

BEFORE THE INDIAN CLAIMS COMMISSION

CABAZON BAND OF MISSION	)	
INDIANS OF CALIFORNIA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Docket No. 148
	)	
THE UNITED STATES,	)	
	)	
Defendant.	)	

Decided: 6-18-69

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Cabazon Band of Mission Indians of California is an Indian tribe, band, or other identifiable group of American Indians within the contemplation of Section 2 of the Indian Claims Commission Act of 1946 (25 U.S.C. 70a) and, as such, is a proper party Plaintiff to maintain a suit before this Commission.

The suit at bar, Docket No. 148, is a timely filed claim by the named Plaintiff for the value, as of December 11, 1914, of the following parcels of land:

- a. Section 24, Township 5 South, Range 7 East, San Bernardino Meridian.
- b. The north half of Section 19, Township 5 South, Range 8 East, San Bernardino Meridian.
- c. The west half of the southwest quarter of the said Section 19.

The three parcels hereinbefore identified are contiguous and all may be located at or immediately adjacent to the existing town of Indio in the State of California. Indio is in the Coachella Valley.

2. These parcels, hereinafter to be identified as "Sections 24 and 19", were first surveyed in the mid-1850s. At that time, the surveyors discovered an Indian Village and a well on Section 24, and an Indian Rancheria on Section 19, plus east-and-west trails between those two Sections. Both the Village and the Rancheria were subsequently identified as habitation and cultivation areas, respectively, of the Cabazon Band of Mission Indians. The well was dug by the Cabazon Indians and used by them for their own drinking water and for watering stock. The Rancheria was never identified by name but the Cabazons' village was known as Pala Tejua ["water found"], Paltewat, or Palt Wait.

3. The record is silent on the question of how many years, or how many decades, elapsed with the Cabazon Band present on Sections 24 and 19 before they were discovered in the 1850s. The presence of a reliable well in a largely arid portion of the United States argues for a use by the Cabazon Indians measured in generations, and it is historical fact that their cemetery was on Section 24.

4. The desert route of the Southern Pacific Railroad to Fort Yuma via the San Corgonio Pass had been established by 1861. This route

included way stations in the Coachella Valley and one such way station was located on Section 24 even though that section, not being an odd-numbered section, was not a part of the railroad's grant.

The Indio way station, with the track crossing Section 24 diagonally, included the depot, an icehouse, a hotel, the roundhouse, subsidiary buildings, and the railroad yards. The presence of the Southern Pacific Railroad in Indio contributed to railroad and other white activity. Such activity resulted in the Cabazons being excluded from the use of their own well as white settlers shot at the Indians, and also resulted in fencing of the lands which the Cabazons had used to pasture their livestock. The exclusion from water made it impossible for the Cabazons to grow the hay and feed which they needed. Subsequently, the white development of artesian wells contributed to the failure of the Cabazon hand-dug well which dried up before 1910.

5. White pressures forced the reluctant and intermittent retreat of Cabazons to use of other nearby lands, such as Section 30, immediately south of Section 19, and Section 32, immediately south and east of Section 30. Such an unwilling and halting retreat was in no sense an abandonment of the Cabazons' ancestral lands. From time to time, and as late as 1912, they were still trying to use Sections 24 and 19 in the traditional Indian fashion.

6. By Executive Order of May 15, 1876, a number of parcels of land were set apart as reservations for the permanent use and occupancy of the Mission Indians of southern California. Among the parcels set aside were three for the Cabazon Indians: Section 6, Township 7 South, Range 9 East, plus Sections 24 and 19, which latter two sections comprised the Cabazons' ancestral lands.

While the instrument setting aside Sections 24 and 19 for the Cabazon reservation did not specifically mention Cabazon Indians by name [in the Executive Order Sections 24 and 19 were denoted "Village"], in 1891 the Smiley Commission alluded to the Cabazons' "present Reservation on the desert near Indio called Village". Following that determination, the Department of the Interior as late as 1911 confirmed that both Section 24 and Section 19 were portions of the Cabazon Reservation.

The Executive Order created a reservation out of land which was the Cabazons' by aboriginal use and occupancy.

7. The Smiley Commission was established by an Act of January 12, 1891 (26 Stat. 712). Its mission was to select an adequate reservation for each band or village of Mission Indians in California. That Commission's examination of Sections 24 and 19 disclosed no Cabazons then present. Likewise, it found no Cabazons on Section 6. Under the "Cabazon" section of its report, the Commission noted Indians, otherwise unidentified, on Sections 30 and 32, Township 5 South, Range 8 East, as of the survey dates.

The Smiley Commission recommended that Sections 24 and 19, plus Section 6, be restored to the public domain, and that Sections 30 and 32 be designated the Cabazon Reservation.

By Executive Order dated December 29, 1891, President Harrison created the Cabazon Indian Reservation consisting of Sections 30 and 32. In the same document, the President expressed his intention to proclaim restoration of Sections 24, 19, and 6 to the public domain.

8. The Cabazon Indians did not restrict themselves to Sections 30 and 32 either before or after the issuance of the Smiley report. They did not use Section 6, which was taken over by the Southern Pacific Railroad. The Cabazons continued to try to use Sections 24 and 19 in traditional Indian fashion despite the increasing white pressures.

9. Among the Cabazons' near Indian neighbors were the Indians of the Torres-Martinez Reservation, which lay some eleven miles south and three miles east of the Cabazon Band's Sections 24 and 19. The Torres-Martinez Reservation consisted of Sections 16, 22, and 26, Township 7 South, Range 8 East. Immediately east of these three sections were Sections 15, 23, and 25 which belonged to the Southern Pacific Railroad.

There was a distinct possibility that if the railroad sold its three sections, development would deplete the Torres-Martinez water supply. It was determined by Interior officials that it would be desirable if the

railroad's Sections 15, 23, and 25 could be added to the Torres-Martinez Reservation for the benefit of that Band.

10. The potential benefit to the Torres-Martinez Band was to be attained at least cost to the Government by an exchange of land on an approximately equal value basis. Interior officials proposed to exchange Section 24, which the Southern Pacific Railroad did not own but had developed exclusively for railroad purposes, for the railroad's Sections 15, 23, and 25.

The "approximately equal value" criterion led the railroad to refuse the exchange of three sections for one. Further negotiations, inspections, and appraisals led to the compromise proposition that the railroad's three sections could be exchanged for all of Section 24, plus the north half of Section 19, plus the west half of the southwest quarter of Section 19. The two segments of Section 19, amounting to 5/8 of the section, were contiguous to Section 24.

No part of the negotiations pertained to the detriment of the Cabazon Band which would result when the Department of the Interior exchanged Cabazon lands for railroad land which would benefit only the Torres-Martinez Band, and, in fact, that detriment was never discussed.

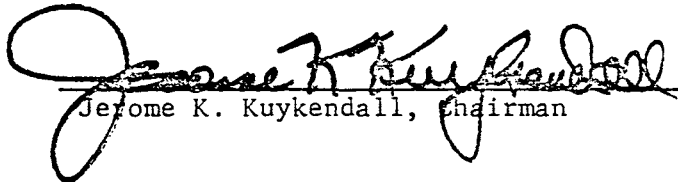
11. In order to consummate the exchange of Section 24 and a large part of Section 19 for Sections 15, 23, and 25, it was necessary to

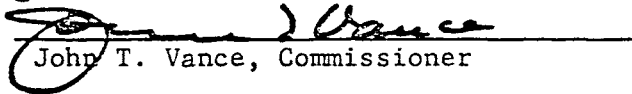
establish that Sections 24 and 19 [with Section 6] had in fact not been restored to the public domain as the Smiley Commission had recommended in 1891. To this end, after the legalities of the proposed exchange had been resolved, it was made the official position of the United States that restoration of those three sections to the public domain required a separate, specific proclamation by the President, and that in fact such a proclamation had never been issued.

With that official position established, Interior officials were in a position to apprise individuals who had made desert entries on Sections 24 and 19 that the entries had been accepted in error, that the several entrymen were then [1911] trespassing on "the Cabazon Indian Reservation," and that they were instructed to remove themselves and their possessions forthwith.

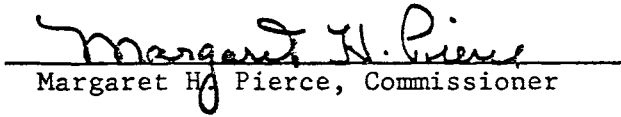
12. The deed from the Southern Pacific Railroad conveying Sections 15, 23, and 25 to the United States was dated May 29, 1912. The patent transferring the Cabazons' land to the railroad was dated December 11, 1914. Thereafter, Sections 15, 23, and 25 were added to the Torres-Martinez Reservation for the benefit of the Torres Mission Band.

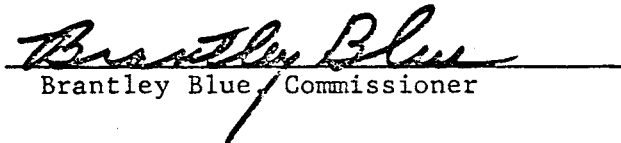
13. The Cabazon Bund was paid nothing for its Sections 24 and 19; and it received no benefit from the consummated transaction.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner