

BEFORE THE INDIAN CLAIMS COMMISSION

THE WESTERN SHOSHONE IDENTIFIABLE GROUP,)	
REPRESENTED BY THE TEMOAK BANDS OF)	
WESTERN SHOSHONE INDIANS, NEVADA,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 326-K
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

ORDER DENYING MOTIONS TO STAY PROCEEDINGS AND FOR OTHER PURPOSES

On November 15, 1976, and January 24, 1977, the Chairman of the Business Council of the Temoak Bands of Western Shoshone Indians filed motions to stay proceedings in Docket 326-K pursuant to resolutions of the Business Council of the Temoak Bands. On April 7, 1977, the Temoak Bands filed an amended motion for a stay of proceedings and supporting material through an attorney employed by their Business Council under a special contract of March 9, 1977, to represent the Temoak Bands before this Commission. The Temoak Bands, in their motions to stay proceedings, reject the litigation plan followed by the plaintiff from the time the claim was filed. They request a stay pending an administrative determination by the Secretary of the Interior on their petition filed with the Secretary on February 22, 1977, asserting that the Western Shoshone Indians of Nevada own beneficial title to some or all of the lands described in Article V of the Treaty of October 1, 1863, of Ruby Valley, 18 Stat. 689.

The defendant responded on November 23, 1976, January 14, and 31, February 23, and April 19, 1977, opposing the motions to stay on the ground that the Commission has already ruled against assertions that the plaintiff owns Indian title to the lands under consideration. On April 19, 1977, the defendant also filed a motion for an order dismissing all of the plaintiff's claims before the Commission in subject docket if the Commission grants a stay of proceedings herein.

On November 29, 1976, the plaintiff's attorney of record moved that the Commission enter its findings on offsets and stay entry of final judgment until disposition of the motion to stay proceedings. In a response of December 8, 1976, the defendant opposed the request for stay of entry of final judgment. On February 28, 1977, the plaintiff's attorney of record replied to the first two motions to stay filed by the Temoak Bands and on April 19, 1977, replied to the amended motion to stay, requesting, by cross-motions, that the Commission issue its findings and conclusions on the offsets phase of this case and that the Commission request the Secretary of the Interior to assist in holding meetings of the Western Shoshones for the purpose of deciding on a course of action in this litigation. On April 28, 1977, the plaintiff's attorney of record filed a response in opposition to the defendant's motion to dismiss.

On April 27, 1977, the defendant responded to the cross-motions of the attorney of record for the plaintiff; on May 2, 1977, the Temoak

Bands responded, opposing the defendant's motion to dismiss, and replied to the responses of the defendant and to that of the attorney of record for the plaintiff to the amended motion for a stay. The response of May 2 also replied to the cross-motions of the plaintiff's attorney of record. On May 12, 1977, the attorney of record for the plaintiff responded to the Temoak Bands' reply to the cross-motions.

Oral argument on the above-listed motions, responses, and supporting pleadings was held before the Commission on July 18, 1977.

Upon consideration of the foregoing pleadings, the supporting documents, and oral argument thereon, and being fully advised in the premises, the Commission concludes that:

(1) The Temoak Bands, organized under the Indian Reorganization Act, 25 U.S.C. §461, 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 of Indians v. United States, 11 Ind. Cl. Comm. 387, 418 (1962). The Western Shoshone Identifiable Group, plaintiff herein, is made up of persons from at least four separate reservations, from a colony, and from non-reservation groups. The plaintiff has been represented before the Commission, since the filing of the Docket 326-K claim in 1951, by the Temoak Bands of Western Shoshones. The Temoak Bands claim authority, as exclusive representative of the plaintiff, under an irrevocable power of attorney, to request a stay of these proceedings in attempting to obtain part of the land included in subject claim rather than money compensation therefor. In filing the motions to stay,

the Business Council of the Temoak Bands has reversed its former position of pursuing the claim herein under the Indian Claims Commission Act for money compensation and, by requesting the stay, has adopted the position of the Western Shoshone Legal Defense and Education Association. The requests by that Association for a stay of proceedings and to present an amended claim herein were denied by the Commission, which denial was affirmed by the Court of Claims. 35 Ind. Cl. Comm. 457 (1975), aff'd, Western Shoshone Legal Defense and Education Association v. United States, 209 Ct. Cl. 43 (1976), cert. denied 429 U.S. 885 (1976).

(2) Two tribes, the Yomba Shoshones and the Duckwater Shoshones, with members belonging to the plaintiff Identifiable Group challenge the assertion that the Temoak Bands are the exclusive representative of the plaintiff. The Court of Claims has held that the exclusive right of representation granted in Section 10 of the Indian Claims Commission Act for tribal organizations recognized by the Secretary of the Interior extends only to representation of its own members (Turtle Mountain Band of Chippewa Indians v. United States, 203 Ct. Cl. 426, 454-59 (1974); cf. Western Shoshone Legal Defense and Education Association, supra, at 60-61 and note 18 on this point.)

(3) Assuming, without deciding, that the Temoak Bands are the exclusive representatives of the Western Bands of the Shoshone Tribe of Indians under an irrevocable power of attorney, we are of the opinion that it is too late in the litigation for the Commission to be asked to stay

proceedings in order to permit the adjudication of the case on a new theory, and this would be our position had the request come from the attorney of record for the plaintiff, since the law of the case has long been established. Western Shoshone Legal Defense and Education Association, supra.

(4) The cross-motion of the attorney of record for the plaintiff that the Commission enter its findings and conclusions on offsets and his motion that the Commission stay entry of final judgment until disposition of the motion to stay proceedings will be dismissed as the Commission's action on offsets in subject docket and on the motions to stay proceedings is being taken today. The cross-motion of the plaintiff's attorney of record that the Commission request the Secretary of the Interior to assist in arranging meetings of the Western Shoshones for the purpose of deciding on a course of action in this litigation will be denied as inapposite in view of our conclusion that the motions to stay should be denied.

(5) The defendant's motion that the Commission dismiss all the claims of the Western Shoshone Identifiable Group in Docket 326-K in the event that the Commission does not deny the Temoak Bands' motions to stay will be dismissed since the Commission concludes that the motions to stay should be denied.

IT IS HEREBY ORDERED that the motions of November 15, 1976, and January 24, 1977, and the amended motion of April 7, 1977, by the Temoak Bands of Western Shoshone Indians of Nevada for a stay of proceedings in Docket 326-K be denied. IT IS FURTHER ORDERED that the cross-motion of the plaintiff's attorney of record as to the Commission's findings and conclusions on offsets be dismissed, that his motion to stay entry of final judgment be dismissed, and that the cross-motion regarding

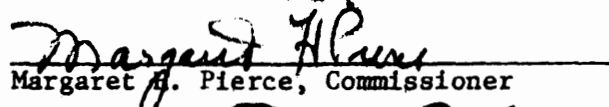
a request that the Secretary of the Interior assist in arranging meetings of the Western Shoshones in order to decide action to be taken in this litigation be denied. IT IS ORDERED ALSO that the defendant's motion that the Commission dismiss the plaintiff's claims in this docket if the motions to stay by the Temoak Bands are not denied is dismissed.

Dated at Washington, D. C., this 15th day of August 1977.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret A. Pierce, Commissioner


Brantley Blue, Commissioner