BEFORE THE INDIAN CLAIMS COMMISSION

THE YANKTON SIOUX TRIBE,	)	
	)	
Plaintiff,	)	
	)	
THE SIOUX TRIBE OF INDIANS, ET AL.,	)	
	)	
Intervenors,	)	
	)	
v.	)	Docket No. 332-C
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: December 17, 1969

Appearances:

Angelo A. Iadarola, Attorney for Plaintiff. Wilkinson, Cragun & Barker and Frances L. Horn were on the briefs.

Marvin J. Sonosky, Attorney for Intervenors Rosebud, Standing Rock, Crow Creek, Lower Brule and Santee Sioux Tribe.

Arthur Lazarus, Jr., Attorney for Intervenor Pine Ridge Sioux Tribe.

William Howard Payne, Attorney for Intervenors Cheyenne River and Fort Peck Sioux Tribes.

Craig A. Decker with whom was Mr. Assistant Attorney General Clyde O. Martz, Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the Opinion of the Commission.

The Yankton Sioux Tribe has claimed that it had recognized title to the lands in southeastern South Dakota ceded by the Treaty of April 19, 1858, 11 Stat. 742. These lands are purportedly mapped as Royce Area 410. For the reasons indicated below we agree with plaintiff that the northwest boundary of the lands ceded should follow the north branch of East Medicine Knoll Creek rather than the south branch as mapped by Royce. Thus our references to Royce Area 410 are intended to include the boundaries of the Yankton cession with this modification of Royce's mapping. In the alternative, plaintiff claims that it had aboriginal Indian title to the subject lands.

The Sioux Tribe of Indians et. al., Plaintiffs in Docket No. 74, have moved for leave to intervene, claiming that they had an interest in Royce Areas 410 and 411, the latter being 400,000 acres set aside as a reservation for the Yankton. For the reasons indicated, we decided that the Yankton Sioux did not have recognized title to Royce Area 410, that the Sioux Tribe of Indians may intervene in order to assert their claim to Royce Area 410, and that they may not intervene to assert their claim to Royce Area 411.

As we have indicated, the parties are not in agreement as to the boundaries of the cession area. As mapped by Royce, the northwest portion of the cession boundary follows the south fork of East Medicine Knoll Creek. Plaintiff contends that, correctly mapped, this portion of the boundary should follow the north fork of the Creek. The Treaty describes this portion of the boundary as follows:

> "...thence up the Missouri River to the mouth of the Pa-hah-wa-kan or East Medicine Knoll River; thence up said river to its head; thence in a direction to the head of the main fork of the Wan-dush-kah-for or Snake River...."

The north branch of the river is the larger branch, though it has a less well defined channel than the southern branch. Nineteenth century maps sometimes showed only one fork of the Creek, although it is not always clear which fork was intended. However it is fairly clear that J. N. Nicollet followed the north fork and went from there to the Snake River in 1838. His map and accounts of his travels would have been available at the time that the Treaty was drafted. Moreover, a map located by plaintiff in the National Archives (Pl. Ex. 277) appears to indicate that the cession boundary follows the north fork. Dr. John L. Champe testified that this appears to be the map transmitted along with the Treaty by Charles Mix, Acting Commissioner of Indian Affairs. Finally, if the boundary is drawn from the headwaters of the north fork to the Snake River it runs a much shorter distance without natural boundaries than if drawn from the headwaters of the south fork.

For these reasons, we conclude that the intention of the parties drafting the Treaty was that the boundary of the lands ceded by the Yankton should follow the north branch of East Medicine Knoll Creek.

The Yankton Sioux have claimed that they have recognized title to the lands ceded by the Treaty of April 19, 1858. The Treaty was entered into between the United States and sixteen chiefs and delegates of the Yankton Tribe (three of these being represented by an

agent). It provided in part as follows:

> "ARTICLE I. The said chiefs and delegates of said tribe of Indians do hereby cede and relinquish to the United States all the lands now owned, possessed, or claimed by them, wherever situated, except four hundred thousand acres thereof, situated and described as follows....[Royce Area 411]
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> "ARTICLE II. The land so ceded and relinquished by the said chiefs and delegates of the said tribe of Yanktons is and shall be known and described as follows....[Royce Area 410]
>
> "And the said chiefs and delegates hereby stipulate and agree that all the lands embraced in said limits are their own, and that they have full and exclusive right to cede and relinquish the same to the United States."

Plaintiff contends that Congress, by ratifying the Treaty, accepted the covenants in the last paragraph of Article II, and thereby recognized title to Royce Area 410 in the Yanktons. We are unable to agree with this interpretation. Whether a tribe has recognized title is a question of the intent of Congress.

> "By 'recognition', the courts have meant that Congress intended to acknowledge, or if one prefers, to grant to Indian tribes rights in land which were in addition to the Indians' traditional use and occupancy rights exercised only with the permission of the sovereign." Miami Tribe of Oklahoma v. United States 146 Ct. Cl. 421, 445, 175 F. Supp. 926, 940 (1959).

Plaintiff points out that in 1851, the United States purchased certain land from the Santee Sioux Tribes, and that the Yankton and Yanktonai who claimed an interest in that land disrupted annuity payments to the Santee. From this, plaintiff theorizes that one of the issues being negotiated with the Yankton was a description of the lands to which they could assert exclusive title so as to prevent a

recurrence of the events following the 1851 Santee cession. Since no journal of the negotiations with the Yanktons has been located, we may never know what actually transpired at the meetings. The available evidence however does not support the theory that Congress intended to ratify warranties of title so as to recognize exclusive rights in the Yankton Tribe.

At the time the Senate ratified the Treaty of April 19, 1858, ie. by February 6, 1859, Congress was aware of the fact that other bands of Sioux claimed that Royce Area 410 belonged not to the Yanktons but to the Sioux Nation at large. The Report of the Commissioner of Indian Affairs for the year 1858 had been submitted to Congress. In that Report was contained the letter of A. H. Redfield, U. S. Indian Agent for the Upper Missouri Agency. He stated in part:

> "On the 12th of June we reached Fort Pierre, and found there representatives from all the upper seven tribes of Sioux....a few were well disposed, but far the greater part were discontented and angry.... They strenuously objected to the sale of the Yancton country, claiming that it belonged to the Sioux nation, and not to the Yanctons exclusively, and declared that the nation would not consent to the sale of that or any other part of their country.
>
> "They wished me to write to their Great Father to stop the treaty and not to pay the Yanctons anything under it. ***
>
> "On the 16th of June we met on the west bank of the river the famous independent Yanctonee chief 'Big Head'.... *** but they also, I am bound to say, expressed much dissatisfaction at the sale of their country by the Yanctons, and insisting as the Sioux did at Fort Pierre, that the whole country belongs to the nation at large, and not to any particular tribe exclusively." Def. Ex. 188; Pl. Ex. 263.

It seems indeed unlikely that the Senate would have chosen to recognize title to the area in the Yanktons through the device of ratifying a warranty of title which it knew was disputed by other tribes. Rather we think that the peculiar language of Article II can be explained in another way.

A large number of Yankton Sioux belonged to the upper bands of the Yankton which were located around Fort Pierre. Deep seated jealousy had always existed between the upper and lower bands. (See Def. Ex. 196). The upper Yankton bands apparently were not represented at the negotiations of the Treaty of April 19, 1858. In June of 1858, they strongly protested the cession. (See, Def. Ex. 188; Pl. Ex. 263). The boundary of the cession area was drawn to exclude the land around Fort Pierre. Rather than following the Missouri River to Fort Pierre, the boundary turned from the River some fifteen to twenty miles below the fort. This indicates that the chiefs and delegates were attempting to outline the lands which their lower Yankton bands claimed. It was only as to these lands, and not as to the lands of the upper Yanktons, that they purported to act with authority.

The Treaty language bears out this interpretation. The cession did not take the usual form of conveyance by the "Yankton Tribe". Rather the cessions were made by "said chiefs and delegates of said tribe". Thus the negotiators were concerned with the authority of the Indians present to represent the entire Yankton Tribe. The ratification of the warranties in Article II was at most an acceptance by the Senate of the authority of the individual signatories to cede the

land described in Article II for the entire Yankton Tribe. The intention of the Senate was not to acknowledge exclusive title in the Yankton Tribe, but rather to acknowledge exclusive authority in these particular chiefs and delegates to represent the Yankton Tribe as to these lands.

This conclusion is in no way changed when we consider the provision of Article III which guaranteed the Yanktons "quiet and undisturbed possession of their present settlements" until they removed to their reservation, provided that removal takes place within one year. This provision emphasizes the temporary nature of the Yankton's rights in the land. It is in sharp contrast to the provision of the Treaty of Greenville discussed in Miami Tribe of Oklahoma v. United States 146 Ct. Cl. 421, 175 F. Supp. 926, 937-938 (1959), which protected the Indians in the possession of their lands for "as long as they please".

The Yankton Sioux Tribe has claimed in the alternative that it had aboriginal Indian title to Royce Area 410. The Sioux Tribe of Indians, plaintiffs in Docket No. 74, also claim to have had aboriginal title to the lands in question, as well as to Royce Area 411. Intervenor, The Sioux Tribe of Indians, contends that its claim arises under the Treaty of April 29, 1868, 15 Stat. 635. On March 6, 1968, the Sioux Tribe moved to amend its petition in Docket No. 74 to allege that its ancestors had at least a fractional interest in Royce Area 410 along with the Yankton Sioux. On October 29, 1968, the Commission issued an Order which provided in part as follows:

"The Commission ... concludes:

"That there is no present necessity for clarification or definition of interests and areas involved,

"That if, as their counsel has stated, the above entitled petitioners believe they may have interests in certain areas outside of those claimed in these cases, specifically in areas claimed by the Yankton Sioux in the matter of Docket No. 332-A, such interests may more properly be asserted by a motion for leave to intervene in that case."

Pursuant to that order, the Sioux Tribe has filed a motion for leave to intervene in the present claim, the successor to Docket No. 332-A.

Both plaintiff Yankton Sioux Tribe and the government oppose the motion to intervene. Their objections are in substance on three grounds: (1) intervention is not supported by the case of Blackfeet and Gros Ventre Tribes v. United States 162 Ct. Cl. 136 (1963), upon which intervenor relies; (2) by its delay in asserting the claim and its prior limitation of its claim in Docket No. 74, the intervenor is now barred by estoppel and laches from asserting an interest in Royce Area 410; and (3) permitting intervention will unduly delay a decision on the claim in Docket No. 332-C which has already been tried on the question of title.

First, we conclude that the Blackfeet case, supra., supports the motion to intervene as to Royce Area 410. In its motion of November 20, 1968, The Sioux Tribe of Indians et. al. allege that they are owners of an undivided interest in Royce Area 410. Such an interest in common with plaintiff is sufficient to permit intervention under the rule of the Blackfeet case. However, the Sioux Tribe may not

intervene to assert a claim to Royce Area 411 since that area is not within the scope of the claim in Docket No. 332-C. Both the Yankton Sioux and the government claim that intervenors are estopped or barred by laches from asserting a claim to Royce Area 410. We disagree. Insofar as the government objects on the ground of laches, we conclude that this defense has no merit. Defendant has made no claim that it was prejudiced in any manner by the delay on the part of intervenor or that it in any way relied upon intervenor's failure to file its claim, and in any event Section 2 of the Indian Claims Commission Act states:

> "All claims hereunder may be heard and determined by the Commission notwithstanding any statute of limitations or laches, but all other defenses shall be available to the United States."

For the Yankton Sioux to show estoppel or laches, it must show that it somehow relied to its detriment or changed its position in reliance upon intervenor's earlier position. This has not been shown. The Yankton had the burden of showing exclusive occupancy of the area claimed. The government defended by asserting that other bands of Sioux occupied parts of the area. Plaintiff cannot logically maintain that it relied to its detriment upon intervenor's position that no other Sioux had occupancy rights to the area when it opposed fully a similar assertion by the government.

A substantial problem does exist however in the delay that will be caused by intervention. This claim is scheduled for hearing on value in May 1970. The parties will find it difficult, if not

impossible, to prepare evidence on value until a decision in the title phase of the claim has been rendered. To be balanced against this problem of delay is the Commission's obligation to decide the claim "on the basis of all available facts". Pawnee Tribe of Oklahoma v. United States 124 Ct. Cl. 324, 339, 109 F. Supp. 860, 869 (1953). Certainly facts regarding use and occupancy of the land by intervenor are necessary to create a complete record.

With the above factors in mind, we grant the motion of the Sioux Tribe of Indians et. al. to intervene in order to present their claim to Royce Area 410. However, a conference will be held with counsel for all parties in the immediate future in order to determine an expeditious procedure for presenting any additional evidence which is necessary for a decision on the title phase of the claim.

John T. Vance, Commissioner

Concurring:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner