

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,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Defendant.

DOCKET NO. 196

PETITIONER'S REQUESTED FINDINGS OF FACT
ON ISSUES OF TITLE AND LIABILITY
AND ACCOMPANYING BRIEF

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STATEMENT

The Hopi petition herein was filed with the Indian Claims Commission on August 3, 1951. A portion of the area claimed by the petitioner as aboriginal lands of the Hopi Tribe to which said Tribe claims Indian title is similarly claimed by the Navajo Tribe in Docket 229. This Commission entered an Order on the 20th day of August, 1959, consolidating Docket 229 with Docket 196, Docket 91, The Havasupai Tribe of the Havasupai Reservation, Arizona, Docket 30, The Fort Sill Apache Tribe of the State of Oklahoma, et al., Docket 48, The Chiricahua and Warm Springs Tribes of Apache Indians, Docket 22-D, The San Carlos Apache Tribe of Arizona, et al., Docket 22-J, The Northern Tonto Apache Tribe, Docket 227, The Pueblo of Laguna, et al., and Docket 266, Pueblo de Acoma were also joined with Dockets 196 and 229 for certain purposes. However, the Hopi claim in Docket 196 conflicts with none of the claims joined for trial, except the claim of the Navajo, Docket 229.

While these proposed findings are primarily on the issue of title, in accordance with the Order of the Commission of October 13, 1958, some phases of liability are incidentally and necessarily included.

FINDING 1

The Hopi Tribe¹ 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),² the majority of the members of which reside on the Hopi Reservation in Arizona. The Hopi Tribe is a tribal organization recognized by the Secretary of the Interior as having authority to represent said Hopi Indians,² who constitute an identifiable group of American Indians entitled to sue under the Indian Claims Commission Act of August 13, 1946. (60 Stat. 1049)

NOTE: Ex. 1 (Hopi). The Disturnell Map published in New York in 1847 and referred to in the Treaty of Guadalupe-Hidalgo in 1848 had a significant notation in Spanish printed thereon translated as follows:
"The Moquis have conserved their independence since the year 1680."

- 1 Ex. 78 (Hopi), pg. 2. "The 'Hopi' and the 'Moqui' are one and the same Indian people."
- 2 Ex. 78 (Hopi), pg. 172. "The proposed constitution and by-laws were submitted to the voters of the Hopi Tribe on October 24, 1936 for their ratification or rejection. The vote was 651 to 104 in favor of ratification. The Secretary of the Interior approved these instruments on December 19, 1936, and they became effective on that date."

FINDING 2

The Hopi Tribe timely filed its claim herein.³ No claim asserted herein, or any part thereof, is included in any suit pending in the Court of Claims of the United States or pending in the Supreme Court of the United States, and no claim asserted herein, or any part thereof, has been filed in the Court of Claims under any legislation in effect on August 13, 1946.

3 The claim was filed August 3, 1951. 25 U.S.C. 70k (60 Stat. 1052) provides that the Commission shall receive claims for a period of 5 years after August 13, 1946.

FINDING 3

Petitioner has entered into a contract with John S. Boyden, Attorney at Law, to prosecute its claims against the United States, which contract has been duly approved by the Commissioner of Indian Affairs for and on behalf of himself and the Secretary of the Interior, as required by law, and is in full force and effect.⁴

⁴ Attorney's Contract B.I.A. Symbol No. I-1-ind. 42501, Vol. 18, pg. 42; extended by letter from Edward W. Fisher, Deputy Solicitor, Nov. 29, 1961, for a period of two years from July 27, 1961; extended for an additional two year period by letter of W. Wade Head, Area Director, on Sept. 9, 1963.

FINDING 4

Petitioner is and always has been the sole and absolute owner of the claims in this cause asserted. No person other than petitioner has ever had any interest therein; no assignment or transfer of the claims asserted by petitioner, or any part thereof, or any interest therein, has ever been made; and petitioner has not been paid for the claims herein allowed, or any part thereof, and is justly entitled to recover from the United States upon the claims as herein found to be due, after the allowance of all just credits and offsets.

FINDING 5

No action has been taken by the Congress or by any Department of the government with respect to the claims made herein, except the Act of August 13, 1946, supra, which provides a forum to adjudicate such claims, the Act of June 14, 1934, (48 Stat. 960, at 961), which granted an undetermined interest in the lands described in said Act to such Hopi Indians as were then located thereon, and the Act of July 22, 1958, (72 Stat. 402), which provided a forum for the determination of the unextinguished title of petitioner in a part of the lands claimed herein.⁵

⁵ Ex. 78 (Hopi). The judgment of the court can be found at page 225.

Ex. 678 (Navajo), pg. 9445. Dr. Harold S. Colton, testifying at a hearing of the Senate Sub-Committee on Indian Affairs, at Tuba City, Arizona, March 20, 1931, stated: "Before 1330 there is no question but that the ancestors of the Hopi occupied the areas between Navajo Mountain and the Little Colorado and between the San Francisco Mountains and the Lukachukais. Hundreds of their ruined villages of that period confirm this statement. In 1291 to 1299 occurred one of the most severe droughts of record."

Ex. 655 (Navajo), pg. 129. The Southern Paiute of the Moapa Valley have a tradition that the builders of the pueblo villages in the valley went to Arizona and were the ancestors of the modern Hopi.

Ex. G 136, pg. 42; Ex. G 142, pg. 29; Ex. G 171, pg. 110; Tr. Ellis 9389; Ex. E 51a, pgs. 187, 218; Ex. E 52, pg. 7; Ex. E 112, pg. 18; Ex. E 158, pg. 216; Ex. E 507, pg. 123; Ex. E 509, pg. VIII; Ex. E 518, pgs. 58, 109; Ex. E 555, pg. 26; Ex. E 570, pg. 10; Ex. 15A (Navajo), pgs. 2,3; Ex. 678 (Navajo), pg. 9444; Ex. 691 (Navajo), pgs. 53-66; Tr. Eggan 7172, 7317, 7414; Tr. Correll 5860; Tr. Schroeder 8081; Ex. 9 (Hopi), Vol. 1, pg. 7. Other documents and testimony supporting the above contention will be found in these exhibits.

7 Ex. G 144, pg. 10; Ex. E 574, pg. 69.

8 Ex. E 112, pgs. 17, 18.

Ex. E 500, pg. 17. Oraibi, on 3rd Mesa, has been occupied continuously since 1100 A.D., as indicated by sherds in village dumps.

FINDING 7

Commencing about the year 1275 A.D., the ancestors of the modern Hopi began a movement to concentrate their dwellings near the center of the territory used by them, initiating an active building period in the area now described as the Hopi 1882 Executive Order Area.⁹ Thus, an earlier widely scattered pueblo people¹⁰ commenced an amalgamation¹¹ in an area which was to become the base for their continued utilization of the larger territory formerly populated by them.¹² Former residences became integral parts of a shrine system, and villages physically abandoned, remained actively, spiritually a part of the Hopi life and way.¹³ The lands between their former villages and their new abode constituted an important asset for their Indian sustenance and customs. Trips to shrines in areas including eagle hunting grounds, salt deposits, and former residences marked destination points between which the Hopi hunted game, gathered herbs and wood, and collected ceremonial objects, making use of the territory in typical Indian fashion.¹⁴

9 "While the regions about Navajo Mountain, Tsegi Canyons, much of Black Mesa, and the Moenkopi drainage were being depopulated, the Hopi pueblos of Oraibi, Old Shungopovi, Old Mishongnovi, Old Walpi, Chuckovi, Hoyapi, Sikiatki, as well as other pueblos in the Hopi area, show an active building period. The same is true of the five great Hopi Pueblos in Jeddito Valley - Kokopnyama, Hepshoptanga, Chakpahu, Kiwaiku, and Awatobi - which flourished with a total population of well over three thousand people." (Colton) Ex. E 518, pg. 109.

10 Ex. E 51a, pg. 187. ". . . Ruins of villages and houses closely resembling those of the Hopi are found all over northeastern Arizona, and it is certain that the Hopi are the cultural descendants of a people who once occupied a much larger area. The cultures of San Juan and Little Colorado areas are the most closely related."

"The Jeddito Valley ruins are so similar in construction to the modern towns and their environment is so similar, that although the valley is now occupied by Navajos, it should geographically be considered a part of the Hopi Country." (John T. Hack)

- 11 Tr. Eggen 7319-20; Ex. 15 (Hopi), pg. 1. ". . . During the thousand years 600 A.D. to 1600 A.D. the original Hopi community received additional people from the north from around Navajo Mountain, and the Tsegi Canyons area; from the south along the Little Colorado, and even increments from the east". (Colton)

Ex. E 518, pg. 110. "In a study of all these separate areas from 1150 to the coming of the Spaniards, we may observe a certain trend - from more and smaller pueblos to fewer and larger. If we could have visited northern Arizona in 1150, we would have seen hundreds of small masonry pueblos scattered on both sides of every valley everywhere, with a large total population. Three hundred years later we would have found the whole population compressed into about twelve large villages". (Colton)

Ex. E 511, pg. 341. ". . . You can see the great increase in population in the Hopi between 1275 and 1400, an increase of over four fold. This is due to the migration just before 1300, when the country north, east and west of the Hopi country was abandoned by the puebloans. The Hopis must have received the survivors of dozens of pueblos". (Colton)

- 12 Ex. E 500, pg. 149. ". . . In their early migrations from distant pueblos to their ultimate homes, each clan halted at intervals, where towns were built but were afterward deserted. The sites of these abandoned villages are indicated by ruins which are very numerous in Arizona and also in parts of New Mexico. Thus it resulted that men of certain clans claim rights in springs near ruins in which their forefathers lived, and at times of ceremony they revisit these ancestral springs to obtain water which is considered particularly efficacious in the performance of ancient rites; thus, also, certain tracts of land are regarded as the property of this or that clan. The present ownership of eagle-nests in the vicinity is a survival of a similar claim." (Fewkes)

Ex. E 500, pg. 17.

Ex. E 500, pg. 148. "The curious fact comes out that these eagle preserves are near the place of ancient occupancy of the clans and show in a most interesting way the lines of migration by which the several clans traveled to the villages where they now live. These rights are jealously guarded by the Hopi and are one of the sore spots in their relations with the Navajo". (Hough)

Tr. Eggan 7407. ". . . They don't just take a helicopter to the shrine, however. The area in between is important to them, too. I have suggested they do other things in between. They gather herbs and plants the same way the Navajo do. They may hunt over that territory. They may bring back wood or they may bring back ceremonial objects. . ."

Tr. Eggan 7165-66. The Hopi are an identifiable group of Indians identified with Tusayan pueblo culture. They are one of the few tribes in North America still residing in their ancestral homeland. Their ancestors many thousands of years ago came into the intermountain areas between the Rocky Mountains and the Sierra Nevada.

The ancestors of the Hopi settled round the springs in the southern margins of Black Mesa. They lived to begin with in small villages, pit houses, later masonry houses, and then pueblos above ground. Throughout this period they cultivated corn, beans, squash, hunted deer, antelope, rabbit, mountain sheep, and gathered wild plants throughout the area for food. During the later pueblo period these villages gradually developed in size and complexity as a result of trade with neighboring areas, a population expansion, and from migration. During most of this period the people moved easily over a wide area.

- 13 Tr. Eggan 7405. "They abandoned them (shrines) physically. They did not abandon them spiritually and they continued to make use of them. They continued to visit them".

Also Tr. Eggan 7220-21.

Ex. G 142, pg. 29. ". . . What is important is that this area be recognized as a sacred area. Use is made of it by priests who visit the shrines to perform certain rites, to trap eagles, and to gather various herbs and minerals necessary to their rites. The Hopi does not think of this region as an area to be used for agriculture or for exploitation of the natural resources."

- 14 Additional sources supporting this matter are: Ex. G 142; Ex. E 18, pgs. 363-64; Ex. E 124, pg. 177; Ex. E 51a, pg. 74.

FINDING 8

The first visit to the Hopi by Europeans was in 1540¹⁵ when General Francisco Vasquez Coronado sent Don Pedro de Tovar and a small detachment to investigate the Seven Pueblos of Tusayan¹⁶ for the purpose of gaining information concerning the area and its people. There were no settlements between the present Village of Zuni¹⁷ and the Moqui villages.¹⁸ The Moqui Indians were found to possess cotton clothes, dressed hides, flour, salt, pinion nuts, corn, native fowl and a few turquoise gems.¹⁹ They cultivated fields of maize, beans, peas, melons and pumpkins.²⁰ The Indians were familiar with the area from their villages to and including the Colorado River, and sent guides to assist the Spanish Explorers of the region.²¹ The Moqui country provided a hunting ground for bears, lions, wild cats and otters.²² The Indians gathered and stored pinion nuts found in the region, cultivated their fields and tended their flocks and herds.²³ There were no other Indians between the villages and the Grand Canyon.²⁴ These facts were ascertained by the Coronado Expeditions.

15 Ex. E 500, pg. 1; Ex. G 205, pg. 1; Ex. 11 (Hopi), pg. 1.

Ex. E 47 (Hopi), pg. 4. "The present dwelling place of the Moquis is not believed to have changed since the coming of Coronado with the first Spanish Expedition to this country in 1541."

Ex. 22 (Hopi), pg. 4. "It (Oraibi) stands today on the identical spot where it was discovered by a party of Coronado's men in the summer of 1540, and is one of the most obdurately conservative, fixed facts in all the history of Arizona."

16 Ex. 6 (Hopi), pg. 4; Ex. 18 (Hopi), pg. 2; Ex. 9 (Hopi), pg. 2. Tusayan was the Spanish name of the Hopi villages.

17 Ex. 6 (Hopi), pgs. 3, 4; Ex. 9 (Hopi), pg. 2. Cibola was the Spanish name of the Zuni villages.

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- 18 Ex. 6 (Hopi) .
- 19 Ex. 6 (Hopi), pg. 2 .
- 20 Ex. 34 (Hopi); Ex. G 147, pgs. 38,39; Ex. 78 (Hopi), pg. 109; Ex. 6 (Hopi),
pg. 2 .
- 21 Tr. Ellis 7527; Ex. 9 (Hopi), pgs. 1,2; Ex. 6 (Hopi), pg. 2.
Ex. 6 (Hopi), pg. 3. The purpose of the trip was to explore the
Colorado River. The Hopi guides pointed out their salt deposits in
the area.
- 22 Ex. 6 (Hopi), pg. 4 .
- 23 Ex. 34 (Hopi); Ex. 78 (Hopi), pg. 109; Ex. G 147, pg. 39.
- 24 Ex. 9 (Hopi), pg. 2; Ex. G 205, pgs. 1,2.

FINDING 9

In 1582 Antonio de Espejo, a Spanish merchant from New Mexico, organized an expedition that eventually took him through Zuni and on to the Moqui country where he visited Awatovi, Walpi, Shungopovi, Mishongnovi and Oraibi.²⁵ They received 4000 cotton blankets from the Moqui²⁶ and were fed venison, and dried rabbits, beans, squash and corn.²⁷ The Indians wore cotton garments.²⁸ Espejo also obtained Moqui guides for his purposes. They took him further south than they had taken the Coronado party, this time to the Moqui silver mines located on Anderson Mesa near the San Francisco Peaks.²⁹ Espejo encountered no Indians between Zuni and the Moqui villages.³⁰

25 Ex. E 500, pg. 1; Ex. E 524, pg. 20.

26 Ex. 8 (Hopi), pg. 3; Ex. 11 (Hopi), pg. 3; Ex. 12 (Hopi); Tr. Eggan 7174.

27 Ex. 8 (Hopi), pgs. 3,4; Tr. Ellis 9387.

28 Ex. 8 (Hopi), pg. 4; Ex. 11 (Hopi), pg. 3; Tr. Eggan 7329.

29 Ex. 8 (Hopi), pgs. 5,6; Ex. 10 (Hopi), pg. 3 et. seq.

30 Ex. 7 (Hopi); Ex. E 70, pg. 193; Tr. Eggan 7174.

FINDING 10

Oñate was sent in 1598 to the Moqui to gain submission of the Moqui Indians to Spain and the Catholic Church.³¹ He was accompanied by Francisco de Escobar.³² They made no mention of any Navajo Indians between Zuni and the Moqui Villages or west of the Villages.³³ Oñate encountered a small nomadic band of Indians in the west generally thought to be ancestors of the modern Apaches.³⁴ He saw the Moqui farms at Moenkopi in 1604.³⁵

31 Ex. E 500, pg. 1; Ex. 13 (Hopi); Ex. E 524, pgs. 20, 21.

32 Ex. 10 (Hopi), pg. 1.

33 Ex. 687 (Navajo), pgs. 141, 142; Ex. E 70, pg. 193; Ex. E 511, pg. 338; Ex. S 641.

34 Ex. 9 (Hopi), pg. 3; Ex. 13 (Hopi).

35 Ex. E 510, pg. 46.

FINDING 11

Beginning in 1629 the Franciscans established a series of three missions in Moqui towns, the Mission of San Bernardino at Awatovi, the Mission of San Bartolome at Shungopovi and the Mission of San Francisco at Oraibi.³⁶ A convent was established at Mishongnovi.³⁷ Fray Francisco de Porras, Fray Andres Gutierrez, Fray Cristobal de la Concepcion, Fray Francisco de San Buenaventura, Fray Alonso de Posada, Fray Jacinto de Monpean, Fray Jose de Espeteta, Fray Jose de Figueras, and Father Fray Agustin de Santa Maria were all instrumental in establishing and maintaining a Spanish-Catholic contact with the Hopi from 1629 until the Pueblo Revolt in 1680.³⁸

36 Ex. E 500, pg. 2; Ex. 11 (Hopi), pgs. 3,4; Ex. E 524, pg. 21.

37 Ex. 11 (Hopi), pg. 4.

Fray Alonso de Benavides was one of the old chroniclers upon whom we depend for many of the old Spanish records.

38 Ex. 11 (Hopi), pgs. 3,4; Ex. 16 (Hopi).

FINDING 12

The Moqui joined the Pueblos of New Mexico in the Pueblo Revolt of 1680³⁹ and were led by one Espelta. They murdered three Franciscan friars, and shook off vassalage to the Spanish dating from the early seventeenth century.⁴⁰

39 Tr. Eggan 7174-75 (Revolt); Ex. E 524, pg. 21.

40 Ex. 25a (Hopi), pgs. 1,2; Ex. E 500, pg. 2.

Tr. Eggan 7174-75.

"...the Pueblo revolt, which was general in the southwest resulted in all of the friars being killed in the Hopi country and the Spaniards being driven out of New Mexico."

FINDING 13

In 1692 Don Diego de Vargas came to the Hopi country for the purpose of reconquering the territory for Spain.⁴¹ The Hopi were warned that de Vargas could not be trusted and as a result the Hopi Indians fled to the mountains.⁴² At this time it was reported that the Hopi mined a metallic substance or earth containing vermillion.⁴³ De Vargas traveled the Hopi area from Zuni, but made no mention of ever seeing the Navajo within the Hopi area.⁴⁴

41 Ex. E 500, pg. 2; Ex. 17 (Hopi); Tr. Eggan 7175; Ex. E 524, pgs. 21,22.

42 Ex. E 3, pg. 30; Ex. G 137, pg. 30; Euler Report, pg. 2, in Havasupai case.

43 Ex. 17 (Hopi), pg. 1.

44 Ex. 17 (Hopi); Ex. G 200, pg. 212 footnote.

"... a sketch of the northern frontier as of the close of the 17th Century mentions the Moqui and Zuni, but not the Navajo."

FINDING 14

Following the Pueblo Revolt of 1680 the Jesuit priests of the Catholic Church hungered to add the Moqui to their fold, but the Moqui generally turned a scornful ear.⁴⁵ However, the people of Awatobi once again turned to the Catholic faith. Once a flowering Hopi town, Awatobi met its ultimate fate late in 1700,⁴⁶ when, owing to the attitude of its people toward the other Hopi and to the fact that they had been encouraging the Spaniards to send missionaries, the natives of the other Hopi villages fell upon them before daybreak, killed many of the inhabitants and distributed the survivors (mostly women and children) among the other pueblos, Mishongnovi receiving most of them.⁴⁷

45 Ex. 25a (Hopi), pg. 2; Ex. 20 (Hopi), pgs. 1,2; Ex. E 1; Ex. E 5.

46 Ex. 11 (Hopi), pg. 4; Ex. 50 (Hopi), pg. 2; Ex. E 525; Ex. E 509; Ex. E 545; Ex. E 564, pg. XXI.

47 Ex. 11 (Hopi), pg. 4.

Tr. Eggan, pg. 7175. ". . . soon after the reconquest the Awatovi mission was reestablished but the Hopi from other villages apparently came over and destroyed the mission and population in part was killed and in part was divided among the First and Second Mesa villages."

Ex. E 500, pg. 2.

FINDING 15

During the years 1775 to 1776, both Father Escalante and Father Garces looked for a way of opening a route from California to the Hopi and on to Santa Fe. They worked on opposite ends of the same problem;⁴⁸ Escalante started from New Mexico, and Garces started from California. Father Escalante spent eight days in Hopi towns in 1775, made a report on their population,⁴⁹ and suggested how they might be conquered.⁵⁰ In 1776 Father Garces, head of the Franciscan Mission of San Xavier del Bac just south of Tucson, went to Cataract Canyon, and then eastward across the Little Colorado north of Cameron and on to Oraibi where he was most inhospitably received, and hence within a few days withdrew.⁵¹ In the travels of both priests, Hopi cattle were found to graze over an extensive area to the west of the Hopi villages.⁵² Escalante found an abundance of black cattle and mustangs.⁵³ Garces noted extensive trade⁵⁴ to the west, especially with the Havauspai.⁵⁵

48 Ex. 24 (Hopi); pg. 1; Ex. E 524, pgs. 22, 23.

49 Escalante found 7,494 Hopi raising horses, sheep, cattle and other animals, besides abundant corn, beans, chili and cotton. Ex. 25a (Hopi), pg. 9

Tr. Ellis 7738; Tr. Ellis 9387; Ex. E 46; Ex. R 22; Tr. Ellis 7529; Ex. 25c (Hopi); Ex. 25d (Hopi); Ex. 23a (Hopi); Ex. 23b (Hopi).

50 Ex. E 500, pg. 3.

51 Ex. E 500, pg. 3; Ex. 22 (Hopi).

Ex. 58 (Hopi) map. This map showing the Moqui but no other Indians in the area was based upon the journey of Garces. See Tr. Eggan 7236-37.

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- 52 Tr. Ellis 7589; Ex. 15 (Hopi); Tr. Ellis 7737-8; Ex. 25c (Hopi);
Ex. 25d (Hopi); Ex. 23a (Hopi); Ex. 23b (Hopi); Ex. 24 (Hopi);
Ex. 15A (Navajo), pg. 7.

In 1776 there were large herds of cattle drifting out to the west, out to Moenkopi, and north of there, explaining that the Hopi had to keep their sheep, horses and cattle far enough from their farm lands so that these creatures did not eat their corn patches. Consequently the animals had been taken out at least a distance of 15 miles from the farm lands.

- 53 Ex. 25c (Hopi); Ex. 25d (Hopi); Ex. 24 (Hopi); Ex. 23a (Hopi);
Ex. 23b (Hopi); Tr. Eggen 7178.
- 54 Ex. 22 (Hopi), pgs. 1,2; Ex. 24 (Hopi), pgs. 1,2; Ex. G 18, pg. 105;
Ex. 14 (Hopi).

The Hopi carried on extensive trade, especially with their neighbors to the south and west. As Garces traveled from the Mojave toward the Hopi Reservation he saw several groups of Hopi traveling in the opposite direction carrying material to trade. The Hualapais wore Hopi shirts and castilian belts showing communication between the two regions hundreds of miles apart. Havasupai obtained cotton seed from the Hopi. Hopi articles were found in Western Arizona.

Euler Report, pg. 5, in Havasupai case; Abalone shells from Pacific were traded.

- 55 Tr. Schroeder 8088-89; Ex. 70h (Hopi); Ex. G 41. Schroeder said that Garces found only the Havasupai west of the Hopi, and that the Navajo were not the Indians who left structures and ruins west of Moenkopi prior to 1882.

FINDING 16

During the entire Spanish period commencing in 1540 to the time of the Mexican Revolution when the area claimed by the Hopi became a part of Mexico, in about 1823, the Navajo were clearly east of the Hopi country.⁵⁶ From all historic evidence it appears that the Navajo entered what is now Arizona in the last half of the eighteenth century.⁵⁷ Although the Hopi Indians were village pueblo dwellers, their culture,⁵⁸ knowledge,⁵⁹ livelihood pursuits⁶⁰ and use of consumer goods and products,⁶¹ established their occupancy of the territory from the San Juan on the north to the Little Colorado on the south, and from the Colorado on the west to the Canyon de Chelly on the east. The absence of any other Indians in the area established the exclusive character of the Hopi occupancy.

56 Ex. 57 (Hopi). A Spanish topographical engineer named Nicholas de la Fora, in the period around 1776-1778 drafted this map. The "Provincia de Moqui" was west of the province of New Mexico.

Tr. Eggen 7233-36; Ex. 24 (Hopi), pg. 4; Ex. 23a (Hopi); Ex. 23b (Hopi).

Tr. Eggen 7236. The Province of Moqui was reported to the King of Spain, in this period, as larger in all directions than the present Hopi claim.

57 Ex. 78 (Hopi), pg. 111; Ex. G 110, pg. 396; Ex. G 205, pg. 5; Ex. G 130, pg. 307-8; Ex. G 203, pg. 245; Ex. S 512 L (Map); Ex. S514N (Map); Ex. S 646, pg. 5; Ex. S 634, pg. 245; Ex. E 17, pg. 16; Ex. E 51a, pg. 57; Ex. E 56, pg. 245; Ex. E 518, pgs. 107,111; Ex. 15A (Navajo), pg. 4.

58 See Finding 20 infra and footnote 3A thereunder.

59 Ex. 6 (Hopi); pgs. 2,3; Ex. 8 (Hopi), pgs. 5,6; Ex. 9 (Hopi), pgs. 1,2;
Ex. 10 (Hopi), pg. 5; Tr. Ellis 7527.

Hopi Indians served as guides for exploring parties.

60 See Finding 20 infra and footnotes 3B, 3C, 3D, 3E and 3F thereunder.

61 See Finding 20 infra and footnotes 3C, 3D and 3F thereunder.

FINDING 17

During the period from 1823 until the beginning of the Mexican War in 1846, the Hopi claimed area was under the control of the newly independent state of Mexico.⁶² During this period the Mexicans were deep in politics and the United States was just beginning to add a new element of uncertainty to the complexion of the times.⁶³ The Navajo were probably at their raiding best during this time of political change⁶⁴ notwithstanding the fact that Juan Bautista Vigil, last of the Mexican governors of New Mexico, made campaigns against the Navajo in 1823, 1833, 1836 and 1838. There was an almost constant condition of warfare.⁶⁵ The Navajo had been held in check by the Spanish government by bribes and occasional punitive expeditions, but they could no longer be controlled by the weak Mexican government in Santa Fe.⁶⁶ Hopi Villages were not immune to the Navajo plunder during this period,⁶⁷ but the Navajo territory was still well to the east.⁶⁸

62 Tr. Eggan 7178-9. See also Finding of Fact 31, Ind. Cl. Com. Docket 22-A, 257.

63 Ex. 12 (Hopi), pg. 3.

64 Id.

65 Id.

66 Ex. G 139, pg. 1.

67 Tr. Eggan 7179; Ex. 78 (Hopi), pg. 109; Ex. 76 (Hopi), pg. 46; Ex. 29 (Hopi); Ex. E 500, pg. 5; Ex. S 635, pg. 24. The Hopi were also plundered by an American fur trapping party in 1834.

68 Tr. Eggan 7388; Ex. S 501A; Ex. S 506F Map; Ex. S 514M Map; Ex. E 51a, pg. 57; Ex. G 18, pg. 95; Ex. 67 (Hopi); Ex. G 109 Map; Ex. G 120 Map; Ex. R 150, pg. 11.

See Finding 34 *infra* for location of Navajo at this time.

FINDING 18

During the period of the Mexican War between 1846 and 1848 the Hopi continued to be an identifiable group of Indians.⁶⁹ In November, 1846, Charles Bent, Superintendent of Indian Affairs for the territory of New Mexico, reported to the Commissioner of Indian Affairs:

"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."⁷⁰

The Navajo were still raiding the Rio Grande pueblos to the east, Zuni to the south, and the Moqui to the west. The Utes to the north were too warlike to be profitably raided.⁷¹ The Navajo were not yet settled in the Hopi country, their visits were either for raiding or trading.⁷² Navajo Indians then described their territory at Canyon de Chelly and to the east.⁷³

69 Tr. Eggan 7408.

70 Ex. G 29, pg. 7; Ex. 40 (Navajo); Ex. E 51a, pg. 187.

71 Ex. G 126, pg. 83.

72 Tr. Eggan 7349.

73 Ex. G 137, pg. 31.
Ex. G 25, pgs. 287, 291. Sandoval, a Navajo Chief and guide, described the principal haunts of the Navajo in 1848 as 200 miles west from Ceboleta in the neighborhood of the great Tcheusca Mountain on the Continental Divide near the western base of the Tcheusca Ridge of the Cordilleras on the Laguna Colorado, or Red Lake. He further described this as the "heart of the Navajo Country."
Ex. 42 (Navajo), pg. 3.

FINDING 19

The Treaty of Guadalupe-Hidalgo was signed February 2, 1848, ratification exchanged May 30, 1848, and proclaimed July 4, 1848.⁷⁴ Under the provisions of this Treaty the lands herein claimed by the Hopi Indians came under the jurisdiction of the United States government.⁷⁵ Among other Articles the Treaty provided as follows:

ARTICLE VIII.

"Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States, as defined by the present treaty, shall be free to continue where they now reside, or to remove at any time to the Mexican republic, retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever.

"Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexican citizens, or acquire those of citizens of the United States. But they shall be under the obligation to make their election within one year from the date of the exchange of ratifications of this treaty; and those who shall remain in the said territories after the expiration of that year, without having declared their intention to retain the character of Mexicans, shall be considered to have elected to become citizens of the United States.

"In the said territories, property of every kind, now belonging to Mexicans now established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States.

ARTICLE IX.

"Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the constitution; and in the mean time shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction."

Whether the Hopi Indians became citizens of the United States under the terms of the Treaty has been subject to considerable question,⁷⁶ but in any event they would be as Mexicans protected in their property under Sections VIII and IX of the Treaty, and if American citizens they would be protected in their property rights under the Constitution of the United States.⁷⁷ The guarantee of the protection of Indian property rights is not a product of legal inferential deduction, but its basis is found in the clear wording of the Treaty. The last paragraph of Article XI provides:

"For the purpose of giving to these stipulations the fullest possible efficacy, thereby affording the security and redress demanded by their true spirit and intent, the government of the United States will now and hereafter pass, without unnecessary delay, and always vigilantly enforce, such laws as the nature of the subject may require. And finally, the sacredness of this obligation shall never be lost sight of by the said government when providing for the removal of the Indians from any portion of the said territories, or for its being settled by citizens of the United States; but on the contrary, special care shall then be taken not to place its Indian occupants under the necessity of seeking new homes, by committing those invasions which the United States have solemnly obligated themselves to restrain."

NOTE: For the map referred to in the Treaty of Guadalupe-Hidalgo see Ex. 1 (Hopi).

74 9 Stat. 922.

75 Ex. 78 (Hopi), pg. 110.

76 Handbook on Indian Law - Cohen - pg. 385.

77 U.S. Constitution, Am. V.

FINDING 20

On July 4, 1848, and prior thereto from time immemorial, petitioner owned or continually held, occupied and possessed a large tract of land described generally as follows, to wit:

Beginning at the juncture of the Colorado and Little Colorado⁷⁸ Rivers; thence in a southeasterly direction along the Little Colorado River to a point at the mouth or entrance of the Zuni River into said Little Colorado River; thence in a northerly direction along the boundary line of the Navajo country as fixed by the Merriwether Treaty of 1855⁷⁹ to a point where said Merriwether line intersects the San Juan River; thence along the San Juan in a generally westerly direction to its juncture with the Colorado River; thence in a southwesterly direction along said Colorado River to point of beginning.⁸⁰

NOTE: Petitioner (Hopi Tribe) in paragraph 7 of its original claim, filed with the Commission, asserted Indian title to a larger tract of land than is now claimed. This requested Finding is in conformity with petitioner's proof at time of trial as substantially confirmed by proof of defendant's witnesses Schroeder, (Ex. S 807 Map), Ellis, (Ex. E 100 Map), and Reeve, (Ex. R 180 Map).

78 Ex. G 209, pg. 2. Little Colorado River is also referred to as Colorado-Chiquito.

79 Ex. G 108. The Merriwether line is depicted on a map in this Exhibit, being a sketch of the Navajo country by First Lieut. W.D. Whipple, 82nd U.S. Infantry.

Ex. 2 (Hopi) Map showing Merriwether line.

See also Finding 25, *infra*.

80 The Hopi Indians have traditionally constructed dwellings of a pueblo or apartment house type. In 1848, and for many years prior thereto, their daily activities upon which they relied for sustenance and protection extended many miles out from the mesas, constituting an actual use and occupancy of the lands

above described. This dominion at the time was exclusive and recognized as shown by the footnotes of other proposed findings herein. It will be noted that occasional trading or raiding by other tribes was done by venturing out of the confines of their own territory.

Ex. 59 (Hopi) Map. The Disturnell map published in New York in 1847 was referred to in the Treaty of Guadalupe-Hidalgo of 1848. Ex. 1 (Hopi) Map. The pertinent part is reproduced in this Exhibit. While the map is very inaccurate in the location of some of the geographical features it will be noted the Navajo country is to the north and east of the Moqui.

Euler Report pgs. 7, 8, in Havasupai case, noted that neither Escalante nor Garces saw Navajo north or west of the Hopi as late as 1776, and Escalante reported in 1775 that the Hopi country was bounded by the Cosninas on the west and northwest and the Navajo on the east.

A. SHRINES, RUINS AND PETROGLYPHS:

Shrine areas were of particular significance because trips to the shrines were coupled with many related activities such as hunting, trapping eagles, gathering herbs, plants, berries, minerals and other items necessary to Hopi life.

Dr. Eggan testified, Tr. 7221: "I think they not only made multiple use, but they made a relatively intensive use of their territory both on their reservation and on the neighboring regions."

See Finding 7 and footnotes thereunder.

Dr. Eggan further testified, Tr. 7429: "I think there is clear evidence they hunted over much of this area, they gathered wild plants for a considerable variety of purposes, they herded cattle and sheep over much of this area, that they had agricultural fields mainly in the heart of this area, that they gathered ceremonial products as evidenced both by a continuation of these and by the shrines which we have located on these maps over an even wider area."

"In many respects this claim is conservative."

For maps locating various shrines in all portions of the claimed area as above described see: Ex. 66 (Hopi), Map of eagle shrines; Ex. 68 (Hopi), Map of active Hopi eagle shrines and eagle shrine areas, (discussed by Eggan at Tr. Eggan 7460), by clans or mesa; Ex. 69 (Hopi), Map of Hopi shrines other than eagle shrines; Ex. E 502 Map.

Ex. 69a (Hopi), Map of additional active Hopi eagle shrines and eagle shrine areas by clans or mesa; Ex. 69b (Hopi), Migration Legend Of The Snake And Flute Clans; Exs. 69c, 69d, 69e, 69f, 69g (Hopi), Photographs of petroglyphs and shrines; Ex. 69h (Hopi), Migration Shrines of Poley Clan; Exs. 69i, 69j, 69k (Hopi), Photographs of Poley Clan shrines. See also Ex. 55 (Hopi), pg. 6.

Ex. E 550, pg. 29; Also Ex. G 142, pg. 29. "This is an area bounded roughly by the Colorado-San Juan Rivers to the north, the present Arizona-New Mexico state line on the east, the Zuni and the Mogollon Rim to the south, and the San Francisco Peaks to the west. It is an area of shrines, sacred natural features, eagle trapping locations, and regions where salt is obtainable. It is necessary to realize, concerning this second claim, that actual use is not the important thing. What is important is that this area be recognized as a sacred area. Use is made of it by priests who visit the shrines to perform certain rites, to trap eagles, and to gather various herbs and minerals necessary to their rites. The Hopi does not think of this region as an area to be used for agriculture or for exploitation of the natural resources."

Tr. Eggan 7324, 7393, 7404-05, 7439; Tr. Ellis 7565, 7676, 7675, 9068; Tr. Pitrat 9641; Ex. E 503, pg. 18; Ex. 50 (Hopi), pgs. 1-10; Ex. E 124, pgs. 175, 177; Ex. E 571, pg. 638; Ex. E 513, pgs. 2,3. Willow Springs 6 miles east of Tuba City is an oft-visited Hopi shrine. Clan symbols have been carved into the stones there for generations. Ex. E 518, pgs. 4, 57; Ex. E 549, pg. 60; Ex. 678 (Navajo), pg. 9445; Ex. 15A (Navajo), pg. 7; Ex. S 635, pg. 25; Ex. E 532; Ex. E 533, pgs. 33-35; Ex. G 142, pg. 29; Ex. 691 (Navajo), pgs. 53-69; Ex. 41 (Hopi), pg. 11; Ex. E 561; Ex. E 564, pg. 18; Ex. E 51a, pg. 187; Ex. E 112, pg. 18; Ex. 50 (Hopi), pg. 5.

(a) WEST:

Ex. 68 (Hopi) Map; Ex. 69 (Hopi) Map;
Ex. 55 (Hopi), pg. 7; Ex. 15A (Navajo),
pg. 3; Ex. E 520, pg. 32, et seq.; Tr.
Schroeder 8081, 8105, 8624;

(b) SOUTH:

Tr. Eggan 7404-05. "They abandoned shrines
in the country around San Francisco Moun-
tains, the shrines down around Winslow and
their shrines over in the east. But still
they feel that those places belong to them."

Ex. 68 (Hopi) Map; Ex. 69 (Hopi) Map; Ex.
9 (Hopi), pgs. 5, 7; Ex. 50 (Hopi), pg. 4;
Ex. E 560, pg. 43; Ex. E 530, pg. 17; Ex.
E 517, pg. 22; Ex. E 540, pgs. 322, 331,
332; Ex. E 541, pgs. 190, 191; Ex. E 124,
pg. 177; Ex. E 555, pg. 27; Ex. G 9, pg.
23; Ex. G 1, pgs. 8, 9; Ex. G 10, pgs. 73,
75, 76; Ex. R 20, pg. 76; Ex. 648 (Navajo),
pg. 276.

(c) NORTH:

Ex. 50 (Hopi), pg. 3. "One of the oldest,
if not the most ancient of all the Walpi
clans, is the Snake, which formerly lived
at a place called Tokonabi, near Navaho
Mountain, far north of the Hopi mesas. In
their migration southward the members of
this clan were accompanied by others, among
whom was the Horn clan. They built houses
at intervals in their migration, the ruins
of which are pointed out, and which are
still known by name to the traditionists of
the clan. On the abandonment of a pueblo
several miles north of Walpi, the Horn
clans separated from the Snake and went to
a pueblo called Lenanobi, which, as its name
implies, was inhabited by Flute (Lena) clans.
After this consolidation these two clans
abandoned Lenanobi and joined the Snake set-
tlement at Walpi."

Ex. 68 (Hopi) Map; Ex. 69 (Hopi) Map; Ex.
69a (Hopi) Map; Ex. G 162, pg. 1; Ex. G 39,
pg. 11; Ex. G 61, pg. 346; Ex. G 89, pgs.
1, 2, 3; Tr. Pitrat 9637, et seq.; Ex. 656
(Navajo), pg. 28.

(d) EAST:

Ex. 68 (Hopi) Map; Ex. 69 (Hopi) Map;
Ex. 69a (Hopi) Map; Ex. 47 (Hopi), pg. 4;
Ex. E 51a, pg. 74, Canyon de Chelly formerly Hopi; Ex. 51b, pg. 378, Canyon de Chelly formerly Hopi; Tr. Ellis 9390, Canyon de Chelly formerly Hopi; Ex. E 531, pg. 664.

(e) EXECUTIVE ORDER:

Ex. 68 (Hopi) Map; Ex. 69a (Hopi) Map;
Ex. 50 (Hopi), pg. 4; Ex. 526, pg. 637;
Tr. Eggan 7171.

B. GRAZING AND AGRICULTURE:

Tr. Eggan 7319, 7326; Tr. Eggan 7429. ". . . they herded cattle and sheep over much of this area, that they had agricultural fields mainly in the heart of this area."

Ex. 15A (Navajo), pg. 7. The Hopis have traditionally in the past made use of the land within 40 or 50 miles of their villages for hunting, grazing and agriculture, etc.

Ex. 55 (Hopi), pgs. 5-8; Ex. 24 (Hopi), pg. 7; Ex. 25c (Hopi), pg. 3; Ex. 15 (Hopi), pg. 3.

Tr. Ellis 7590. Dr. Ellis explained that the Hopi were required to keep their sheep, horses and cattle far enough from their farmlands so that these creatures would not eat their cornpatches, noting that they were far beyond the Hopi cornfields, which themselves extend out 15 miles from Moenkopi. See also Tr. Ellis 7738.

Ex. 6 (Hopi), pg. 2.

Ex. 23b (Hopi), pg. 10. "We traveled by extensive plains on which the herds of cattle and horses of Moqui graze. . ." (Fray Dominguez with Escalante)

Ex. G 42, pgs. 116, 129; Ives describes Moqui grazing and agriculture in 1858.

Ex. E 51a, pgs. 186-187; Ex. E 112, pg. 18; Ex. 44 (Hopi), pg. 1. Hopi on Little Colorado 1878.

Tr. Egan 7393.

Ex. 28 (Hopi), pgs. 1, 2. Hopi peach orchards and gardens in 1834.

Ex. G 37, pgs. 22, 90, 91, 93. In 1869 it was reported the Hopi grazed cattle as far south as Prescott.

Ex. G 96, pg. 3; Ex. E 560, pg. 43; Ex. 564, pg. XXI, et seq.; Ex. 47 (Hopi), pgs. 4,5; Ex. 12 (Hopi), pg. 1, Coronádo; Ex. E 510, pg. 46, Onate; Ex. 8 (Hopi), pgs. 1-5, Espejo; Ex. 678 (Navajo), pg. 9444, Garces and Escalante.

Ex. G 18, pg. 105. The Havasupai obtained cottonseed from the Hopi.

Ex. G 117, pg. 368.

Ex. G 18, pg. 119. Cotton and tobacco; Ex. 55 (Hopi), pg. 2; Ex. 25c (Hopi), pg. 3. Beans, corn, etc.; Ex. E 51b, pg. 268; Ex. 42 (Hopi). Melons, pumpkin, etc.; Ex. 47 (Hopi), pgs. 2,3,4,6,7. Peaches, wheat, etc.; Ex. 655 (Navajo), pg. 129; Ex. E 509, pg. VIII; Ex. E 552, pg. 861; Tr. Ellis 7723, 7738.

C. TIMBER AND PLANTS:

Ex. 3 (Hopi); Ex. E 538, pg. 35, 36. "It is true that the Hopi extend their environment by long journeys for various substances. Every berry patch for many miles around is known and visited; a journey of 200 miles or so for salt from the Grand canyon, wild tobacco from the Little Colorado, sacred water from Clear creek, or pine boughs from San Francisco mountain, the home of the snow, is thought of little moment. To my knowledge, an Oraibi man made a continuous run of 160 miles as bearer of a note and answer. The knowledge of the resources of a vast territory possessed by the Hopi is remarkable, and the general familiarity with the names and uses of plants and animals is surprising. Even small children were able to supply (sic) the names, corroborated later by adults."

Ex. E 555, pg. 22. Wood from Black Mesa and San Francisco Peaks.

Ex. E 504, pgs. 50, 56. Timber from Black Mesa.

Ex. E 559, pg. 49. Timber, and various woods and plants for many purposes.

Tr. Eggan 7393, 7439; Ex. 48 (Hopi), pgs. 2, 3; Ex. E 571, pg. 638.

Ex. E 570, pg. 11. Great distances to obtain pinion nuts, juniper berries and mesquite beans and prickly pears.

Ex. 539, pg. 137, 138. Many plants.

Ex. 15A (Navajo), pg. 7. Wood.

Ex. G 142, pg. 29. Plants.

Ex. 53 (Hopi). Material for bows at San Francisco Peaks area.

Ex. E 570, pg. 11; Ex. E 544, pg. 23. Black oak for dye; Ex. E 40, pg. 202; Ex. E51a, pg. 74; Ex. 49 (Hopi), pg. 1; Ex. 43 (Hopi); Tr. Ellis 7566; Ex. E 91, pg. 11.

D. HUNTING:

Tr. Eggan 7429. "I think there is clear evidence they hunted over much of this area. . ." Tr. Eggan 7393.

Tr. Ellis 7567. "Hunting as I said, took place all through this area. . . The area enclosed by the Colorado and the Little Colorado and over to the New Mexico line, but I think that a majority of it for the period with which we are concerned would definitely have been carried on west of Steamboat if that was considered to be the outline of where the Navajos came to."

Ex. 54 (Hopi), pgs. 1,2. Antelope, deer, turtles. "It has been stated by some students that Hopi hunting assumes more the character of a religious ritual than an economic enterprise. This is surely incorrect. The quest for food or for objects to be later used in every day or in ceremonial activities is fundamental."

Ex. G 18, pg. 160, 161.

Tr. Ellis 9387. Espejo was fed venison and dried rabbit.

Ex. 41 (Hopi), pg. 18. Hopi possessed bear skins, wild cat and deer skins.

Tr. Ellis 9388. Hunting on visits to shrines.

Tr. Eggan 7388. No conflict between Navajo and Hopi hunting grounds until 1840's or 50's; Ex. 15A (Navajo), pgs. 4, 7; Ex. 15 (Hopi), pg. 3.

Tr. Eggan 7393. Hopi traditionally hunted within an area 40 to 50 miles from their villages.

Ex. E 503, pg. 18; Ex. E 550, pg. 29; Ex. G 142, pg. 29. Trapping eagles.

Tr. Ellis 7563. Turtles in Clear Creek, Cottonwood Wash.

Ex. E 570, pg. 11. Badger, cougar, wolf, fox, coyote, etc.

Ex. 6 (Hopi), pg. 4. Lions, wildcats and otter.

E. TRADING AND TRAILS:

Ex. E 44, pg. 365. Trail to Havasupai on the west.

Ex. 41 (Hopi), pg. 18. Trading with Jacob Hamblin and Major Powell. Hopi had cow, black and cinammon bear, wildcat and deer skins.

Ex. G 41, pg. 101. With Utes to north.

Ex. 49 (Hopi), pg. 1. With Zuni to southeast.

Ex. 55 (Hopi), pg. 3. With Navajo of the northeast.

Ex. E 518, pgs. 88, 89. Hopi pottery all over Arizona.

Ex. 47 (Hopi), pg. 5. Commercial relations in all directions.

Ex. E 541, pg. 74; Ex. E 566, pgs. 278, 279; Ex. G 147, pgs. 39, 40, 41; Ex. 53 (Hopi); Ex. E 524; Ex. E 512, pg. 308; Euler Report on Havasupai; Ex. E 51b, pgs. 398, 437; Ex. 14 (Hopi), pg. 1; Ex. G 117, pg. 356; Ex. G 135, pg. 163; Ex. G 18, pgs. 105, 246; Ex. 22 (Hopi), pg. 2; Ex. 24 (Hopi), pg. 1; Ex. 12 (Hopi), pg. 1; Tr. Reeve 7899; Ex. E 523, pg. 6; Tr. Eggan 7349, 7393; Ex. E 570, pg. 12; Ex. E 520, pg. 36; Ex. E 532, pgs. 353, 356; Ex. G 88, pgs. 2, 3; Ex. G 57 (Map); Ex. G 61, pg. 345; Tr. Schroeder 8625; Ex. G 10, pgs. 73, 75, 76.

F. SALT, MINERALS AND MISCELLANEOUS:

Tr. Eggan 7439. "It is true that the Hopi extend their environment by long journeys for various substances. . . . a journey of two hundred miles or so for salt from the Grand Canyon. . . is thought of little moment."

Ex. E 538, pgs. 35, 36; Ex. 48 (Hopi), pg. 3.

Tr. Ellis 7564. Salt in Colorado River Area.

Tr. Ellis 9068. Salt mines.

Ex. E 555, pg. 22. Salt and pigments.

Ex. E 570, pg. 12. Salt and clay.

Tr. Ellis 7564; Ex. E 504, pgs. 52, 56. Salt and cottonwood roots from Little Colorado.

Ex. E 565, pgs. 469-70. Pigments in Cataract Canyon.

Ex. G 142, pg. 29. Salt.

Ex. E 562, pg. 9. Roots.

Ex. 6 (Hopi), pg. 3; Ex. E 520, pg. 36. Salt.

Ex. E 571, pg. 638; Ex. G 42, pg. 117; Ex. 66 (Hopi) Map showing salt locations.

FINDING 21

The United States Government commenced exerting military pressure against the Navajo in the winter of 1846 under Col. Alexander Doniphan.⁸¹ Between then and the summer of 1849 no less than five expeditions of American troops took the field against the Navajo.⁸² Between 1850 and 1860 large numbers of the Navajo pursued by the United States military forces⁸³ entered what was then Hopi territory,⁸⁴ being forced into areas they had not previously occupied.⁸⁵

After 1848 the Navajo commenced to settle upon land previously used by the Hopi.⁸⁶ Military correspondence of the period clearly indicates the scattering of the Navajo to the west.⁸⁷

81 Ex. G 205, pg. 10.

82 Ex. G 22; Ex. G 23; Ex. G 24.

83 Ex. G 57; Ex. G 56; Ex. G 59; Ex. 55 (Hopi), pg. 4; Ex. G 205, pgs. 10, 15; Ex. G 22; Ex. G 23; Ex. G 24; Ex. G 31; pgs. 540-43; Ex. G 137, pgs. 31-32; Ex. G 95; Ex. G 126, pg. 107; Ex. E 82, pg. 69; Ex. 656 (Navajo), pg. 14; Ex. E 568, pg. 17; Ex. E 51b, pgs. 269, 397, 408-474; Ex. G 105; Ex. 15A (Navajo), pg. 4; Ex. E 51a, pgs. 57, 102, 253; Tr. Ellis 7637, 7639, 7641, 7587; Tr. Schroeder 8152-53, et seq., 8625, et seq.; Tr. Correll 5617, et seq.; 5701, et seq., 5886, et seq., 5899, et seq., 5960, 6221, et seq.; Ex. G 18, pgs. 95, 362-368; Ex. 56 (Hopi); Ex. 28 (Hopi); Ex. 19 (Hopi), pgs. 1, 2, 3; Ex. 15 (Hopi), pg. 2; Ex. E 550, pg. 34; Ex. E 8, pg. 390; Ex. E 10, pgs. 2, 3; Ex. G 135, pg. 156; Ex. E 51c, pgs. 491-494; Ex. G 32, pg. 718. The Navajo entered what is now the Hopi claim area under military pressure during the 1850's and 1860's.

84 Ex. E 51a, pg. 102; Ex. E 550, pg. 34.

Ex. 64 (Navajo). The Captains of the Navajo describe their habitat as between the Chelly and Laguna, Colorado, in 1851.

85 Ex. E 51a, pgs. 253, 269; Ex. E 51b, pgs. 397, 408-474; Tr. Ellis 9065, 9069; Ex. E. 10, pgs. 2,3. The references listed under footnote 83, supra, include specific references to all areas within the claim.

86 Tr. Ellis 7641, et seq.; Ex. G 93; Ex. 55 (Hopi), pg. 4; Ex. E 51b, pgs. 408-474; Ex. E 550, pg. 34.

Tr. Ellis 9389:

"Q. All through these years that we have a record, beginning in 1848, the creeping Navajo preemption of these lands has continued, has it not?

A. Yes, they have certainly moved into Hopi lands, according to the records, throughout the period for which we have records.

Q. Until now the records show even in the Hopi Executive Order Reservation there are more Navajos than there are Hopis?

A. Yes, sir."

87 Ex. E 51b, pgs. 408-474; Ex. G 11; Ex. G 22; Ex. G 23; Ex. G 24; Ex. G 31, pgs. 540-43; Ex. G 32, pgs. 706-7; Ex. G 36, pg. 230; Ex. G 39; Ex. G 55; pgs. 297, 303, 305, 307-39; Ex. G 56; Ex. G 57; Ex. G 59; Ex. G 93; Ex. G 95; Ex. G 98; Ex. 35 (Hopi); Ex. 55 (Hopi), pg. 4; Ex. S 616, pgs. 225, 230; Ex. S 690; Ex. E 8, pg. 390; Tr. Eggan 7381; Tr. Reeve 7859, et seq.

FINDING 22

A few scattered Navajo bands, visited the Hopis to trade or raid during the period from 1848 to 1851,⁸⁸ but they did not remain permanently, and there were no Navajo settlements in the Hopi territory during this time.⁸⁹

In October 1850 and August 1851 Moqui deputations visited Agent Calhoun at Santa Fe to seek aid against the Navajo whose depredations had reduced them to great poverty.⁹⁰ Calhoun reported that a trip from Zuni to the Moqui would be dangerous since the Apache were upon the left of the route and the Navajo on the right.⁹¹ He further observed that the Moqui were "beyond the Navajo country."⁹²

Maps of the period placed the Navajo east of Fort Defiance.⁹³

Further military expeditions were undertaken against the Navajo during this period,⁹⁴ and the expeditions to the north and east of Fort Defiance were said to be through the "very heart of their country."⁹⁵

88 Tr. Eggan 7349.

Ex. S 608, pg. 263. The Navajo also continued to raid Zuni during this period, and the pueblo of Laguna in 1851 challenged the Navajo rights to any land in that area since the Navajo were relatively newcomers.

89 Tr. Eggan 7349. "As far as I know in 1846 and 48 the Navajo who are reported in the documents at that time were groups who either came out to trade or came out to raid. I know of no permanent settlements in the Hopi country by Navajo at this time."

See also Tr. Eggan 7312.

Ex. 15 (Hopi); Ex.E 51c, pg. 491; Tr. Eggan 7388. Ex. 60 (Hopi) Map 1849-52. Navajo east of Fort Defiance. The Navajo grazing area did not conflict with the Hopi hunting and grazing until about 1840 through 1850.

Ex. 64 (Navajo). The Captains of the Navajo described their habitat in 1851 as between the Chelly and Laguna Colorado.

90 Ex. S 635, pg. 25; Ex. G 29, pgs. 264, 415.

91 Ex. S 635, pg. 25.

Tr. Schroeder 8625. He restated his reasons for so placing the Navajos in 1848 as "in 1812 the Navajos were still said to have lived 25 leagues to the right or northeast of the trail that ran from Zuni to Hopi and again in 1850. I pointed out that the first historical reference we get to Navajos west of the Marsh Pass - Hopi pueblo area all indicate that they would flee to the west from troop movements being undertaken in the Canyon de Chelly country and also I believe actually the first mention of some of them fleeing was as early as 1851."

Tr. Correll 5960, et seq. Although there was very little known about the movements of Navajo population prior to 1848.

Ex. R 1, pg. 342; Ex. G 29, pg. 342. Agent Calhoun reported to his superiors that in 1851 the Navajos started removing from the de Chelly to the San Juan, and pitching their lodges on both sides of the river.

92 Ex. G 29, pg. 415.

93 Ex. 60 (Hopi); Ex. G 6; Ex. G 7.

Ex. G 152 shows the Navajo cornfields east of Mesa de la Vaca in 1851.

94 Ex. R 16; Ex. R 17; Ex. R 18; Ex. G 4, pgs. 56, 89, 107; Tr. Schroeder 8625.

95 Ex. G 4, pg. 107.

Tr. Schroeder 8625. According to Schroeder the first mention of Navajo fleeing to the west under military pressure was in 1851.

Tr. Correll 5955. Correll testified that the Navajo close to Fort Defiance under military pressure spread out in all directions during this period.

FINDING 23

After the United States acquired the land that is presently New Mexico and Arizona, Lt. L. Sitgreaves was ordered to see whether the Zuni and the Little Colorado Rivers were navigable to the sea. He passed down the Zuni to the Little Colorado⁹⁶ in 1851, then followed the Little Colorado to Grand Falls concluding that the venture was quite impossible. He then cut north of the San Francisco Mountains and west to California.⁹⁷ On the west bank of the Little Colorado and along the trail were many ruins similar to the Moqui pueblos.⁹⁸ As he left the Little Colorado River proceeding into the mountains to the west, the ruins became a rarer occurrence.⁹⁹

The Sitgreaves maps placed the Navajo northeast of Fort Defiance.¹⁰⁰

From Sitgreave's report the Moqui at that time had over 10,000 acres of corn under cultivation¹⁰¹ as well as some cotton.

In 1852 Dr. P.S.G. Tenbroeck, assistant surgeon, U. S. Army, visited the Moqui,¹⁰² but added little to the information already known.¹⁰³

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- 96 Tr. Reeve 7927, et seq.
- 97 Ex. E 500, pg. 5; Tr. Reeve 7822, et seq.; Ex. 61 (Hopi); Ex. G 1, pg. 6.
- 98 Ex. G 1.
- 99 Ex. G 1, pgs. 8,9.
- 100 Ex. 61 (Hopi); Ex. G 1; Ex. R 19; Ex. G 228 (Map by Eastman).
- 101 Ex. G 1, pg. 6; Ex. E 543, pg. 53.
- 102 Ex. E 524, pg. 25; Ex. S 635, pg. 25; Ex. E 543, pg. 53; Ex. 76 (Hopi), pg. 46.
- 103 Ex. 82 (Navajo), pg. 1. . One accompanying Surgeon Tenbroeck described in detail each day's journey from Fort Defiance to the Moqui pueblos. The only Navajo mentioned in the entire report were several lodges located approximately 20 miles west of Fort Defiance.

105 Ex. R 20, pg. 73.

106 Tr. Reeve 7821, 7901 et seq., 7927; Ex. R 20, pg. 73.

107 Tr. Reeve 7821.

108 For maps of Whipple's journey see Ex. G 8; Ex. G 9; Ex. G 43;
Ex. E 500, pg. 5.

FINDING 25

In 1855 Governor David Merriwether established a Treaty boundary to separate Indian tribes in the New Mexico Territory, including the Hopi and Navajo, the Navajo being east of the line and the Hopi west thereof.¹⁰⁹ This he did in spite of the fact that no well-defined boundary lines existed anywhere in the territory, and the Indians all made indefinite, overlapping and conflicting claims.¹¹⁰

The Navajo-Hopi boundary as established by the Merriwether Treaty of July 18, 1855, was described as follows:

Beginning at the mouth of the Zuni River where said river enters into the Colorado Chiquito, thence north to the south bank of the San Juan River, at the mouth of the Rio de Chelly.¹¹¹

109 Ex. G 69.

Ex. 118 (Navajo). Merriwether reported that he drew the lines according to the boundaries "generally conceded to the tribes and bands respectively."

Ex. 157 (Navajo), pg. 2. But Merriwether on his map (Ex. 62 (Hopi)) enclosed the pueblos of Moqui in red lines stating that he did not intend to indicate the boundaries of their claims, for he had no information as to the extent or boundary thereof.

Ex. G 230a (map) 1856.

110 Ex. G 82, pgs. 1, 2; Ex. R 150, pg. 34.

111 Tr. Eggen 7416. Dr. Eggen was of the opinion that the Merriwether line divided the Hopi and Navajo country as of 1848 and for some reasonable time before. (See also Ex. 2 (Hopi) map)

Tr. Pitrat 9644-5, 9678-80, 9693. Hopi tradition establishes the east boundary of Hopi land and the west boundary of Navajo land as a line running east of, but parallel to, the Merriwether line, west of Ganado.

Exs. 69 l, m, n and o (Hopi). This line is marked with a boundary marker.

(See also Tr. Pitrat 9645).

Tr. Pahona 7476-77, 7482. The agreed traditional boundary was solemnized by the delivery of an Indian "Tiponi" by the Navajo to the Hopi as a reminder of the promise. (See also Ex. 55 (Hopi), pg. 2.)

Tr. Reeve 7905-6. Dr. Reeve was of the opinion the Navajo corn fields then extended further to the west than the Merriwether line, but on cross-examination admitted the line was intended to separate the Hopi and Navajo corn fields, and further admitted that he did not have a single document to substantiate his contention in this regard in the period 1848 to 1855. (See also Tr. Reeve 7950)

Dr. Reeve admitted that his conclusion to extend the northern part of his line west of the Merriwether line was based on two army letters of very little value and admitted he had never read the Pettit diary. For trail of Pettit Journey see Ex. 70 (Hopi) large plastic relief map; Exs. 70a-70i (Hopi) supporting documents; Ex. 71 (Hopi) small plastic relief map; Ex. 72 (Hopi) diary comparison and log of 1962 observation trip; and Tr. Pitrat 9648 et seq., testimony of Charles Pitrat who made the 1962 trip.

Tr. Reeve 7917-19. (See also Ex. R 180 map)

Tr. Schroeder 8591. In describing what Schroeder felt was exclusive Navajo land in 1848, he described the western portion as (in terms of use and occupancy) "starting at a point on the San Juan north of the Carrizo mountains and between the Mancas and McElmo drainage, I would come southwest across the middle waters of Walker Creek in which the Navajoes were reported in 1829 in the upper waters by Armijo, and would come across the Chinle Wash in an area below or north of Rock Point, where in 1855 some farm lands were noted and up the Chinle Valley including the middle drainages below Black Mesa, more or less in a straight north-south line to the pueblo Colorado wash southwest of Ganado, and including the area around Cornfields, Arizona, and then would turn south-southeast in a line that would be to the west of wide ruins or pueblo grande in the region of the Hopi-Zuni trail in the vicinity of Lajarra Springs and then east." (See also Ex. S 807 map).

Ex. E 100. Dr. Ellis drew the dividing line just west of the Merriwether line. (See also Tr. Ellis 9380-81)

Tr. Ellis 9101, 9112. Dr. Ellis described the area of 1848 exclusive use and control by the Navajo (in the west) as leaving out the Painted Desert since it was so important to the Hopi. She indicated the western line ran from there north to Steamboat and up to the San Juan. Her line is indefinite but a good approximation and as close as anyone could draw it. She indicated that the Navajo had taken over the area between the Arizona-New Mexico state line and her boundary line by 1848. (See also Tr. 7580-1; Ex. 69a Hopi).

Ex. G 108 (Map). It should be noted that the pencil lines and lettering were added after Whipple made the map. Whipple's Expedition was in 1853. The Merriwether line, in pencil is inaccurately located and was not established until 1855, 2 years after the Whipple journey.

Ex. G 209. Description of Merriwether line taken from original treaty; Ex. 127 (Navajo).

Ex. 2 (Hopi) map showing Merriwether line.

Ex. 36 (Hopi). As late as 1864 an Arizona paper stated: "We cannot, however, understand his (a rival editor's) reason for putting forth such an uncommon proposition as that perpetuated in his paper of April 12th, wherein he calls the Navajos an Arizona Indian, and favors their reservation on the Colorado Chiquito. He should have known that few if any of the Navajos have lived west of Navajo Springs, and that they are essentially and notoriously a New Mexican savage."

FINDING 26

In 1857 E. F. Beale, then Superintendent of Indian Affairs for California, was authorized to seek a route and build a wagon road from the head of Steamboat Navigation on the Arkansas River to California. He generally followed Whipple's route south of the San Francisco Peaks, approximating the present route of the Santa Fe Railroad, introducing camels as well as mules and wagons into his train in an experiment on their adaptability to the southwestern terrain.¹¹² He noted the presence of Navajo each time he passed through Jacob's Well, but only a few west thereof at Navajo Springs.¹¹³ No Navajo were reported further west in the southern end of the Hopi claims area, but the Moqui were reported to be to the northwest.¹¹⁴

112 Ex. E 500, pg. 5; Ex. R 21, pg. 39; Ex. G 151; Tr. Reeve 7928-29.

113 Ex. R 21, pgs. 39, 40, 84.

114 Ex. R 21, pgs. 39, 40; Ex. G 151.

FINDING 27

In 1858 Lt. Joseph C. Ives and J. S. Newberry took a boat up the Colorado River, and then proceeded overland from Needles, Arizona, to Fort Defiance, New Mexico. Ives made a side trip to visit the Hopi,¹¹⁵ and probably is the first American to have left a record of his visit, although LaRoux, who had been with Sitgreaves' expedition, is said to have visited them in 1850.¹¹⁶

Although it is evident that the Navajo rapidly spread westward after 1848, among other reasons, for the purpose of relieving the military pressure upon them,¹¹⁷ Ives ten years later, while camped at White Rock Springs east of the Hopi mesas, stated: "We are now in the Navajo region."¹¹⁸ He further noted that his Navajo guide left him "as soon as he came in sight of his own territory."¹¹⁹ The next day the Hopi guides commented that they were then entering into one of the most thickly populated sections in the Navajo territory..¹²⁰ They were then but one day's travel from Fort Defiance.¹²¹ Twelve miles east of Camp 100 (White Rock Springs) the green plains to the north he reported were dotted with Navajo herds and flocks as far as the eye could see.¹²²

115 Ex. G 42, pgs. 117, et seq.; Tr. Ellis 7534, et seq. He came from the south making his way from the Little Colorado, where he reported Hopi salt sources and extensive ancient pueblo ruins, up to the Middle, or 2nd Mesa, and described in some detail what he saw around the mesas. He reported the evidence of Navajo depredations, the extensive Hopi fields, etc.

Ex. G 118, pg. 51; Ex. S 645, pgs. 127, 128.

Ex. S 645, pg. 127. He noted that the Navajo were trading with the Hopi, but that they did not live close by. He further noted the Moqui had inhabited the same territory for centuries.

116 Ex. E 500, pgs. 6, et seq.

117 See Findings 21, 28 and 30, and footnotes thereunder.

118 Ex. G 42, pg. 128.

Tr. Ellis 7533, et seq. Dr. Ellis estimated that Ives' total trip for the first two days after leaving the Moqui villages covered 50 miles, and that is generally considered this brought him to Steamboat, which he reported the Hopi considered to be the edge of their country and the edge of the Navajo country, where the two groups met and did some trading on occasions.

Tr. Ellis 9390. The first Navajo flocks were seen east of Steamboat Springs.

The location of Ives' camps are plotted on Ex. G 42 (Map), and locations are named on Ex. G 53 (Map).

Ex. E 567, pg. 128; Euler Report pg. 14 in Havasupai case.

119 Ex. R 24, pg. 128; Ex. G 42, pg. 128; Ex. E 567, pg. 128; Ex. S 645, pg. 128.

120 Ex. S 635, pg. 33; see also footnote 118 supra.

121 Ex. E 567, pg. 129.

122 Ex. S 645, pg. 90.

FINDING 28

The period 1858 to 1860 was apparently the high point of Navajo-white tensions.¹²³ Military pressures resulted in forcing more Navajo bands to take refuge north and northwest of the Moqui.¹²⁴ Captain Walker reported Paiutes in the Marsh Pass area during this period, and Ute attacks on the intruding Navajo in that area as well.¹²⁵

Lieut. Col. D. S. Miles, who made a survey of Navajo cultivation in the area, stated that the largest Navajo cultivation of corn west of Fort Defiance was at the mouth of the Canyon de Chelly, but after extensive investigation he concluded that most of the Navajo grazing and farming was still east of a longitudinal line running through Fort Defiance.¹²⁶

123 Ex. E 51b, pg. 269; Tr. Ellis 7587, 9168.

Ex. G 165, pg. 8. On March 2, 1857, Comm. Manypenny reported claims for Indian depredations in the Territory of New Mexico totaling nearly \$503,000.00.

124 Ex. R 23, pg. 335; Ex. 656 (Navajo), pg. 14.

Ex. E 51b, pg. 669. "No convincing data indicating that the Navajo spread west of the Hopi villages before the wide scattering which began about 1858 has come to light." Navajo that were camping on the Little Colorado and above on the Coconino Plateau were described by the Havasupai as interesting newcomers, who explained they were fleeing from the whites.

125 Ex. G 31, pg. 543; Ex. G 55, pg. 297; Ex. G 58; Ex. G 86.

Ex. R 22, pg. 717. Indian Agent reports during this period described the Navajo in the de Chelly and along the Rio de Chelly to the San Juan, but noted that Ute pressures kept the Navajo "this side of the Tunachor Mountains," with few Navajo settlements within forty miles of the San Juan River.

See also Maps Exs. G 57, G 58 and G 60; Ex. G 59 (Map of Lieut. W. H. Bell).

126 Ex. 33 (Hopi), pg. 1.

FINDING 29

A few months after Ives' visit in 1858 Jacob Hamblin, a Mormon¹²⁷ missionary to the Indians, crossed the Colorado River at the Crossing of the Fathers just north of the present southern boundary of Utah, and proceeded to visit the Moqui.¹²⁸ He made a second trip to the Moqui in 1859,¹²⁹ but on neither trip did he encounter the Navajo Indians between the Colorado River and the Moqui villages. On both trips he was fearful of Navajo raiders, but it was his third trip in 1860 when disaster struck his party, and George A. Smith, Jr. was killed by Navajo Indians.¹³⁰ After several other trips in intervening years Hamblin was requested by Major Powell to join him in a trip to the Moqui country in the autumn of 1871.¹³¹

127 Church of Jesus Christ of Latter-day Saints.

128 Ex. E 500, pg. 14; Ex. G 205, pg. 43.

Ex. 70g (Hopi), pgs. 88, 89, 95. An exploring expedition also passed through the northeastern claims area and along the Colorado to the north in 1859. Their reports describe extensive ancient pueblo ruins, and the obvious similarities between this ancient people and the Hopi.

129 Ex. R 8, pg. 64, et seq.

130 Ex. R 8, pgs. 65, et seq.; Ex. S 648, pgs. 65 et seq.

131 Ex. 39 (Hopi), pg. 2; Ex. R 8, pg. 99, et seq.

FINDING 30

The literature during the period of 1860 to 1861 indicated many Navajo fugitives, under military pressure, were fleeing with their flocks to the de Chelly, the Collabana Mountain, Pueblo Colorado, the Moqui villages,¹³² the area north of the Moqui villages,¹³³ the Little Colorado,¹³⁴ southern Utah,¹³⁵ Puerco and Lower Collitas, and the Pueblitas of Torejon,¹³⁶ as well as the area far to the west of the Hopi villages, an area which was not their customary homesite.¹³⁷

Throughout this period the Navajo problem remained unsettled, and settlers as well as Indian Agents continued to call for the greater use of force.¹³⁸

An 1862 map of the Surveyor General shows the Navajo far to the east and north of the Hopi villages, extending from the Rio de Chelly south and east to the Rio de San Jose, with the majority of Navajo lands still located in New Mexico.¹³⁹

132 Ex. G 93, pg. 2.

133 Tr. Reeve 7939, et seq.

134 Ex. G 95, pg. 1. (Two letters were numbered Ex. G 95. We refer to the first letter.)

135 Ex. G 135, pg. 156.

136 Tr. Correll 5886-5887.

137 Ex. R 150, pg. 3; Ex. E 51a, pgs. 57, 253; Ex. E 51b, pgs. 397, 408.

Ex. G 96, pg. 2. The fleeing Navajo left the area south of the Canyon de Chelly, and east of Mesa de la Vaca, a waste from overgrazing.

138 Ex. G 32, pgs. 706-707; Ex. G 33, pg. 243; Ex. G 34, pg. 733; Ex. G 35, pgs. 188, 383, 385.

139 Ex. G 230c.

FINDING 31

With Navajo depredations increasing Kit Carson launched a final military drive in 1863¹⁴⁰ resulting in a rounding up and imprisonment in Fort Sumner at the Bosque Redondo for a majority of the Navajo.¹⁴¹ Many Navajo fled to escape capture,¹⁴² locating in Hopi country north,¹⁴³ south,¹⁴⁴ and west¹⁴⁵ of the Hopi mesas. Navajo activities of this period throw little illumination either upon the aboriginal title of the Navajo or Hopi or to the disputed and overlapping claims of both tribes as of 1848 and before. The fleeing of the Navajo into areas not previously occupied by them¹⁴⁶ furnishes a practical answer to many of the Navajo assertions of former occupancy.

140 Ex. G 124, pg. 252; Ex. E 8, pg. 390; Ex. G 137, pg. 31.

141 Ex. G 124, pg. 254-5.

Tr. Eggen 7382. The estimates of the number of Navajo at large during the period of captivity varied from 300 to 3000. The highest number reported at the Bosque Redondo was in the month of January, 1865, when 8,557 were counted. This number had dwindled to 6,236 by the end of the year.

142 Ex. E 511, pg. 342; Ex. E 518, pg. 113; Ex. E 51b, pg. 423, et seq.; Tr. Ellis 7637.

143 Ex. E 51b, pgs. 408, 409, 421; Tr. Eggen 7381, 7539; Ex. E 51c, pgs. 491, 494; Ex. E 10, pg. 2; Tr. Ellis 7539, 9060, 9068; Schroeder Tr. 8152, et seq.; Ex. 19 (Hopi), pg. 2; Ex. 656 (Navajo), pgs. 14, 21, 22, 28; Ex. G 205, pg. 26.

144 Tr. Eggen 7381; Ex. E 51b, pg. 433; Ex. E 82, pg. 69; Ex. E 51c, pg. 494; Ex. E 511, pg. 342; Ex. E 518, pg. 113; Tr. Ellis 7539; Ex. 666 (Navajo).

145 Tr. Eggen 7382; Ex. E 51b, pgs. 269, 424, 433; Ex. R 150, pg. 3; Ex. E 51c, pg. 494; Ex. 511, pg. 342; Ex. E 518, pg. 113; Tr. Ellis 7539; Ex. 666 (Navajo); Ex. E 44, pg. 362; Tr. Schroeder 8578-79; Ex. 15A (Navajo), pg. 4; Ex. R 150, pg. 3; Ex. 35 (Hopi); Ex. G 205, pg. 26; Ex. G 18, pg. 95; Ex. E 87, pg. 57.

146 Tr. Eggan 7381; Tr. Ellis 7539, 7637; Ex. E 87, pg. 57; Ex. E 51b, pgs. 408, 433; Ex. G 18, pg. 95; Ex. R 150, pg. 3; Ex. E 511, pg. 342; Ex. E 518, pg. 113; Tr. Ellis 7539; Ex. E 44, pg. 363; Tr. Schroeder 8578-79.

Ex. 63 (Hopi) map of 1866 showing Hopi area.

Ex. 64 (Hopi) map of 1867 showing Hopi area; Ex. 65 (Hopi) map of 1871 locating Hopi.

FINDING 32

After the release from Fort Sumner, the Navajo were forced, by new treaty obligations¹⁴⁷ and increased pressure by white immigrants from the Rio Grande Valley, to abandon to a large degree their old territory in the Mount Taylor-Chaco Canyon region.¹⁴⁸ This tended to push many of the Navajo westward even beyond the west boundary of the 1878 Treaty Reservation established by executive order.¹⁴⁹ Droughts also attracted some Navajo groups to the Hopi country to trade for corn and melons. These groups settled in the Jeddito Valley and on Black Mesa, where water was available,¹⁵⁰ in direct competition to long established Hopi use.¹⁵¹

147 Treaty of June 1, 1868. (15 Stat. 667).

148 Ex. E 550, pg. 34.

149 Executive Order October 29, 1878, 1 Kappler 875; Ex. 238a, pg. 16; (For map see Ex. 2 (Hopi)).

150 Ex. E 580, pg. 34; Ex. G 142, pg. 34; Ex. G 205, pg. 36.

151 Ex. E 564, pgs. xx, xxi. Evidence of ancient Moqui farming occurs on the north side of the Jeddito Valley.

Ex. E 51a, pg. 187.

"In addition to many small ruins, ruins of four large and several medium sized villages, which were occupied from about 1100 to 1500 or 1700 A.D., are found on the north side of the (Jeddito) valley.

"The Jeddito Valley ruins are so similar in construction to the modern (Hopi) towns and their environment is so similar, that although the valley is now occupied by Navahos, it should geographically be considered a part of the Hopi country."

Ex. 15A (Navajo), pg. 7

The Hopi have in the past made use of the land within forty or fifty miles of their villages for hunting, grazing, agriculture and for wood supplies. (See also Finding 20 supra and footnotes 80A(d) and 80A(e) thereunder.)

Ex. 15A (Navajo) pgs. 10, 11. The Hopi to the present time tenaciously cling to a very limited use of the Jeddito Valley.

FINDING 33

While population estimates before the census taken by Donaldson in 1893¹⁵² are generally unreliable, there was sufficient Hopi population to utilize, in customary Indian manner, the area claimed by the Hopi Tribe for the entire period during which aboriginal title was established.¹⁵³

152 Ex. E 524; Ex. S 635.

Ex. E 500, pg. 38. Dr. Ellis refers to the Donaldson census in her report on "The Hopi, Their History and Use of Lands."

153	<u>YEAR</u>	<u>POPULATION</u>	<u>SOURCE</u>
	600 A.D.	3,000	Ex. E 511, pg. 341.
	800 A.D.	10,000	Ex. E 511, pg. 341.
	1000 A.D.	23,000	Ex. E 511, pg. 341.
	1150 A.D.	19,000	Ex. E 511, pg. 341.
	1275 A.D.	3,000	Ex. E 511, pg. 341.
	1540 A.D.	(3-4,000 men)	Ex. 6 (Hopi), pg. 4.
	1540 A.D.	7,000	Ex. 34 (Hopi), pg. 1.
	1583 A.D.	5,000 (50,000)	Ex. 11 (Hopi), pg. 2; Ex. E 500, pg. 38.
	1629 A.D.	10,000	Ex. 11 (Hopi), pg. 1.
	1630 A.D.	10,000	Ex. 16 (Hopi), pg. 1.
	1634 A.D.	10,000	Ex. 11 (Hopi), pg. 1.
	1641 A.D.	2,966 (3 mesas)	Ex. 11 (Hopi), pg. 4.
	1680 A.D.	3,900	Ex. 11 (Hopi), pg. 4.
	1745 A.D.	(14,000 before pestilence) 10,846	Ex. 11 (Hopi), pg. 4 Ex. E 500, pg. 38; Ex. E 524, pg. 15;
	1775 A.D.	7,494	Ex. 25a (Hopi), pg. 3. Ex. 25a (Hopi), pg. 4; Ex. E 524, pg. 15.
	1776 A.D.	7,494	Ex. 25d (Hopi), pg. 9.
	1777-1780 A.D.	(dropped from 7500 to less than 1000)	Ex. 25a (Hopi), pg. 3.
	1780-1781 A.D.	798 (6698 deaths from smallpox reported)	Ex. E 500, pg. 38.
		(5000 deaths from smallpox reported)	Ex. 21 (Hopi), pg. 17.
	1782 A.D.	(6698 deaths from smallpox reported)	Ex. 25c (Hopi), pg. 11.

1846 A.D.	2,450	Ex. G 29, pg. 7; Ex. E 500, pg. 38.
1852 A.D.	2,500 8,000	Ex. G 188. Ex. E 500, pg. 38; Ex. E 524, pg. 15.
1853-1854 A.D. (decrease in population) due to smallpox)	6,720 2,000	Ex. G 9, pg. 23. Ex. G 10, pg. 75. E Ex. E 500, pg. 38; Ex. 524, pg. 15. Ex. G 10, pg. 75.
1855-1856 A.D. (Smallpox reported, Moqui almost totally destroyed)		Ex. G 38, pg. 135.
1858 A.D.	3,500	Ex. G 116, pg. 614.
1861 A.D.	6,000 2,500	Ex. G 34, pg. 828. Ex. E 500, pg. 38.
1863 A.D.	4,000 (Carson)	Ex. E 8, pg. 390.
1864 A.D.	2,000 to 4,000	Ex. E 500, pg. 38.
1865 A.D.	3,000	Ex. E 500, pg. 38
1869 A.D.	4,000	Ex. G 37, pgs. 20, 91, 460; Ex. E 500, pg. 38.

FINDING 34

The first historical documentation of the Navajo is notably scant because their contacts with the Spanish were neither intimate nor of long duration.¹⁵⁴ The Navajo themselves referred to upper Blanco and Largo Canyons in northern New Mexico as their ancestral homeland which they call "Navajo country."¹⁵⁵ The lower Navajo Dam Reservoir region, also in New Mexico, was inhabited by the tribe until the late 1500's when, after some 200 years, they abandoned the region to move south and west.¹⁵⁶ They came into the upper San Juan River area sometime after 1500,¹⁵⁷ remaining there until the mid 1700's before moving further south and west.¹⁵⁸ The Navajo did not enter northern Arizona until the latter part of the eighteenth century.¹⁵⁹ In 1822 the Navajo Indians were occupying the Chuska and Corrizo Mountains along the present New Mexico-Arizona state line as well as the plateau country to the east and west.¹⁶⁰ The Canyon de Chelly was described as a Navajo stronghold in 1838.¹⁶¹ While the Navajo did some trading and raiding west of the Merriwether line before 1848,¹⁶² the country west of that line was considered exclusively Hopi to the Colorado River,¹⁶³ with the Havasupai beyond.¹⁶⁴

154 Ex. S 646, pg. 5; Ex. E 51b, pgs. 333-34; Ex. G 205, pg. 2; Ex. S 643, pg. 395.

155 Ex. E 16, pg. 65; Ex. E 51b, pg. 355; Ex. E 51c, pg. 484; Ex. E 505, pg. 151; Ex. G 109, pgs. 513, 516; Ex. G 205, pg. 2; Ex. S 622, pg. 513; Ex. S 625, pg. 65; Ex. 641 (Navajo), pgs. 513-16. See also maps: Ex. 67 (Hopi); Ex. G 109; Ex. 641 (Navajo), pg. 514; Ex. E 51a, pgs. 117-118; Ex. S 622, pg. 514.

156 Ex. E 51c, pg. 475; Ex. E 56, pg. 245; Ex. E 98, pgs. 208-09; Ex. S 634, pgs. 244-245; Ex. G 203, pg. 244. See also maps: Ex. 67 (Hopi); Ex. G 109; Ex. 641 (Navajo), pg. 514; Ex. E 51a, pgs. 117-118; Ex. S 622, pg. 514.

157 Ex. E 11, pg. 68; Ex. E 17, pg. 16; Ex. E 51a, pgs. 13, 57; Ex. E 51c, pg. 475; Ex. E 56, pg. 245; Ex. E 58, pg. 81, Ex. E 147, pg. 294; Ex. S 501A (map); Ex. S 502B (map); Ex. S 503C (map); Ex. S 504D (map); Ex. S 506F (map); Ex. G 137, pg. 1; Ex. G 203, pg. 245; Ex. G 205, pg. 4; Ex. 671 (Navajo), pg. 239; Tr. Ellis 9030.

See also maps: Ex. 67 (Hopi); Ex. G 109; Ex. 641 (Navajo), pg. 514; Ex. E 51a, pgs. 117-18; Ex. S 622, pg. 514.

158 Ex. S 502B (map); Ex. E 503C (map); Ex. S 504D (map); Ex. S 505E (map); Ex. 507G (map); Ex. S 646, pg. 5; Ex. S 634, pgs. 244, 245; Ex. G 47 (map); Ex. G 48 (map); Ex. G 49 (map); Ex. G 50 (map); Ex. G 51 (map); Ex. G 110, pg. 396; Ex. G 131, pg. 356; Ex. G 203, pg. 244; Ex. G 205, pgs. 4-5; Ex. E 17, pg. 16; Ex. E 51b, pgs. 268, 334, 355, 380; Ex. E 51c, pg. 484; Ex. E 56, pg. 245; Tr. Brugge 6531; Tr. Ellis 9018; Tr. Reeve 7781, et seq.; Ex. 657 (Navajo), pgs. 3-4 (maps); Ex. E 80 (map).

See also maps: Ex. 67 (Hopi); Ex. G 109; Ex. 641 (Navajo), pg. 514; Ex. E 51a, pgs. 117-118; Ex. S 622, pg. 514.

159 Ex. 78 (Hopi), pg. 111; Ex. G 110, pg. 396; Ex. G 205, pg. 5; Ex. G 130, pgs. 307-08; Ex. G 203, pg. 245; Ex. S 512L (map); Ex. S 514N (map); Ex. S 646, pg. 5; Ex. S 634, pg. 245; Ex. E 17, pg. 16; Ex. E 51a, pgs. 57, 117-118 (maps); Ex. E 56, pg. 245; Ex. E 518, pgs. 107, 111; Ex. 15A (Navajo), pg. 4; Ex. E 51c, pg. 484; Tr. Ellis 9015; Ex. R 5 (Map); Ex. E 87, pg. 58; Ex. E 125, pg. 89; Ex. E 140, pg. 308.

Navajo sites in Chaco Canyon in Canyon de Chelly suggest a Navajo population in these regions by the mid-to late-18th century.

Ex. 91, pg. 11; Ex. E 51a, pg. 187; Ex. E 112, pg. 18; Ex. E 81 (map).

It is clear that the Navajo as compared to the Hopi are relative newcomers to Arizona.

160 Ex. G 143, pg. 15 (map on pg. 17); Ex. E 51a, pg. 88; Ex. E 56, pg. 245; Ex. S 514N (map); Ex. G 120 (map).

161 Ex. R 150, pgs. 11, 15; Ex. G 264, pg. 213.

162 Tr. Ellis 7637, 7643; Ex. E 51a, pg. 102; Ex. E 51b, pgs. 380-81.

Ex. G 205, pg. 7.

Ex. 36 (Hopi).

Ex. G 126, pg. 109. The western Navajo boundary beyond Canyon de Chelly was little known in 1846.

Ex. 36 (Hopi). The editor of "The Arizona Miner" stated in 1864: "Few if any Navajo have lived west of Navajo Springs, . . . they are essentially and notoriously a New Mexican savage."

See also Tr. Ellis 9738 et seq.

Tr. Ellis 9389-9392. Dr. Ellis further testified that during the period 1848-1858, "the creeping Navajo preemption" of Hopi lands was an uncontroverted fact.

In discussing the western boundary of the Navajo country during this period, she testified as follows:

Q. Now, I take it that if a Navajo simply went across and had a structure of some kind over this Hopi territory you did not intend to make this line cover every place that might be so identified?

A. No, sir, . . . I think there were a few Navajos who were to the west of the line that I drew and I think there were spots in which there were not Navajos a bit to the east of the line which I drew. I did it as best I could on the basis of data which we have at present.

Q. Now, we also know that there were Hopis who used the Canyon de Chelly centuries back, do we not?

A. Yes, they did.

Q. We know that within our time that there are Hopis still going to the Canyon de Chelly area to pick peaches from orchards they claim?

A. Yes. . . .

Q. Now, the earliest historical information we have in making this line at all is where we have Ives coming in an easterly direction from the Hopi villages in which he found Navajos at Steamboat Springs and Navajo flocks east of Steamboat Springs?

A. Yes, sir.

Q. That you have regarded as crucial because it is the closest to 1848?

A. Yes, sir. I want to add he had nothing to gain in his statement one way or the other. This is merely a statement of his observation.

Q. Now, in view of the constant movement of the Navajos to and around the Hopis, is it not fair to assume that if there is any shade to be given to that distance at all, it would have to be toward the east instead of toward the west, because of the ten years that elapsed from 1848 to 1858?

A. Speaking somewhat vaguely, from the general concept I would say yes, because we know the Navajos had been continuing to move westward to get away from the push of the whites but we are short on specific sites that would give us as exact data as we might really desire up and down that area.

Q. I take it from your testimony, Dr. Ellis, that if you felt that there was a joint use, permissive use of both tribes of a particular area, you would not include it in either group?

A. No, if it were to any extent. As I said, probably an occasional Navajo family got into the Hopi area and lived there for a bit but we also know of the Hopis going over to Canyon de Chelly and picking the peaches. This I would say would be permissive use of very small groups and not joint occupation and use.

Q. You have drawn this line, using your best judgment, defining exclusive occupation as you have already stated on the stand?

A. Yes.

Mr. Boyden: That is all.

163 Ex. 1 (Hopi); see also Ex. G 229. In 1848 the Disturnell Map of 1847, which was referred to in the Treaty of Guadalupe Hidalgo, still placed the Navajo well east and north of the Moqui.

Ex. 60 (Hopi) map -- Navajo east of Fort Defiance.

Ex. R 19 (map); Tr. Reeve 7822; Ex. G 228 (map).

Ex. R 150, pg. 3. Dr. Reeve summarized the situation in 1848 as follows: "Westward from the Chuska range, the Navajos did not live much beyond the Pueblo Colorado Wash and Keams (Steamboat) Canyon (even as late as 1863). They grazed their sheep to some extent on Black Mesa, but their cornfields lay in the Wash and in Black Creek Canyon with a spill over into the Puerco Valley of the west near the junction of the creek and the Puerco River. They might have grazed their stock further southward along the Puerco, and perhaps even south of that River for some distance toward the Little Colorado River; but the extent is not known and probably was not significant."

Ex. G 6 map showing location of Navajo in 1850.

Ex. G 7 map showing location of Navajo in 1849-52; Ex. E 51c, pg. 491; Ex. E 100 (map); see also Finding 25 supra and footnotes thereunder.

164 See Euler Report, pgs. 2, 4, 6, 7 and 14 in the Havasupai case.

FINDING 35

After July 4, 1848, defendant took control of the aforesaid area held, occupied and possessed by petitioner, except as to Moencopi Village area, and the following described land which was, by decree of the court in the case of Healing v. Jones, 210 F. Supp. 125; 10 L. Ed. 2d 703, adjudged and decreed to constitute a reservation for the Hopi Indian Tribe:

Starting at the section corner between Sections 3 and 4, Township 28 North and Range 14 East. This corner is located 24.75 chains due South and then 54.35 chains due West from Windmill M-174. The corner is steel and is located on the West bank of the Dinehbito Wash. It is located a few chains West of the wash. The boundary runs South of this corner to the center of the wash which distance is about 2 chains. From the above mentioned corner the boundary runs North 25° 10' West to Howell Mesa escarpment in Section 20, Township 29 North, Range 14 East. It then goes in a northerly direction along said escarpment until the Tuba City-Hotevilla road is intersected in the South half of Section 28, Township 30 North, Range 14 East. The boundary then follows the road until it reaches the center of the Dinehbito Wash about on the section corner common to Sections 22, 23, 26 and 27, Township 30 North, Range 15 East. The boundary then follows the center of the Dinehbito Wash in a northeasterly direction until it intersects a line going North 45° West from the quarter corner between Sections 17 and 20, Township 30 North and Range 16 East. This line is approximately 43 chains long. The boundary then follows said line Southeast to the quarter corner between Sections 17 and 20, Township 30 North, Range 16 East. The boundary then follows the section line due East from the said quarter corner for 4.5 miles to the section corner common to Sections 13 and 24, Township 30 North, Range 16 E, and Sections 18 and 19, Township 30 North, Range 17 East, then turns an angle and goes North 42° East for a distance of approximately 2.2 miles until the escarpment on the East side of the valley is encountered in the NW $\frac{1}{4}$ of Section 8, Township 30 North, Range 17 East. The boundary then follows this escarpment in a southerly direction until the most southerly point in the escarpment is reached in the E/2 of Section 16, Township 30 North, Range 17 East. The boundary then goes .4 miles South 23° East at which point it reaches the Oraibi Wash in the NW $\frac{1}{4}$, Section 22, Township 30 North, Range 17 East. The boundary then follows the West bank of the Oraibi Wash in a northeasterly direction until a point 200 yards above the Hardrocks Diversion Dam is reached. The boundary then turns an angle and follows a line South 57° 30' East for a distance of approximately five miles until it reaches the buck pasture fence in the SW $\frac{1}{4}$, Section 15, Township 30 North, Range 18 East.

The boundary then follows the buck pasture fence Southwesterly for approximately .4 miles in the NW $\frac{1}{4}$, Section 22, Township 30 North, Range 18 East. Thence Southeasterly along the buck pasture fence for approximately .4 mile in the NW $\frac{1}{4}$, Section 22, Township 30 North, Range

18 East. Thence Northeasterly along the buck pasture fence for approximately 3 miles to a point in the NW $\frac{1}{4}$, Section 18, Township 30 North, Range 19 East. Then Southeasterly along the buck pasture fence for approximately 1 mile to the SE $\frac{1}{4}$, Section 18, Township 30 North, Range 19 East. Thence Northeasterly along the buck pasture fence approximately .2 mile to the point on the section line between the SW quarters of Sections 17 and 18, Township 30 North, Range 19 East. Then South 76° 30' East following the Existing Boundary fence to a point 1,879 feet due North of Section corner between Sections 23, 24, 25 and 26, Township 30 North, Range 19 East. This section corner is located near water well H 11 which is known as Cat Springs. Then South 54° 15' East following the Existing Boundary fence to a point in Bingham's Lake approximately 8 miles South of Latitude 36° 00' and 4.25 miles West of Longitude 110° 00'.

From this point in Bingham's Lake the boundary then runs South 38° 00' West following the Existing Boundary fence until it intersects the Jeddito Wash. The intersection takes place at the same point as Longitude 110° 15' intersects the wash. The boundary then follows the center of the wash to the point where the Township line between Townships 24 and 25 North intersects the wash. The boundary then follows the Township line due West following the Existing Boundary fence for 2.3 miles at which point it goes North 45° 57' West following the Existing Boundary fence for approximately 25.6 miles until it intersects the Dinebito Wash at the same point as the Township line between Townships 27 and 28 North. The boundary then follows the center of the Wash 8 miles up to the point where it intersects the line running due South of the corner between Sections 3 and 4 Township 28 North, Range 14 East.¹⁶⁷

165 For aboriginal area of the Hopi Indians, see Finding 20 supra.

166 Ex. 15 (Hopi), pg. 3; see also Act of June 14, 1934 (48 Stat. 960 at 961).

167 Ex. 78 (Hopi), pgs. 226, 227, 228.

FINDING 36

The United States District Court in the case of Healing v. Jones,¹⁶⁸ on the 28th day of September, 1962, further held that the petitioner in Docket 196, The Hopi Indian Tribe, and the petitioner in Docket No. 229, The Navajo Indian Tribe, for the common use and benefit of their respective members, but subject to the trust title of the United States, have joint, undivided and equal rights and interests both as to the surface and sub-surface, including all resources, in and to all of the Executive Order Reservation of December 16, 1882,¹⁶⁹ lying outside of the boundaries of the Hopi Reservation as described in Finding 35 supra. Said court accordingly quieted title to said lands in the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike, subject to the trust title of the United States, as a reservation.¹⁷⁰ Although petitioner herein has now been adjudged a tenant in common of said property, petitioner is still deprived of the use of all of said lands, notwithstanding its aboriginal title.¹⁷¹

168 210 F. Supp. 125; 10 L. Ed. 2d 703.

169 1 Kappler 805, pg. 222, Conclusion of Law 7.

170 Ex. 78 (Hopi), pg. 228. The Navajo Indian Tribe was impliedly settled by the Secretary of the Interior upon the 1882 Executive Order Reservation. The settlement was pursuant to the Executive Order, but was upon the aboriginal land of the Hopi Indians.

171 Ex. 78 (Hopi), pg. 224, Conclusion of Law 12. The exclusion of the Hopi Indians from use and occupancy was at all times illegal even under the Executive Order of December 16, 1882. The Executive Order withdrew aboriginal lands of the Hopi. (See Finding 20 supra.)

BRIEF

The statement of the three judge court in the case of Healing v. Jones (210 F. Supp. 125; 10 L Ed. 2d 703) succinctly states a proposition fundamental in the proof of aboriginal title for the petitioner herein.

The court there stated:

The Hopis are a remnant of the western branch of the early house-building race which once occupied the southwestern table lands and canyons of New Mexico and Arizona. Before 1300 A.D., and perhaps as far back as 600 A.D., the ancestors of the Hopis occupied the area between Navajo Mountain and the Little Colorado River, and between the San Francisco Mountains and the Luckachukas.

No Indians in this country have a longer authenticated history than the Hopis. As early as 1541, a detachment of the Spanish Conqueror, Coronado, visited this region and found the Hopis living in mesa villages, cultivating adjacent fields, and tending their flocks and herds. In 1692 another Spanish officer, Don Diego De Vargas, visited the area where he met the Hopis and saw their villages. American trappers encountered the Hopis in 1834. In 1848, by the Treaty of Guadalupe Hidalgo, 9 Stat. 922, this area came under the jurisdiction of the United States.

(Ex. 78 (Hopi), pgs. 109-110)

The only difference between the testimony of witnesses for the defendant and for this petitioner, as to the territory exclusively held and occupied by the Hopi Indians at the time sovereignty of the United States attached on July 4, 1848, was with respect to the east boundary line of the Hopi country.

Dr. Eggan, testifying for the petitioner, was of the opinion that the Merriwether line divided the Hopi and Navajo country on July 4, 1848.

(Tr. Eggan 7416)

Hopi witnesses Pitrat and Pahona gave evidence of a traditional boundary east of and parallel to the Merriwether line running through a

point just west of Ganado, Arizona. (Tr. Pitrat 9644-45, 9678-80, 9693); Tr. Pahona 7476-77, 7482.)

Dr. Reeve, witness for the defendant, in drawing the line between these two tribes (Ex. R 180) irregularly extended the line in two westward protrusions. With respect to the lower protrusion, on cross-examination, Dr. Reeve admitted that he did not have a single document to substantiate his contention that the Navajo country extended further west to include Navajo corn fields. (Tr. Reeve 7905-06.) With respect to the upper protrusion, he admitted that his conclusion was based upon two army letters of very little value and further admitted he had never read the Pettit diary. (Tr. Reeve 7950-51) The petitioner, with substantial proof, showed that the Pettit journey in 1855 was far to the east of the point to which Dr. Reeve referred, (Ex. 70 (Hopi); Ex. 70a through 70i (Hopi); Ex. 71 (Hopi); Ex. 72 (Hopi); Tr. Pitrat 4648) and that Pettit came upon the Navajo Indian lodges at a point east of the Merriwether line, which point is now known as Whiskey Creek. (Ex. 72 (Hopi))

Dr. Ellis, another witness for the defendant, drew a line taking in only a minimal amount of territory west of the Merriwether line. (Ex. E 100) She based her testimony largely upon the visit of Ives some ten years after the Treaty of Guadalupe Hidalgo. (Tr. Ellis 9380-81.) She agreed that in view of the continual moving of the Navajo to the west it is probable they had made some progress in the previous ten years. (Tr. Ellis 9389 et seq.)

Another government witness, Mr. Schroeder (Ex. S 807) conceded territory to the Hopi without substantial difference from the testimony

of petitioner's expert witness, but gave the Navajo less territory on both ends of the Merriwether line. (Tr. Schroeder 8591 et seq.)

It is quite apparent that Dr. Reeve and Dr. Ellis did not fully consider that the rights of aboriginal title must have time to take root. (Sac and Fox Tribe of Indians of Oklahoma v. U.S., 315 F. 2d 896 at 905) Sparse accounts of the occasional presence of the Navajo before 1848 could not defeat the aboriginal title of the Hopi. (Sac and Fox case supra.)

Although Governor Merriwether was not possessed of all the facts with respect to the claims of the Indians, (Ex. 157 (Navajo) pg. 2) his delineation of the western boundary of the Navajo claim, we submit, is as nearly correct as can be determined from the facts at this time.

The Hopi use and occupancy from time immemorial was exclusive over a definable territory. (U.S. v Santa Fe Pacific R.R. Co. 314 U.S. 339 at 345)

The Navajo Indians could acquire no aboriginal title after the lands came under the jurisdiction of the United States in 1848. (Howar Tribe of Kansas v. United States, 6 Ind.Cl.Comm. 464, 502 (1958); Pueblo de Isleta v. United States, 7 Ind.Cl.Comm. 619, 622 (1959), aff'd 152 C.Clas. 866 (1961), cert.den., 368 U.S. 822 (1961); Osage Nation v. United States, 11 Ind.Cl.Comm. 733, 838 (1962.)

The only question is whether the aboriginal title of the Hopi Indians was lost before the taking by the government. While the present phase of this case, by order of the Commission (October 13, 1958), was limited to the question of aboriginal title, successive executive orders for the

Navajo, as shown on Ex. 2 (Hopi), culminating in the Act of June 14, 1934 (48 Stat. 960), and the settling of Navajo Indians upon the Hopi executive order reservation of 1882 supra, by the United States Government, as determined by the three judge court (Ex. 78 Hopi, p.223), were the acts that deprived the Hopi Tribe of its title.

To this day the Hopi Indians have struggled to preserve their aboriginal title. There is no abandonment for the evidence is clear that the Navajo were driven into the area through the military pressure of the United States Government in 1846 (Proposed Finding 21) and after 1848 (Proposed Finding 21, footnote 83; Proposed Findings 22 and 28), in an endeavor to protect the citizens of the United States, largely in the state of New Mexico. (Proposed Finding 28, footnote 123.) When the Navajo stayed in Hopi territory the government recognized the aggression by successive executive orders to sanction the Navajo action. The executive orders were ultimately confirmed by the Act of June 14, 1934, supra.

Depriving the Hopi Tribe of its territory was accomplished while the fee to both the Navajo and Hopi real property was held by the United States Government as the guardian of their property. (Buttz v. No.Pac. R.R., 119 U.S. 55 at 66; 30 L Ed. 330 at 335). After assisting the United States in its war upon the Navajo (Ex. 307 (Navajo); Ex. 303 (Navajo) pg. 2), the Hopi reliance upon the government for protection of Hopi property resulted in frustration and loss.

The Supreme Court of the United States held in the Santa Fe case (314 U.S. 339 at 345) that the policy of the government to respect the aboriginal possession of lands held by Indian tribes applies to lands

acquired under the terms of the Treaty of Guadalupe Hidalgo (9 Stat. 922). It is not denied that the Hopi right of occupancy was subject to the dominion and control of the government. (Buttz v. No. Pac. R.R. supra) (Johnson v. McIntosh, 8 Wheat 543 at 575, Bk. 5 L Ed. 681 at 689).

To abandon is to forsake or desert the territory. The circumstances of the instant case are clearly distinguishable from the cases holding that Indian title is extinguished when a tribe ceases to exclusively occupy an area of land. (Quapaw Tribe v. United States, 128 C.Cls.45,49; Osage Nation v. United States, 11 Ind.Cl.Comm. 733).

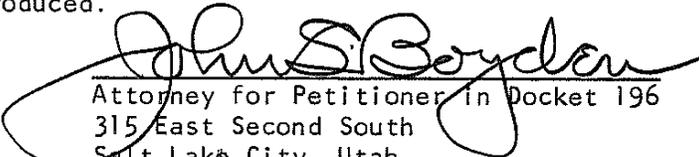
The government, charged with the solemn duty to deal fairly and honorably with petitioner and its property, (Act of Aug. 13, 1946, Sec. 2, 60 Stat.1049) cannot allow one of its wards to impose upon another, sanction and ratify the imposition, and then claim Indian title is not exclusive because of acts which that government has aided and abetted.

The dominion of the government over Indian land was also recognized by the Supreme Court in an earlier case, (Beecher v. Wetherby et al, 5 Otto 517, 95 U.S. 517, Bk. 27 L Ed. 440) but the court employed some significant language:

"It is to be presumed that in this matter the United States would be governed by such considerations of justice as would control a Christian people in their treatment of an ignorant and dependent race."

Congress has answered the challenge with the Act of August 13, 1946, supra, under which redress may be had. (Jicarilla Apache, Kiowa, et al cases, Dockets No. 22A and No. 257).

We respectfully submit that the Hopi claim is conservative and meritorious under all of the evidence produced.


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