

IN THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF ARIZONA

DEWEY HEALING, Chairman of the Hopi
Tribal Council of the Hopi Indian
Tribe, et al.,

Plaintiff,

v.

PAUL JONES, Chairman of the Navaho
Tribal Council of the Navaho Indian
Tribe, et al.,

Defendants.

No. Civil - 579

PLAINTIFF'S REPLY TO COUNTERCLAIM

Dewey Healing, Chairman of the Hopi Tribal Council of the Hopi Indian Tribe, for and on behalf of the Hopi Indian Tribe including all villages and clans thereof and on behalf of any and all Hopi Indians claiming any interest in the lands described in the Executive Order dated December 16, 1882, replies to the counterclaim of defendant, Paul Jones, as follows:

1. Replying to paragraph 1 of defendant's counterclaim, realleges and incorporates by reference, all of the allegations of plaintiff's complaint herein on file, and denies each and every allegation of defendant's answer that is contradictory to the allegations of said complaint.

2. Replying to paragraph 2 of defendant's counterclaim, denies the same.

3. Replying to paragraph 3 of defendant's counterclaim, admits that the Hopi Indians have, since the treaty of Guadalupe Hidalgo, July 4, 1848 (9 Stat. 922) continuously occupied the villages on top of the first, second and third mesas located in the central portion of the aforesaid Executive Order lands, but denies that said occupation was limited to such area.

Further replying to said paragraph, alleges that the Hopi people at various times occupied the valleys below the mesas, including all of the territory embraced within the Executive Order of December 16, 1882, but that such occupation was hampered and hindered by the encroachment of raiding and trespassing Navahos and said Hopis were required, because of the belligerent and lawless attitude and actions of the Navaho

people and the overwhelming odds of the Navaho population, to fortify themselves on the mesa tops to avoid extermination. Denies each and every other allegation in said paragraph contained.

4. Replying to paragraph 4 of defendant's counterclaim, admits that the Navaho Indians entered the lands within the Executive Order Reservation prior to 1882 and that such entry was known by government officials and alleges that such infiltration into this area by the Navaho Tribe and resultant imposition by the Navaho Indians upon the Hopi Indians constituted one of the most compelling reasons requiring and prompting the Executive Order of December 16, 1882. Admits that white settlement also expanded westward into the Indian country. Alleges the Indian Agent then charged with administration of the Hopi affairs urged the government to withdraw the land embraced within the Executive Order Reservation and further alleges said proposed withdrawal was to protect the Hopi Indians against the Navaho Indians in addition to offering effective means of control of non-Indians within the area. Admits the promulgation of the Executive Order dated December 16, 1882. Denies each and every other allegation in said paragraph contained.

5. Denies each and every allegation of paragraph 5 of the counterclaim.

6. Replying to paragraph 6 of defendant's counterclaim, denies that the government expected a merging of the Navaho and Hopi Tribes. Further answering said paragraph, alleges that the area of the Executive Order Reservation was and is sufficient to meet the needful purposes of the Hopi population and no larger. Denies each and every other allegation in said paragraph contained.

7. Denies each and every allegation of paragraph 7 of the counterclaim.

8. Replying to paragraph 8 of defendant's counterclaim, plaintiff alleges that the government sought to allot lands in severalty to the Hopi Indians but such plan was abandoned and denies each and every other allegation in said paragraph contained.

9. Denies each and every allegation of paragraph 9 of the counterclaim.

10. Denies each and every allegation of paragraph 10 of the counterclaim.

11. Replying to paragraph 11 of defendant's counterclaim, alleges that the Bureau of Indian Affairs established in the Executive Order area, Land Management Unit No. 6 as a conservation measure for the control of grazing within the area, without regard to the traditional or legal rights of the Hopi Indians and that the boundaries of said Unit 6

were later changed. Denies each and every other allegation in said paragraph contained.

12. Replying to paragraph 12 of defendant's counterclaim, admits and alleges that the Navahos living within the area of the Hopi Executive Order Reservation have continued to participate in all Navaho tribal affairs, electing delegates to the Navaho Tribal Council, and sharing benefits which accrued to Navahos on the Navaho Reservation. Denies each and every other allegation in said paragraph contained.

13. Replying to paragraph 13 of defendant's counterclaim, admits that on December 19, 1936 the Secretary of the Interior ratified and approved the Hopi constitution adopted by the Hopi Tribe October 24, 1936. Further admits and alleges that Article I of said constitution is as follows:

"JURISDICTION

The authority of the Tribe under this Constitution shall cover the Hopi villages and such land as shall be determined by the Hopi Tribal Council in agreement with the United States Government and the Navajo Tribe, and such lands as may be added thereto in future. The Hopi Tribal Council is hereby authorized to negotiate with the proper officials to reach such agreement, and to accept it by a majority vote."

Admits and alleges that the Hopi Tribe has never obtained an agreement with the United States Government and the Navaho Indians concerning lands outside the Hopi villages. Denies each and every other allegation in said paragraph contained.

14. Replying to paragraph 14 of defendant's counterclaim, alleges that the Navahos using and occupying a portion of said Executive Order Reservation have continued to share like other Navahos all the benefits of Navaho tribal income, all appropriations and have participated in tribal organization of the Navaho Tribe, and alleges that the Secretary of the Interior has never settled said Navaho Indians upon said Executive Order Reservation pursuant to said Executive Order and the government has never required the Navaho Indians living within said Executive Order Reservation to abandon their Navaho tribal benefits, that said occupation of the Hopi Executive Order Reservation by said Navaho Indians was and is without right or lawful authority. Admits and alleges that the Hopi Indian Tribe and its individual members have at all times material herein claimed an estate or interest in and to all the lands of the Executive Order Reservation held and occupied by Navahos and denies each and every other allegation in said paragraph contained.

15. Denies each and every allegation in said counterclaim contained not specifically

admitted herein.

WHEREFORE, plaintiff demands judgment that the counterclaim herein be dismissed with costs and disbursements.

Plaintiff's Address:

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One copy of the foregoing Plaintiff's Reply to Counterclaim mailed with postage prepaid this 15th day of June, 1959, to:

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Two copies of the foregoing Plaintiff's Reply to Counterclaim mailed by registered mail, postage prepaid, this 15th day of June, 1959 to:

William P. Rogers
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John S. Boyden
Attorney at Law