BEFORE THE INDIAN CLAIMS COMMISSION

THE WESTERN SHOSHONE IDENTIFIABLE GROUP, REPRESENTED BY THE TEMOAK BANDS OF WESTERN SHOSHONE INDIANS, NEVADA, Plaintiff,	)	
WESTERN SHOSHONE LEGAL DEFENSE AND EDUCATION ASSOCIATION and FRANK TEMOKE, Petitioners,	)	
v.	)	Docket No. 326-K
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: February 20, 1975

Appearances:

Robert W. Barker, Attorney for Plaintiffs.

John D. O'Connell, Attorney for Petitioners.

MaryEllen A. Brown, with whom was Assistant Attorney General, Wallace H. Johnson, Attorneys for Defendant.

OPINION OF THE COMMISSION

Pierce, Commissioner, delivered the opinion of the Commission.

On April 18, 1974, the Western Shoshone Legal Defense and Education Association, an unincorporated group, and Frank Temoke, by

and through their counsel, petitioned the Commission pursuant to Section 10 of the Indian Claims Commission Act (60 Stat. 1049, 1052) and sections 1(c), 8(b), and 13 of the General Rules of Procedure of the Commission (25 C.F.R. §§503.1(c), 503.8(b), 503.13), for a stay of the proceedings and for leave to present an amended claim in the above-identified case. 1/ The petitioners are

1/ Section 10 of the Indian Claims Commission Act provides that:

> Any claim within the provisions of this Act may be presented to the Commission by any member of an Indian tribe, band, or other identifiable group of Indians as the representative of all its members; but wherever any tribal organization exists, recognized by the Secretary of the Interior as having authority to represent such tribe, band, or group, such organization shall be accorded the exclusive privilege of representing such Indians, unless fraud, collusion, or laches on the part of such organization be shown to the satisfaction of the Commission.

The General Rules of Procedure relied on by the petitioner provide as follows:

> Section 1. Plaintiffs.
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> (c) Where by virtue of fraud, collusion or laches on the part of a recognized tribal organization a claim has not been presented (or has not been included as part of a presented claim), any member of such tribe, band or group may file claim on behalf of all the other members of such tribe, band or group upon complying with the provisions of Sec. 8(a).
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> Section 8. Capacity.
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> . . . .
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> (b) If a petition is filed by one or more members of a tribe, band or other identifiable group having a tribal organization which is recognized by the Secretary of the Interior because the tribal organization has failed or refused to take any action authorized by the act, the petition shall be verified and shall aver that the

individual members of the plaintiff Western Shoshone Identifiable Group. The plaintiff, through its attorney of record, filed a memorandum opposing the petition, and the defendant filed a motion to dismiss it. Thereafter, the petitioners responded to the opposition of both the plaintiff and the defendant. By order of October 2, 1974, the Commission set oral argument for November 14, 1974, on the issue of collusion. On November 7, 1974, the petitioners filed a memorandum on collusion. The plaintiff filed a memorandum on collusion on November 13, 1974. At the oral argument

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1/ (Continued)

> petitioner is a member of the tribe, band or group. The petitioner shall also set forth with particularity the efforts of the petitioner to secure from the duly constituted and recognized officers of said tribal organization such action as he desires and the reasons for his failure to obtain such action (such as fraud, collusion or laches) or the reasons for not making such effort.
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> SEC. 13. Amended and supplemental pleadings.
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> (a) Amendments. (1) A party may amend its pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been set for hearing, it may so amend it at any time within 20 days after it is served. Otherwise a party may amend its pleading only by leave of the Commission or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time allowed for responding to an original pleading, unless the Commission otherwise orders.
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> (c) Relation back of amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

the defendant moved to strike the petitioners' memorandum of November 7 and the plaintiff's memorandum of November 13, or, in the alternative, that the defendant be granted time to reply to these pleadings if the defendant deemed such a reply to be advisable. The Commission, by order of November 20, 1974, denied the motion to strike, and allowed 30 days for the defendant to respond. On November 25, 1974, the defendant advised the Commission that it did not desire to respond further to the plaintiff's and the petitioners' pleadings of November 7 and 13, 1974.

The crux of the petition for a stay is the assertion that, in effect, the Indian title to the greater portion of the aboriginal lands of the Western Shoshones, plaintiffs in Docket 326-K, has not been extinguished, but that such lands are unoccupied and under the supervision of the United States which, as guardian of the Western Shoshones, has the duty of supervising and protecting their property. The petitioners also assert that the Docket 326-K proceeding before the Commission, seeking an award of damages, will extinguish the Western Shoshones' claim to lands, title to which petitioners allege has never been extinguished by the United States, and that the Temoak Bands and the United States have collusively included, within the Docket 326-K claim, lands still owned by the Western Shoshones, thus "selling" Western Shoshone lands to the United States. The petition is apparently intended to refer only to aboriginal lands of the Western Shoshones in Nevada, amounting to 22,211,753 acres (exclusive of reservations), and does not affect their aboriginal lands in California.

The defendant asserts and the petitioners[2] deny that the petition is barred by Section 12 of the Indian Claims Commission Act (60 Stat. 1049, 1052), which provides that no claim existing before, but not presented within five years after the date of approval of the Act (August 13, 1946), may thereafter be submitted to any court or administrative agency for consideration. The petitioners point out that under their proposal, the quantity of land in the Docket 326-K claim would be reduced, but except for that and a change in the valuation date for the Nevada lands, the claim would not be changed.

The original Docket 326 petition contained specific counts setting forth the claims of the Western Bands of the Shoshone Nation of Indians.[3] Paragraphs 23 and 25 of this petition, filed on August 10, 1951, state that:

> 23. Prior to 1863 and from time immemorial, the Western Bands of the Shoshone Nation of Indians, represented herein by the Te-Moak Bands of Western Shoshone Indians, Nevada, owned or occupied a large territory of land in the present State of Nevada, including the lands set forth in the Treaty of Ruby Valley of October 1, 1863, referred to in paragraph 6(f) hereof and shown on Exhibits A and B attached hereto.
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> 25. In violation of said Western Bands' rights of ownership or occupancy in the lands referred to in paragraph 15 hereof, or in violation of the right or title or ownership or occupancy recognized in the said bands by the Treaty of Ruby Valley, defendant has disposed of a large part of the said land to settlers and others, or has seized and converted

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2/ In this opinion we refer to Western Shoshone Legal Defense and Education Association and Frank Temoke as "petitioners", and the Western Shoshone Identifiable Group as "plaintiff."

3/ By Commission order of August 16, 1967, the claim of the Western Shoshone Identifiable Group was severed from the claims filed in Docket 326 on August 10, 1951, for five groups of Shoshones including the Western Shoshones, and the Western Shoshone claim was designated Docket No. 326-K.

> a large part of the said lands to its own use and benefit, without any compensation to the said Western Bands or compensation agreed to by them. Alternatively, thereby defendant has not dealt fairly and honorably with said Western Bands.

These paragraphs, describing plaintiff's lands and alleging, among other things, that the United States converted a large part of these lands to its own use and benefit, were denied in the defendant's answer, putting in issue from the outset of this proceeding the question whether the United States converted to its own use and benefit a large part of the Western Shoshone aboriginal lands, including those described in the October 1, 1863, Treaty of Ruby Valley (18 Stat. 689). The quoted paragraphs seem broad enough to support the petitioners' assertions to a smaller quantity of land than the 22,211,753 acres in Nevada to which the Western Shoshones' aboriginal title was extinguished as determined by Findings 23 and 26 in the Commission's adjudication in the title phase of Docket 326-K (11 Ind. Cl. Comm. 387, 413-14, 416). Accordingly, we do not agree with the defendant's arguments that the petitioners are attempting to present a new claim barred by section 12 of the Indian Claims Commission Act.

In substance, the petition for a stay is a request that the Commission reconsider basic portions of its findings in the title and valuation proceedings in Docket 326-K relating to the quantity of land in Nevada which the United States acquired from the Western Shoshones, and to the date as of which the Nevada lands should be valued. The parties by stipulation agreed to a date which was approved by Commission order of

February 11, 1966. The petitioners request a hearing before the Commission on these matters, making their petition the equivalent of a motion for rehearing. Such a motion should have been filed within 30 days after the title decision was issued on October 16, 1962. (Section 33 of the Commission's General Rules of Procedure.) Since October 1962, when the title phase of this case was completed, the plaintiff and defendant have spent large amounts of money in having appraisals made of the land and in preparing for other aspects of the valuation proceeding in this docket. The desirability of protecting large expenditures of time and money made in support of adjudications under the Indian Claims Commission Act, in itself, would ordinarily be sufficient reason for not considering a motion for rehearing which is many years late, as this is. Not only is the petitioners' request filed over 11 years late, it fails to meet other requirements of Section 33 of the Rules which provide that motions for rehearing specify errors of fact and law with full reference to evidence and authorities relied upon. The petition is unsupported by any data which would justify reopening or rehearing the question of the quantity of land to which Indian title has been extinguished or the related matters of the evaluation dates.

Moreover, Commission rules permit amendment by members of plaintiff tribe, as petitioners are, only in situations where, because of fraud, collusion, or laches by the recognized tribal organization, a claim has not been presented (or has not been included as part of a presented claim). (Sec. 1(c), Rules of Procedure, see note 1, supra.) The petitioners try to meet this requirement with the assertion that counsel for the parties have acted collusively in refusing to acknowledge that the Western Shoshone aboriginal title is

unextinguished over much of the land included in Docket 326-K, and this refusal might jeopardize a valid claim of the Western Shoshones to some of their aboriginal lands in Nevada. We conclude, for the reasons discussed below, that in addition to the lateness of this petition, the contentions of collusion upon which the petition and supporting statements are based are untenable, and that no grounds are alleged or appear of record which would warrant granting the requested stay of proceedings or the petition to amend, even if the requests had been timely filed.

Collusion has been defined as an agreement between two or more persons to defraud a person of his rights by the forms of law, or to obtain an object forbidden by law. It implies the existence of fraud of some kind, the employment of fraudulent means, or of lawful means for the accomplishment of an unlawful purpose. (Black's Law Dictionary 331 (rev. 4th ed. (1968).)

We shall first consider the petitioners' assertions of collusion between the plaintiff's counsel and the defendant regarding the area of plaintiff's aboriginal land and the extinguishment of the Western Shoshones' use and occupancy title to that land. The original petition, the defendant's answer, and the entire record in Docket 326[4/] indicate that the petitioners' charge of collusion has no basis in fact. The location of the land involved in this proceeding is referred to in paragraphs 23 and 25 (quoted above) of

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4/ See note 3.

the plaintiff's 1951 petition. Defendant denied plaintiff's allegations. Both parties introduced evidence on the issue of plaintiff's aboriginal title and the issue was tried in an adversary proceeding. Far from being the result of agreement or collusion between the plaintiff's counsel and the defendant, the Commission's Finding 23 relating to the area of plaintiff's use and occupancy at the time of the Treaty of Ruby Valley, and Finding 26 relating to the extinguishment of aboriginal Indian title, were based on issues resolved after hearing before the Commission, and on the consideration of oral and documentary evidence. In fact, in the title phase of this case, the area of aboriginal use and occupancy by the plaintiff and the extinguishment of the plaintiff's aboriginal title were fundamental prerequisites in establishing the plaintiff's claim. In the original petition filed in Docket 326 on August 10, 1951, paragraph 23 alleged aboriginal title in the Western Shoshones to a large territory of land in Nevada, including the lands set forth in the Treaty of Ruby Valley. In paragraphs 25 and 26 of the petition, it was alleged that defendant seized and converted a large part of the plaintiff's lands to the use and benefit of the defendant, in violation of the Treaty of Ruby Valley and without payment of compensation to the plaintiff. In its answer, filed on July 31, 1952, the defendant denied both the allegation of aboriginal ownership in the plaintiff and the allegations of seizure and conversion.

After hearing and weighing the evidence, the Commission determined, in Finding 26 (11 Ind. Cl. Comm. 837 at 416) as follows:

> The Commission further finds that the Goshute Tribe and the Western Shoshone identifiable group exclusively used and occupied their respective territories as described in Findings 22 and 23 (except the Western Shoshone lands in the present State of California) until by gradual encroachment by whites, settlers and others, and the acquisition, disposition or taking of their lands by the United States for its own use and benefit, or the use and benefit of its citizens, the way of life of these Indians was disrupted and they were deprived of their lands. For these reasons the Commission may not now definitely set the date of acquisition of these lands by the United States. The Commission, however, finds that the United States, without the payment of compensation, acquired, controlled, or treated these lands of the Goshute Tribe and the Western Shoshone group as public lands from date or dates long prior to this action to be hereinafter determined upon further proof unless the parties may agree upon a date.

We note particularly that the Commission determined, in addition to the gradual encroachment on Western Shoshone lands by whites, settlers, and others, that the United States had acquired, disposed of, or taken, for its own use and benefit, lands of the plaintiff. This finding is an adjudication that title was extinguished, as stated expressly in paragraph 6 of the Commission's interlocutory order of October 16, 1962, in which the Commission concluded as a matter of law and fact:

> 6. That the Western Shoshone identifiable group exclusively used and occupied the lands described in Finding of Fact No. 23; that the Indian title to such of the lands of the Western Shoshone group as are located in the present State of California was extinguished on March 3, 1853; and that as to the remainder of the lands of the Western Shoshone, Indian title was extinguished by the gradual encroachment by whites, settlers and others, and the acquisition, disposition or taking of said lands by the United States for its own use and benefit, or the use and benefit of its citizens. [11 Ind. Cl. Comm. 387, 446 (1962).]

This brief summary of the process of adjudication of the quantity of land involved and of the extinguishment of aboriginal title demonstrates that, contrary to the petitioners' assertions of collusion, these issues were tried and determined by the Commission after hearing and considering the evidence of both parties thereon.

However, the determination of the date for valuation of plaintiff's Nevada land was concluded in a different way. The Commission's determination that the extinguishment of the plaintiff's aboriginal title to these lands was gradual (not a sudden extinguishment) was the basis of its holding in Finding 26 that it might not then set the date of acquisition of these lands by the United States. The Commission found that the United States, without payment of compensation, acquired, controlled, or treated these lands of the Western Shoshones as public lands from a date or dates long prior to the title proceeding, such date or dates to be thereafter determined upon further proof, unless the plaintiff and defendant agreed upon a date. The requirement that further proof be taken unless the parties agreed upon the date or dates when the defendant acquired, controlled, or treated the plaintiff's lands as public lands was contained in Finding 26 of the Commission title decision issued on October 16, 1962.

Subsequently, by order of February 11, 1966, the Commission approved a joint stipulation of the plaintiff and the defendant, entered into in lieu of further proof and adjudication by the Commission on the valuation date, as follows:

> Counsel for both parties, having reviewed pertinent information relating to the time as of which the Western Shoshone lands in Nevada (Indian Claims Commission Finding No. 23) should be valued, hereby stipulate that the Nevada portion of the Western Shoshone lands in dockets 326 and 367 shall be valued as of July 1, 1872.

In support of the charge of collusion, the petitioners assert that the stipulated evaluation date for plaintiff's Nevada lands is detrimental to the interest of the plaintiff (all Western Shoshones) without indication of evidence to sustain the charge. The Court of Claims has held that the date of extinguishment of Indian title is the date the government actually takes over possession or exerts dominion. It may occur when the federal government ousts the Indians under a claim of right, gets possession of the land, or otherwise asserts dominion. (Pillager Bands of Chippewa Indians v. United States, 192 Ct. Cl. 698, 428 F.2d 1274 (1970), aff'g Docket 144, 21 Ind. Cl. 1 (1969); see Simon Plamondon ex rel. Cowlitz Tribe v. United States, 199 Ct. Cl. 523, 467 F. 2d 935 (1972), aff'g Docket 218, 25 Ind. Cl. Comm. 442 (1971).) The petitioners' assertions to the effect that the agreement of the parties about the evaluation date for Nevada land was collusive seem to stem from a supposition that there was no evidence on this matter. As indicated above, in our discussion of the basis of Finding 26 in the title decision herein,

the very question was in issue and resolved by the finding of gradual encroachment and taking. The approval by the Commission in its order of February 11, 1966, of the stipulation date agreed to by the parties as the evaluation date for the Nevada lands was a determination that the stipulated date was acceptable. If the date had been unfair to the plaintiff, the Commission would not have approved it.

Where, as in this case, there was no single clearcut extinguishment of Indian title as of one date or even a few dates certain, and the extinguishment was by gradual encroachment over a considerable period of time, it has been customary to rely on a composite or average date for the purpose of valuing the lands. This eliminates the cost and delay in considering every single taking date or disposition of land. As Judge Nichols recently noted in a case which involved the use of an "average date" of extinguishment for the purpose of valuing aboriginal title lands of the Northern Paiute Indians in Nevada, ". . . . The Commission previously had asked the parties to try to agree on an 'average date'. 7 I.C.C. at 419. Such a legal shortcut is often necessary in Indian claims litigation, if it is ever to be concluded, and has the sanction of the Supreme Court." United States v. Northern Paiute Nation, 203 Ct. Cl. 468, 473; 490 F. 2d 954, 957 (1974), rev'g. on other grounds Docket 87-A, 28 Ind. Cl. Comm. 256 (1972). See Creek Nation v. United States, 302 U.S. 620 (1938). The Court of Claims has also held that the Commission has discretion to select an average "taking date" for valuation purposes for all lands where the "taking" extended over a number of years, but that it is not bound to do so. Three Affiliated Tribes of Fort Berthold Reservation v. United States, 182 Ct.

Cl. 543, 569, 390 F 2d. 686, 701 (1968) aff'g in part, rev'g in part, Docket 350-F, 16 Ind. Cl. Comm. 341 (1965).) Accordingly, an evaluation date which is agreed to by the parties with the approval of the Commission, dispenses with the necessity of further proof on the question of the dates of extinguishment of plaintiff's aboriginal title, but it is no indication of collusion between the parties. Since no objection to the evaluation date for the Nevada lands was raised until long after the date was approved, expensive appraisal studies based upon the date were made for both parties herein, and a valuation trial held and a decision based thereon issued, only the possibility of serious injustice would warrant reconsideration of the stipulated date. We find no basis for petitioners' charge of collusion.

To clarify our conclusion, one further argument in support of the charge of collusion will be noted. The petitioners, members of the plaintiff Western Shoshone Bands, disagree with the plaintiff's counsel about the proper presentation of the claim in this docket. However, the contention of the petitioners, that their position is not rightfully represented by the plaintiff's counsel, does not support their charges of collusion against the plaintiff's counsel and the defendant. The petitioners' reliance on cases involving class actions is of no avail in trying to establish collusion between the plaintiff's counsel and the defendant because the class action cases involved individuals having separate rights, some of whom were not represented, and these are clearly distinguishable from cases involving the interests in tribal

property of the members of an Indian tribe. This follows from the fact that a member of an Indian tribe does not have individual ownership in tribal lands. Minnesota Chippewa Tribe v. United States, 161 Ct. Cl. 258, 315 F 2d. 906 (1963), rev'g in part 8 Ind. Cl. Comm. 781 (1960) Docket 18-B; Spokane Tribe of Indians v. United States, 163 Ct. Cl. 58 (1963) aff'g in part, rev'g in part 9 Ind. Cl. Comm. 236 (1961), Docket 331.

There being nothing to support a charge of collusion, the petitioners have no standing to amend the Docket 326-K claim, and the Commission is not required to consider any of petitioners' legal arguments. Nonetheless, without ruling on their arguments, we will note our views on some of the propositions advanced by the petitioners.

The crux of the petitioners' legal position is the contention that aboriginal title to large portions of plaintiff's land has not been extinguished because the treaty provided the only methods by which plaintiff's aboriginal title might be extinguished and the United States obtained and is holding large quantities of former aboriginal lands of the plaintiff for purposes not authorized by the treaty. Thus, it is contended, the Treaty of Ruby Valley anticipated that plaintiff's aboriginal lands might be acquired by the defendant for roads and military posts and used by non-Indians for specific uses such as mining and agricultural development. But the petitioners argue in substance that the treaty did not permit the United States to acquire lands for inclusion in national forests and grazing districts, although many of plaintiff's

former aboriginal lands have for many years been included in and administered as federal land and part of a national forest or a federal grazing district. The Supreme Court observed in United States v. Santa Fe Pacific Ry., 314 U.S. 339, 347 (1947) that the power of Congress is supreme with regard to the extinguishment of Indian title based on aboriginal possession, adding:

> The manner, method and time of such extinguishment raise political, not justiciable, issues. Buttz v. Northern Pacific Railroad, ... As stated by Johnson v. M'Intosh . . . "the exclusive right of the United States to extinguish" Indian title has never been doubted. And whether it be done by treaty, by the sword, by purchase, by the exercise of complete dominion adverse to the right of occupancy, or otherwise, its justness is not open to inquiry in the courts. Beecher v. Wetherby, 95 U.S. 517, 525.

If, as petitioners maintain, the treaty did not authorize the use of plaintiff's aboriginal lands for some of the purposes for which the United States took them, e.g., for national forests or for federal grazing districts, Congress had full power to authorize such uses by subsequent legislation which superseded the treaty in this respect. (See Lone Wolf v. Hitchcock, 187 U.S. 553, 564-568 (1903); F. Cohen, Handbook of Federal Indian Law, Ch. 3, §6 (1945)).

A further legal argument of the petitioners is the contention that the Treaty of Ruby Valley gave the Western Shoshones recognized title to the lands described in that treaty. Recognized title is a technical term which the courts use to describe a legal right or interest in land which Congress intended to grant to an Indian tribe. In Miami Tribe v. United States, 146 Ct. Cl. 421, 439; 175 F. Supp. 926, 936 (1959), aff'g

in part Docket 67 et al. 2 Ind. Cl. Comm. 617 (1954), the Court of Claims described recognized title as follows:

> Where Congress has by treaty or statute conferred upon the Indians or acknowledged in the Indians the right to permanently occupy and use land, then the Indians have a right or title to that land which has been variously referred to in court decisions as "treaty title", "reservation title", "recognized title", and "acknowledged title." As noted by the Commission, there exists no one particular form for such Congressional recognition or acknowledgment of a tribe's right to occupy permanently land and that right may be established in a variety of ways. Tee-Hit-Ton v. United States, 348 U.S. 272; Hynes v. Grimes Packing Co., 337 U.S. 86; Minnesota v. Hitchcock, 185 U.S. 373.

In Sac and Fox Tribe v. United States, 161 Ct. Cl. 189, 192-93, (1963), cert. denied, 375 U.S. 921 (1936) (aff'g Docket 83, 7 Ind. Cl. Comm. 675 (1959)), the court relied on its definition of recognized title in Minnesota Chippewa Tribe v. United States, supra, stating that:

> ....Congress, acting through a treaty or statute, must be the source of such recognition, and it must grant legal rights of permanent occupancy within a sufficiently defined territory. Mere executive "recognition" is insufficient, as is a simple acknowledgment that Indians physically lived in a certain region. There must be an intention to accord or recognize a legal interest in the land.

Articles V and VI are the only provisions in the Treaty of Ruby Valley (8 Stat. 689) on which the claim for recognized title might be based. Article V described lands claimed and occupied by some of the Western Shoshone Bands at the time of the treaty, but contained no grant of legal rights to the Western Shoshones in those lands. Article VI of the treaty provided that whenever the President deemed it proper, he

would make reservations for the use of the Shoshones within the areas described in Article V. Under Article VI the Western Shoshones agreed to move to such reservations as the President might indicate, and to reside and remain therein. This provision does not recognize or grant any permanent right to the lands except those which, at a later date, the President might designate for reservations. If Articles V and VI of the Treaty of Ruby Valley are compared with Articles IV and V of the Treaty of Greeneville (7 Stat. 49), which the petitioners cited and which, when read with subsequent treaties of cession, has been held to have granted recognized title to the signatory tribes, the difference in the intent of these provisions in the respective treaties seems unequivocal. In Articles IV and V of the Treaty of Greeneville, the United States recognized title in the Indian treaty tribes by relinquishing its claims to specified Indian lands, reciting that the Indians who had a right to the lands were to quietly enjoy them, hunting, planting, and dwelling thereon so long as they pleased. The treaty provided that the Indians might sell their lands but only to the United States; and, until such sale, the United States promised to protect the Indians in the quiet enjoyment of their lands against citizens of the United States and other white intruders. No such rights were granted the Western Shoshones in the Treaty of Ruby Valley.

In Crow Tribe v. United States, 151 Ct. Cl. 281 (1960), cert. den. 366 U.S. 924 (1961), the Court of Claims concluded that the Crow and other tribes held their lands under the Treaty of Fort Laramie of September 17, 1851 (11 Stat. 749), by recognized title. In the Crow case and in Assiniboine Indian Tribe v. United States, 77 Ct. Cl. 347 (1933) cert. denied, 292 U.S. 606 (1933), the court held that the Treaty of Fort Laramie was a treaty of recognition. The treaty fixed boundaries within which the tribes agreed to reside. In Article III of the Fort Laramie Treaty, the United States bound itself to protect the Indian signatories against the commission of depredations by the people of the United States, and in Article IV the Indian tribes agreed to make restitution for any wrongs by their people against people of the United States lawfully residing in or passing through the tribes' respective territories. The court concluded that the language of the treaty, and its purpose and intent as a whole, assured to each of the participating tribes title to the lands set aside. No such recognition of permanent legal rights is contained in the Treaty of Ruby Valley.

We note one other matter, namely, the petitioners' characterization of an award to the plaintiff in this case as the equivalent of a purchase by the United States of part of the Western Shoshones' aboriginal lands. Equating the present proceeding to a sale of aboriginal title is incorrect. The Commission determined in the title proceeding that the Western Shoshones have no present tribal interest in their former aboriginal lands (Finding 26, quoted above). The claim in Docket 326-K arose from the defendant's

gradual acquisitions of Western Shoshone lands after October 1, 1863, without proper payment to the plaintiff. Nothing in the Indian Claims Commission Act authorizes the restoration of lands to Indian claimants. The remedy which this Commission may provide is to find and award the value of land, tribal title to which has been extinguished. Congressional action is the only means by which tribal title in former aboriginal lands might be restored to the Western Shoshones.

The petitioners request the Commission to suspend further action in this proceeding until the United States District Court for the Nevada District has decided the trespass action brought by the United States for a restraining order and for a permanent injunction against two individual Western Shoshones in the case of United States v. Dann, Civil No. R-74-60, BRT, (D. Nev.). The case assertedly involves the right of two Indians to use for their own grazing purposes, without permission of the United States, lands within the boundaries of plaintiff's former aboriginal lands which are now claimed and managed by the United States as public land. As the plaintiff has noted, individual Indians have no ownership interest or title in tribal lands. The District Court proceeding involving the legality of the use of plaintiff's former aboriginal lands outside of the reservation areas, by individual Western Shoshone Indians, does not raise issues which seem to us to warrant further delaying the proceedings before this Commission involving a tribal claim against the United States.

For the reasons discussed herein, we conclude that the petition for a stay of proceedings and for leave to present an amended claim in this docket should be dismissed. An order to this effect is this day being entered herein.

Margaret H. Pierce, Commissioner

We concur:

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Brantley Blue, Commissioner