

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

HOOPA VALLEY TRIBE,)
)
 Plaintiff)
)
 v.) No. 06-908
)
 THE UNITED STATES OF AMERICA,) Judge Victor J. Wolski
)
 Defendant.)
)
)

SETTLEMENT AGREEMENT BETWEEN PLAINTIFF AND THE UNITED STATES

WHEREAS, on December 28, 2006, the Hoopa Valley Tribe (“Plaintiff” or “Tribe”) filed this case for damages, injunctive relief, interest, fees, and costs, against the United States;

WHEREAS, Plaintiff alleges that this Court has jurisdiction under 28 U.S.C. § 1491, among other statutes;

WHEREAS, Plaintiff and the United States (“the Parties”) have conducted settlement discussions and agreed to a settlement of Plaintiff’s existing claims and issues relating to (1) the United States’ alleged failure to provide an accounting of Plaintiff’s trust funds and non-monetary trust assets or resources; (2) the United States’ alleged mismanagement of Plaintiff’s non-monetary trust assets or resources; and (3) the United States’ alleged mismanagement of Plaintiff’s trust funds; and

WHEREAS, the Parties believe that it is in their best interests to enter into this Settlement Agreement, which resolves and settles the above-mentioned trust accounting and trust mismanagement claims;

NOW, THEREFORE, THE PARTIES HEREBY JOINTLY STIPULATE TO THE FOLLOWING:

1. **Settlement Without Admission of Liability or Wrongdoing.** This Settlement

Agreement is the result of compromise and settlement between the Parties. It shall not constitute or be construed as an admission of liability or wrongdoing by any Party, and it shall not be utilized or admissible as precedent, evidence, or argument in any other proceeding, except as may be necessary to ensure compliance with or to carry out its terms and conditions.

2. **Amount of Settlement.** In consideration for (a) the dismissal of this case with prejudice, pursuant to Paragraph 3 of this Settlement Agreement; (b) the waiver, release, and covenant not to sue that are set forth in Paragraph 4 of this Settlement Agreement; and (c) any other commitments and covenants made by Plaintiff in this Settlement Agreement, the United States will pay to Plaintiff the sum of \$49,200,000, in full, complete, and final settlement.

3. **Dismissal With Prejudice.** In consideration for the payment required by Paragraph 2 above, the Parties shall file a joint motion to dismiss this case with prejudice in accordance with the requirements of Paragraph 17 below.

4. **Full Settlement, Waiver, Release, and Covenant Not to Sue.** In consideration of the payment required by Paragraph 2 of this Settlement Agreement, Plaintiff hereby waives, releases, and covenants not to sue in any administrative or judicial forum on any and all claims, causes of action, obligations, and/or liabilities of any kind or nature whatsoever, known or unknown, regardless of legal theory, for any damages or any equitable or specific relief, that are based on harms or violations occurring before the date of the execution of this Settlement Agreement by both Parties and that relate to the United States' management or accounting of Plaintiff's trust funds or Plaintiff's non-monetary trust assets or resources. The claims being settled include, but are not limited to, the following:

- a. The United States' alleged obligation to provide a historical accounting or

reconciliation of Plaintiff's trust funds and non-monetary trust assets or resources, and the United States' fulfillment of any such obligation;

b. The United States' alleged mismanagement of Plaintiff's non-monetary trust assets or resources, including but not limited to any claim or allegation that:

(1) The United States failed to make Plaintiff's non-monetary trust assets or resources productive;

(2) The United States failed to obtain an appropriate return on, or appropriate consideration for, Plaintiff's non-monetary trust assets or resources;

(3) The United States failed to record or collect, fully or timely, or at all, rents, fees, or royalties, or other payments for the transfer, sale, encumbrance, or use of Plaintiff's non-monetary trust assets or resources;

(4) The United States failed to preserve, protect, safeguard, or maintain Plaintiff's non-monetary trust assets or resources;

(5) The United States permitted the misuse or overuse of Plaintiff's non-monetary trust assets or resources;

(6) The United States failed to manage Plaintiff's non-monetary trust assets or resources appropriately, including through the approval of agreements for the use and extraction of natural resources which are or were located in or on Plaintiff's trust property, leases of Plaintiff's trust lands, easements across Plaintiff's trust lands, and other grants to third Parties of authority to use Plaintiff's trust lands or natural resources;

(7) The United States failed to enforce the terms of any permits, leases, or contracts for the transfer, sale, encumbrance, or use of Plaintiff's non-monetary trust

assets or resources;

(8) The United States failed to prevent trespass on Plaintiff's non-monetary trust assets or resources;

(9) The United States failed to report, provide information about the United States' actions or decisions relating to, or prepare an accounting of Plaintiff's non-monetary trust assets or resources;

(10) The United States improperly or inappropriately transferred, sold, encumbered, allotted, managed, or used Plaintiff's non-monetary trust assets or resources; and

(11) The United States failed to manage Plaintiff's non-monetary trust assets or resources appropriately by failing to undertake prudent transactions for the sale, lease, use, or disposal of Plaintiff's non-monetary trust assets or resources.

c. The United States' alleged mismanagement of Plaintiff's trust funds,¹ including but not limited to any claim or allegation that:

(1) The United States failed to invest tribal income in a timely manner;

(2) The United States failed to obtain an appropriate return on invested

¹ For purposes of this Settlement Agreement, Plaintiff's trust funds include but are not limited to any monies that have been received by Plaintiff in compensation for or as a result of the settlement of Plaintiff's pre-1946 claims brought before the Indian Claims Commission ("ICC"); the monies in any Tribal-related accounts; any proceeds-of-labor accounts; any Tribal-Individual Indian Money ("Tribal-related IIM") or special deposit accounts; any Indian Money-Proceeds of Labor ("IMPL") accounts; any Treasury accounts; any legislative settlement or award accounts; and any judgment accounts, regardless of whether the above-described accounts are principal or interest accounts, whether they were established pursuant to Federal legislation, and whether they are or were maintained, managed, invested, or controlled by either the Department of the Interior ("Interior") or the Department of the Treasury ("Treasury").

funds;

(3) The United States failed to deposit monies into trust funds or disburse monies from trust funds in a proper and timely manner;

(4) The United States disbursed monies without proper authorization, including that of Plaintiff; and

(5) The United States failed to report or provide information about its actions or decisions relating to Plaintiff's trust fund accounts.

d. The United States' alleged failure to perform trust duties related to the management of trust funds and non-monetary trust assets or resources, as set out in the complaint filed in this case and in this Settlement Agreement, that were alleged to be owed to Plaintiff, at any time up to the date of the execution of this Settlement Agreement by both Parties.

5. **Plaintiff's Release, Waiver, and Covenant Not to Sue Unaffected by Tolling Provisions.** Nothing in any of the appropriation acts for the Interior Department, which address the application of the statute of limitations to claims concerning losses to or mismanagement of trust funds (*see, e.g.*, Department of the Interior Appropriations Act of 2009, Pub. L. No. 111-88, 123 Stat. 2904, 2922 (2009), and similar provisions in other Interior Department appropriations acts enacted before or after the date of execution of this Settlement Agreement), shall affect in any way Plaintiff's foregoing release, waiver, and covenant not to sue.

6. **Exceptions to Plaintiff's Release, Waiver, and Covenant Not to Sue.** Notwithstanding the provisions of Paragraph 4 of this Settlement Agreement, nothing in this Settlement Agreement shall diminish or otherwise affect in any way:

a. Plaintiff's ability, subject to the provisions of Paragraph 13 below, to assert a claim for harms or damages allegedly caused by Defendants after the date of execution of this Settlement Agreement;

b. Plaintiff's water rights, whether adjudicated or unadjudicated; Plaintiff's authority to use and protect such water rights; and Plaintiff's claims for damages for loss of water resources allegedly caused by Defendants' failure to establish, acquire, enforce or protect such water rights;

c. Plaintiff's federal law hunting, fishing, trapping and gathering rights, including federally reserved and aboriginal rights, whether adjudicated or unadjudicated, and Plaintiff's authority to use and protect such rights;

d. Plaintiff's rights and remedies under federal laws of general application for the protection of the environment (and regulations arising under such laws), including but not limited to (1) the Clean Water Act, 33 U.S.C. § 1251 *et seq.*; (2) the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.*; (3) the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; (4) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*; (5) the Nuclear Waste Policy Act, 42 U.S.C. § 10101 *et seq.*; (6) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; (7) the Oil Pollution Act, 33 U.S.C. § 2701 *et seq.*; (8) the Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 *et seq.*; (9) the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; (10) the Indian Lands Open Dump Cleanup Act of 1994, 25 U.S.C. § 3901 *et seq.*; (11) the Endangered Species Act of 1973, 16 U.S.C. § 1531 *et seq.*; (12) the Atomic Energy Act of 1954, 42 U.S.C. § 2011 *et seq.*; and (13) the Uranium Mill Tailings Radiation Control Act of 1978, 42 U.S.C. § 2201 *et seq.*;

e. Plaintiff's or Defendant's claims, including but not limited to claims arising prior to July 19, 1966, that were identified by or submitted to the Interior Department, pursuant to the Indian Claims Limitation Act of 1982, Pub. L. 97-394, 96 Stat. 1966, which extended the statute of limitations contained in 28 U.S.C. § 2415 (such claims being commonly referred to as "Section 2415 claims"), against third parties. The parties to this Settlement Agreement intend there to be no third-party beneficiaries to this Settlement Agreement;

f. Plaintiff's ability to assert any claims not otherwise waived herein; and

g. Any defenses that Defendant has or may have regarding any claims that Plaintiff may assert in subsequent litigation or administrative proceedings.

7. Plaintiff's Attestation Regarding Its Trust Account Balances, as Stated by the Office of the Special Trustee for American Indians. In consideration of the payment required by Paragraph 2 above and upon the execution of this Settlement Agreement by both Parties, Plaintiff, as a matter of settlement and compromise, accepts as accurate the balances of all of Plaintiff's trust fund accounts, as those balances are stated in the most recent periodic Statements of Performance issued by the Office of the Special Trustee for American Indians ("OST") (attached hereto as Exhibit 1).

8. Plaintiff's Acceptance of Periodic Statements of Performance Provided by OST. Plaintiff accepts, as a matter of settlement and compromise, the most recent Statements of Performance issued by OST (attached hereto as Exhibit 1), as accurate, full, true, and correct statements of all of Plaintiff's trust fund accounts as of the date of the Statements. Further, Plaintiff accepts, as a matter of settlement and compromise, the Statements of Performance

(Exhibit 1) in fulfillment of any accounting of Plaintiff's trust fund accounts that is required by law as of the date of execution of this Settlement Agreement.

9. **Plaintiff's Acceptance of the United States' Compliance with Applicable Law as Satisfaction of Any Duty and Responsibility to Account for and Report to Plaintiff Regarding Plaintiff's Trust Funds.** Plaintiff accepts that the United States satisfies any duty and responsibility to account for and report to Plaintiff regarding Plaintiff's trust funds, through the United States' compliance with applicable provisions of the United States Constitution, treaties, and federal statutes and regulations, as well as any subsequent amendments thereto, as those requirements may be construed by the courts.

10. **Interior's Provision of Certain Information to Plaintiff Under Section 102 of Reform Act of 1994.** In satisfaction of its reporting responsibilities under Section 102 of the Reform Act of 1994 (codified at 25 U.S.C. § 4011), Interior currently provides Plaintiff with the following, as it has done since 1995:

a. A periodic Statement of Performance, on a quarterly (or, upon request, monthly) basis, for all of Plaintiff's funds held in trust pursuant to the Act of June 24, 1938 (codified at 25 U.S.C. § 162a), in the form attached hereto as Exhibit 1. Conditional on Interior continuing to provide Plaintiff with these reports or with reports that substantially conform, as to the frequency of issuance and substantive content, to these reports, Plaintiff attests that the mailing, provision, or otherwise making available to Plaintiff of the foregoing satisfies the present reporting requirements of Section 102 of the Reform Act of 1994 (codified at 25 U.S.C. § 4011).

b. A letter, on an annual basis, that relates to Interior's annual audit of all funds held in trust for the benefit of tribes pursuant to the Act of June 24, 1938 (codified at 25 U.S.C. § 162a) in the form attached hereto as Exhibit 2. Conditional on Interior continuing to provide Plaintiff with these letters or with letters that substantially conform, as to the frequency of issuance and substantive content, with these letters, Plaintiff attests that the mailing, provision, or otherwise making available to Plaintiff of the foregoing satisfies the present annual auditing requirements of Section 102 of the Reform Act of 1994 (codified at 25 U.S.C. § 4011).

11. **Interior's Provision of Certain Information to Plaintiff Under Section 303(b)(2)(B)(ii) of Reform Act of 1994.** In satisfaction of its reporting responsibilities under Section 303(b)(2)(B)(ii) of the Reform Act of 1994 (codified at 25 U.S.C. § 4043(b)(2)(B)(ii)), Interior presently provides Plaintiff with periodic Statements of Performance, which contain a report of Plaintiff's trust fund investments and the return on those investments, in the form attached hereto as Exhibit 1. Plaintiff attests that the Interior Department's continued mailing, provision, or otherwise making available to Plaintiff of the periodic Statements of Performance or of similar reports satisfies the present requirements of Section 303(b)(2)(B)(ii) of the Reform Act of 1994 (codified at 25 U.S.C. § 4043(b)(2)(B)(ii)).

12. **Preservation of Plaintiff's Right to Contest Accuracy of Interior's Reports; Continued Force of Applicable Law.**

a. Nothing in Paragraphs 10 and 11 of this Settlement Agreement shall signify Plaintiff's acceptance of any Statement of Performance or any annual audit, or the contents of any Statement of Performance or audit, that Interior provides to Plaintiff, after the date of execution of this Settlement Agreement, as accurate.

b. Nothing in this Settlement Agreement, including but not limited to provisions regarding Plaintiff's acknowledgments and attestations in Paragraphs 10 and 11, is in derogation of either party's obligation to comply with applicable federal law, including any future amendments to the Reform Act of 1994.

13. Requirement for Notice by Plaintiff of Certain Claims Concerning Information in Future Periodic Statements of Account or Performance; Availability of Trust Account Information to Plaintiff.

a. If Interior continues in the future to provide Plaintiff, at a minimum, with reports that substantially conform, as to the frequency of issuance and substantive content, to the reports that are specified in Paragraphs 10(a) and Paragraph 11 above (attached as Exhibit 1) and if Plaintiff has any of the following claims, Plaintiff shall present the claim(s) in writing to Interior, in the manner set forth herein, within six years after the close of the calendar year in which the reported period occurs or within six years after the Statement of Performance or similar report is provided to Plaintiff, whichever is later:

- (1) the United States failed to invest tribal income in a timely manner;
- (2) the United States failed to obtain an appropriate return on invested funds;
- (3) the United States failed to disburse monies in a proper and timely manner from trust accounts listed on a Statement of Performance or similar report; or
- (4) the United States disbursed monies without Plaintiff's proper authorization.

b. In presenting its written claim, Plaintiff shall include a reasonably particular description of the grounds for the claim. Further, Plaintiff shall present its written claim to Interior, by U.S. certified mail, at the following address:

United States Department of the Interior
Office of the Special Trustee for American Indians
1849 C Street, N.W.
Mail Stop 2603
Washington, DC 20240
Attn: Director, Office of Trust Review and Audit

Also, Plaintiff shall provide a copy of its written claim to the Regional Director of the Pacific Regional Office of the Bureau of Indian Affairs (“BIA”).

c. Within 60 days after receiving Plaintiff's written claim, Interior will provide Plaintiff with a written response, explaining how it proposes to respond to the claim or advising Plaintiff that it needs additional time to respond to the claim.

d. Except for claims of fraud or gross negligence, Plaintiff conditionally releases, waives, and covenants not to sue the United States, its agencies, its officials, its employees, or its agents for, the claims listed in subparagraph (a) above, if Plaintiff does not present the claims in writing to Interior as specified in this Settlement Agreement. Plaintiff shall not file suit seeking damages or specific or equitable relief before it has received Interior's response to Plaintiff's claim. Notwithstanding the foregoing, nothing in this paragraph shall preclude Plaintiff from filing suit, where (1) Plaintiff has provided notice of the grounds for a claim pursuant to subparagraph (b) above; (2) Interior has not responded within 60 days; and (3) Plaintiff believes in good faith that the applicable statute of limitations for such claim may expire within 30 days, absent the filing of a suit.

e. Plaintiff's duly authorized officials are entitled to request, in writing, additional information regarding Plaintiff's trust accounts at any time. Plaintiff shall direct such written requests to the following address:

United States Department of the Interior
Office of the Special Trustee for American Indians
4400 Masthead Street, N.E.
Albuquerque, NM 87109
Attn: Deputy Special Trustee – Field Operations

Plaintiff shall make any new designations of authorized official(s) by tribal resolution and notify Interior in writing of any such new designations, within 30 days of such a designation, so that OST may provide information to and request information from Plaintiff's duly authorized officials concerning Plaintiff's tribal trust accounts.

f. OST shall provide the information requested under subparagraph (e) above as soon as reasonably practicable.

14. **Treasury's Obligations under this Settlement Agreement.** Treasury's obligations under this Settlement Agreement regarding the management of Plaintiff's trust funds are defined by 25 U.S.C. § 161a(a) and other applicable federal law.

15. **Handling of Settlement Proceeds.** As soon after the execution of this Settlement Agreement as reasonably possible, the United States shall transfer or cause to be transferred, in a single payment, the sum of money specified in Paragraph 2 above ("Settlement Proceeds"), to a trust fund account that OST shall establish for Plaintiff's benefit, in which trust fund account the Settlement Proceeds shall remain, until Plaintiff provides OST with written instructions, through a duly enacted resolution of Plaintiff's Tribal Council, consistent with applicable laws and regulations, for the disposition of the Settlement Proceeds or a portion thereof, or until

September 30, 2017, whichever occurs earlier. In the event that Plaintiff does not provide OST with written instructions for disposition of all of the Settlement Proceeds by September 30, 2017, the United States shall transfer or cause to be transferred, as soon as practicable after September 30, 2017, any Settlement Proceeds remaining in the trust fund account to an account to be identified by Plaintiff in a private bank or other third-party financial institution by no later than October 15, 2017. Upon deposit of the Settlement Proceeds in the established trust fund account, OST will invest the Settlement Proceeds in liquidity investments as soon as possible. The Settlement Proceeds shall be available for use by Plaintiff as it decides in its sole discretion. Plaintiff will assume all responsibilities for distribution of per capita payments from the Settlement Proceeds in this trust fund account. Plaintiff shall provide instructions in writing to OST regarding the investment of the Settlement Proceeds, within 15 days of the deposit of the Settlement Proceeds in the trust fund account and within thirty days of the start of each calendar year. The investment instructions will identify, at a minimum, one of the following three investment objectives:

a. Liquidity. Short term investments in the Treasury one-day security or securities with short maturities.

b. Income. Investments in securities with higher interest rates, which tend to have longer maturities but which are subject to possible loss in principal resulting from changes in interest rates.

c. Long-term. Investments in United States government securities, agency fixed-income securities, and other similar government securities, which may have longer terms and higher rates of return but which are subject to possible loss in principal resulting from

changes in interest rates.

OST will manage in accordance with OST's Investment Policy the Settlement Proceeds in the trust fund account established pursuant to this paragraph. Further, OST will use Plaintiff's investment instructions as guidance in making OST's investment decisions regarding the Settlement Proceeds in the trust fund account. Nothing in this provision prevents Plaintiff from providing investment instructions to OST more frequently than is stated herein. Plaintiff is encouraged to inform OST about Plaintiff's cash-flow needs or investment objectives, as often as required or necessary or as Plaintiff deems appropriate or desirable.

Except for claims of fraud or gross negligence, Plaintiff waives and covenants not to sue the United States, the Department of the Interior, OST, BIA, or any other federal agencies or officials, for any and all claims relating to the investment or disbursement of the Settlement Proceeds in the trust fund account established pursuant to this paragraph.

Further, as to any Settlement Proceeds that are transferred to a private bank or other third-party financial institution pursuant to the terms of this paragraph, the United States shall have no duty or liability whatsoever, including without limitation, no liability as fiduciary, trustee, or similar status, regarding Plaintiff's use or expenditure of those Settlement Proceeds.

16. **Entire Agreement Between Parties, Modification, and Non-Severability.** This Settlement Agreement is the entire agreement between the Parties in this case. All prior conversations, meetings, discussions, drafts, and writings of any kind are specifically superseded by this Settlement Agreement. The terms of this Settlement Agreement may not be changed, revised, or modified, except as provided by a written instrument that is signed by the Parties to this Settlement Agreement. This Settlement Agreement shall be effective upon the date of its

execution by both Parties.

17. **Filing of Joint Motion and Proposed Order Regarding Dismissal of Litigation with Prejudice.** As soon as practicable after executing this Settlement Agreement and receiving notice of the payment that is required in Paragraph 2 above, the Parties will execute and file a joint motion and proposed order to dismiss this case, with prejudice.

18. **Compliance with Anti-Deficiency Act.** No term or provision of this Settlement Agreement will constitute or will be construed as a commitment or a requirement that the United States obligate or pay funds in contravention of the Anti-Deficiency Act, 31 U.S.C. § 1341, or any other applicable law or regulation. In the event that the Anti-Deficiency Act, any other applicable law, or any regulation precludes the United States from obligating or paying the sum of money set forth in Paragraph 2 above, the Settlement Agreement, including its terms, conditions, dismissal, release, waiver, and covenant not to sue, shall be deemed null, void, and unenforceable.

19. **No Effect on Federal Funding.** No provision of this Settlement Agreement shall impair Plaintiff's ability to receive federal funding.

20. **Authority of Parties to Enter Into Settlement Agreement.** The undersigned representative(s) for each party certifies that he or she is fully authorized by the party or parties whom he or she represents to enter into the terms and conditions of this Settlement Agreement and to bind legally such party or parties to it. In particular, undersigned counsel for Plaintiff certifies that the Tribal Chairman and the Tribal Council have reviewed this Settlement Agreement and that, by tribal resolution signed by the Tribal Chairman and the Tribal Council, they have approved and authorized the execution of this Settlement Agreement by Plaintiff, by

and through its counsel.

21. **Execution of Settlement Agreement in Counterpart.** This Settlement Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which, taken together, shall constitute one and the same instrument. Facsimile signatures shall have the same effect as original signatures in binding the Parties.

22. **Alternative Dispute Resolution Process Relating to This Settlement Agreement.** After the date of the execution of this Settlement Agreement by both Parties and the dismissal with prejudice of this case, if there is a dispute over compliance with any term or provision of the Settlement Agreement, the disputing Party will notify the other Party in writing of the dispute. The Parties will attempt to work out the dispute informally, as set forth below, before seeking judicial review by this Court.

a. The disputing Party will engage the other Party in informal dispute resolution. During this informal dispute resolution period, which will not exceed 90 days (unless the Parties agree to an extension of the period), the Parties will meet as many times as both deem necessary to discuss and attempt to resolve the dispute.

b. If the Parties are unable to resolve the dispute through informal dispute resolution, either Party may file a motion asking that the United States District Court for the District of Columbia enforce the relevant term(s) and provision(s) of this Settlement Agreement.

23. **Parties' Attorneys' Fees and Costs.** Each Party shall be responsible for its own attorneys' fees and costs, as well as any other fees and costs, related to this case.

IN WITNESS WHEREOF, this Joint Stipulation of Settlement has been duly executed by the parties hereto.

Respectfully submitted,

 

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