

BEFORE THE INDIAN CLAIMS COMMISSION

THE AMERICAN INDIANS RESIDING ON)	
THE MARICOPA-AK CHIN INDIAN)	
RESERVATION,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 235
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: September 19, 1973

FINDINGS OF FACT

1. Historical Background. Plaintiff is an identifiable group or band of American Indians residing on the Maricopa-Ak Chin Indian Reservation in Pinal County, Arizona. Before moving to the land which was later encompassed by their present Executive-order reservation, plaintiff band subsisted as flood water farmers in a locality known as Maricopa Wells, Arizona. There the band irrigated its land with flood waters from the intermittent Santa Cruz River. Plaintiff sold surplus agricultural products to the stagecoach station located at Maricopa Wells. The plaintiff band moved from the Maricopa Wells vicinity primarily because the land the Indians farmed became too laden with alkali to be productive. Drought also prompted plaintiff's move from the Maricopa Wells vicinity. Plaintiff's abandonment of Maricopa Wells was also occasioned by the construction of the Southern Pacific Railroad, which eliminated the stage line through Maricopa Wells. There being no more transients to sell surplus produce to, the plaintiff band had less reason to continue to live

near Maricopa Wells. Around 1874, the Indians settled at Ak Chin, approximately 11 miles south of Maricopa Wells. They chose land on and near the flood plain of the Ak Chin Wash because of the proximity to flood waters. There they continued to practice flood water farming as they had practiced near Maricopa Wells.

2. Establishment of the Ak Chin Reservation. By the Executive Order of May 28, 1912, the Maricopa-Ak Chin Reservation was established. The band had lived and farmed at that site for approximately 38 years. After minor modifications in the boundaries of the reservation by the Executive Orders of September 2, 1912, and October 8, 1912, the reservation contained 21,840 acres, including all of the land occupied by the band. It is so constituted today. The reservation lies on a flat plain between the Sacaton Mountains on the east and the Palo Verde Mountains on the west, approximately 2 miles south of the present town of Maricopa, Arizona.

3. Description of the Reservation. The Ak Chin Reservation is located on relatively flat desert terrain, having a gentle slope from the southeast to the northeast. There are no streams located on the reservation but there are two washes, the Ak Chin Wash (also known as the Vekol Wash) which crosses the center of the northwestern part of the reservation, and the Santa Cruz Wash which crosses the easterly one-third of the southeastern part of the reservation. These washes are normally dry except for a few hours following summer rains. The average annual

rainfall on the reservation from 1876 to 1934 was 7.03 inches.

4. Population of the Ak Chin Reservation. At the time the reservation was established the population of plaintiff band was approximately 100. In December 1913 there were 105 Indians living on the Ak Chin Reservation. At the time of the establishment of the Ak Chin Reservation the Indians living thereon were destitute and on the verge of starvation. They were attempting to farm 180 acres by primitive flood water methods but a lack of water had caused their crops to fail. Their only other means of support, the sale of chopped wood to white settlers, was unavailable since they had exhausted the wood supply on the unsettled land in the locality. The poor condition of the plaintiff band just prior to the creation of the reservation is described in a letter from John Granville, Superintendent of Irrigation, to W. H. Code, Chief Engineer, dated May 20, 1911:

They are, without exception, the greatest objects of destitution that I have seen among any Indians. Last season their crops failed and without credit or seed they are unable to plant their fields this year and seem on the verge of starvation. They have apparently lost hope and with it, all energy, and how they manage to live under present conditions is beyond me.

Their white neighbors describe them as honest and hard workers who will work when the opportunity presents.
(Def. Ex. 6, p. 2.)

5. Preliminary Water Planning. Immediately after the Executive Order of May 28, 1912, the United States filed on June 7, 1912, "Notices of Water Appropriation" with the Recorder of Pinal County, Arizona, for

both the Ak Chin and the Santa Cruz Washes, in the amount of 10,000 and 60,000 acre-feet each, "for the purpose of irrigation and domestic use on lands . . . reserved . . . to its wards, the Papago and Pima Indians."

The notices also stated that the United States "intends to construct irrigation works, including dams for the diversion of said quantity of water, canals, reservoirs, tanks and other works for the irrigation of Indian lands. . ." In September of the same year the notices were amended to read acre feet per annum.

The Annual Report of the United States Indian Irrigation Service for the year 1913 indicates that the amount of water which could be taken from the Santa Cruz Wash was almost negligible and although there was a possibility for a reservoir eight miles north of the Ak Chin Reservation the only source of water supply for Ak Chin "that seems feasible is that from underground sources. Wells, which whites have sunk in this vicinity, indicate a large amount available." Def. Ex. 19, p. 30.

In 1914, Mr. C. A. Engle, Assistant Engineer for the United States Indian Service, filed a report on proposed wells at the Papago village of Ak Chin. This report confirmed the small amount of surface water available for irrigation purposes. In his report Mr. Engle made a thorough analysis of the available surface water and the quantity and quality of the underground water being obtained from wells in the vicinity of Ak Chin. He recommended that the Indians be given 2 1/2 acre farm plots to farm and that wells be dug and pumps be provided for the purposes of

irrigating these lands. Mr. Engle selected sites for the wells and locations for the 2 1/2 acre allotments.

6. Underground Water Development. In 1914, defendant commenced drilling the first well on plaintiff's reservation. By May 27, 1915, defendant had drilled four such wells with depths ranging from 196 feet to 475 feet. Immediately thereafter testing was begun. In June of 1915, the pumping plant for one well was installed. In December of 1915, the plants for two more wells were completed. In addition to the wells and pumps, the defendant furnished such adjuncts as storage buildings, pump houses and small concrete-lined reservoirs. Ditches and appurtenant works for distribution and delivery of the pumped water were dug. Arrangements were made to construct a fuel storage tank on a lot in Maricopa to be served by a spur tract from the Southern Pacific Railway. Fence wire, seed and agricultural assistance were also provided to plaintiffs. At the time of the construction the cost of these improvements was carried as a reimbursable item on defendant's books of account.

Part of the agricultural program commenced with the digging of the irrigation wells in 1915, and included farming the smaller allotments. When the reservation was first created the Indians had applied for 160 acre allotments. Instead they were assigned 2 1/2 acre farm plots. Difficulty was experienced in reeducating the Indians to intensively farm 2 1/2 acre tracts with ground water rather than their customary larger acreage with flood water.

7. Ownership of Land. All land on plaintiff's reservation was and is tribally owned. Each Indian on the tribal roll has a communal interest in all of the land. The land on Ak Chin Reservation was never technically "allotted" to individual Indians but farm plots were assigned to them for their beneficial use so long as they continued to use it as a member of the band.

8. Sacaton Incident. In 1919, a group of nine Indians was taken from Ak Chin Reservation and detained from one to four days. These Indians allegedly had refused to adopt the modern farming techniques using ground water irrigation and were preventing the Indians who had accepted these techniques from entering the new farm established by defendant.

9. Elimination of Ak Chin Debt. By Act of Congress of July 1, 1932, 47 Stat. 564, the Secretary of the Interior was authorized and directed to adjust or eliminate reimbursable charges existing as debts against Indians or Indian tribes. Pursuant to this Act, \$125,139.09 in old construction costs expended by defendant on plaintiff's behalf and carried on defendant's books as a debt of plaintiff were cancelled.

10. Amount of Cropped Acreage. The first crop harvested under the new program was in 1916, totalling 115 acres of hay and 45 acres of wheat. Using the figures introduced into evidence, the average cropped acreage from 1916 through 1944 was 294.75 acres, the highest acreage being 561 acres in 1941, and the lowest 124 acres in 1929.

11. Adequacy of Pumps Provided by Defendant. The capacity of the pumps installed in 1915 was sufficient to irrigate approximately 500 to 600 acres of land. At no time before 1946 were more than 600 acres of land irrigated on plaintiff's reservation.

12. Renewal of Ak Chin Project. Around 1930 the pumps installed in 1915 started to fail. There were requests from the Indians themselves and a Franciscan Missionary in the vicinity, as well as from defendant's agents at the Pima Agency, for improvements to the project. By January of 1934, defendant had installed three new electric pumping units, 2,660 feet of 16 inch underground concrete pipeline were laid, and two additional wells drilled. In 1937, another well was drilled and provided with an electric motor. By the summer of 1937, the Ak Chin Reservation had four electrically powered pumps and wells, a 40,000 gallon concrete storage reservoir, a 1,000 gallon elevated steel storage tank, 10 miles of open ditches, 2,660 feet of 16 inch concrete pipe lines, and an 11,000 volt power line 1.75 miles long, in addition to previously mentioned buildings and equipment.

13. Flood Control. As flood control measures, the defendant had built before July 1939, 2 1/2 miles of dikes and levees. The Civilian Conservation Corps in the latter half of 1940 built additional dikes and realigned the washes to reduce flood hazards.

14. Resistance to Modern Farming Techniques. Plaintiff band did not rapidly accept modern farming techniques. The evidence shows a preference of some members of the plaintiff band to work for wages on neighboring farms

rather than to intensively farm their own farm plots. A 1944 report by the Pima Agency stated that the Indians had become wage conscious and preferred to work for wages off the reservation and to carry on only subsistence farming on the reservation.

15. Decline of Water Level. The ground water level under the plaintiff's reservation declined approximately 19 feet between 1923 and 1947. There had been no appreciable decline before that date. The evidence indicates that the level declined slowly, less than two-tenths of one foot per year, between 1923 and 1942. A 1936 Soil Conservation Service study found this rate of decline to be negligible.

From 1942 to 1947 the rate of decline in the ground water level increased. Defendant's expert witness, Mr. Leonard C. Halfpenny, computed that the level fell an average of 16.6 feet between 1942 and 1947, about three and one-third feet per year. There was no evidence introduced which would directly indicate whether this more rapid decline can be considered substantial. However, the record is clear that the agricultural development of the reservation did not begin its rapid growth until after 1947, and the most prosperous period began in the 1960's. In 1964, the ground water level stood 140 feet lower than its 1947 level. It is therefore apparent that the 19 foot drop in the ground water level between 1923 and 1947 did not impair the development of the Ak Chin Reservation and cannot be considered a significant decline.

16. Irrigable Acreage. The parties disagree over the amount of irrigable acreage on the Ak Chin Reservation. Defendant states that 4,792 acres are irrigable and plaintiff states that approximately 16,000 acres are irrigable. Defendant's estimate is based upon that portion of a 1936 United States Government survey of the reservation which found that 4,792 acres were favorably suited for agricultural use. However, that report also found that there were 5,190.40 acres of second class land, suited for limited irrigated agriculture, and 4,395.20 acres of temporarily non-irrigable land, suitable for irrigation only by proper reclamation measures. The total acreage in these three classes was 14,377.60 acres. Plaintiff's figure of 16,000 acres was approximate, based upon the testimony of the manager of the Ak Chin Farms, Mr. Harold Wayne Sprawls.

We find that plaintiff's estimate of approximately 16,000 acres of irrigable land is preferable and we accept it. It is based upon the opinion of a man who had farmed on the Ak Chin Reservation for eighteen years, who was intimately acquainted with the Reservation and its productivity, and who had been actively involved in the process of subjugating areas of the reservation to agricultural use. In 1970, approximately 11,000 acres had been so subjugated.

17. Potential Agricultural Development. Plaintiff introduced testimony to the effect that it would have been feasible to irrigate the entire 16,000 acres of irrigable land as early as 1914, and thereafter operate profitably. While there has been no detailed evidence on


expenses or the ability of the plaintiff band to operate such a project at that time, the witnesses who testified on this issue affirmed the feasibility of the project, with qualifications. Mr. Sprawls stated that it would not have been until about 1930 that the technology of pumping and availability of tractors would have enabled farming on this scale. Mr. W. S. Gookin testified that the number of Indians living on the reservation was insufficient to operate a farm of such proportions using 1914 technology and that they would have had to resort to leasing some of their land. We find that had defendant, or others, drilled sufficient wells and supplied necessary appurtenant equipment, the entire irrigable acreage could have been profitably farmed commencing in about 1930.

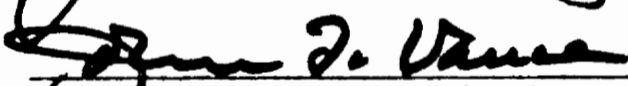
18. Later Development of Ak Chin Reservation. The principal development of the plaintiff's reservation did not commence until after March 5, 1946. On that date the plaintiff band passed a resolution favoring the development of reservation desert lands under improvement leases. These leases ran for a period of ten years. The lessee was to clear, level, fence and place under cultivation all of the irrigable lands in the leased area and to drill an irrigation well to supply water. Upon the expiration of the lease all improvements would pass to plaintiff.

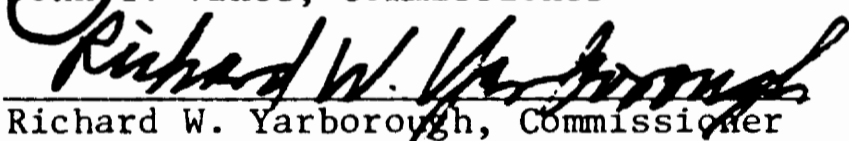
19. Defendant Intended to Benefit Plaintiff. We find that the irrigation projects and the other agricultural assistance provided to


plaintiff by defendant were intended to benefit plaintiff and to alleviate the impoverished state of its members at the time the reservation was created. There is no proof that defendant impaired plaintiff's vested rights or appropriated plaintiff's property for a public purpose. There is no proof of spoliation of plaintiff's property.


20. Defendant Did Not Prohibit Plaintiff from Developing. We find that defendant did not prohibit plaintiff from independently developing the Ak Chin Reservation, nor did defendant have a duty to do more than it did.


Jerome K. Kuykendall, Chairman


John T. Vance, Commissioner


Richard W. Yarborough, Commissioner


Margaret H. Pierce, Commissioner


Brantley Blue, Commissioner