

## BEFORE THE INDIAN CLAIMS COMMISSION

THE MOHAVE INDIANS who are	)	Docket No. 283
members of THE COLORADO RIVER	)	
INDIAN TRIBES, et al.	)	
	)	
MOHAVE TRIBE OF INDIANS of	)	Docket No. 295
Arizona, California and	)	
Nevada, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: May 13, 1970

FINDINGS OF FACT

The Commission makes the following findings of fact which are supplemental to the findings numbered 1 through 25, previously made herein, 7 Ind. Cl. Comm. 219 (1959):

26. The land area owned aboriginally by the Mohave Tribe consists of 1,006,300 acres distributed as follows: 179,400 acres in California, 161,500 acres in Nevada, and 665,400 acres in Arizona. The Commission has previously found, 7 Ind. Cl. Comm. 219, 243-244 (1959), that title to the California lands was extinguished as of March 3, 1853, and that title to the lands in Arizona and Nevada was extinguished on March 3, 1865. No consideration was paid to the Mohave Tribe for the extinguishment of aboriginal title to its lands.

27. The Mohave Tract was part of the lands acquired by the United States from Mexico in 1848 under the provisions of the Treaty of Guadalupe Hidalgo (9 Stat. 922). The subject lands extend for

about 96 miles along both sides of the Colorado River. The tract is very dry, with an average annual rainfall of 4 to 12 inches. Near the level of the water on both sides of the river is alluvial valley land. A little above the valley is desert mesa land, more or less flat and containing desert growth, and on the perimeters above the mesa lands on both sides are desert mountains. Rainfall generally exceeds 7 inches per year only in the mountainous areas.

Defendant's appraiser has determined the percentage of each type of land in the tract to be as follows: alluvial flood plain lands, 8.0%; river channel lands, 1.4%; bench or mesa lands, 29.9%; mountainous lands, 60.7%.

The summers are very hot, with mean temperatures from 82 to 91 degrees, and average maximum temperatures from 100 to 110 degrees. The winters are mild, having mean temperatures of 47 to 53 degrees.

Without irrigation, food crops could be grown only on the level lands along the river. Foods such as corn, melons, beans and pumpkins could be grown after the early summer floods subsided leaving moist soil. The variable nature of the floods resulted in reduced or lack of crop production in some years. The tract might also have been used to a limited extent for cattle grazing. Proposals for simple irrigation in the area were being made in the 1860's.

28. The Mohave Tract and its surrounding area were sparsely populated. The nearest significant population centers were over 150 miles west around Los Angeles and San Bernardino. Los Angeles County had a population of 7,930 in 1852 and 11,333 in 1860. San Bernardino

had a population of 1,200 in 1854. The nearest population centers in other directions were some 110 miles east and over 200 miles southeast around the Arizona towns of Prescott and Tucson. From Fort Mohave San Francisco was 450 miles, Salt Lake City was 435 miles and Santa Fe was 490 miles. San Francisco had an 1860 population of 57,000 and an 1870 population of almost 150,000. Salt Lake had, respectively, 8,236 and 12,854; Santa Fe had 4,635 and 4,765.

29. One of the two major emigrant routes across the Arizona Territory to California crossed the Mohave Tract. This was the 35th parallel route, also known as the Old Government Road because it was used by the government to supply Fort Mohave. Fort Mohave was intended as a protection to emigrants travelling the road. It was reported however that by 1861 only one party had attempted to traverse the trail.

In May 1861, troops were withdrawn from Fort Mohave as a result of the Civil War. Most of the white settlers in the area withdrew with them abandoning their property. It was only upon the return of federal troops and the protection which they gave that settlers returned to the Mohave Tract and explored its mineral resources. The California column arrived in Tucson in June 1862 and declared the territory under martial law. The writings of historians which have been introduced as evidence indicate that this protection by federal troops from California was absolutely necessary before miners could explore the mineral resources of the tract.

After this return of federal troops, large numbers of emigrants

also began to cross the Arizona desert to California.

30. The Colorado River was an important commercial waterway by 1865. River steamers were travelling up the river to Fort Mohave and Hardyville. A purchaser in 1865 would have anticipated that the Colorado River would develop as part of a trade route between San Francisco and Salt Lake. Goods on such a route would be taken by road to and from Callville, located outside the Mohave Tract on the river less than 400 miles from Salt Lake City.

Plaintiffs' appraisal is premised upon the assumption that plaintiff had title to the Colorado River for 85 miles, and thereby had an absolute monopoly upon the commercial potential of the river for this distance. As indicated in our opinion, although the tribe had the right to use the river and its water, aboriginal title to the Mohave Tract did not include title to the navigable waters of the Colorado River. Value is added to the Mohave lands however by reason of their accessibility to the river and its water.

31. California became a state in 1850. The Territory of New Mexico was created in 1850 and originally included all that part of the Mohave Tract that was east of the Colorado River. In 1863, Congress carved out the western part of that Territory and made it into the Territory of Arizona, which until after the date of taking included that part of the Mohave Tract which later became part of the State of Nevada.

32. The first significant mineral discovery within the Mohave Tract was the Moss Lode, discovered by John Moss in 1863. This was

within the area known officially as the San Francisco Mining District. This District was located entirely within the Arizona Territory. Within the District, one concentration of mineral veins occurred around Oatman and another occurred from Union Pass westward. There were no known minerals which would add value to the California portion of the tract as of March 3, 1853.

33. In July 1864, Benjamin Silliman, Professor of Chemistry at Yale University, visited the Colorado River to see some of the mineral districts near Fort Mohave. He reported his findings in a paper read before the National Academy of Sciences at Washington, D. C. in January of 1866, and later that year published in The American Journal of Science and Arts. His description of the San Francisco District was in part as follows (Def. Ex. 48, pp. 293, 294, 305):

"Measured upon the course of the river, this District extends about twenty miles, or ten on each side of Silver Creek, from north to south. In the other direction, from east to west, the District extends about ten miles....

\*\*\*

"San Francisco District ... is entirely destitute of timber, and at present is very imperfectly supplied with water. Timber is said, however, to exist in considerable abundance ... on or near the banks of the Colorado, within 100 miles of Silver Creek; at points from which it can be brought at a moderate cost for the supply of fuel and mining timber to meet the future demands of this district.

"When we remember the experience in Nevada, especially the dearth of water on Mt. Davidson, in the early history of mining on the Comstock lode in Virginia City, and its present comparative abundance there as the result of mining operations, we are encouraged to believe that a similar result may be expected

in San Francisco District, especially since the very limited explorations which have been carried out here have resulted in the discovery of water even in the driest situations."

\*\*\*

"In no other mineral district which I have seen are there so many remarkable outcroppings of quartz veins carrying the precious metals, crowded into so small an area and on a scale of such magnitude in development as in the San Francisco District.

\*\*\*

"Supplies can be brought with tolerable certainty by sea and river to Hardy's Landing, immediately in front of the San Francisco District, and within five miles of the Moss lode.

"With these facilities for development we ought not to remain long in ignorance of the true character in depth of these very remarkable mineral veins, nor is it too much to hope that they will, with an honest and prudent use of capital reward the adventurers with handsome returns for the capital employed in the exploration."

34. Professor Silliman reported that he visited over fifty lodes or veins in the San Francisco District in 1864, but that in most cases the work performed on them had been too little to furnish important data about them. However exploration had been undertaken on the Moss and Skinner Lodes.

35. Evidence as to the value of the Moss Mine at the valuation date is sketchy and, in some cases, contradictory. The Mining and Scientific Press of April 28, 1883, reported (Def. Ex. 70, p. 24):

"In the early part of the year 1864, John Moss [and others] ... prospected through the Union Pass Range... The result of this trip was the location of the celebrated Moss mine by John Moss, one of the party... The wonderfully rich specimens of gold taken from this mine created a great excitement in San Francisco and resulted in the sale of the mine for \$90,000."

No deed has been located which can be identified as this sale. Conveyances of fractional interests by John Moss made on December 21, 1863, have been located. Thus the accuracy of the above report is called into question.

Professor Silliman reported that the Moss Lode extended for at least 7,800 feet and was claimed for double that distance. In 1865, the Moss, Colorado Company filed a claim for 3,000 feet; the Moss, Mohave Company claimed 2,400 feet; and the Moss East, Rochester Company claimed 1,800 feet. In the same year, two other companies filed claims of unknown size. In 1867, the Moss, Segregated Company filed a claim of 50 feet.

Sales of interests in the Moss Mine around the valuation date fell into three distinct price ranges. Conveyances of 5 and 25 feet by John Moss were made in December 1863 at \$300 and \$320 per foot respectively. In his report for 1867, J. Ross Browne states: "It is not surprising that the owners have held their claims as high as \$300 per foot." Claims of this value were apparently located around Allen's Shaft. Professor Silliman reported that he found surface gold for 250 feet from the shaft and could easily detect gold particles for 500 feet. By 1864, John Moss took out \$240,000 of gold from a pocket close to the surface.

Two conveyances of interests by the Moss, Rochester Company were made around the valuation date. In December 1865, a 15 foot interest was sold at \$33.33 per foot. In February 1866, a 20 foot interest was sold at \$25 per foot.

Two sales of interests in the Moss, 4th Extension were recorded in 1864. These sales of 25 feet each brought \$2 and \$3 per foot respectively. The San Francisco Moss Lode, one of the extensions of the Moss Lode, was reported to have been sold for \$96,000 in 1866.

Large amounts were spent in development work on the Moss Mines. It was reported that John Moss spent the entire \$240,000 of gold which he took out of the mine for development. Much of this, however, was ill conceived and of little value. In 1871, Rossiter W. Raymond, United States Commissioner of Mining Statistics reported the following in regard to the Moss Lode (Def. Ex. 60, p. 264):

"The tunneling works, as well as one of the shafts, are remarkable specimens of mining engineering, such as have ruined many other mining enterprises, besides the one under discussion, in the West ... Whoever planned these works must have evidently seen drawings of mining works in depth, without understanding their import."

Thus the tunnels and shafts accounted for little of the value of the Moss Lode.

36. The Southern Cross or Hardy Mine in the San Francisco District consisted of 1,800 feet in the Parsons Lode and 1,600 feet in the Michigan Lode. Twenty-six sales of interests in the Michigan Lode were recorded in 1865. These sales, totalling 1,040 feet, averaged \$4 per foot. For 1865 in the Parsons Lode, nine sales totalling 3,763 feet averaged \$.29 per foot. In a report in 1871, Rossiter W. Raymond stated (Def. Ex. 60, p. 265):

"The Southern Cross is a vein upon which more work has been done than upon all the others in the district together. About \$70,000 has been expended in tunneling and shafting, all of which is well planned and executed,



but it established beyond a doubt that the Southern Cross will never support a prosperous enterprise.

\*\*\*

"The Queen of the Pacific is an extension of the foregoing. About \$10,000 have here been expended in shafting and tunneling, but nothing different was elicited from the experience in the Southern Cross."

37. The Leland Lode was located in the San Francisco District in 1863. Professor Silliman reported as of 1864 that it was almost completely unexplored. One sale in 1865 conveyed an interest of 25 feet for \$18.50 per foot. A sale of 200 feet of the Leland, 3rd Extension East was made in 1865 at \$2 per foot. Before 1870, considerable work had been performed on the mine, but it was unsuccessful.

The Dayton Lode, also in the San Francisco District, was first mentioned by Silliman in his description of some of the smaller lodes in the San Francisco District. Four sales in 1865 totalling 1,225 feet averaged \$3.26 per foot.

The Mitchell Lode was discovered by 1864. Nine sales of interests totalling 2,202 feet were recorded between November 1865 and April 1866. The sales averaged \$1.18 per foot. In July 1868, a sale of 1,750 feet, which was reported as the entire Mitchell Mine, was made for \$10,000. In August 1868, a sale of 1,400 feet on Mitchell, 1st Extension East was made for \$350.

The Skinner Lode was one of the first located in the San Francisco District and was described by Professor Silliman as one of the most conspicuous. Work was begun on the lode in 1863. Silliman reported that as of 1864, a shaft had stopped at 50 feet as the resources of the explorer who dug it gave out. He described the Skinner Lode as

follows (Def. Ex. 48, p. 304):

"The boldest outcrop is called the 'center claim' of 1600 feet. But those portions called the Rochester (1800 feet) and the San Francisco (2400 feet) are nearly as bold."

In 1864, a 20 foot interest in Skinner, Alice Company was sold at \$5 per foot.

The Moss Back Lode in the San Francisco District was first located about 1863, was relocated in 1864, and thereafter was abandoned.

38. Plaintiffs' mineral experts have estimated that production costs for ore taken from the San Francisco District in 1865 would have been \$25 per ton. Defendant's experts found a much higher cost for transportation of ore, apparently assuming that mills would be located in San Francisco rather than near the mines. Plaintiffs' experts calculated that an annual gain of \$225,000 would be realized on gross production of \$750,000 of ore with an average mill recovery of 80%.

39. Mr. Roy P. Full, expert witness for plaintiffs, found the value of the mineralized potential of the lands in the Mohave Tract to be \$500,000. In reaching this figure, he considered both sales of interests in the area and production and cost figures.

Dr. Homer Hoyt and Mr. Ernest Oberbillig, expert witnesses for defendant, valued the mineral lands in the Mohave Tract at \$143,500. This was intended to be the wholesale value of all mineral rights.

40. The highest and best use of 80,500 acres of the Mohave Tract was for agricultural production to feed miners exploiting the mineral resources of the tract. The highest and best use of 5,000 acres was

for facilities necessary to support the extraction of minerals. The remaining land in the tract consisted of areas with grazing potential which, though limited, was sufficient to support the cattle needed by local miners. Portions of the tract, particularly in the mountainous areas, had no known use which would add any value to the tract.

41. The only known sale of surface acreage in the Mohave Tract as of the valuation dates was the reported sale of Cottonwood Island in the Colorado River by Iritaba, an Indian chief, for \$50.

A tract known as Baca Float No. 5 was sold on May 1, 1864, for 6.85¢ per acre. This tract of 99,289.39 acres was located 75 miles due east of Fort Mohave and about 30 miles northwest of Prescott. This land received more rainfall than the Mohave Tract. It was the only private land sale near the valuation date within 100 miles of the area to be valued.

In 1853, the Gadsden Purchase involved the sale of some 19 million acres located about 100 miles south of the Mohave Tract. In consideration for this land, for the cancellation of Mexican depredation claims, and for the abrogation of Article 11 of the Treaty of Guadalupe Hidalgo which obligated the United States to restrain Indian incursions into Mexico, the United States paid \$10,000,000. The United States, which was in a stronger bargaining position than was Mexico, desired the land involved for use as a possible railroad route.

Sales of ranchos in California involving lands substantially superior to those of the Mohave Tract took place around the valuation dates. In 1852, the 37,700 acre Rancho San Bernardino sold at

approximately \$2.05 per acre. This was good agricultural land with water and timber.

Sales of confirmed Spanish land grants on the Sacramento River near the gold fields occurred in the period 1863 to 1865. In 1863, the Fernandez Grant in Butte County, consisting of 100 acres, sold at \$1.00 per acre. In 1865, 19,727 acres in Larkin's Childrens Rancho sold for \$19,000. In 1866, four ranchos on the southwest coast of San Luis Obispo County, 250 miles west of the Mohave Tract, containing 58,521 acres sold at 85¢ per acre.

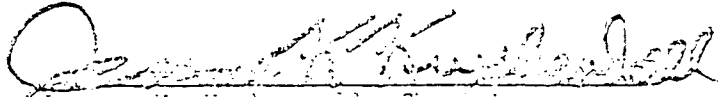
No lands had been surveyed in the Mohave areas in Nevada and Arizona as of their appraisal date, March 3, 1865. As of the dates of the original surveys (California 1855, Nevada 1882, Arizona 1905-1916), 98% of the total Mohave lands in the three states was still in public ownership.


42. Plaintiffs' expert witness, Mr. Donald D. Myers, valued the surface acreage of the Mohave Tract at \$800,000. This excluded 5,000 acres estimated as necessary to support mining operations and 38,384 acres that comprised the reservation subsequently established on the Mohave lands.

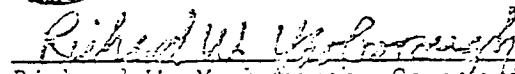
Defendant's expert witness, Dr. Homer Hoyt, valued the surface acreage at \$47,000.

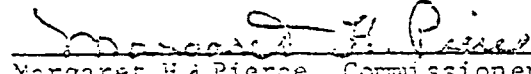
43. Considering all the evidence, we find the fair market value of the California portion of the Mohave Tract as of March 3, 1853, to be \$6,000, and the fair market value of the Arizona and Nevada portions of the tract, including mineral enhancement, as of March 3, 1865, to

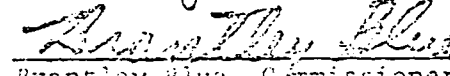
be \$594,000. Plaintiffs are entitled to recover the sum of \$600,000,  
less any offsets allowable under the Indian Claims Commission Act.

  
Jerome K. Kuykenall, Chairman

  
John L. Vance, Commissioner

  
Richard W. Yarbrough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner