

## BEFORE THE INDIAN CLAIMS COMMISSION

RED LAKE BAND AND PETER GRAVES,	)	
JOSEPH GRAVES AND AUGUST KING,	)	
EX REL, RED LAKE BAND,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 189-B
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: November 29, 1972

## Appearances:

Rodney J. Edwards, Attorney for  
Plaintiffs, Marvin J. Sonosky  
was on the brief.

Joseph S. Davies, Jr., with whom  
was Mr. Assistant Attorney General  
Kent Frizzell, Attorneys for Defendant.

OPINION ON DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT AND/OR DISMISSAL OF DOCKET 189-B

Pierce, Commissioner, delivered the opinion of the Commission.

This case is presently before the Commission on defendant's motion for summary judgment and/or dismissal of the claims in Docket 189-B. Since this docket contains two claims by the plaintiff band, we will consider defendant's motion as it applies to each claim.

Plaintiffs' first claim for relief is for the taking of Royce Area 706 (Minnesota) by defendant from the Red Lake Band of Chippewa Indians without the assent of that band and without payment of compensation. The Court of Claims has previously found that the Chippewa Indians in Minnesota (including the Red Lake Band) gave the consent required by the Act of

January 14, 1889, 25 Stat. 642 (hereinafter referred to as the 1889 Act), for the cession of Royce 706. Chippewa Indians v. United States, 80 Ct. Cl. 410, 436-42 (1935). We are bound by that finding. Also, counsel for plaintiffs has admitted this assent at two hearings before this Commission, <sup>\*/</sup> as well as in plaintiffs' opposition to this motion. It is basic law that when property is acquired by the United States with the consent of the owners there can be no taking within the meaning of the Fifth Amendment. See Three Affiliated Tribes of the Fort Berthold Reservation v. United States, 182 Ct. Cl. 543, 560, 390 F.2d 686, 695 (1968) (aff'g in part, rev'g in part, Docket 350-F, 16 Ind. Cl. Comm. 341 (1965)); Pawnee Indian Tribe v. United States, Docket 10, 8 Ind. Cl. Comm. 648, 756-57 (1960), aff'd, 157 Ct. Cl. 134, 301 F.2d 667, cert. den., 370 U.S. 918 (1962). See generally 1 Nichols' The Law of Eminent Domain §1.11 (Revised 3d ed. J. Sackman, 1964). Accordingly, defendant's motion should be granted as to plaintiffs' first claim for relief.

Plaintiffs' second claim is for discovery and accounting as to all lands in Royce 706 and for a judgment for the difference between the fair market value of the lands and timber in Royce 706 and the amount credited to the Red Lake Band by the United States for the sale or other disposal of the said lands and timber. Defendant moves for summary judgment and/or dismissal of this claim on the ground that it has no obligation to maintain separate accounts for the assets of the Red Lake Band. We note that this case overlaps Dockets 189-A and 19 to some extent. Those cases are for an accounting of all funds received and expended

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\*/ Transcript of November 14, 1967, hearing at pp. 17-18, and transcript of December 14, 1971, hearing at p. 42.

pursuant to the 1889 Act on behalf of the Red Lake Band and the Minnesota Chippewa Tribe, respectively. Although plaintiffs' second claim for relief in Docket 189-B appears to be included in Docket 189-A, we choose not to dismiss the second claim because neither party has adequately briefed this issue. We see no other compelling need to dismiss this claim at this time. Docket 189-B will be consolidated with Dockets 19 and 189-A for the convenience of the parties. Although defendant argues that logic compels that Docket 189-B be dismissed before we can reach the accounting claims in certain related cases, we disagree. These related cases, in addition to the aforementioned Dockets 19 and 189-A, are Dockets 188, and 189-C. These four dockets are claims for an accounting by either the Minnesota Chippewa Tribe or the Red Lake Band. Docket 189-B logically belongs with these cases. If, at trial, we find that the claims in Docket 189-B duplicate those of another docket, we will dismiss it at that time. Defendant's motion for summary judgment and/or dismissal will be denied as to plaintiffs' second claim for relief.

Margaret H. Pierce  
Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall  
Jerome K. Kuykendall, Chairman

John T. Vance  
John T. Vance, Commissioner

Richard W. Yarborough  
Richard W. Yarborough, Commissioner

Brantley Blue  
Brantley Blue, Commissioner