

BEFORE THE INDIAN CLAIMS COMMISSION

THE LOWER SIOUX INDIAN COMMUNITY)	
IN MINNESOTA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 363
)	(Second Claim)
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	
)	
THE YANKTON SIOUX TRIBE,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 332-C
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: October 4, 1972

Appearances:

Marvin J. Sonosky, Attorney for Plaintiffs
in Docket 363. Emerson Hopp was on the brief.

Angelo A. Iadarola, Attorney for Plaintiff in
Docket 332-C. Frances L. Horn was on the brief.

Craig A. Decker and Bernard M. Sisson, with whom
was Assistant Attorney General Kent Frizzell,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

The Commission has before it a motion filed by the defendant to
consolidate Dockets 363 (second claim) and 332-C for further proceedings
because of an alleged overlap in the lands claimed in each docket.

The lands in South Dakota to which overlapping claims of aboriginal title allegedly exist are bound as follows:

Beginning at the mouth of Snake Creek on the James River; then southerly down the James River to the mouth of Timber Creek; then east-southeasterly in a direct line to the mouth of Stray Horse Creek on the Big Sioux River; then northerly up the Big Sioux River to Lake Kampeska; and then in a direct line to the point of beginning.

The plaintiffs in both dockets 363 and 332-C oppose defendant's motion. For the reason stated below we shall deny defendant's motion to consolidate.


In Docket 332-C the Yankton Sioux Tribe claimed, alternatively, recognized title and aboriginal title to lands in southeastern South Dakota, identified as Royce Area 410, which it ceded to the United States under the Treaty of April 19, 1858, 11 Stat. 743. In its decision of December 17, 1969, 22 Ind. Cl. Comm. 344, the Commission decided that the Yanktons did not have recognized title to Royce 410. A year later, in our decision of December 14, 1970, 24 Ind. Cl. Comm. 208, we considered the Yankton claim of aboriginal title. We found that with the exception of two small tracts, in the northwestern and northeastern corners of Royce 410, the Yanktons had aboriginal title to the area. One of the areas which was excluded was the area of alleged overlap described above. In rejecting the Yankton claim to ownership of that tract the Commission stated,

. . . The latter is excluded because Yankton use of the area was not exclusive. In Finding 11 we have found that the Five Lodge Band of Sisseton Sioux had a permanent village in northwest Deuel County, and hunted between that village and the James River. Such continued use by another Indian entity precludes Yankton title to that area.

24 Ind. Cl. Comm. at 210-11.

Subsequent to our decision in Docket 332-C, the plaintiffs in Docket 363 sought to amend their petition to include a claim for the tract which we had excluded from the Yankton aboriginal title area, and in our decision of September 22, 1971, 26 Ind. Cl. Comm. 267, we permitted the requested amendment.

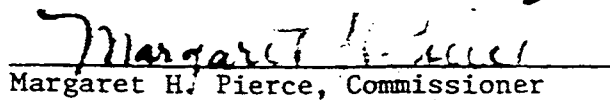
It is clear from the above-recited history that there are no overlapping claims to the lands involved in defendant's motion. We have specifically ruled that the Yankton Sioux Tribe, plaintiff in Docket 332-C, did not have title to this area. Thus, the only outstanding claim to this area is that of the plaintiffs in Docket 363. Although the Docket 332-C plaintiff has appealed our decision on aboriginal title (as well as our denial of their claim of recognized title), we have no reason to anticipate that it will be reversed. In any event, at the current stage of the proceedings in these dockets there is no overlap of aboriginal title claims and therefore we shall deny defendant's motion.



John T. Vance, Commissioner

We Concur:


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner