

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS,)	
)	
Plaintiff,)	
)	
v.)	Docket No. 229
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 29, 1970

FINDINGS OF FACT

1. The plaintiff, the Navajo Tribe of Indians, is a tribe of American Indians residing within the territorial limits of the United States and possessing a tribal organization recognized by the Secretary of the Interior as having authority to represent and act for the plaintiff. It is authorized to maintain this action under Section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1049, 1050, 25 U.S.C. §70a).

2. The Navajos are a branch of Athapaskan people who migrated into the southwestern part of the United States from Canada. With the Apaches, they make up one linguistic unit and form the Southern Athapaskan group. In their earliest contacts the Spaniards called them "Querechos" and "Tacabuy". Soon, however, it became the practice in Spanish to refer to the Athapaskan peoples of the Southwest as "Apaches", including the Navajos in this general descriptive term and identifying them as a separate group by "Apaches del Navajo" or "Apaches de Navahu", meaning "Apaches of Navajo". The earliest

known use of "Apaches de Navaju" in writing was about 1626-1629.

From 1630 to modern times the Navajos generally have been referred to in historical documents of the Spanish, Mexicans and Americans as "Apaches", "Apaches de Navajo", "Navajo Apaches", "Navajo" or in variants of these terms.

3. The Navajo Tribe was organized on a geographical basis. Within the tribe these were relatively small units which were variously referred to as bands, people, groups, communities, land use communities or districts. These units had home areas where they farmed but they moved freely throughout Navajo country for economic, social, religious, and other activities. They had headmen or chiefs who met with the chiefs of other units to make decisions of importance to the tribe and to coordinate tribal activities.

The Navajo Tribe is made up of people who have a common culture, a common language, a common set of customs, the same clans, the same set of ceremonies, occupy contiguous territory and are interested in the exploitation of a common territory. The Navajos constitute a society in which each individual has a strong sense of belonging with the others who speak the same language and a strong sense of difference and isolation from the rest of humanity. Navajo cohesiveness is due to a common linguistic and cultural heritage, to the occupation of a defined territory and to a common designation for themselves, that is "Dine" or "People," as against all others. They are a distinct land using entity.

4. The Navajos entered the claimed area sometime between 1300 and 1500 A.D. The earliest phase of Navajo history places them in the area of the upper San Juan River and its tributaries east of Blanco, New Mexico. This was the Navajo homeland. By the time the eighteenth century was a few decades old, some Navajos had filtered south and west to Wide Belt Mesa, Chacra Mesa, to the vicinity of Mt. Taylor, and to the Chuska Mountains and into more open areas such as Canyon de Chelly.

Before the advent of European settlers, the Navajos lived by gathering foods such as pinon nuts, juniper berries, yucca fruit, wild potatoes and wild seeds and grains; by hunting; by raiding their pueblo neighbors; and by farming small tracts of land on which they raised corn, beans, squash, cotton, pumpkins, tobacco, wheat, melons and peaches.

Sometime in the sixteenth or seventeenth century the introduction of the horse and sheep by the Spanish into Navajo culture set in motion a trend of events that revolutionized Navajo life. The horse provided greater mobility and greatly expanded opportunities for hunting, food gathering and raiding. The sheep provided a staple food supply and the Navajos became basically a pastoral society. However, agriculture remained an important source of food. The raising of livestock encouraged even wider dispersal of Navajo families to assure sufficient forage for their herds. With the Navajo population growth and stock increase they expanded further to the west into the wild broken country where they could find the necessary range land. As a result, the bulk of the Navajos soon concentrated in Canyon de Chelly and the Tunicha-

Lukachukai-Carrizon Mountains.

5. Although not historically nomadic in the sense of being aimless or continually wandering, the Navajo people were a mobile group, shifting residence from season to season along with the climatic fluctuations which controlled the food supply and forage. Thus, many people living near the mountains maintained a summer place at the higher elevations and a winter place at lower elevations or on the plains. Family movements were generally confined to well defined areas of seasonal residence, however, and during the planting and growing season at least part of the family usually remained in the locality where they had their fields.

As we have seen, the acquisition of livestock changed the way of life of the Navajo tribe from a somewhat precarious hunting-agricultural economy to a pastoral economy in which an adequate food supply was virtually assured. It also introduced the opportunity for the Navajos to accumulate property, and, as a result, many of them became wealthy stock owners.

The mobility and continued expansion of the Navajos brought them into conflict at times with other Indian tribes. From the Spanish period onward the surrounding Indian tribes, including the Hopi in the west, the Utes in the north and northeast, various tribes of Apaches in the south, southwest and southeast, and the several pueblo tribes who were neighbors on the east had periodic clashes with the Navajos. There was also some conflict with the Zuni Indians whose pueblo was toward the interior of the Navajo claim.

6. At the time of the Spanish conquest of New Mexico the Navajos were the first of the tribes to cause trouble. They repeatedly raided the Spanish settlements and the Pueblo Indian villages. They were, however, not the only wrongdoers, for it was a common practice during both the Spanish and Mexican periods for the whites to seize Navajos and use them as slaves. Spanish officials frequently forced Pueblo Indians to assist them in these slave raids. Slave raiding apparently was one of the principal reasons for continued Navajo hostility and the participation of Pueblo Indians in these campaigns greatly increased the animosity of the Navajos toward both the Spanish and the Pueblos.

The practice of slavery was discouraged by the United States after the 1848 Treaty of Guadalupe Hidalgo (9 Stat. 944), but the institution of slavery and the practice of slave raiding by the Spanish Americans continued on into the American period.

7. From 1720 to 1770, however, an era of peace prevailed between the Spanish and the Navajos. By 1720 raids and reprisals had ceased and the Navajos were no longer numbered among the enemies of the province. Except for this period of time, Navajo-Spanish relations were generally of a hostile nature during the many years of Spanish sovereignty over this part of the country. Navajo raids upon the Pueblo Indians and Spanish settlements in the Rio Grande Valley, and in the country to the west, were a common occurrence throughout this period and frequently resulted in retaliation by the Spanish, who pursued the Navajos to their lands west and northwest of the Pueblo and white settlements. Repeated clashes of

the Navajo with the Ute Indians in the northeast part of the subject area also occurred during this period.

In 1800 the Governor of New Mexico placed a colony of white settlers in Cebolleta Canyon and insisted the settlement should remain even though the Navajos protested that this was their land. Between 1805 and 1818 relations between the Navajos and the settlers were reasonably friendly. However, in 1818 hostilities again broke out and not long afterward Mexico declared its independence.

The Spanish Government had been able to control the Navajos to some extent, but the Mexican Government in Santa Fe was unable to do so. Mexican officials considered themselves at war with the Navajos throughout almost the entire Mexican period of 1821-1846. This was the situation which existed when General Stephen Watts Kearney took over New Mexico for the United States in 1846. Even after the 1848 Treaty of Guadalupe Hidalgo whereby New Mexico became a part of the United States, raids by the Navajos, as well as other Indians, especially Utes and Apaches, continued.

8. There is evidence of Navajo use or occupation of some of the more peripheral sections of the claimed area such as Big Bead Mesa, the Cebolleta Mountains, Mt. Taylor, Rio Puerco and the Puerco of the West, the Zuni Mountains, Largo Canyon, Ramah, Bear Springs, St. Johns, Mesa Redondo, Chevelon Creek and Chevelon Butte, upper Oak Creek Canyon, Carrizon Wash, the valley of the Little Colorado River, Black Canyon, Anderson and Diablo Canyons, Pueblo Colorado, Pueblo Colorado

Wash, Steamboat Canyon, Black Mesa, Calabasa Mesa, Navajo Mountain, and both sides of the San Juan River, at the time of the beginning of the American Period in 1848. The extent of Navajo occupation during the American Period is suggested by Superintendent Doty in a report to Commissioner William P. Dole in 1863. Doty said that the Hopis were ". . . in constant fear of the Navajos, whose country nearly surrounds theirs, who frequently attack them and drive off their flocks of sheep and herds of cattle."

At this time the Navajos numbered approximately 12,000 persons and needed a large area for their numerous herds and extensive farming activities. Governor Meriwether reported in 1855 that the Navajos were the owners of about 200,000 head of sheep and over 10,000 horses. He also estimated that they had 5000 acres under cultivation and had raised 60,000 bushels of corn in a single season.

9. In 1846 Captain Reid of the United States Army met with a number of Navajos including the friendly Sandoval and Chief Narbonna. The Indians promised to meet in Sante Fe to make a treaty of peace with all their enemies. However, the Navajos failed to appear there and continued their depredations along the Rio Grande. As a result, on October 2, 1846, General Kearney ordered Colonel Doniphan to march against the Navajos, to require them to return all prisoners and stolen property, and to surrender Navajo hostages to assure future good conduct by the tribe. Doniphan acted promptly and after a council with a number of the Navajos at Bear Spring he concluded a treaty with them

on November 22, 1846. The treaty provided that there was to be peace between the American people, including the Mexicans and Pueblo Indians and the Navajos. There was to be freedom of trade and mutual restoration of prisoners and all property taken after August 18, 1846, was to be restored by both sides. This agreement was signed by fourteen Navajos but was never ratified by the United States.

As a result of further raiding by the Navajos, Colonel Newby led a campaign against them in 1848 but accomplished nothing except to negotiate another treaty of peace with the Navajos. This treaty, too, was never ratified. The Navajo depredations continued.

On September 9, 1849, Lt. Col. John M. Washington, Governor of New Mexico and James S. Calhoun, Indian Agent at Santa Fe, New Mexico, concluded another treaty with the Navajos. This treaty was negotiated in Canyon de Chelly. Approximately a year after the treaty was signed, it was ratified by the Senate and later proclaimed by the President. However, the Navajo raiding continued. In August of 1851 three or four hundred Navajo depredators were reported camped on the Gila River some distance south of the claimed area. Fort Defiance was established in 1851 to check the increasing Navajo depredations and thus it became the first military post in the present State of Arizona.

Unrest and depredations by the Navajos continued during the next few years. In 1854 depredations by the Navajos were reported to have occurred as far south as the Mexican State of Chihuahua and Durango.

Finally, David Meriwether, Governor of New Mexico, was appointed special commissioner to effect a treaty with them. He met with them at Laguna Negra in July 1855 and by the 18th of that month had concluded a treaty. Again, the treaty was never ratified by the Senate.

10. The Meriwether Treaty of July 18, 1855, was the first attempt by the United States to set up a reservation for the Navajos. Under the proposed treaty the area to be reserved for the Indians was described as follows:

... Beginning on the south bank of the San Juan river, at the mouth of Rio de Chelly, thence up the San Juan to the mouth of the Canada del Amarillo, thence up the Amarillo to the top of the dividing ridge between the waters of the Colorado and the Rio Grande, then southwestwardly along said dividing ridge to the head of the main branch of the Zune river, thence down the north side thereof to its mouth or entrance into the Colorado Chiquito, thence north to the beginning, excluding the lands owned by the Pueblos of Zune and Moqui, and reserving to them all their rights and privileges, and reserving to the United States a tract of country embracing fifty square miles around Fort Defiance, to be laid off under the direction of the Commanding officer of the department, and in such manner as he may see proper: reserving to the Navajos the right to gather salt at the Salt Lake near Zuni. (Plfs. Ex. No. 127)

When discussing the proposed reservation boundaries described above, Manuelito, Head Chief of the assembled Navajos, remarked that the Navajos claimed a much larger country, but agreed to the terms of the treaty.

Subsequently on December 30, 1856, in response to Commissioner Manypenny's request, Meriwether sent to him a map showing the claims

and reservations of the various Indian tribes in New Mexico territory. In the letter accompanying the map Meriwether acknowledged that the map was made from "limited and imperfect information": but was the "most correct" he could procure.

Meriwether further explained that there were "...no well defined and acknowledged boundary lines dividing the white people from the Indians of this Territory, nor between the several tribes and bands of Indians themselves." With respect to the Navajos, he said:

...I think it probable, too, that the Navajos and Utahs have no valid claim so far west as the Colorado river, but I can gain no information as to where the western boundary of their claim should be placed; and as no other people inhabit the country west of the established claim of the Navajos and Utahs, and east of the Colorado, I have assigned it to those Indians...." (Plfs. Ex. 157)

An examination of the Meriwether map shows the Ute Indians north of the San Juan River; that lands northeast of Canada del Ojo Amarillo lay outside the Navajo territory; that the eastern boundary extended in a generally northeasterly direction from Mt. Taylor to Canyon Largo and from Mt. Taylor directly south to about 34° 30' north latitude; that the southern boundary extended approximately along an east-west line at 34° 30'; while the western boundary followed the Colorado River north to the San Juan. The northern boundary was the San Juan.

11. Prior to the submission of the Meriwether map to Commissioner Manypenny, other maps had been made showing the location of the various Indian tribes in the southwest including the Navajos. The early

Spanish map of 1769 outlines in a general way the areas then considered to be the lands of the various Indians in what was then known as New Spain. The home of the Navajo Indians is outlined as "Provincia de Nabajo" and extends from north of the San Juan River (Rio de Navajo) almost as far south as Zuni. South of the San Juan the various Hopi villages are depicted but no boundary is indicated separating them from the Navajos. The eastern Navajo boundary is a line extending approximately north and south through the vicinity of Mt. Taylor and the Cebolleta Mountains.

On March 7, 1851, Lt. John G. Parke of the army topographical engineers submitted a map of the Navajo country, together with detailed notes on that country and the use made thereof by the Navajo Indians. Parke's information was furnished by Rafael Carravajal, an old guide who had been found reliable in earlier operations with the army and who had extensive knowledge of the country, as well as other persons who were well acquainted with the Navajo country.

An examination of Parke's map shows that the "Navajo Country" extended from the San Juan River and its northern tributaries, namely, the Mancos, La Plata, Florida, Las Animas, and Los Pinos rivers in the north, to the Zuni Mountains and Mt. Taylor in the south; and from Mesa de la Vaca or Black Mesa in the west to Canyon Largo and the Rio Puerco in the east. Lt. W. D. Whipple's "Sketch of Navajo Country" shows the same general locations for the Navajos. Undoubtedly the information on these maps was available to Governor Meriwether

in composing the map which was sent to Commissioner Manypenny.

12. Difficulties continued among the Navajos and the New Mexicans and Pueblo Indians throughout the 1850's and into the 1860's. The United States troops having been removed from Fort Defiance in July of 1861 for Civil War duty, the Navajos and Apaches increased their raids on the Rio Grande settlements in the fall of 1862.

In September 1863, General James Carleton conceived the idea of moving all the Navajos to Fort Sumner on the Pecos River in eastern New Mexico. He believed that there the Navajos would acquire new ideas, new ways of life, would settle down, and that gradually the old Indians would die off and a new and peaceful generation would develop. Carleton advised and convinced his superior that it would be cheaper to feed the Navajos than to fight them. The result was that an area 40 miles square was set aside as a reservation for them and the Mescalero Apaches at the Bosque Redondo with Fort Sumner in the center of the reserve.

Upon orders from General Carleton, Col. Kit Carson proceeded against the Mescaleros, subdued them, and then moved against the Navajos. The Navajos, being fearful of the Carleton plan, sought to avoid the military forces that were in the field against them and refused to come in. Some of them fled while others continued to raid.

13. A group of eighteen headmen of the Navajos visited Carleton in Santa Fe and protested that all Navajos should not be punished but only those guilty of murdering settlers and stealing livestock. However, Carleton had no faith in their promises and continued in his plan to subdue them.

Small scouting parties moved throughout the country, hunting and capturing Navajos, killing their stock and destroying their fields. The Navajos scattered and fled before the troops. Some moved west of the Hopis into the Coconino Basin and San Francisco Mountains. Others went south to the Escudilla and White Mountains and other border areas.

By 1863 the Navajos were fleeing from one area to another with Kit Carson in pursuit. However, they gradually learned that although Carson was waging a vigorous campaign against them and destroying everything they possessed he was not out to destroy them. He only wanted them to surrender at Fort Canby or Fort Defiance so that they could be sent to the Bosque Redondo. Therefore, not long after Carson's campaign into Canyon de Chelly, 500 Navajos voluntarily appeared at Fort Canby bringing their flocks with them. Soon bands of Navajos began to arrive almost daily. By February 15, 1864, 1,500 were at the Fort and by March 6th, there were 2,400 who started the long walk of approximately 300 miles eastward to Fort Sumner and the Bosque Redondo. On March 14th, 700 more began the walk, and on March 15th, 2,300 more arrived at Fort Defiance. By the end of April more than 8,000 Navajos were at Fort Sumner. However, many Navajos were still in hiding and avoided coming to Fort Sumner.

14. The Navajos were not happy at Fort Sumner. Confinement of this kind was contrary to their way of life. Conditions went from bad to worse until it became apparent to the United States officials that some other solution had to be found for the Navajo problem.

Finally, in the spring of 1868, an Indian Peace Commission, authorized by Congress, sent General William T. Sherman and Col. Francis Tappan as delegates and peace commissioners to Fort Sumner to try to work out a solution with the Navajo leaders. The result was the Navajo Treaty of June 1, 1868 (15 Stat. 667, 2 Kappler 1015) providing for the creation of the Navajo Reservation.

On May 29, 1868, during the negotiations leading up to the treaty, Barboncito, the head chief and principal spokesman for the Navajos, objected to being "...on a reservation with a boundary line..." but wanted "...to have the privilege of going outside the line to hunt and trade." However, he agreed with General Sherman's proposal which allowed them to go outside the line to hunt and trade but required them to farm and live "... inside the boundary line..." The next day when the treaty was read and interpreted to the Indians and approved by them, General Sherman said:

... We have marked off a reservation for you, including the Canyon de Chelly, and part of the valley of the San Juan. It is about (100) one hundred miles square. It runs as far south as Canon Bonito, and includes the Chusca Mountain, but not the Mesa Calabasa you spoke of; that is the reservation we suggest to you, it also includes the Ceresca Mountain, and the bend of the San Juan River, not the upper waters. (Plfs. Ex. 410)

Barboncito said:

... We are very well pleased with what you have said, and well satisfied with that reservation; it is the very heart of our country and is more than we ever expected to get. (Ibid.)

15. Under the provisions of Article 2 of the Treaty of June 1, 1868 (15 Stat. 667, 2 Kappler 1015, 1016) the following described tract of land was set aside as a reservation for "the Navajo Tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; ...":

... bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Canon Bonito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-de-oso, Bear Spring, and west by a parallel of longitude about 109° 30' west of Greenwich, provided it embraces the outlet of the Canon-de-Chilly, which canon is to be all included in this reservation, ...

The above tract is reported to contain 3,414,528 acres and lies within the heart of the area claimed herein by the plaintiff.

The Commission finds that in return for this reservation and other stated consideration and under the provisions of Article 9 of the Treaty of June 1, 1868, the Navajos agreed to "...relinquish all rights to occupy any territory outside their reservation, as herein defined ..." and thereby ceded their aboriginal lands to the United States as of that date. The treaty was ratified on July 25, 1868, and thereupon became effective.

16. Approximately 1400 habitation sites were located by plaintiff's archaeologists throughout the claimed area. These sites are located primarily in the disputed portions of the claim rather than in territory conceded to be Navajo. More than 200 of these sites are located north

of the San Juan River. Approximately 30 are located between the 1882 Executive Order Reservation and the San Juan River. More than 200 others are south and southeast of the present day Navajo Reservation. A few were situated west of the 1882 Executive Order Reservation. The others are scattered throughout the remainder of the claimed area.

Plaintiff's expert witnesses gave testimony and presented documentary evidence as to the location, identity of the inhabitants, and the date of habitation of each of these sites. In addition to the testimony of these witnesses the location of these sites was shown by photographs taken of the site at the time it was discovered by the archaeologist. Tree ring or dendrochronological evidence, typological evidence in the form of potsherds taken from the sites, and Navajo tradition were the principal means used by the experts to determine the date or dates the sites were occupied. The structural types found at the sites, the association of the artifacts discovered there, and Navajo traditions were the means used to identify the previous inhabitants of these sites. Plaintiff's expert witnesses identified approximately 1300 of these locations as being Navajo habitation sites. These same experts concluded that approximately half of these 1300 sites were inhabited earlier than the 1846-1868 period.

The defendant's experts challenged the reliability of plaintiff's conclusions in many cases because of their subjective nature. Defendant's experts disagreed with plaintiff's experts as to the dating or identity of approximately 400 of these sites based on an examination of the archaeological evidence which plaintiff had introduced.

Although the conclusions of the experts respecting the meaning of much of the archaeological evidence tended to be subjective, this evidence confirmed the limits of plaintiff's aboriginal title area found from other evidence of record.

17. On July 25, 1868, the effective date of the 1868 Navajo Treaty, the Navajo Tribe of Indians held aboriginal title to a large tract of land lying within the following described boundaries, except for any valid Spanish or Mexican grants or parts thereof contained therein:

Beginning at the intersection of the Colorado and San Juan Rivers in the present State of Utah; thence on a line northeasterly to Bears Ears; thence easterly to Blanding, Utah, thence southeasterly to Cortez, Colorado; thence, southeasterly to Allison, Colorado; thence southerly to San Miguel Mountain in the present State of New Mexico; thence southerly to the highest point of Mesa Prieta; thence to the northwest corner of the Nuestra Senora de la Luz de las Laganita Grant; thence southwesterly to Mount Taylor; thence northwesterly to Powell Mountain; thence southerly to Lookout Mountain; thence westerly to Ramah, New Mexico; thence southerly to Quemada, New Mexico; thence westerly to the highest point of Mesa Redondo in Arizona; thence westerly to Snowflake, Arizona; thence westerly to Chevelon Butte; thence northwesterly to Sunset Crater; thence northeasterly to the point where Dinnebeto Wash enters the Little Colorado River; thence southeasterly up the Little Colorado River to Cottenwood Wash; thence northeasterly up Cottenwood Wash and Pueblo Colorado Wash to Greasewood Trading Post; thence northerly to Steamboat Canyon Trading Post; thence northerly to Yale Point; thence northwesterly to the northeast corner of the 1882 Executive Order Reservation; thence northwesterly on a line through Navajo Mountain to the Colorado River; thence northwesterly up the Colorado River to the place of beginning.

