

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

The McCumber Agreement of October 22, 1892, amended by the Act of April 21, 1904, 33 Stat. 189, 193, involved the cession of certain lands in North Dakota. The agreement was executed by the Turtle Mountain Band of Chippewa Indians. Three separate plaintiffs or groups of plaintiffs have filed claims based upon their alleged interests in the lands so ceded. The claims of these three groups are found in four dockets, numbered 113, 246, 191 and 221. We shall refer to these plaintiffs collectively as the "Chippewa plaintiffs". We refer to the ancestral landowning entity as "Plains-Ojibwa".

The areas originally claimed by the various plaintiffs are shown on Defendant's Exhibit 74, Docket 113. Subsequently the Chippewa plaintiffs modified their contentions. All the Chippewa plaintiffs now claim the same boundaries for lands ceded under the McCumber Agreement. The eastern portion of the area originally claimed was the subject of a final award in Red Lake, Pembina and White Earth Bands et al. v. United States.^{1/} That case set the eastern boundary of the present Chippewa claim. The southern boundary as originally claimed overlapped with the claim of the Sioux Nation in Docket 74. The Chippewa plaintiffs have however, eliminated that overlap, claiming now only as far south as the Sioux-Chippewa line agreed to in the "Sweet Corn Agreement."

^{1/} 6 Ind. Cl. Comm. 249 (1958), 9 Ind. Cl. Comm. 315 (1961), aff'd. in part and rev'd in part, 164 Ct. Cl. 389 (1964), 13 Ind. Cl. Comm. 574 (1964), aff'd in part and rev'd in part, 173 Ct. Cl. 928, 335 F.2d 936 (1965), 19 Ind. Cl. Comm. 205, 267 (1968).

The western boundary claimed by the Chippewa plaintiffs is a line from near the mouth of the Little Knife River due north to the Canadian border. The northern boundary of the Chippewa claim follows the United States-Canadian border.^{2/}

The Chippewa plaintiffs ask for compensation under clauses (3), (4) and (5) of Section 2 of the Indian Claims Commission Act for land ceded by the McCumber Agreement.

The claims of the Fort Berthold Indians in Dockets 350-B and 350-C were consolidated with the Chippewa claims because of an alleged overlap. Only Docket 350-B presents an overlap with the land claimed by the Chippewa in North Dakota. Outside the area claimed by the Chippewa plaintiffs the claims by the Fort Berthold Indians present other overlaps.^{3/}

^{2/} Of the Chippewa plaintiffs, questions of title remain to be decided in Dockets 191, 221-A and 221-B. An accounting claim remains as Docket 221-C. This opinion disposes of all remaining title issues in Dockets 113, 246 and 221.

^{3/} The following claims remain to be decided: (A) Land in northern Montana involving Dockets 350-C, 221-B and 191. (B) Land east of the Missouri River in North and South Dakota, south of the McCumber Agreement land claimed by the Turtle Mountain Band and others, involving Dockets 74, 221-A, 350-B and 350-C. (C) Land in northwestern North Dakota, west of Turtle Mountain claim, involving Dockets 221-A and 350-C.

PARTIES

Several questions have been raised as to the parties who may properly maintain the claim advanced by the Chippewa plaintiffs. Both Dockets 246 and 221 involve multiple plaintiffs, certain of whom, it is conceded, have no interest in the lands presently at issue. Plaintiffs in Docket 246 concede that the Red Lake Band, and Peter Graves, Joseph Graves and August King as members of that band, have no interest in the present claim. (See Plaintiffs' Proposed Findings of Fact, Docket 246, at p. 15). The Red Lake Band and these named individuals are therefore dismissed as plaintiffs. Plaintiffs in Docket 221 concede that the Chippewa Cree Tribe of the Rocky Boy's Reservation, Montana, and Joe Corcoran as a member of that tribe, have no interest in the present claim. (See Tr. 295-296). They are therefore dismissed as plaintiffs.

The remaining Chippewa plaintiffs are the Turtle Mountain Band of Chippewa Indians, The Pembina Band of Chippewa Indians and certain individual members of that band, and the Little Shell Band of Chippewa Indians (which sometimes describes itself as the Chippewa Cree Tribe) and certain individual members of that band.

The standing of the Little Shell Band (in Dockets 191 and 221) to maintain a claim has been questioned by the other Chippewa plaintiffs. We hold that the Little Shell Band is a proper party plaintiff. As a group of descendants of the Plains-Ojibwa, the band is an identifiable group as that term has been defined by the Court of Claims. Red Lake and Pembina Bands v. United States, 173 Ct. Cl. 928, 940-941, 355 F.2d

936, 943 (1965). A motion to dismiss made by the government on the ground that plaintiff in Docket 191 is not an identifiable group has previously been denied. Little Shell Band v. United States, 3 Ind. Cl. Comm. 417 (1954). We have found that the Little Shell Band claimants in Docket 221 are part of the same group.

Plaintiffs in Docket 113 claim that under Section 10 of the Indian Claims Commission Act they have the exclusive privilege of bringing the subject claim. We disagree. Under that section they merely have the exclusive privilege of representing the present Turtle Mountain Band, whose constitution and bylaws were approved by the Secretary of Interior in 1932. McGhee v. Creek Nation, 122 Ct. Cl. 380, 394-395 (1952), cert. denied, 344 U.S. 856 (1952). The Little Shell plaintiffs do not purport to represent this Turtle Mountain Band. Rather they claim to represent a dissident group of Plains-Ojibwa who refused to sign the McCumber Agreement. The Court of Claims has held that it would defeat the purpose of Congress to deny separate representation to descendants of a group which constituted a portion of the original landowning entity. McGhee v. Creek Nation, supra, at 395.

Finally, we should note that the Commission has no jurisdiction to determine how an award is to be paid or precisely who can participate in an award. This is for Congressional and administrative determination. Red Lake and Pembina Bands, supra, at 942-943, 355 F. 2d, at 944. To dismiss the Little Shell plaintiffs would be an

