

BEFORE THE INDIAN CLAIMS COMMISSION

THE PAPAGO TRIBE OF ARIZONA,)
)
 Plaintiff,)
)
 v.) Docket No. 345
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Decided: October 1, 1969

ADDITIONAL FINDINGS OF FACT

The Commission's decision of September 10, 1968 delineated the outer perimeter of the Papago aboriginal title area, reserving determination of the date or dates of taking of the tract or parts of it. After briefing and argument, the Commission on March 12, 1969 issued its Modified Pretrial Order establishing the general date of taking of all Papago lands not earlier taken as January 14, 1916. After motion by the defendant, and briefing and further evidence submitted by the plaintiff and defendant, the Commission makes the following additional findings of fact:

26. Exclusions from the Award Area.

a. As previously determined by the Commission the area within the present San Xavier del Bac and Sells Papago Reservations is deemed not to have been taken by the defendant (except for certain mineral patents in the latter reservation) and is excluded from the award area to be valued.

b. Confirmed Spanish and Mexican land grants evidence an extinguishment of aboriginal title before American sovereignty attached; the United States is not liable for their taking. Confirmed Spanish and Mexican grants within the award area are (1) the San Ignacio de la Canoa Grant of 17,203.21 acres, (2) the Maria Santisima del Carmen Grant of 5733.41 acres, (3) the San Rafael de la Zanja Grant of 17,474.06 acres, (4) the San Jose de Sonoita Grant of 5123.42 acres, and (5) the San Ignacio del Babocomari Grant of 3200 acres, all as depicted on Defendant's Exhibit A.

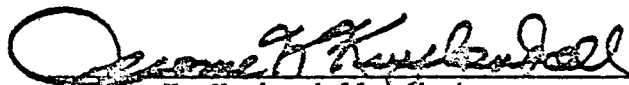
c. Tucson and Tubac were Spanish-Mexican garrisons and settlements within the award area settled at dates prior to 1854. No evidence has been submitted showing that Spain or Mexico asserted its sovereignty to formally extinguish Papago title to the area of the settlements. Tucson was established at the site of a Papago village; Papagos formed a continuing portion of the population. Under these circumstances, no pre-1854 extinguishment of Papago title to the Tucson area is found. Tubac had been abandoned by 1854; Papago title survived.

27. Dates of Taking.

a. The date of taking for valuation purposes of the Papago award area (unless specified otherwise) is January 14, 1916, the date of establishment of the Sells Papago Reservation.

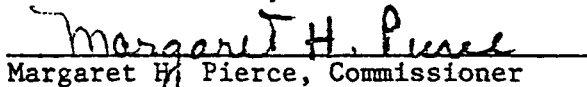
b. The date of taking of the Louis Maria Baca Float Number 3 Grant (as shown on Defendant's Exhibit A) is the date of its patent.

c. The date of taking of subsurface tracts is the date of patent, if any, of the mineral survey locations listed in Defendant's Motion to Fix Valuation Dates of May 2, 1969, pp 3-6, or January 14, 1916, whichever is earlier, unless the location is within the present Sells Papago Reservation. Within that Reservation, takings will occur as of the date of patent prior to May 27, 1955.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner