BEFORE THE INDIAN CLAIMS COMMISSION

Plaintiffs	Docket
CLYDE F. THOMPSON, et al., (Indians of California)	Docket No. 31
ERNEST RISLING, et al., (Indians of California)	Docket No. 37
46 BANDS OF MISSION INDIANS	Docket No. 80
THE NORTHERN PAIUTE NATION, et al.	Docket No. 87
THE SOUTHERN PAIUTE NATION, et al.,	Docket No. 88
KLAMATH AND MODOC TRIBES AND YAHOOSKIN BAND OF SNAKE INDIANS,	Docket No. 100
YOKIAH TRIBE OF INDIANS, et al.,	Docket No. 176
YANA TRIBE OF INDIANS	Docket No. 215
COLORADO RIVER INDIAN TRIBES, et al.	Docket No. 283
THE WASHOE TRIBE OF THE STATES OF NEVADA AND CALIFORNIA	Docket No. 288
MOHAVE TRIBE OF INDIANS, et al.,	Docket No. 295
THE QUECHAN TRIBE OF THE FORT YUMA RESERVATION, CALIFORNIA	Docket No. 319
PAUL JAKE, et al., EACH ON THEIR OWN BEHALF AND ON BEHALF OF THE SOUTHERN PAIUTE NATION OF INDIANS,	Docket No. 330
SHASTA TRIBE, et al.,	Docket No. 333
PIT RIVER INDIANS	Docket No. 347
CHEMEHUEVI TRIBE, et al.,	Docket No. 351

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Decided: January 20, 1958

OPINIONS OF COMMISSIONERS

SEPARATE OPINION OF CHIEF COMMISSIONER WITT

As to the question of whether or not the Indians of California, petitioners in Dockets Nos. 31 and 37, have the exclusive right to present claims to the Indian Claims Commission relating to the lands of California does not present any issue of fact (all facts involved being undisputed), I decide said question, and that alone, by this decision.

There is nothing in the language of the Indian Claims Commission Act which supports the contention that the Indians of California have the sole and exclusive right and power to sue and recover on claims for the lands in California. To the contrary, the expressed provisions of Section 10 of said act are otherwise. This section reads as follows:

> "Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission." (Underscoring supplied)

It is plain from this provision that there is only one situation where the act grants an exclusive right and power to sue, namely, where a tribe, band, or group has a governing body recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group and where such governing body is not guilty of fraud, collusion, or laches in the bringing of the suit. In other situations, the act applies

the doctrine of representative suits and authorizes any member of any tribe, and, or identifiable group to sue for the benefit of all its members. The Indians of California do not have a tribal organization or governing body, nor is it contended that they have. However, the respective petitioning tribes in Dockets Nos. 87, 88, 100, 330, 283, 288, 295, 319, 351 and 347 each alleges it is a tribal organization and is recognized by the Secretary of the Interior as having authority to represent such tribe. It is not contended that such tribal organization or any of them are guilty of any of the delinquencies that would deny them exclusive rights to assert their respective claims.

The contention of the Indians of California for the exclusive right and power to sue and recover on claims for the lands in California is claimed to be derived from the Act of May 18, 1928. If the contention of the Indians of California for such exclusive right is sustained, this would nullify the above quoted (and underscored) provision of Section 10 and also would nullify the provision of Section 15 of the Indian Claims Commission Act which authorizes tribes to present their claims through attorneys of their own selection; and also would nullify the provision of Section 2 of the Indian Claims Commission Act which provides that said Commission shall hear and determine claims "on behalf of any Indian tribe, band, or other identifiable group of American Indians, residing within the territorial limits of the United States or Alaska."

There can be no doubt as to the meaning of Sections 2, 10, and 15 as hereinabove referred to. These provisions constitute a positive and unambiguous authorization of Indian tribes claiming ownership of lands

which were taken by the United States to sue and recover from the United States for such taking, if liability is established. The construction which the petitioners in Dockets Nos. 31 and 37 seek would be a nullification of the rights of tribal claimants as provided in said Indian Claims Commission Act and a nullification of the duty of the Indian Claims Commission to hear and determine such tribal claims.

In Thompson v. The United States (122 C. Cls. 348), the Court of Claims held that for the purpose of presenting claims to the Commission, the Indians of California (petitioners in Dockets Nos. 31 and 37) were an identifiable group of American Indians within the meaning of Sections 2 and 10 of the Indian Claims Commission Act. I find nothing in said decision of the Court of Claims, however, holding that said petitioners in Dockets Nos. 31 and 37 have the exclusive power and right to present to the Commission and the exclusive right to recover on claims relating to the lands of California. Neither of the two said issues were presented to the Court of Claims in said case. They were not considered by the Court of Claims, and it is my view they were not decided by the Court of Claims.

The Act of 1928, relied on by petitioners, defines the Indians of California as being "all Indians who were residing in the State of California on June 1, 1852, and their descendants," and petitioners allege they are this group; and this group doubtless includes many, if not all, the persons belonging to tribal plaintiffs in the tribal suits, as well as the Indians whose tribal organizations had ceased to exist. However, said act states that such definition was "for the purposesof this Act"; that is for the purpose of the law suit therein authorized.

In discussing the history of the 1928 Act, the Court of Claims in the Thompson case, above referred to, states, among other things, that:

> "After the cession of California to the United States by the Treaty of Guadalupe Hidalgo of July 4, 1848, thousands of white people entered the State of California, and as a result of this great influx of white people the various bands, groups and communities of Indians which had up to that time existed in more or less distinct Indian fashion, were disrupted; many were killed and those remaining were driven from their places of abode and scattered throughout the State. As a result of this treatment of the Indians in California and the policies of the United States thereafter pursued with respect to them, the existence and life of the Indians of California, as bands or groups which had previously existed were disrupted and destroyed and such tribes, bands or separate groups constituting villages, have not since that time existed, and for this period of 100 years these Indians have been known only as the 'Indians of California.'"

Elsewhere the Court said:

> The Indians of California who had many years ago lost their identity as distinct tribes, band or villages, had been pressing their claims before Congress for many years, and we think it is clear that in enacting the Indian Claims Commission Act, Congress intended to confer upon the Indian Claims Commission jurisdiction to hear and determine such claims.

It seems evident that it was the view of the Court of Claims that Congress created the group "the Indians of California" to represent the Indians whose tribal connections had been lost because of extinction of tribal identity or tribal organization by disruption, destruction, death forced abandonment of their homes, etc.

By permitting the prosecution by the tribal organization that claim to have survived of their claimed losses of land, while at the same time permitting the petitioners in Dockets 31 and 37 to maintain their actions, I think we are carrying out the wishes of Congress as indicat[illegible]

Act of 1928, as construed by the Court of Claims, and are not doing violence to the provisions referred to in the act creating the Indian Claims Commission and providing its jurisdiction.

In passing, I will say that the willingness of said petitioners in Dockets 31 and 37 to waive all rights as to approximately 1,600,000 acres in the State of California, involved in Docket No. 100, does not seem reconcilable with the claim of exclusive right of prosecution for all lands in California. This waiver would seem to be an admission by petitioners in Dockets Nos. 31 and 37, that the Act of May 18, 1928 does not constitute an absolute bar to the suit for or recovery by a tribal claimant on a claim relating to lands in California. If the law as contended for by petitioners in said docket numbers gives said petitioners the exclusive right to prosecute claims for lands in California, this would be a jurisdictional matter and could not be thus waived.

In regard to the contention made by petitioners that to permit the several tribal claimants to maintain their claims would work unfairness and injustice by reason of the fact that members of such tribes have participated in the judgment previously recovered by reason of the 1928 Act, and offsets by reason of expenditures made in behalf of said respective tribes have been allowed against other Indians, it is my view that those matters can be controlled by the distribution of any awards, either by direction of the Indian Claims Commission or by Congress. Petitioners in Docket Nos. 31 and 37 themselves seem to admit that this can be done (see petitioners' brief, p. 22 and footnote).

Therefore, I am of the opinion that the tribal claimants in Docket Nos. 87, 88, 100, 330, 283, 288, 295, 319, 351 and 347 are each entitled to present and have determined their respective claims relating to lands in California; and that the petitioners in Dockets 31 and 37 can prosecute claims for all lands in California not recovered in the tribal suits.

I am of the opinion that the facts involved are undisputed, and the statements in this decision are sufficient and additional findings of fact unnecessary, but I would consider any contention by any party hereto to the contrary, and any findings requested.

I see no reason for changing orders in Dockets 80, 176, 215, and 333. The petitioners in these cases should be permitted, in my judgment, to try to recover as independent tribes, if they should fail as members of Indians of California. Alternative bases of relief are well recognized rights -- and assertable as desired, and especially applicable to California Indians because of their confused condition.

Edgar E. Witt
Chief Commissioner

SEPARATE OPINION OF COMMISSIONER O'MARR
IN WHICH COMMISSIONER HOLT JOINS

I have read with much interest the opinion of Chief Commissioner Witt and concur in his conclusions that the claimants in Dockets Nos. 87, 88, 100, 283, 288, 295, 319, 330, 347 and 351, may, as they have done, assert claims for lands within the State of California and may recover for such as they may prove they had Indian title to when the defendant acquired them; that as to such lands the Indians of California (petitioner in Dockets Nos. 31 and 37) have no right to make claim therefor. As to the claims set forth in the dockets referred to above, it may be stated that, with the exception of the Quechan Tribe, Docket No. 319, and the Pitt River, Docket No. 347, all those claimants assert claims for lands which extend into California from contiguous areas in the adjoining state of Nevada or Arizona. The Quechan and Pitt River claims are for lands within the borders of California and the Indians of California have waived all claim to Modoc (Docket 100) lands in California.

Aside from the claim of the Indians of California in Dockets 31 and 37, and the claims in the ten dockets mentioned above, there are four Indian groups who have filed claims for lands located entirely within California. They are the Mission Indians, Docket No. 80, Yokiah Tribe, Docket No. 176, Yana Tribe, Docket No. 215, and Shasta Tribe, Docket No. 333. In their petitions, each of these four groups base their claim on Indian title to specific areas of land in that state.

In his opinion, the Chief Commissioner refers to the four groups who have made stipulations (hereafter set forth) with the Indians of California by this language:

I see no reason for changing orders made in Dockets 80, 176, 215 and 333. The petitioners in these cases should be permitted, in my judgment, to try to recover as independent tribes, if they should fail as members of Indians of California. Alternative bases of relief are well recognized rights -- and assertable as desired, and especially applicable to California Indians because of their confused condition.

The record in this case shows that in 1955 the Indians of California and each of said four groups made separate stipulations as to the handling of their respective claims. The stipulations are substantially the same and I set forth the following pertinent parts of the stipulation entered into by the Indians of California and the Yokiah Tribe, Docket No. 176, as typical of the others:

1. Docket No. 176, with the consent of the Indian Claims Commission, may be held in abeyance pending the final determination of consolidated Docket Nos. 31 and 37 insofar as Docket No. 176 asserts any claim for compensation based on original Indian title to land in California.

2. If the plaintiffs in consolidated Dockets Nos. 31 and 37, or either of them, should recover compensation for the lands in California, formerly owned by original Indian title by the Indians in California, including the area claimed by petitioners in Docket No. 176, as is more particularly set forth in the petitions in consolidated Dockets Nos. 31 and 37, this case, Docket No. 176, may be dismissed, insofar as Docket No. 176 seeks compensation for lands in California formerly owned by original Indian title.

3. If it should be finally adjudicated that the plaintiffs in consolidated Dockets Nos. 31 and 37, or either of them, should not recover compensation for the lands in California, formerly owned by original Indian title, including the lands claimed by petitioners in consolidated Dockets Nos. 31 and 37, this case, Docket No. 176, shall be brought on for trial without prejudice to the plaintiffs in Docket No. 176 and with the same rights as if Dockets Nos. 31 and 37 had never been tried.

This stipulation was followed by an order permitting it to be filed and directed the handling of such claims in accordance with the terms of the stipulation.

The orders in Dockets Nos. 215 and 333 varied from those in Dockets Nos. 80 and 176 only in that they expressly approved the stipulations while there is no such express provisions in the orders in Dockets Nos. 80 and 176.

A reading of the petitions of the Indians of California (Dockets Nos. 31 and 37) shows that these Indians claim compensation for all lands in the State of California, except confirmed grants, and by their briefs maintain that they have the exclusive right to assert a claim for all the California lands, except Modoc lands. As to the granted lands, however, we need not, and do not, for the purposes of this discussion, determine whether they are or are not included as part of the area claimed in the petitions. It is in any event obvious that at the time the stipulations and the orders referred to above were made the Indians of California were contending, as they now are, that they have the exclusive right to claim compensation for all lands in California. The four groups by becoming parties to the stipulation agreed to this theory of the Indians of California, for, it would seem, that unless the Indians of California had such right there would be no basis for the stipulations since the stipulations do not purport to assign the claims of any of the four claimants or authorize the Indians of California to assert claims for them or on their behalf. The contrary is apparent, for by express provisions of the stipulations and orders the claims are merely "held in abeyance without prejudice to the plaintiffs [claimants] * * pending the final determination of consolidated Dockets Nos. 31 and 37." It is true, of course, that the stipulations provide for a dismissal of such petitions should the Indians of California recover for

lands, which include the lands of said four groups, but they also provide for the contingency that should the Indians of California fail to obtain such a recovery each stipulator could assert its claim independently of the Indians of California. Obviously, the stipulations were based upon the possibility that the Indians of California would be adjudged to have the exclusive right to recover for all lands in the state, including those of the stipulators.

Now that all the members of the Commission are agreed that claims for large segments of California lands may be asserted and maintained by the ten tribal claimants independently of the Indians of California, I find no logical or legal basis for holding that the Indians of California may include as part of their claim the lands of the Mission Indians, the Yokiah, Yana and Shasta Tribes, which are claimed in their separate cases. Certainly, the only possible basis for treating them differently is the fact that they entered into the stipulations above referred to which, as I have stated above, do not in my opinion, change their status as litigants before this Commission, nor that of the Indians of California insofar as permitting them to include in their claims lands of these four groups.

For the reasons mentioned above, I believe the claims of the four groups -- Mission Indians, Yokiah, Yana and Shasta -- be proceeded with the same as was done with the other ten claims, except the Modoc, and that the same be set down for trial in the reasonably near future. In this connection, it appears that there is already in the record evidence concerning the areas used and possessed by each of these four groups and since such

evidence is made available for use by all parties to the consolidated hearing there should be no great delay in concluding such cases. It may be that the parties desire to rely upon the evidence already in the record, in which event further hearings on the four cases should not be required.

Louis J. O'Marr
Associate Commissioner

Wm. M. Holt
Associate Commissioner