



## Appearances:

Ernest L. Wilkinson, Robert W.  
Barker and Francis M. Goodwin,  
Attorneys for Petitioners in  
Docket 31

Reginald Foster  
Attorney for Petitioners in  
Docket 37

Norman M. Littell  
Attorney for Petitioners in  
Docket 80

I. S. Weissbrodt  
Attorney for Petitioners in  
Docket 88

Nicholas Allen  
Attorney for Petitioners in  
Docket 288

Harold Payne  
Attorney for Petitioners in  
Docket 295

Louis L. Phelps  
Attorney for Petitioners in  
Docket 347

Ralph A. Barney, with whom was  
Mr. Assistant Attorney General  
Perry W. Morton,  
Attorneys for Defendant.

OPINION OF THE COMMISSION

O'Marr, Commissioner, delivered the opinion of the Commission.

On June 6, 1958, the petitioners in Dockets 31 and 37, who will hereafter be referred to as Indians of California, filed a motion to divide the State of California into two parts for the purpose of determining the rights of the Indians of California and the other claimants to lands in that State. Specifically, the plan proposed by the motion is to remove

from the area included in the claim of the Indians of California those lands in the State which are claimed in separate suits by tribes which we, by our decision of January 20, 1958, held were entitled to sue independently of the Indians of California. The claims that would be placed in this division are those of the Northern Paiute Nation, Docket 87; Southern Paiute Nation, Dockets 88 and 330; Mohave Tribe, Dockets 283 and 295; Washoe Tribe, Docket 288; Quechan Tribe, Docket 319; Pitt Rivers, Docket 347; and Chemehuevi Tribe, Docket 351. Although the Klamath and Modoc Tribes, Docket 100, have a pending claim for lands in California which were excluded from the lands claimed by the Indians of California by a disclaimer filed on June 29, 1955, we include the California lands involved in this claim in order that all tribal claims for California lands will be included.

This division shall, for convenience of reference, be designated Area A.

The other proposed division, which we shall hereafter refer to as Area B, would include all remaining lands in California (that is, all lands outside of proposed Area A), and would include the lands claimed by the Mission Bands, Docket 80, Yokiah Tribe, Docket 176, Yana Tribe, Docket 215 and the Shasta Tribe, Docket 333.

The defendant filed objections to the motion on June 18, 1958, on the main ground that the Government would be prejudiced by the proposed plan. We do not see that defendant would be prejudiced by the proposed plan, for it seems clear that the Government would not be deprived of any of its defenses to the claim of the Indians of California or to the claim of any of the other groups included in the plan.

After a careful study of the proposed plan for dividing the land areas of the State for the purposes of this litigation, we are convinced the plan has much merit, and with certain modifications would result in the clarification of a confused situation that has arisen from the conflicting claims and contentions of the parties. Furthermore, it is, in the main, in harmony with our decision of January 20, 1958, in which we held that each of the claimants; named above, could maintain its separate suit independently of the Indians of California.

The claims of the Yokiah, Yana and Shasta have been merged with the claim of the Indians of California by our Order of the 6th day of October, 1958, so they will be considered a party to the claim of the Indians of California and hereafter all reference to the Indians of California shall include the Yokiah, Yana and Shasta, except where the discussion requires their separate mention.

The Mission Bands, Docket 80, did not join with the Yokiah, Yana, Shasta and the Indians of California in their motion of June 6, 1958, which resulted in the merger of the claims of the above cases for all purposes, including judgment, by our Order of the 6th day of October, 1958. In fact, at the oral argument on that motion on June 23, 1958 (Trans. pp. 4158-4178), counsel for the Mission Bands vigorously refused to join the Indians of California in a consolidation of their claim with the latter and insisted upon proceeding under their stipulation of June 1, 1955, by which their case would be held in abeyance pending the outcome of Dockets 31 and 37. (See our opinion of January 20, 1958, 6 Ind. Cls. Com. 93, 94, for form of stipulation).

Since we have overruled the joint motion of the Indians of California, Mission Bands, Yokiah, Yana and Shasta tribes, filed on March 25, 1958, and the separate motion of the Mission Bands, filed on July 24, 1958, to modify our decision of January 20, 1958, and permit the Mission Bands to proceed under its stipulation of June 1, 1955, mentioned above, the question arises as to how best to determine the claim of the Mission Bands.

The record in the consolidated cases, Vol. XV, pp. 1404-1406, shows the boundaries of the area claimed by the Mission Bands and for which they seek compensation; also, by stipulation of the Indians of California and the Mission Bands, filed on February 12, 1958, it is agreed by them that the area within the boundaries of the Mission Bands' claim comprises 8,002,356 acres. It is plain then, that insofar as these claimants are concerned there is no question about the boundary and location of the lands involved in Docket 80.

Counsel for the Mission Bands indicated in open hearing on June 23, 1958, that there were other theories than those under which the case has been tried which he could and would present if the case were separately prosecuted, but he also said it would take one or possibly two years to present them. Manifestly, such a delay would work an injustice to the Indians of California who have closed their case and are, according to the statement of their counsel made to the Commission on June 23, 1958, not opposed to having the lands of the Mission Bands excluded from the area claimed by the Indians of California.

Furthermore, we believe the Mission Bands should be given the right to present their claim on every possible theory they may have under their

petition, unhampered by the legal theories under which the case has been presented by the Indians of California. In saying this we do not intimate that the case has been presented on an improper legal theory; we are simply saying the Mission Bands should not be denied the right to make a full presentation of their case.

From the record before us, including statements of their counsel, we are convinced that it is for the best interests of the Mission Bands that their case be heard as a separate claim and independent of the claim of the Indians of California. And to bring this about their lands, as described above, will be excluded from the lands claimed by the Indians of California.

A definitive separation of California into the two areas presents a practical problem that must be resolved in order to make the plan effective. The movants ask us to "determine from the record or from proper stipulations of the parties, the boundaries and total area in the aforesaid classification 'A'." The "record" referred to, we gather from the oral argument on the motion, is the map of California prepared by the witness, A. L. Kroeber, and admitted in evidence as the petitioners' Exhibit ALK-1955 - Parts 1 and 2, on which is shown the territory alleged to have been occupied by each of the claimants (other than the Indians of California) who have filed separate claims for California lands.

The primary purpose of dividing the State into two parts is to limit the land claim of the Indians of California to all that part of California not included in the claims of those tribes or groups that have filed cases for specific areas in the State. The exact boundaries of those lands are not necessary for the division nor would the separate claimants be bound

by it except to the extent they may, by stipulation or otherwise, limit their respective boundaries. What is important, though, is that reasonably definite lines of division be fixed. For this purpose the boundary lines of the tribal claimants insofar as shown on the Kroeber map, Ex. ALK-1955 - parts 1 and 2, are acceptable, unless modified by stipulations between the Indians of California and the respective tribes, except the boundaries of the claim of the Mohave Tribe, Dockets 283 and 295, which are referred to later.

We are not unmindful of the possibility that, should we make an award to the Indians of California or any of the other claimants, there might be overlaps which would result in double payments. This should be guarded against and we suggest the parties in Dockets 87, 88, 288, 319, 330, 333, 347 and 351 give serious consideration to stipulations that would remove the possibility of overlaps or uncertainty as to boundaries.

We have mentioned the Mohave case, Docket 295. This case involves a large area of land in California extending west from the Colorado River to the Tehachapi Mountains. The same tribe filed another suit, Docket 283, for a much smaller area in California, and in the latter suit, Dr. A. L. Kroeber, by a map admitted in evidence in Docket 283 as Exhibit No. 283-2, shows the Mohave lands to be confined to a considerable distance along the Colorado River. These cases have been consolidated for trial. But because of great differences in the areas claimed, the boundaries of the Mohave lands that are included in Area A cannot be determined until we decide from the evidence which, if any, lands the Mohave have proved to have Indian title in California.

We accordingly conclude that for the purpose of determining the rights of the respective claimants to lands in California the State shall be divided as follows:

Area A shall include all lands as shown by the map, Exhibit ALK-1955 - Parts 1 and 2, to have been occupied and used by the following tribes or groups: Northern Paiute, Klamath and Modoc, Washoe, Quechan, Southern Paiute, Pitt River, Chemehuevi, Mohave (boundaries to be determined as stated above) and Mission Bands whose area is described by Dr. A. L. Kroeber at pp. 1404-1406, Vol. XV of Transcript, and delineated on Exhibit ALK-1955 - Part 1.

Area B shall include all lands in California not included in Area A as above set forth.

Dividing the lands as shown above is for the purpose of simplifying the procedure for presenting and determining the rights of all litigants asserting claims to lands in California, but in so doing we are not determining the rights of any of the claimants to lands in that State, nor are we passing upon the right or capacity of any of the claimants to maintain their claims; those are matters that will be determined from the evidence in the record.

An order will be entered in accordance with the above opinion.

We concur:

Edgar E. Witt  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

Louis J. O'Marr  
Associate Commissioner