

BEFORE THE INDIAN CLAIMS COMMISSION

COLORADO RIVER INDIAN TRIBES,)	
et al.,)	
)	
Plaintiffs,)	
)	
v.)	Docket No. 283-B
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: August 28, 1975

Appearances:

I.S. Weissbrodt, Attorney for Plaintiffs.
Weissbrodt and Weissbrodt were on the
briefs.

James M. Upton, with whom was Assistant
Attorney General Wallace H. Johnson,
Attorneys for Defendant.

OPINION OF THE COMMISSION ON
PLAINTIFFS' MOTION FOR REHEARING

Vance, Commissioner, delivered the opinion of the Commission.

Plaintiffs have filed a motion for rehearing of our order denying the defendant's motion to dismiss plaintiffs' "trespass" claim, 36 Ind. Cl. Comm. 233 (1975). Plaintiffs state that, notwithstanding the title, our order effectively granted the relief sought by defendant because we concluded that no "trespass" claim was before the Commission in this docket. Defendant has responded to plaintiffs' motion for rehearing by stating that we correctly found that no "trespass" claim was before the Commission, ignoring the fact that the subject originally came before the Commission on defendant's motion.

In prior proceedings we have found that the plaintiffs retained aboriginal title to their California lands until March 3, 1853, and to their Arizona lands until March 3, 1865. 7 Ind. Cl. Comm. 219, 243-44 (1959), and we later awarded plaintiffs \$600,000, which included mineral enhancement, for these lands. 23 Ind. Cl. Comm. 87, 92 (1970).

Plaintiffs have provided the Commission with a copy of a letter dated March 13, 1970, to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, confirming statements they made in an informal conference in 1970 that they intended to present a claim for minerals mined and removed from plaintiffs' aboriginal title lands. However, we are still unclear as to the nature of plaintiffs' claim.

It is unclear to the Commission whether plaintiffs' "trespass" claim asks defendant to account for minerals removed from their aboriginal lands, as their petition suggests, or if plaintiffs intend to affirmatively show that defendant, or third parties aided and abetted by defendant, tortiously entered plaintiffs' aboriginal lands and removed minerals.

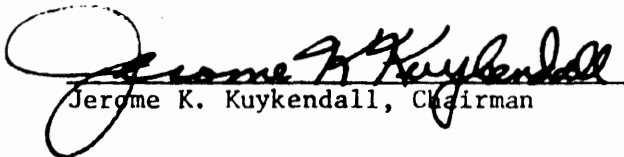
Quite simply, we feel that plaintiffs have not pleaded their claim with sufficient specificity to determine the nature thereof. We find that our original finding that no claim for preextinguishment removals of minerals from plaintiffs' lands was before us, was premature. We will vacate the Order Denying Defendant's Motion to Dismiss of July 10, 1975 and deny it without prejudice to defendant's refiling it at a later date. We invite plaintiffs to allege their "trespass" claim, either by

more definite statement in Docket 283-B, if it is an accounting claim, or by an Amended Petition as Docket 283-C, if it is a claim for tortious removals from plaintiffs' lands. After such a claim is filed defendant may, of course, raise any objections it may have.



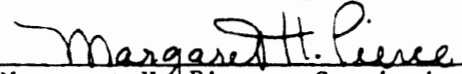
John T. Vance, Commissioner

We Concur:



Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner



Margaret H. Pierce, Commissioner



Brantley Blue, Commissioner