

BEFORE THE INDIAN CLAIMS COMMISSION

THE MOHAVE INDIANS WHO ARE MEMBERS OF )	
THE COLORADO RIVER INDIAN TRIBES, )	
et. al., )	Docket No. 283
)	
MOHAVE TRIBE OF INDIANS OF ARIZONA, )	
CALIFORNIA, AND NEVADA, et. al., )	Docket No. 295
)	
Plaintiffs, )	
)	
v. )	
)	
THE UNITED STATES OF AMERICA, )	
)	
Defendant. )	

Decided: May 13, 1970

Appearances:

Charles MacPhee Wright, Attorney for Plaintiffs in Docket No. 283.

Raymond C. Simpson, Attorney for Plaintiffs in Docket No. 295.

Lester Reynolds with whom was Mr. Assistant Attorney General Shiro Kashiwa, Attorneys for Defendant.

OPINION OF THE COMMISSION

Vance, Commissioner, delivered the opinion of the Commission.

This is a claim under section 2, clause 4 of the Indian Claims Commission Act (60 Stat. 1049, 1050) for the fair market of lands in California, Nevada and Arizona which were owned aboriginally by the Mohave Tribe. The valuation date of the California lands is March 3, 1853, and that of the Nevada and Arizona lands is March 3, 1865.

Beginning with the mineral discovery by John Moss in 1863, the San

San Francisco Mining District in the Arizona Territory was the subject of significant attention. Since much of the District was unexplored at the 1865 valuation date, we must determine what an informed purchaser at that date would have thought its potential to be. The report of Professor Benjamin Silliman indicates that such a purchaser would have been optimistic as to the potential of the mines. At the end of 1863, at least parts of the Moss Lode were selling at \$300 to \$320 per foot. It would seem that these portions probably consisted of the area 250 to 500 feet around Allen's Shaft that Professor Silliman indicated contained surface gold. The Moss Lode extended for at least 7,800 feet and was claimed for twice that distance. While a great deal was spent on development of the Moss Mines, most of the development was ill conceived and added little value.

The Southern Cross or Hardy Mine consisted of footage on the Parsons and Michigan Lodes. Many conveyances of interests in these lodes were made around the valuation date. Among other important lodes were the Leland, Dayton, Skinner and Moss Back. Professor Silliman indicated that he visited over fifty lodes or veins in 1864.

At least \$240,000 of gold was removed from a pocket of the Moss Lode close to the surface by 1864. Much interest in the San Francisco District was created. Knowledgable persons, such as Professor Benjamin Silliman, were very optimistic about the future of the District around its valuation date. Defendant has attempted to discredit Professor Silliman's report, but we find nothing to support the suggestion that Professor Silliman was employed to make the report by a mining company with interests in the area.

We have examined the sales data for interests in the San Francisco

District around its valuation date and have found this to be the best evidence of value. The other methods of valuation suggested by plaintiffs involve the use of information regarding future ore production and reserves which a purchaser on the valuation date could not have reasonably known. While we do not accept the methods by which plaintiffs estimate the length and number of lodes which had been located, nor the failure to distinguish between more and less valuable portions of the mineralized area, we find the final value assigned by plaintiffs to the mineral resources to be substantially correct.

Within the Mohave Tract, only one minor sale of surface acreage took place around the respective valuation dates. Thus the parties have relied primarily upon sales of land outside the Mohave Tract around the valuation dates. In 1864, Baca Float No. 5, a tract of over 99 thousand acres, was sold for 6.85¢ per acre. This land was located 75 miles due east of Fort Mohave. In 1853, the United States acquired the Gadsden Purchase for \$10 million. This is not of great probative value since in exchange for this amount, the United States received some 19 million acres of land, cancellation of Mexican depredation claims and the abrogation of Article 11 of the Treaty of Guadeloupe Hidalgo. The land acquired was located some 100 miles south of the Mohave Tract. The United States, at the time the treaty was made, was in a stronger bargaining position than Mexico.

In valuing the surface acreage, plaintiffs' appraiser assumed that the Mohave Tribe's aboriginal title included ownership of the navigable waters of the Colorado River. This assumption is in error.

"Navigable waterways have never been the property of adjacent land owners." Tlingit and Haida Indians v. United States, 182 Ct. Cl. 130, 142, 389 F.2d 778, 786 (1968). On the other hand, the value of the Mohave lands were certainly increased by their accessibility to the River. The Supreme Court in United States v. Rands, 389 U. S. 121 (1967), held that in condemnation proceedings there is no constitutional obligation to compensate for the special value of land which arises from access to and use of navigable waters. "But Congress can at its option decide, though not compelled to do so, to pay more than the constitutional minimum of just compensation." Confederated Salish and Kootenai Tribes v. United States, 181 Ct. Cl. 739 (1967). In that case the Court of Claims decided that Congress had recognized the right of those tribes in water power generated by navigable waters on their reservation and refused to dismiss a jurisdictional act suit claiming compensation for the power value of their land.

On the same day that it decided Confederated Salish and Kootenai Tribes, supra, the Court of Claims held that the enhancement of value created by accessibility to navigable waters is an element of value in cases brought under the Indian Claims Commission Act. In Lummi Tribe of Indians v. United States, 181 Ct. Cl. 753 (1967), the court said;

"For the Commission to downgrade the fair market value of this land for inaccessibility to settlers because of the complete absence of roads or railroads in 1859 ... cannot be supported by substantial evidence. On the contrary, the Lummi tract was readily accessible for settlers, lumbering and mining operations by the

existing and active commercial intercourse by vessels using the navigable waters in the Puget Sound area."

\* \* \* \*

"The two-thirds remainder of about 45,000 land acres was located on three islands, and was as equally accessible as the mainland to the commercial intercourse with the remainder of the Puget Sound area and the California coast by the vessels then using the adjoining navigable waters on the west and south." *Id.* at 766, 767.

In so holding, the Court was reaffirming a view it stated earlier in Otoe and Missouriia Tribe of Indians v. United States, 131 Ct. Cl. 593, 633-634, 131 F. Supp 265, 290 (1955); cert. denied 350 U.S. 848 (1955):

"This method of valuation takes into consideration whatever sales of neighboring lands are of record. It considers the natural resources of the land ceded, including its climate, vegetation, including timber, game and wildlife, mineral resources and whether they are of economic value at the time of cession, or merely of potential value, water power, its then or potential use, markets and transportation--considering the ready markets at that time and the potential market." (Emphasis added)

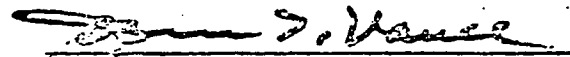
Thus we find that Congress, in passing the Indian Claims Commission Act, intended to compensate tribes beyond the constitutional minimum by, inter alia, including as an element of value the special value added to land by reason of its accessibility to navigable waters.

We have found the highest and best use for the Mohave Tract at the valuation dates to be crop and cattle production for miners living in the area for a portion of the land, and have found that

portions of the land added no value to the tract at the valuation dates.

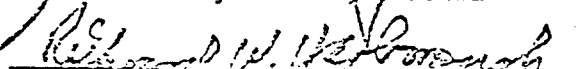
Access to the Colorado River and the presence of emigrant routes over the land enhanced its value. At the California valuation date, a purchaser would have had no knowledge of minerals which would add any significant value to the Tract.

Considering all the evidence, we hold that the fair market value of the California portion of the Tract on March 3, 1853, is \$6,000, and that the fair market value of the Arizona and Nevada portions of the Tract, including mineral enhancement, on March 3, 1865, is \$594,000. No consideration was paid to the Mohave Tribe for the extinguishment of aboriginal title to the lands. The plaintiffs are therefore entitled to recover the sum of \$600,000, less offsets, if any, allowable under the Indian Claims Commission Act.

  
John T. Vance, Commissioner

We Concur:

  
Jerome K. Kuykendall, Chairman

  
Richard W. Yarborough, Commissioner

  
Margaret S. Pierce, Commissioner

  
Brantley Blue, Commissioner