

BEFORE THE INDIAN CLAIMS COMMISSION

TURTLE MOUNTAIN BAND OF CHIPPEWA)	Docket No. 113
INDIANS,)	
)	
RED LAKE AND PEMBINA BANDS,)	Docket No. 246
)	
LITTLE SHELL BAND OF CHIPPEWA)	Docket Nos. 191 and 221
INDIANS,)	
)	
Plaintiffs,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER DENYING DEFENDANT'S MOTION TO DETERMINE ISSUES
AND SET PROCEDURAL DATES FOR RECEPTION OF EVIDENCE
AND FOR ALTERNATIVE RELIEF

On January 27, 1975, the defendant filed a "Motion to Determine Issues and Set Procedural Dates for Reception of Evidence: and for Alternative Relief." The issues which defendant seeks to raise involve the extent to which the Indians' aboriginal title area was entered upon by settlers under public land laws, and the extent to which that area was subject to railway, townsite, school land and other grants from the United States to non-Indian parties, prior to February 15, 1905. The defendant's motion is, in effect, a motion for reconsideration, since its purpose is to obtain a change in the determination made by the Commission as to the date of extinguishment of the Indians' aboriginal title.

In the alternative, defendant moves that this Commission certify to the United States Court of Claims the foregoing issues in order to obtain a determination that the valuation date of certain tracts within the award area which were entered into by settlers under the public land laws, or were disposed of by the United States to non-Indian parties, prior to February 15, 1905, should, as a matter of law, be valued as of the date of such entry or grant with all remaining lands not so entered or granted, being valued as of February 15, 1905.

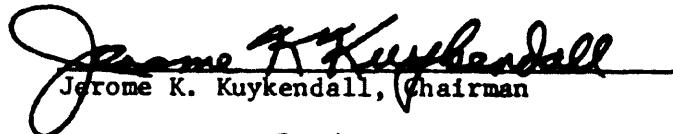
On February 4, 7, and 10, 1975, the plaintiffs in Docket 246, Docket 113, and Dockets 191 and 221, respectively, filed their responses in opposition to the instant motion.

UPON CONSIDERATION of the foregoing and the record in this case the Commission concludes that the question of the date of extinguishment of the Indians' aboriginal title was settled by the Commission in its decision of June 30, 1970, 23 Ind. Cl. Comm. 315 (1970). The plaintiffs in Dockets 113 and 246 and the defendant appealed the Commission's decision. Among the grounds for defendant's appeal was its assertion that the Commission had erred in fact and law in determining that Indian title had been terminated on February 15, 1905, by ratification of the McCumber Agreement. That issue was argued before the Court of Claims and the court rejected defendant's arguments, affirming the Commission's finding that Indian title had been extinguished as of February 15, 1905. 203 Ct. Cl. 426, 490 F.2d 935 (1974). Defendant filed a motion for a rehearing en banc in which the date of extinguishment issue was again raised. That motion was denied on May 31, 1974.

The Commission therefore concludes that the issues raised in defendant's motion have been settled and it is the law of the case that the date of extinguishment of the Indians' aboriginal title and, accordingly, the valuation date for the lands involved in this case is February 15, 1905.

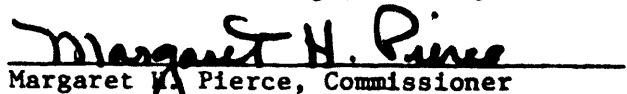
IT IS THEREFORE ORDERED that defendant's motion be, and the same is hereby, denied.

Dated at Washington, D. C., this 19th day of March 1975.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner