

BEFORE THE INDIAN CLAIMS COMMISSION

THE HUALAPAI TRIBE OF THE	)	
HUALAPAI RESERVATION, ARIZONA,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Docket No. 90
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: November 19, 1962

Appearances:

Royal D. Marks, with whom was Arthur Lazarus, Jr., of the firm of Strasser, Spiegelberg, Fried, Frank & Kampelman, Attorneys for Petitioner

Howard G. Campbell, with whom was Mr. Assistant Attorney General Ramsey Clark, Attorneys for Defendant

OPINION OF THE COMMISSION

Holt, Associate Commissioner, delivered the opinion of the Commission.

The petition in this case was timely filed by The Hualapai Tribe of the Hualapai Reservation, Arizona.. Petitioner is an organized tribe recognized by the Secretary of the Interior as having the right to maintain this action and the Commission has found petitioner has the capacity to bring such suit.

This phase of the litigation is limited to the issue of what lands, if any, were exclusively used and occupied by the Hualapai Indians prior

to extinguishment of Indian title in the lands by the United States. Petitioner claims that The Hualapai Tribe held Indian title to a described tract of land (Finding 4) from time immemorial until January 4, 1883, the date the Hualapai Reservation was created by Executive Order of the President of the United States.

The claimed tract is estimated, generally speaking, to contain in excess of 6,000,000 acres of land but since the reservation area of about 700,000 acres is included therein and is not involved in this action, the total acreage for which recovery is sought approximates 5,500,000 acres. The claimed area is located in northwestern Arizona. It is bounded roughly to the north and west by the Colorado River, on the east by an irregular line running from the Colorado River at the mouth of National Canyon southeast to about Ash Fork, Arizona, then southwest to the north fork of the Santa Maria River and on the south by Bill Williams Fork. The topography of the region causes great differences in altitude ranging from about 1,000 feet in the southwestern portion of the claimed area to about 6,500 feet in the northeastern part. Parallel mountain ranges running in something of a south-northwest direction intersperse the claimed tract such as the Black Mountains, White Hills, Cerbat Mountains, Hualapai Mountains and the Aubry Cliffs. The climate varies from arid to what may be termed semi-arid depending upon elevation.

Petitioner takes the position that the basic questions pertaining to the existence of a Hualapai Tribe, its exclusive use and occupancy

of a definable territory in northwestern Arizona and the extinguishment of the tribe's Indian title in lands outside the present reservation have already been decided by the Supreme Court of the United States in United States v. Santa Fe Pacific Railroad Co., 314 U. S. 339 (1942) and related litigation. According to counsel for petitioner the only real issues remaining for the Commission to determine are where to locate the precise boundaries of the Hualapai territory and whether the acquisition by defendant of petitioner's lands outside the reservation constituted a taking by defendant of tribal property (a) without payment of just compensation in violation of the Fifth Amendment, or (b) for an unconscionable consideration.

Counsel for petitioner contend that during the litigation in the Santa Fe case the Government urged and the courts ruled "that the Hualapai Tribe from time immemorial exclusively used and occupied a definable territory in the northwestern portion of the present State of Arizona." We do not believe so much can be read into the Santa Fe case. Only a brief discussion of this contention appears necessary in view of the decision herein rendered in favor of the Hualapai Tribe. Briefly then, it seems that after the Hualapai Reservation had been set aside for these Indians in 1883 a controversy developed between the Hualapais and the Santa Fe Pacific Railroad Company which had constructed a railroad across the reservation. The railroad claimed full title to alternate sections within the reserve under the grant to its predecessor the Atlantic and Pacific Railroad Company, provided for in the Act of July 27, 1866, 14 Stat. at L. 292, Chap. 278. The railroad was constructed across the

reserve in the early 1880's but there was little controversy until about 1925. Inevitably the question of Hualapai occupancy rights to the whole of the reservation became a matter of controversy between the railroad and the Hualapai. Finally, the United States brought suit in its own right and "as guardian of the Indians of the Walapai (Hualapai) Tribe in Arizona" to enjoin the Santa Fe Railroad from interfering with the possession and occupancy by the Indians of certain lands in northwestern Arizona.

The action commenced by the Government to quiet title stated two causes of action, the first relating to lands inside, and the second to lands outside the 1883 reservation. In brief, the Supreme Court of the United States ruled that, as to the lands outside the reservation, the establishment of the 1883 reservation and the acceptance thereof by the Hualapai amounted to a relinquishment of any tribal claims to such lands. Since any semblance of title in any lands outside the reservation in the Hualapai had been extinguished the Supreme Court affirmed the decree of the lower court dismissing said second cause of action. As to the first cause of action relating to lands within the exterior boundaries of the Hualapai Reservation the Supreme Court observed that on the day the petition for certiorari was filed the railroad had quit-claimed to the United States all lands claimed by it under the 1866 Act within the reservation. Because of this the lower court's decree dismissing the first cause of action was not reversed but was modified to allow an accounting "as respects such lands in the reservation which can be proved to have been occupied by the Walapais from time immemorial

can be had." The United States had prayed for an accounting "for all rents, issues and profits derived from the leasing, renting or use of the lands subject to said right of occupancy."

Up to this stage of the litigation in the Santa Fe case we find nothing that would give substance to petitioner's contention that the courts ruled that the Hualapai Tribe from time immemorial exclusively used and occupied a definable territory. The fact, however, that the United States instituted the suit to quiet title on behalf of the Indians is strong evidence that the Government believed that the Hualapai Tribe had exclusively used and occupied lands in northwestern Arizona from time immemorial.

Following the Supreme Court's decision an investigation was ordered (Pet. Ex. 73) by the Department of the Interior of the unpatented lands released (quitclaimed) to the United States by the railroad. An exhaustive investigation was made by two examiners for the Department, Mr. Felix Cohen and Mr. Abe Barber. The Department's investigators were instructed to ascertain the tribal rights of the Hualapai Indians to lands within the reservation and individual rights of occupancy of Indians on released lands without the reservation. In conducting the investigation the examiners among other matters considered the claim of the Hualapai Tribe covering all of the released lands within the external boundaries of the Hualapai Reservation. This claim was based upon the allegation that those lands were located in an area that was part of the ancestral home of the tribe and had been exclusively occupied from time immemorial.

The examiners held extensive hearings at which many aged Hualapai Indians testified. These investigators also considered many of the documents which are in evidence in the instant case such as the "Walapai Papers" (Pet. Ex. 72), "Walapai Ethnography" (Pet. Ex. 71), and other ethnological and documentary material. As a result of their investigation the examiners made Findings of Fact the first of which was that "The Walapai Tribe in 1872 and long prior thereto exclusively occupied and claimed an area of land" which is described at page 53 of their report (Pet. Ex. 73) and is depicted on a map (Pet. Ex. 76). Based upon their findings of fact the examiners concluded as a matter of law that the Hualapai Tribe had exclusive use and occupancy rights to all lands within the reservation released by the railroad at the time the railroad's map of definite location was filed under the 1866 Act and that the exclusive right of use and occupancy of the tribe had not been forfeited, abandoned, or otherwise extinguished with respect to reservation lands. Following this investigation the United States and the railroad company entered into a stipulation for entry of judgment which settled the accounting phase of the litigation as to lands on the reservation. In this stipulation (Pet. Ex. 74) which covered the history of the controversy is included a description of boundaries which plaintiff (the United States "in its own right and as guardian of the Indians of the Walapai (Hualapai) Tribe in Arizona") "contends that from time immemorial until establishment of the 1875 military reservation hereinafter referred to, the Hualapai Tribe had exclusively occupied, and claimed as its own, by aboriginal

possession, \* \* \*." The area described in the stipulation (and depicted in yellow on a map - Pet. Ex. 76) covers a great amount of territory on the east and south that is not included within the boundaries of lands said to have been exclusively occupied and claimed by the Hualapai Tribe by the examiners. The unexplained discrepancy clearly indicates the difficulties inherent in any case where it becomes necessary at this late date to determine with reasonableness the boundaries of lands exclusively used and occupied by an Indian tribe, band or group. It is significant also that even petitioner's own experts do not agree with the boundaries as described in either the examiners report or in the stipulation.

The litigation in the Santa Fe case, supra, is important in that it clearly shows that the United States has previously taken the position that the Hualapai Tribe did exclusively occupy and claim lands in northwestern Arizona in 1872 and long prior thereto. We believe this adequately dispenses with defendant's contention now presented that "Petitioner was not a recognizable tribe of Indians within the purview of the Act 160 Stat. 1049 in aboriginal, or pre-conquest times." In any event this Commission based upon the record as a whole independent of the Santa Fe litigation has found that the Hualapai were a tribe both in aboriginal times and in pre-conquest times and that said tribe exclusively used and occupied an area of land. The Santa Fe case is also important since it does, as urged by petitioner, set the date of extinguishment of the Hualapai Tribe's Indian title to lands outside the reservation as of January 4, 1883. Defendant's contention that Indians located in Arizona could have

no Indian title in lands acquired in 1848 from Mexico by the United States by the Treaty of Guadalupe Hidalgo, 9 Stat. 922, is also adversely disposed of by the Santa Fe case. See also The Mohave Tribe v. United States (Docket Nos. 283 and 295) 7 Ind. Cl. Comm. 219, 259-261.

The Hualapai, or Walapai, Tribe is of the Yuman linguistic family. The neighbors of the Hualapai were the Mohave Indians to the west, the Southern Paiute to the north, the Havasupai to the east and the Yavapai to the south. Generally speaking the Hualapai were friendly with all but the Yavapai who were considered enemies. The Hualapai at times have been referred to as mountain Indians because of the topography of part of their habitat and to distinguish them from the riverine tribes.

The first recorded white contact with the Hualapai Indians within the claimed area occurred in 1776 when the famed Spanish missionary and explorer, Father Francisco Garces, traveled in the region. The Spanish priest found the Hualapai in the vicinity of the present Kingman, Arizona, and he called them "Jaguallapais." Villages of Hualapai which Garces called rancherias were visited in the vicinity also of what are known today as Hualapai Station; at Truxton Springs; near Peach Springs; and just west of the Aubrey Cliffs among other places. Although Garces' journal refers to some of the Indians he visited in this area as "Yabipais" they were Hualapai and not Yavapai who were enemies of the Hualapai. It would indeed be strange if Garces were guided by Hualapai to Yavapai villages where both he and his guides would be royally treated as was the case. At one of the rancherias so visited Garces reports



"All were festive, men and women dancing at their pleasure, and applauding loudly what I told them, that the Castillas - as they call the Espanoles - were driving the Yabipais from the south and keeping them far aloof."

So Garces' indiscriminate use of the word "Yabipais" in speaking of the Hualapai undoubtedly was caused, as pointed out by petitioner's expert, by referring to bands of the Hualapai by the designation used by the more western Hualapai to signify "people to the east."

Following Garces' visit there is little recorded mention of the Hualapai Indians until exploration of the region by officials of the United States after the Treaty of Guadalupe Hidalgo. Lieutenant Joseph C. Ives of the Corps of Topographical Engineers on his exploring trip in 1857-1858 in proceeding east of the Cerbat Mountains met Hualapai Indians near Truxton Springs who guided his party to the Grand Canyon of the Colorado. In exploring the region to the south of the Colorado River, no doubt on the present reservation, they saw several Hualapai Indians and huts of the rudest construction.

Emigration to Arizona Territory brought settlement to the claimed area. By the early 1860's settlers had entered Hualapai country taking over farming and grazing lands and carrying on mining operations. Efforts were made by the Superintendent of Indian Affairs to obtain the consent of the Hualapai Tribe to remove to a reservation on the Colorado River. The tribe refused. Hostilities broke out in 1865 which was touched off by the killing of a Hualapai chief by a white man. The Hualapai War ensued with the Hualapai Tribe and other belligerents engaging the

United States Army until about 1870. During the campaign against the Hualapai Indians the U. S. Army engaged forces of the Hualapai Tribe, or destroyed their rancherias, at or near Truxton Spring, Peach Springs, Peacock Springs, in the Cerbat, Hualapai and Aquarius mountains and on the Big Sandy river, among other places.

Following the cessation of hostilities, many of the Hualapai Indians were forcibly removed to the Colorado River Reservation at La Paz in April, 1874, but a number of the tribe successfully eluded the round-up. These mountain Indians who were removed found the reservation along the Colorado River to be a location unsatisfactory to their needs, habits and health. They protested in vain and finally in April 1875 they left the reservation at La Paz without permission and returned to their own territory. There destitution and frustration awaited them for over the years settlers had taken over many of the water sources and much of the better grazing and farming lands. Game had become scarce and these mountains Indians were avid meat eaters. During the latter part of the 1870's the United States had to supply the Hualapai with rations. Government officials and authorities urged they be placed on a reservation. The Indians themselves realized they must secure a reservation if they desired to remain in the area. Finally in 1881 they appealed through the military for a reservation and eventually the present one was set apart by executive order of the President on January 4, 1883. Some of the Indians went upon the lands so set apart for them. Many others did not, some preferring to remain near their old haunts, while others found employment in the towns in the area or at the ranches which had been























