

BEFORE THE INDIAN CLAIMS COMMISSION

THE NORTHERN PAIUTE NATION, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Docket No. 87-A
	)	
THE UNITED STATES OF AMERICA,	)	
	)	
Defendant.	)	

Decided: February 16, 1972

Appearances:

I. S. Weissbrodt, Attorney for Plaintiffs.  
Richmond F. Allan and Ruth W. Duhl were  
on the Briefs.

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

OPINION ON MOTION FOR INTERLOCUTORY ORDER  
AS TO DATES OF ESTABLISHMENT OF PYRAMID LAKE  
RESERVATION AND WALKER RIVER RESERVATION

Blue, Commissioner, delivered the opinion of the Commission.

The Commission has before it a motion of the plaintiffs for an inter-locutory order determining that the Pyramid Lake Reservation and the Walker River Reservation were established on November 29, 1859. The memorandum in support of the motion avers that this was the effective date of the establishment of these reservations by virtue of certain actions taken within the Department of Interior. The resolution of this issue will enable the parties to prepare their proof concerning the claims in Docket 87-A, which relate to the unlawful taking of reservation lands, unlawful trespasses on the plaintiffs' land, and conversion of their property.

The defendant opposes this motion and requests that the Commission enter an interlocutory order adjudging that the Pyramid Lake Reservation and the Walker River Reservation were established as of the dates of the Executive orders issued on March 23, 1874, and March 19, 1874, respectively.

In summary, the chronology of events relating to the establishment of the reservations is as follows:

1. On October 6, 1858, J. Forney, Superintendent of Indian Affairs for Utah Territory, instructed F. Dodge, U. S. Indian Agent in Utah Territory, to make some geographical explorations with a view of selecting suitable reservations for the Indians in his agency. Pl. Ex. 106 (Dkt. 87): National Archives; Bureau of Indian Affairs, Utah Superintendency, Letters Received 1859.

2. On November 25, 1859, F. Dodge, Indian Agent in Utah Territory, recommended by letter to A. B. Greenwood, Commissioner of Indian Affairs, that the northwest part of the Valley of the Truckee River, including Pyramid Lake, and the northeast part of the Valley of Walker River, including the lake of the same name, be reserved for the Indians. Mr. Dodge identified the boundaries of the areas mentioned on a map which accompanied the letter. Pl. Ex. 125 (Dkt. 87): National Archives, Bureau of Indian Affairs, Utah Superintendency, Letters Received 1859.

3. On November 29, 1859, A. B. Greenwood, Commissioner of Indian Affairs, wrote a letter to Samuel A. Smith, Commissioner of the General Land Office, concurring in Agent Dodge's suggestion and requesting that he

direct the Surveyor General of Utah Territory to respect said reservations upon the plats of survey when the public surveys were extended over that part of the territory. 1 Kappler 868.

4. By letter of December 8, 1859, to the Surveyor General at Salt Lake City, Utah, the Commissioner of the General Land Office instructed that official to reserve for Indian purposes the two tracts of land described and indicated on an enclosed map of Utah. See Hearings on S. 840 Before the Senate Committee on Indian Affairs, 75th Cong., 1st Sess. 45 (1937).

5. In December 1864 the Walker River Reservation was surveyed, and in January 1865 the Pyramid Lake Reservation was surveyed.

6. On March 18, 1874, the Secretary of Interior recommended to the President that he set apart the Walker River Reservation for the use of the Pah-Ute Indians. 1 Kappler 869.

On March 21, 1874, the Secretary of Interior recommended to the President that he set apart the Pyramid Lake Indian Reservation for the use of the Pah-Ute and other Indians. 1 Kappler 869.

7. By Executive Order of March 19, 1874, President Grant ordered that the reservation situated on Walker River, Nevada, be set apart for the use of the Pah-Ute Indians. 1 Kappler 869.

8. By Executive Order of March 23, 1874, President Grant ordered that the Pyramid Lake Indian Reservation in Nevada be set apart for the Pah-Ute and other Indians. 1 Kappler 869.

The motion before us requests a determination of the date or dates on which these two reservations were established.

We agree with the plaintiffs' position that the reservations were established by actions taken within the Department of the Interior in the latter part of 1859.

The question of the establishment dates of these reservations has been judicially determined in two cases in which the Government successfully pleaded and established against third parties that the reservations were set apart in 1859. In United States v. Walker River Irr. Dist., 104 F. 2d 334, 335 (9th Cir. 1939), it was held that "the Walker River Indian Reservation was set aside by departmental action on November 29, 1859, for the use of the Pahute tribe." The court went on to say that the subsequent proclamation of the President merely gave formal sanction to an accomplished fact (id. at 338).

The Government also sustained its contention that the Pyramid Lake Indian Reservation was established in 1859 for the purpose of reserving water for the Indians. United States v. Orr Water Ditch Company, Equity No. A-3 (D. Nev., September 8, 1944). The Court there held that the effective date was December 8, 1859. That was the date the Commissioner of the General Land Office issued an order withdrawing the land from the public domain for the use and benefit of the Indians.

The Government had earlier determined administratively that, "the reservation established in 1859 by the General Land Office was a legal reservation, and the subsequent order of the President only declared what had been already done." Opinion of Ass't. Atty. Gen. Shields July 7, 1891, reprinted in Hearings on S. 24 Before the House Committee

on Indian Affairs, 78th Cong., 1st Sess. 43-46 (1943); accord, Central Pacific Ry. Co., 45 Decisions of Secretary of the Interior (Public Lands) 502 (1916).

The defendant has asserted that plaintiffs are estopped from claiming that these reservations were established in 1859 because this Commission held in a claim between these parties in Docket 87 that these two reservations were established by Executive orders in 1874. (Finding of Fact No. 30, Northern Paiute Nation v. United States, Docket 87, 7 Ind. Cl. Comm. at 617 (1959)). The date of establishment of these reservations was not, however, at issue in that case. This date was not essential or material in that decision, and the defense of collateral estoppel must fail.

The defendant relies on United States v. Moore, 62 F. Supp. 660 (W. D. Wash. 1945), aff'd, 157 F.2d 760 (9th Cir., 1946), for the proposition that the date of the Executive order is the date of establishment of the reservation. In that case there was an 1855 treaty between the "Quillehute" Indians and the Government which provided that there should be reserved for the Indians "a tract or tracts of land sufficient for their wants within the Territory of Washington, to be selected by the President of the United States, and hereafter surveyed or located and set apart for their exclusive use . . . ." (12 Stat. 971). Not until 34 years later did the President fulfill this treaty obligation. Then, on February 19, 1889, President Cleveland issued an Executive order which reserved certain described lands for the "Quillehute" Indians. The district court found that under the terms of the treaty, no rights in the lands could accrue to the Indians until such time as the President reserved them. There being no such treaty in the case at bar, the Moore case is inapposite.

In this case the responsible official, the Commissioner of Indian Affairs, requested on November 29, 1859, that the Commissioner of the General Land Office respect these reservations. The lands were in fact reserved for the plaintiffs from that date forward. The Indians were subsequently induced to leave their other aboriginal lands and to settle on these reserved lands. The Government respected the reservation of these lands when adjoining lands were surveyed and opened up for settlement. The Executive orders establishing these reservations were thus after-the-fact formalities.

We conclude as a matter of law that the Pyramid Lake Indian Reservation and the Walker River Indian Reservation were established on November 29, 1859.

Brantley Blue  
Brantley Blue, Commissioner

Concurring:

Jerome K. Kuykendall  
Jerome K. Kuykendall, Chairman

John T. Vance  
John T. Vance, Commissioner

Richard W. Yarborough  
Richard W. Yarborough, Commissioner

Margaret H. Pierce  
Margaret H. Pierce, Commissioner