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6 Attorneys for Defendants

7
8 UNITED STATES DISTRICT COURT
FOR THE
9 DISTRICT OF ARIZONA

10

11 WILLIARD SEKIESTEWA, CHAIRMAN OF)
12 THE HOPI TRIBAL COUNCIL OF THE)
HOPI INDIAN TRIBE, et al.,)

13 Plaintiffs,)

No. Civil 597 Pct.

14

vs.)

15 PAUL JONES, CHAIRMAN OF THE)
16 NAVAJO TRIBAL COUNCIL OF THE)
NAVAJO INDIAN TRIBE, et al.,)

ANSWER, COUNTERCLAIM
AND CROSS-COUNTERCLAIM

17 Defendants.)

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20 Comes now Paul Jones, as Chairman of Navajo Tribal
21 Council, for said Council, for the Navajo Indian Tribe, for
22 each and every member thereof and for each and every Navajo
23 Indian, using and occupying or who has or has had any claim of
24 any right, title, or interest, in the use and occupancy of any
25 part, parcel or portion of the lands described in the Executive
26 Order, dated December 16, 1882, and for answer to the Complaint
27 herein says:

28 1. Defendants admit the allegations of paragraphs 1, 3
29 and 4 of the Complaint.

30 2. Defendants are without knowledge or information suffi-
31 cient to form a belief as to the truth of the allegations
32 contained in paragraph 2 of the Complaint.

1 3. Answering paragraph 5 of the Complaint these Defendants
2 deny that the United States of America holds in trust for the
3 Hopi Indians any part, parcel or portion of the lands or
4 interests therein, described in paragraph 5 of the Complaint,
5 save and except that portion thereof described as follows:

6
7 Beginning at the northeast corner of
8 section 29^{1/2}, township 28 north, range 14
9 east, Gila and Salt River Meridian, Arizona,
10 on the southeast bank of the Dinnebito Wash,
11 unsurveyed; thence in a southeasterly direc-
12 tion to the northeast corner of township 25
13 north, range 17 east; thence in a north-
14 easterly direction to the northwest corner
15 of section 33, township 27 north, range 19
16 east, survey of July, 1891; thence due east
17 four miles to the northeast corner of
18 section 36, township 27 north, range 19
19 east, survey of July, 1891; thence in a
20 northeasterly direction to the northeast
21 corner of section 30, township 27 north,
22 range 20 east, resurvey of July, 1910;
23 thence in a northerly direction approxi-
24 mately 16 miles to the northeast corner of
25 section 6, township 29 north, range 20 east,
26 unsurveyed; thence west approximately 7
27 miles to the southwest corner of township 30
28 north, range 19 east; thence north two miles
29 to the northeast corner of section 25,
30 township 30 north, range 18 east, survey of
31 March, 1909; thence west approximately 20
32 miles to the point of intersection of the
southeast bank of the Dinnebito Wash with
the section line between sections 22 and 27,
township 30 north, range 15 east, survey of
May, 1909; thence down the southeast bank of
the Dinnebito Wash to the point of begin-
ning.

23 and these Defendants allege that neither the Plaintiffs nor
24 anyone claiming by, through or under them or either of them have
25 any right, title, interest or estate in or to any part, parcel
26 or portion of the rest, residue and remainder of the lands
27 described in paragraph 5 of the Complaint. Further answering
28 paragraph 5 of the Complaint these Defendants admit the United
29 States of America holds in trust for the Plaintiffs the lands
30 specifically described in this paragraph and allege that the
31 United States of America holds in trust for these Defendants

1 all the rest, residue and remainder of the lands embraced
2 within and set aside by the Executive Order of December 16,
3 1882.

4 4. Answering paragraph 6 of the Complaint these Defendants
5 admit they claim all the right, title, estate and interest in
6 and to all of the lands described in paragraph 5 of the
7 Complaint, save and except that part, parcel and portion thereof
8 specifically described in paragraph 3 hereof.

9 5. Answering paragraph 7 of the Complaint these Defendants
10 allege the United States of America does and as of right ought
11 to admit, claim and assert its trusteeship of the lands
12 embraced within the Executive Order of December 16, 1882, for
13 the beneficiaries set forth, delineated and described in
14 paragraph 3 hereof.

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COUNTERCLAIM

17 Comes now Paul Jones as Chairman of the Navajo Tribal
18 Council, for and on behalf of the Navajo Indian Tribe, each and
19 every member thereof and for each and every Navajo Indian,
20 using and occupying or who has or has had any claim of any
21 right, title, or interest, in the use and occupancy of any part
22 of the area embraced within and set aside by Executive Order of
23 December 16, 1882, and by way of Counterclaim against the
24 Plaintiffs and each of them alleges:

25 1. These Defendants here adopt and by reference incor-
26 porate herein all of the allegations of the foregoing Answer.

27 2. Commencing in the seventeenth century and continuing
28 until the present day, numerous members of the Navajo Indian
29 Tribe have occupied, used and controlled all of the lands in the
30 State of Arizona embraced within and set aside by the Executive
31 Order of December 16, 1882, save and except that part, parcel

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1 and portion thereof specifically described in paragraph 3 of
2 the foregoing Answer, which includes the mesas in the central
3 portion of the aforesaid lands which said mesa tops were
4 occupied by the Hopi Indians and are commonly referred to and
5 known as the First, Second and Third mesas. All of the lands
6 embraced within and set aside by the Executive Order of
7 December 16, 1882, other than the part, parcel and portion
8 thereof described in paragraph 3 of the foregoing Answer were
9 and are a part of the ancestral home of the Navajo Indians, and
10 members of the Navajo Tribe have for more than one hundred
11 years occupied and exercised dominion and control over the
12 entire area embraced within said Executive Order surrounding
13 the Hopi villages on top of the First, Second and Third mesas,
14 to the exclusion of all other occupants.

15 3. At the time of the assumption of American sovereignty
16 over the territory embraced within the aforesaid Executive
17 Order by the Treaty of Guadalupe Hidalgo, July 4, 1848
18 (9 Stat. 922), and continuously since that date the Hopis
19 occupied and have continued to occupy the same villages on top
20 of the First, Second and Third mesas located in the central
21 portion of the aforesaid Executive Order lands. The Hopi
22 population, as well as their area of occupation, was and is very
23 limited. During the years from 1540 when Coronado's soldiers
24 made the first call made by white men on the Hopi villages,
25 the Hopi population has been limited to approximately 2,500 to
26 3,000. Both before and after United States sovereignty was
27 established, the Hopis limited their occupation to the said mesa
28 tops where they were and are to this day distinguished for
29 their extraordinary capacity for passive resistance to change.
30 After this area became a part of the United States, the
31 Government tried through several successive

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1 Indian agents to persuade the Hopis to leave the mesas if only
2 to establish farms in the valleys below them, but the Hopis
3 resisted all such efforts to persuade them to leave their mesa
4 villages.

5 4. The presence of Navajo Indians in very large numbers on
6 the lands within the Executive Order area surrounding the Hopi
7 villages on the mesa tops was well known to and frequently re-
8 ported by many government officials prior to 1882 as was Hopi
9 occupancy and use of the First, Second and Third mesas. As white
10 settlement expanded westward, settlers arrived in ever-increasing
11 numbers, settled or trespassed upon Indian lands and interfered
12 with the efforts of the Government to protect Indian use and occu-
13 pancy thereof. The Indian agent then charged with the adminis-
14 tration of Hopi affairs, being otherwise powerless to protect
15 the Indians, including the Navajos, or to expel undesirable and
16 trouble-making non-Indian persons and settlers from Indian lands
17 which were then classified as public domain and therefore open to
18 entry by the white men, urged that the Government withdraw a large
19 area from settlement and sale and set it aside for exclusive use
20 of the Indians. As a result and by reason whereof the Executive
21 Order of December 16, 1882, was promulgated. It, among other
22 things, provides that an area of some 2,508,800 acres

23 "be and the same is hereby withdrawn from
24 settlement and sale, and set apart for the
25 use and occupancy of the Moqui (Hopi) and
26 such other Indians as the Secretary of the
27 Interior may see fit to settle thereon."

28 5. The occupation, use and control of all of that portion
29 of the Executive Order area, save and except that specifically
30 described in paragraph 3 of the foregoing Answer which sur-
31 rounded the said mesas by numerous members of the Navajo Indian

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1 Tribe, was well and fully known by the Government when the
2 Executive Order of December 16, 1882, was issued; the settle-
3 ment of said Navajos and of additional Navajos within the Exe-
4 cutive Order area subsequent to the issuance thereof on December
5 16, 1882, was ratified, approved and confirmed by successive
6 Secretaries of the Interior down to the present day.

7 6. Early expectations of the government that the two
8 Tribes would merge or become assimilated did not materialize
9 and no fundamental change in the relationship of the Hopis and
10 the Navajos took place in the decade after the Executive Order
11 was issued. The government used every effort to get the Hopis
12 off the mesas into more healthy conditions, promising them roofs,
13 doors, windows and floors for new homes, if they would move into
14 the valleys. While some homes were built, they remained vacant
15 most of the year and the Hopis invariably returned to their mesas
16 where they successfully resisted government efforts to expand
17 their limited occupation and use of the Executive Order area.
18 Their population remained almost static from 1,920 in 1884 to
19 2,200 in 1890, declined again to 1,832 by 1900, and by 1936,
20 when a constitution was adopted by the Hopis and approved by the
21 Secretary of the Interior, totaled approximately 3,000.

22 7. Following the failure of assimilation of the two tribes,
23 the United States Government attempted to demark a boundary line
24 between the Hopi area of occupancy and the Navajo area of occu-
25 pancy. The government proposed a boundary line in 1891 having a
26 radius of sixteen miles from the Hopi village of Mischongnovi.
27 Markers were put up on the proposed boundary line and Navajos
28 moved out of those areas then occupied by them within the said
29 boundary, but the Hopis refused to recognize any boundary line,
30 destroyed the markers, and the plan to maintain separately de-
31 fined areas failed.

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1 8. After the failure to maintain a marked boundary be-
2 tween the two Tribes, the government sought to set aside indi-
3 vidual allotments of lands as a solution. The Office of Indian
4 Affairs embarked on the first allotment program pursuant to the
5 Allotment Act of 1887, approved February 8, 1887 (24 Stat. 388),
6 and from 1892 to 1894 the government sought to allot lands in
7 severalty to the Hopis and to the Navajos. When the Commis-
8 sioner of Indian Affairs recognized the rights of the Navajos
9 to the land they then occupied near the Hopi mesas and refused
10 to eject them, the Hopis resisted the plan for allotment, and
11 it was abandoned. A second allotment scheme launched in 1907
12 also failed when the Hopis refused to accept the plots allot-
13 ted.

14 9. The Navajos at all times mentioned herein and now
15 are ready and willing to accept, respect and abide by any
16 properly determined boundary line between the two Tribes, but
17 as appears by the allegations hereof and by the Complaint
18 filed herein, the Hopis have not been and are not now willing
19 to restrict their claims and assertions of title to the lands
20 which are rightfully and justly theirs and to refrain from
21 claiming and asserting right, title and interest in and to
22 lands rightfully belonging to these Defendants. Defendants
23 are informed and believe that a majority of the Hopis share
24 the opinion of the Navajos as to the desirability for and
25 acceptance of a boundary line but that a faction or factions
26 generally known as the "traditionalists" have at all times
27 been, and at the present time are, unwilling or unable to dis-
28 associate their interest in far distant mountains and other
29 sacred places having to do with religious beliefs and cere-
30 monials from the concept of ownership and hence have at all
31 times refused to recognize any realistic legal solution of the
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attribution - order of Murray 5/19/59

1 problems of ownership of the lands embraced within the
2 Executive Order area. The Navajos respect the sacred places of
3 the Hopis and have their own distant sacred places which they
4 hope will always be similarly respected, but the Navajos do
5 not contend that they own every such sacred place as do the
6 traditionalists among the Hopis.

7 10. After December 16, 1882, members of the Navajo Tribe
8 continued to settle in said Executive Order area with recog-
9 nition and approval of the Secretary of the Interior, while
10 the Hopi Indians continued to confine and limit their
11 occupancy and use of the Executive Order area to their villages
12 on the First, Second and Third mesas. Numerous Secretaries of
13 the Interior recognized that segregation through the drawing
14 of a boundary line between the Navajo area and the Hopi area
15 offered the only possible solution to the Navajo-Hopi problem.
16 Views differed as to where the line of demarcation should be,
17 but every boundary line ever drawn in the numerous studies and
18 reports made at the direction of the Secretary of the Interior
19 or Congress, includes areas which coincide substantially with
20 the recommendation of every other study and report in recog-
21 nizing and confining Hopi occupation principally to the
22 villages on the mesa tops where they can be found to this day,
23 with varying recommendations as to the use of abutting agri-
24 cultural or grazing lands. No report ever suggested that the
25 Hopis used and occupied or should be given all of the area set
26 forth in the Executive Order of 1882.

27 11. All of the foregoing was well known to Congress, both
28 before and after passage of the Act of June 14, 1934, extending
29 the western boundary of the Navajo Reservation in Arizona to
30 the Colorado River. In making this 1934 extension of the
31 Navajo Reservation, a number of Executive Order extensions of

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1 the Navajo Reservation, including all of the lands in the
2 Executive Order of December 16, 1882, where Navajos were then
3 settled or had theretofore been settled with the approval of the
4 Secretary of the Interior, were all blanketed into the Navajo
5 Reservation, without prejudice, however, to whatever rights the
6 Hopis had in the area of the Executive Order of December 16,
7 1882. Being itself ill-equipped to do so, confronted with the
8 Hopi protests as herein above alleged and hopeful of a satisfac-
9 tory solution of the problem by the executive branch of the
10 government, the Congress postponed defining a boundary line
11 between the two tribes leaving the problem, for the time being,
12 to the Executive Branch of the government charged with admini-
13 stration of Indian affairs. In an effort purportedly to solve
14 the problem for administrative purposes, the Bureau of Indian
15 Affairs established in the Executive Order area "Land Management
16 Unit 6," embracing 499,248 acres. It was designated the "Hopi
17 Unit" and was for the exclusive use of the Hopi Indians, Plain-
18 tiffs herein. The remaining fourteen "Land Management Units"
19 including the remainder of the Executive Order area were
20 for the exclusive use of the Navajo Tribe. The creation of
21 these Units in the manner and for the purposes aforesaid was
22 approved by the Commissioner of the Bureau of Indian Affairs on
23 December 28, 1937. Thereafter, for reasons unknown to and
24 beyond the comprehension of these Defendants, but without right
25 or warrant of authority and contrary to and in violation of the
26 rights of these Defendants resulting from exclusive Navajo
27 occupancy, use and control of the lands affected thereby the
28 Defendant, United States of America, acting by and through the
29 Bureau of Indian Affairs, on more than one occasion extended
30 and enlarged Said Land Management Unit 6 so that as of April 24,
31 1943, it embraced 631,194 acres. The enlargements and

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1 extensions of Unit 6 were accomplished by wrongfully and
2 illegally including therein approximately 132,000 acres which
3 had been occupied and used by members of the Navajo Tribe from
4 the earliest times and which successive Secretaries of the
5 Interior had recognized and confirmed as Navajo tribal lands.
6 The Navajos then in possession of the area embraced in said
7 expansion were forced to vacate said lands contrary to and
8 against their will, all in derogation of the lawful rights of
9 the Navajos in said area pursuant to the Executive Order of
10 December 16, 1882.

11 12. The Congress has ratified, approved and confirmed
12 this administrative segregation of the two Tribes by annually
13 appropriating funds for the purpose of and which were used in
14 the administration of the Hopi Agency by the Bureau of Indian
15 Affairs administering the Hopi portion of the Executive Order
16 area and by the Navajo Agency administering the affairs of the
17 Navajo Reservation, including about four-fifths of said
18 Executive Order area occupied by the Navajos. The Navajos
19 living within said area participated in all tribal affairs,
20 elected delegates to the Navajo tribal council, shared benefits
21 which accrued to Navajos in other parts of the Navajo Reserva-
22 tion, and in all other respects regarded the areas of occupancy
23 as part of the Navajo Reservation.

24 13. On December 19, 1936, the Secretary of the Interior
25 ratified and approved the Hopi Constitution adopted by the Hopi
26 Tribe on October 24, 1936. In and by this Constitution so
27 approved as aforesaid, the jurisdiction of the Hopi Tribe was
28 defined as the area occupied by the villages on the three mesas
29 herein above mentioned and such additional land as would be
30 agreed upon between the Hopis and the United States and the Hopis
31 and the Navajos. No agreements touching or concerning such

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1 additional lands were ever reached between the two Tribes.
2 14. Both the Executive and Legislative Branches of the
3 United States Government have continued to recognize and approve
4 the use and occupancy to the present day by members of the
5 Navajo Tribe of all of the Executive Order area, except for
6 Land Management District 6 as re-defined and wrongfully extended
7 by the Bureau of Indian Affairs in 1943, and the inclusion of
8 Navajos using and occupying the said area as a part of the tribe
9 sharing like other Navajos on the reservation in all benefits of
10 tribal income or appropriations and participating in tribal
11 organization. Notwithstanding the recognition, confirmation and
12 ratification by the United States of Navajo Tribal interests in
13 and to the Executive Order area, the Hopi Indian Tribe and its
14 individual members have at all times material herein, claimed
15 an estate or interest in and to said lands held and occupied by
16 the Navajos adverse to the Navajo Indian Tribe and have inter-
17 ferred with and are now interfering with the peaceful enjoyment,
18 possession and use by Navajo Tribal members of the lands of the
19 Navajo Tribe within the Executive Order area of December 16,
20 1882, notwithstanding the fact that the Hopi Indian Tribe and
21 its individual members have no estate, right, title or interest
22 whatsoever in said lands or any part thereof.

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24 CROSS-CLAIM AGAINST THE UNITED STATES OF AMERICA

25 Comes now Paul Jones as Chairman of the Navajo Tribal
26 Council, for and on behalf of the Navajo Indian Tribe, each and
27 every member thereof and all Navajo Indians using and occupying,
28 or who have used and occupied, any portion of the area embraced
29 within and set aside by the Executive Order of December 16, 1882,
30 and for cross-claim against the Defendant, United States of
31 America, alleges:

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Beginning at the northeast corner of section ~~28~~ township 28 north, range 14 east, Gila and Salt River Meridian, Arizona, on the southeast bank of the Dinnebito Wash, ~~unsurveyed~~; thence in a southeasterly direction to the northeast corner of township 25 north, range 17 east; thence in a northeasterly direction to the northwest corner of section 33, township 27 north, range 19 east, survey of July, 1891; thence due east four miles to the northeast corner of section 36, township 27 north, range 19 east, survey of July, 1891; thence in a northeasterly direction to the northeast corner of section 30, township 27 north, range 20 east, resurvey of July, 1910; thence in a northerly direction approximately 16 miles to the northeast corner of section 6, township 29 north, range 20 east, unsurveyed; thence west approximately 7 miles to the southwest corner of township 30 north, range 19 east; thence north two miles to the northeast corner of section 25, township 30 north, range 18 east, survey of March, 1909; thence west approximately 20 $\frac{1}{4}$ miles to the point of intersection of the southeast bank of the Dinnebito Wash with the section line between sections 22 and 27, township 30 north, range 15 east, survey of May, 1909; thence down the southeast bank of the Dinnebito Wash to the point of beginning.

18 The Navajo Tribe has the exclusive interest in all of the lands
19 embraced within and set aside by the Executive Order of
20 December 16, 1882 and that said lands shall hereafter be and
21 constitute a part of the Navajo Indian Reservation.

22 2. That the Plaintiffs and each of them and all persons
23 claiming by, through or under them or either of them, be per-
24 manently and perpetually enjoined and restrained from entering
25 upon, crossing over, except at the places for the purposes and
26 in the manner fixed and determined by said final Judgment, and
27 from otherwise or in any manner interfering with the peaceful
28 possession, use and enjoyment by these Defendants of said lands
29 so determined to be a part of the Navajo Indian Reservation.

30 3. That the Plaintiffs and each of them and all persons
31 claiming by, through or under them or either of them, be

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1 permanently and perpetually enjoined from asserting any claim
2 whatsoever in and to the lands so determined to be a part of the
3 Navajo Indian Reservation or to any part thereof.

4 4. That the Defendant, the United States of America, be
5 adjudged and determined to be the trustee of and to hold in
6 trust for the exclusive use and benefit of the Navajo Indian
7 Tribe all of the lands embraced within and set aside by the
8 Executive Order of December 16, 1882, save and except those lands
9 specifically described in paragraph 3 of the foregoing Answer.

10 5. That these Defendants shall have such other and further
11 relief in the premises as the nature of the case may require and
12 as to the court may seem meet, just and equitable.

13 6. That these Defendants have and recover the costs of this
14 suit.

15
16 NORMAN M. LITTELL
17 1824-26 Jefferson Place, N.W.
18 Washington 6, D. C.
19 JOSEPH F. McPHERSON
20 Window Rock, Arizona
21 LAURENCE A. DAVIS
22 2214 North Central Avenue
23 Phoenix, Arizona

24
25 *By Laurence A. Davis*
26
27 Attorneys for Defendants
28 Paul Jones, Chairman of the
29 Navajo Tribal Council, the
30 Navajo Indian Tribe and all
31 Navajo Indians claiming an
32 interest in the area set aside
by Executive Order dated
December 16, 1882.

1 One copy each of the foregoing Answer, Counter-
2 claim, and Cross-claim, mailed, postage prepaid, this 1st day
3 of December, 1958, to:

4 John S. Boyden
5 351 South State Street
6 Salt Lake City, Utah

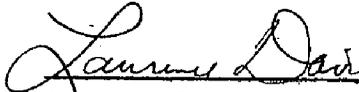
7 Fennemore, Craig, Allen & McClennen
8 First National Bank Building
9 411 North Central Avenue
10 Phoenix, Arizona

11 Attorneys for the plaintiff.

12 Two copies of the foregoing Answer, Counterclaim
13 and Cross-Claim mailed, registered mail, postage prepaid,
14 this 1st day of December, 1958, to:

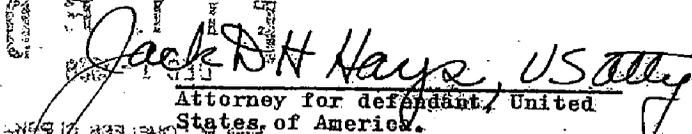
15 William P. Rogers,
16 Attorney General of the United States
17 Department of Justice,
18 Washington 25, D.C.

19 Attorney for defendant, United States of America

20 

21 Attorney for plaintiff, Paul Jones,
22 Chairman of the Navajo Tribe of Indians

23 Service of one copy of the foregoing Answer,
24 Counterclaim, and Cross-claim accepted this 1st day of
25 December, 1958.

26 
27 Attorney for defendant, United
28 States, of America.