

BEFORE THE INDIAN CLAIMS COMMISSION

THE THREE AFFILIATED TRIBES OF THE )  
FORT BERTHOLD RESERVATION, ET AL., )  
 )  
Petitioner, )  
 )  
v. ) Docket No. 350-F  
 )  
THE UNITED STATES OF AMERICA, )  
 )  
Defendant. )

INTERLOCUTORY ORDER

Upon consideration of the Commission's Findings of Fact and Opinion filed this day herein, which Findings of Fact and Opinion are hereby made a part of this order, the Commission concludes as a matter of law that:

1. The petitioner herein, The Three Affiliated Tribes of the Fort Berthold Reservation, is a corporate entity and the successor in interest to those Fort Berthold Indians who lived upon the Fort Berthold Reservation during the times pertinent to the claims asserted herein.
2. The petitioner has the right and capacity under the Indian Claims Commission Act to bring and maintain this suit on its own behalf.
3. By the Act of March 3, 1891 (10 Stat. 1032), the petitioner was granted reservation title (except for the 160 acre tract upon which is located the St. Edward Mission) to all the subject lands on the Fort Berthold Indian Reservation situated within that area officially designated as Royce Area 713.
4. Under the Act of June 1, 1910 (36 Stat. 455), the United States in the role of a trustee, offered for sale and entry to homesteaders, some 205,000 acres, more or less, of petitioner's surplus reservation land; and, within one and a half years following the May 4, 1912 date of entry, practically the entire offering had been sold.
5. Under the provisions of the Act of August 3, 1914 (38 Stat. 681), some 110,818.28 acres of petitioner's surplus reservation land was offered for sale to homesteaders and became subject to entry on May 1, 1916. By September of 1916 practically the entire offering had been sold and entered.
6. On September 6, 1916, an additional 6,848.49 acres of petitioner's surplus reservation land was offered for homestead sale and made available for entry beginning on November 13, 1916. Between November 1916 and September 1917 approximately 3500 acres, more or less, were sold and entered upon.

7. By the Act of March 3, 1917 (39 Stat. 1131), some 9,006.08 acres of petitioner's surplus reservation land was offered for homestead sale and entry. Some 8,126.08 acres were sold, the bulk of which was entered upon by May of 1917.

8. By the Act of May 10, 1920 (41 Stat. 595), isolated tracts of petitioner's surplus reservation land remaining unsold became subject to sale by auction. The Commission is unable to determine the amount of petitioner's land offered and sold under the 1920 Act.

9. With respect to the lands sold as set forth in subparagraphs 4, 5, 6, 7, and 8 the petitioner lost its occupancy rights as a matter of fact as of the date of entry for each sale.

10. Under the Act of June 1, 1910, the United States purchased at \$2.50 per acre a sufficient quantity of petitioner's surplus reservation land to satisfy the school land claims of the State of North Dakota. The State of North Dakota ultimately selected 29,482.03 acres of school land. The petitioner lost its reservation title to said school lands as of the effective date of the Act of June 1, 1910.

11. On October 21, 1910, pursuant to the provisions of the Act of June 1, 1910, the United States, without payment of compensation, set aside 490.81 acres of petitioner's surplus reservation land as a reservoir site. The petitioner is entitled to be compensated for the Shell Creek Reservoir site based upon the fair market value of said 490.81 acres as of October 21, 1910.

12. By the presidential proclamation of June 29, 1917, issued under the provisions of the Act of June 8, 1906 (34 Stat. 225) 253.04 acres of petitioner's surplus reservation land was set aside for the purpose of establishing the Verendrye National Monument. The United States paid the petitioner \$5.00 per acre for said monument site. For valuation purposes said date of taking is June 29, 1917.

The Commission further concludes as a matter of law that,

1. The petitioner has no compensable interest in those lands embraced within Royce Area 716, a small area that was added to the Fort Berthold reservation by the Executive Order of June 17, 1892.

2. Petitioner has no compensable interest in the 160 acre tract of land upon which is located the St. Edward Mission, said tract having been reserved and set aside by the Interior Department on July 30, 1889, at a time when the Fort Berthold Indian Reservation lands involved herein were executive order lands.

3. Petitioner has no compensable interest in the 320 acres comprising the McLean Wildlife Refuge, set aside in the 1939 executive order; said lands in 1939 having already been granted to the State of North Dakota.

4. Petitioner is not entitled to recover compensation for alleged "temporary taking" by the United States of some 18,111.62 acres of vacant lands that were returned to the tribal ownership in 1938.

IT IS THEREFORE ORDERED that this case shall proceed for the purposes of determining:

1. The acreages of lands sold and patented to homesteaders under the above 1910, 1914, 1917, and 1920 Acts of Congress; their fair market value based upon the average date of the entries made under each act, and the consideration received for said lands under each act.

2. The fair market value of the school lands granted to the State of North Dakota as of the effective date of the Act of June 1, 1910.

3. The fair market value of the lands set aside for the Shell Creek Reservoir site and for the Verendrye National Monument as of the respective dates said sites were reserved for the purposes intended; and any other matters that may bear upon the question of defendant's liability to the petitioner herein.

Dated at Washington, D. C., this 4th day of November, 1965.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner