

BEFORE THE INDIAN CLAIMS COMMISSION

CLYDE F. THOMPSON, et al.,	)	Docket No. 31
(Indians of California),	)	
	)	
Petitioners,	)	
	)	
ERNEST RISLING, et al.,	)	Docket No. 37
(Indians of California)	)	
	)	
Petitioners,	)	
	)	
THE QUECHAN TRIBE OF THE FORT	)	Docket No. 319
YUMA INDIAN RESERVATION,	)	
	)	(In the United States Court of
Petitioners,	)	Claims, Appeal No. 2-61)
(and Plaintiffs in	)	
Intervention)	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: March 3, 1964

Appearances:

Robert W. Barker, Walter M. Gleason, and Fulton W. Hoge, Attorneys of Record for Petitioners

Ralph A. Barney, with whom was Mr. Assistant Attorney General, Ramsey Clark, Attorneys for Defendant

OPINION OF THE COMMISSION

PER CURIAM:

The subject cases are now before the Commission upon order of the Court of Claims, dated February 20, 1964, which remanded them for the sole purpose of determining whether the Quechan Tribe of the Fort

Yuma Indian Reservation is a proper party in Docket Nos. 31 and 37, and, if so, its interest therein. This issue has arisen upon motion of the Quechan Tribe for leave to intervene, originally filed before the Court of Claims on April 2, 1963. That motion was allowed on June 21, 1963. On December 18, 1963, defendant filed a motion to dismiss the petition of intervention or, alternatively, to remand the issue raised by said petition to this Commission. By its order of February 20, 1964, the Court of Claims vacated its order of June 21, 1963, and remanded this sole issue to this Commission

By stipulation, filed February 28, 1964, the parties have agreed that the issue remanded by the Court of Claims will be determined upon the pleadings previously filed before the Court of Claims and that ~~Court~~'s orders thereon. We have all such pleadings and other documents relating to this issue before us and, having considered the same, we conclude that the Quechan Tribe of the Fort Yuma Indian Reservation is not a proper party in the cases brought by Clyde F. Thompson, et al., and Ernest Risling, et al. as representatives of the Indians of California, Dockets Nos. 31 and 37 before this Commission.

Briefly, our reasons for so holding are as follows. The two subject cases filed by Thompson and others (Docket 31) and by Risling and others (Docket 37) on behalf of and as representatives of the Indians of California were similar claims whereby each sought to establish an exclusive right to represent all of the enrolled Indians of California and to recover for all lands in California aboriginally used and occupied by "California Indians." There were also some 15 other claims filed by

separate "tribes or bands" each seeking recovery for certain areas of land, either wholly or in part within the limits of the present State of California. Included among these 15 other claims was the Quechan Tribe of the Fort Yuma Reservation of California. The Quechan Tribe's claim (which related to lands in California and Arizona) was assigned docket number 319. The Quechan Tribe maintained before this Commission that it had the exclusive right to represent the Quechan Indians. The issue of representation was decided by this Commission on January 20, 1958. It was then determined that the Thompson and Risling petitioners (Dockets Nos. 31 and 37) did not have the exclusive right to represent all Indians of California and that the other claimants, including the Quechan Tribe, could maintain their own separate claims. Thereafter, on October 6, 1958, the Commission ordered that all of California be divided into two major areas. The area described as Area A included all lands in the State of California which were claimed in separate suits by tribes which had been held entitled to sue independently of the "Indians of California" i.e. Dockets Nos. 31 and 37. The Quechan Tribe (Docket No. 319) was specifically designated as an Area A petitioner. <sup>1/</sup> All remaining lands were designated Area B.

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<sup>1/</sup> Actually Area B included the lands in California claimed by the Yokiah Tribe (Docket 176), Yana Tribe (Docket 215) and the Shasta Tribe (Docket 333). Those three tribal claims were upon joint motion of the parties consolidated with Dockets 31 and 37 for all purposes including judgment by order of this Commission under date of October 6, 1958.

On July 31, 1959, the Commission determined that the petitioners in Dockets 31 and 37 had established original Indian title to the "Area B" lands in the State of California (except the Spanish and Mexican private land grants). In the Interlocutory Order entered by the Commission the "Area A" lands, which included the lands claimed by the Quechan Tribe, were specifically excepted.

Therefore, by the decisions of this Commission the claims of the petitioners in Dockets 31 and 37 have been restricted to representative actions on behalf of "the Indians of California" except those whose claims were to be maintained by separate tribal organizations, which separate claimants were specifically held to be entitled to maintain their respective claims independently of the Dockets 31 and 37 petitioners.<sup>2/</sup> This Commission has determined that the petitioners in Dockets 31 and 37 have established Indian title to the lands in California except those lands which have been claimed by the separate tribal claimants (as enumerated). Therefore, the claims brought by petitioners in Dockets 31 and 37 have been restricted by decisions of this Commission to a circumscribed group of "Indians of California" which excludes specifically the Quechan Tribe. Clearly, then, the remanded question from the Court of Claims must be answered in the negative. The claim of

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<sup>2/</sup> The petitioners which were to proceed with their respective claims independently of Dockets 31 and 37 were: Northern Paiute Nation, Docket 87; Southern Paiute Nation, Docket 88; Mohave Tribe, Dockets 283 and 295; Washoe Tribe, Docket 288; Quechan Tribe, Docket 319; Pitt Rivers, Docket 347; Chemehuevi Tribe, Docket 351; Klamath and Modoc Tribes, Docket 100; and Mission Bands, Docket 80.

the Quechan Tribe has been specifically excluded from the claims to be determined in the matter of Dockets 31 and 37.

The Quechan Tribe has raised some arguments to which we shall make specific reference. In its response (filed January 22, 1964) to defendant's motion to dismiss the petition in intervention the tribe contended that "the Quechan Tribe or its members are members of the class, known as the Indians of California, for whom the suit is brought." It is true that petitioners in Dockets 31 and 37 originally argued that they did represent all Indians of California, which would have included Quechan Indians. However, they did not prevail in their argument before this Commission, and we have found their representation extends only to the restricted identifiable group of "Indians of California" which does not include those tribes (one of which is Quechan) which have filed their own separate claims. One sentence has been quoted from our July 31, 1959, decision as indicating that our determination was not intended to disregard the 1928 Act (the jurisdictional Act of May 18, 1928, 45 Stat. 502, by which Congress established an enrollment of California Indians).

The quoted sentence reads as follows:

We are not to be understood as holding that the enrollment of Indians under the 1928 Act and its amendments is to be ignored for it might well be that, should an award be made, the Congress would order a distribution of the award on the basis of such enrollment as the only practical way of distributing an award after the lapse of over a century. (8 Ind. Cl. Comm. 1, 16)

This sentence is not related in any manner to our decision in this matter and would, we now believe, have been better left unsaid. Our speculation as to how Congress might accomplish distribution of a prospective award should not have been embodied in our opinion.

Of course it is incumbent upon this Commission to determine the ownership of a claim. We must in our awards define the tribe, band or identifiable group entitled to the judgment. In this case that identifiable group represented by petitioners in Dockets 31 and 37 and entitled to the ultimate award envisioned by this Commission would be the Indians of California except those tribes, bands or identifiable groups which filed their own separate claims, as specifically defined in our decisions of January 20, 1958, and October 6, 1958. Any question as to how the 1928 Act enrollment or any other enrollments might be utilized in effecting any distribution of an award is beyond our jurisdiction and responsibility.

The parties have argued the merits of including the Pitt River Indians and the Mission Indians in a proposed compromise settlement involving Dockets 31 and 37 as well as Dockets 347, 80 and 80-D. Of course neither the Pitt River Indians nor the Mission Indians are included in any compromise negotiations as a matter of right arising from any of our decisions. Both groups are without the circumscribed "Indians of California" identifiable group represented by Dockets 31 and 37 and are included in "Area A." In that respect they are no different than the Quechan Tribe. The question as to which groups of claimants are to be included in compromise negotiations is between the parties involved and defendant. The reasons and merits for including or excluding certain groups is not an issue before us.

The Quechan Tribe has also referred to prejudice to its rights if intervention is not permitted in the Dockets 31 and 37 claims. We can

see no basis for such a contention. The proposed compromise settlement in no way affects the claim of the Quechan Tribe.<sup>3/</sup> The lands claimed by the Quechan Tribe are excluded from the area involved in the proposed settlement. The members of the Quechan Tribe are not members of the identifiable group represented by the petitioners in Dockets 31 and 37. In connection with the presentation of the matters pending on appeal before the Court of Claims it appears that the Quechan Tribe was named as an adverse party to the appeal filed by the Dockets 31 and 37 petitioners. Therefore the Quechan Tribe is a party to that appeal and should be in a position to fully defend its rights in respect to the matters pending in that appeal.

Arthur V. Watkins  
Chief Commissioner

Wm. M. Holt  
Associate Commissioner

T. Harold Scott  
Associate Commissioner

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<sup>3/</sup> In our decision of September 30, 1959, in the matter of Docket No. 319 (Quechan Tribe, 8 Ind. Cl. Comm.111a) we found that the Quechan Tribe of the Fort Yuma Reservation, California, had a tribal organization and was entitled to maintain the claim set forth in its amended petition for the lands alleged to have been owned by the Quechan Tribe. We determined that the tribe had held certain lands in California and Arizona and that said lands had been taken by defendant.