

BEFORE THE INDIAN CLAIMS COMMISSION

THE QUECHAN TRIBE OF THE FORT YUMA)
 RESERVATION OF CALIFORNIA,)
)
 Petitioner,)
)
 vs.)
)
 UNITED STATES OF AMERICA)

Docket No. 319

Defendant.

Decided: Sept. 30, 1959

Appearances:

Fulton W. Hoge,
 Attorney for Petitioner.
 Louis L. Rochmes
 of Counsel

Milton E. Bander, with whom
 was Mr. Assistant Attorney
 General, Perry W. Morton,
 Attorneys for Defendant.

OPINION OF THE COMMISSION

Witt, Chief Commissioner, delivered the opinion of the Commission.

The petitioner, the Quechan Tribe of the Fort Yuma Reservation of California, an alleged identifiable tribe of American Indians, timely filed its petition herein seeking recovery of compensation from the United States, defendant, under provisions of the Indians Claims Commission Act, (60 Stat. 1049) for certain lands alleged to have been aboriginally used and occupied by their predecessors in interest, the Quechan (or Yuma) Tribe of Indians. The land so claimed is situated along and near the International Boundary of the United States with

Mexico and the common state boundary line of the States of Arizona and California, the lower Colorado River.

On November 19, 1953, this Commission entered an order consolidating this case for hearing with the Indians of California cases, Dockets Nos. 31 and 37, et al. After the hearings in such cases as consolidated were held, by order entered herein on October 6, 1958, this case was severed from the consolidated cases and permitted to proceed separately. The testimony and all other evidence therein adduced in such cases, as consolidated, became a part of the record of evidence in this case.

The Commission's findings of fact and opinion now herein made and rendered relate only to issues involving the Government's liability; all other issues as valuation of lands, deductions of reservation acreage, offsets and other pertinent issues as may be necessary to a final determination of this case are deferred for future proceedings.

The defendant stated certain objections to a ruling of this Commission wherein leave was granted petitioner to amend its petition to "specifically include a claim under the provisions of Section 2(4)" of the Indian Claims Commission Act, as follows:

Claims arising from the taking by the United States, whether as a result of treaty, cession or otherwise of lands owned and occupied by the Claimant without payment of such lands (R. 152-153).

(It is noted that, although leave to file such amendment was granted to the petitioner on July 11, 1955, no paster to the original petition or other amendment has been filed.)

The defendant renews its objection in "Objection to Petitioner's Requested Finding 2," stating:

* * * It was not until the time of trial that petitioner alleged any right to recover under Section 2(4). This we contend was too late. * * * (Def. Br. pp. 35-37).

Such requested amendment to the petition "specifically alleging" petitioner's claim under the provisions of Section 2(4) was nothing more than a clarification of the original petition. The ruling of this Commission made on July 11, 1955, overruling defendant's objections to filing of same, therefore, stands now as when made. (R. 152-153; See Def. Br. 35-37 for complete statement of its objections.)

The four fundamental issues presented in the petitioner's claim are:

1. Whether petitioner has the legal capacity to maintain this action? That is, whether this petitioner is, in fact, a presently identifiable tribe of American Indians?
2. Whether petitioner is successor in interest to the historic Yuma Tribe? That is, are its present tribal members, in fact, the descendants of the historic Yuma Tribe?
3. Whether the historic Yuma Tribe held aboriginal Indian title to any of the land here claimed? That is, what definable areas of land, within the lands here claimed, were in fact, exclusively used and occupied in aboriginal times by the historic Yuma Tribe, and particularly at the time when sovereignty of the United States attached to same?
4. Whether such aboriginal lands, if any, were taken from this petitioner, or its predecessors in interest, by the defendant, and the date (or dates) of such taking, if any? That is, whether, in fact, defendant has extinguished the aboriginal Indian title to any lands of the historic Yuma Tribe, and if so, when and what lands were taken?

LEGAL CAPACITY

The Quechan Tribe of the Fort Yuma Reservation of California is an organized tribe of American Indians with a Constitution and By-Laws. (Cl. Ex. 8). Petitioner's constitution was duly adopted by the tribe, and approved by the Secretary of the Interior on December 18, 1936, pursuant to the Indian Reorganization Act of June 18, 1934. (25 U. S. C. A. 476). The jurisdictional requirements as to identification of the petitioner tribe to bring this action under the provisions of Section 2 of the Indian Claims Commission Act are met.

While Section 10 of the Indian Claims Commission Act permits "any member of an Indian tribe, band or other identifiable group of Indians as the representative of all its members" to present a claim to this Commission, it is further therein provided that:

"wherever any tribal organization exists, recognized by the Secretary of Interior as having authority to represent such tribe, band or group, such organization shall be accorded the exclusive privilege of representing such Indians, * * *."

We conclude that the addition of individual members as parties plaintiff to the named tribe, petitioner, would be superfluous and is unnecessary.

Defendant maintains that the Tribal Council's authority to sue for tribal lands is limited to land "within the Fort Yuma Reservation" (Def. Br., P. 63). We note that Article IV, Section 1(b) of the constitution expressly empowers the Council, "to present and prosecute any claims or demands of the Quechan Tribe" (Pet. Ex. 8, p. 2).

SUCCESSORSHIP

Defendant contends in Defendant's Requested Finding 2 (Def. Br., p. 6), that competent evidence fails to disclose petitioner is successor to the

historic Yuma or Quechan Tribe, that no proven descendant of the historic tribe supplements the corporation "as party plaintiff" and no evidence is adduced "to determine the composition of the tribal roll of April, 1934."

This Commission has no express jurisdiction in matters of enrollment and other such governmental relations with individual Indians. These are administrative functions under jurisdiction of the Department of the Interior and the Bureau of Indian Affairs. The jurisdiction of this Commission is limited to claims defined by statute and presented on behalf of a "tribe, band, or other identifiable group of American Indians" (Section 2, Indian Claims Commission Act, 60 Stat. 1049; 25 U.S.C.A. 70a).

The question raised by defendant as to successorship by this tribe to the rights of the aboriginal tribe is a separate question from the issue of present identity of the petitioner as a tribe of American Indians. Successorship involves the proof of descendancy from the original tribe, group or band. But we do not find it reasonable or necessary to identify each tribal member of petitioner tribe as to the authenticity of his tribal enrollment or as to his aboriginal antecedents or genealogy to prove the successorship of petitioner to the aboriginal tribe.

It is sufficient for petitioner to show that it is the tribal organization which has been approved by the Secretary of Interior (Pet. Ex. 8) and that as a corporate entity it collectively constituted that tribe whose members descended from the aboriginal tribe. The record in this case is replete with historical accounts, extracts of reports, Government correspondence, and other records which establish the continuous existence of this tribe of Indians (See Pet. Ex. 4A through Z: and Pet. Ex. 10) from earliest historic times to the present. We,

therefore, have concluded that petitioner is the successor to the rights of the historical Yuma (or Quechan) tribe (Finding 5).

"Yuma" is an English name and is synonymous with the Indian name "Quechan." This tribe of Indians was 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. This has always been the center of their territory and is where they are now assigned a reservation. Kino records that the Yuma also lived on the west side of the Colorado. Although he did not cross over, some 300 swam over to greet him. (Forde's Ethnog. of Yuma Indians, p. 99).

ABORIGINAL INDIAN TITLE

The Yuma were relatively undisturbed in Spanish and Mexican times. They maintained their aboriginal culture almost unchanged until the fifties of the last century, when the establishment of the caravan trail to Southern California terminated their freedom to pursue their native culture (Forde's Ethnog., p. 88). They were a strong war-like people with a population of about 3000 in 1848. Their population was not diminished until after the United States acquired sovereignty of their soil (Driver, r. 219; Heintzelman, Cl. Ex. 10, p. 18). Dr. A. L. Kroeber described them as a tribe of farming Indians in California, living in independent social groups, which were autonomous land-owning villages or "rancherios" (R. pp. 11-12).

The petitioner seeks recovery of compensation herein for certain described land situated in the southern part of the area presently known as the States of Arizona and California. This claim is based solely upon

a claim of exclusive use and occupancy from time immemorial, and is not based upon any treaty with or cession to the United States. The lands claimed generally extend from about 8 miles northwest of Blythe, California, down both sides of the Colorado River to some 20 miles below its confluence with the Gila River. The claimed area also encompasses about 10 miles on either side of the Gila eastward to the Mohawk Range. It includes an area extending from said confluence near the International Boundary with the Republic of Mexico, and bounded on the southwest by a line of sand hills, almost to the Salton Sea.

The northern part of the area claimed by the Yuma Tribe includes the southern part of the "Great Colorado Valley" which valley stretches along the Colorado River from Parker, Arizona, downstream to Picachio, California.

In 1828 the Halchadhoma Indians were driven out of the area, between Palo Verde north to Parker by the Mohave Indians. The Halchadhoma were virtually annihilated and the remnant fled and emerged with the Maricopa up the Gila River after a sojourn in Old Mexico for a few years. Dr. A. L. Kroeber, petitioner's expert, stated that the Yuma displaced the Halchadhoma in the area of Palo Verde.

The Yavapai also frequented the Colorado River on the east about the area of Picacho. The Yavapai were not farming Indians and their planting was with seeds borrowed from the Yuma. Such limited use could not be considered more than "permissive use" by the Yavapai of Yuma land.

Likewise on the west of the Colorado, below Blythe, Dr. Kroeber related that Gifford in his studies of the Kamia (or Dieguenos) reported the Kamia were permitted by the Yuma to plant some in dry years. However,

Gifford stated "The Yuma held the opposite bank and were evidently the owners of the west bank." The Kamia use was limited to dry years when New River and Alamo Slough dried up.

Petitioner makes claim to desert areas extending almost to the Salton Sea in the Imperial Valley area. There is no evidence to support this claim. Dr. A. L. Kroeber, petitioner's expert, testified he had altered his earlier views and had concluded after a careful investigation, there was no Yuma occupancy of the Imperial Valley area in aboriginal times. (Finding 18; R. 102-106)

The Halchadhoma and Maricopa Indians occupied the Gila River area in the Mohawk Mountains. The Yuma planted corn, beans, pumpkins and melons on the moist flood plains of their rivers and gathered mesquite beans up to fifteen miles above the confluence of the Gila with the Colorado River, and along the Colorado River. The Yuma additionally used Antelope Hill to break out metate slab for grinding stones. However, the close proximity and danger of an attack from the Halchadhoma and Maricopa necessitated an armed band of Yuma to travel together to Antelope Hill. It is concluded that the Yuma use and occupancy boundary did not extend to their claimed line on the Mohawk Range but only to the area of Metate Mountains.

In dry years, when the river failed to flood their planting ground and the mesquite beans were scarce, the Yuma were reported to eat rats, mice, frogs and lizards. They were essentially dependent upon the plant life adjacent to the rivers for their subsistence. Their use of the desert mesas was limited. The Yuma used wild tobacco found in the Calcomucho Mountains about fourteen miles northwest of Yuma.

The defendant urges that "the historic Yuma Tribe had no title to the lands claimed," basing this contention upon certain events prior to 1848 alleging that such lands were first under the dominion of the King of Spain in 1492 which was a proprietorship belonging to the Spanish Crown, that Spanish law recognized only mission settlements of Indians and with only limited rights of a usufructuary nature (Def. Br., pp. 64-65), that after the Declaration of Independence of Mexico recognized by the United States in 1822, thereafter Mexico's Supreme Executive Government established in 1828, set up a cautious procedure designed to guard against fraud in land matters, and that Mexico never recognized the principle of Indian title or aboriginal title, with the exception of missions and towns (Def. Br., p. 67).

We must reject the contention that any non-recognition of Indian title by the prior sovereignty of Spain and Mexico would operate as a bar to this petitioner's claim here. There is no difference in the policy of the United States as respects aboriginal possession in lands previously owned by Spain and Mexico than in any other areas. (Mohave Consolidated Cases v. U.S., 7 Ind. Cl. Com. 219; U.S. v. Santa Fe Pac. R.R. Co., 314 U. S. 339, 346).

Defendant also contends that this Commission has erred in its interpretation of the Act of March 3, 1851 (9 Stat. 631), as it was applied to a fact situation similar to this claim in the Mohave Consolidated cases (7 Ind. Cl. Com. 219, Fdg. 22(b) at p. 242) and that we have thereby "overruled" the 1901 decision of the Supreme Court in Barker v. Harvey (161 U.S. 481) (See Def. Br p. 78).

Plaintiff Indians in Barker v. Harvey were held to have "abandoned" any claims to certain mission lands in California which were based or founded on the action of the Mexican government. The great weight of the evidence fails to support defendant's contention that the Yuma Tribe voluntarily abandoned its lands. The Yuma Tribe was not a mission group of Indians and was not required to comply with the Act of March 3, 1851 (9 Stat. 631) in confirming or registering any land claim derived from Mexico or Spain. (Mohave Consolidated Indian Cases v. U. S. 7 Ind. Cl. Comm. 219; U. S. v. Sante Fe Pac. R.R. Co., 314 U. S. 339)

TAKING OF YUMA LANDS IN CALIFORNIA

The operative effect of the 1851 Act was held in the Santa Fe case as containing "machinery for extinguishment of claims, including those based on Indian right of occupancy," insofar as lands situated on the California side of the Colorado River were concerned. Section 13 of the 1851 Act extinguished the aboriginal Indian title of the Yuma Tribe to its California lands by declaring same "public domain" of the United States. (See Fdg. 22(b); cf., Mohave Consolidated Cases v. U.S., 7 Ind. Cl. Comm. 219; Indians of California, 8 Ind. Cl. Com. 1, 29, 39; Indians of California, 98 C. Cls. 583, 592, Cert. Den., 319 U. S. 764). Consistent with the above cited cases, we think the effective date that Yuma lands in California became "public domain," on March 3, 1853, constitutes the date of taking (Finding 23(b)).

TAKING OF YUMA LANDS IN ARIZONA

The opinion in the Santa Fe case distinguished the 1851 Act from the Act of July, 1854 (10 Stat. 308) which established the office of

Surveyor General of New Mexico and required him to make a report to Congress on all claims of land under the laws, usages and customs of Spain and Mexico as originated before the cession of the territory to the United States by the Treaty of Guadalupe Hidalgo in the territory of New Mexico. The opinion stated:

The Acts of 1854 and 1870, unlike the Act of 1851, merely called for a report to Congress on certain land claims. If there was an extinguishment of the rights of the Walapais, it resulted not from action of the Surveyor General but from action of Congress based upon his reports. We are not advised that Congress took any such action. (314 U.S. 339, 351)

The opinion on the question of the "taking" of the Walapais' aboriginal lands concluded that the Walapais acceptance of a reservation established by executive order in 1883 must be deemed to have been a "relinquishment of tribal rights in land outside the reservation and notoriously claimed by others," as to any lands in Arizona.

The establishment of a "reserve for Yumas" by President Chester A. Arthur's executive order of January 9, 1884, and the acceptance of same and removal thereon of the Yuma Tribe, constitutes the date of relinquishment of its tribal rights to lands outside such reserve. Therefore, on January 9, 1884, the United States had extinguished Indian title to those lands which the Yuma Indians held by exclusive use and occupancy in Arizona (Finding 26).

The petitioner has proven aboriginal Indian title in the Yuma (Quechan) tribe to the lands described in Finding 21 and the taking of same by the United States was without treaty of cession or payment of compensation.

Accordingly, an interlocutory order will be entered herein adjudging the United States liable to petitioner for the value of the lands described in Finding 21, less the amount of such acreage as is claimed by this petitioner in Docket No. 320. The total value of such net acreage shall be reduced in the total amount of credits and offsets, if any, allowable under the Indian Claims Commission Act.

EDGAR E. WITT

Chief Commissioner

We Concur:

WILLIAM H. HOLT

Associate Commissioner Arthur V. Watkins takes no part in the rendition of this Opinion because he has only recently become a member of this Commission.