No. 8, Original
IN THE
Supreme Court of the United States

October Term, 1982

STATE OF ARIZONA,

Complainant,

vs.

STATE OF CALIFORNIA, PALO VERDE IRRIGATION DISTRICT, IMPERIAL IRRIGATION DISTRICT, COACHELLA VALLEY COUNTY WATER DISTRICT, THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA, CITY OF LOS ANGELES, CALIFORNIA, CITY OF SAN DIEGO, CALIFORNIA, AND COUNTY OF SAN DIEGO, CALIFORNIA,

Defendants,

THE UNITED STATES OF AMERICA AND STATE OF NEVADA,

Interveners,

STATE OF UTAH AND STATE OF NEW MEXICO,

Impleaded Defendants,

COLORADO RIVER INDIAN TRIBES, FORT MOJAVE INDIAN TRIBE, CHEMEHUEVI INDIAN TRIBE, COCOPAH INDIAN TRIBE, AND FORT YUMA (QUECHAN) INDIAN TRIBE,

Interveners.

MOTION FOR LEAVE TO FILE PETITION FOR RECONSIDERATION OUT OF TIME AND PETITION FOR RECONSIDERATION BY THE QUECHAN INDIAN TRIBE

LAW OFFICES OF
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Attorneys for the Quechan Tribe

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Interveners.

MOTION FOR LEAVE TO FILE PETITION FOR RECONSIDERATION OUT OF TIME BY THE QUECHAN INDIAN TRIBE

The Quechan Indian Tribe, Intervener herein, respectfully moves this Honorable Court for leave to file its Petition for Reconsideration out of time since no one would be prejudiced thereby, and strict application of the time rule would be incompatible with the enlightened policy of this Court, and with true justice, for the following reasons:

1. No notice of the March 30, 1983 decision in the case at bar was given to the Tribe or its attorney, nor were they provided with a copy thereof.

2. Communication of the contents of the decision plus copies thereof were received much later, and had to be presented to many people — the Tribe. This required making arrangements for a tribal meeting for full discussion and explanation. This took considerable time.

3. Following serious deliberations, involving translation from English to the Quechan Indian language, the Tribe then decided to instruct its attorney to file a Petition for Reconsideration, but, unfortunately this delay precluded the timely filing thereof. This request for leave to file out of time is therefore requested in the same spirit that was accepted by this Court in the cases of *Gondeck v. Pan American World Airways, Inc.* (1965) 382 U.S. 25, 15 L.Ed.2d 21, 86 S.Ct. 153; *United States v. Ohio Power Co.* (1957) 353 U.S. 98, 1 L.Ed.2d 683, 77 S.Ct. 652, *reh. den.* 353 U.S. 977, 1 L.Ed.2d 1139, 77 S.Ct. 1053.

Dated: May 5, 1983

Respectfully submitted,

SIMPSON & RUSSELL
Raymond C. Simpson
2032 Via Visalia
Palos Verdes Estates, California 90274
Attorneys for the Quechan Tribe

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PETITION FOR RECONSIDERATION

"Equal Justice Under Law"

With all due deference to this Court, the Quechan Indian Tribe submits this Petition for Reconsideration. The Quechans are convinced that this Court has been guilty of insensitive discrimination against their Tribe and that it has been pendantically puerile in dealing with the issues of "omitted" lands and "disputed boundary" lands. This high Court should be dedicated to the words carved upon the entrance of its building: "Equal Justice Under Law". Yet, last fall it summarily refused to extend equal treatment to the Quechan Tribe by denying its plea to allow its attorney of record to present oral argument.

Throughout these proceedings the Quechans have remained consistent in their claim that an inherent conflict of interest had and still precludes the United States from adequately representing them. The Quechans understand that oral argument is not a right but a privilege. All parties could have been refused oral argument, but this Court recognized the importance of the case and ordered such oral argument. The State Parties, the Department of Justice, and the four other Indian Tribes involved were extended this privilege through the lawyers they selected.

On the other hand, the Quechans, who had presented a significantly different case, were discriminated against when they were denied the privilege of participation, when they were compelled to have their lawyer remain silent. Their case was notably different because they insisted that the United States, as trustee, had violated its fiduciary duty by failing to make an honest claim for their water entitlement in the earlier Rifkin hearings. Their point was graphically illustrated in the Denver hearings where the Quechans were abandoned and were required to proceed alone against the combined opposition of the Department of Justice and the four other Indian Tribes who were either too cowardly or too blind to openly oppose the United States, as their trustee. (TR VIII, 1524, 1536, 1537, 1538 and 1549).

This difference was particularly highlighted when the Quechans attempted to prove the previously inadequate representation of the United States and the conflict of interest which had precluded aggressive advocacy of their Indian position. This abandonment distressed the Quechans to such a degree that they thereafter found it impossible to enter into a proposed stipulation with the other Indian Tribes regarding the lawyer who would make the oral argument before this Court.[1] The lawyer who was then

[1] The record of this Court will show that the Quechan Indian Tribe would not stipulate to the designation of the attorney who made the oral argument.

selected by a vote of the other four Tribes was Mr. Lawrence Aschenbrenner. He had previously worked for the Department of Interior as a Deputy Solicitor, but it was his vehement opposition and objection to the Quechan effort during the Denver hearings that made it patently clear that he could not and would not advocate the Quechan position. How could this Court even consider that he spoke for the Quechan Indians? The truth is that the Quechans were not given a hearing.

At the Argument

During oral argument the fears and apprehensions of the Quechan Tribe proved to be justified. Questions were repeatedly asked by several of the Justices regarding the justification for giving any further consideration at this late date to claims for "omitted" lands. In fact, Justice Rehnquist and Justice O'Connor particularly focused upon this, and made it very clear that they were inviting responsive answers addressed to the issue of finality. The designated speakers had already made it clear to the Quechans that they were not really concerned with the inadequate representation or conflict of interest issue. Hence, they gave evasive anwers predicated upon the modification language of Article IX of the 1964 Decree.

The Quechans would have directed the Court's attention to Article VI in order to permit the Court to understand their position. Therein this Court mandated that "within two years from the date of this Decree, the States of Arizona, California and Nevada shall furnish....a list of present perfected rights...." The States had ignored this mandate for nearly fourteen years, and then they attempted to comply by proposing a stipulation concerning the present perfected rights which included the Indians. In turn, this led to an independent assertion of the Indian claims since the Indians were informed by their trustee that the 1964 Decree had not become final, and that it

would not be final until there was compliance with Article VI. In other words, if it was not too late for the States to act, then why should it be deemed too late for the Indians to finalize their claims for the lands "omitted" by their trustee, the United States?

After the Argument

Following oral argument in the case at bar and the rendition of this Court's Decision on March 30, 1983, the Quechan Tribe sent the following letter of inquiry to their lawyer:

A Sincere Letter

April 10, 1983

Dear Mr. Simpson:

How much longer must the Quechan Tribe wait for justice? Will all of the Justices on the present Supreme Court have to die first? We have been waiting since 1894 for justice. During this long wait we have become acutely aware of the fact that justice delayed is justice denied. Thus, it is difficult for us to now understand how our Supreme Court, dedicated to "Equal Justice Under the Law", can compound the delay by the decision they rendered in the case of Arizona v. California on March 30 of this year.

With undeniable evidence in the record that the United States knowingly and willfully "omitted" making a claim for water for all of our irrigable lands in the earlier hearings, the Court has strayed so far from justice as to compel the Indians to pay for this omission by their trustee. Further, in connection with our "disputed

boundary" lands, the Court has made it necessary for us to continue our century-old wait while an inferior District Court attempts to do what the Supreme Court could and should have done. In other words, what the Court did this year they could have done years ago without appointing a Special Master and thereafter ignoring all of his recommendations. This is an unbelievable waste of human energy and over a million dollars of money that the Indians could have spent much more constructively. Judge Tuttle understood this and the meaning of "justice delayed is justice denied". Clearly this is why he recommended action now!

Will you therefore please explain to us how the Supreme Court could so arbitrarily refuse to hear our lawyer present our argument, and then by this most recent decision, make us wait even longer?

Sincerely yours,

Vincent Harvier, President
Quechan Indian Tribe

The above letter[2] was received shortly after the Opinion rendered by this Honorable Court in the case at bar was issued on March 30, 1983. The letter was followed by a request[3] that the Tribe's lawyer file this Motion for Reconsideration upon the following grounds:

1. Truth should always be accorded a higher status than technical law.
2. Waste and injustice must not be tolerated by the Supreme Court.

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[2]Appendix "A"

[3]Appendix "B"

Truth v. Technical Law

"Omitted Lands"

The admitted facts show that even under the States' self-serving standards there were at least 18,500 irrigable acres which should have been included as part of the award for the Indians under this Court's 1964 Decree if the United States, as their trustee, had performed its duty of identifying and claiming them. Special Master Tuttle's Report, pages 109, 125 (1982) This was graphically illustrated at the Denver hearing when it was shown that the earlier claim asserted by the United States for the Quechan Tribe was considerably less than its full entitlement. Jim Jones, a retired engineer, was called as a witness. He testified that he had previously been employed by the Bureau of Indian Affairs, and had been directed in 1955 to map the Quechan's "irrigable acres" south of the All American Canal. (TR IX 1604)[4] The results of his mapping disclosed 4,800 irrigable acres of land that the United States knew were irrigable, but for which they made no claim to water. (TR IX, 1602, 1604)[4] This omission took place despite the fact that the Bureau of Indian Affairs knew that these so-called non-irrigable acres were under cultivation at the time. (TR IX 1605)[4]

In other words, there can be no dispute about the fact that the Quechan Indians were entitled to additional water which their trustee simply did not claim. This can hardly be called justice. Instead, this should be viewed as an exception to all technical legal bars, and should therefore yield to the truth. Whenever the United States breaches its trust to the Tribes, while openly advancing its own interest, the Tribes should not be bound. *United States v. Truckee-Carson Irrigation District*, 649 F2d 1286, 1307 (9th Cir. 1981) In fact, it was this situation that former President Nixon had in mind when he said:

---

[4]see Appendix "C"—extracts from the testimony of Jim Jones.

"The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal disputes. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance both the national interest in the use of land and water rights and the private interests of Indians in land which the government holds as trustee.

Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists." (President Nixon's July 8, 1970 speech at the White House on the Establishment of Independent Trust Counsel for Indians...)

Thus, it follows that if truth is to prevail, the 1964 Decree should be modified to allow inclusion of those Indian lands which were omitted by their trustee.

Judicial Economy or Judicial Waste

"Disputed Boundary Lands"

On January 9, 1979, this Court, being cognizant of the tremendous case load confronting it, determined that it would be judicial economy if it secured help in this significant water rights case. The case had been before it for nearly thirty years. Thus, an Order was made appointing one of the nation's most respected judges, the Honorable Elbert P. Tuttle as Special Master to get the job done.

Everyone knew that the task was herculean, but to Judge Tuttle it was a challenge. He promptly set up a meeting with all counsel to explain his informal but fair ground rules. At the meeting he also told everyone that he was eighty-one years old, in the twilight of his life, and that he therefore would not countenance any waste of time—that he wanted to see this case concluded during his lifetime. Thereafter, Judge Tuttle and his staff immediately went to work with a dynamic dedication. Preliminary briefs were filed by the several States, the United States, and the five Indian Tribes. Evidentiary hearings were held throughout the country. Oral arguments and printed briefs were made. All of this required an aggregate expenditure of more than one million dollars and took more than three years, but it permitted Judge Tuttle to file a final and comprehensive Report with the Supreme Court on February 22, 1982.

A. Judge Tuttle's Report:

His Report recognized that the Indians involved were parties with a real interest who should be allowed to participate. His Report also increased the allocation of water from the Colorado for the Indians since their trustee had omitted making the claims that should have been made as a matter of law for water during the Rifkin hearings. In addition, Special Master Tuttle found that the

Secretarial Orders enlarging the Indian reservations had increased their entitlement to water since such orders provided the kind of finality contemplated by the Court in 1964 when it left certain boundary disputes for a later determination. Then, as a matter of fairness, Judge Tuttle recommended that the following proviso be included in the final decree:

> "Provided, further, ...that lands presently determined for this purpose to be within the boundaries of the above-named Reservations and later determined to be outside the boundaries of the above-named Reservations, as well as any acretions thereto to which the owners of such land may be entitled, should not be included as irrigable acreage within the Reservations and that the above-specified diversion requirements of such land that is irrigable shall be reduced by the unit diversion quantities listed in the (1979 Decree)." Tuttle Report, 282-283.

B. Response by the States: —"Didn't Participate"

In response, the State parties and the respective California agencies vehemently objected to this proposal by the Special Master by contending that the Secretarial Orders and the quiet title judgments involved were not "final determinations" within the meaning of Article II (D) (5) of the 1964 Decree inasmuch as they had not been given an opportunity to participate in any of these proceedings, and since the Administrative Orders were still susceptable to judicial review. This simply is not true. For years following the 1964 Decree the State Parties and the United States had conveniently ignored the two year mandate of this Court to finalize "present perfected rights" pursuant to Article VI. They had many meetings with the intention of ignoring the truth and stipulating to the division of the water from from the Colorado River. In

other words, the State Parties were truly "buddy-buddy" with the United States. It was the Indian Tribes who had not been accorded the courtesy of participation. In fact, the Chairman of the Confederated Tribes of the Colorado River stressed this in his affidavit attached to the first petition to intervene filed by the Indians in the case at bar which was filed on April 7, 1978, as Appendix "A" thereof. Therein he said:

> "I have repeatedly requested that the United States consult with our tribes regarding our water rights under Arizona vs. California, but my requests have been to no avail. Instead, the United States merely scheduled some meetings where they told us that our input was not desired since a "deal" had already been made with the States and the Irrigation Districts. This started in 1971, when the leaders of our respective tribes were asked to come to Washington, D.C. to discuss a Stipulation that was being proposed. Representatives of the Department of Justice and the Department of Interior at that time told us that the Supreme Court wanted to finalize the present perfected rights under Article VI of the Decree within two years after it had issued, but that necessary studies to marshall the facts had not been conducted so that the proposed Stipulation seemed like the easiest answer.
>
> In response, the Indian leaders objected to the Stipulation and requested that a diligent effort be made without further delay to obtain the facts so that the truth could be presented to the Supreme Court....
>
> Again, in 1975 the Indian leaders were again called to a meeting by the Bureau of Indian Affairs to consider the soil classification work which had been completed, and to give their approval. The preliminary results looked rather

good to our Indian leaders, but we could not give our approval due to the fact that certain specific areas of land had not been included, and we were unwilling to endorse such deception. At this time we were warned that if we kept on insisting upon the truth being presented to the Supreme Court that we would really be in trouble. Although we had no wish to be unreasonable we firmly felt that anything short of a truthful presentation would be both intolerable and unconscionable. Hence, all of the Indian leaders agreed to stand firm.

In the wake of this warning we learned that the Department of Justice, the Department of the Interior, the States and the Irrigation Districts were going to have a "big" meeting in Washington, D.C. to resolve the Indian opposition to the proposed Stipulation. On behalf of the Indian leaders I requested that we be included. My request was denied. I next requested that the attorney representing our Confederated Tribes be allowed to be present. By the time that the big meeting took place this request was conditionally granted, the condition being that our attorney was not to say anything at the meeting unless everyone else had had their say and some meeting time was still left. This "big" meeting took place in May of 1976, and it was chaired by the Solicitor for the Department of the Interior... ."

As can easily be seen from the above, it was the Indians whose participation was restricted in the case at bar.

The State Parties are now complaining about not having participated in the "disputed boundary" cases. This is a specious statement. For instance, the State Parties have

been intimately involved for years with the Quechan boundary dispute, and this Court can take judicial notice of this fact because the story is recorded as part of the official record of the Senate of the United States. See Hearings Before the Committee on Interior and Insular Affairs, United States Senate, 94th Congress, Second Session, "Oversight on Quechan Land Issues", dated May 3 and June 24, 1976. It is therefore incredible that the State Parties can now claim lack of participation and that the majority of the members of this Court can believe them.

C. Waiting for Judicial Review Is Unwarranted:

Since 1894 the Quechan Indians have been unable to effectively utilize approximately 25,000 acres of their original Reservation because of a dispute that arose between the United States and the Quechan Tribe. On December 20, 1978 the Secretary of the Interior resolved this dispute when he "reaffirmed" the 1884 Executive Order of President Arthur which had established the Quechan Reservation at Yuma. No one has ever challenged the legality of the President's 1884 Executive Order. It was not questioned in the Rifkin hearings; so why should it provoke so much concern at this time? The Secretarial Order of December 20, 1978 did not really add new lands to the Quechan Reservation; it merely "reaffirmed" the boundaries of their original 1884 Reservation. In fact, the word "reaffirmed" had been carefully selected for the 1978 Secretarial Reaffirmation Order so that it would preclude the possibility of any additional disputes as to the boundary. Thus, the nearly ninety year old exclusive dispute between the Quechan Tribe and the United States was resolved. The State Parties had no proprietary interest in this land. Thus, how can the resolution of this old dispute between the United States and the Quechan Tribe, through a reaffirmation of what the President of the

United States established in 1884, provide any legal basis for a challenge by the State Parties? This action was merely an exercise of the traditional authority of the United States which is not subject to judicial review. As this Court said much earlier in *Cragin v. Powell*:

> "From the earliest days matters appertaining to the survey of public or private lands have devolved upon the commissioner of the general land-office, under the supervision of the secretary of the interior. Rev.St. §453....the power to make and correct surveys of the public lands belongs to the political department of the government, and that, while the lands are subject to the supervision of the general land-office, the decisions of that bureau in all such cases, like that of other special tribunals upon matters within their exclusive jurisdiction, are unassailable by the courts, except by a direct proceeding, and that the latter have no concurrent or original power to make similar corrections, if not an elementary principle of our land law, is settled by such a mass of decisions of this court that its mere statement is sufficient." *Cragin v. Powell,* 128 U.S. 691, 698

To this we should add the reason for the rule which was stated in *Cragin v. Powell, supra*:

> "The reason of this rule, as stated by Justice Catron, in the case of *Haydel v. Dufresne*, is 'that great confusion and litigation would ensue if the judicial tribunals were permitted to interfere and overthrow the public surveys on no other ground that an opinion that they could have the work in the field better done and divisions more equitably made than the department of public lands could do.' "

Therefore, in light of the above, the Quechans believe that the dilatory decision by the majority of this Court deferring Judge Tuttle's determination of water rights for the so-called disputed boundary areas on a conditional basis can only be viewed as unjust and unreasonable. It can only mean further delay. In other words, it is the conviction of the Quechans that this Court's refusal to rule on Judge Tutle's determinations of irrigable acreage amounts to a horrible waste. When the so-called "final determinations" have been made, then the task of determining the irrigable acres will no doubt have to be repeated. This is truly a shocking illustration of judicial waste which tragically compels another conclusion, i.e., that this Court has unwittingly insulted Judge Tuttle by stealing invaluable time. This Court could have done what it has now done, and could have done it much earlier, without even asking him to lift a hand. This waste of Judge Tuttle's invaluable time, plus this unreasonable postponment of the determination of the Indian entitlement to water, can only make one wonder and reflect upon the words from Scripture that:

> "Here there was no water for the people to drink.
> 2. They quarreled therefore with Moses . . . .
> 4. So Moses cried out to the Lord, "What Shall I do with these people? A little more and they will stone me!" —Exodus 17:1-4

CONCLUSION

While the Quechan Tribe has disagreed with what this Court has failed to do in the case at bar it nevertheless has faith in the capacity of the Court to make corrections where warranted. Therefore, the Quechans do hereby sincerely request that this Court reconsider its position, and in the furtherance of justice:

1. Recognize that truth should always be accorded a higher status that technical law and that the Indians should not be required to forever forfeit invaluable water rights as a result of the omissions of their trustee, and

2. Acknowledge that the boundaries of the Quechan Reservation were established by the President of the United States in 1884, and that a "reaffirmation" thereof in 1978 by the Secretary of the Interior should not make the boundaries something less than final, thereby entitling the Indians to a determination of their irrigable acres and the quantification of their water without further delay.

Respectfully submitted,

SIMPSON & RUSSELL

By _____
Raymond C. Simpson
Attorneys for the Quechan Tribe

CERTIFICATION OF COUNSEL

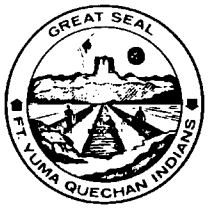
This is to certify that the above Petition for Reconsideration is presented in good faith and not for purposes of delay and is based upon substantial grounds not previously presented.

Respectfully submitted,

SIMPSON & RUSSELL

By _____
Raymond C. Simpson
Attorneys for the Quechan Tribe

APPENDIX



QUECHAN INDIAN TRIBE
Fort Yuma Indian Reservation

P.O. Box 1352
YUMA, ARIZONA 85364-0235
Phone (619) 572-0213

April 10, 1983

Raymond C. Simpson, Esq.
2032 Via Visalia
Palos verdes Estates, CA 90274

Dear Mr. Simpson:

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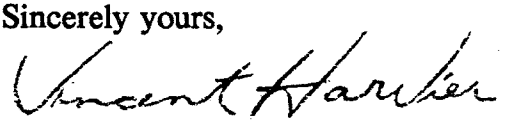
Special Master and thereafter ignoring all of his recommendtions. This is an unbelievable waste of energy and over a million dollars of money that the Indians could have spent much more constructively. Judge Tuttle understood this and the meaning of "Justice delayed is justice denied". Clearly this is why he recommended action now!

Will you therefore please explain to us how the Supreme Court could so arbitrarily refuse to hear our lawyer, present our argument, and then by this most recent decision, make us wait even longer?

Sincerely yours,



Vincent Harvier, President
Quechan Indian Tribe

QUECHAN INDIAN TRIBE
Fort Yuma Indian Reservation

P.O. Box 1352
YUMA, ARIZONA 85364-0235
Phone (619) 572-0213

R-22-83

RESOLUTION

A resolution authorizing attorney Raymond C. Simpson to submit a petition to the Supreme Court for reconsideration of the Quechan's claim on the Arizona vs. California Water Rights case.

WHEREAS: The Quechan Tribal Council has determined that the Quechan Tribe was not afforded a fair hearing in the Arizona vs. California Water Rights Case and

WHEREAS: The Quechan Tribal Council has determined that the Quechan Tribe was not properly represented through authorized legal counsel and

WHEREAS: The Quechan Tribal Council feels that the recent decisions of the Supreme Court warrants a petition for reconsideration, so Council authorizes the submittal of a petition to the Supreme Court for reconsideration of the Quechan's claim on the Arizona vs. California Water Rights case and

BE IT FINALLY RESOLVED: That the Quechan Tribal Council hereby authorizes attorney Raymond C. Simpson to file and execute said petition on behalf of the Quechan Tribe

APPENDIX "B"

CERTIFICATION

The foregoing resolution was presented at a Special Council meeting which convened on April 20, 1983, duly approved by a vote of 5 for, and 0 against, by the Tribal Council of the QUECHAN INDIAN TRIBE, pursuant to authority vested in it by Section 16 of the Indian Reorganization Act of June 15, 1934 (49 Stat. 378), and Article IV, Section 1(b), Section 15, and Article VIII, Section 1, of the Quechan Tribal Constitution and Bylaws. This resolution is effective as of the date of its approval.

QUECHAN INDIAN TRIBE

By:

Vernon Smith

Vernon Smith, Vice-President

Patricia Quahlupe

Patricia Quahlupe, Secretary

APPROVED:

Superintendent

APPENDIX "C"

Pages 1602, 1604 and 1605
of Reporters Transcript
of Testimony by
Jim Jones

with which you were concerned?

A. Yes sir. There was a joint team study of these lands following the survey by the Bureau of Land Management. There was a soil survey conducted by the soil scientist for the Bureau of Indian Affairs.

I did the engineering layout of canals being laterals and fields for this area, computed the areas. And a report was written and signed, I believe, by an engineer named Rupkey who I was working for.

Q. Now keeping to your knowledge of this, was any conclusion reached regarding the irrigable acreage contained within the accreted lands you studied?

A. Yes, sir, we did reach one.

Q. How many acres was involved?

A. A total of about 4800 acres, gross area. And we concluded that some 4300 of those acres were irrigable.

Q. Now, Mr. Jones, are you aware of the fact that while you were conducting this particular study that there was a water distribution system in the Yuma area at the time servicing 7,743 acres?

A. Yes, sir.

Q. Now the lands that you were talking about in excess of 4,000 acres, were they lands which were included within the 7,743 acres?

A. No, sir, they were not. These were separate

west of the old 1905 levee, and between that and the Colorado River, beginning on the west at the foothills and going east all along the southern part of the Indian reservation, taking in the areas east of the Yuma Hills below the 1905 levee and up around the Hotland Lake area on the east, and taking in the so-called peninsula area on the east, and this area up here almost to Laguna Dam itself.

SPECIAL MASTER TUTTLE: So these accreted lands you speak of are known as accreted lands because of a change in the flow of the river towards the east and south, is that right?

THE WITNESS: Yes, sir.

Q. (BY MR. SIMPSON) Mr. Jones, you have told us that this information was communicated to the Bureau of Indian Affairs.

Did you ever of your own knowledge know whether or not it was communicated to the evidence preparation team to which you have referred?

A. Yes, sir. I can't tell you the exact date, but probably in 1955 I was assigned to that team to prepare irrigation maps, to compute land area and to collect data for presentation to the Court.

As a part of that assignment, I was instructed to prepare a map of the Yuma Indian Reservation and with the knowledge I had in it, so I prepared the base map that

encompassed all of the 7700 acres and the 4300 acres of accretion land.

Q. Now, Mr. Jones, after that period of time, referring to 1953 or '54, did you have occasion to do any further work with respect to the lands you have described and pointed out on United States Exhibit 13?

A. Yes, sir.

Q. Would you tell us what it was.

A. In 1968 I was assigned as a special project officer to study land boundary problems for Indian reservations, principally at that time along the Colorado River. One of the areas that we were studying was the Quechan or the Yuma Indian Reservation.

We had attempted over a number of years to get restoration of these lands to the Indian people, and we were advised, of course, by the government that these lands were considered non-irrigable lands.

In 1969 I was on this land on one of a number of trips into that area. And there were lands lying between the 1905 levee and the river that were under crop at that time.

Q. And these were some of the lands that had been classified as non-irrigable by the United States?

A. Yes, sir.

Q. Mr. Jones, did you, in connection with that last

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State of California

ss.

County of Los Angeles

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen (18) years and not a party to the within action or proceeding; that my business address is 3340 Ocean Park Boulevard, Suite 3005, Santa Monica, California 90405: that on May 5, 1983, I served the within *Motion for Leave to File Petition for Reconsideration Out of Time and Petition for Reconsideration by the Quechan Indian Tribe* in said action or proceeding by depositing three true copies thereof, enclosed in a sealed envelope with postage thereon fully prepaid, in the United States mail at Santa Monica, California, addressed to all other parties of record, namely:

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I declare under penalty of perjury that the foregoing is true and correct. Executed on May 5, 1983 at Santa Monica, California.

KIRK W. HARNEY
(Original signed)

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