

BEFORE THE INDIAN CLAIMS COMMISSION

THE SAN CARLOS APACHE TRIBE OF ARIZONA; )  
 )  
 THE WHITE MOUNTAIN APACHE TRIBE OF THE )  
 FORT APACHE INDIAN RESERVATION; )  
 )  
 THE WHITE MOUNTAIN APACHE TRIBE OR GROUP, )  
 THE SAN CARLOS APACHE TRIBE OR GROUP, )  
 THE CIBECUE APACHE TRIBE OR GROUP, )  
 THE SOUTHERN TONTO APACHE TRIBE OR )  
 GROUP, and the several bands of each )  
 of them, ex. rel., respectively )  
 Clarence Wesley (White Mountain), )  
 Jess J. Stevens (San Carlos), Nelson )  
 Lupe, Sr. (Cibecue), and Ernest )  
 Cutter (Southern Tonto); )  
 )  
 THE WESTERN APACHE and each group and )  
 band thereof, ex. rel. Clarence )  
 Wesley, Jess J. Stevens, Nelson )  
 Lupe, Sr., and Ernest Cutter, )  
 )  
 THE NAVAJO TRIBE OF INDIANS, )  
 )  
 Plaintiffs, )  
 )  
 v. )  
 )  
 THE UNITED STATES OF AMERICA, )  
 )  
 Defendant. )

Docket No. 22-D

Docket No. 229

Decided: June 27, 1969

FINDINGS OF FACT

1. Capacity. The San Carlos Apache Tribe of Arizona and the White Mountain Apache Tribe of the Fort Apache Reservation, petitioners herein, are Indian tribes recognized by the Secretary of the Interior. The above petitioners have the capacity to bring this action under the Indian Claims

Commission Act on behalf of themselves and in a representative capacity on behalf of the White Mountain Apache Tribe or group, the San Carlos Apache Tribe or group, the Cibecue Apache Tribe or group and the Southern Tonto Apache Tribe or group, and the several bands of each of them, as the said tribes or groups and the bands thereof existed in aboriginal times under whatsoever name, said tribes or groups and the bands thereof collectively constituting an identifiable group of American Indians termed "Western Apache" in modern anthropological literature.

2. The Claim. Petitioners seek compensation from the defendant under Section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049) for the taking of approximately 9,545,000 acres of land in the present state of Arizona, claimed to have been the Indian title area of the four aboriginal Apache groups designated herein as the Western Apache and to have been taken by the United States without the payment of compensation. The approximate boundaries of the above claim are as follows:

"Starting at a point about two miles east of Hay Lake, thence south by east to Mesa Redonda passing through the site of the present town of Snow Flake, thence in a southeasterly direction to the summit of the ridge east of Blue River at a point northwest of the site of the present town of Blue, reaching this point in a manner to include within Western Apache country the sites of the present towns of Floy, Greer, and Espero, thence southerly following the course of the Blue River to its junction with the San Francisco River, thence south-southwest along the east side of the San Francisco River, crossing the Gila a few miles east of its junction with the San Francisco River, to Guthre Peak, thence southwest to Circle Hills and continuing in the same direction to the southernmost reaches of

the Winchester Mountains, thence northwest along the summit of Winchester Mountains to a point about two miles southeast of Saddle Mountain, thence south-southwest to the site of the present town of Hot Springs, thence southwest to Rincon Peak, thence northwest along the western border of the Coronado National Forests to a point on the Canada del Oro approximately 10 miles northeast to the site of the present town of Kino, thence in a north-northeasterly direction to the site of the present town of Feldman, thence north-northwest to the site of the present town of Winkleman, thence following the course of the Gila River northeastward to a point a few miles east of Drippings Springs Wash, thence northwestward to a point near the present U.S. Route 80 about three miles west of the site of the present town of Bellevue, thence in a direction slightly north of west to a point a few miles west of the head of the West Fork of Pinto Creek, thence almost due north along the summit of the divide east of Salt River to the site of the present town of Roosevelt, thence west-southwest to the summit of the Mazatzal Mountains, thence northward along this summit to Mazatzal Peak, thence following generally the summit of the divide between the Verde and East Verde River northwestward to the junction of these rivers and thence still northward along the east side of the Verde River to its junction with Fossil Creek thence in a northeasterly direction to Hardscrable Mesa, thence north to Turkey Mountain, thence northeasterly to the point of easterly beginning.

The claim of the petitioners in Docket No. 22-D conforms generally to the area outlined on a map appearing in "The Social Organization of the Western Apache" written by Grenville Goodwin and published posthumously in 1942 (CX 413, p. 4), except for the area outlined for the Northern Tonto group. This Northern Tonto area has become a separate claim in Docket No. 22-J. Of these 9,545,000 acres claimed by petitioners in Docket No. 22-D, the Navajo Tribe, petitioner in Docket No. 229, claims approximately 1,435,000 acres.

3. The Claimed Area. The lands of the Western Apache claim area are located in the southeastern part of the present state of Arizona and are characterized by a variety of land terrain types and a great diversity of widely distributed resources. No one place constituted a center for development. There are two relatively level, large sized plateaus. The largest area is the one northward from the Mogollon Rim, a prominent escarpment. The streams flow northward from the lip of the rim at elevations of about 7000 feet emptying into the Little Colorado River. A few of the streams have formed deeply cut canyons. The southern part of the plateau is covered with a heavy coniferous forest. Another extensive level surface forms a double bench north of the upper Gila River. This area is extremely dry. The lower bench supports only short grass but the higher one has more and taller grass and some scattered trees because of more abundant rainfall.

There are several mountain ranges in the claimed area. The general trend of the desert ranges is in a north northwest-south southeast direction but within the individual ranges the topography is extremely jumbled with slopes facing virtually every direction. These desert ranges include the Mazatzal and Sierra Ancha Mountains in the northwest part of the area, the Mescal Mountains near San Carlos Lake, and the Santa Teresa, Galliuro, Graham or Penaleno, Winchester, Rincon and Santa Catalina Mountains in the southern part. There are also the Gila Mountains just north of the Gila River and the White Mountains in the northeastern part of the claim. The White Mountains are very diversified and rugged and abound with coniferous forests.

The main rivers in the claimed area are the East Verde, Salt and Gila Rivers. The East Verde and its tributaries drain the extreme northwest part of the claimed area below the Mogollon Rim. The Salt River flows from east to west across the center of the claimed area. Its tributaries include many creeks and rivers, the most important being the White and Black Rivers, Big Bonita and Tonto Creeks. Tributaries such as the Black and White Rivers, with sources in the White Mountains, carry a permanent flow of water. The Gila River flows across the southern part of the claimed area and is also fed by many tributaries, the most important being the San Carlos, San Pedro, and San Francisco Rivers, and Eagle, Bonita, Salt and Deer Creeks. There are deep and narrow canyons along the courses of the major streams.

4. Expert Witnesses. Several expert witnesses testified before the Commission during the course of the hearing. Petitioners presented two anthropologists, Dr. Morris E. Opler and Dr. Harry T. Getty. Dr. Homer Aschmann, a geographer, and Mr. Albert H. Schroeder, an archaeologist, testified for the defendant.

Dr. Opler testified that the Western Apache, composed of the White Mountain, San Carlos, Cibecue, Southern Tonto and Northern Tonto bands or groups, were an identifiable people who recognized themselves as one people, who had a cultural and linguistic unity, and whose separate groups held contiguous land areas. He said that the Northern Tonto group shared in both the Western Apache and Yavapai cultures. Dr. Opler concluded that the claimed area in Docket No. 22-D was essentially an accurate representation

of the area of exclusive use and occupancy of the Western Apache in aboriginal times. Dr. Opler did not submit a written report.

Dr. Getty testified concerning the specific areas where the Western Apache farmed, hunted and gathered and the manner of their use of the claimed area. He also testified with respect to the topography, climate, vegetation and animal life in the claimed area as related to its use by the Western Apache. Dr. Getty testified that he prepared Petitioners' Exhibit No. 536 which is a map of the claimed area with the specific locations of Western Apache use of the area for farming, hunting and gathering. He stated that his map was composed largely from the materials in Petitioners' Exhibit No. 413, "The Social Organization of the Western Apache" by Grenville Goodwin. Dr. Getty did not file a written report.

Dr. Homer Aschmann testified that the resources of the claimed area were widely distributed with no single place having abundance enough to support a sedentary population. He stated that other Indians such as the Yavapai, Navajo and Havasupai probably also used the claimed area north of the Mogollon Rim for hunting and gathering. He excluded the southern part of the claimed area covered by the Santa Catalina, Rincon, Galliuro and Winchester Mountains from the Western Apache claim. However, he testified that no other Indians occupied this area even temporarily after 1775. He expressed some reservation about Western Apache use and occupancy of the Arivaipa Valley and the Upper Gila River Valley from Bylas to Solomon which was barren and little used. He admitted that there was an Indian group which could be identified in cultural terms as Western Apache. Dr. Aschmann submitted a written report, Defendant's Exhibit No. 3.

Mr. Schroeder testified that on the basis of the historical documents the Apache first came into the claimed area in the 1690's. He excluded several parts of the claimed area based on his study of the historical documents relating to that area. Some of the claimed area in the south was excluded because the Western Apache had only seasonal campsites there and used the area primarily as a base from which to raid. The area north of the Mogollon Rim was excluded on the ground that the Navajo were there after 1859. Mr. Schroeder concluded that the Indians using the territory along the western boundary of the claimed area were Yavapai, that a triangular section in the northwest portion of the claim was used and occupied by Indians whose identity was unknown, and that some of the claimed area along the eastern boundary was occupied by Mogollon Apache. However, Mr. Schroeder included the Dripping Springs area just outside the western boundary of the claim area as belonging to the Western Apache. He also testified that the White Mountain, San Carlos, Cibecue, Southern Tonto and Northern Tonto Indians were not aboriginal groups but were reservation groupings. Mr. Schroeder submitted a written report, Defendant's Exhibit No. 5.

One of the basic sources used by all the expert witnesses was Petitioners' Exhibit No. 413 "The Social Organization of the Western Apache" by Grenville Goodwin published in 1942 after Mr. Goodwin's death. The book is the result of Mr. Goodwin's studies among these Western Apache groups during the 1930's. During this period he lived among them, learned their language and mapped what he considered to be their territory in pre-reservation times. This study includes Mr. Goodwin's conclusions as to the different groups and

bands that composed the Western Apache, the places they farmed, hunted and gathered, their social organization, their old camping sites and former boundaries.

5. Early History. The term "Western Apache" is a modern term used to describe the westernmost division of the Apache Indians. Historical documents relating to the claimed area from the Spanish period to the 1870's refer to the inhabitants variously as Pinal Apaches, White Mountain Apaches, Arivaipa Apaches, Coyotero Apaches, Gila Apaches or combinations of these terms. Modern anthropologists refer to their descendants as White Mountain Apaches, San Carlos Apaches, Cibecue Apaches and Southern Tonto Apaches and collectively as Western Apaches. In spite of the lack of political unity and the distinctions which existed between the various bands and groups composing the Western Apache, there was an overall cultural and linguistic unity among the bands and groups so that they considered themselves to be one people with common interests apart from other neighboring Indian tribes. Because of these common interests and the amicable relationship of the various groups in the use of contiguous areas, we find the above groups composing the Western Apache to be an identifiable group of American Indians and a single land using entity in pre-reservation times. The population of the Western Apache in pre-reservation times was approximately 4300 persons.

There is no agreement as to the exact time when the Western Apache entered the claimed area. There is good evidence that the Apache moved into the general area from the north and east prior to the Spanish period and gradually displaced the pre-historic inhabitants in the process.



In any event, by the middle of the 17th century the White Mountain group of the Western Apache had penetrated the extreme easterly portion of the claim area. Early references to Indians in or near the claimed area by the Spanish explorers Coronado (1540), Espejo (1583), Farfan (1598) and Onate (1604) are uncertain as to specific identity and definitely placed only the Sobaipuris in the claimed area. However, by the 1690's there is reference to the Spanish being allied with the Pima and Janos Indians in campaigns against the Apache in the Pinaleno Mountains and of the Sobaipuri Indians, a branch of the Pimas who inhabited the San Pedro River Valley in the southwest part of the claimed area, as fighting the Apaches who were infiltrating their territory from the east.

During the first half of the 18th century the Apache in the claimed area engaged in innumerable raids against the Spanish settlements and while maintaining these attacks, opened a corridor for raids down the Sonora River Valley in Mexico. The Spanish attempted to stop this raiding by sending many military expeditions against the Apaches but because there was virtually no center of Apache settlement that could be attacked by concentrated forces, the military expeditions were largely unsuccessful and the raids continued unabated.

In 1762 the attacks of the Pinal Apaches compelled the Sobaipuri Indians to withdraw from the drainage area of the San Pedro Valley. With the withdrawal of the Sobaipuris, the Apache in the claimed area were now free to hunt and gather wild food in the Graham, Winchester, Rincon and Santa Catalina Mountains while preparing for raids into Mexico, Tucson, and the Santa

Cruz Valley ranches and adjacent territories. After these raids they would then return to the rugged terrain of these mountains with livestock and other booty.

The nature of the claimed area made the raiding activities of the Apache inhabitants extremely difficult to control. In general, the area was wooded and mountainous with some broad desert lowlands in the central part which were crossed and hunted over by the Western Apache in order to gather the acorn and mescal in the Graham and Santa Teresa Mountains. The Apache settlements were in narrow valleys or canyons or tucked into the slopes of the several mountain ranges. Some of the most narrow and deep canyons were along the courses of the major streams. These were great barriers to cross but the Apache, whose agility is proverbial, were less troubled by these barriers than any other group. The presence of such deep canyons and broken terrain contributed to the refuge or hideout value of their homeland and small groups or families could disperse into it when pressed by outside forces. These places had water, wood and wild produce in abundance and also natural fortifications where the Apache could defend themselves against enemies. These places were almost inaccessible to the white man.

By the 1820's when Mexico won its independence from Spain, the Apaches were "riding roughshod" over northern Mexico. Ten years later these raids had extended down to central Sonora. During the 1830's Tucson experienced a brief period of peace from the Apache oppression but in the early 1840's trouble there began again, possibly due to scalping parties organized by

Americans that started in 1837. During the early 1850's the Apaches raided more extensively than ever before. Central and eastern Sonora suffered incursions. The Mexicans were as powerless as the Spanish before them to devise any practical means of insuring peace.

6. Western Apache Ecology - Farming. The Western Apache farmed extensively in the claimed area. Most of their farm sites were located along the streams where they could be irrigated by the construction of diversion dams and ditches. Other plots were located on the valley sides and were irrigated by springs. A few level patches just below the Mogollon Rim received enough rain so that dry farming was possible. The major crops of the Western Apache were corn, beans, pumpkins, squash and wheat. It is estimated that these crops accounted for about one-fourth of their total diet.

Families and clan groups were specifically attached to particular farming sites, and such lands were treated as owned property. Most all of the bands of the Western Apache had at least one agricultural site within their band territory. The band might spend approximately half the year at such localities. However, individuals incapacitated for rapid movement because of age might remain at such places permanently, watching but probably not cultivating growing crops while the more vigorous members of the bands journeyed to a place where particular wild foods were regularly gathered.

Western Apache farm sites were located at the East Fork of White River, the head of Bonita and Turkey Creeks, near the head of Black River, on

Eagle Creek, at Point of Pine, and head of Cienega Creek; at Cedar Creek, Canyon Day and Bear Springs; on Carrizo Creek, the north fork of White River and the head of Forestdale Creek; on Cibecue Creek and its tributaries, on Salt Creek, upper Cibecue Creek and Spring Creek; on Oak Creek, Gentry Canyon, Canyon Creek and Cherry Creek, along Pinal Creek in the Wheatfields area at the juncture of Pinal Creek and upper Salt River, on the Salt River between Pinal and Tonto Creeks, Coon Creek Canyon and the mouth of Dick Springs Canyon on the Gila River at the head and mouth of Aravaipa Canyon; on the San Carlos River from Victor's Bluff to near Seven Mile Wash; along Tonto Creek from its mouth to past Gem Creek and at the juncture of Salt River and Tonto Creek; along Greenback Creek; at the juncture of Rye and Tonto Creeks, on Spring Creek, at Gisela and near Turkey Creek between Spring Creek and Gisela; at Payson, Round, Green and Star Valleys; off the north end of Mazatzal Mountains near "blue farms"; at the vicinity of White Rock Mesa north of the East Verde River, in Weber Canyon north of the East Verde River, on the East Verde River below the Payson to Pine Road, at Pine, on Pine Creek near Natural Bridge, at Strawberry and on the south fork of Strawberry Creek; on the East Verde River near the mouth of Pyeatt Gulch, at Promontory Butte, at Pleasant Valley and near the Christopher and Horse Mountains south of Promontory Butte.

The historical documents describe many of these farm sites as being located southwest and west of Mount Turnbull, near the White Mountains,

north of the Pinal Mountains, in the Aravaipa Valley, in the San Carlos Valley, in the Gila Valley, throughout the Tonto basin, on Cibecue Creek; on the tributaries of the San Carlos River, on Corduroy Creek, on Pinal Creek, on Canyon Creek, on the White River, and the Salt, Gila and San Carlos Rivers and their tributaries, and on Cherry, Coon and Cedar Creeks. There were no Western Apache farms north of the Mogollon Rim.

7. Gathering. Wild plant foods were present throughout the area but the places of their availability varied from season to season. Each group of Western Apache and also individual bands within the groups moved over and exploited many kinds of land and natural vegetation in the course of a year.

Food gathering journeys were to specific localities, used regularly by particular bands, for particular stuffs, at specific seasons. With permission, however, a band or group of families might be permitted to gather food in another band's area. Individual families would also travel through and gather and reside in several different ecologic zones during the course of a year.

Gathering began in April with the collection and preparation of mescal. Mescal grew throughout the area and was most abundant on Mescal Mountain, along the southern slopes of the Natanes Rim and on the lower elevation south of the Gila River on Turnbull and the Graham or Pinaleno Mountains. The Western Apache also gathered mescal near the Winchester Mountains and at a number of localities between the Salt and the Gila Rivers.

Late in June, family groups traveled to the low country of the Gila Valley and lower San Pedro Valley to gather the saguaro or giant cactus, prickly pear and other desert fruits. Other family groups gathered wild seeds and berries in the northwest part of the claimed area north of the Mogollon Rim.

The Western Apache harvested and processed a variety of acorns starting in late July. Their favorite acorn grounds were along the southern face of the Natanes Rim, and in the vicinity of Oracle at the north end of the Santa Catalina Mountains. Limited groups of Western Apache journeyed to the low country of the Gila River when the mesquite beans were ripe. Pinon nuts and juniper berries ripened in the fall and were obtained along the Natanes Rim, and on the slopes of the Graham, Mazatzal, and White Mountains. The pinon-juniper country of the Mogollon Rim was also visited occasionally at this time to collect pinon nuts, juniper berries and wild seeds. A variety of wild seeds were harvested in parts of the claimed area. Edible roots were occasionally collected in the coniferous forest on top and just below the Mogollon Rim and also in the White Mountains.

Acorns, wild seeds, mescal, juniper berries and pinon nuts were transported from collecting sites and stored for use during the winter season. Some wild plants were used as dyes, fibers, medicines and for ceremonial purposes.

8. Hunting. Game was widely distributed in the claimed area. However, in no place was the game abundant enough to support a sedentary population.

The animal life varied in kind with the elevations. Rodents, jack and cottontail rabbits, coyotes, fox, quail and various birds such as turkey, pigeon, dove, ducks and geese were found in the valleys while the larger grazing and browsing types such as deer, elk, and mountain sheep were located in the mountains. They also hunted the lion, bobcat, beaver, porcupine and badger.

Hunting was carried on throughout the year by the Western Apache groups to maintain the supply of meat which formed about 35% of their total diet. Their meat supply was also augmented by raiding. Most of the claimed area was ranged on intermittently by these Western Apache groups as they hunted wherever game might be found. During both hunting and gathering expeditions the Western Apache established seasonal camp sites in the mountains where there was a continuous flow of water and where game and plant foods were plentiful. In the winter the men went out alone on extended hunting trips while the women, children and elderly persons stayed behind in the more permanent lodgings near their farm sites.

Western Apache groups hunted near the Natanes Rim, in the canyon of the Carrizo, and in the White, Pinal, Mescal, Sierra Ancha, Mazatzal, Turnbull, Graham or Pinaleno, Santa Teresa, Santa Catalina, Rincon, Galliuro and Winchester Mountains as well as in other parts of the claimed area near their farming sites. The territory north of the Mogollon Rim was also used for hunting on occasion by Western Apache groups.

9. Indian Neighbors. Northwest of the Western Apache were the Northern Tonto. These Indians were an amalgamated group of bilingual and intermarried Apache and Yavapai Indians distinct from both the Yavapai and the Western Apache. Relations between groups of the Western Apache and Northern Tonto were friendly and visits were exchanged. The approximate boundary between the two groups extended in a northeasterly direction from the junction of the East Verde River and Fossil Creek to the general vicinity of Hay Lake.

On the west were the Yavapai who spoke the unrelated Hahan-Yuman language. The Western Apache relations with the Yavapai was nearly always friendly. The boundary between the Yavapai and the Western Apache began at the juncture of Fossil Creek and the East Verde River and ran in a southerly direction following the natural barriers along the crest of the Mazatzal and Pinal Mountains.

On the west and southwest were the Pima, Maricopa and Papago tribes who spoke languages unintelligible to the Western Apache. The Western Apache were continually at war with these tribes. The approximate boundaries between these tribes and the Western Apache were the San Pedro River Valley, the Santa Catalina Mountains and the Rincon Mountains.

South and east of the Western Apache were the Chiricahua Apache. There were marked differences between the Western Apache and the



Chiricahua in language, economic practices, social organization and religious beliefs. The approximate boundaries between these two groups were the Rincon and Winchester Mountains. The boundary then extends northeasterly from the Winchester Mountains to the juncture of the Blue and San Francisco Rivers, and from this juncture northerly to the present town of Blue.

The Navajo were the Western Apache neighbors to the north and northeast. Relations between the two groups were intermittently friendly and hostile. At least by the late 1850's some Navajos were dispersing to the headwaters of the Little Colorado River and the north slopes of the White Mountains because of the winter campaign against them. Up to 1864 there was conflict between the Apaches and the Navajos in these areas. Their relationship became more friendly after 1864 while the Navajos were seeking refuge from the military. At least some of the claimed area between the Mogollon Rim and the Little Colorado River was used by the Navajo from time to time for hunting and gathering from at least the late 1850's into the 1870's.

10. American Period. By the Treaty of Guadalupe Hidalgo on February 2, 1848 (9 Stat. 922), following the war between Mexico and the United States, Mexico ceded to the United States an extensive area in the present-day American southwest, including most of the lands in Arizona which are involved in this case. The Treaty recited that "\*\*\*a great part of the territories which, by the present treaty, are to be comprehended for the

future within the limits of the United States, is now occupied by savage tribes, who will hereafter be under the exclusive control of the government of the United States\*\*\*" (9 Stat. 922, 930). With reference to said tribes, the United States agreed, inter alia, to restrain their incursions into the country of the Mexican Republic, and to take special care not to place the Indian occupants of the ceded territory under the necessity of seeking new homes (9 Stat. 922, 932). By the Gadsden Treaty of December 10, 1853 (10 Stat. 1031), the United States extended its sovereignty over additional lands in the present-day American Southwest, including the remaining lands which are involved in this case.

By the Act of September 9, 1850 (9 Stat. 446), a territory of New Mexico was established and its boundaries set. Included within this new territory were most of the lands claimed in this case. Section 3 of this Act provided that the governor of the Territory shall perform the duties of Superintendent of Indian Affairs. Section 7 of the Act prohibited the New Mexico territorial government from passing any law "interfering with the primary disposal of the soil." Section 17 of the Act provided that "the Constitution, and all laws of the United States which are not locally inapplicable, shall have the same force and effect within the said Territory of New Mexico as elsewhere within the United States." By the Act of February 24, 1863 (12 Stat. 644), Arizona was separated as a territory from New Mexico.

By the Act of February 27, 1851 (9 Stat. 574, 587), the United States amended the Indian Trade and Intercourse Act of June 30, 1834 (4 Stat. 729)

over the Indian tribes in the Territory of New Mexico. This 1834 Act, inter alia, made it an offense to drive stock to range and feed "on any land belonging to any Indian or Indian tribe, without the consent of such tribe" (Section 9); gave the Superintendent of Indian Affairs and Indian Agents authority "to remove from the Indian country all persons found therein contrary to law" (Section 10); and made it unlawful to settle on "any lands belonging \*\*\* to any Indian tribe" (Section 11).

Accordingly, by virtue of the aforesaid acts and other acts, the United States acquired sovereignty of the territory which included the area in issue in this case, and established a system of laws for the territory. The United States also acquired jurisdiction over the Western Apache Indians and their affairs, and undertook to respect the Western Apache right to use and occupy lands within the Territory of Arizona in a manner consistent with the policy of the United States in other territories and states.

Contacts of officers and agents of the United States with the Western Apache were limited during the early American period. In August 1856, Agent Steck submitted a report to the Commissioner of Indian Affairs in which he stated that

"Of the Coyotero Apaches who live north of the Gila, but little is known, as no agent has ever visited their country. They are represented by other tribes and traders who have visited them as a powerful tribe. They are favorably disposed toward Americans, and have large herds of stock and plant extensively after the fashion of their neighbors, the Navajos. This tribe depredate

largely upon settlements of Sonora in the Republic of Mexico and travellers upon the California road from El Paso to San Diego have suffered from their marauding bands."

Steck recommended that an agent visit this tribe for information so that "security be given to travel upon this rout[e] and to settlers (sic) upon the Gadsen purchase..."

A military campaign against the Apache having been decided upon, troops under the command of Colonel Bonneville invaded the territory of the Western Apache in 1857. Pursuant to a subsequent suggestion of Agent Steck, a general council was held and peaceful relations were reestablished with the Western Apache. During the early years of contact with the Western Apache, officers and agents of the United States recommended that the Indians should be located in a permanent home to be set apart for them. No action, however, was taken on these proposals.

A program looking toward the making of a treaty with the Western Apache and their establishment on a reservation was abandoned after the outbreak of the Civil War. In lieu thereof, the military commanders adopted a policy of attempting to subdue the Apaches by force, a policy which was to continue for a period of almost ten years.

By the end of the 1860's, the futility of attempting to subjugate the Indians by force became evident to the officers and they recommended that a reservation be set apart for the Western Apache within their aboriginal territory. The boundaries of a proposed reservation in the White Mountain region were set forth in a letter dated January 31, 1870 from Major H. M. Robert, Engineers Office, Military Division of the Pacific, to General

W. D. Whipple, Adjutant General, Military Division of the Pacific. In 1871, President Grant directed Commissioner Vincent Colyer "to proceed to New Mexico and Arizona, and there take such measures as he deemed wisest to locate these Apache Indians on suitable reservations, feed, clothe, and otherwise care for them\*\*\*" By letter dated September 5, 1871, Commissioner Colyer "concluded to select the White Mountain Reservation, the boundaries of which were defined in letter of H. M. Robert, major of Engineers\*\*\*". By the Executive Order of November 9, 1871, the White Mountain Indian Reservation was established. By Executive Order dated December 14, 1872, President Grant enlarged the said White Mountain Indian Reservation by adding to it a described tract known as the "San Carlos division of the White Mountain Indian Reservation." By the latter date as a result of the pressure of the American military and the voluntary action of the Indians, most of the Western Apache were on reservations and by May 1873 they were almost all on reservations.

Subsequent to the establishment of the White Mountain Indian Reservation, including the San Carlos division, pursuant to the aforesaid Executive Orders of November 9, 1871 and December 14, 1872, the area of the reservation was successively curtailed and diminished by a series of Executive Orders, including those issued August 5, 1873, July 21, 1874, April 27, 1876, January 26, 1877, March 31, 1877, and December 22, 1902.

11. Aboriginal Title Lands. The Commission finds that on May 1, 1873, and for a long time prior thereto, the Western Apache exclusively used and occupied in Indian fashion the following area in the present state of Arizona:

Starting at the south end of Long Lake in T16N R11E (Gila and Salt River Meridian) thence southeasterly through the site of the present town of Heber to the site of the present town of Showlow; thence easterly to the present town of Vernon; thence southeasterly to Mallory Springs; thence southeasterly to the site of the present town of Blue; thence southerly following the course of the Blue River to its junction with the San Francisco River; thence southerly to the site of the present town of Guthrie; thence southwesterly to the highest peak of the Circle I Hills; thence southwesterly to Rincon Peak; thence northerly on a line following the ridge dividing the waters which flow into the San Pedro River from the waters which flow into the Santa Cruz River to the peak of Oracle; thence northeasterly to the site of the present town of Mammoth on the San Pedro River; thence northerly following that river to its junction with the Gila River; thence northerly to Signal Peak; thence northwesterly following the crest of the Pinal and Mazatzal Mountains to the juncture of the Verde River and the East Verde River; thence northeasterly to Turkey Mountain; thence northerly to the point of beginning at the south end of Long Lake.

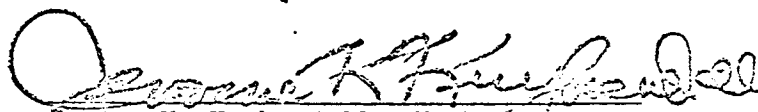
The Commission also finds that on May 1, 1873, the Navajo Tribe, plaintiff in Docket 229, did not hold aboriginal title to any of the area enclosed within the above boundaries.

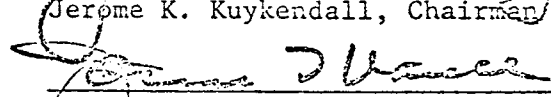
12. The Commission finds that May 1, 1873 marks the date on which the United States took from the Western Apache Indians their Indian title to all of their aboriginal lands located outside of the boundaries of the reservation established by the Executive Orders of November 9, 1871 and December 14, 1872. By December 14, 1872, the United States unequivocally manifested its intention to deprive the Western Apache Indians of their occupancy and use of their aboriginal lands outside of the reservations and by May 1, 1873 General Crook's campaign had succeeded in carrying out this intention and virtually all the Western Apache were on reservations.

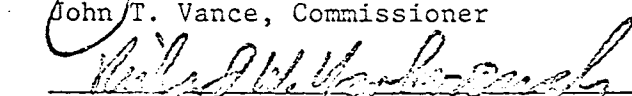
August 5, 1873 marks the date of taking of the Western Apache Reservation lands placed in the public domain by the Executive Order of that

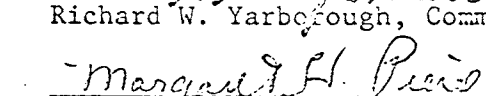
date. Also, each of the dates of July 21, 1874, April 27, 1876, January 26, 1877, March 31, 1877, and December 22, 1902, marks the taking date of an additional tract of Western Apache reservation lands, each of the particular tracts so taken being described in the respective Executive Orders issued on that date.

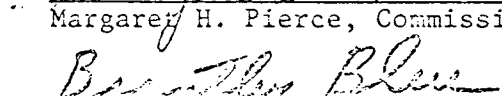
13. The Commission finds that the San Carlos Apache Tribe of Arizona and the White Mountain Apache Tribe of the Fort Apache Reservation, jointly, as representatives of the Western Apache and each group and band thereof as the same existed on May 1, 1873, are entitled to recover of and from the defendant the fair market value of their aboriginal title lands as of the taking dates set forth in Finding No. 12 herein, less such offsets, if any, to which the defendant may be entitled under the Indian Claims Commission Act (60 Stat. 1049).

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner