

BEFORE THE INDIAN CLAIMS COMMISSION

GILA RIVER PINA-MARICOPA INDIAN)
 COMMUNITY, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 THE UNITED STATES OF AMERICA,)
)
 Defendant.)

Docket No. 228

Decided: December 17, 1970

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 Bendora 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 southeasterly 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 northwesterly 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 Cubillias 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 distinguishable 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-^{1/}western Mexico.

^{1/} "Pima Indians" as used herein refers only to the Gila River Pimas (also called the Gileños).

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 15th 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

