

BEFORE THE INDIAN CLAIMS COMMISSION

THE MOHAVE TRIBE OF INDIANS OF ARIZONA,)	
CALIFORNIA, AND NEVADA,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 295-A
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 30, 1970

Appearances:

Raymond C. Simpson,
Attorney for the Plaintiff.

Marvin E. Schneck, with whom was
Assistant Attorney General Shiro
Kashiwa, Attorneys for the Defendant.

OPINION OF THE COMMISSION

Commissioner Vance delivered the opinion for the Commission.

This docket involves the Mohave claims for compensation for the loss of a greater part of the Mohave reservation lands due to the flooding of the Colorado River that resulted from the construction, maintenance, and operation of Parker Dam. The Mohave lands in suit abut the Colorado River on the east, and consist of the alternate even numbered sections of land that either front on the river or extend back therefrom 5 or 6 miles. The alternate odd numbered sections of land are in private hands, the original owner being the Cotton Land Company, a now defunct corporation.

The Parker Dam project was initiated under the Act of August 30, 1935, 49 Stat. 1028. The acquisition of additional land needed

* See Cotton Land Company, et al. v. United States, 109 Ct. Cl. 816, 75 F. Supp. 232 (1948).

to accommodate the reservoir for the waters impounded by Parker Dam was accomplished under the Act of July 8, 1940, 54 Stat. 744. Under this 1940 Statute the Secretary of Interior was authorized to pay the Mohave Tribe "just and equitable compensation" for whatever tribal lands the Secretary designated as needed for the project. The Secretary, having acted pursuant to the authority granted, transferred to the United States 3,736.34 acres of land from the Mohave Reservation, extending from Topock, Arizona to the 455th contour line. For these lands the Secretary, after a fair market appraisal had been made, awarded the Mohave Tribe \$111,547.44. The plaintiff is now complaining that the above amount was so grossly inadequate that it amounted to payment of an "unconscionable consideration" within the meaning of the Indian Claims Commission Act.

As later events proved, the Secretary of Interior had woefully underestimated the amount of land needed for the Parker Dam project. The water that was being impounded behind Parker Dam caused such an appreciable decrease in the velocity of the Colorado River that large quantities of sand and silt, formerly held in suspension, were being deposited on the river bottom at an alarming rate. A "choke" soon developed in the Colorado River at Topock and this "choke" grew into an obstruction or delta that ultimately extended upstream nearly 22 miles. As the river bottom rose, so did the surface waters until they overran the river banks and levees. The resultant flooding of the plaintiff's land above the 455th contour line began in December of

1940, and reached a maximum stage at the 471st contour line in 1942. The plaintiff tribe thus lost the beneficial use of its tribal lands above the 455th contour line without payment of any compensation. The defendant has admitted liability in this regard, but claims that by January of 1953 the subsequent rechannelization of the Colorado River between Needles, California, and Topock, Arizona had successfully returned to the plaintiff tribe all its reservation lands above the 455th contour line. Thus, defendant argues, the Mohave tribe suffered only a temporary loss of its lands, the loss to be measured in terms of the fair rental value from December 1940 to January 1953.

Any final determination of the "unconscionable consideration" claim with respect to the 3,736.34 acres of Mohave lands below the 455th contour line must await the presentation of value evidence on this issue. The acreage and consideration paid by the United States are already a matter of record and not in dispute.

The claim for the loss of Mohave lands above the 455th contour line is also subject to further proceedings on value. While defendant admits liability in the premises, the parties are not in agreement on the acreage.

The plaintiff has not introduced any evidence on the acreage question except to hold the defendant to certain figures appearing in a 1946 letter from the Assistant Commissioner of Indian Affairs wherein it is estimated that the amount of flooded Mohave land above the 455th contour line is between "7000 and 9000" acres. Such evidence is not

dispositive of the issue or very helpful to the Commission.

In the course of the 1964 hearings in this docket, the defendant produced the testimony of the control engineer from the Bureau of Reclamation who directed the 1950 rechannelization efforts on the Colorado River, and who testified that the inundated Mohave lands above the 455th contour line amounted to 6,300 acres.

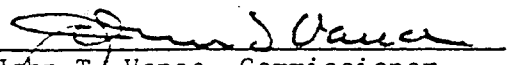
The Commission has accepted the 6,300 acres as a minimum acreage figure. We have found that other evidence of record, particularly some of the maps, indicates that perhaps more than 6,300 acres of Mohave land between the 455th and 471st contour lines was inundated or isolated by the flooding. We will reserve any final determination of the acreage involved until after the value evidence has been presented.

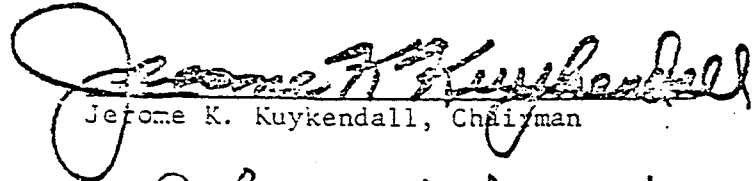
Finally, the Commission agrees with the defendant that the plaintiff suffered only a temporary loss, and that the proper method of valuing the Mohave lands flooded above the 455th contour line shall be their fair rental value for the period from December 1940 to January 1953. See. R. J. Widin Co. v. United States, 174 Ct. Cl. 1020, 357 F.2d 988 (1966).


This case shall now proceed to final determination of all matters

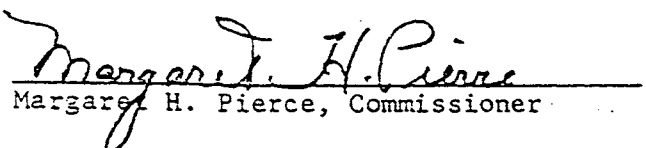
of value, acreages, mitigation of damages, and offsets in order to resolve the extent of defendant's liability to the Mohave Tribe.

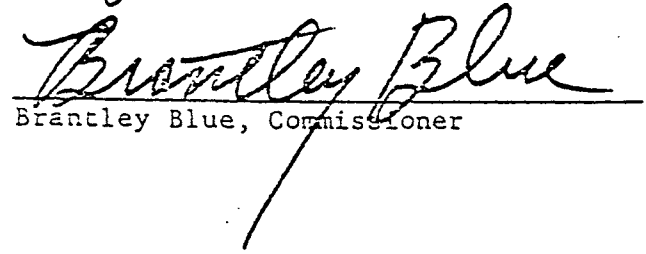
Concurring:


John T. Vance, Commissioner


Jerome K. Kuykendall, Chairman


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner