

BEFORE THE INDIAN CLAIMS COMMISSION

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

Decided: June 16, 1971

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 of the Commission.

On August 14, 1970, the defendant filed a "Motion for Rehearing" in this docket in which it requested that the Commission modify its findings of fact, opinion, and interlocutory order entered herein on June 30, 1970, to reflect that:

1. The plaintiff tribe has relinquished and abandoned any "unconscionable consideration" claim for the 3,736 acres of former Mohave lands below the 455th contour line;
2. The plaintiff tribe cannot assert a damage claim or claims for loss of personal property belonging to individual Mohave Indians; and,

3. The defendant is not bound by the Commission's finding of fact that a minimum of 6,300 acres of Mohave lands above the 455th contour line were inundated and temporarily lost to plaintiff tribe as a result of the Parker Dam project.

On August 24, 1970, the plaintiff responded to the defendant's motion but addressed itself only to defendant's challenge of the 6,300 acre minimum figure.

When this Commission handed down its 1970 decision, it had some doubt whether plaintiff's present counsel had actually abandoned the "unconscionable consideration" claim for the lands below the 455th contour line. In our judgment, some statements attributed to plaintiff's counsel which appear in the record seemed somewhat ambiguous, and did not precisely indicate an intent to abandon such claim. In any event we have again reviewed the record and the pleadings, and, coupled with plaintiff's failure to respond to defendant's present motion on this very point, we have concluded that for all intents and purposes the plaintiff has abandoned any unconscionable consideration claim for the 3,736 acres of former Mohave lands below the 455th contour line.

As to defendant's second point, we agree that claims for the loss of personal property belonging to individual Indians are not cognizable under the provisions of the Indian Claims Commission Act, 60 Stat.

1049. Absentee Shawnee Tribe v. The United States, 165 Ct. Cl. 510

(1964). Therefore, in order to clarify the record, the issues in this

case shall be limited to the question of the extent of defendant's liability to the plaintiff tribe for the temporary loss by flooding of Mohave tribal lands above the 455th contour line.

This brings us to the third point raised in defendant's motion, that is, whether defendant is bound by our finding that at least 6,300 acres of Mohave tribal lands were inundated and temporarily lost to the plaintiff tribe as a result of the Parker Dam project.

Defendant suggests the following as to why it is not bound by the Commission's minimum acreage finding:

The Commission rejected petitioners' evidence on acreage as being dispositive of the issue. The defendant's evidence of 6300 acres albeit more cogent and substantial than petitioners was in effect rejected as not being sufficient to make a definite and absolute finding of 6300 acres. It is submitted that if defendant's evidence falls short of the Commission's standards for establishing 6300 acres as an amount certain then it also falls short of establishing 6300 acres as a minimum for which the petitioners could recover.\*

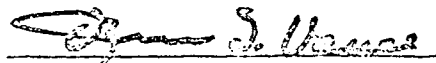
The Commission agrees that defendant's evidence on the acreage figure was indeed more "cogent and substantial than petitioners," and that it was offered as the correct acreage figure. However, in making such an offer, it follows that defendant was conceding that the acreage that was inundated was not less than 6,300 acres. It may turn out that when the record is complete the defendant has indeed stated the

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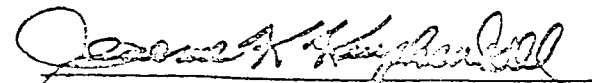
\*Page 11 - Defendant's Motion for Rehearing

correct acreage. However, the Commission believes that the present record may suggest a higher acreage figure, and for the moment we fail to see how defendant is prejudiced by holding it to a 6,300 minimum acreage.

Defendant's motion will be denied and an appropriate order entered in conformity with this opinion.

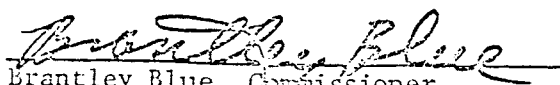
  
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John L. Vance, Commissioner

We Concur:

  
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Jerome K. Kuykendall, Chairman

Richard W. Yarborough, Commissioner

  
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Margaret H. Pierce, Commissioner

  
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Brantley Blue, Commissioner