

BEFORE THE INDIAN CLAIMS COMMISSION

THE QUILCHAN TRIBE OF THE FORT YUMA )  
RESERVATION, CALIFORNIA, )

Petitioner, )

v. )

THE UNITED STATES OF AMERICA, )

Defendant. )

Docket No. 319

Decided: September 30, 1959.

FINDINGS OF FACT

The Commission makes the following Findings of Fact:

1. (a) This case was consolidated with "Indians of California" cases, Dockets Nos. 31 and 37, et al., for the purposes of trial by order of this Commission dated November 19, 1953. Pursuant to such order, hearings were held but a separate record was made in this case with the stipulation that evidence in Dockets Nos. 31 and 37 should be considered evidence in this case, Docket No. 319 (R. 82). Thereafter, on October 6, 1958, this case among others was severed from the California consolidated cases and permitted to proceed separately.

(b) Petitioner has filed a separate petition in Docket No. 320 which asserts a claim based upon an 1893 cession to defendant of certain alleged "reservation lands" situated within the land areas for which compensation herein is sought. For a description of such reservation lands claimed by this petition in said separate claim reference is made to Section 7 of the Act of August 15, 1894 (28 Stat. 286, 332). Such "reservation lands" are excepted from the claim herein made (Pet. Req. Fdgs. 14, 15 and 16; Def. Req. Fdg. 26).

2. Petitioner filed its original "Petition Relating to Lands in the States of California and Arizona" on August 10, 1951, and filed an amendment to the original paragraph numbered 11 on December 21, 1953, "In order to more accurately describe the land claimed," which description as amended reads as follows:

Beginning at a point midstream of the Colorado River, near Pilot Knob, and constituting the most easterly point of the international boundary line between the State of California and the Republic of Mexico; thence west along said line to a point about ten miles west of the present town of Mexicali, Mexico; thence on a curved line, approximately parallel to the New River, and about ten miles distant therefrom, to the Superstition Mountains; thence northeasterly on a line through the present towns of Westmoreland and Calipatria, and continuing to the southernmost extension of the Chuckwalla Mountains and west of the westernmost extension of the Chocolate Mountains located on the California side of the Colorado River; thence northerly through the Chuckwalla Mountains; thence northeasterly to the McCoy Mountains; thence north to the Little Maria Mountains; thence northeasterly to the Riverside Mountains; thence east along the line of  $34^{\circ}$  north latitude to the Colorado River; thence south along the channel of said river to a point opposite the northern boundary of the town of Blythe; thence easterly to the crest of the Dome Rock Mountains; thence southerly along the crest of said Dome Rock Range, and continuing south to the Chocolate Mountains located on the Arizona side of the Colorado River; thence southwesterly along the crest of said Chocolate Mountains to a point about five miles from the Colorado River, at the place where the river turns south after having flowed east from Picacho; thence in a southeasterly direction to the Muggins Mountains; thence northeasterly on a line in approximately the same direction as the channel of the Gila River and about ten miles above said river, to a point on a northerly projection of the line of the Mohawk Mountains; thence southeasterly along the line of said Mohawk Mountains to a point about ten miles below the Gila River; thence southwesterly on a line about ten miles from said river to the Gila Mountains; thence southeasterly along the crest of said Gila Mountains to the Mexican border; thence northwesterly along said border to the Colorado River; thence north along said river to the point of beginning.

TOGETHER WITH all rights and appurtenances thereunto appertaining, including all mineral and water rights.

3. Petitioner, The Quechan Tribe of the Fort Yuma Reservation, California, has a tribal organization and a Constitution of the tribe dated December 18, 1936. The Constitution has been approved by the Secretary of Interior (Cl. Ex. 8) under the provisions of the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; as amended 49 Stat. 378; 25 U.S.C.A. 476).

4. (a) The "Yuma" historical Indian name is "Kwatca'n" (or Quechan) as they have called themselves from earliest record. The name "Yuma" is the English equivalent of the Indian name "Quechan." (Forde, Ethnog. of Yuma Indians, pp. 88-89; Dkt. Nos. 295 and 283, (Consolidated Mohave Cases), 7 Ind. Cl. Com. 219, 250-251; Dr. A. L. Kroeber, R. 61; Dr. H. E. Driver, R. 173 at lines 20-26, and R. 173 at lines 1-7).

(b) The Yuma Indians were a part of the Yuman linguistic family. This linguistic family also includes the Mohave, Kamia, Diegueno, Cocopa, Maricopa, Halchidhoma, Walapai, Kohuana, and Havasupai. Culturally the Yuma (or Quechan) were more closely related to the Mohave, although linguistically they were related closely to the Maricopa, Kamia, and Diegueno.

(c) When first encountered by Spanish explorers and missionaries they were said to be, together with other members of their linguistic family, occupying the bottom lands of the lower Colorado from Needles, California, to the Gulf of California. The aboriginal population of this region, exclusive of the higher cultures of Middle America, were probably as dense as any in the New World. This concentration depended, however, on no great elaboration of material civilization, but upon the

crude agriculture and collection of wild fruits fertilized by the silt deposits of the annual river floods.

(d) A general description of the more prominent physical features in this region, centering generally on the lower Colorado and Gila Rivers, in what is now part of the States of Arizona and California, will serve to explain their aboriginal culture, especially as concerns subsistence methods and land usage.

The Colorado River emerges from its narrow gorges about sixty miles south of the great bend which forms the Arizona-Nevada boundary and flows into its lower course through a longitudinal oasis created by the annually flooding river and is flanked on either side by barren ranges whose festoons or curves segment the valley into a series of broad flood plains some twenty-five miles in width, connected by narrow canyons. A few miles below the final constriction at Yuma where the river has cut a narrow gorge through a low conglomerate spur the muddy waters forsake a single channel and spread out over the great alluvial fan which extends sixty miles from Yuma to the Gulf of California.

Bluffs some fifty to a hundred feet in height and varying in distance from a few hundred yards to several miles from the river border the valley and mark the flood plain. The Colorado River is situated in and below a drainage area of a quarter million square miles of much semi-arid land. It is fed little by its lower affluents. The river does not rise appreciably apart from occasional spring floods from the Gila until May or reach a maximum before late June. The silt load is very heavy, far higher than the Mississippi or the Nile.

In aboriginal times the river plain and upper delta was normally flooded every year. Precipitation is almost negligible and the flooded land is of great contrast to the sandy and stony deserts above the bluffs on "the mesa." The vegetation of the lowlands was luxuriant and often approached jungle density. Dense groves of cottonwood, willow, mesquite and sycamore covered the uncleared land. Impenetrable thickets of arrowweed confronted early travelers and necessitated guides from village to village. This weed occupied the greater part of the flood plain and grew in thickets six or eight feet high.

The winters are usually quite mild with little frost and the summers reach maximums up to 120° F. in the shade. The nights are cool only a few hours before dawn and temperatures generally rise rapidly at sun-up in the Yuma region (Forde's Ethnog. pp. 89-92).

The confluence of the Gila River with the Colorado River is immediately northeast of the present site of Yuma, Arizona. Twenty miles to the north the Chocolate Mountains form a hundred mile angle or are separated into two segments by the channel and valley of the Colorado River. The west segment of the Chocolate Mountains (or hills) is on the California side, and the east segment on the Arizona side of the Colorado River.

About ten miles west of this Gila-Colorado confluence is Pilot Knob.

Sand dunes extend northwest from Pilot Knob for a distance of about forty miles long and are about three to five miles wide. These dunes have in modern times been popular sites for shooting movies of "Sahara" desert scenes.

The Trigo Mountains on the Arizona side of the Colorado River form an irregular cluster pattern and extend generally north and some east

from an elbow bend in the Colorado near Picacho, California. About seven miles east of the Trigo are the "Arizona" Chocolates extending in a generally north-south direction and the longer range of Castle Dome extends ten or fifteen miles farther south and about ten miles east and somewhat parallel to the "Arizona" Chocolate Mountains. The elevation of Castle Dome Peak is 3793 feet and is one of the highest points in this region of the Colorado River.

The "Great Colorado Valley" at the north end of the claimed territory extends far up the Colorado from Picacho, California, to Parker, Arizona.

The International Boundary on the south with Mexico traverses a flat sandy desert type land both on the California and Arizona sides of the Colorado.

5. The Commission finds that this petitioner is the successor in interest to the historic Yuma or Quechan tribe.

The Quechan Indians were first identified in 1700 by Father Kino, a Jesuit priest and explorer. They were found by him in the Gila River valley and at the confluence of the Gila and Colorado Rivers, which has been the center of their territory ever since, and where they now have a reservation (Forde, *Ethnog. of the Yuma Indians*, Ex. R. H. No. 68, Dkts. 31 and 37, p. 88; R. 64 and R. 93; Cl. Ex. 10, pp. 1-3).

Father Font, a Jesuit Priest, in his diary of his second journey to California in 1775-1776 vividly describes the Yuma Indians on the bottom land of the Colorado River (Forde, *Ethnog. of Yuma Indians*, pp. 94-97, *cit. id.*). Fray Francisco Garces made a lone visit in 1771 and the records of the two expeditions to California under the leadership of

Anza in 1774 and 1775 also affords some detailed information of the Yuma. The Yuma figure prominently in the diaries of these journeys in fording the Colorado and the establishment of a mission at Puerto de la Concepci'on (later Fort Yuma) and another mission at a southern Yuma village near Pilot Knob on the present International Boundary.

The Spaniard Fages covered part of the Yuma territory in 1781-82 in a punitive expedition after the destruction of these missions. Fages indicated that Yuma villages at that time extended some ten miles up the Gila above the confluence.

Don Jose Cortez in a manuscript report of 1799 stated about three thousand Yuma were on the west bank of the river and extended as far south as 33° (Forde, Ethnog. of Yuma Indians, p. 102, cit. id.).

Captain (later Major) Heintzelman, in charge of the U. S. garrison, Fort Yuma, reported in 1853 on the Yuma "or Cuchan Indians" on the Colorado and Gila Rivers. Heintzelman referred to a separate group of Indians, the Kanya, as the "Yum.!" The name invites confusion and has been dropped by modern writers.

Ives who navigated the Colorado from the gulf to the Mohave country in 1857-58 attempted to delimit the Yuma tribal territory (Forde, Ethnog. of the Yuma Indians, pp. 102-103, Cit. id.).

These above mentioned accounts compiled by C. Daryll Forde, anthropology professor, University of London, upon completion of his field work and library research in his "Ethnography of Yuma Indians" (1931) establishes that the Quechan Indians of Fort Yuma Reservation, corporate petitioner herein, have been identified from aboriginal times.

6. The date of the Treaty of Guadalupe Hidalgo, 1848, was the date when the United States first acquired sovereignty to any of the land in question by virtue of said treaty made at the conclusion of the Mexican War (9 Stat. 922). Some of the land as herein claimed by petitioner south of the Gila River and east of the Colorado River was obtained by the United States from Mexico in the Gadsden Purchase Treaty of 1853 (10 Stat. 1031).

The defendant urges (see Defendant's Requested Findings numbered 3 through 10) that all of the lands herein claimed were once under Spanish rule, and the Yumas being wild and irreconcilable Indians "had no rights whatever to the soil," since they were not part of a mission or a civilized community.

Whatever may have been the rights and legal status of the Yuma Indians under Spain and Mexico, their Indian rights of occupancy as recognized by the United States continued after the sovereignty of the United States attached to the lands in question and became legally recognizable under the long established Indian policy of the United States. See U. S. v. Santa Fe Pacific Railroad Company, 314 U. S. 339, 346.

7. The population of the Yuma Indians in 1848 was about the same as in Spanish times and is generally estimated at 3000 (Driver, R. 222; Cl. Ex. 10, p. 13 and p. 28; Kroeber, R. 82).

8. The Yuma and other tribes along the lower Colorado and Gila Rivers practiced a crude form of agriculture. Annual floods occurred as a rule. After the floods subsided the Indians would plant seeds and

the moisture from the flooding lasted long enough for them to grow crops of corn, beans, pumpkins and melons. Another staple article of diet was the mesquite bean harvested from the trees which grew along the mesa and generally within about 5 miles of the river, but some mesquite grew as far as the foot of the mountains (Forde, p. 107, et seq.; Driver, R. 165-168, and R. 209, lines 16-25).

The two sources of both food and non-food needs of the Yuma tribe were the river and the desert. Dr. A. L. Kroeber, former head of the Department of Anthropology at the University of California, petitioner's expert, and Dr. Harold E. Driver, associate professor of anthropology, University of Indiana, defendant's expert, both estimated the Yuma obtained about one-half their food from the above described methods of agriculture (Dr. Kroeber, R. 82, 83; Dr. Driver, R. 175). Dr. Driver's estimate was 40% plus 10% dependence on "semi-cultivated" plants which grew wild but were also sown (R. 177), especially the screw bean.

The prime source of wild plant life food was the mesquite bean gathered from the mesquite trees which grew back from the flood plain with roots which extended 50 to 70 feet into the ground (R. 167).

Construction of modern dams have greatly modified flood conditions of the lower Colorado River country. In aboriginal times Anza reported inundation was very extensive and the waters at flood stage spread over a distance of half a league (about 1.32 miles) on either side of the main stream (Forde's Ethnog. of the Yuma Indians, p. 107). Forde also states a few deer strayed along the cottonwood groves near the river and rabbits burrowed in its sandy banks but that game, both large and small, were

relatively scarce in this arid country of the lower Colorado and Gila River bottoms.

Special Agent J. Ross Browne of the Interior Department wrote to Commissioner William P. Dole of Indian Affairs from Fort Yuma, Colorado River, December 27, 1863, and is quoted as follows (Pet. Ex. 10, p. 27) with reference to Yuma subsistence on rats, frogs, mice and lizards:

Under ordinary circumstances, when the usual overflow of the Colorado takes place, they cultivate the lowlands in their rude way, and generally succeed in raising considerable crops of grain and vegetables. These bottomlands are light, rich and easily worked, and afford ample means of subsistence to tribes bordering on the River. During the past year, however, there has been no overflow and consequently no crops have been put in by the Indians. To add to their misfortune, it has been a season of such unusual drought that the mesquite beans, berries and other wild crops upon which they are accustomed to depend in seasons of scarcity, have entirely failed so that they are left utterly destitute. Their seed, wheat and beans stored for planting have long since given out; and for sometime past, they have been compelled to subsist on rats, mice, frogs, lizards as they can gather on the deserts and the banks of the River.

9. Dr. Driver, defendant's expert, quoted the earliest report on the Yuma Indians (Kino's Journey, 1699 or 1700, R. 213) as encountering their "first Yumas at San Pedro of San Pablo, 27 leagues below San Matias. From here to the junction of the Colorado was about 18 leagues" (47.31 miles). However, before the middle of the nineteenth century, when the United States acquired sovereignty, their farming efforts were confined to that portion of the Colorado River known as the flood plains, which extended only ten or fifteen miles up the Gila River (Kroeber, R. 238; Driver, R. 164). The defendant admits the Yuma occupied portions of the area claimed, at least along the flood plains on the Gila and the Colorado Rivers. (See Def. Req. Fdgs. 11, 12, 13, 14 and 15).

10. The "Great Colorado Valley" which includes Parker Valley, Cibola Valley and Palo Verde Valley (R. 15) was so named by Lieutenant Ives. It runs from about Parker, Arizona, to near Picacho, California.

Lieutenant A. W. Whipple, on a Government exploration and survey journey to the west coast reached the Colorado River from the east by Bill Williams Fork in 1854. While in the Chemehuevi Valley, the chief or headman of the Chemehuevi sketched a map of the tribes on the Colorado River. Upstream from the Gila confluence he showed the Yuma on the east side most of the way from the Gila River to Bill Williams Fork and on the west side opposite the mouth of the Gila; the Chemehuevi above the Bill Williams Fork and Mohave above the Chemehuevi. Another map sketched on the ground by a Yuma chief and copied by Whipple showed, from the mouth of the Gila upstream on the Colorado, the following tribes: The Yuma around the mouth of the Gila; then the Yavapai above the Yuma; the Yuma again in the Great Colorado Valley; then in the same valley above Yuma the Mohave and the Chemehuevi before reaching Bill Williams Fork.

11. Dr. A. L. Kroeber, petitioner's expert, related that the Dieguena Indians of San Diego Mission crossed over the mountains and into the great desert south of the Salton Sea (now referred to as the Imperial Valley). The Kamia spoke Diegueno and the Yuma and Mohave distinguished the Dieguena and the foreign, remote, or alien Kamia, who were those attached to the mission or high up in the mountains. Dr. Kroeber testified his information was based upon a monograph of Kamia studies made by his colleague, Edward Gifford (R., pp. 18-21).

The Kamia lived in some areas of what is now the Imperial Valley which are described in E. W. Gifford's publication "The Kamia" (1931) published by the Bureau of American Ethnology, Bulletin 97:(1) On New River around Indian Wells, (2) On Alamo Slough around Brawley, (3) At Hatopet on the east-west course of the Alamo River ten miles south of the Sandhills, ten miles from the Colorado River, and also at Espayan opposite San Luis. Gifford pointed out that these "streams" of the Imperial Valley, New River and Alamo Slough intermittently dried up and the Kamia habitat was "at times the west bank of the Colorado in Yuma territory. \* \* \* When they were on the Colorado they lived on the west bank near Algodones. The Yuma held the opposite bank and were evidently owners of the west bank" (Cl. Ex. 4, p. 12).

12. Fray Francisco Garces in 1776 found the Halchadhoma (or Halchidhoma) Indians on the Colorado River from below Palo Verde to Parker. Garces sought to effect peace between the Halchadhoma and their enemies, the Yuma and Mohave.

Dr. Leslie Spier of the University of New Mexico in his book on the Yuman tribes reported that sometime between 1825 and 1830 the Mohave virtually annihilated the Halchidhoma and the remnant fled and emerged with the Maricopa up the Gila River after a sojourn in Old Mexico for a few years. Dr. Kroeber placed the probable date of the battle removing the Halchadhomas from the Colorado as the year 1828. The exact battle location is disputed but was reported by Spier as two miles south of Blythe (Kroeber, R. 26-30).

Dr. Kroeber reported the Chemehuevis were a problem to anthropologists since "they had some miserable land," were prolific and always searching for food. Their contacts were primarily with the Mohave. He states they were

emigrant aliens in the area above Blythe on the Colorado and were of no particular concern or consequence to the Yuma (Dr. Kroeber, Tr. p. 56). This habitat was north of "the Yuma country."

13. Dr. Kroeber's map of the Indians on the Colorado River shows the north line of the Yuma lands (Pet. Exs. 3 and 6) as identical with the larger map in the Mohave case, Docket Nos. 295 and 283 consolidated, marked "Claimants' Exhibit No. 2" and shown thereon as "Area 4C." The legend of this map introduced in the Mohave cases (Dkt. Nos. 295 and 283) identifies "Area 4C" as "mainly Yuma after 1828 but containing resident Mohave and increasing number of Chemehuevi."

We conclude here, as in the Mohave cases (Dkts. 295 and 283, Fdg. 19, 7 Ind. Cl. Com. 219), that the above mentioned map in the Mohave cases, consistent with Yuma map (Pet. Ex. 3), reflects the situation of the north Yuma boundary. We conclude here, as in the Mohave cases, that the evidence in this case establishes there was beyond question some use and occupancy of the southern part of the "Great Colorado Valley" by the Yuma Tribe.

The document entitled "Entries on MS Map of Colorado River" and allied papers, consisting of 26 pages, marked "Claimant's Exhibit No. 4" contains brief extracts of statements of explorers and Government men as to the lands areas occupied by the Yuma Indians as "the documentary" of Dr. Kroeber's map (R. 67; Cl. Ex. 4) and is concluded with a bibliography.

Agent Leihy in a letter dated October 2, 1866, to Commissioner of Indian Affairs, stated as follows (Cl. Ex. 4, p. 19):

Yumas --- (occupy) left bank of the Colorado, from the southern boundary of the territory to about 30 miles above Ft. Yuma, but are concentrated mostly at Arizona City (Yuma City), thence crossing to Ft. Yuma.

Dr. Kroeber in his "comment" appended to this extract noted the Great Colorado Valley began about 30 air miles or 60 miles by river from Yuma and there is more evidence of its occupation by the Yuma in the 1850's above the entrance to the valley around  $33^{\circ} 14'$  ... than the stretch below. Six miles south of La Paz by air is nearly to Ehrenberg on level with Blythe, or by the river perhaps halfway between the two. There are no recorded Mohave settlements below this line though there are definite records of Yuma villages above it in 1851 and 1856 (see Map, Cl. Ex. 3).

With reference to Yuma occupancy in the north portion of the claimed area in the Great Colorado Valley, Lieutenant Ives on his trip by the steamer Explorer in 1858, reported (Cl. Ex. 4, p. 6):

(p. 53)

"The Yumas cultivate the better portions" of the Great Colorado Valley \*\*\*

The Yumas have been consistently encountered since we have been in this valley. They collect in knots upon the bank to watch us pass. Their fields and villages have not been seen from the river \*\*\*. Much bottom land, thick growth of trees [This was written at Camp 24, lat.  $33^{\circ} 48'$ , 129 m. by river above Yuma, on 1/23/57 -- viz. 6 days or 69 m. above entry of the "Great Valley."]7

(p. 54)

"The Yumas present a sorry appearance" with their cast-off white clothing.

Camp 24,  $33^{\circ} 48'$ , base of Halfway (Maria) Mts. "A small party ... of Chemehuevis came into camp this evening. They live in the valley adjoining that which we are now traversing, but are altogether different ...

(p. 55-56)

Camp 32, Beaver Isl. 1/31/57, (about  $34^{\circ} 09'?$ ), 18 m. below mouth of Bill Williams Fork: "42 m. of navigation [Since Camp 24 of 1/23/57] ... have brought us to the head of the Great Colorado Valley ... The Yumas are no longer seen. Our sharp-witted friends, the Chemehuevis, seem to have exclusive possession of the upper end of the valley.

14. Following the Treaty of Guadalupe Hidalgo (9 Stat. 922) in 1848 by which California was ceded to the United States, large numbers of people from the east began the long overland journey to California. One of the migrant routes took the travelers over the Colorado River at Gila Junction. Because of Indian hostilities Fort Yuma was established at this point in 1851 and reoccupied in 1852 by Major Samuel P. Heintzelman. Peaceful relations were eventually restored within the next few years with the Yuma tribe and the Cocopah Indians who were located downstream toward the mouth of the Colorado. In 1858 and 1859 the officials of the United States desired to open the Colorado River to navigation. Captain Sitgreaves of the United States Engineers lead a party into the Great Colorado Valley from Zuni (New Mexico) where he contacted the Mohave and at Parker reported a large but recent settlement of Indians represented to be Yumas. His soldiers repulsed an attack of these "Yumas" and proceeded down river to Fort Yuma (Cl. Ex. 4, pp. 4-5). Sitgreaves saw nothing of the Halchidhoma (who Garces reported occupied a brackish, long "lake or slough at the edge of mts., W. of Colorado R., a day's long walk; 'near'", i. e., more than halfway to Yuma). This would be Laguna Palo Verde near Palo Verde according to Dr. Kroeber, (Cl. Ex. 4, p. 4). The Halchidhoma had been driven out in about 1828 by the Yuma and Mohave.

In 1849, two years earlier than the Ives trip, Lieutenant A. W. Whipple, on a Government exploration and survey journey to the West Coast, reached the Colorado River from the east by Bill Williams Fork. The mountains opposite the mouth of this fork were named "Whipple Mountains" for this explorer. Lieutenant Whipple copied a Chemchuevi map scratched in the sand (Finding 10 above; Cl. Ex. 4, pp. 21-24).

Dr. Kroeber's Mohave informant, Tokwatha, narrating "Olive Oatman's Return" sets out an 1856 itinerary from near Needles to Ft. Yuma and that on "5th day - to Asakwatai on W. side, Yuma living there, gave food" (Near Ehrenberg - Blythe 33° 30', + or -).

15. The Yuma Tribe occupied areas along the Colorado River in the vicinity of Blythe and Ehrenberg at least at the time of its acquisition by the United States.

The Yavapai's occupancy or use of lands on the Colorado in the vicinity of Picacho was only as "permissive users." The Yavapai did not cultivate food plants and their farming of that river bottom was limited to the invitation, seeds, and assistance of the Yuma. Then these "desert people" went back to their mountains after mescal, at LaPaz, Moon Mountain, Quartzite, Castle Dome Mountains and Kofa Mountains (Gifford, Cl. Ex. 4, p. 14).

Dr. Kroeber testified that Picacho, situated thirty air miles north of Yuma or sixty miles up river from Yuma, was an old established Yuma site. He stated that Gifford in his studies of the Yavapai published a map which brought the Yavapai down to the river on the east in this general section. But to ascribe ownership or use and occupancy by the Yavapai to this area would be an erroneous conclusion because the Yavapai "when they got completely starved up here (in the desert area of Arizona) they would come down and visit their Yuma friends and get a few square meals of corn and pumpkins, and sometimes would say 'Give us some seeds and we'll do a little planting.'" Moreover, the Yavapai had no knowledge of farming save as they were sometimes shown by the Yuma. After planting these

borrowed seeds the individual Yavapai "would then return to their mesa and hills to hunt quail, rabbits, or whatever it was." The Yavapai visits were only of those who individually had friends among the Yuma (Kroeber, R. 24-25).

As in their relations with the Yavapai, the Yuma likewise in "intermittent dry years" permitted the Kamia some usage of the Lower Colorado below Blythe. Also the Kamia (or Dieguenos) frequented an area to the south in the same manner at Dieguenos in Lower (Mexican) California. However, the weight of the evidence shows the Yuma were not only the recognized owners of the river lands between Blythe and Fort Yuma by all Indians involved but actually did use and exercised exclusive control over such lands.

16. Dr. C. Daryll Forde summarizes records of Diaz and Alcoran (Forde's Ethnog. of Yuma Indians, p. 101) to the effect that during the floods of April and May the Yuma move away from the river to escape inundation and that while these accounts did not agree in details they "indicate the instability of occupation of any particular site."

Forde also listed the following Yuma village sites:

(1) The site of Palma's village, one of their main settlements until recent times about two miles northeast of Fort Yuma.

(2) The second large village, immediately south of Pilot Knob, north of the confluence of the Alamo stream with the Colorado across the present International Boundary.

(3) Another settlement of considerable size at the present site of Laguna Dam on the California side.

(4) Another village, whose name is forgotten, a little east of the present site of Picacho at the foot of the Chocolate Mountains.

Forde points out that while Lieutenant Ives reported the Yuma were concentrated in the country ten to fifteen miles to the north and to the south of Fort Yuma, that Yuma villages were found at intervals all the way up to Half Way Mountain, about 135 miles north of the Yuma confluence "but that from Ehrenberg to Parker was occupied exclusively by Chemehuevi."

Forde, in apparent comparison of Ives 1858 reports to the 18th and 19th century reports of the Spaniards that the Yuma were situated near the Gila confluence remarked:

These accounts do not necessarily exaggerate the territory then occupied by the Yuma, for a shift of population had occurred in the preceding years. The remnants of two tribes (Kohuana and Halchidhoma) occupying the valley around and north of the present site of Ehrenberg moved east to join the Maricopa \*\*\*. After being harried many years by Yuma and Mohave raiding parties they moved off eastward the Halchidhoma going first, before the arrival of the American explorers. This evacuation of the wide valley south of Bill Williams Fork was apparently followed by a considerable northward extension of Yuma settlements.

One of these northern villages was called avi'kwotapai. It was some distance south of Parker on the California side. Steven Kelley's father lived there (p. 103, Forde's Ethnog. of Yuma Indians).

17. Forde also relates in his Ethnography of Yuma Indians (p. 117) that "tobacco was obtainable in small quantities where it grew wild near the mesa edge" but that the imported tobacco of the Kamy'a and Akwa'ala was preferred.

Defendant's expert, Dr. Harold Driver, upon the possibility of the Calcomucho Mountains as a tobacco source, stated as follows (R. 172, line 23 to p. 173, line 3):

I read everything I could find on the Yuma, 30 some references, and I found no specific localities mentioned west of the river other than the Calcomucho Mountains which are about 10 or at most 15 miles from Fort Yuma, northwest, where Castetter and Bell say they may have gathered wild tobacco because the species they smoke is found there. So it is not a firm statement but it seems likely and it is close enough.

18. Dr. A. L. Kroeber, petitioner's expert, upon examination of Gifford and other sources, concluded that the Imperial Valley was "actually used and occupied by the Kamai" (R. 102, line 26).

19. Dr. Driver stated that he was not aware of any evidence to the effect the Yumas ever used the Chocolate Mountains (R. 234).

This witness further stated he was aware of no evidence of Yuma occupancy of the sand dunes in the United States portions (R. 234). Forde lists an aboriginal settlement a little east of Picacho "at the foot of the (Arizona) Chocolate Mountains" (p. 102, Forde's Ethn. of Yuma Indians). Also Kroeber's description of the Chemehuevi Chiefs' map shows this area as Yuma lands (Pet. Ex. 4, p. 24).

20. There is no substantial evidence in the record to show that the Yuma occupied, farmed or otherwise used any of that land on the Gila River farther than about fifteen miles above its confluence with the Colorado River, save and except periodic trips made by armed bands of Yuma Indians to Metate Mountain or Antelope Hill "to break out" slabs for grinding stones (R. 164-165). This activity constituted a use of such land and was a necessary and essential part of Yuma life.

Dr. Kroeber conceded that along the Lower Gila there was always danger of a raid from the Maricopa and the Kavel-chadon (Halchidhoma) so that when the Yuma went to Antelope Hill for slab to use as grinding stone that it

was necessary to travel as an armed band (R. 245). He further stated "there is no question that in the first half of the 19th century there was a more or less depopulated stretch along the lower Gila. I don't mean it was not owned but nobody lived there."

Since the only evidence of any use of the Gila area above the farm land at the confluence was the use of metate slab from Antelope Hill, we have defined the Yuma boundary short of the Mohawk Range. The fact that an armed party was essential for protection against their enemies does not alter or negate the fact that such usage of Antelope Hill was made by the Yuma Tribe (Driver, R. 164; Deposition Stephen Kelly, Pet. Ex. 9, p. 13).

21. The Commission finds, based on the findings of fact herein made and the record as a whole, that petitioner, The Quechan Tribe of the Fort Yuma Reservation of California, at the time said lands were acquired by the United States by the Treaty of Guadalupe Hidalgo in 1848 and in the Gadsden Purchase of 1853, aboriginally used and occupied the following described land:

Beginning at a point midstream of the Colorado River, near Pilot Knob, and constituting the most easterly point of the International Boundary Line between the State of California and the Republic of Mexico; thence west along said line to the point of its intersection with the east edge of the Sand dunes; thence north along the western edge of the Calcomucho Mountains; thence northwest across the mesa and the Chocolate Mountains to the point on Arroyo Seco where several tributaries join the main channel; thence east by northeast, to the northwest point of the Palo Verde Mountains; thence northeast to a point eight miles north of Blythe, California (along the Yuma boundary shown on map, "Plf. #6", drawn in red pencil by Dr. Kroeber to the point of Maria Mountains); thence southeast to the short turn in the river about three miles northwest of Blythe; thence due east, to the crest of Dome Rock Mountains; thence generally south to southeast along the crest of Trigo Mountains;

thence generally southwest along the crest of the Chocolate Mountains of Arizona along a curved line to a point about five miles east of where the river bends south downstream from Picachio; thence southeast to Muggins Mountains; thence east by southeast to the mouth of that Arroyo, located about 6 miles east of Antelope Hill on the Gila River; thence southeast and upstream along the channel of said Arroyo for a distance of ten miles from the Gila River; thence west by southwest along a slightly curved line on the crest of the Gila Mountains to the point of intersection of the Arizona-Mexican Boundary with the Colorado River; thence generally northward, along the Colorado River to place of beginning.

The acreage as contained within the above described boundary shall be reduced in the amount of acreage, if any, as may be determined "reservation lands" of this petitioner in its claim, Docket No. 320.

(Reference, for convenience, is made to the map marked "Plf. #6." The above defined boundary varies with the Yuma boundary as drawn in red pencil on said map by Dr. Kroeber in two areas. The west boundary varies from Dr. Kroeber's between the southern end of the Sand Hills to the Palo Verde Mountains. The southeastern boundary varies from Muggins' Mountains to the Arroyo channel's intersection with the Yuma south boundary, some 12 miles southeast of Antelope Hill).

22. (a) No treaty was made between the United States and the Yuma tribe for the purpose of extinguishing the Indian title in said tribe to the lands it exclusively used and occupied. The lands found herein to have been exclusively used and occupied by the Yuma were located in what are now the States of California and Arizona.

(b) California was admitted to the Union by the Act of September 9, 1850 (9 Stat. 452). On March 3, 1851, the Congress passed "an Act to Ascertain and Settle the Private Land Claims in the State of California" (9 Stat. 631).

Section 8 of the Act provided:

... that each and every person claiming lands in California by virtue of any right or title derived from the Spanish or Mexican Government, shall present the same to the said Commissioners, sitting as a board \*\*\*

Section 13 of this Act further provided:

... all lands, the claims to which shall not have been presented to the said commissioners within two years after the date of this Act, shall be deemed, held, and considered as a part of the public domain of the United States; \*\*\*.

The claim here asserted is for lands aboriginally used and occupied by petitioner's predecessors in interest. It is not a claim based upon any right or chain of title derived from the Spanish or Mexican governments, and therefore, was not required by such act to be presented to the commissioners for confirmation.

Nevertheless, this 1851 Act, by virtue of the provisions of said Section 13, declared such California land, including that portion which is described in Finding 21 above, to be "public domain of the United States" effective March 3, 1853. The effect of this provision constituted an official taking of that portion of Yuma lands situated on the California side of the Colorado river and the Indian title to same was thereby extinguished by the 1851 Act of Congress.

23. The Indian title to lands of the Yuma Tribe on the Arizona side of the Colorado River, as are described and found by this Commission to have been exclusively used and occupied by the Yuma Tribe, were not extinguished until after the Yuma lands in California were declared public domain effective March 3, 1853.

An Act of July 22, 1854 (10 Stat. 308) established the Office of Surveyor General of New Mexico, and required him to make a report of all claims originating under laws of Spain and Mexico to lands in the territory of New Mexico. (The territory of Arizona was separated from that

of New Mexico February 4, 1863, 12 Stat. 664). This 1854 Act merely required the Surveyor General "to report" to Congress and did not constitute a method for extinguishment of Indian title, as distinguished from the 1851 Act concerning California lands (see U. S. v. Santa Fe Pac. R. R. Co., 314 U. S. 339 at pp. 351, 352).

As recited in footnote 7, page 352 of said opinion, Superintendent Poston of Arizona Territory held a council in 1864 attended by the principal chiefs and headmen of the Yumas, Mohaves, Yapapais, Hualapais and Chemehuevis. Superintendent Post proposed to this Council that a reservation for the Colorado River Tribes be made by means of a petition to the Congress.

Congress established the Colorado River Reservation by Act of March 3, 1865 (13 Stat. 559). Many of the Mohave Indians accepted this offer of the Government, and moved onto the reservation (see Fdgs. 15 and 25(c), Docket Nos. 283 and 295 Consolidated Mohave cases v. U. S., 7 Ind. Cls. Com. 219).

However, the Yuma refused to accept this offer of the Government to share in such reservation, as reported by the Commissioner of Indian Affairs, 1871. The Annual Report of 1871 contained a letter to the Commissioner of Indian Affairs dated August 22, 1871, from Superintendent Bendell, who noted (pp. 348, 351) their refusal as follows:

This tribe (Yuma) range in and about Arizona City. The Government of late years has given little or no attention to their condition. I have frequently invited their chief (Pascual) to visit me, but he has declined in every instance. The bulk of the tribe remain in their rancheros, and gain a subsistence by planting and cutting wood for the steamers plying on the Colorado River \*\*\*. They will not go to the Colorado reserve and are satisfied where they are. (Pet. Ex. 10, p. 31; underscoring supplied).

The Annual Report of the Commissioner of Indian Affairs for the following year, 1872, recited the same doleful state of "the Yumas." They consistently refused to move onto the reservation occupied by some 500 of the Mohaves and remained in dwindling numbers, gaining a scanty subsistence by planting, chopping wood for steamers on the river and performing menial tasks for whites. "They had no treaty with the Government and received but little assistance from the Government" (Pet. Ex. 10, p. 32). The Government waited thirty years to assign any reservation lands in "the Yuma country" for petitioner tribe.

24. In September 1854 Special Agent Harvey had advised "that a Reservation (for the Yuma) be made at once and surveyed" (Pet. Ex. 10, p. 24). However, during the next thirty years following Harvey's letter there was no acceptance by, or removal of, the Yuma Tribe to any reservation.

The intrusion of whites in large numbers through the heart of "the Yuma country" had begun soon after the Treaty of Guadalupe Hidalgo in 1848, which was the same year gold was discovered in the Sacramento Valley. A principal wagon trail to California crossed the Colorado River near Fort Yuma. A ferry was established across the Colorado River in March 1849 and conducted an immediate thriving business over the active resistance of the Yuma (Pet. Ex. 10, p. 12, Arizona Archives, Doc. No. 58,925).

The Yuma "have killed at least one hundred Americans since 1849" wrote Special Agent Harvey in his letter of September 1854 forwarded by Colonel Thomas I. Henley, Superintendent of Indian Affairs to the Commissioner of Indian Affairs. Harvey described "frequent disturbances with the emigrants, the stock of the emigrants getting into their (Yuma) fields" (Cl. Ex. 10, p. 24).

Although the "chiefs and headmen of Yuma" attended the conference of Superintendent Poston in 1864 of the Colorado River tribes, which conference resulted in the establishment of the Colorado Indian Reservation by Act of Congress the following March, 1865 (see Pdg. 23 above), it seemed apparent to George W. Leihy, Superintendent of Indian Affairs, Arizona Territory, that the Yuma Tribe would not remove themselves from their flood plains on to such reservation situated miles up river from their ancestral lands.

Superintendent Leihy, in a letter addressed to D. N Cooley, Commissioner of Indian Affairs and dated January 24, 1866, urgently propounded the question of the deteriorating status of the Yuma Tribe in their rights to their historic lands and whether the Government intended to abandon protection of the Yuma Tribe to their lands. The concluding part of Leihy's letter reads as follows (Pet. Ex. 10, p. 29):

\*\*\* To obviate difficulties, to protect the rights of the Indians, and for the satisfaction of the settlers, I would most respectfully submit to the department the following question. Does the department regard the unceded lands, those to which Indian title has not been extinguished as "Indian country?" If Yes, what are the instructions of the department concerning its government, etc.?

A decision upon this point is growing daily more important, as settlers are rapidly locating the few spots suitable for cultivation, and upon which the Indians for centuries have depended for subsistence.

The westward movement of American emigrants through Yuma lands at first constituted only a trespass or interference with the Yuma Indians

in the enjoyment and use of their lands. These trespasses were soon followed by actual dispossession of the Yuma from their best subsistence land on the flood plains by white settlers.

On January 9, 1884, President Chester A. Arthur by executive order cancelled a similar order of the preceding year and on the California side of the Colorado provided for a "reserve for Yumas" now known as "Fort Yuma Reservation of California" (Royce, p. 914).

25. Defendant maintains that "the record fails to disclose one scintilla of evidence of any 'taking' of lands from petitioner by defendant" (Def. Br., p. 34).

The petitioner contends "the times when and the transactions in which said lands were taken are unknown to the petitioner but known to the defendant, and have not yet been determined or agreed upon" (Pet. Br., p. 10; Req. Fdg. 13).

The Yuma Tribe had lost the possession of much of its more valuable agricultural tracts of land in Arizona to the land-hungry settlers long before their Indian title was extinguished in Arizona by any official act of the United States (see extract of Superintendent Leihy's letter, Finding 24).

26. The removal of the Yuma Tribe to the reservation set aside for them in President Arthur's executive order of January 9, 1884 (Royce, p. 914) is found to be a relinquishment as of that date of tribal rights in lands outside that reserve. In view of the long standing attempt to

settle the Yuma problem by placing them on a reservation, their acceptance of the reserve established in 1884 is the equivalent to a release of any tribal rights in lands outside the reservation. The United States extinguished Indian title to the Yuma lands in Arizona in the establishment of this reservation, and by removal of the Yuma Tribe to same.

EDGAR E. WITT  
Chief Commissioner

WM. M. HOLT  
Associate Commissioner

Associate Commissioner Arthur V. Watkins takes no part in making the above Findings of Fact because he has only recently become a member of this Commission.