

BEFORE THE INDIAN CLAIMS COMMISSION

THE LOWER SIOUX INDIAN COMMUNITY)	
IN MINNESOTA, ET AL.,)	
)	
Plaintiffs,)	
)	Docket No. 363
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 22, 1971

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

On January 27, 1971, plaintiffs filed a motion captioned "Motion for Leave to Amend the Amended First Amended Petition Second Claim."

The motion to further amend the original petition was filed as a result of the Commission's decision in Yankton Sioux Tribe v. United States, Docket 332-C, 24 Ind. Cl. Comm. 208 (1970), in which the Yankton's claim to a triangular section of land south of the subject land in the principal case was denied by the Commission. The plaintiff by the proposed further amendment seeks to claim the tract of land to which the Yanktons were found not to have had exclusive use and occupancy. The present proposed amendment asserts an aboriginal title claim to a portion of Royce Area 410, by virtue of language in the cession agreement between the United States and the Sisseton and Wahpeton Bands of Sioux Indians, dated September 20, 1872, wherein the Indians would cede specific treaty lands, "As well as all lands in the

territory of South Dakota to which they have title or interest."* The additional area claimed is more particularly described as follows:

Commencing at the mouth of Snake Creek on the James River; thence down the James River to the mouth of Timber Creek; thence by a direct line east-south-easterly to the mouth of Stray Horse Creek on the Big Sioux River; thence up the Big Sioux River to Lake Kampeska; and thence in a direct line to the point of beginning.

By an order entered December 10, 1969, the Commission allowed the plaintiffs to amend the original amended petition, second claim, to encompass land claims arising under the Treaty of February 19, 1867, 15 Stat. 505, as amended and ratified by the Senate on April 15, 1867, 15 Stat. 509, and for certain treaty land ceded under the aforementioned agreement of September 20, 1872, 22 Ind. Cl. Comm. 226, 231 (1969).

In allowing the previous amendment the Commission found that the defendant had notice from the broadly worded second claim in the original amended petition of the possibility of the more specific claim subsequently asserted by the plaintiffs. Id. at 227; see Yankton Sioux Tribe v. United States, 175 Ct. Cl. 564, 568-69 (1966) (aff'g in part, rev'g in part Docket 332-A, 10 Ind. Cl. Comm. 137). The second claim of the original amended petition contained broad language, apparently intending thereby to encompass any claims the plaintiffs might have against the defendant. The Commission finds that the present proposed amendment is also encompassed within the broad language of the original

*The original 1872 agreement was amended by Congress, incorporated into an 1873 agreement, and ratified by the Act of June 24, 1874, 18 Stat. 167.

amended petition, and that such amendment does not constitute a new cause of action. Snoqualmie Tribe of Indians v. United States, 178 Ct. Cl. 570, 372 F.2d 951 (1967) (aff'g in part, rev'g in part Docket 93, 15 Ind. Cl. Comm. 267).

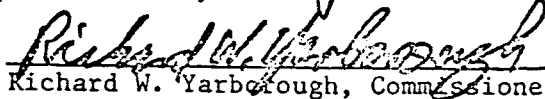
McGhee v. United States, 194 Ct. Cl. 86, 437 F.2d 995 (1971) (aff'g in part, rev'g in part Docket 280, 22 Ind. Cl. Comm. 10), cited by the defendant, is distinguishable. In that case a proposed amendment would have changed not only the quantum of relief but also the theory of recovery. In the instant motion to amend the theory of recovery is not changed.

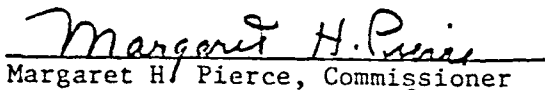
Accordingly, the Commission shall issue an order allowing the amendment as additional allegations in the original amended petition, and the claim asserted therein shall be adjudicated on the present record.


John T. Vance, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner