

BEFORE THE INDIAN CLAIMS COMMISSION

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

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The plaintiff herein, the Mohave Tribe of Indians of Arizona, California, and Nevada, as represented by the individual members of the Mohave Tribal Council named in the petition, has the right and capacity to bring and maintain this suit under the provisions of the Indian Claims Commission Act (60 Stat. 1049).

2. The lands in suit lie within the Fort Mohave Indian Reservation, which reservation and the subsequent modifications thereto were created under a General Order of the War Department, dated August 4, 1870, and the Executive Orders of December 1, 1910, and February 2, 1911 (Pl. Ex. 1). More particularly the subject lands are situated on the east bank of the Colorado River in Mohave County and consist of alternate even numbered sections extending easterly from the Colorado River approximately 3 miles and northerly from Topock, Arizona approximately 29 miles to old Fort Mohave.

The alternate odd numbered sections of land were owned by the Cotton Land Company, a defunct corporation, throughout the period of time material to the Mohave claims asserted herein.

3. Pursuant to a contract, dated February 10, 1933, with the Metropolitan Water District of Southern California and Act of Congress of August 30, 1935, 49 Stat. 1028, and July 8, 1940, 54 Stat. 744, the United States undertook the construction of Parker Dam on the Colorado River at a point 48 miles south of the town of Topock, Arizona. The town of Needles, California is located on the Colorado River 13 miles north of Topock. The Hoover Dam, which is also on the Colorado lies 95 miles north of Needles.

4. All the necessary land thought needed to accommodate Lake Havasu, the reservoir created by Parker Dam, was acquired by the United States pursuant to the Act of July 8, 1940, supra, which Act insofar as pertinent provides as follows:

. . . That, in aid of the construction of the Parker Dam project, authorized by the Act of August 30, 1935 (49 Stat. 1048), there is hereby granted to the United States, its successors and assigns, subject to the provisions of this Act, all the right, title, and interest of the Indians in and to the tribal and allotted lands of the Fort Mohave Indian Reservation in Arizona and the Chemehuevi Reservation in California as may be designated by the Secretary of Interior.

Sec. 2. The Secretary of the Interior shall determine the amount of money to be paid to the Indians as just and equitable compensation for the rights granted under Section I thereof . . .

Passage of the above statute amounted to a recognition on the part of Congress that the Mohave had a compensable interest in the Mohave Indian Reservation. Pursuant to the Secretary's designation title to 3,736.34 acres from the Mohave Indian Reservation was transferred to the United States. The acreage so transferred extended from Topock, Arizona to the 455th contour line. In further compliance with the 1940 Act, supra, the Secretary of Interior appointed a committee to ascertain the fair market value of the lands acquired in the Indian reservation. After the submission of majority and minority reports, the Secretary awarded the Mohave Tribe the sum of \$111,547.44 in full payment of lands taken up to the 455th contour line. None of the subject lands above the 455th contour line were involved in the Secretary's action.

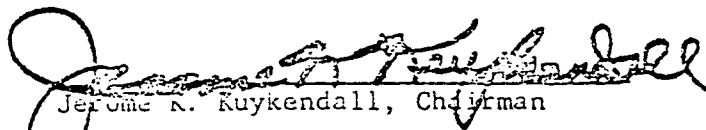
5. Lake Havasu was created in the fall of 1939 by impounding the waters of the Colorado River behind Parker Dam up to the 450th contour line. Allowing a 5-foot freeboard, the limits of the backwater on Lake Havasu would fall approximately on the 455th contour line. Due to the increase of the water surface elevation, the width and depth of the river in the backwater area increased. This slowed the velocity of the water, decreased its capacity to carry sand and silt in suspension, and resulted in a heavy alluvial deposit in the backwater area above Topock. By the latter part of 1939 the disposition of sand and silt above Topock had reached the town of Needles. As a direct result of the "choke" or delta at Topock, the Colorado River overflowed its banks, and in

December 1940 began inundating a portion of the Mohave Indian Reservation above the 455th contour line. The construction, maintenance and operation of the Parker Dam was the direct cause of the formation of the delta.

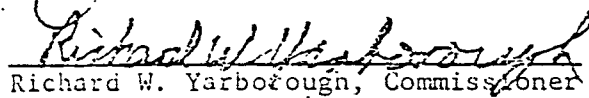
6. The maximum flooding of the Mohave Indian Reservation above the 455th contour line was reached in 1942, the inundated area extending as far as the 471st contour line. On January 31, 1949, the Bureau of Reclamation of the Department of the Interior commenced the channelization of the Colorado River in the 12 mile section from Needles to Topock to relieve the adjacent lands from flood and high water damage. By January 3, 1953, the channel dredging had been completed and as a result the flooding receded over all Mohave lands above the 455th contour line.

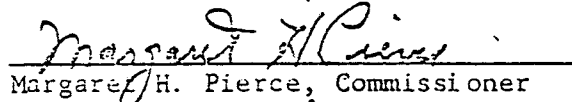
7. The Mohave lands above the 455th contour line which were inundated between December 1940 and January 1953 contain a minimum of 6,300 acres bounded on the west by the Colorado River, on the south by the 455th contour line, on the east by a line of escarpments that are depicted on the map designated as "Def. Ex. 49", and described therein as "Mesa", and on the north by the 471st contour line. The defendant is liable to the

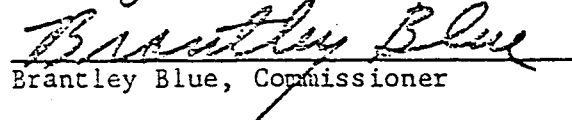
plaintiff tribe for the temporary loss of the flooded and isolated Mohave tribal lands above the 455th contour line, said loss to be measured by the fair rental value of these lands for the period of December 1940 to January 1953.

  
Jerome K. Kuykendall, Chairman

  
John T. Vance, Commissioner

  
Richard W. Yarborough, Commissioner

  
Margaret H. Pierce, Commissioner

  
Brantley Blue, Commissioner