BEFORE THE INDIAN CLAIMS COMMISSION

GILA RIVER PIMA-MARICOPA INDIAN COMMUNITY, et al.,

Plaintiffs,

v.

THE UNITED STATES OF AMERICA,

Defendant.

Docket No. 228

Decided: December 17, 1973

FINDINGS OF FACT

The Commission makes of following findings of fact:

1. The Claim. The plaintiffs herein timely filed their petition with the Commission on August 8, 1951, seeking compensation from the defendant for taking a large tract of land lying in south-central Arizona. The land to which the plaintiffs claim they held title is generally an expansive lowland area, bordered on the north and east by mountains, and through which flow the Gila and Salt Rivers. The present-day city of Phoenix, Arizona, is situated within the claimed area. In the plaintiffs' Proposed Finding of Fact No. 19, the claimed area is more specifically described, to wit:

Beginning at the north end of the west side of the Mohawk Mountains; thence northerly on an arc turning northeasterly to the south slope of the Palomas Mountains; thence continuing northeasterly by Face Mountain to the Vendola Valley just south of Gila Bend Mountains; thence northerly along the east slope of Black Butte and through Vulture...
Mountains; thence on an arc northeasterly to a
point approximately midway between the present towns
of Flores and Wickenburg, Arizona; thence easterly
by southeasterly north and east of Lake Pleasant to
a point between Black Mountain and Quien Sabe Peak
by Tortilla Flats; thence on an arc beginning south-
easterly and ending southerly passing east of
Canyon Lake Dam and through Tortilla Flats to a
point immediately west of North Butte; thence on an
arc beginning southeasterly and turning southerly
following the southwest foothills of the Tortilla
Mountains to a point immediately west of Black
Mountain; thence on an arc southwesterly to the
Durham Wash; thence southeasterly to the present
town of Picacho, Arizona; thence westerly by north-
westerly passing immediately south of the present
towns of Eloy and Toltec, Arizona, to a point in the
center of the Casa Grande Mountains; thence on an arc
beginning westerly and turning southwesterly to the
center of Table Top Mountains; thence northwesterly
to a point at the north end of the Sand Tank
Mountains; thence westerly to the Gila Bend Plain
and just south of Gila Bend, Theba and Piedra to
the south end of the Painted Rock Mountains; thence
northwesterly to the south bank of the Gila River;
thence following the south bank of the Gila River
to the point of beginning.

The defendant contends that the plaintiffs did not exclusively
use and occupy for a long time any of the claimed land except that
portion thereof which lies within the present Gila River Indian
Reservation.

2. **Capacity.** The Pima Indians and the Maricopa Indians are
identifiable groups of American Indians residing in the state of
Arizona. The Gila River Pima-Maricopa Indian Community and the Salt
River Pima-Maricopa Indian Community, two of the plaintiffs herein,
were organized under the Indian Reorganization Act (48 Stat. 984).
The claims of all the Pimas who are members of the Gila River Pima-
Maricopa Indian Community were presented by one of its members,
Alfred Jackson. The claims of all the Pimas who are members of the Salt River Pima-Maricopa Indian Community were likewise presented by Billman Hayes. The claims of those Maricopa Indians who are members of the Gila River Pima-Maricopa Indian Community and the Salt River Pima-Maricopa Indian Community were presented by their duly authorized representatives, Cyrus Sunn and Charles Chough, respectively. The third plaintiff joining in this action are the Indians residing on the Maricopa-Ak Chin Indian Reservation, organized under the Indian Reorganization Act in 1961. We find that all plaintiffs have the capacity to bring this suit on behalf of the Pima and Maricopa Indian Tribes.

3. Recognized Title. It is the plaintiffs' contention that they were formally granted title to the lands claimed herein and that the title was recognized by Spain and Mexico and acknowledged by the United States. The plaintiffs placed in evidence extensive documents and expert testimony concerning the laws of Spain and Mexico which related to the status and protection of rights of Indians within their territory. Also placed in evidence were the provisions of the Treaty of Guadalupe Hidalgo (9 Stat. 922) and the Gadsden Treaty (10 Stat. 1031) which obligated the United States to recognize as valid prior Spanish and Mexican grants of land lying within the newly acquired territory. The plaintiffs also submitted numerous letters and reports written during the 1850's and 1860's which make reference to a Spanish grant of tribal lands to the Pimas and Maricopas. One
such letter, which was the most explicit, was written by Sylvester
Mowry, Indian Agent, to the Commissioner of Indian Affairs. In that
letter, dated November 21, 1859, Agent Mowry wrote:

... I stated two years since, to the honorable
Secretary of the Interior my information, gained
in Sonora, from Governor Cubillas and others,
confirmed by the archives of the State and of the
capital of Mexico, that the Pimos and Maricopas
were entitled to fifty leagues of land by actual
grant. (Senate, Ex. Doc. No. 2, 36th Congress,
1st Session, Cong., Doc. Series No. 1023; Def.
Ex. 54, p. 727).

The plaintiffs, however, were unable to produce any official document,
record, or copy of the grant which described the land area supposedly
granted. There was never any effort by the Pimas and Maricopas to
formalize such a grant before the Court of Private Land Claims or
the Congress of the United States. In the absence of any substantial
proof of title the Commission finds that the plaintiffs did not hold
title to the claimed area by actual Spanish or Mexican grant.

4. Language. The Pima Indians spoke a Piman language dis-
tinguishable from the Yuman language of their neighbors to the west
and north (the Yumas, the Mohaves, and the Yavapais) and from the
Athabascan language of their neighbors to the east (the Apaches).
Their language was very closely related to that of the Papagos, their
neighbors to the south, and to other Piman groups found in north-
western Mexico.

1/ "Pima Indians" as used herein refer only to the Gila River Pimas
(also called the Gilenos).
The Maricopa Indians spoke a Yuman language distinguishable from the Piman tongue, but similar to the language of the Yumas, the Mohaves, and the Yavapais.

5. Pima-Maricopa Entity. Although the Pimas and Maricopas were once distinct tribes of Indians, they have lived side by side from earliest historical times, in perfect harmony, forming a federation for political, social, economic and defensive purposes. They have been continuously referred to as a single socio-political entity since the time of earliest white contact and have been dealt with as such by their friends and by their enemies.

Throughout recorded history chroniclers have found the Pimas continuously living along the Middle Gila River in what is now south-central Arizona. The Maricopas, however, have exhibited a slight migratory pattern. Prior to the 18th century the Maricopa villages were primarily located on the lower Gila River and along the Colorado River. During the 1700's and early 1800's an increasing number of Maricopa villages were established further up the Gila, adjacent to the Pimas, so that by the mid-nineteenth century the primary Maricopa villages were just to the west of those of the Pimas on the Middle Gila. The members of the two tribes intermarried and adopted many of the other's habits and customs causing a synthesis of their culture. The interdependence which developed between the Pimas and Maricopas was primarily based on their alliance for common defense from the same enemies. But the close proximity of their villages also
facilitated their joint economic pursuits, particularly with regard to agriculture. The Pima and Maricopa Indians were a single land-using entity.

6. **Spanish Period (1539-1821)**. The first white men known to have come into this general area were the Spanish explorers. Fray Marcos de Niza (in 1539), Francisco Vasquez de Coronada (in 1540), and Juan de Onate (in 1604). Although none of these explorers actually made contact with the Pimas or Maricopas, they did hear reports of these two tribes residing in the Gila River valleys. The first white man to actually make contact with the Pimas and Maricopas was Eusebio Francisco Kino, a Jesuit who made four expeditions into the Gila River area between 1694 and 1699. In the logs and diaries of the members of the Kino expeditions are found the first physical and cultural descriptions of the Pimas and Maricopas.

Throughout the 18th century there were more Spanish expeditions into the Gila River Valley, the most noteworthy of which were the four from 1769 to 1776 led by Francisco Garces. The accounts of Garces and of Padre Pedro Font and Juan Bautistade Anza, companions on these expeditions, describe their contacts with the Pimas and Maricopas and are the best documented reports to emerge from the Spanish period.

7. **Mexican Period (1821-1848, 1853)**. All of what is now the State of Arizona came under Mexican sovereignty in 1821, when Mexico declared its independence from Spain, and remained so until the end
of the Mexican War. The Treaty of Guadalupe Hidalgo which formally terminated hostilities between the United States and Mexico, February 2, 1848, provided that all Mexican territory north of the Gila River was thereby ceded to the United States. By the Gadsden Treaty of December 30, 1853, that area lying south of the Gila River and within the present United States territorial boundary came under American sovereignty.

During the periods of Mexican sovereignty over Arizona there were both Mexican and American contacts with the Pimas and Maricopas. The Mexican travelers who came into the Gila River area in the early 1820's found the Pimas and Maricopas living in basically the same manner and in the same areas as was described by Garces and Font. In 1846 the first American military expedition, under the command of Col. Stephen W. Kearney, made contact with the Pimas and Maricopas. In connection with this expedition Lt. William H. Emery made a reconnaissance of the Gila River Valley, giving a comprehensive report on the topography, fauna, flora and peoples he encountered.

2. American Period (1848-1853). From the time the United States acquired the lands on which the Pimas and Maricopas lived, these Indians were hosts to thousands of Americans. The American military expeditions into the area during and after the Mexican War were always warmly received by the Pima-Maricopas. The discovery of gold in California drew thousands of Americans to the West, with the trail through the Gila River Valley being one of the most heavily
traveled southern routes used by gold seekers. Government agents, acting in the capacity of boundary commissioners and Indian agents, likewise had extensive contacts with the Pimas and Maricopas after American acquisition of the territory. From the reports and chronicles of these observers emerge a comprehensive account of the life and culture of the Pimas and Maricopas during the mid-19th century. Two of the best accounts of the area for this period were by John Russel Bartlett in 1850 and by Sylvester Mowry in 1857.

9. The Pima Domain. Throughout recorded history the Pimas have been living in the lowlands and flatlands of the Middle Gila River Valley. In the Piman language they are called "Akimult O'Otam" or "River People." Archaeological evidence indicates that the predecessors of the Pimas in this area were the Hohokam people. Vestiges of Hohokam culture appear in that of the Pimas.

Both the Pimas and Maricopas relied heavily, though not exclusively, on their agricultural endeavors for subsistence. Although the Pimas and Maricopas can generally be characterized as sedentary farmers, as opposed to a nomadic people, they did utilize the expansive Gila River Basin, and the surrounding mountains to a limited extent, for hunting animals and gathering wild plants to supplement their needs.

10. Pima Agriculture. The lowlands of the Gila River Valley are arable and can sustain intensive crop raising as long as there is an adequate supply of water. Because the annual rainfall in the area is so minute, the necessary water supply for the crop lands
could be obtained only from the streams and rivers. Until ground water began being used in the latter part of the 19th century, the primary water supply was the Gila River.

Archaeological evidence shows that the prehistoric predecessors of the Pimas and Maricopas in the area, the Hohokams, were using irrigation farming methods. Whether the Pimas and Maricopas were the direct beneficiaries of the Hohokam expertise on irrigation methods is not known, but at the time of the first white contact, and continually since then, the Pimas and Maricopas have been praised for their sophisticated methods of irrigation farming.

Before the first Spanish contact with the Pimas and Maricopas, maize was probably the principal food crop, with cotton being the main non-comestible crop. Father Kino introduced wheat into the area which ultimately replaced maize as the leading cultivated food source. Other irrigated crops produced by the Pimas and Maricopas were melon, pumpkins, squash, calabash, potatoes, tomatoes, yams, peas and various other vegetables, sugar and tobacco. They also raised some Castillian fruits such as grapes, figs, pomegranates, peaches and pears. About half of the total food supply of the Pimas and Maricopas was derived from their agricultural endeavors.

11. Pima Trading. Except in periods of drought, the Pimas and Maricopas were able to not only produce sufficient quantities of agricultural produce for their own consumption, but also consistently accumulated surpluses. This was due to their irrigation skills and
to the climate which provided a long growing season and permitted the
harvesting of certain commodities biannually. Before the advent of
the Spanish, the Pimas and Maricopas were carrying on trade with the
friendly Papagos to the south. Often the Papagos would receive a
share of the produce in exchange for their aid in the harvest.

Cotton, which was spun and used to weave material and blankets,
was traditionally a large surplus crop. In 1757 an observer noted
that the Pimas on the Gila River left more cotton standing in their
fields than the Spanish in Sonora harvested. Cotton blankets and
fiber constituted important trade items for the Pimas and Maricopas.
Other important objects of barter given by the Pimas and Maricopas
were wheat, corn, beans, mesquite beans and mesquite meal, dried
squash, pumpkins and melons, baskets and pottery.

Throughout most of the 18th and early 19th century most of the
traders in the area were Mexican. However, the acquisition of this
territory by the United States and the contemporaneous influx of
American military and travelers created a new market for Pima-
Maricopa goods.

Although the Pimas and Maricopas had highly sophisticated
farming methods for their times and were diligent in their efforts,
successful crop production was always dependent on the availability
of water. During periods of drought the Gila River, their primary
water source, could not supply sufficient quantities of water for
irrigation and crops failed. Similarly, floods would sometimes
wash out their cultivated crops. Although the Pimas and Maricopas could fall back on their accumulated surpluses to some extent during non-productive periods, it, nevertheless, disrupted their agricultural-based economy and their entire way of life.

12. Farming Locations. The location of the Maricopa cultivated fields has not been static since the first white contact with these people. When the Spanish first arrived, they found farm lands along the Gila River generally from the Buckeye Hills westward to the Sentinel Plain. Anza in his diary (1775) reported seeing Maricopa fields near Agua Caliente. The fields had been cultivated prior to his arrival, but were not then being worked because of a war with the Yumans. Díaz (1774), however, noted the fertile Maricopa fields near Gila Bend which were then yielding plentiful crops. Lt. Emory on his reconnaissance mission (1846) also noted that there were numerous signs of former cultivation in the vicinity of Agua Caliente. By the early part of the 19th century the primary Maricopa fields were further eastward, generally along the Gila River from its confluence with the Salt River to the vicinity of Komatke.

In the early Spanish period the Pimas were farming in the area which extends from the Gila and Salt River confluence eastward along both sides of the Gila to a point about 10 miles west of Florence. By the 1840's and 1850's Emory and Bartlett found the most intensive Pima cultivation was being carried on along the Gila River from Komatke to Sacaton.
In summary, the agricultural activities of the Pimas and Maricopas in the mid-19th century were concentrated along both sides of the Gila River from the confluence of the Gila and Salt Rivers to Sacaton. In 1859 the Pimas and Maricopas had over 15,000 acres under fence and in cultivation.

13. Villages. In order to protect their crops from neighboring raiders, the Pimas and Maricopas often located their villages close to their cultivated fields. When the Spanish first arrived, they found Maricopa villages along the Gila River generally from Buckeye Hills westward to the Sentinel Plain. Anza (1775) found Maricopa villages in the western portion of the claimed area near Painted Rock, below Gila Bend, and near Agua Caliente. The most westerly village reported by Anza and Diaz (1774) was called "San Bernardino," located 15 miles east of the Mohawk Mountains. Garces found San Bernardino to be the western limit of the Maricopa villages, but did note that some Maricopas were nevertheless found further downstream. Similarly, Font (1775) reported that the Maricopa Tribe extended down the Gila River to "San Pasqual," about six miles east of the Mohawk Mountains. Font estimated the Maricopa population at that time to be about 3,000 persons.

By 1846 most of the Maricopas were located on the Middle Gila River adjacent to the Pimas. Lt. Emory noted the eastern limit of Maricopa villages was near Komatke. Anthropologist Leslie Spier concluded that the western limit of concentrated Maricopa dwellings
on the Gila River was just above the Gila-Salt River confluence.

14. Population. In the 1770's Father Garces and Anza found the center of the Pima population to be around Sacaton. Likewise, Lt. Emory found that in 1846 the concentration of Pima dwellings was about 8 to 9 miles downstream from the present town of Gila. Bartlett, in 1850, also found that the Pimas most densely occupied the area from Sacaton to Komatke.

Emory estimated the mid-19th century Pima population to be approximately 4,000 plus about 1,000 Maricopa. Bartlett, however, estimated the combined Pima-Maricopa population at 2,000 in 1850. The annual census of 1862 showed the combined Pima-Maricopa population to be 5,800 persons.

15. Gathering. The gathering of both edible and non-edible wild plants was an essential part of Pima-Maricopa existence. When there was a crop failure a much greater reliance was necessarily placed on gathering native foods. Most of the gathering was done in the valleys and on the slopes leading to the mountains (the bajadas); very little gathering was done in the mountains. The most important wild plant to the Pimas and Maricopas was mesquite, followed by saguaro cactus, cholla buds, mescal, yucca, prickly pears, pink berries, screwbeans, ironwood, and miscellaneous greens and vegetables.

Mesquite has traditionally been the most important wild food plant for the Pimas and Maricopas and retained high importance as a subsistence item even in years of successful harvests. It was used
as a food, medicine, fuel and for the construction of dwellings. The mesquite bean was also used to feed livestock as a supplement to other pasturage.

In the mid-19th century mesquite was abundant in the Gila River basin. It was typically found on the lower plains which extend from the rivers up onto the "bajadas." Johnston (1846) and Barton reported very thick growths of mesquite in the area of Komatke and near the northeast foot of the Sierra Estellas. Spier stated that the Pimas and Maricopas would camp on the Salt upstream as far as Phoenix for the combined purposes of gathering mesquite and fishing. Mesquite was also gathered east of Florence and along the Santa Cruz River.

The fruit of the giant saguaro cactus was probably the second most important plant gathered by the Pimas and Maricopas and was their primary source of sugar. This plant was found primarily on the bajadas. It was gathered annually to the west of the Gila Bend Plain and to the east in the vicinity of Superior, Arizona. It was also gathered near Table Top Mountain, near Apache Junction, near the southern end of the Maricopa Mountains, and in the Sacaton and Santan Hills. Spier indicated that the region north of the Salt River was also used to gather saguaro fruit. Between Sunnyslope and the White Tank Mountains was a particularly important saguaro gathering area.

The cholla bud, which was used as a food spice, was often found on the bajadas near the saguaro. Specific cholla bud gathering
areas were near the Gila River just west of Florence and in the area south of Casa Grande. They also gathered cholla along the Hasayampa River and in the area north of Sunnyslope.

Mescal was found at higher altitudes than most of the other plants which were gathered, requiring the Pimas and Maricopas to go into the enemy infested surrounding mountains to obtain it. Because of the distance and dangers involved, mescal was considered a luxury. Mescal was also gathered near Black Butte and near the Picacho Mountains.

Not only were plants gathered by the Pimas and Maricopas, but also various mineral substances. They would obtain a black mineral paint used for tattooing and body painting in the vicinity of Wickenberg. South of Wickenberg they obtained a superior quality red ochre and kaolin, the latter being a white substance which was put on the hair for decorative purposes and used in making pottery.

16. **Hunting.** The Maricopas were traditionally more inclined to hunting than the Pimas. For both, however, hunting was the third most important occupation in the quest for food. Rabbits were plentiful in the area and were the most widely hunted small game. It was not unusual for a hunter to kill six or eight rabbits on a day's hunt. The Pimas and Maricopas also hunted deer, antelope, rats, birds (especially quail and doves), mountain sheep, beaver, turkey and prairie dogs.
Deer were quite scarce in the area but in the fall they were hunted in the canyons of the Sierra Estrellas. Mountain sheep, a sacred animal, were hunted by the Maricopas in the Gila Bend Mountains. Occasionally the Maricopas hunted antelope in the mountains to the southeast of their territory. Turkeys were hunted in the mountainous areas north of the Salt River. Informant testimony obtained by the plaintiffs' expert Mr. Ortiz, indicated that the Pimas and Maricopas were hunting and gathering up to 30 miles east of Florence in the mid-19th century. By ranging over a large area these Indians were able to obtain a variety of wild game to supplement their food requirements.

17. **Fishing.** During the early and middle 19th century the primary Maricopa fishing area was in the Santa Cruz slough at the northern foot of the Sierra Estrellas. A secondary location was at the confluence of the Gila and Salt Rivers and upstream on the Salt to the vicinity of Phoenix. Bartlett reported encountering a group of Pimas on the Salt River who were on a hunting and fishing expedition. At a point 12 miles upstream from the mouth of the Salt River he had found "wigwams" which were used by the Maricopas on fishing trips. After continuing on up the Salt from that point for approximately three to four hours, Bartlett encountered the Pima fishing party which provided him with a large catch of fish.

The Pimas usually fished on the Gila River near their villages and, as with the Maricopas, fish constituted a staple in their diet.
Because of the variable flow of water in the Gila it was not as dependable as the locations used by the Maricopas. However, in most years the Gila did provide an abundance of fish.

It was common practice for the Pimas and Maricopas to have multiple purposes for their expeditions which took them relatively far from their main villages. Women would gather wild plants while the men hunted and fished and offered protection from a possible enemy attack. The danger of encountering an enemy tribe was always greatest when the Pimas and Maricopas were at the foot of and in the mountains where the Yavapai and Apache roamed and, although this danger did not deter the Pimas and Maricopas from going there, special precautions were taken.

18. Grazing. Horses and cattle were introduced into the Southwest by Father Kino in about 1697 and were acquired by the Pimas for domestic purposes by 1700. Throughout the 18th century, Spanish traders brought livestock to the Pimas, introducing mules and donkeys. Subsequently the Pimas acquired oxen, which were used for cultivating the fields, and began raising limited numbers of sheep.

Except on the bottomlands of the Gila and Salt Rivers, grass for pasturage was quite sparse. Lt. Emory described a long meadow, reaching for many miles south, where the Pimas graze their cattle. Emory's vantage point was near the present town of Sacaton and the meadow which he described was the lowland area immediately east of the Sacaton Mountains on the south side of the Gila River.
The number of livestock raised by the Pimas and Maricopas was relatively small until the end of the 1840's. However, by 1859 they had a herd of about 1800 cattle and horses. In 1866 they reportedly had about 120 oxen, 1200 head of cattle, and 1000 horses; by 1883 they had 13,000 ponies alone.

On much of the land within the claimed area grass was sparse. Hence, the Pima-Maricopa herds grazed over an enormous area and pasturage sites were continually rotated. Informant testimony obtained by the plaintiffs indicated that the Pima-Maricopa grazing lands were quite vast in the mid-19th century, extending from Table Top Mountain east to the Picacho Mountains. From that point the grazing lands extended north to where the Gila descends from mountains, and northwesterly to the vicinity of Florence Junction.

Use of grazing areas far from the rivers which provided water for the herds was, however, seasonal. In order to capture and retain what meagre rain waters might fall during the wet season, the Pimas and Maricopas would make a hole in the ground and line it with clay. They would also sometimes dig shallow wells near or in dry stream beds to obtain water. Using these methods, their herds were not confined to grazing only within 2 to 3 miles of the Gila and Salt Rivers.

19. Neighboring Tribes and Defense of Territory. The Pima and Maricopa Indians were almost surrounded by hostile tribes. To the west were the Yumans who were the traditional enemy of the Maricopas
and who had forced the latter eastward into an alliance with the Pimas. The Yumans, often allied with the Mohaves, would attack Pima and Maricopa villages and hunting parties primarily as an exercise in warfare, but not for acquiring tangibles or to make conquests of land.

In the mountains to the north and east were the Yavapais and Apaches. These marauding tribes raided the Pimas and Maricopas for the acquisition of foodstuffs, livestock, and other personal property, but they did not wage wars for the conquest of Pima-Maricopa tribal lands.

The Pimas and Maricopas, although inclined to a peaceful existence, were fierce warriors, and their combined efforts were quite effective in the defense of their property and use of their lands. In September 1851, for example, a Yuma-Mohave war party intending an attack on the Pimas sustained a major defeat when they were intercepted by a party of Maricopas. In 1857 a raiding party made up of Yumans and Mohaves was reportedly soundly defeated by the Maricopas on Maricopa lands. In 1858 the Pimas and Maricopas maintained a force in the field of at least 300 warriors to defend their people and property. The raids by the Yavapais and Apaches often resulted in the Pimas and Maricopas driving the intruders back up into the mountains whence they came.

Lt. Emory indicated that the point where the Gila River flows from the mountains near North Butte was neutral ground and about the dividing line of the territory claimed by the Pimas and the Apaches.
Near this place he found fresh horse tracks which had been made by a Pima scouting party, sent there to watch the movements of their enemies, the Apaches.

At the time of early Spanish contact the Sobaipuris, a Piman-speaking tribe, were living in the upper Santa Cruz and San Pedro River Valleys. In the latter part of the 18th century, however, they moved from the San Pedro westward to the Santa Cruz due partly to Apache raids in their San Pedro homeland and, in part, to join the Papagos who were well organized in their defense against Apache attacks. "Whatever distinction [the Sobaipuris] may have had from the Papago, as a group they had disappeared before 1800. They intermarried with the Papagos and became completely merged with them by the end of the 18th century." Papago Tribe v. United States, 19 Ind. Cl. Comm. 394, 411 (1965). The Papagos and the Pimas and Maricopas always enjoyed friendly relations and "apparently ... recognized a boundary between their lands running from Table Top Mountain to Red Rock." Papago Tribe v. United States, supra, at page 411.

20. Plaintiffs' Expert Witnesses. Dr. Paul H. Ezell, an anthropologist, testified before the Commission as the principal expert witness for the plaintiffs. Dr. Ezell had examined the available material relating to the early history of the Pima and Maricopa Indians. The sources of his information included ethnographic and historical accounts, archeological records, field work, informants' statements and other accounts, reports and observations.
Based on all of the materials which he had utilized, and concerning which he testified before the Commission, Dr. Ezell concluded that the Pima and Maricopa Indians had used, occupied and possessed to the exclusion of all other Indian tribes an area of land which was defined by him by means of a green boundary line on plaintiffs' map exhibit numbered 15. The area so defined extended from about the town of Growler, Arizona, on the Gila River along that river eastward to the Painted Rock Mountains. From that point the area extended to the north and then the northeast near the towns of Wintersburg and Whittmann and as far north as the southern tip of Lake Pleasant (about 30 miles north of Phoenix). From that point the area extended to the southwest to Black Mountain near Barkerville, Arizona. The southern limits of Dr. Ezell's "area of exclusive use and occupation" extended generally from Barkerville westwardly through the towns of Eloy and Toltec, Table Top Mountain, and Gila Bend to Growler.

Although Dr. Ezell testified that, in his opinion, the Pimas and Maricopas at one time utilized a more extensive area, he considered the lands outside of the "green boundary" area were not exclusively used by the Pima and Maricopa Indians. As Dr. Ezell expressed it:

Well, in my opinion, by 1825 Petitioners' land use area had shrunk to approximately the area delineated by the green line on the map. That is, the outstanding feature, as I see it, is that Petitioners no longer had exclusive use of
the mountainous area surrounding the central valley that they once had had. I don't mean that they gave up using it, I mean that they no longer had exclusive use of it. (Tr. 838)

* * *

My opinion is that the area used by Petitioners was still essentially that circumscribed by the green line on the map, H-15. (Tr. 840)

* * *

Well, in my opinion they have used that area circumscribed by the green line ever since the beginning of historic times. (Tr. 841)

The plaintiffs also presented expert testimony from Dr. John Allen Jones, Associate Professor of Anthropology, Arizona State University; Dr. Alfonso Ortiz, Associate Professor of Anthropology, Princeton University; Dr. S. Lyman Tyler, Professor of History, Brigham Young University; Dr. Russell C. Ewing, Chairman of the Department of History, University of Arizona, and Father Kieran Robert McCarty a research historian for the Academy of American Franciscan History. All of the expert witnesses generally agreed with and substantiated the opinions of Dr. Ezell. However, both Dr. Jones and Dr. Ortiz considered that the Pimas and Maricopas used and occupied some additional lands outside of Dr. Ezell's "green line."

21. **Defendant's Expert Witness.** Dr. Robert Allen Hackenberg, an expert anthropologist, prepared a report and testified for defendant. Dr. Hackenberg researched the available material relating in particular to the period which began with the assumption of jurisdiction by the United States (1848 and 1853) over the lands actually
used and occupied by the Gila River Pima-Maricopa Community. His research involved studies of historical works; biographies and memoirs; reports of technical experts such as irrigation engineers, agricultural economists and surveyors; statements made by anthropologists on the cultural history of Indian groups in the area; and statements from living native informants. Based on his research Dr. Hackenberg concluded, in essence, that Pima and Maricopa actual exclusive and continuous occupancy and use did not extend to land beyond the limits of the present 372,000 acre Gila River Indian Reservation.

22. Reservations. On February 28, 1859, the first Pima-Maricopa Indian reservation, consisting of 64,000 acres, was created on the Gila River (11 Stat. 339, 401). The United States, however, did not effectively govern or administer the reservation until after the Civil War and, as a result, the Pimas and Maricopas were almost wholly unrestricted, continuing to live in their customary ways and to use the much larger area which they had traditionally defended against encroachments by hostile Indians. From its inception the original reservation was objected to by the Pimas and Maricopas because it did not encompass all of their fields, villages, or fishing areas. It further restricted their access to irrigation waters and it did not include pasture land for their stock. The reservation did not include the broad Gila and Salt River Valleys which they had always considered to be their tribal lands.
As white settlement in the area intensified in the late 1860's and 1870's, the Pimas and Maricopas found their water supplies even more depleted and much of their agricultural land outside the reservation taken up by settlers. In impressing upon Washington the necessity to enlarge the original 1859 reservation, government agents repeatedly referred to the injustice being done to and the severe hardships being experienced by the Pimas and Maricopas in allowing their tribal lands to be taken and irrigation waters to be diverted. By the Executive Order of August 31, 1876 (1 Kappler 806) approximately 7,000 acres were added to the boundaries of the 1859 reservation. This included some prime farm land which the Pimas and Maricopas were already using and a village, Blackwater, which they had established.

By 1878 the water supply on the reservation had decreased because of upstream diversions by settlers and a long drought. There was not sufficient water for them to drink or to water their livestock. By that year about 2,500 Pimas and Maricopas had moved off the reservation to farm in other localities, primarily along the Salt River. To protect the Pima-Maricopa farm lands on the Salt from settlers' intrusions, the Salt River Indian Reservation, consisting of 46,627 acres, was created by the Executive Order of June 14, 1879 (1 Kappler 806, 807).

The Gila River Reservation was enlarged to its present size by six executive orders subsequent to 1876. The greatest single addition was on November 15, 1883 (1 Kappler 808) which enlarged it to almost
its present 372,000 acres.

23. **Boundaries of Pima-Marcopaa Land.** The Commission finds that at the dates of American accession in 1848 and 1853 and subsequently until taken from them the Pima and Maricopa Indians exclusively used and occupied in Indian fashion the lands lying within the following boundary descriptions:

Commencing at the town of Gila Bend, Arizona; thence northwesterly in a straight line to the peak of Face Mountain; thence northeasterly in a straight line to the town of Wintersburg; thence northeasterly in a straight line to the northernmost edge of the White Tank Mountains; thence northeasterly in a straight line to the most southern edge of Lake Picacho; thence southeasterly in a straight line to the juncture of the Salt and Verde Rivers; thence southeasterly in a straight line to Dosedary Peak; thence southerly in a straight line to the town of Price, on the Gila River; thence south-southeasternly in a straight line to the peak of Black Mountain; thence west-southwesterly in a straight line to the town of Redrock; thence west-northwesterly in a straight line to Picacho Peak; thence west-northwesterly in a straight line to the northermost northeast corner of the Papago Indian Reservation; thence west along the northern border of that reservation to its northwest corner; thence west to the peak of Table Top Mountain; thence west-northwesterly through Lost Horse Tank to the point of beginning at Gila Bend.

24. **Date of Taking.** The determination of the dates of extinguishment of the plaintiffs' aboriginal title is an issue here reserved by the parties for a later hearing. Dates that the Commission has found to be significant in this title determination include 1843 (the Treaty of Guadalupe Hidalgo), 1853 (the Cadsden Treaty), 1859 (the establishment of the original 64,000 acre Gila River Indian
Reservation), and 1883 (the setting aside of the greater part of the present 372,000 acre Gila River Indian Reservation). The evidence shows that the extent and nature of the use and occupancy of the subject tract by the Pima-Maricopa did not materially change during the time period in question. The Pima and Maricopa did not abandon any part of their tribal lands during the material period.

25. Areas Not Taken. It appears that some areas within the perimeter of the subject tract may be the subject of Spanish-Mexican land grants, or were never taken from the plaintiffs, so the determination of such areas will be reserved for the next proceeding in this case.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner