

BEFORE THE INDIAN CLAIMS COMMISSION

THE NORTHERN TONTO APACHE TRIBE or group,)
and each group and band thereof, ex rel.)
Harrington Turner;)

THE YAVAPAI and the groups and bands thereof,)
ex rel. Calloway Bonnaha, Harry Jones,)
Fred Beauty, and Warren Gazzam;)

THE WESTERN APACHE and each group and band) Docket No. 22-J
thereof, ex rel. Clarence Wesley, Jess)
J. Stevens, Nelson Lupe, Sr., Harrington)
Turner and Ernest Cutter;)

THE YAVAPAI-APACHE INDIAN COMMUNITY, The)
Fort McDowell Mohave-Apache Community,)
The San Carlos Apache Tribe of Arizona,)
The White Mountain Apache Tribe of the)
Fort Apache Indian Reservation, each on)
its own behalf, on behalf of the several)
bands and groups of each of them respectively,)
and each on behalf of the Northern Tonto)
Apache Tribe or group, and each group and)
band thereof;)

THE NAVAJO TRIBE OF INDIANS,) Docket No. 229
Plaintiffs,)

v.)

THE UNITED STATES OF AMERICA,)
Defendant.)

Decided: June 27, 1969

FINDINGS OF FACT

Introduction

1. On February 3, 1948, the Apache Tribe of the Mescalero Reservation and the several individual members of the Claims Committee of that Tribe filed a petition before this Commission for and on behalf of the Apache

Nation. This petition was assigned Docket No. 22. It asserted, among other claims, a claim to recover damages for the taking by the United States of land exclusively used and occupied from time immemorial by the Apache Nation. This land was located in New Mexico, Arizona, Texas and portions of adjoining states.

On October 18, 1950, a First Amended Petition was filed in Docket No. 22. The Apache Tribe of the Mescalero Reservation was joined in this petition by other petitioning Apache tribal reservation groups: namely the Yavapai-Apache Community, the Fort McDowell Mohave-Apache Community, the San Carlos Apache Tribe of Arizona, the White Mountain Apache Tribe of the Fort Apache Indian Reservation, and the Jicarilla Apache Tribe of the Jicarilla Reservation. Also, the five original Indian plaintiffs were joined in this petition by thirteen additional individual Indian petitioners. Among these additional individual petitioners was Harrington Turner who claimed to be a member of the Northern Tonto Apache Tribe. This petition asserted claims on behalf of the "tribes, bands and subdivisions" of the Apache Nation. Expressly named among these "tribes, bands and subdivisions" for which claims were asserted in the petition was the Northern Tonto Apache Tribe.

By order of May 25, 1959, the Commission separated from Docket No. 22 separate aboriginal title claims asserted in the first amended petition in that Docket by authorizing the filing of four second amended petitions. Docket No. 22-D contained the Indian title claim of the Western Apache and groups thereof, including the Northern Tonto Apache Tribe or Group, and Docket No. 22-E, those of the Yavapai Tribe and bands thereof.

At the same time the Commission directed that the petition in Docket Nos. 22-D and 22-E be made to describe the boundaries of the Indian title area claimed in each. Thereupon, the petition in Docket No. 22-E was amended to describe by metes and bounds the area so claimed. Substantially all the area attributed by plaintiffs in Docket No. 22-D to the Northern Tonto Apache group of the Western Apache was also included within the area claimed by plaintiffs in Docket No. 22-E as belonging to the Yavapai. Accordingly, an area claimed in both Docket Nos. 22-D and 22-E resulted.

In June 1959, the plaintiffs in Docket Nos. 22-D and 22-E jointly moved the Commission to consolidate these two dockets for the trial of Indian title to this area of overlap. The Commission denied the motion. Thereafter the trial of the Yavapai claims in Docket No. 22-E was held from October 19 through October 28, 1959. The parties adduced evidence that related to the Yavapai and the present Northern Tonto claim areas, and thereafter plaintiffs filed their proposed findings of fact and brief with respect to both areas. Then, on March 3, 1961, the plaintiffs in Docket Nos. 22-D and 22-E jointly moved the Commission to sever from their dockets claims arising out of the taking by the United States of the area claimed to have been used by the Northern Tonto Apache Tribe or groups thereof and to allow said claims to be presented to the Commission in a separate docket. On October 10, 1961, the Commission entered an order severing the area claimed to have been used and occupied by the Northern Tonto Tribe or groups thereof from the areas for which claims were made

in Docket Nos. 22-D and Docket No. 22-E and designated this claim as Docket No. 22-J. As a result of this action by the Commission, there are no longer any overlapping claims between the plaintiffs in Docket Nos. 22-D and 22-E.

2. Capacity. The claims asserted in this Docket No. 22-J have been presented to the Commission by several individual Indians and by four tribal organizations. One of the individuals, Harrington Turner, is a Northern Tonto Apache Indian. The four tribal organizations, the Yavapai-Apache Indian Community, the Fort McDowell Mohave-Apache Indian Community, the San Carlos Apache Tribe of Arizona, and the White Mountain Apache Tribe of the Fort Apache Indian Reservation all maintain tribal organizations recognized by the Secretary of Interior as having authority to represent such tribe or group and the members thereof. All said organizations include among their membership, members and descendants of members of the Northern Tonto Apache Tribe or group and these organizations have the capacity under the Indian Claims Commission Act to bring this suit in a representative capacity on behalf of the Northern Tonto Apache Tribe or group and each group and band thereof, the Northern Tonto Apache Tribe or group constituting an identifiable group of American Indians under the Indian Claims Commission Act.

3. The Claim. Plaintiffs seek compensation from the defendant under Section 2(4) of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049) for the taking of approximately 1,537,280 acres of land located in the central part of the present state of Arizona. Plaintiffs allege that

the Northern Tonto Apache Tribe had Indian title to the above acreage and that it was taken from the Northern Tontos by the United States without the payment of compensation. The boundaries of the claim are described by the plaintiffs as follows:

Commencing at a point on State Highway No. 79 where the highway crosses the northern limit of Section 12 N, 3 E, Gila and Salt River Base and Meridian, and thence northward passing midway between the western border of the present Camp Verde Indian Reservation and the present town of Cherry to cross the Verde River at a point about one-quarter mile above the junction of the Verde River and Oak Creek, and thence continuing northward along the crest of the ridge west of Oak Creek on a line passing approximately midway between the present towns of Cornville and Clemenceau and continuing northward along said ridge to the summit of a peak lying midway between the Wilson and Casner Mountains and from this peak continuing northward to run along the summit of the elevation lying east of Sycamore Creek to a point approximately 3 miles due west of Rogers Lake, thence in a direct line northeastward toward the San Francisco Mountains and continuing into said mountains to an elevation of approximately 10,000 feet, thence east to the point where the present U. S. Highway 89 crosses the northern limit of Section 22 N, 8 E, Gila and Salt River Base and Meridian, thence in a southeast direction directly through the site of the present town of Winona and continuing southeastward to the southeast corner of Section 20 N, 11 E, Gila and Salt River Base and Meridian, thence south and east along the course of Diablo Canyon to the eastern edge of two small lakes lying 3 miles south of Long Lake, thence southeast for 1 mile, thence turning sharply west-southwest to run along the south edge of Turkey Mountain along approximately the 7000 foot elevation line to a point on said line due north of the present town of Clints Well, thence in a direct line south to Clints Well, thence southwest in the direction of the present town of Strawberry to a point on the Mogollon Rim directly north of the present town of Pine, thence southward to Pine and continuing in a south and westward direction to run along the southern rim of the Hard-scrabble Mesa and to cross Fossil Creek and the Verde

River at points approximately one-quarter mile above the junction of these streams, thence continuing west and slightly north to a point on the Eastern Branch of Ash Creek approximately 4 miles above the junction of Ash Creek and Agua Fria River, thence north and slightly west to the point of beginning.

3(a) The Navajo Tribe in Docket No. 229 has also asserted a claim to approximately 414,000 acres in the northeastern part of the area claimed by plaintiffs in Docket 22-J. The present case was consolidated with Docket No. 229 and a consolidated hearing completed relative to the right of the plaintiffs in Docket No. 22-J to recover for this overlap area.

4. Claim Area. There are a variety of distinct terrain types in the subject tract. The northwestern part of the claim is covered with a forested plateau; streams draining southward into the Verde River have cut deep canyons into the edge of this plateau. There are a number of shallow lakes and undrained basins on the plateau, Rogers and Mormon Lakes being the largest. The area of the claim south and southeast of Mormon Lake contains scattered clumps of pines and junipers and is covered for the most part by grassland and wet meadows. Waterfowl and antelope were abundant in this area.

The northeastern part of the claim is "Break Terrain" wooded with dense thickets of pinon, juniper, live oak and other smaller bushy species. The brushy forest of the "Breaks" extends out on the flats for about five miles; pinons disappear quickly and progressively smaller and more widely spaced junipers are the dominant form.

The main streams in the claimed area are the Verde River and its tributaries, Oak Creek, Dry Beaver Creek, Wet Beaver Creek, Clear Creek, Sycamore Creek and Fossil Creek. The Verde River flows across the south-east part of the claim and for much of this distance it meanders in a flood plain from one to three miles wide. It then narrows and enters its canyon to the south. The country for several miles on both sides of the Verde is dissected canyon country. The area between the streams flowing into the Verde sustains different types of vegetation depending on the rainfall and elevation. Such vegetation includes juniper, live oak, chaparral, pinon pine, ponderosa pine, cottonwood, sycamore, willows, aspen, ash, walnut and some berry and grape vines. The higher country provides good browse and sustains a substantial deer population and many game birds. The entire area supports large numbers of animals.

It is estimated that the terrain of the claimed area is 5% canyon or valley bottoms, 35% dissected canyon country, 40% forested plateau, and 20% grassland.

5. Expert Witnesses in Related Dockets. The evidence which has been presented to the Commission is voluminous. Hearings, at which interested Indians testified, were held on January 15, 1951, at Phoenix, Arizona, and on January 16 and 17, 1951, at Prescott, Arizona. Documentary evidence and expert testimony with respect to the claimed area were adduced at the Yavapai trial in Docket No. 22-E, that was held in Washington, D. C., from October 19, through October 28, 1959. Petitioners in Docket No. 22-E

presented the testimony of three experts: Dr. Philip Drucker, archaeologist, Dr. Harry T. Getty, who has taught graduate and undergraduate courses on the ethnology of Southwest Indians in the University of Arizona at Tucson since 1938, and Dr. Alfred B. Thomas, Professor of History at the University of Alabama. Dr. Thomas supplemented his testimony with a written report on the Yavapai Indians, based primarily on the Spanish and Mexican documents of the period prior to 1848. The defendant presented the testimony and written report of Mr. Albert Schroeder, an archaeologist employed by the National Park Service. Mr. Schroeder appeared before the Commission as an expert witness on behalf of the defendant and prepared a report which was received in evidence as Defendant's Exhibit S-238 in the Yavapai case. During the course of the hearings in the Navajo case (Docket No. 229), the Commission received expert testimony and documentary and archaeological evidence with respect to Navajo occupancy in the northeast part of the claimed area. Mr. Schroeder also testified for the defendant in that case.

6. Expert Witnesses on the Northern Tonto. Additional documentary evidence and expert testimony with respect to plaintiffs' right to recover for the claimed area were adduced at the consolidated hearing of the Western Apache (Docket No. 22-D) and the Northern Tonto Apache (Docket No. 22-J) claims. The trial was held in Washington, D. C., commencing on August 3 and extending through August 19, 1964. Plaintiffs presented the testimony of two expert witnesses, Dr. Morris E. Opler, Professor of Anthropology at Cornell University and the above-mentioned Dr. Harry T. Getty.

The defendant also presented the testimony of two expert witnesses, Dr. Homer Aschmann, Professor of Geography at the University of California and the above-mentioned Mr. Albert H. Schroeder. Dr. Aschmann prepared a report entitled "Environment and Ecology in the 'Northern Tonto' Claim Area," which was received in evidence as Defendant's Exhibit 2. Mr. Schroeder prepared a report entitled "The Apache and Their Neighbors, 1540-1700" which was received in evidence as Defendant's Exhibit 5, Volume 1. He also prepared a three volume report pertaining to the Western Apache and the Northern Tonto Apache, which was received in evidence as Defendant's Exhibit 5, Volumes 2, 3, and 4. Generally speaking, the expert witnesses by their testimony and written reports sustained the position of the party who offered them as a witness.

7. Ethnological Sources. Some basic sources used by the expert witnesses were the writings of Dr. E. W. Gifford and Grenville Goodwin, modern anthropologists who did intensive investigations of the claimant Indians. Gifford's publications are basic sources for ethnological information on the Yavapai. He also made a culture element survey of Indian Tribes of the Southwest, including the Northern Tonto. The publications of Grenville Goodwin are basic sources for ethnological information on five groups, including the Northern Tonto, which he classified as Western Apache. Goodwin began his field work and research with them in 1929 and continued his investigation of them until his untimely death in 1941. He had completed a book-length study of the Western Apache which was prepared for publication by his colleagues. This volume entitled "The Social Organization

of the Western Apache" was published by the University of Chicago Press in 1942 and was received in evidence as Plaintiff's Exhibit 413. This study include Mr. Goodwin's conclusions as to the different groups and bands composing the Western Apache, the places they farmed, hunted and gathered, their social organization, their old camping sites and boundaries in pre-reservation times. This included a study of the Northern Tonto group as a part of the Western Apache.

8. Expeditions in the Claimed Area. The first white expedition known to have entered the claimed area was led by Antonio de Espejo and Father Beltran in 1583. This was followed by expeditions of Farfan in 1598 and Onate in 1604. Each of these early Spanish explorations entered the claimed area from the Hopi Pueblos to the northeast. The first two traveled south and west to the neighborhood of the Upper Verde River valley and from that place, after a brief stay, returned to the Hopi Pueblos. The Onate expedition crossed the claimed area along its northern segment and emerged on the Colorado River at the mouth of the Bill Williams River. These expeditions encountered Indians near Hay and Mormon Lakes, on Beaver Creek, on Sycamore Creek, in the valley of the Verde River, and to the west in the approximate regions of Jerome or Prescott. The diarists who accompanied these expeditions named the Indians met in these places the "Seranos," meaning mountain people, the "Querechos" and "Jumana," meaning wandering people, and the "Cruzados" because they wore crosses. Historians and anthropologists have concluded that the "Cruzados" were Yavapai Indians.

After these earliest explorations, there is no evidence of any expedition into the claimed area during the Spanish and Mexican periods. However, there are Spanish reports based on travels in neighboring areas which are sufficient to locate, in general terms, both the Yavapai and Western Apache in relation to neighboring Indian tribes.

9. American Contacts. During the early American period there are a few specific references in the historical documents to Indians of the claimed area. Thus, the report of the expedition of Captain Sitgreaves in October, 1851, mentions a "large encampment of Yampai or Tonto Indians" in the northwesternmost part of the claimed area. Also, in May, 1854, a group of Indians identified as "Tonto of the Yampai Nation" attacked the members of Leroux's party when they reached a point identified by Aschmann as probably in the vicinity of Clear Creek.

In the late 1850's the influx of miners and settlers into the claimed area and its vicinity generated hostilities and troops were dispatched. Following these contacts with the Indians of the claimed area, it was first recognized that they comprised an intermingled and intermarried group of bilingual Yavapai and Apache. Thus, Lt. Schuyler observed that "the so-called Tontos are mainly half breed Apaches and Apache Mohaves [Yavapai], as a rule they speak both languages, and style themselves either Apaches or Apache Mohave as the humor strikes them. *** They partake of the peculiarities of character and features of both tribes, and generally speak both languages, though incorrectly."

10. Northern Tonto Origins. Both the Yavapai and Apache had a reputation of being normally at war with their neighbors. However, in the claim area, the two groups got along well. Intermarriage and common residence or residence exchange in both directions following intertribal marriage are reported by modern ethnographers. Some time before 1860 this union of the Yavapai and Apache groups formed a separate group of Indians in the claimed area. This union brought together two people whose social and political culture and manner of subsistence were similar but who spoke two separate languages. The new group became bilingual, for the most part, and as of 1860 the two languages were still being used.

Bands and band leaders generally had names in both languages. Some consciousness continued to exist of being either Apache or Yavapai, each Indian choosing primarily the mother's language and tribe. However, they were mostly bilingual and lived in families and bands comprised of both Apache and Yavapai. This group were first called Tontos by White Mountain Apaches on account of their supposed childish or foolish manner of speaking the language. By 1860 the Apache and Yavapai in these bands had joined permanently to form family units and bands in which the two people were united as one, being separate and distinct from the neighboring purely Yavapai and purely Apache bands. This group has been termed "Northern Tonto" by modern ethnographers. In pre-reservation times these Northern Tonto numbered approximately 450 persons.

11. The four constituent bands of the Northern Tonto were the Mormon Lake, Fossil Creek, Bald Mountain and Oak Creek bands. The Fossil Creek,

Bald Mountain and Oak Creek bands consisted of intermarried and bilingual Yavapai and Apache Indians. Only the Mormon Lake band was composed entirely of Apache Indians. However, the members of this band were distinct from the Western Apache and Navajo, had free access to the territory of the other three bands and considered themselves to be most closely affiliated with the other three bands. One band took its name from Fossil Creek, the place they most frequented. This group had a few tiny farms on Fossil Creek, Clear Creek and a site on the Verde River below the mouth of Deer Creek. In their hunting and gathering activities they were scattered west of the Verde River, northwest to the Oak Creek band territory and northeast to Apache Maid Mountain. Another Northern Tonto group lived mainly around Bald Mountain or Squaw Peak, a big mountain on the west side of the Verde Valley, southwest of Camp Verde. This group lived entirely by hunting and gathering plant foods. A third group of Northern Tonto frequented a place near Oak Creek, some three or four miles west of Sedona. They lived along Oak Creek, Dry Beaver Creek, Wet Beaver Creek and used the area southward to the west side of the Verde River between Altman and West Clear Creek, eastward to Stoneman's and Mary's Lakes, and northward to Roger's Lake and Flagstaff.

The fourth Northern Tonto band had its main camp at a spot east of Mormon Lake near the head of Anderson's Canyon and were exposed to the hostile Navajo on the north and east. They depended entirely on hunting and gathering wild plant foods for sustenance. During these activities

they ranged up to the southern foot of the San Francisco Mountains, at Elden Mountain near Flagstaff, around Mormon, Mary's, Stoneman's and Hay Lakes, and at Anderson and Padre Canyons.

12. Agriculture. The Northern Tonto were primarily a hunting and gathering people. Lacking either suitable ground or water, agriculture was not as important to them as it was to the neighboring Western Apache groups. However, wherever feasible, Northern Tonto Indians cultivated small patches of corn, beans, squash, and melons. Some of these patches were irrigated by small springs. Corn and beans were dried and stored for winter. Their farms were located along Fossil Creek, Clear Creek, Oak Creek, and at a site on the Verde River below the mouth of Deer Creek. They attended their farms only at planting and harvesting time so that gathering and hunting could be pursued in other areas during the growing season. The different bands and groups roamed throughout the claimed area while hunting and gathering, but the cultivated land was considered to be the private property of a particular family or group.

13. Hunting. Flora and fauna in the claimed area varied with the climate and elevation. About 25% of the Northern Tonto diet consisted of deer, antelope and mountain sheep. Other animals used for food included the mountain lion, fox, coyote, skunk, badger, racoon, the desert tortoise, a specie of caterpillar, quail, a variety of small birds, and the honey of the yellow jacket. The men hunted while the women gathered wild plants. In this manner the Northern Tonto ranged over the claimed area in family

groups for hunting and gathering.

An important by-product of hunting was buckskin which was used for clothing, moccasins and for trade. Other animal skins were also used but were less important.

14. Gathering. The principal vegetable products used for food by the Northern Tonto Indians were mescal, saguaro, the prickly pear, mesquite, acorns, pinon seeds and a variety of greens, fruits, nuts, seeds, berries, and roots. Acorns and mescal or agave were the most important plant foods. Mescal grew at high elevations and in abundance on the middle slopes around Fossil Creek and was available at all times of the year. The cactus fruits, saguaro and tunas, ripened in the summer and were found at low elevations in the Verde River and Fossil Creek areas. The live oak on the slopes and upper valleys of the streams on both sides of the Verde produced acorns in abundance. This was the principle wild crop of the Northern Tonto. Substantial quantities of these acorns were transported in baskets to winter quarters for use during the cold weather.

Pinon seeds and juniper berries were also important foods for the Northern Tonto. These fruits ripened in October and November and were found on the upper interfluvial slopes of the canyon country on either side of the Verde River at elevations from 4500 to 6000 feet, and in the "Breaks" and just below them in the country that begins to fall off toward the Little Colorado River. While juniper berries were consistently available, a given stand of pinon will bear fruit heavily only one year in four. Pinon seeds were a choice, storable and easily collected foodstuff.

Mesquite beanpods were also used as an important foodstuff. These were found on the better drained banks of the Verde River and in the lower parts of the tributary canyons. They ripened in the late summer.

The cactus fruits, saguaro and the tunas of the platyopuntias, that are referred to as important to both the Yavapais and the Tonto Apaches are fairly abundant only in the lowest Verde River and Fossil Creek areas. It is therefore likely that the inhabitants of the Northern Tonto claim also gathered these items farther south in the territories of other Indian groups.

Grapes and walnuts in the canyons, berries on the plateau, grass and other seeds at various elevations, roots in swampy localities, yucca on dry intermediate slopes, and many other plants were exploited on occasion. Wild plant foods were seasonably available from July to November, except for mescal which could be obtained at any season. It is likely that for the Northern Tonto well over half the total diet was obtained from this source. Raiding was comparatively unimportant to the Northern Tonto.

There was a pattern among the Northern Tonto of allowing other Indians to visit them for acorns and pinon nuts and going into the areas of others for mescal and saguaro. Tenure over territory was claimed, but the right of others to gather or hunt seems always to have been granted if requested.

Visitors who hunted and gathered in another band's territory might be attacked in revenge for some past action or even because of the insult caused by failure to request permission to hunt and gather, but not for the economic damage they were doing.

15. Indian Neighbors. The Havasupai Indians were located to the northwest of the claimed area. The relations of the Northern Tonto with the Havasupai were usually hostile and members of the two groups occasionally raided each other. However, the Havasupai did not use or occupy any of the claimed area.

The Cibecue group of Western Apache bordered the Northern Tonto on the east and the Southern Tonto group of Western Apache bordered them on the south and southeast. Relations with the Cibecue group were friendly and visits were exchanged. The Mogollon Rim and Fossil Creek canyon formed a natural boundary between the Northern Tonto and the Southern Tonto though friendly visits were exchanged here also. The Yavapai bordered three Northern Tonto bands on the south and west. Relations between the Northern Tonto and the Western Apache and Yavapai were friendly and visits were exchanged. However, there was no adverse use or occupation of the claimed area by either of these tribes or groups.

At least by the late 1850's the Navajo's were dispersing into part of the claimed area on the north and east as a result of the United States military campaigns directed against them. Because of this dispersion some of the claimed area on the north and west was used by the Navajo for hunting and gathering from at least the late 1850's until into the 1870's.

16. United States Sovereignty Over the Claimed Area. By the Treaty of Guadalupe Hidalgo of 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 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***". 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.

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 the lands claimed in this case. Section 3 of this Act provided that the governor of the Territory should 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 Act of February 27, 1851 (9 Stat. 574, 587), the United States extended the Indian Trade and Intercourse Act of June 30, 1834 (4 Stat. 729) to 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 Northern Tonto Indians and their affairs, and undertook to respect the Northern Tonto 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.

17. Aboriginal Title Lands. The Commission finds that on May 1, 1873, and for a long time prior thereto, the Northern Tonto Indians exclusively used and occupied in Indian fashion the following area in the present State of Arizona:

Commencing at the juncture of the East Verde River and the Verde River; thence northerly along the Verde River to its juncture with Fossil Creek; thence northwesterly to Bald Mountain; thence northerly to the juncture of Oak Creek and the Verde River; thence northerly to Sliker Hill; thence northeasterly to Schultz Peak in the San Francisco Mountains; thence southeasterly to Cave Hill; thence southerly to Youngs Lake; thence southeasterly to Crater Lake; thence southerly to the south end of Long Lake in T16N R11E (Gila and Salt River Meridian); thence southwesterly to Turkey Mountain; thence southwesterly to the point of beginning at the juncture of the East Verde and Verde Rivers.

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

18. The Taking of the Northern Tonto Lands. The Northern Tonto had little contact with Americans before Indian hostilities commenced in the 1860's with the arrival of miners in the area. Camp Lincoln, renamed Camp Verde, was established on the Verde River in the Northern Tonto area in 1864. Additional military camps were established in adjacent areas. Over ten years, successive military commanders at Camp Whipple, and at the posts at Date Creek, Verde, and McDowell, with varying degrees of success, sent their troops out to tract down, attack, and capture Indians not living attached to one or another military post. Most of the Indians, including the Northern Tontos, alternated between periods of submission when they drew rations and protection on a reservation or at a military post, and periods of return to their former way of life, but modified now by raids upon herds and crops of the settlers made to supplement their declining natural food resources. These conditions grew progressively more acute. Finally, following a series of meetings held by Vincent Colyer with Indians at McDowell, Verde, and Date Creek, a reservation was approved at Camp Verde by Executive Order dated November 9, 1871. A small part of this reservation lies within the boundaries of the Northern Tonto aboriginal title area. The Indians were directed to remove to this reservation and stay within its borders. This directive failing to be effective, General Crook, in the fall and winter of 1872-1873, waged a vigorous campaign throughout the area until virtually all the Indians had either surrendered to troops in the field or else had come in to a military post. In May, 1873, all these

Indians, numbering about 2000, were taken to the Camp Verde Reservation. They were largely Yavapai and Northern Tonto. Here they remained until March, 1875, when they were removed in a body to the San Carlos Reservation, outside their country.

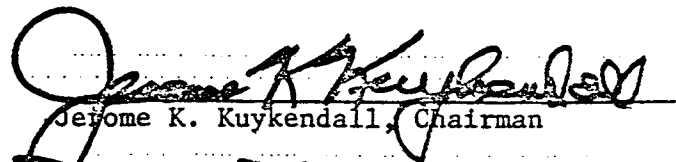
On April 23, 1875, the Camp Verde Reservation was restored to the public domain by Executive Order of that date.

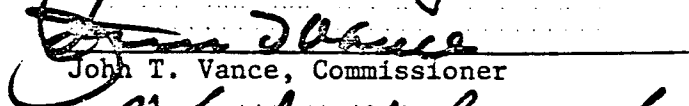
The Commission concludes that the forceful placing of the Northern Tonto Indians on the Camp Verde Reservation marks the date on which the United States, without payment of compensation, took from them their Indian title lands outside the Camp Verde Reservation boundaries. We, therefore, conclude May 1, 1873, to be the taking date for these lands. We also conclude that the Executive Order of April 23, 1875, which restored the Camp Verde Reservation to the public domain, also extinguished the aboriginal title to the remainder of the Northern Tonto lands.

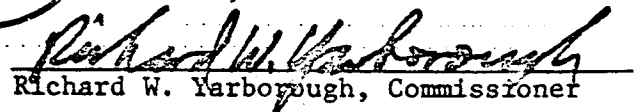
19. Conclusion. The Commission finds that May 1, 1873, marks the date on which the United States took from the Northern Tonto Indians their aboriginal lands located outside the Camp Verde Reservation by depriving them of the use and occupancy of these lands. The Commission finds that the Northern Tonto aboriginal lands located within the Camp Verde Reservation were taken by the United States on April 23, 1875, when the Camp Verde Reservation was restored to the public domain by Executive Order.

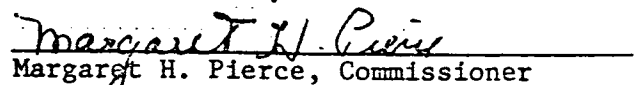
The Commission finds that the Yavapai-Apache Indian Community, the Fort McDowell Apache-Mohave Indian Community, the San Carlos Apache Tribe

of Arizona and the White Mountain Apache Tribe of the Fort Apache Indian Reservation jointly on behalf of the Northern Tonto Indians are entitled to recover of and from the defendant the fair market value of their aboriginal lands as of May 1, 1873, and of April 23, 1875, less such offsets, if any, to which it 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