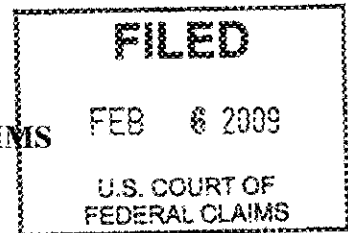


ORIGINAL

IN THE UNITED STATES COURT OF FEDERAL CLAIMS



KLAMATH TRIBE CLAIMS COMMITTEE

Plaintiff,

09-75 L

v.

Case No. 09-CV

UNITED STATES OF AMERICA

Defendant

COMPLAINT

JURISDICTION

1. This case arises out of the implementation the 1954 Klamath Tribe Termination Act, 25 USC 564 et seq and the Treaty of 1864 between the United States and the Klamath , Modoc , and Yahooskin Bands of Snake Indians . Jurisdiction rests on 28 USC 1505.

PARTIES

2. The Klamath Claims Committee was established for the purpose of asserting claims relating to Klamath Indian Reservation (hereafter "Reservation") based assets , title to which existed in the United States at the time the Reservation was terminated by Congress in 1961. The Committee has acted and continues to act on behalf of tribal members enrolled at termination (hereafter "the 1954 tribal membership") who made up the membership of the tribe that was terminated pursuant to the 1954 Act.
3. The Committee is charged with assuring that the 1954 tribal membership and the 1954 terminated tribe are compensated fully for the distribution by the United

States of Reservation assets as well as protecting for such 1954 members and the 1954 terminated tribe those Reservation assets not distributed.

4. In 1986, Congress restored the federal status of the Klamath, Modoc and Yahooskin Bands of Snake Indians, 25 USC 566 et seq, did not restore the Reservation assets addressed in the 1954 Act and did not eliminate the authority and duties of the plaintiff. Since restoration in 1986, the plaintiff continues to represent the interests of the 1954 tribal membership and the 1954 terminated tribe with respect to claims associated with the Reservation assets addressed in the 1954 Act. The 1954 tribal membership today are the senior members of the post restoration membership of the Klamath Tribes. The non-1954 membership has no direct interest in the claims brought in this litigation.
5. The United States, acting through the Bureau of Indian Affairs has in the past and continues in the present to control, manage, preserve and dispose of assets which Congress established for the benefit of the 1954 tribal membership and the 1954 terminated tribe.

FACTUAL ALLEGATIONS

6. Under the Klamath Termination Act, Congress terminated the federal relationship with the Klamath Tribes and its members. In doing so, it set forth specific directions as to how the BIA, acting on behalf of the United States, would protect and in the alternative dispose of October, 1864 treaty secured Reservation assets.
7. An essential part of that termination was the transfer and/or sale of thousands of acres of forest lands which made up the bulk of the October, 1864 treaty

reservation. The proceeds of such sales were made available to the 1954 tribal membership.

8. At the same time, minerals hunting , fishing and gathering rights secured under the Treaty of October, 1864 were preserved for the benefit of the 1954 tribal membership and their descendants and federal reserved water rights were likewise excepted from termination as necessary to protect the preserved treaty mineral, fishing, hunting and gathering rights.
9. A tribally and federally built and maintained irrigation district (Klamath Indian Irrigation Project) was separately addressed in the 1954 Act. Section 13 of the Act, 25 USC 564l, authorized the United States to reimburse the terminated Tribe and the 1954 tribal membership \$89,212 with interest at 4 % per annum for the Tribe's past construction, operation and maintenance of the Klamath Irrigation Project serving non tribal lands up until the date of termination.
10. Two of the most important and valuable trust assets associated with the Klamath Irrigation Project are the Chiloquin Dam on the Sprague River and the storage water rights associated with that dam. The dam was removed in August of 2008 by the Bureau of Indian Affairs. In removing the dam, the BIA expressly relied upon 25 USC Sec.13.
11. The plaintiff and the BIA are unable to confirm that the payment set forth in paragraph 9 above has been made.
12. At all times the BIA has exercised comprehensive and sole responsibility over the funds identified in Section 13 of the 1954 Act. Beginning at a time within the past six years, the BIA(on its own and in concert with the Bureau of

Reclamation) began exercising sole responsibility over the removal of the Chiloquin Dam and the elimination of the senior storage water rights associated with the dam.

13. At all times the United States, acting through the BIA, has retained a treaty and statutory duty to protect and preserve those assets set out in paragraphs 9 and 10, acting as a trustee, for the benefit of the 1954 tribal membership and the 1954 terminated tribe. The termination act established a fair inference that substantive obligations were imposed on the BIA to protect those assets, enforceable by damages.

FIRST CLAIM FOR RELIEF

(Taking of Indian trust assets by the failure to reimburse the 1954 terminated tribe and the 1954 tribal membership set forth in section 13 of the Termination Act)

14. Paragraphs 1-13 are hereby incorporated by reference.
15. Upon information and belief, the plaintiff asserts that the BIA has taken property owned by the 1954 terminated tribe and the 1954 tribal membership without just compensation in violation of the Fifth Amendment, by failing to make the payments as set forth in Section 13 of the Termination Act. That failure is on going as the authorization to reimburse has no fixed date. The plaintiff, acting on behalf of the 1954 tribal membership and the 1954 terminated tribe is entitled to that sum plus interest.

SECOND CLAIM FOR RELIEF

(Breach of fiduciary duty relating to the ongoing failure to disperse funds pursuant to Section 13 of the Termination Act)

16. Paragraphs 1 through 15 are hereby incorporated by reference.

17. Upon information and belief, the plaintiff asserts that the BIA has violated its fiduciary duty to reimburse as set out in Section 13 of the Klamath Termination Act. That failure is on going as the authorization to reimburse the 1954 tribal membership and the 1954 terminated tribe has no fixed date
18. The plaintiff, acting on behalf of the 1954 tribal membership and the 1954 terminated tribe is entitled to that sum plus interest.

THIRD CLAIM FOR RELIEF

(Taking of Reservation trust assets by removal of the Chiloquin Dam)

19. Paragraphs 1-18 are hereby incorporated by reference.
20. The August, 2008 removal of the Chiloquin Dam and the elimination of storage water rights by the BIA constitutes a taking of 1864 Treaty secured Reservation assets preserved from termination for the benefit of the 1954 tribal membership and the 1954 terminated tribe , without just compensation in violation of the Fifth Amendment. The plaintiff is entitled, at a minimum, to the replacement cost of the dam and interest.

FOURTH CLAIM FOR RELIEF

(Breach of fiduciary duty relating to removal of the Chiloquin Dam)

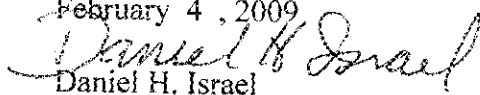
21. Paragraphs 1-20 are hereby incorporated by reference
25. The August , 2008 removal of the Chiloquin Dam and associated water rights, undertaken by the BIA, under the authority of 25 USC sec.13 ,constitutes a breach of a fiduciary duty for which compensation is due. The plaintiff is entitled, at a minimum , to the replacement cost of the dam and interest.

REQUEST FOR RELIEF

The Plaintiff requests that the court find that it has jurisdiction in this matter and find that the BIA ;

1. continues to unlawfully retain funds authorized by Congress in Section 13 of the Klamath Termination Act for distribution to the plaintiff which acts on behalf of the 1954 tribal membership and the 1954 terminated tribe, in violation of the Fifth Amendment to the United States Constitution and in violation of its fiduciary duties, and the plaintiff is entitled to the fund plus interest.
2. unlawfully breached the Chiloquin Dam and eliminated the associated storage water rights without payment of compensation in violation of the Fifth Amendment to the United States Constitution and in violation of its fiduciary duties, and the plaintiff is entitled to the replacement cost of the dam plus interest;
3. should have a judgment entered against it and in favor of the plaintiff for the claims set forth herein in an amount of \$ \$9,900,000 plus interest; and
4. plaintiff is entitled to its costs and attorney fees

February 4, 2009



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