

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.)	

ORDER DENYING PETITION TO STAY PROCEEDINGS AND PRESENT
AN AMENDED CLAIM AND FOR OTHER PURPOSES

On April 18, 1974, the Western Shoshone Legal Defense and Education Association and Frank Temoke (petitioners) filed a document entitled "Petition To Stay Proceedings And For Leave To Present Amended Claim," requesting leave "to present an amended claim" which would exclude from the claim being adjudicated in Docket 326-K a large amount of Nevada land as to which petitioners assert Indian title has not been extinguished. Petitioners base their right to appear on behalf of the Western Shoshone Indians on the allegation that the Temoak Bands of Western Shoshone Indians and the United States have acted in collusion to include in the Docket 326-K claim lands which still belong to the Western Shoshone people.

On May 1, 1974, the defendant moved to dismiss the petition on a number of grounds, asserting, among other things, that the petitioners are attempting to present a new claim prohibited by Section 12 of the Indian Claims Commission Act which bars consideration of claims existing before but not presented by August 13, 1951 (60 Stat. 1049, 1052); that the petitioners have failed to state a claim upon which relief can be granted; that petitioners lack capacity to maintain this suit on behalf of the plaintiff tribe; and that there is no basis for the charge of collusion. The petitioners replied to the defendant's motion on May 13, 1974.

On July 1, 1974, the plaintiff filed a memorandum opposing the petition, and on August 2, 1974, the petitioners replied to the plaintiff's memorandum. On August 30, 1974, the plaintiff filed a supplemental memorandum responding to the petitioners' reply.

By order of October 2, 1974, the Commission set oral argument on the issue of collusion for November 14, 1974. On November 7, 1974, the petitioners filed a memorandum on the issue of collusion, and on November 13, 1974, the plaintiff filed a memorandum on collusion. Following oral argument, at which 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.

Upon consideration of the foregoing pleadings, the oral argument, and for the reasons set forth in the opinion herein, the Commission concludes that:

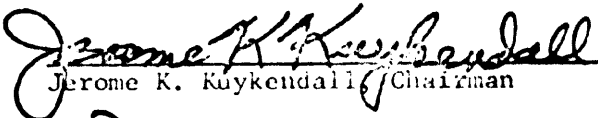
1. The petitioners, being members of the plaintiff Temoak Bands, have no standing to amend the Docket 326-K claim except upon a showing of fraud, collusion, or laches on the part of the recognized tribal organization in the presentation of the claim or failure to present part of the claim, 25 U.S.C. §701 (1970). The claim in Docket 326-K was presented by the Temoak Band of Western Shoshone Indians, Nevada, as representatives of the Western Shoshone Identifiable Group. The Temoak Bands, organized under the Indian Reorganization Act, 25 U.S.C. §461 (1970), and recognized by the Secretary of the Interior as having authority to maintain a suit, were held to have the capacity to maintain the Docket 326-K suit. Shoshone Tribe v. United States, 11 Ind. Cl. Comm. 387, 418 (1962). There being nothing to support a charge of collusion, the petitioners have no standing to amend the Docket 326-K claim.

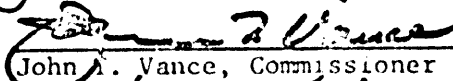
2. The matters which the petitioning Western Shoshone Legal Defense and Education Association seek to present to this Commission do not, in fact, relate to or constitute an amended claim on behalf of the Western Shoshone Indians but amount rather to a motion to have the Commission rehear its previous decisions, namely, the decision on title entered on October 16, 1962, Dockets 326 and 367, 11 Ind. Cl. Comm. 387; the order of February 11, 1966, by which the Commission approved a joint stipulation of the parties which provides that the Western Shoshone land in Nevada should be valued as of July 1, 1872; and the decision on value

entered on October 11, 1972, 29 Ind. Cl. Comm. 5. Section 33 of the Commission's General Rules of Procedure requires that motions for rehearing be filed within 30 days from the date of the conclusions on the findings complained of. The petitioners' request filed on April 18, 1974, asking, in effect, for reconsideration of Commission opinion and findings of October 16, 1962, was filed over 11 years late. The requirements of section 33 of the rules that errors of fact and errors of law be specified with full reference to evidence and authorities relied on to support the motion have not been met. The petitioners have asserted generalities to support their petition and failed to meet the requirements of the Rules of Procedure in this respect. The petition is unsupported by any data which would justify reopening or rehearing the question of the quantity of land taken or the related questions of the evaluation dates.


IT IS HEREBY ORDERED that the petition of the Western Shoshone Legal Defense and Education Association requesting leave to present an amended claim and for rehearing is dismissed.

Dated at Washington, D. C., this 20th day of February 1975.


 Jerome K. Kuykendall, Chairman


 John A. Vance, Commissioner


 Richard W. Yarborough, Commissioner


 Margaret M. Pierce, Commissioner


 Brantley Blue, Commissioner