

BEFORE THE INDIAN CLAIMS COMMISSION

THE HAVASUPAI TRIBE OF THE HAVASUPAI)	
RESERVATION, ARIZONA,)	Docket No. 91
)	
THE NAVAJO TRIBE OF INDIANS,)	Docket No. 229
)	
Petitioners,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 30, 1968

FINDINGS OF FACT

1. Capacity. The Havasupai Tribe of the Havasupai Reservation, Arizona, petitioner in Docket No. 91, is an identifiable group of American Indians residing within the present state of Arizona. Petitioner has a tribal organization recognized by the Secretary of Interior and is authorized to maintain this action under the provisions of Section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049).

2. The Claim. The Havasupai Tribe timely filed its claim under the Indian Claims Commission Act for recovery of compensation for the loss of a large tract of land which it claims to have exclusively used and occupied from time immemorial until deprived of such use and occupancy by the United States. A description of the land for which compensation is claimed is as follows:

"Beginning at a point midstream of the Colorado River marked by the intersection of said river with the eastern boundary of the present Hualapai Reservation; thence south on a line following the said boundary of the said reservation and continuing to a place known as Rose Well; thence southeast and south on a line passing along the Aubrey Cliffs, through Round Mountain and Mount Floyd (the western edge of the watershed of Cataract or Havasu Creek), to a point about five miles west of Ash Fork; thence east and northeast on a line (approximating the southern edge of the watershed of Cataract Creek) passing through Bill Williams Mountain to the highest peak in the San Francisco Mountains; thence northeast and north on a line to the junction of the Little Colorado River and the Moencopie Wash, approximately three miles northwest of Cameron; thence north and northwest on a line through the center of the said Little Colorado River to its confluence with the Colorado River; thence west and northwest on a line following the center of the said Colorado River to the point and place of beginning."

3. Expert Testimony. Several expert anthropologists testified during the course of the hearing before the Commission in Docket No. 91. These included Dr. Robert C. Euler and Mr. Alfred F. Whiting for the petitioner and Dr. Robert A. Manners for the defendant.

During the hearing in Docket No. 229, Dr. Florence H. Ellis, an anthropologist and Mr. Albert H. Schroeder, a historian, both testified as witnesses for the defendant concerning the eastern part of the Havasupai claimed area which was also claimed by the Navajo Tribe, petitioner in Docket No. 229. Mr. J. Lee Correll,

an archaeologist, also testified concerning this overlap area as a witness for the Navajo Tribe. The Commission considered the testimony of these expert witnesses and the evidence submitted in Docket No. 229 concerning this overlap area as well as the record in Docket No. 91 in reaching its determination of the Havasupai claim.

Dr. Euler testified that from time immemorial the Havasupai Indians exclusively used or claimed ownership to all the lands claimed by them in their petition. Mr. Whiting considered the territory claimed to have been exclusively used and occupied by the Havasupai to be a reasonable claim. On direct examination Dr. Robert A. Manners said that the Havasupai exclusively used and occupied Cataract Canyon and the plateau for a distance on both sides of the canyon but that he was not prepared to state whether or not they exclusively used and occupied or needed all the claimed area. Under cross examination he testified that the Havasupai used the claimed area over to the Little Colorado on the east.

During the hearing in Docket No. 229, Mr. J. Lee Correll testified that the habitation sites located in the overlap area clearly showed extensive Navajo use prior to 1848. Mr. Schroeder and Dr. Ellis disagreed with Mr. Correll. They concluded that the

habitation sites were either Havasupai sites, were unidentifiable, or were sites occupied by the Navajos in the 1850's or later. They also testified that the western boundary of the Navajo tribe in 1848 was some distance east of the land claimed by the Havasupai.

4. Havasupai Neighbors. The Havasupai Tribe of Indians has always been comparatively small in number. From earliest recorded times through the nineteenth century the Havasupai Tribe was composed of about 60 families numbering from 250 to 300 including men, women and children.

The Havasupai speak one of the dialects of the Yuman language and, linguistically, are closely related to the Hualapai, their neighbors immediately to the west. The Havasupai were very friendly with the Hualapai, had similar cultural patterns and intermarried with them on occasion. They were also friendly with the Hopis who lived to the east. The Yavapai Indians who bordered the Havasupai on the south and the White Mountain and Tonto Apache who lived to the southeast were enemies of the Havasupai. To the north were the Paiutes with whom the Havasupai had very little contact. On the east were the Hopi and Navajo. The Havasupai were intermittently friendly and hostile to the Navajo and Paiutes.

5. Early Contacts. The Havasupai were more commonly known throughout their early history as Kohnina, Cohonin, Cosninas, Coninas,

Cominas, Yampais, Supais, Yava Supai and Yurapei. The Spanish learned of the Indians in the claimed area as early as 1665 from the Hopi who gave these western Indian neighbors the Hopi name Cohonin. The Spanish transliteration of this name was Cosnino. This name was also used on occasion to designate the Hualapai who were neighbors to the Havasupai on the west and with whom the Havasupai had a close friendship. Both the Havasupai and the Hualapai referred to themselves as "pai" meaning "the people."

It was in 1776 that the name by which the Havasupai designated themselves first appeared and then it appeared in the form "Jabesua." In that year Father Garces made the first known European expedition into the claimed area. He visited the Indian village in Cataract Canyon and referred to the 34 families he found living there as Cosoninas.

Father Escalante, a Franciscan Priest, skirted the claimed area in 1776 but saw only the signs of Indians having recently been there. A letter he wrote in 1778 indicated that the Hopis bordered the Cosninas on the east. Early Spanish maps place the Hopis and Navajos east of the "Cosninas" or other variation of that name.

During Captain Sitgreaves expedition in 1851 he saw Indians both in the eastern section and near the southern boundary of the claimed area. He called these Indians "Yampai." In 1858 when

Lt. Ives reached Cataract Canyon where the present Havasupai Village is located he referred to this village as "Yampai Village."

Lt. Whipple explored parts of the claimed area in 1853 and 1854. During this expedition he saw no Indians but observed fresh traces of their presence near the southern boundary of the petitioner's claimed lands. Lt. Beale also made an expedition into the claimed territory in 1857 and 1858 without seeing any Indians. However, he also observed that fresh signs of Indians and Indian horses were abundant.

In 1873, John D. Lee, a Mormon colonizer, reported seeing a "Cohhon" hunting party at "...the S.W. End of the Buckskin, or Kiabab, Mountains ..." which was near "...the Choho nee na trail leading from their village to the Oriba villiages."

6. Havasupai Ecology. From aboriginal times the Havasupai have inhabited a village located in Cataract Canyon, a branch of the Grand Canyon of the Colorado, and other parts of that area of Arizona. The general area occupied by the Havasupai is characterized by a scarcity of fresh water and land suitable for cultivation. Where water and tillable land were found in this area, Havasupai families, bands or groups maintained camps where they raised such food as beans, corn, melons, peaches and squash. While most of the Havasupai farming areas were in the specific locations of

Cataract Canyon, Indian Gardens, Apache Spring, Howard Spring, and Willow Spring, other areas were also cultivated from time to time depending on the availability of water. The produce from these gardens placed in small granaries added to the food supply stored for use during the winter months. During the winter months the corn and other products stored in these granaries and the mescal gathered from the red sandstone benches served as a primary source of food. In addition to planting and harvesting the crops from their small farms, the Havasupai hunted and gathered on the plateau, the esplanade or in remote canyon areas.

On the plateau the Havasupai groups were necessarily small, being composed of single families or groups of two or three families who established semi-permanent camps from which they moved out in search of wild food products or to hunt where wild game might be found. By means of such gathering and hunting they were able to obtain clothing, tools, domestic utensils, fuel, medicines, ornaments, and other necessary equipment.

The wild game they hunted included deer, elk, antelope, rabbits, wild sheep, and occasionally a porcupine. Some of the major plant foods gathered were juniper berries, agave, pinon nuts, cereal grass, yucca fruit and mesquite. Pinon nuts ripened in different parts of the plateau from year to year and the areas where other wild food

products appeared also varied from year to year. Therefore, the Havasupai families and groups gathering on the plateau found it necessary to go wherever the food could be found. This hunting and gathering type of economy made necessary the use of a comparatively large area.

These hunting and gathering sites included Red Butte, Cedar Ranch, Mt. Kendrick, Mt. Sitgreaves, Bill Williams Mountain, Grey Mountain, San Francisco Peaks, Mount Floyd, Round Mountain, Black Tank, Rose Well, Sheep Tank, Beaver Canyon, Howard Spring and Coconino Basin, as well as other parts of the claimed area. However, other Indian tribes also used Bill Williams Mountain, the Grey Mountain area, San Francisco Peaks, and part of the Coconino Basin for hunting or gathering.

During the summer months the economy of the Havasupai also included trading expeditions to the Hualapai, Hopi and Navajo. The items they used for trade included red paint, pottery, leather, deer hides, antelope skins and agave.

7. Distinctive Pottery and Houses. Like all other Indians in the Southwest, the Havasupai manufactured pottery. The period of Havasupai pottery manufacturing extended from about 1300 A.D. to 1880. Havasupai pottery is a type designated Tizon Brownware and is distinguishable from Hualapai, Hopi and Navajo pottery in several ways.

The distinguishing feature between Havasupai and Hualapai pottery is that Havasupai pottery has wipe marks running horizontally across the surface of the pottery while Hualapai pottery does not. Navajo pottery has a more distinctive black or dark grey color because it is fired in more of a reducing atmosphere. Much of the Navajo pottery is made with a small fillet of clay encircling the neck of the vessel, something never seen on Havasupai pottery. Navajo pottery is also finished by scraping rather than the paddle and anvil technique used by the Havasupai. Hopi pottery is of a finer quality than either Navajo, Hualapai or Havasupai pottery and is usually decorated with a painted design of black on a yellow background or black and red on a yellow background. However, because pottery was a common trading item, it was not unusual for any one of these Indian tribes to possess and use the pottery of another tribe living in the same general area.

The Havasupai constructed several types of houses. One type is a dome-shaped house built on a four post foundation with the ribs covered with brush or brush and dirt. Others were either rectangular shaped or open sided and were called shade houses. The wickiup or tepee shaped house was constructed using a standing tree to form part of the house. The Havasupai also had sweat houses. These were small structures heated by creating steam

through pouring water over hot rocks. Natural shelters and caves were also used by the Havasupai. The Navajo used some of these same features in constructing their houses and also used natural shelters and caves, as well as building their distinctive hogans. Thus although such diagnostic traits may indicate presence of members of a tribe at one time or another, this and other archeological evidence in the record is not conclusive in determining exclusive use and occupancy from one or a few sites, nor in providing precise dates of use.

8. Navajo Incursions. The Navajos entered New Mexico sometime between 1300 A.D and 1500 A.D. Early Spanish maps and the records of early explorers of the southwest place the Navajo to the east of the Hopi and the Indians later known as Havasupai to the west of the Hopi. From this original base in New Mexico the Navajos moved westward and southward because of the pressure of the Utes and Comanches. The period between 1770 and 1848 was characterized by intermittent periods of conflict between the Navajos, and the Spanish and Mexican settlers and Pueblos.

When the United States became sovereign over this territory in 1848, these conflicts did not abate. The Navajos continued to have conflicts with the local white settlers and adjacent Indian tribes. Threats and expeditions of troops were made against the Navajo by

the United States but matters did not improve. Consequently a series of operations, often referred to as the "Navajo War," were then carried on against the Navajos by the military forces whose members were generally augmented by volunteer citizens and Pueblo Indians. As a result of these military campaigns the majority of the Navajos were placed at Bosque Redondo in 1864. However, during the military campaigns, some of the Navajos fled into areas where they had not previously been found except for trading or raiding purposes.

In 1848 the bulk of the Navajo Tribe was some distance east of the eastern boundary of the area claimed by the Havasupai. However, during the latter part of the 19th century increasing numbers of the Navajo moved westward into areas traditionally used and occupied by the Havasupai.

9. United States Actions. Petitioner first came under the jurisdiction and protection of the United States February 2, 1848, by virtue of the treaty of Guadalupe Hidalgo (9 Stat. 922). However, no treaty, agreement or contract with regard to the claimed area was ever made between the petitioner and the United States. The contact of the officials of the United States with the Havasupai Indians was only indirect until about 1880 when the Commissioner of Indian Affairs and military authorities in Arizona became concerned

about them. As a result of this concern, the Governor of the Territory recommended that a reservation be established for the Havasupai Tribe. Consequently, on June 8, 1880, President Rutherford B. Hayes issued an Executive Order (I Kapp. 809) creating the original Havasupai Reservation in Cataract Canyon. The tract reserved was five miles wide and twelve miles long extending two and one-half miles on each side of Cataract Creek and contained approximately 38,400 acres. Due to an error in the description, a new Executive Order (I Kapp. 809) was issued by the President on November 23, 1880, changing the description of the reserved tract but encompassing exactly the same linear dimensions and acreage.

On March 3, 1882, a third Executive Order (I Kapp. 809) was issued diminishing the size of the reservation to an area of about 518.6 acres. In addition to the above reservation in Cataract Canyon, four sections of the public domain were set aside for the Havasupai Indians by Congress under the provisions of the Act of March 4, 1944 (58 Stat. 110). These lands have been added to and made a part of the Havasupai Reservation.

10. Encroachments on Havasupai Area. During the period from February 2, 1848 until the date of the Executive Order of June 8, 1880, non-Indian ranchers, miners and settlers encroached on water

sites and farming and grazing lands in petitioner's aboriginal territory. Although forced to withdraw from some of their aboriginal territory from time to time because of these encroachments, petitioner did not consent to these actions nor abandon their aboriginal lands because of them.


11. Area of Havasupai Title. The Commission finds that on June 8, 1880, as they had for a long time, the Havasupai Tribe of Indians exclusively used and occupied in Indian fashion the following area in the present state of Arizona:

Beginning at the point of intersection of the midstream of the Colorado River and the line of the eastern boundary of the Hualapai Indian Reservation, south along said boundary to the Reservation corner in T28NR6W, thence southerly to Trinity Mountain, thence southeasterly to Mount Floyd, thence easterly to Sitgreaves Mountain, thence northeasterly to Kendrick Peak, thence northerly to the southwest corner of the Navajo Indian Reservation in R6E, thence northerly along the western boundary of the Navajo Reservation to its intersection with the Little Colorado River, thence westerly downstream along the center of the Little Colorado and Colorado Rivers to the point of beginning.


12. Date of Taking. The Commission finds that the action of the President of the United States in issuing the Executive Order of June 8, 1880 (I Kapp. 809), whereby approximately 38,400 acres of petitioner's Indian title lands were set aside for them constituted a taking of the remainder of petitioner's Indian title

lands under the Indian Claims Commission Act. The Executive Order of March 3, 1882 (I Kapp. 809), constituted a taking of the said 38,400 acres except for 518.6 acres which were explicitly reserved to the petitioners by said Order. Petitioner has never been compensated by defendant for the taking of the above Indian title lands.

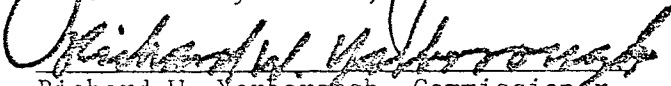
13. Conclusion. The Commission finds that the Havasupai Tribe of the Havasupai Reservation, Arizona, is entitled to recover of and from the defendant the fair market value of their aboriginal title lands as of the taking dates determined in Finding No. 12 herein, less such offsets, if any, which the defendant may be entitled under the provisions of the Indian Claims Commission Act (60 Stat. 1049).



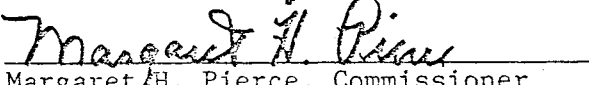
 John T. Vance, Chairman



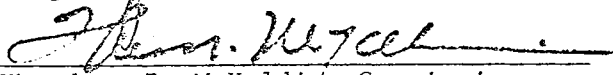
 Jerome K. Kuykendall, Commissioner



 Richard W. Yarbrough, Commissioner



 Margaret H. Pierce, Commissioner



 Theodore R. McKeldin, Commissioner