

BEFORE THE INDIAN CLAIMS COMMISSION

THE SISSETON AND WAHPETON BANDS OR)	
TRIBES OF SIOUX INDIANS, ET AL.,)	
)	
Petitioners,)	
)	
v.)	Docket No. 363
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ON PETITIONERS "MOTION FOR FINDINGS IN ACCORDANCE WITH
MEDEWAKANTON AND WAHPAKOOTA PROPOSED FINDING 16-A"

PER CURIAM

In the above motion the Medewakanton and Wahpakoota petitioners are asking the Commission to make certain findings of fact,

". . . on the claim asserted in Docket No. 363 with respect to Royce Area 440 in accordance with their proposed Finding 2, item 6, and Finding 16-A."

These petitioners further contend that they have a claim,

". . . for their share of Royce Area 440 amounting to approximately 370,000 acres located on the south side of the Minnesota River."

The proposed findings, as suggested above, were considered by the Commission during the preparation of the Commission's findings of fact and opinion in this docket, and those consolidated with it, which findings and opinion were released on January 12, 1962. We rejected them at that time, and we reject them now for the same reason; namely, that no claim or cause of action for Royce Area 440 has ever been timely filed before this Commission by these petitioners or any other tribal petitioner

in any docket.^{1/} Certainly no such claim has been set forth in the original or amended petitions in Docket No. 363.^{2/} The record also shows that at the time of the initial hearings on the title phase of this consolidated docket in October of 1958, the petitioners made no attempt to present or prosecute any such claim for Royce Area 440. In fact, if we read the remarks of petitioners' counsel during that hearing, the existence of any such claim for Royce Area 440 is specifically negated. The following colloquy from the transcript of the October 20, 1958 hearing is worth noting:

Mr. Sonosky: When the United States took a cession from these Indians in the area in red, Royce 289, there was a provision in that treaty setting aside this area of land, which is roughly ten miles on each side of the Minnesota River. This is the Minnesota River and the reservation ran roughly like this.

Chief Commissioner Witt: That is a total width of twenty miles there?

Mr. Sonosky: Yes, sir. Ten miles on each side of the river. The river splits the western boundary, and the reservation was roughly like this. This blue and this gray went to the Medewakanton and Wahpekutas. This yellow and this blue went to the Sisseton and Wahpeton. Then there were various events because of the way the Senate took that provision out of the treaty and gave certain discretion to the President, as to where he should put these Indians, but finally by subsequent Act of Congress in 1854 they were permitted to move on to this

1/ 18 USC § 70k. Limitation of time for presenting claims

The Commission shall receive claims for a period of five years after August 13, 1946, and no claim existing before such date but not presented within such period may thereafter be submitted to any court or administrative agency for consideration, nor will such claim thereafter be entertained by the Congress.

2/ Petitioners' original and amended petitions in Docket No. 363 are identical. The original typed petition was filed on August 11, 1951, and the printed amended petition was filed on March 3, 1952.

reservation, and in 1858 it was decided that the Indians did not need all of this land and it was too much for them. So the United States took a cession in 1858, and it took this gray (Royce Area 413) on the north side of the Minnesota River. It took the gray from the Medawankanton and the Wahpekuta, and took back the yellow (Royce Area 414) from the Sisseton and Wahpeton, and leaving them with a reservation on the south side of the river in blue (Royce Area 440).

Then in 1862, as a result of the outbreak and massacre which occurred in 1862, by Act of Congress these Indians and all their lands in Minnesota were forfeited, and they were moved out of the State of Minnesota. Then these lands in blue (Royce Area 440) were then sold under the public land laws and the proceeds of the sale were paid over to the Indians.

In these cases which are before Your Honor now there is no claim for this land in blue (Royce Area 440). So far as I know, there is no claim pending for this land in yellow (Royce Area 414). There is a claim pending for this land in gray (Royce Area 413) on the ground that in 1858, when the Indians ceded this land in gray, the consideration paid to them was unconscionable. 3/ (Parenthetical matter and emphasis supplied)

Furthermore, when the hearing began, petitioners' counsel identified the subject matter of Docket No. 363 as being a claim only for Royce Area 413.^{4/} It was to this area the Commission subsequently found the petitioners had reservation title in Docket No. 363.

Because they were not asserting any such claim to Royce Area 440, the petitioners made no reference to any such claim in their proposed findings of fact and brief which were filed before this Commission on

3/ Transcript of October 20, 1958, Docket Nos. 142, 359-363, 332-A, pp. 108, 109.

4/ p. 6 Ibid. On October 15, 1958, a few days before the hearing commenced, petitioners' counsel supplied the Commission with a document entitled "General Outline of Mississippi Sioux Claims." On page 23 of this outline, under the caption "Docket No. 363" there is the following statement: "This claim arises out of the Treaty of June 19, 1858, 12 Stat. 1031, 2 Kappler 781." This 1858 treaty dealt specifically with the Medewakanton and Wahpakoota Sioux bands for the cession of Royce Area 413. No other land cession was involved.

September 16, 1959. It was not until the defendant had filed its objections to petitioners' proposed findings of fact on May 27, 1960. that there appeared the first suggestion of the possible existence of a claim for Royce Area 440. In Making its objections to the petitioners' proposed "Finding 2 - Area in Suit" the defendant offered this gratuitous but erroneous observation,

"In addition the finding (Finding 2) does not mention Royce Area 440 for which a claim was made in the petition in Docket No. 363, but for which no claim seems to be made in petitioners' proposed findings." 5/
(Parenthetical matter added)

The defendant's generous concession of the existence of such a claim for Royce Area 440 in Docket No. 363 was immediately followed by petitioners' motion of August 2, 1960, for leave to amend their proposed findings of fact, which motion was granted under the Commission's order of October 22, 1960. Said new and amended proposed findings did specify a claim in Docket No. 363 for Royce Area 440. 6/ As we said previously, the Commission has already considered and rejected these proposed findings. Of course, defendant's apparent willingness to concede the existence of a claim not timely filed before this Commission does not confer jurisdiction upon the Commission to hear such a claim at this late date.

5/p. 124 - "Defendant's Brief, Objections to Petitioners' Proposed Findings of Fact, and Defendant's Requested Findings of Fact."

6/"Mississippi Sioux Petitioners' Motion For Leave To Amend Their Proposed Findings." Under the amendment to petitioners' proposed Finding 2 the petitioners added to their "Area in Suit" the following: "6. Docket No. 363, Medawakanton and Wahpakoota portion of Royce 440 etc." Following the proposed Finding 16, the petitioners added a "Finding 16-A" captioned "Medewakanton - Wahpakoota portion of Royce 440. Act of March 3, 1863, c. 119. 12 Stat. 819"

This proposition is elementary. Therefore, since the Commission has never had jurisdiction to entertain such a claim for Royce Area 440, the petitioners' motion asking the Commission to make certain requested findings of fact relative to this area must be denied.

/s/ Arthur V. Watkins
Chief Commissioner

/s/ Wm. M. Holt
Associate Commissioner

/s/ T. Harold Scott
Associate Commissioner