

BEFORE THE INDIAN CLAIMS COMMISSION

THE LIPAN APACHE TRIBE, THE MESCALERO)	
APACHE TRIBE, et al.,)	
)	
Plaintiffs,)	
)	
THE PUEBLO DE SAN ANTONIO DE LA YSLETA)	
DEL SUR, AND THE PIROS, MANSOS AND THE)	
SUMAS TRIBES, AND THE PUEBLO OF THE)	
TIGUA INDIAN COMMUNITY,)	
)	
Intervenors,)	
)	
THE TONKAWA TRIBE OF INDIANS OF OKLAHOMA,)	
amalgamated with and successors in interest)	Docket No. 22-C
to the TEXAS TONKAWA TRIBE and the TEXAS)	
LIPAN TRIBE, and the TEXAS KARANKAWA)	
TRIBE,)	
)	
Second Intervenors,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER GRANTING IN PART DEFENDANT'S MOTION
TO DISMISS APPLICATIONS TO INTERVENE, ETC.

On November 5, 1969, the Commission granted the motion of the Pueblo de San Antonio de la Ysleta del Sur, and the Piros, Mansos and Sumas Tribes, and the Pueblo of the Tigua Indian Community to intervene under the claim of the Lipan Apache Tribe, the Mescalero Apache Tribe, et al., in the above-captioned Docket 22-C. See 22 Ind. Cl. Comm. 1 (1969). On April 19, 1972, the Commission permitted the above-captioned second intervenors to intervene under this docket ". . . for the limited purpose of establishing, on the present record, the applicant's identification with the aboriginal owner of the Lipan claimed area." See 27 Ind. Cl. Comm. 485 (1972). On July 20, 1972, the Tiwa Tribe of the Pueblo of San Juan de Guadalupe, alleging to be the owner in common of a portion of the claim of the intervenors, moved to intervene and to be recognized as a separate identifiable group of Indians entitled to a portion of any award entered herein in favor of the intervenors. This latter motion is currently pending before the Commission. An amended motion was filed by the Tiwa Tribe of the Pueblo of San Juan de Guadalupe on October 16, 1972.

On May 15, 1974, the defendant moved that the applications to intervene filed herein by the intervenors, the second intervenors, and by the Tiwa Tribe of the Pueblo of San Juan de Guadalupe all be dismissed with prejudice. Defendant based its motion on the decision of the Court of Claims dismissing the claim in intervention of the Wichita Tribe and Affiliated Bands in the case of Kiowa, Comanche and Apache Tribe v. United States, 202 Ct. Cl. 29 (1973), cert. denied, 416 U.S. 936 (1974) (rev'g Docket 257, 24 Ind. Cl. Comm. 405 (1971); 26 Ind. Cl. Comm. 101 (1971)). In that case the Court of Claims held that the Indian Claims Commission is without jurisdiction to permit an intervention after August 13, 1951, in a timely filed claim by a party claiming aboriginal title adversely to the plaintiffs.

On July 1, 1974, the intervenors and the second intervenors filed responses opposing defendant's motion, as, on July 15, 1974, did the Tiwa Tribe of the Pueblo of San Juan de Guadalupe. On July 10, 1974, the plaintiffs filed a response wherein they urged that defendant's motion be granted. On August 22, 1974, the defendant filed a reply to the several responses.

The Commission having considered defendant's said motion, together with the separate responses thereto and the defendant's reply to said responses, has concluded that the defendant's motion, insofar as it relates to the second intervenors, the Tonkawa Tribe of Indians, et al., is without merit since said second intervenors were permitted to intervene under this docket for the limited and express purpose of establishing that they are the real party in interest with respect to the timely filed claim of the Lipan Apache Tribe. Under such circumstances the rule in the Kiowa, Comanche case, supra, is inapposite and resolution of the issue of the identity of the real party in interest under the claim of the Lipan Apache Tribe should be made on the merits as part of the Commission's pending decision on title. The Commission has therefore concluded that defendant's motion insofar as it relates to said second intervenors should be denied.

With respect to the defendant's motion insofar as it relates to the intervenors, the Pueblo de San Antonio de la Ysleta del Sur, et al., the Commission has concluded that to the extent the intervenors' claim is adverse to that of the plaintiffs the rule pronounced by the Court of Claims in the Kiowa, Comanche case, supra, is controlling. To the extent said intervenors' claim is not adverse to that of the plaintiffs, it is a new claim barred absolutely by the jurisdictional limitation on the filing of claims before this Commission enunciated by Congress as section 12 of the Indian Claims Commission Act, 60 Stat. 1049, 1052 (1946). Defendant's motion insofar as it relates to the claim of the intervenors should therefore be granted. From this conclusion, it necessarily follows that the motion of the Tiwa Tribe of the Pueblo of San Juan de Guadalupe to intervene should be denied.

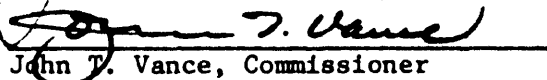
IT IS THEREFORE ORDERED that the defendant's motion to dismiss the application in intervention of the second intervenors, the Tonkawa Tribe of Indians, et al., be, and the same hereby is, denied.

IT IS FURTHER ORDERED that the defendant's motion to dismiss the application in intervention of the intervenors, the Pueblo de San Antonio de la Ysleta del Sur, et al., be, and the same hereby is, granted, and, further that the Commission's order of November 5, 1969, granting intervention to the Pueblo de San Antonio de la Ysleta del Sur, et al., be, and the same hereby is, vacated, and the motion to intervene upon which said order was based be, and the same hereby is, denied.

IT IS FINALLY ORDERED that the above-described motion to intervene filed July 20, 1972, as amended October 16, 1972, by the Tiwa Tribe of the Pueblo of San Juan de Guadalupe, be, and the same hereby is, denied as being moot.

Dated at Washington, D. C., this 15th day of January 1975.


 Jerome K. Kuykendall, Chairman


 John T. Vance, Commissioner

Richard W. Yarborough, Commissioner


 Margaret H. Pierce, Commissioner


 Brantley Blue, Commissioner