

BEFORE THE INDIAN CLAIMS COMMISSION

GOSHUTE TRIBE OR IDENTIFIABLE)	
GROUP, REPRESENTED BY THE)	
CONFEDERATED TRIBES OF THE)	
GOSHUTE RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 326-J
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER DENYING MOTION FOR REHEARING

The Commission, having considered the defendant's motion for a rehearing filed on September 6, 1973, and the plaintiff's response in opposition to the said motion filed on October 16, 1973, and the defendant's reply to plaintiff's response, filed on October 29, 1973, concludes that the grounds set forth in support of the motion for rehearing relate to matters which defendant has previously presented to the Commission and that the motion represents a restatement of arguments which were presented to the Commission and fully considered in arriving at the decision of August 9, 1973.

The Commission further concludes that the defendant's request for a trial on the issue of liability and damages for the removal of minerals prior to the January 1, 1875, taking of plaintiff's lands does not warrant the granting of a rehearing in this case. By defendant's own admission it was aware in January 1971, when it received the plaintiff's expert appraisal report, of the details of plaintiff's claim and the evidence to be offered in proof of damages for minerals removed prior to January 1, 1875. At the hearing on February 23 and 24, 1971, defendant objected to the admission of evidence relating to the value of the minerals so removed on the grounds that such a claim was not asserted in the plaintiff's petition and that the United States could not be held liable for the taking of minerals from the Indians' aboriginal lands. The defendant asserted its position that in spite of the Commission's decision in Washoe Tribe v. United States, Docket 288, 21 Ind. Cl. Comm. 447 (1969), the United States could not be held liable for any pre-evaluation date removal of minerals. When its objection to the admission of plaintiff's evidence on this issue was overruled, defendant did not move to have the record remain open for the submission of any evidence it might wish to present. Defendant did not

cross-examine plaintiff's expert witness on this issue, and made no motion to reopen the record to present evidence on the issue of damages for the pre-evaluation date removal of minerals. Accordingly, it does not appear that the defendant can validly claim surprise or that it has been deprived of an opportunity to present any evidence it deemed pertinent to the issue of damages for the removal of minerals from plaintiff's lands before the valuation date,

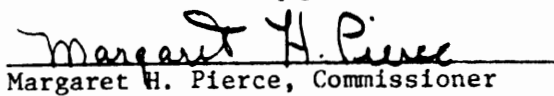
IT IS THEREFORE ORDERED that the motion for rehearing be, and the same is hereby, denied.

Dated at Washington, D. C., this 14th day of November 1973.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner