

BEFORE THE INDIAN CLAIMS COMMISSION

CLYDE F. THOMPSON, et al. (Indians of California))	Docket No. 31
)	
ERNEST RISLING, et al. (Indians of California))	Docket No. 37
)	
YOKIAH TRIBE OF INDIANS, et al.)	Docket No. 176
)	
YANA TRIBE OF INDIANS)	Docket No. 215
)	
SHASTA TRIBE, et al.)	Docket No. 333
)	
Petitioners,)	
v.)	
UNITED STATES OF AMERICA,)	
)	
Defendant.))	

Decided: October 6, 1958

Appearances:

Ernest L. Wilkinson
Reginald E. Foster
Charles Kasch
Milton Fenton
Laurence A. Schroeder, Jr.
Attorneys for Petitioners.

Ralph A. Barney, with whom
was Mr. Assistant Attorney General
Perry W. Morton,
Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

On June 6, 1958, the Indians of California, Dockets Nos. 31 and 37,
the Yokiah Tribe, Docket No. 176, the Yana Tribe, Docket No. 215 and the

Shasta Tribe, Docket No. 333, joined in a motion requesting -

"* * that the order of consolidation of Nov. 1953, where-
in the aforesaid Dockets 176, 215 and 333 were 'consolidated
for trial' with Dockets 31 and 37, be amended to provide that
the aforesaid Dockets 176, 215 and 333 be consolidated in their
entirety for all purposes, including judgment, with the afore-
said Dockets 31 and 37."

The defendant filed its response to such motion on June 18, 1958,
stating that on certain specified conditions it did not object to the
motion.

To fully understand the purpose and scope of the motion it is neces-
sary to look at the explanation of it by the attorney representing all
the parties thereto. At the argument of the motion (pp. 4124-4126) of
Transcript of June 23, 1958, Docket No. 31 et al.) the attorney said
about the motion:

Now, there is a second motion filed in order to establish
a fair and orderly method of procedure and that is the motion
filed by Dockets Numbers 31 and 37 and Dockets Numbers 176,
215 and 333, in which we seek alternative relief.

First, a granting of our motion of March 25, 1958 about which
I have just been talking, holding that that is the fair and
orderly way to dispose of this question. The alternative would
be, and only if the Commission should rule against us on the
first alternative, that these cases be consolidated for all pur-
poses hereafter.

That would mean that we would have one case proceeding, we
would have consolidated five cases -- six cases -- and proceed-
ing as one action, the different party plaintiffs and the pro-
cedure necessary and the substantive law applicable to the case
would be just as if we had five cases merged so that we had one
case with six different party plaintiffs and the applicable law
would then govern the proceedings.

* * *

COMMISSIONER O'MARR: Before you get into that, Mr. Barker,
do these six groups that you have just referred to, you say on

your alternative plan that you would consider those cases consolidated for all purposes, including judgment. I am merely inquiring if we were to adopt your alternative plan, would there be separate judgments for each one of these four groups and the description of the lands involved?

MR. BARKER: No, your Honor. It is our view there would be one judgment. I misstated myself and I should have said five cases because Docket Number 80 was not joined in this motion.

Should they see fit to come in the scope of this motion, we have indicated we would be willing to have them come in. Actually, there would be five.

COMMISSIONER O'MARR: I understand that we are talking about the groups in the stipulated class.

MR. BARKER: The answer to your question would be we envisage one judgment on behalf of all of the group and they would all share in that judgment as Indians of California.

The point being here that as your case proceeds, we have one consolidated case as if it were one action with the claimants, Clyde F. Thompson, et al, in Docket Number 31 and Ernest Risling, et al, in Docket Number 37, the Yokiah Tribe of Indians in 176, the Yana Tribe in Docket Number 215, and the Shasta Tribe in Docket Number 333, all with separate attorneys of record.

* * *

COMMISSIONER O'MARR: Would the lands be separately described, the boundaries of the land of the four groups?

MR. BARKER: It is our thought that the land would not be separately described in the four groups under this proceeding.

The above explanation makes it plain that it is proposed to have us consider the claims of the Yokiah, Yana, Shasta (for lands in California), and Indians of California as though they had joined in a single action and a judgment entered on that basis. Such a judgment would no doubt be a final determination of the rights of each of the parties joining in the motion for lands in California.

We see no objection to the proposed arrangement and an order will accordingly be made.

Since the above plan removes the question of the rights of the Yokiah, Yana and Shasta to assert their claims separately from the claim of the Indians of California (Dockets 31 and 37), which was the question basic to the Commission's decision of January 20, 1958, 6 Ind. Cls. Com. 93-97, there is no need for modifying that decision. Moreover, it would seem to follow that the approved consolidation constitutes an abandonment of the stipulations the three tribes made with the Indians of California, however, the effect of the consolidation is perhaps not directly involved and need not be passed upon at this time.

Louis J. O'Marr
Associate Commissioner

We concur:

Chief Commissioner

Associate Commissioner