

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

established. In 1884 a census of the tribe showed 712 Hualapai and one taken in 1886 indicated 646 persons. For a number of years but few Hualapai Indians lived on the reservation. Most of the lands on the reservation were suitable for only grazing and white stockmen trespassed thereon with the Indians getting little benefit from their lands. Water was a problem on the reservation and the amount of agricultural land was small. Periodic census checks were made of the Hualapai and these showed a gradual reduction in population until by 1916 the figure was 466 of whom not more than 10 families resided permanently on the reservation. By this date, however, the policy of leasing the grazing lands on the reserve had been put into effect and the tribe was securing some monetary benefits from its lands. In 1950 the tribe numbered 561 persons. The record indicates that the Hualapai Indians have continuously maintained some semblance of tribal organization with a tribal roll. The present tribal organization which when established included in its By-Laws as members all Indians on the Hualapai Tribe census roll as of January 1, 1938, and made provision for correction of said roll, is successor in interest to the Hualapai Tribe as it existed on January 4, 1883 (Pet. Ex. 77, 120).

In support of its claim petitioner presented two expert witnesses, Mr. (now Doctor) Henry F. Dobyns and Mr. Robert C. Euler. Both were qualified anthropologists. These men undertook an exhaustive archaeological study of the claimed area and excavated a number of sites therein; made lengthy field surveys at both previously recorded and newly discovered

locations of Indian occupancy; studied existing scientific collections and prior archaeological reports; and collected and made an analysis of over 26,500 pottery sherds from more than 600 sites. On the basis of these examinations Doctor Dobyns prepared a monumental, three volume report (Pet. Ex. 94) entitled, "Prehistoric Indian Occupation within the Eastern Area of the Yuman Complex - A Study in Applied Archaeology," consisting of 700 pages. In addition Doctor Dobyns prepared written reports on Hualapai "Trails," "Agriculture," "Plant Food Gathering," "Meat Sources" (Pet. Exhibits 107, 109, 111, 113) and a "Lineage Chart" (Pet. Ex. 119).

In his archaeological report, which shall be referred to herein as The Dobyns Report to distinguish it from the other studies he made in this case, Doctor Dobyns states the study was an attempt "to apply archaeological techniques to a particular boundary claim problem." Dobyns and Euler rationalized that if they could identify the pottery made by petitioner's ancestors then with other archaeological investigations such as examination and excavation of recorded and newly discovered sites and including the analysis of the pottery sherds recovered at the sites then they could generally define the area used and occupied by the Hualapai Tribe from the year 1300 to 1874-75. In reaching their conclusions, petitioner's experts applied the following formulae:

(1) If artifacts (potsherds) produced, used and discarded by Hualapai Indians constitute 70% or more of all artifacts deposited at a particular site from time immemorial to the conquest of petitioner by the United States, then the Hualapai Tribe exclusively owned and enjoyed the sole and undisputed use, occupancy and possession of that area during that period of time.

(2) If artifacts (potsherds) produced, used and discarded by non-Hualapai Indians constitute less than 25% of all artifacts deposited at a particular site from time immemorial to the conquest of petitioner by the United States, then no other Indians used or occupied that area during that period of time except for friendly intercourse with or occasional raids upon the Hualapai Tribe.

Based upon their study petitioner's expert witnesses concluded that on the basis of archaeological evidence and applying the above formulae the Hualapai Tribe exclusively used and occupied from time immemorial the following territory:

Beginning at a point midstream of the Colorado River marked by the intersection of said river with a line projected northward from the northernmost tip of the plateau ridge between Prospect Valley and Mohawk Canyon; thence southward along said projected line to the plateau ridge; thence along the crest of said ridge (or the top edge of the western rim of Mohawk Canyon) to the top edge of the Aubry Cliff escarpment; thence along said escarpment's top edge to its southern end; thence easterly to Mount Floyd's northernmost peak and along the top edge of the plateau escarpment north of Ash Fork; thence southerly along the top edge of the plateau escarpment east of Ash Fork; thence southwesterly along the top edge of the plateau escarpment of Black Mesa south of Ash Fork; thence southeasterly in a line across Chino Valley to the junction of Walnut Creek with the Chino; thence south to Kirkland Creek and the north fork of the Santa Maria River and the Santa Maria River proper to its junction with the Big Sandy River; thence north along the Big Sandy to the neighborhood of Signal; thence westerly along the crest of the drainage divide north of Bill Williams Fork including the Mohave Mountains to The Needles; thence northeasterly on a line to the southern tip of the Black Mountains; thence generally northward along the crest of said Black Mountains to Fortification Hill inside the Great Bend of the Colorado River; thence in a line to the midstream of said river at the said Great Bend; and thence following the midstream of said Colorado River to the point of beginning.

The area so described by Dobyns and Euler is depicted in red on a map

reproduced in The Dobyys Report at page 682 and on a map--Petitioner's Exhibit 116.

Counsel for defendant devotes most of his brief and findings of fact to an analysis of The Dobyys Report contending that this was made necessary in view of the fact that the defendant believes petitioner's case is based almost entirely on this report. With this the Commission does not agree since there is other substantial evidence of a documentary and ethnological nature upon which to determine the lands exclusively used and occupied by the Hualapai Tribe in aboriginal times. Many of these sources are the basis for the findings of facts herein made which identify the Hualapai Tribe, place them within the claimed area since at least 1776, locate their villages, show the areas of their exclusive use and occupancy, and demonstrate that the defendant knew of their existence and their attachment to their homeland. While we do not agree with defendant's theory that this is a "potsherd case" we do recognize the pitfalls which would be encountered in any case that might be presented for determination solely upon such archaeological evidence. The need (1) for positive identification that the tribe in question alone made the type of pottery; (2) for evidence that the sites were actually used and occupied in historic times by the tribe and not at some time within a period of several centuries; and (3) for other substantial evidence that the tribe exclusively used and occupied the sites and surrounding lands is clear as pointed out by defendant's counsel. This is not to say that the Commission has ignored the archaeological study of petitioner's experts. The conclusions reached as to identification of Hualapai pottery are probably scientifically sound. For much of the claimed area there is

no proof that any other Indians but the Hualapai ever used or occupied the lands. On sites where Hualapai Indians have been known to have lived in historic times such pottery sherds of Aquarius Brown, Cerbat Brown or Sandy Brown of the general class of unaltered Tizon Ware have been found. There is no questioning the fact that the Hualapai who at one time did manufacture pottery at least used this pottery and the great preponderance of this type of sherd at the sites within the core of Hualapai Territory as compared to sherds of other classes of pottery which were the more prevalent of the types on the outermost parts of the claimed area do lend credence to the conclusion that the Hualapai manufactured the pottery in early aboriginal times. In any event, as previously stated, there is substantial evidence of another nature, some included within the several Dobyys reports, to support the boundaries of The Hualapai Tribe as found by this Commission in Finding of Fact No. 17.

Defendant further contends that petitioner should not recover because, defendant urges, the "petitioner was not a recognizable tribe of Indians within the purview of the Act in aboriginal, or pre-conquest, times." It is defendant's view that the environment of the region forced dispersal into small, disconnected, unrelated bands, having no central tie or control. Even if this Commission were to find, which it has not, that the Hualapai were not a tribe as concluded by defendant's ethnologist, Doctor A. Manners, it would certainly be justified in finding the Hualapai to be a land-owning entity as an identifiable group under the standards laid down in Nooksack Tribe v. United States, 3 Ind. Cl. Comm. 479;

Muckleshoot Indians v. United States, 3 Ind. Cl. Comm. 658; and Washoe Tribe v. United States, 7 Ind. Cl. Comm. 266. Doctor Manners prepared a written report (Def. Ex. 1) in which he discusses much of the documentary and ethnological material available on the Hualapai Indians. Defendant's expert was of the opinion that the Hualapai Indians in aboriginal times (prior to 1850 according to the witness) never had a true tribal unity of any kind, political, ceremonial or emotional; that these Indians never did all join together for defense, offense, or subsistence activities; that "while certain parts of the total area under consideration were unquestionably occupied by ancestors of living Walapais, and were, further occupied by them either to the exclusion or to the virtual exclusion of all other groups of Indians, we cannot map these areas with the precision which has been presumed by some ethno-cartographers" (underscoring supplied); and that no particular land-using group of Hualapai considered itself under any legal obligation to be concerned for the welfare of other, remote groups of Hualapai. Doctor Manners was of the opinion that:

Walapais were a hunting and a gathering people whose technology and natural environment largely determined their social and political groupings. These groupings appear to have been land-owning and autonomous, recognizing no obligation to other groups or to a centralized leadership.

* * *

This statement in Manners' report is more fully explained by the following testimony of defendant's expert (Tr. 755-756):

Chief Commissioner Witt: The ownership idea was the settlement, a certain settlement, owned the land contiguous to where they lived, but didn't own the land that was occupied by a neighboring settlement?

The Witness: With the stipulation that ownership should be seen as somewhat different from our own sense of ownership, that friends could come and camp with them and stay with them and could hunt on their territory, and with the further stipulation that there were common areas, like the Round Valley area, and like Hualapai Valley and other areas, and the mountains, where the pinyon nuts ripened, where people congregated in large numbers from adjacent areas, and probably from fairly great distances, to collect these food products because they were friendly with each other.

There were no enmities among the Hualapais.

Doctor Manners further testified that this feeling toward the use of land did not extend to lands occupied by other tribes.

Assuming for the moment that the Hualapai were not a tribe in a political sense we have a people who all ethnologists agree spoke the same language, had a common culture, intermarried, made common use of the lands away from their settlements, shared their own territories, engaged in common economic activities and considered themselves one people. Such factors make the Hualapai an identifiable group and a land-owning entity under the Nooksack, Muckleshoot and Washoe decisions, supra. A study of the record in this case, however, convinces the Commission that at all times material to this claim the Hualapai did in fact constitute a tribe in the true sense of the word.

What the political nature of the Hualapai prior to continued white contact (after 1848) was can only be inferred since there are no documents before that time bearing on the subject. In the "Walapai Ethnography" - 1935 (edited by Doctor A. L. Kroeber), Fred B. Kniffen, who was one of an advanced student group that in 1929 made the ethnographic study, wrote in part that:

It seems doubtful if there were permanently fixed political subgroups among the Walapai. More likely there were several generally recognized nuclear areas, based largely on the natural geographical divisions, where the significant factors were resources in water, game, and plant food. Quite possibly settlements on the border between such nuclear areas changed their "allegiance" frequently, so that the boundary lines were either indefinite or flexible.

And another of the investigating team, R. M. McKennan, observed:

The place of the chief in Walapai society was ill-defined. There was no chieftain accorded a recognized place at the head of the entire tribe. Rather there was a series of petty chiefs or "headmen," who enjoyed a certain position in each of the seven geographical subdivisions of the tribe.

* * *

The advent of the white man further complicated the situation, for the early military officers, anxious to deal with some centralized authority, issued papers to various outstanding Walapai leaders, acknowledging them as chiefs. * * *

Also with the coming of the white people came a crisis in the attitude of the Indians toward the newcomers. Older and wiser chiefs such as Levi-levi favored the peaceful reception of the newcomers and hence came to be called * * * peace chiefs; while other younger and more fiery figures, such as Serum and Walapai Charlie, urged aggressive measures and hence were called * * * "was talkers," or war chiefs.

Witness Dobyms testified that he was of the opinion that the Hualapai Tribe in aboriginal times consisted of three primary divisions, or as he called them congeries, each of which had a major chief and that the chiefs of these divisions acted together as a tribal council in conducting the affairs of the tribe. Whatever the early aboriginal political structure of the Walapai may have been, although a loose form of

tribal government seems to have existed, it is clear that continued white contact in aboriginal times, after American sovereignty attached, resulted in a tribal government sufficiently organized to be considered a tribe in its dealings with the United States.

Within the divisions of the Hualapai Tribe, whether it be the seven divisions or groups as outlined in the "Walapai Ethnography" or the three divisions or congeries found to have existed by Dobyns, there were in aboriginal times a large number of villages within the area herein found to have been exclusively used and occupied by the Hualapai Indians. The average village was small and had an average population of about twenty-five persons in each. The environment was a definite factor in determining the size of these villages. The distribution of population and villages within the area was determined in terms of availability of water, game and edible plants. Major centers of Hualapai population were found concentrated for the most part within the core of the area herein found to have been exclusively used and occupied by the tribe (see Pet. Ex. 71 - "Walapai Ethnography," map following page 44); Kniffen estimated 40 villages (Walapai Ethnography, page 45) while the examiners for the Department of the Interior concluded there were 50 Walapai villages and settlements, or more (Pet. Ex. 73, page 11).

The greater portion of the sustenance of the Hualapai Indians was obtained by gathering various natural products of the soil such as mescal, pinyon nuts, cereal grasses, yucca and mesquite. These aborigines

were also fond of meat and they hunted deer, antelope, mountain sheep and rabbits within their country. The very nature of the region made it necessary that they make extensive rather intensive use of their lands and the thousand, or so, Hualapai Indians in aboriginal times lived thinly distributed over a relatively sizeable area.

Beyond the Hualapai boundary on the northeast as found herein by the Commission (Finding 17) the Hualapai did not exclusively use and occupy the claimed area since the lands there located were also used by the Havasupai Indians, neighbors and friends of the petitioner. Part of the area claimed in the west, that is the lands located east of the Colorado River to the crest of the Black Mountains are excluded since there is also evidence of use and occupancy thereof by the Mohave Tribe. Along the south and southeastern portions of the claimed lands there were areas of tension with the Yavapai where those who have studied these hostile neighbors have found it difficult to decide upon a common boundary. In view of informant testimony adduced not only in this proceeding but also by the examiners for the Department of the Interior, and the ethnological studies such as the "Walapai Ethnography" and E. W. Gifford's work on the eastern and western Yavapai published in 1936 (Def. Ex. 12), certain lands claimed by the petitioner north of the Bill Williams Fork and the Santa Maria River have been excluded from within the boundaries of the Hualapai Tribe as found by this Commission.

As previously stated counsel for petitioner maintain that the lands of the Hualapai Tribe were taken by defendant (a) without payment of just compensation in violation of the Fifth Amendment of the Constitution

of the United States, or (b) for an unconscionable consideration. This is not an action falling within clause (1) of section 2 of the Indian Claims Commission Act, 60 Stat. 1049, 25 U.S.C., Sec. 70-a, Osage Tribe v. United States, 119 C. Cls. 592, 672; Kiowa v. United States, ____ C. Cls. _____, Slip Opinion, July 16, 1958. Nor is this an action falling within Clause (3) of section 2 of the Act since the lands were acquired by defendant without the payment of consideration. The Commission concludes that the Hualapai Tribe exclusively used and occupied the lands described in Finding of Fact No. 17, from time immemorial until January 4, 1883, when said lands were acquired by the United States without the payment of compensation to petitioner, and that petitioner is entitled under Clause 4 of section 2 of the Indian Claims Commission Act to recover of defendant the fair market value of said lands (excluding the Hualapai Reservation) as of January 4, 1883. The case will proceed to a determination of the fair market value of said lands as of the valuation date, January 4, 1883, and to a determination also as to what offsets, if any, defendant is entitled to under the provisions of the Act.

Wm. M. Holt
Associate Commissioner

We concur:

Arthur V. Watkins
Chief Commissioner

T. Harold Scott
Associate Commissioner