BEFORE THE INDIAN CLAIMS COMMISSION

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS,	)	Docket No. 113
PEMBINA BAND, AND KATHERINE CARL BARRETT, ET AL., EX. REL., PEMBINA BAND,	)	Docket No. 246
THE LITTLE SHELL BAND OF CHIPPEWA INDIANS, AND JOSEPH H. DUSSOME, ET AL., EX. REL., SAID BAND,	)	Docket No. 191
BLANCHE PATENAUDE, ET AL., EX. REL., LITTLE SHELL BAND OF INDIANS AND THE CHIPPEWA CREE TRIBE,	)	Docket No. 221
THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket Nos. 350-B and 350-C
THE THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION,	)	Docket Nos. 350-B and 350-C
TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS,	)	Docket No. 113
RED LAKE BAND AND PETER GRAVES, ET AL., EX. REL., RED LAKE BAND, PEMBINA BAND AND KATHERINE CARL BARRETT, ET AL., EX REL., PEMBINA BAND, JOHN B. AZURE, ET AL., EX REL., CHIEF LITTLE SHELL'S BAND OF PEMBINA CHIPPEWA INDIANS,	)	Docket No. 246
THE LITTLE SHELL BAND OF CHIPPEWA INDIANS, AND JOSEPH H. DUSSOME, ET AL., EX REL., SAID BAND,	)	Docket No. 191

CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION, MONTANA, AND JOE CORCORAN, EX. REL., CHIPPEWA CREE TRIBE OF THE ROCKY BOY'S RESERVATION,	)	Docket No. 221
BLANCHE PATENAUDE, ET AL., EX. REL., LITTLE SHELL BAND OF INDIANS AND THE CHIPPEWA CREE TRIBE,	)	
THE SIOUX NATION, ET AL.,	)	Docket No. 74
THE CHIPPEWA CREE TRIBE OF ROCKY BOY'S RESERVATION, Plaintiffs, v. THE UNITED STATES OF AMERICA, Defendant.	)	Docket No. 221-A

Decided: November 11, 1971

Appearances:

Glen A. Wilkinson, Attorney for Plaintiff in Docket No. 113. John A. Storman, J. Howard Storman, Frances L. Horn, and Wilkinson, Cragun & Barker were on the briefs.

Rodney J. Edwards, Attorney for Plaintiffs in Docket No. 246. Marvin J. Sonosky was on the brief.

Lawrence C. Mills, Attorney for Plaintiffs in Docket Nos. 191, 221 and 221-A. Mills and Garrett were on the briefs.

Jonathan C. Eaton, Jr., Attorney for Plaintiff in Docket Nos. 350-B and 350-C.

Arthur Lazarus, William Howard Payne, and Marvin J. Sonosky, Attorneys for Plaintiffs in Docket No. 74.

William H. Donham, Gordon W. Daiger, and Howard G. Campbell, with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Commissioner Vance delivered the opinion of the Commission.

The Commission has before it two motions for rehearing arising out of its opinion, findings of fact, and interlocutory order entered in consolidated Docket Nos. 113, 191, 221, 246, 350-B, and 350-C, on June 30, 1970, Turtle Mountain Band of Chippewa Indians v. United States, 23 Ind. Cl. Comm. 315, and two motions for rehearing arising out of its opinion, findings of fact, and order entered in consolidated Docket Nos. 350-B, 350-C, 113, 246, 191, 221, 74, and 221-A, on March 30, 1971, Three Affiliated Tribes of the Fort Berthold Reservation v. United States, 25 Ind. Cl. Comm. 179. In the first of those decisions the Commission found that the Plains-Ojibwa had aboriginal title to a tract of land in north central North Dakota, which tract was ceded to the United States by the McCumber Agreement which became effective February 15, 1905. In the second decision, the Commission found that the Mandan, Hidatsa, and Arikara Tribes had aboriginal title to a tract of land in North Dakota, southwest of the Ojibwa tract, which tract was acquired by the United States on April 12, 1870.[1/] Because the second pair of motions request

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1/ The plaintiffs in Docket No. 350-C have filed a motion for rehearing requesting that the Commission reconsider this finding of an 1870 taking date. Rehearing on that issue has been granted. Three Affiliated Tribes of the Fort Berthold Reservation v. United States, 26 Ind. Cl. Comm. 326 (1971).

substantive relief identical to part of the relief already requested in the first pair of motions,[2/] we shall treat these later motions as being incorporated into the earlier ones. The Docket No. 246 motions for rehearing ask the Commission to amend its decision so as to (1) redraw the boundaries of the Ojibwa aboriginal title area, and (2) declare that the Pembina Band rather than the Plains-Ojibwa was the landowning entity. The motions for rehearing in Docket No. 113 ask the Commission to amend its decision so as to (1) redraw the boundaries of the Ojibwa aboriginal title area, (2) declare that the Turtle Mountain Band rather than the Plains-Ojibwa was the landowning entity, and (3) find that the plaintiffs in Docket Nos. 191 and 221 are not identifiable groups and are not entitled to participate in this suit as separate parties. For the reasons indicated below we find that the boundaries of the aboriginal title area must be modified as indicated in our amended finding number 19

2/ In the first pair of motions the Chippewa plaintiffs contend that the western boundary of Chippewa aboriginal land followed a line drawn from Dog Den Butte to the mouth of the Little Knife River on the Missouri and then due north to the Canadian border, and that the Commission was in error in failing to award this western area to the Chippewas. In the second pair of motions the Chippewa plaintiffs contend for the same western boundary, and that the Commission was in error in awarding the western area to the plaintiffs in Docket No. 350-C.

in Docket Nos. 113, et al., and amended finding number 26 in Docket Nos. 350-B, et al., entered today; that the Plains-Ojibwa as defined in this opinion was the proper landowning entity; and that the plaintiffs in Docket Nos. 191 and 221 are a separate identifiable group and thus have standing to participate in this claim. We therefore grant in part and deny in part the motions for rehearing.

Boundaries

In its decision of June 30, 1970, in Docket Nos. 113, et al., the Commission found that the Plains-Ojibwa had aboriginal title to an area bounded as follows:

> Beginning at the 98th parallel where it crosses the International Boundary, running due south along the 98th parallel to the point at which it intersects the Middle Branch of the Forest or Salt River; then southwest to the northeastern-most point on Stump Lake, which is the point where Stump Lake is intersected by the stream running between Stump Lake and Coon Lake; then westerly through the Devil's Lake complex to the southeastern corner of the town of Minnewaukan; then in a southwesterly direction to Dog Den Butte, which is part of the Missouri Coteau; then in a northerly direction to the southwest tip of Buffalo Lodge Lake, which is where that Lake is intersected by South Egg Creek; then due west to the western branch of the Souris or Mouse River; then up the Souris River through the center of Lake Darling, then continuing up the Souris River to the International Boundary; then east along the International Boundary to the place of beginning. (23 Ind. Cl. Comm. at 336-37.)

The motions for rehearing challenge the eastern, southeastern, and western boundaries of the Commission's finding. Plaintiffs[3/] allege that the current eastern boundary of the title area--the 98th meridian--causes either an overlap or allows a void[4/] between the subject lands and the lands ceded by the Red Lake and Pembina Bands in the Treaty of October 2, 1863, 13 Stat. 667, title to which land the Commission found in the Red Lake and Pembina Bands, Red Lake, Pembina and White Earth Bands v. United States, Docket 18-A, 6 Ind. Cl. Comm. 247 (1958). In describing the boundaries of the aboriginal title area in its Turtle Mountain decisio the Commission intended the eastern border to coincide with the western border of the aboriginal area in Docket 18-A. See 23 Ind. Cl. Comm. at 316. The Commission was of the belief that that western boundary was the 98th meridian. It now appears that the 98th meridian may not be identical with the western boundary of the Docket No. 18-A aboriginal lands. Therefore, we shall amend our finding number 19 in Docket 113, et al., so that the first call is as follows:

3/ In this portion of the opinion, the term "plaintiffs" refers to the plaintiffs in Docket Nos. 113, 191, 221, and 246.

4/ The motion in Docket No. 246 states that the subject lands as described overlap the lands ceded in 1863, while the motion in Docket No. 113 alleges that there is a void between the two areas.

> (1) Beginning at the International Boundary where it is intersected by the western boundary of the lands described in Article 2 of the Treaty of October 2, 1863, 13 Stat. 667, with the Red Lake and Pembina Bands of Chippewa Indians, southerly on that boundary to the point at which it intersects the Middle Branch of the Forest or Salt River.5/

Plaintiffs challenge the southeastern boundary of the Commission's finding, asserting that this boundary should coincide with the northern border of the lands described in Article 2 of the Treaty of February 19, 1867, between the United States and the Sisseton and Wahpeton Sioux, 15 Stat. 505. That border, as relevant to this opinion, runs from the source of Goose River to the westernmost point of Devil's Lake. It is apparent from an examination of current maps that this border overlaps the southeastern boundary of the Plains-Ojibwa aboriginal lands as found by the Commission. We do not believe, however, that this overlap necessitates our changing the southeastern boundary as described in our finding number 19. The claim in these dockets is based on Chippewa aboriginal title to the subject lands. In determining the extent of land to which the Chippewa had title the Commission examined and weighed all of the evidence in the record relating to use and occupancy of the subject lands. Based on this evidence the Commission concluded that Chippewa exclusive use and occupancy in the southeastern portion of the

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5/ Plaintiffs have urged that the Commission use the 1863 treaty description "main branch of Salt River" rather than "Middle Branch of the Forest or Salt River". The Commission is of the opinion, however, that the name of this river as it appears on modern maps aids in locating the boundary and we thus choose not to change this part of the description.

subject area extended as far south as the northeasternmost point on Stump Lake. The motions for rehearing do not allude to any new evidence which would indicate that Chippewa occupancy did not extend that far south. The Commission does not believe that the boundary of the lands claimed by the Sioux in 1867 is conclusive in establishing the southernmost extent of Chippewa occupancy in the Devil's Lake area. Therefore, the southeaster boundary of the subject lands shall remain as already described by the Commission.[6/]

Plaintiffs also challenge the western boundary of the Commission's finding. They urge that the boundary should proceed from Dog Den Butte northwesterly in a direct line to the confluence of the Little Knife and Missouri rivers, and then continue north to the International Boundary. Plaintiffs allege that in its original determination the Commission failed to consider all the evidence and therefore erroneously excluded from the Plains-Ojibwa aboriginal area lands west and southwest of the Souris River.

6/ Plaintiffs have urged that the Commission use the 1867 treaty descriptic "most westerly point of Devil's Lake" in lieu of "southeastern corner of the town of Minnewaukan." Plaintiffs contend that the former description is more easily identifiable than the latter. A comparison of modern maps with those drawn in the 19th century, however, indicates that the western-most point of Devil's Lake has moved significantly over the last 100 years and is therefore a location which is quite difficult to identify. The Commission has concluded that the town of Minnewaukan is located where the westernmost point of Devil's Lake was in the 19th century and has chosen it as the proper terminus of the third call.

The evidence which plaintiffs allege the Commission ignored consists of exhibits which indicate that the Office of Indian Affairs "recognized" the subject lands as belonging to the Chippewa. In the proposed findings of fact filed by the Docket No. 113 and the Docket Nos. 191 and 221 plaintiffs this evidence was said to support a finding that the Chippewa had recognized title to the area. The plaintiffs in Docket No. 246, in their proposed findings, asserted that this evidence supported a finding that the land was "administratively recognized" by the Department of the Interior as being Chippewa property. Based on these proposed findings, the Commission assumed that these exhibits were in evidence for the purpose of establishing recognized title to the subject lands. Plaintiffs now assert that this evidence supports their claim of aboriginal title to lands west of the Souris River. In the additional findings entered today in Docket Nos. 113, et al., we have examined this evidence.

The Commission has previously found that a portion of the additional land being claimed in these motions was possessed aboriginally by the Mandan, Hidatsa, and Arikara Tribes. See Three Affiliated Tribes of the Fort Berthold Reservation v. United States, supra, at 209-10. The second pair of motions now under consideration request the Commission to reconsider that decision. We have reexamined our findings of fact in that decision and the evidence of record and conclude that, with one exception, our conclusion with regard to title was correct. The exception is our finding that the Mandan, Hidatsa and Arikara had title to a triangular tract of land north and east of the Souris River. Our findings of fact in that

decision support a conclusion of Mandan, Hidatsa, and Arikara use and occupancy only on the south or west side of the Souris River.[7/] Our reexamination of the evidence failed to disclose any evidence of Mandan, Hidatsa, and Arikara use of the triangular tract during the historical period under consideration. Accordingly we shall amend finding number 26 in Docket 350-B, et al., so that the second and third calls read as follows:

> (2) Then northerly in a direct line through Dog Den Butte to the Souris or Mouse River;
>
> (3) Then westerly along the Souris River to a point due west of the southwest tip of Buffalo Lodge Lake (the point where that lake is intersected by South Egg Creek);

Based on the additional findings entered today and the findings previously entered the Commission now concludes that the Plains-Ojibwa exclusively used and occupied lands to the west of the Souris River as well as the land in the triangular tract north and east of the river. Therefore we shall further amend our finding number 19 in Docket 113, et al., so that the last five calls read as follows:

> (5) Then in a northerly direction to the Souris or Mouse River;
>
> (6) Then westerly along the Souris River to a point due west of the southwest tip of Buffalo Lodge Lake (the point where that lake is intersected by South Egg Creek);

7/ Both the Gasman Coulee site and the "Drive Fish Between the Rocks" site mentioned in finding number 22 were on the Souris River. Neither was in the area north and east of the river.

(7) Then in a west-northwesterly direction along the northern boundary of the lands described in call number (4) of finding number 26 entered in Docket Nos. 350-B, et al., March 30, 1971, (Three Affiliated Tribes of the Fort Berthold Reservation v. United States, 25 Ind. Cl. Comm. 179, 209), until it intersects the shoreline of Lower Lostwood Lake, in Township 158 North, Range 91 West;

(8) Then due north to the International Boundary;

(9) Then east on the International Boundary to the point of beginning.

Landowning Entity

In our decision of June 30, 1970, we referred to the group of Chippewas which had aboriginal title to the subject lands as "Plains-Ojibwa." Specifically, in finding numbers 4 and 5 we said:

4. Around the end of the eighteenth century, prior to the advent of white traders in the area, the formerly woodland oriented group of Chippewas moved out beyond the border of the plains in pursuit of the buffalo. They successfully reoriented their culture to life on the plains, developing the bison-hide tipi, the Red River cart, hard soled footwear and new ceremonial procedures. Around 1800, these Indians were hunting in the Turtle Mountain area. These Indians who adapted to the plains formed a group which may best be identified as the Plains-Ojibwa.

5. The Plains-Ojibwa are an identifiable group of American Indians on whose behalf an action may be maintained under the Indian Claims Commission Act. The Plains-Ojibwa have also been known by many other names, among which are Bungi, Saulteaux, Turtle Mountain Band, Little Shell Band, Chippewa and Chippewa-Cree. (23 Ind. Cl. Comm. at 328.)

Both motions for rehearing challenge the Commission's determination that the Plains-Ojibwa was the landowning entity. Plaintiffs [8/] claim

8/ The plaintiffs in Docket Nos. 191 and 221 are in agreement with the Commission's findings on landowning entity. The term "plaintiffs", therefore, refers here only to the plaintiffs in Docket Nos. 113 and 246.

that "Plains-Ojibwa" is merely a term used by anthropologists to distinguish the Chippewa who lived on the plains from those who lived in the forests. The "Plains-Ojibwa", argue the plaintiffs, were not a landowning entity, but rather a cultural segment of the Chippewa Nation. The Docket No. 246 plaintiffs contend that the Pembina Band was the landowning entity. In support of this contention they argue that the subject land was merely the western portion of a larger Pembina country, the eastern portion of which was ceded to the United States by the Pembina Band and the Red Lake Band in the Treaty of October 2, 1863, 13 Stat. 667. They further argue that agents of the defendant acknowledged that the Pembinas were not ceding all their land in 1863, but were retaining their interest in lands west of the cession. Docket No. 246 plaintiffs finally rely upon the Commission's finding in Docket No. 18-A--that members of the Turtle Mountain Band or the Little Shell Band were all part of the Pembina Band in 1863 (Red Lake, Pembina and White Earth Bands v. United States, supra, at 250)--as establishing that the Pembina Band was the landowning entity. The plaintiff in Docket No. 113, on the other hand, contends that the Turtle Mountain Band was the landowning entity. In support of this contention, this plaintiff argues that the United States acknowledged the Turtle Mountain Band as the landowning entity when it negotiated with that band for the cession of the subject lands. It further relies on the Commission's statement in Docket No. 18-A that the Pembina Chippewas who did not migrate to Minnesota in 1873 became known as and were recognized by the defendant as the Turtle Mountain Band of Chippewas

(Red Lake, Pembina and White Earth Bands, supra, at 309). Although the contentions of both of these plaintiffs have merit, the Commission has decided to abide by its determination that "Plains-Ojibwa" is the best designation for the Chippewa landowning entity in these dockets.

In formulating its judgments the Commission must be careful to avoid predetermining the persons who will benefit from it. Cherokee Freedmen v. United States, App. No. 5-70 (Ct. Cl. June 11, 1971), slip op. at 11, (aff'g, Docket 173-A, et al., 22 Ind. Cl. Comm. 417 (1970)); Red Lake and Pembina Bands v. United States, 173 Ct. Cl. 928, 943, 355 F.2d, 936, 944, (1965) (aff'g in part, rev'g in part, Dockets 18-A, et al., 13 Ind. Cl. Comm. 574 (1963)). Thus, in choosing a designation for the landowning entity in this case the Commission had to avoid using any name which might result in such a predetermination. The name by which the Chippewa landowning entity in these dockets has been known varied greatly during the 19th and early 20th centuries. Early in the 19th century this group was referred to as the People of the Red River, the Bungi, or the Saulteaux. By the middle of the 19th century this group was generally referred to and designated by the United States as the Pembina Band of Chippewas. Later in the 19th century and continuing to the date of cession the group was designated the Turtle Mountain Band of Chippewas. At various times this group was also known as the Little Shell Band of Chippewas. Therefore, the Commission agrees with the Docket No. 246 plaintiffs that in 1863 the "Pembina Band" was the landowning entity. Likewise, we agree with the Docket No. 113 plaintiffs that later in the 19th Century the landowning

entity was known as the "Turtle Mountain Band." The Commission, however, was and is of the opinion that if it chose either of these names as the proper designation for the landowning entity it might be predetermining the participants in any potential award. If we called the landowning entity "Pembina Band" our language might be misinterpreted as referring only to the plaintiffs in Docket No. 246. Likewise, if we called the entity "Turtle Mountain Band" it might be thought, incorrectly, that we referred only to the plaintiff in Docket No. 113. Therefore, we chose the term "Plains-Ojibwa" as the proper designation for the landowning entity. In adopting that name the Commission did not intend it to be synonomous with the term used by anthropologists to refer to all plains Chippewa. Rather we intend "Plains-Ojibwa" to refer only to that group of Chippewa which was known in 1863 as the Pembina Band, and was later recognized by the United States as the Turtle Mountain Band.

Parties

The plaintiff in Docket No. 113 again challenges the right of plaintiffs in Docket Nos. 191 and 221 to participate in this claim, and again asserts that it has the exclusive right to represent the entity which executed the McCumber Agreement. These arguments of Docket No. 113 plaintiff were considered and rejected by the Commission in its decision of June 30, 1970, 23 Ind. Cl. Comm. at 318-20.[9/] We must reject them again.

9/ In our findings in that decision we found as follows: "Plaintiffs in Dockets 191 and 221 claim to be successor to the interests of Little Shell and his followers. Little Shell and his followers left the negotiations with the McCumber Commission and refused to sign the McCumber Agreement. We find that these plaintiffs together constitute an identifiable group of American Indians, many of whose members are descendents of Chief Little Shell and his followers." (23 Ind. Cl. Comm. at 327.)

Docket No. 113 plaintiff relies upon the decisions of the Court of Claims in Red Lake, Pembina, and White Earth Bands v. United States, 164 Ct. Cl. 389 (1964) (aff'g Dockets 18-A, et al., 9 Ind. Cl. Comm. 457 (1961)), Spokane Tribe of Indians v. United States, 163 Ct. Cl. 58 (1963) (aff'g in part, rev'g in part, Docket 331, 9 Ind. Cl. Comm. 236 (1961)), and Minnesota Chippewa Tribe v. United States, 161 Ct. Cl. 258, 315 F.2d 906 (1963) (aff'g in part, rev'g in part, Docket 18-B, 8 Ind. Cl. Comm. 781 (1960)). In these cases the court decided that awards made pursuant to the Indian Claims Commission Act must run in favor of a present tribal entity rather than in favor of individual descendents of the wronged tribe. Docket No. 113 plaintiff argues that because the plaintiffs in Docket Nos. 191 and 221 are merely individual descendents of members of the wronged entity they cannot participate in this claim. We cannot agree. As was pointed out by the court in Red Lake and Pembina Bands v. United States 173 Ct. Cl. 928, supra, the rule in the Minnesota Chippewa line of decisions relates only to the actual form of the judgment entered by the Commission. The problem we face, on the other hand, relates to representation and the composition of an identifiable group. The Court in Red Lake and Pembina, supra, made it clear that these latter questions are still controlled by the rule pronounced in Thompson v. United States, 122 Ct. Cl. 348, cert. denied, 344 U.S. 856 (1952) (rev'g, Docket 31, 1 Ind. Cl. Comm. 358 (1950)), and cases which followed it.

In Thompson, the court stated the rule to be that any group could file a claim under the Indian Claims Commission Act if it could be

identified as a group of descendents of Indians who were members of the wronged entity at the time the claim arose. 122 Ct. Cl. at 357. In McGhee v. United States, 122 Ct. Cl. 380 (1952) (rev'g, Docket 21, 1 Ind. Cl. Comm. 546 (1951)), the court ruled that a group is an identifiable group if it is composed of descendents of members of the tribe or band as it existed at the time the claim arose. Id. at 391. Under the rule set out in Thompson and McGhee and restated more recently in Red Lake and Pembina, supra, the plaintiffs in Docket Nos. 191 and 221 clearly are identifiable groups in that many of their members are descendents of members of the Plains-Ojibwa as it existed when the claim arose.

Turtle Mountain Band plaintiff argues that the rule of Thompson v. United States, supra, does not apply when the landowning entity has been in continuous existence from the date of the alleged wrong. In such a case, it argues, the continuing entity is the sole successor in interest and has the exclusive right of representation. This argument is without merit. A similar contention was rejected by the Court of Claims in McGhee v. United States, supra. The court there stated that it was the ancestral wronged entity which had the claim against the United States. If that entity divides after the date of the alleged wrong none of the resulting factions is the sole successor in interest even if the United States has recognized it as the continuation of the tribe. 122 Ct. Cl. at 387. In Miami Tribe v. United States, Docket 256, 14 Ind. Cl. Comm. 375, 435-44 (1964), this Commission also rejected a similar argument. In that case we ruled that any identifiable group of Indians has standing

to make a claim before the Commission. Furthermore, we said, every identifiable group has the right to sue on its own behalf, even if an organized tribe or band making the same claim declares that it will represent all indivduals entitled to participate. We then stated:

> We cannot say that petitioner in Docket 256 is the sole successor in interest to the original Miami Tribe even if we assume that said petitioner has continued as a tribal entity from the treaty dates of the subject case to the present time. (14 Ind. Cl. Comm. at 443.)

We concluded by saying that so long as there are other identifiable groups which contain members whose ancestors were part of the wronged entity, the organized tribe is not the sole successor in interest, and each of the present entities is entitled to participate in the claim. Id. at 444. The Commission reached a similar result in Yakima Tribe v. United States, Docket 161, 12 Ind. Cl. Comm. 301, 364 (1963), and in Eastern Band of Cherokee Indians v. United States, Docket 282, 7 Ind. Cl. Comm. 140, 147 (1959). We conclude therefore that the plaintiff in Docket No. 113 is not the full successor in interest to the Plains-Ojibwa, and that the plaintiffs in Docket Nos. 191 and 221, being identifiable groups, have standing to participate in this claim.[10/]

10/ Our conclusion is supported by the recent decision of the Court of Claims in Cherokee Freedmen v. United States, supra. In that case the court set out three protective devices the Commission should use to avoid predetermining the participants of an award. The first of these devices is to allow all identifiable groups which may have an interest in the claim to participate in the claim. Secondly, the Commission should avoid referring to any organized entity as the beneficiary or the only beneficiary of the claim. Finally the Commission should make clear, in its opinions and in its final judgment, the identity of the injured tribal entity. Id., slip op. at 11-12.

For the reasons and to the extent indicated above we grant in part and deny in part the motions of plaintiffs for rehearing.

John T. Vance, Commissioner

We Concur:

Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner