

BEFORE THE INDIAN CLAIMS COMMISSION

MOHAVE TRIBE OF INDIANS of Arizona,)
 California, and Nevada; and)
 ROBERT JENKINS, FRANCES STILLMAN,)
 GEORGE WILSON, HAL O. DAVIDSON,)
 CYRUS W. FIELDS, ARTHUR GOENAWEIN,)
 and HARWOOD JENKINS, members of)
 Tribal Council,)
 Claimants,)
 v.) Docket No. 295
 UNITED STATES OF AMERICA,)
 Defendant.)

THE MOHAVE INDIANS who are members)
 of the Colorado River Indian Tribes;)
 and JAY GOULD, NORMAN SCOTT and)
 MERRITT LAFOON, as representatives)
 of such group,)
 Petitioners,)
 v.) Docket No. 283
 UNITED STATES,)
 Defendant.) (CONSOLIDATED)

Decided: March 19, 1959

Appearances:

Harold Payne
 Attorney for Claimants
 Docket No. 295

C. M. Wright
 Attorney for Petitioners
 Docket No. 283

Ralph A. Barney and Lester
 Reynolds, 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.

The claim of the Mohave Tribe with respect to lands formerly held by said Indians by Indian title was timely filed with this Commission by two separate identifiable groups of Mohave Indians. In Docket 295 the petitioners are the Mohave Tribe of Indians and named individual members of the Tribal Council on behalf of the Mohave Tribe, and for themselves, and for all persons similarly situated as members of said tribe. Petitioners in Docket 295 are the Needles group of Mohave Indians living on or near the reservation in Mohave Valley, set aside by Executive Orders of August 22, 1890, December 1, 1910, and February 2, 1911. The petitioners in Docket 283, as amended, are The Mohave Indians who are members of The Colorado River Indian Tribes and named individual members alleged to be Mohave Indians. The original petition in Docket 283 was amended to present therein solely the claim of the Mohave as to aboriginal title. In Docket 295 all claims were severed except the first cause of action pertaining to aboriginal title. Both the Needles group and the Parker group, as those Mohave on the Colorado River Reservation are sometimes called, have the capacity to present the claim of the Mohave Tribe.

Since the claims as to aboriginal title set forth in Dockets 283 and 295 included lands in California, said dockets were consolidated for the purposes of trial with Docket numbers 31 and 37 in which cases were presented the claim of the "Indians of California" and certain other docket numbers seeking recovery for the value of lands allegedly held by aboriginal ownership in the respective petitioners (Order of Commission,

November 19, 1953). On January 20, 1958, this Commission held that the petitioners in Dockets 283 and 295 were entitled to present the claim of the Mohave Tribe relating to lands in California and that petitioners in Dockets 31 and 37 did not have the exclusive right to present claims relating to lands in that State (6 Ind. Cl. Comm. 86). While it was originally thought by the parties and the Commission (Order of the Commission, Nov. 16, 1956, as amended Nov. 20, 1956) that the hearings on the Mohave claim would be limited to proof as to aboriginal ownership to lands in California (as opposed to lands outside California) the nature of the proof as to Mohave land holdings necessarily had to include the evidence with respect to the alleged exclusive use and occupancy of the Mohave Indians of not only lands in California but in Arizona and Nevada as well. Since petitioners in both Docket 283 and Docket 295 were presenting the claim of the Mohave Tribe as to aboriginal lands, the dockets were consolidated to be prosecuted as a single claim (Tr. 20, Docket 283). It is this claim to aboriginal ownership of the Mohave Indians to lands in what are now the States of California, Arizona and Nevada, that is determined herein.

Following the hearings on the merits in the above cases, petitioners in Docket 295 filed a motion on April 5, 1957, "for leave to amend petition" on the grounds "that the issues raised by said amendments were tried at the hearing of the above matter at the consolidated trial thus far had, by consent of the parties"; and "that said amendments conform to the evidence which was offered and received at the trial thus far had, without objection; * * *." On May 1, 1957, petitioners were permitted by

Commission's order to file the amended petition and defendant was granted time to answer or otherwise plead to said amended petition. Defendant thereupon filed a motion to vacate said Order of May 1, 1957 and to disallow or strike the amended petition. Defendant urged among other grounds in support of its motion that "the changes and additions proposed by the amended petition are not confirmed or supported by the evidence cited by claimants, or any other creditable evidence in the record." The amended petition set forth the claim on behalf of the Mohave Indians to large areas of land not included in the original petition. Since the petitioners in Docket 295 urged that this claim to additional land conformed to the evidence, it became incumbent upon the Commission to search the entire record to ascertain the validity of this contention, and action on defendant's motion to disallow or strike the amended petition was delayed until the Commission could determine the merits of the whole claim. The Commission has found no substantial evidence to support petitioners' claim to the additional large areas contended for in the amended petition. A thorough study of all the evidence, much of which is set forth in the findings of fact herein made, does not support petitioners' contention in Docket 295 that such amendment would conform to the evidence.

Briefly, the amended petition would add a large area of land in southwest Arizona, extending the claimed boundary eastward from the crests of the mountains bordering the Colorado River on the east (said crests being the eastern boundary claimed in the original petition) to the Hassayampa River Valley. The southern boundary west of the Colorado River originally

claimed would be extended by the amended petition to include the Colorado Desert area in California. The additional lands sought to be claimed by the Mohave by the amended petition, east of the Colorado River, would be added by petitioners in Docket 295 to the area claimed because, according to Mohave mythology and tradition, the Mohave were in the area for a period before settling in the Mohave Valley following their being compelled to withdraw from the Mohave Desert due to the changing climate and increasing aridity. The Yavapai, according to petitioners, who were located in historic times in at least a part of this additional area, "were aliens residing in Mohave territory having no claim to the land." There is no proof that in historic times, or at or near the time of the acquisition of these lands by the United States, the Mohave Indians exclusively used and occupied the additional lands in Arizona, which petitioners would now file claim to. Petitioners would add the lands west of the Colorado River, that is, the Colorado Desert area, to the description of the lands originally claimed because of some observations based on archeological investigations which have been called speculative by at least some authorities that the Mohave may have inhabited the Colorado Desert before increasing aridity made the desert uninhabitable. There is no evidence to support petitioners' contention of ownership in the Mohave of the Colorado Desert in historic times.

The Commission therefore sustains defendant's motion to vacate the Order of May 1, 1957, and to disallow or strike the First Amended Petition, and an order to this effect is this day made. It should be noted at this time also that petitioners' counsel in Docket 295 further intimated

