from other sources, we believe that the proposed settlement is fair to the Indians. The settlement of claims of the Confederated Tribes of the Umatilla Indian Reservation in Indian Claims Commission Dockets Nos. 264, 264-A, and 264-B for a final judgment in the amount of \$2,450,000.00 is hereby approved under authority by Section 11, Secretarial Order 2508 (27 F.R. 11560).

Sincerely yours,

JAMES E. OFFICER

ASSOCIATE COMMISSIONER"

18. On the 21st day of January 1966, the Court of Claims entered an order dismissing Appeal No. 1-65. A copy of said order follows: