

JUN 16 1961

BEFORE THE
Indian Claims Commission

—
No. 196
—

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, *Petitioner,*

v.

THE UNITED STATES OF AMERICA, *Defendant.*

—
ANSWER
—

Comes now the defendant, by its Assistant Attorney General, and for its answer to the petition herein states:

FIRST DEFENSE

As and for a First Defense, defendant alleges that:

1. The petition fails to state a claim upon which relief can be granted.

SECOND DEFENSE

As and for a Second Defense, defendant:

2. Admits the allegations set forth in the first two sentences of paragraph 1 of the petition. Except as so admitted, defendant denies the remaining allegations of paragraph 1 of the petition.

3. Admits the allegations in paragraphs 2 and 3 of the petition.

4. Denies each and every allegation set forth in paragraphs 4, 5, 6, and 7 of the petition.

5. Denies each and every allegation set forth in paragraph 8 of the petition, except that defendant admits that on July 4, 1848, defendant acquired sovereignty over the area occupied by the Hopi Indians at that time.

6. Denies each and every allegation set forth in paragraphs 9, 10, 12, 13, 15, 16, 18, 19, 21, 22, 24, 25, 27, 28, 30, and 31 of the petition.

7. Denies each and every allegation set forth in paragraphs 32, 33, and 34 of the petition. Defendant alleges that the petitioner, the Hopi Tribe, is a corporation organized under the Act of June 18, 1934 (48 Stat. 934, as amended) and that under said Act the petitioner has complete charge of its own property and other assets. Defendant further alleges that under said Act, petitioner is not the assignee or successor in interest of the individuals who are the descendants of the aboriginal Hopi Indians, nor is petitioner the assignee, successor in interest, or beneficiary of any funds which may be held by defendant on behalf of, or for the benefit of, the Hopi Indians.

THIRD DEFENSE

As and for a Third Defense, defendant alleges that:

8. Defendant is informed and believes that the lands described in paragraph 7 of the petition were used entirely or in part by the following tribes or bands of Indians:

- (a) Navajo Tribe
- (b) Various Paiute bands
- (c) Zuni Tribe
- (d) Various Western Apache Tribes
- (e) Capote Utes
- (f) Weeminuchi Utes

9. The ancestors of the present day Hopi Indians did not have exclusive use, occupancy or possession of any portion of the lands described in paragraph 7 of the petition.

10. The ancestors of the present day Hopi Indians did not have "aboriginal" or "Indian" title to any part of the lands described in paragraph 7 of the petition.

11. The petitioner and the present day Hopi Indians do not have any compensable interest in the lands described in paragraph 7 of the petition.

FOURTH DEFENSE

As and for a Fourth Defense, defendant alleges that:

12. Defendant repeats and realleges each and every allegation set forth in paragraphs 8 through 11, inclusive, of the answer herein and makes them a part hereof.

13. The Navajo Tribe has filed a petition with the Indian Claims Commission, *The Navajo Tribe of Indians v. The United States of America*, Docket No. 229, which asserts a claim, based upon aboriginal title, to all of the lands described in paragraph 7 of the petition herein.

14. If the said claim of the Navajo Tribe be valid, petitioner herein and/or the ancestors of the present day Hopi Indians could not have had aboriginal title to any portion of the lands claimed by the said Navajo Tribe.

FIFTH DEFENSE

As and for a Fifth Defense, defendant alleges that:

15. Defendant repeats and realleges each and every allegation set forth in paragraphs 8 through 11, inclusive, of the answer herein and makes them a part hereof.

16. The Southern Paiute Nation has filed a petition with the Indian Claims Commission entitled *The Southern Paiute Nation et al v. The United States of America*, Docket No. 88, which asserts a claim, based upon aboriginal title, to part of the lands described in paragraph 7 of the petition herein.

17. Paul Jake and others have filed a petition on behalf of the Southern Paiutes with the Indian Claims Commission entitled *Paul Jake et al v. The United States of America*, Docket No. 330, which asserts a claim, based upon aboriginal title to part of the lands described in paragraph 7 of the petition herein.

18. If any of the said claims of the Southern Paiutes, filed in Docket Nos. 88 and 330, be valid, petitioner

herein and/or the ancestors of the present day Hopi Indians could not have had aboriginal title to any portion of the lands claimed by the aforesaid claimants in Docket Nos. 88 and 330.

SIXTH DEFENSE

As and for a Sixth Defense, defendant alleges that:

19. On or about December 16, 1882 the President of the United States, by Executive order, created a reservation for the Hopi Indians and such other Indians as the Secretary of Interior might settle thereon.

20. The value of the area occupied within said Executive order reservation by the Hopi Indians and/or petitioner exceeds by far the value of the questionable rights of the Hopi Indians to the lands described in paragraph 7 of the petition.

SEVENTH DEFENSE

As and for a Seventh Defense, defendant alleges that:

21. On or about July 22, 1958, the defendant, by statute (72 Stat. 403), provided that the lands occupied by the Hopi Indians, pursuant to the terms of the Executive order of December 16, 1882 establishing the Hopi Reservation, should be held in trust for said Hopi Indians.

22. The aforesaid statute (72 Stat. 403) provides a judicial forum, other than the Indian Claims Commission, for the determination of the area within the former Hopi Executive order reservation which the defendant shall hold in trust for the Hopi Indians.

23. Pursuant to said statute (72 Stat. 403) there is now pending in the United States District Court for the District of Arizona an action to determine the area, within the former Hopi Executive order reservation, to which the Hopi Tribe may have full beneficial ownership. All of the parties to said pending action have conceded the claim of the Hopi Indians to a portion of the former Hopi Executive order reservation. The Hopi Indian claim to the balance of said former Hopi Executive order reservation is disputed by the Navajo Tribe of Indians.

24. The value of the lands conceded to belong to the Hopi Indians as well as the value of any other lands which the United States District Court for the District of Arizona may determine belong to the Hopi Tribe, as of July 22, 1958, will far exceed the value of any lands to which the Hopi Indians may have had aboriginal Indian title as of July 4, 1848, or as of any subsequent date.

EIGHTH DEFENSE

As and for an Eighth Defense, defendant alleges that:

25. From time to time, although under no obligation to do so, defendant has gratuitously expended various sums of money and other things of value on behalf and for the benefit of the petitioner and the Hopi Indians. The amount of such sums and the value of such other things is not known to the defendant at this time, but will be subsequently set out by an amendment hereto under Section 12 of the Rules of the Commission, if the Commission shall determine that the defendant is liable to the petitioner in any amount.

NINTH DEFENSE

As and for a Ninth Defense, defendant alleges that:

26. If any sum shall be found owing to petitioner or the Hopi Indians by defendant, petitioner or the Hopi Indians are not entitled to any interest thereon.

WHEREFORE, defendant prays that the petitioner and the Hopi Indians recover nothing in this action and that the petition be dismissed.

RAMSEY CLARK
Assistant Attorney General

WALTER A. ROCHOW
Attorney

CERTIFICATE

I hereby certify that on the _____ day of June, 1961, ten (10) copies of the above and foregoing answer were mailed to the attorney of record for the petitioner, Mr. John S. Boyden, Suite 2, Utah Building, South State Street, Salt Lake City 11, Utah.

WALTER A. ROCHOW
Attorney