

BEFORE THE INDIAN CLAIMS COMMISSION

THE HOPI TRIBE, an Indian Reorganization Act)	
Corporation, suing on its own behalf and as)	
a representative of the Hopi Indians and the)	
Villages of FIRST MESA (Consolidated Villages)	
of Walpi, Shitchumovi and Tewa), MISHONGNOVI,)	
SIPAULAVI, SHUNGOPAVI, ORAIBI, KYAKOTSMOVI,)	
BAKABI, HOTEVILLA and MOENKOPI,)	Docket No. 196
)	
Plaintiff,)	
)	
THE NAVAJO TRIBE OF INDIANS,)	Docket No. 229
)	
Plaintiff,)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: June 29, 1970

FINDINGS OF FACT

The Commission makes the following findings of fact.

1. The Hopi Tribe, the plaintiff in Docket No. 196, is a corporation organized under the Indian Reorganization Act of June 18, 1934, (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), the majority of whose members reside on the Hopi Reservation in Arizona. The Hopi Tribe is recognized by the Secretary of Interior as having the authority to represent said Hopi Indians, and as such the Hopi Tribe has the right and capacity under the Indian Claims Commission Act (60 Stat 1049) to bring and maintain this action.

2. The Navajo Tribe of Indians, the plaintiff in Docket No. 229 is a tribe of American Indians that possesses a tribal organization recognized by the Secretary of Interior as having the authority to

represent and to act on behalf of said tribe. The Navajo Tribe of Indians has the right and capacity under the Indian Claims Commission Act, supra, to bring and maintain the claims asserted herein.

3. The lands to which the Hopi Tribe asserted aboriginal or Indian title, and, which said tribe claims the United States took without the payment of any compensation, are located in Arizona and Utah. This landed area is bordered on the north and west by the San Juan and Colorado Rivers, on the south by the Little Colorado and Zuni Rivers, and on the east by the "Merriwether Line", a line that extends from the confluence of the San Juan and Rio de Chelly Rivers on the north to the confluence of the Little Colorado and Zuni Rivers on the south.

This tract of land that is aboriginally claimed by the Hopi Tribe in Docket No. 196 lies totally within a larger area to which the Navajo plaintiff in Docket No. 229 is asserting Indian title. In order to resolve all title claims against the United States to this overlap area, or subject tract, the Commission ordered consolidation of the above dockets. (Commission's Order of May 31, 1957.)

4. The Hopi or "Moqui" Indians are a remnant of the western branch of an early house building race which once occupied the southwestern table lands and canyons of New Mexico and Arizona. The Hopi Indians belong to the Pueblo culture, speak a Shoshonian dialect, and are one of the Indian tribes of North America still residing in their ancestral home.

5. Before 1300 A.D. the ancestors of the Hopi were identified in the area between Navajo Mountain in the northwest corner of the overlap area and the Little Colorado River to the south, and between the San Francisco Mountains well south of the overlap area and the Luckachuais Mountains in the northeast portion of the subject tract.

Archaeological evidence indicates that the Hopi village of Oraibi has existed in its present form since the 12th century. Oraibi is located near the center of the subject area and within the confines of the Hopi Reservation that was established by the Executive Order of December 16, 1882 (I Kappler 805).

6. It was in the summer of 1541 that the Hopi Indians first became known to white men. At that time, General Francisco Coronado sent Don Pedro de Tovar and a small detachment westward from the Zuni country to investigate the seven Pueblos in the province of Tusayan, as the Hopi country was then referred to, for the purpose of gaining information relative to the area and its people. There Tovar found the Hopis in villages on the mesa tops. The level summits of these mesas rise about six hundred feet above the surrounding valleys and range lands. The individual village houses, made of stone and mud, were two or three stories high and grouped together in typical pueblo fashion. The Hopis, who are ordinarily a timid and inoffensive people, were at first unfriendly to the Spaniards, but this soon changed and de Tovar's party remained with the Indians, learning from them, among other things, of the existence of the Grand Canyon.

De Tovar found that Hopis of this period wore cotton garments and that they possessed such things as dressed hides, flour, salt, pinon nuts, fowl and jewelry. They also cultivated fields of maize, beans, peas, melons, and pumpkins. The areas away from their village sites provided the Hopi Indians with a hunting ground for bears, mountain lions, wild cats, and other wild life.

In 1582 the Spanish merchant, Antonio de Espejo, journeyed from the Zuni village in New Mexico to the Hopi villages of Awatovi, Walpi, Shungopovi, Mishongnovi, and Oraibi. While there Espejo traveled to the Hopi silver mines that were located on Anderson Mesa near the San Francisco peaks, a location situated southwest of and outside the overlap area.

In 1598 the Spanish Governor and colonizer of New Mexico, Onate, visited the Hopi villages and took possession of the country in the name of the Crown of Spain.

In 1629 the Franciscan missionaries established a series of three missions in the Hopi villages of Awatovi, Shungopovi, and Oraibi. Father Benavides, one of the most important Spanish chroniclers of this period, had visited the Hopis in 1628 and 1630, but in 1633 he was killed at the village of Awatovi.

7. In 1680 the Pueblo Indians of New Mexico rebelled against the Spanish Government. The Hopi Indians joined in the rebellion which resulted in the temporary withdrawal of the Spanish from New Mexico. In 1692 Don Diego de Vargas returned, reconquered New Mexico for Spain,

and reestablished Sante Fe as the capital.

The Spanish reconquest of New Mexico in the 1690's led many of the Pueblo Indians in the Upper Rio Grande Valley to seek protection among the Hopi. About the year 1700 the Tewa Indians, who had come to the "First Mesa" in the heart of the Hopi country at the invitation of the inhabitants of the Hopi village of Walpi, established the village of Hano. Here they have continued to live ever since. During this period the pueblos of the ancient Tusayan (Hopi) province, as known to the Spanish, consisted of Walpi, Sichomovi, and Hano, on First Mesa; Mishongnovi, Shungopovi, and Shipaulovi on Second Mesa; and Oraibi on Third Mesa, all such sites being situated in the center of the Hopi claimed area and within the confines of the 1882 Hopi Executive Order Reservation, supra. The ancient village of Awatovi was destroyed in 1700.

During the years 1775 and 1776, two Catholic priests, Fathers Escalante and Garces, sought to open a way from California to the Hopi villages and on to Santa Fe, New Mexico. Father Escalante started from New Mexico and spent eight days in the Hopi towns. Father Garces started from California and traveled eastward across the Little Colorado River north of the Cameron and arrived at the Hopi village of Oraibi.

8. Although the Hopi Indians are pre-eminently a religiously oriented people, the Spanish missionaries had very little success in converting these Indians to the tenets of Christianity.

The Hopi worship was centered primarily on the eagle, it being considered the most sacred of birds. The Hopi Tribe had many eagle shrines that were visited periodically, although in the minds of the Hopi Indian one's actual presence at the particular shrine was not needed in order to satisfy the required religious attachment. In the buttes and higher mountain regions there were found many eagle shrines that were located forty miles or so from the nearest Hopi village claiming the ownership thereof. Such of the Hopi shrines as were located in San Francisco Peaks, west of the claimed area and at Chevelon Creek southeast of Winslow, Arizona, were quite remote from the principal Hopi villages. Many of these shrines had been physically abandoned over the years and long before the United States acquired sovereignty over the southwest portion of our country. Abandoned Hopi shrines can be found on Navajo Mountain, on the northwest perimeter of the overlap area, in the San Francisco Mountains, and around Winslow, Arizona in the Little Colorado Valley. The Hopi villages that had been located along the Little Colorado near Winslow were moved on to the Hopi mesas and further north to Oraibi, and into the Jeddito Valley, these locations being well within the subject tract and the confines of the 1882 Hopi Executive Order Reservation. In addition to the Hopi, other southwest tribes, such as the Navajos, Zunis, Acomas, Lagunas, and the Apache groups visited religious shrines that were located on many of the prominent mountain peaks.

9. The Navajo Indians, a branch of the Athapaskan people, and, who with the Apaches make up one linguistic unit, apparently migrated into the southwest from Canada. Just when the Navajos entered New Mexico is problematical, perhaps as early as 1300 A.D., or as late as 1500 A.D. Traditionally the Navajos refer to the upper Blanco and Largo Canyons in northern New Mexico as their ancestral lands, an area well east of the Hopi-Navajo claimed area that is involved therein. The lower Navajo Dam Reservoir region, also in New Mexico and east of the overlap area, was first settled by the Navajos in the 1500's and subsequently abandoned in the later 1700's probably due to the increasing hostilities with the Utes. In any event, the Navajos began to range further south and southwestward from the upper San Juan River areas during the Spanish period of sovereignty.

10. It was sometime during the early years of Spanish rule that the Navajo Indians were first introduced to horses and sheep, two items that would markedly increase their tribal mobility and foster a more nomadic existence.

As their population and animal stock increased in number, Navajo territorial demands increased accordingly. They grew more aggressive and warlike, and began with increasing regularity to raid and harass the Spanish settlements and the Pueblo Indian villages lying west of the Rio Grande River. Spanish reprisals against the Navajos were almost immediate, and as the colonial population grew in the Rio Grande Valley, the Navajos were compelled to move farther westward in order

to find the necessary range and to elude their enemies. Spanish slave raids against the Navajos, which were frequently carried out with the assistance of the Pueblo Indians, created more antagonism.

From 1720 until about 1750 an era of relative peace prevailed between the Spanish and the Navajos. This favorable situation was occasioned for the most part by the open hostility of the Ute Indians, who, coming down from the north, kept the Navajos busy and compelled them to move further south.

By the 1740's very few Navajo Indians remained in the Gobernador-La Jara area, most of them having receded southward toward the Big Bend Mesa and into the Cebolleta mountain region east of Mt. Taylor, an area somewhat east of the contested lands in this law suit.

Efforts by the Spanish missionaries in the 1740's to Christianize the Navajos living in the Cebolleta Mountains ultimately failed, and with the Spanish population in the Rio Grande Valley continuing to increase in the years that followed, territorial demands upon the Navajos and the other nomadic Indian tribes caused further migration south and west.

11. There was a renewal of Navajo raiding activity upon the Spanish colonial settlements and the neighboring Pueblo Indian villages that continued intermittently through the remainder of the Spanish regime as well as the entire 1821-1846 period of Mexican sovereignty.

Mexican officials considered themselves at war with the Navajos throughout the entire Mexican period, having conducted campaigns against

them in 1823, 1833, 1836 and 1838. It was also a period when the Hopi villages were no longer immune to Navajo raiding and hostility, although generally speaking the territory of the Navajos was still to the east of the Hopi mesas.

12. It was during the Mexican War between 1846 and 1848 that the Hopi Indians became better known to American authorities. In 1846, Charles Bent, the Superintendent of Indian Affairs for the New Mexico Territory reported to the Commissioner of Indian Affairs as follows:

The Moquis are neighbours of the Navajoes and live in permanent villages, cultivate grain, and fruits and raise all the varieties of stock. They were formerly a very numerous tribe in the possession of large flocks and herds but have been reduced in numbers and possessions by their more warlike neighbours and enemies the Navajoes. The Moquis are an intelligent and industrious people, their manufactures are the same as those of the Navajoes. They number about 350 families or about 2450 souls.

Apparently the Navajo had not yet settled to any extent in the Hopi country, their territory being described as to the east and at Canyon de Chelly. The Navajos along with the Apaches were still raiding the Rio Grande Pueblos to the east, and the Zuni Pueblo to the south. To the west the Navajos were raiding near the Hopi villages, while at the same time they were avoiding any contact with the warlike Utes to the north.

The United States had commenced exerting military pressure against the Navajos as early as 1846. A treaty of peace with the Navajos was sought in the same year but failed ratification. A second peace

treaty in 1848 also failed to be ratified.

13. With the advent of American sovereignty over the Southwest in 1848 under the Treaty of Guadalupe Hidalgo (9 Stat. 922), Navajo depredations seem to increase in frequency despite military operations against them. Ute and Apache raiding activities contributed to the general unrest.

In 1849 American authorities concluded a peace treaty with the Navajo tribe at Canyon de Chelly in the very heart of the Navajo country. This treaty was ratified in 1850 but failed to halt Navajo raids. In the same year a deputation of Hopi Indians arrived in Santa Fe, New Mexico, to complain bitterly to the authorities of the Navajo raiding and stealing in their country.

In an effort to check further Navajo raiding, Fort Defiance was established in 1851 in Arizona at a point just west of the present Arizona-New Mexico boundary line. The military operations emanating from Fort Defiance had a two-fold effect. The Navajo began to range further south, west, and northwest, and the military authorities were brought into closer contact with the Hopi Indians. It was the beginning of the period when the military reported more accurately the movement of the Navajos who obviously were ranging well into the overlap area.

In 1851 Navajos were reported pitching tents on both sides of the Rio de Chelly. In 1853 they were reported west of Jacobs Well (Ojo Redondo) in the southern part of the Hopi-Navajo claimed area. An 1851 map submitted by Lt. John G. Parke of the topographical engineers

depicts the so-called "Navajo country" as extending from the San Juan River and the lower reaches of its northern tributaries in the north to the Zuni Mountains, and Mt. Taylor in the south, and from Canyon Largo and Rio Puerco in the east, to Mesa de La Vaca or Black Mesa in the west. Black Mesa is situated well into the Hopi-Navajo overlap area within the northern boundary of the 1882 Hopi Executive Order Reservation.

A second base map of New Mexico that was prepared by the same Lt. Parke was utilized by Governor David Merriwether in 1855 when he sought by treaty to separate and identify the lands of Indian tribes residing in the New Mexico Territory, among them being the Hopi and Navajo. While the 1855 Merriwether Treaty failed to be ratified, it was the initial attempt by the United States to set up a Navajo reservation, the western boundary of which was a line that began at the mouth of Zuni River where it enters the Colorado River and ran north to the mouth of the Rio de Chelly where it enters the San Juan River. The "Merriwether Line" is almost parallel to and less than 20 miles east of the eastern boundary line of the 1882 Hopi Executive Order Reservation.

14. By 1858 Navajo were reported in the northern part of the overlap area around Calabasa Mesa, North Pass and north of the Hopi villages. To the south of the Hopi villages the Navajo could be located west of Jacobs Well, Navajo Springs and the Puerco River area. In the years that followed the Navajo Indians progressively moved into much

of the area surrounding the Hopi lands, being found even west of the Hopi villages.

The period 1858-1868 can be characterized as the Navajo flight period, one in which the United States military operations finally succeeded in quieting the Navajo raiding, and one in which a permanent Navajo Reservation was finally established.

In the summer of 1863, General James Carleton conceived the idea of collecting all Navajos and placing them on a new reservation on the Pecos River in New Mexico. An area forty miles square was thereafter set aside for the Navajo and the Mescalero Apaches at the Bosque Redondo with Fort Sumner in the center. Colonel Kit Carson was charged with the responsibility of carrying out the new plan. As a result of Carson's determined efforts, more than 8000 Navajos were at Fort Sumner by the end of April 1864.

Meanwhile, the United States had established an Indian agency for the benefit of the Hopi Tribe, with the headquarters at Keams Canyon which is twelve miles east of the nearest Hopi village and well within the area in suit.

15. The Navajos were not happy at Fort Sumner. Confinement in this manner was alien to their nomadic way of life. The fact that many of their fellow tribesmen were still at large only added to their discontent.

In 1868 the Congress sought to settle all matters of mutual concern when it authorized a commission to treat with the Navajo chieftains

at Fort Sumner. The result was the Navajo Treaty of June 1, 1868, (15 Stat. 667). Under the 1868 Treaty, a new Navajo Indian Reservation, some one hundred miles square, was established in northwestern New Mexico and northeastern Arizona, the boundaries of which were to encompass the heartland of what was traditionally considered to be Navajo country. In exchange for this new reservation, the Navajo Tribe agreed among other things to relinquish all occupancy rights to other lands outside of the reservation except the right to hunt on unoccupied lands contiguous thereto.

Following the conclusion of the 1868 Treaty, those Navajo Indians who had been confined at Fort Sumner, were released and began to move on to the new reserve. At this time the overall Navajo population was estimated at between twelve to thirteen thousand souls.

Despite the size of their new reservation, many Navajo Indians failed to acknowledge its boundaries and continued to move into other areas where some established farms. Other Navajo Indians, as was their custom, moved sizeable herds of livestock in a seasonal manner from mountain to valley. A steady stream of Navajo family groups began to move into the Black Mesa region in the northern part of the overlap area, and into the Jeddito Valley to the south.

16. In an effort to cope with the rapidly increasing Indian population and the steady pressure from nearby Mormon settlements, the Indian Agent at Fort Defiance, Arizona, recommended in 1876 that a reservation fifty miles square be set aside for the benefit of the

