BEFORE THE INDIAN CLAIMS COMMISSION

THE CONFEDERATED TRIBES OF THE COLVILLE RESERVATION, et al., Plaintiffs,	)	
v.	)	Docket No. 181-C
THE UNITED STATES OF AMERICA, Defendant.	)	

Decided: November 18, 1976

Appearances:

Abe W. Weissbrodt, Attorney for Plaintiff, Weissbrodt & Weissbrodt and Howard L. Sribnick were on the briefs.

James M. Mascelli, with whom was Assistant Attorney General Peter A. Taft, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Kuykendall, Chairman, delivered the opinion of the Commission.

This case is now before the Commission on plaintiffs' motion of August 5, 1976, for leave to file an amended petition setting forth certain claims arising from the construction and operation of the Grand Coulee Dam. Plaintiffs ask that the amended claim be severed and placed into a separate docket, to be designated Docket 181-D, to avoid the possibility of delaying the claims now set for trial in Docket 181-C.

Defendant opposes both of plaintiffs' requests. Defendant argues that the amended claim is barred by the statute of limitations, and that leave to file must therefore be denied.

In addition, defendant argues that if plaintiffs' claim is allowed, plaintiffs' request that the amended claim be severed into a separate docket should be denied. Defendant bases this argument on the allegation that the Grand Coulee claim is inextricably intertwined with the fisheries claim in Docket 181-C.

The Indian Claims Commission Act, 60 Stat. 1049, 1052, 25 U.S.C. §70k provides that the jurisdiction of the Commission should be limited to those claims filed within 5 years after the date of the approval of the act, August 13, 1946. Rule 13(c) (25 C.F.R. §503.13(c)) of the Commission's General Rules of Procedure provides that whenever the claim set forth in the amended pleading arose out of the conduct, transactions, 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 Court of Claims has interpreted Rule 13(c) as "' based on the idea that a party who is notified of litigation concerning a given transaction or occurrence is entitled to no more protection from statutes of limitations than one who is informed of the precise legal description of the rights being enforced.'" Snoqualmie Tribe v. United States, 178 Ct. Cl. 570, 587, 372 F.2d 951, 960 (1967), aff'g in part, rev'g in part, Docket 93, 15 Ind. Cl. Comm. 267 (1965). (quoting 3 Moore, Federal Practice, ¶15.15[2], p. 1018 (1964 ed.)). The court concluded that "the inquiry in a determination of whether a claim should

relate back will focus on the notice given by the general fact situation in the original pleading." Id.

The original petition in this case was timely filed on July 31, 1951, as Docket 181. In 1956, Dockets 181-A, 181-B and 181-C were established on the basis of paragraphs taken verbatim from the original petition. Plaintiffs cite certain paragraphs, taken from the original petition and included in the 181-C petition, that they contend were sufficient to encompass the Grand Coulee claim. The relevant language is as follows:

> 53. The Respondent was grossly negligent in the performance of its duties of a guardian or trustee in possession in that it did not take the steps which it could have taken and was under a duty to take to safeguard the rights of the Claimant Tribes to damages for the unlawful trespasses on their lands, and to compensation or other benefits from the use of their lands and other property.
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> Part VII
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> Claims for Relief.
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> 54. The petitioners, herein, realleging each and all of the facts and circumstances set forth above so far as relevant in support of each claim, assert each of the following claims for relief separately and alternatively.
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> Respondent, in violation of law and in breach of its fiduciary obligations as guardian and trustee in possession, failed to protect the Claimant Tribes, or each of them, from trespass on its lands and the taking and destruction of its properties; converted the properties of the Claimant Tribes, or each of them to Respondent's own use; failed to safeguard the rights of the Claimant Tribes, or each of them, to damages or other compensation for the said unlawful trespasses on its lands and the taking and destruction of its properties; and encouraged, aided, and abetted said trespasses. Said violations of law and breaches of fiduciary obligations by Respondent included, but not by way of limitation, the following:

> (a) It failed to protect the Claimant Tribes, or each of them, from trespasses on their lands and from the taking of their properties and the use of their lands* * *

Clearly, the quoted language is extremely broad. There is no mention of the Grand Coulee Dam or of any of the statutes cited in the amended petition. However, the original petition does allege taking of plaintiffs' properties and use of plaintiffs' lands. In Yankton Sioux Tribe v. United States, 175 Ct. Cl. 564 (1966), aff'g in part, rev'g in part, Docket 332-A, 10 Ind. Cl. Comm. 137 (1962), the court held that the Commission erred when it refused to allow an amendment to include a specific land claim within an "exceedingly broad and comprehensive" land claim. Id. at 568. The court stated as follows:

> * * * Under the circumstances of the time interval between Indian occupancy of the land (into which settlement was rapid after the mid-1800's) and the date for filing the petitions, the uncertainties of Indian title to any of this land and the time pressures for filing the claims before the Commission, we cannot say that appellant's claim is so broad or indefinite that it fails to allege any cause of action, since the area in controversy was in fact included in the land claimed. There are indications that at the time the claim was filed it was as specific as possible. Second, we note that defendant had no difficulty at all answering or defending the claim on account of its broadness, for it knew what the controversy was concerned with and defended well. Third, we take cognizance of the liberality in pleading before judicial tribunals in these modern times, as fully discussed by Commissioner Scott, and need but mention that the Commission is bound both by the rules it has adopted and the spirit of the Indian Claims Commission Act to this liberality in procedure. [Id. at 569].

A more recent Court of Claims decision held that in litigation brought by Indian Tribes to redress an alleged wrong by the Government, which has

long supervised their affairs, a special relationship exists. "Though we do not lean over backwards in such a case, we are somewhat more lenient in procedural matters than we might be in other classes of cases in which the relationships of the parties are not so special." Confederated Salish and Kootenai Tribes v. United States, 189 Ct. Cl. 319, 324 (1969). The Court of Claims has long held that the remedial nature of the Indian Claims Commission Act requires a liberal construction in determining whether a claim is timely or not. United States v. Lower Sioux Indian Community, 207 Ct. Cl. 492, 502, 519 F.2d 1378, 1383 (1975), aff'g 33 Ind. Cl. Comm. 389 (1974); Snoqualmie Tribe, supra.

Finally, we note that the alleged wrongs arose out of the construction and operation of the dam by defendant or with defendant's authorization. The defendant can be charged with notice of the possibility that this claim was included within the broad claim through its authority as administrator of Indian Affairs and its course of activities in connection with the construction and operation of the Grand Coulee Dam. See San Pasqual Band of Mission Indians v. United States, 30 Ind. Cl. Comm. 451, 455 (1973); compare Snoqualmie Tribe, supra, 118 Ct. Cl. at 588, 372 F.2d at 961.

We conclude that the original petition filed herein was broad enough to support a claim for damages arising from the construction and operation of the Grand Coulee Dam. Therefore plaintiffs' amended claim relates back, and is not barred by the statute of limitations.

Defendant also argues that plaintiffs are estopped from presenting the Grand Coulee Dam claim, for two reasons. The first is that when plaintiffs moved for substitution of the Docket 181-C amended petition for the Docket

181 original petition, they stated that no claims were contained in the amended petition which had not been presented in the original. Defendant points out that the original petition contained numerous statutory citations but none pertaining to the Grand Coulee issue. Defendant's second estoppel argument arises from plaintiffs' failure to raise the Grand Coulee claim in its opposition to defendant's motion for summary judgment filed in 1972. We find that neither omission estops plaintiffs from raising the Grand Coulee claim at this time. Defendant has neither shown nor alleged that it relied to its detriment on plaintiffs' omission. Detrimental reliance is the basis of an estoppel. See Pacific Far East Lines, Inc. v. United States, 184 Ct. Cl. 169, 194 (1968), Sound Shipbuilding, Inc. v. United States, 158 Ct. Cl. 1, 8 (1962).

Accordingly, we will grant plaintiffs' motion to file its amended claim.

Plaintiffs also move that the amended petition be filed in a separate docket. Plaintiffs state that the amended petition involves a number of novel and complex principles of law which have never been considered by the Commission. Because of this plaintiffs feel that the trial of the existing issues in Docket 181-C, now set for December 13, 1976, would be delayed if the amended claims were included in that docket. Defendant opposes this motion on the grounds that the Grand Coulee Dam claims are inextricably intertwined with the fishing rights issue of Docket 181-C. Defendant states that severence of the Grand Coulee claim would merely cause the parties to try the same issues twice and prevent the Commission from reviewing the case in its full perspective.

We have examined the amended petition and the fishing rights claim as presently defined. We see very little overlap, if any, between these claims. We agree with plaintiffs that the presence of the Grand Coulee Dam claim in Docket 181-C would only slow the progress of that docket. We will therefore grant plaintiffs' motion, and a new docket, number 181-D, will be established containing plaintiffs' amended petition.

Jerome K. Kuykendall, Chairman

We concur:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner