Apache Indians XII

MESCALERO APACHE SUBSISTENCE PATTERNS AND SOCIO-POLITICAL ORGANIZATION

Harry W. Basehart

COMMISSION FINDINGS ON THE APACHE

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Contents*

Map showing 1950 location and estimated original range of the Apache Indians 7**
The Report
Mescalero Apache Subsistence Patterns and Socio-Political Organization, *Harry W. Basehart* 9
Commission Findings on the Apache Indians 179

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HP2458

BEFORE THE INDIAN CLAIMS COMMISSION

THE FORT SILL APACHE TRIBE OF THE STATE OF OKLAHOMA,	)	
THE CHIRICAHUA APACHE TRIBE, EX REL. SAM HAOZOUS, BENEDICT JOHZE, JAMES KAYWAYKLA, ROBERT GOODAY, DAVID CHINNEY,	)	
THE WARM SPRINGS APACHE BAND, EX REL. SAM HAOZOUS, BENEDICT JOHZE, RAYMOND JOHN LOCO,	)	
THE CHIRICAHUA APACHE BAND, EX REL. ROBERT GOODAY, DAVID CHINNEY, CASPER CALIO,	)	Docket Nos. 30 and 48
THE NAVAJO TRIBE OF INDIANS,	)	Docket No. 229
Plaintiffs,	)	
v.	)	
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: April 1, 1970

FINDINGS OF FACT

The Commission makes the following findings of fact:

1. The Fort Sill Apache Tribe of the State of Oklahoma represents the Chiricahua Apache Tribe, the Warm Springs Apache Band, and the Chiricahua Apache Band, and together they constitute a single identifiable Apache group having the right and capacity to bring and maintain in their own behalf under the Indian Claims Commission Act (60 Stat. 1049) the claims asserted herein against the United States. They shall hereinafter be referred to either as "Apache plaintiffs", "Apaches", or

450

simply "plaintiffs". Commission's Finding 2, The Fort Sill Apache Tribe of the State of Oklahoma, et al., v. United States, Dockets 30-A and 48-A, 19 Ind. Cl. Comm. 212, 214 (1968).

2. The Navajo Tribe of Indians, the plaintiff in Docket No. 229, is a tribe of American Indians residing within the territorial limits of the United States, and it possesses a tribal organization recognized by the Secretary of the Interior as having authority to represent and to act on behalf of said tribe. The Navajo Tribe of Indians has the right and capacity to bring and maintain this action under Section 2 of the Indian Claims Commission Act of August 13, 1946 (60 Stat. 1050, 25 U.S.C. §70a).

3. The subject lands are located in the southwestern part of the State of New Mexico between the San Francisco River on the west and the Magdalena Mountains on the east. The northern boundary of said lands is the northern boundary of a large land area originally claimed by the Apache plaintiffs in the Fort Sill case, supra; the southern boundary of the subject lands lying adjacent to that area awarded to the plaintiffs in the Fort Sill case. Plaintiffs and the Navajo Tribe of Indians are each asserting exclusive ownership of the Indian title to the subject area. The date of taking by the United States of the Apache plaintiffs' interests in the subject lands is September 4, 1886, the date of final surrender of the Chiricahua Apaches under Geronimo, and the ultimate removal of the Apaches as a tribe from New Mexico and Arizona to Florida. Comm. Finding 14, Fort Sill Apache et al., v. United States, supra.

451

HP2459

4. The earliest record of Apaches in the subject area pertained to a group called Querechos in 1583. They were again referred to by the first Spanish Governor of New Mexico in 1599. The name "Apache" actually first appears in the literature in 1598. One big group begins to show up between 1607 and 1705, the Apaches de Chilmo, described as being "north of the Mansos on the Rio Grande River" (at El Paso on the Mexican border). When Father Benavides came into the area in the 1620's, he said that the Apaches roamed to somewhere below Socorro, locating them in a region that stretched from the San Mateo Mountains on the east westward to what is now the western border of New Mexico. This description includes in its boundaries the
452 subject overlap. Apache expansion southward occurred after 1700, following the Pueblo Rebellion.

5. The expert testimony in the record established specific Apache habitations within the overlap area prior to 1796 as far west as the Mangas Mountains, as far north as the Gallinas and Bear Mountains, and on the San Augustin Plains, across which they traveled to a large cluster of Apache sites along the Rio Grande River east of the subject area, ranging from the Magdalena Mountains southward. Additional residential locations of the Apaches were shown to persist through a period studied up to 1876. These included locales on the western edge and the central portion of the San Augustin Plains, with locations to the north as far as Quemada and the Gallinas Mountains. Apache locations existed in the Apache

Mountain and Tularosa Mountain areas as late as 1868, and in the Magdalena Mountains in 1864. The latest new Apache location to the east near the Rio Grande was in 1863. Others were traced to the period of the 1850's.

6. Much of the territory used and occupied by the Apaches in southwestern New Mexico is semi-arid. Being a nomadic non-agricultural people, the Apache subsistence requirements caused these Indians to range over a vast land expanse in search of wild game and such wild foods as roots, herbs, mescal, pinon nuts, as well as salt and medicinal items. Some of these resources existed in the southern sector of the subject area. The general unproductiveness of the land explains to a great extent the reasons for Apache raiding and stealing 453
from the Mexicans below the border, and the white settlers above, as well as the practice of trading at distant posts the fruits of their raids for the necessities of life.

The Apaches continually used the Plains of San Augustin in the overlap area to reach their habitats near the Rio Grande River, as well as to visit trading posts located at Socorro and Sante Fe. They moved from one camp to another from season to season.

Confirmation of Apache presence in the southern sector of the subject area in regard to raiding activities and traveling at Socorro and other points is found in the reports of traders and United States Government officials between 1840 and 1856.

HP2460

7. The first mention of Indians other than Apaches in southwestern New Mexico occurs in the 1700's when the Navajos, under pressure from the Utes and Comanches, began a southward movement from the San Juan basin toward the San Jose River just north of the overlap area. Actually the Navajos had entered New Mexico proper sometime between the years 1300 and 1500.

These Navajo Indians were primarily a nomadic type, and as their population increased so did their economic needs. As they acquired horses they sought additional forage for their growing livestock enterprise. Wandering over broader areas they became more warlike, stepping up their raids and thefts from their neighbors, be they Indians or white settlers.

454

While there is little doubt that the Navajos wandered over this general area, historical records prior to the attachment of American sovereignty are inconclusive as to the extent or nature of Navajo presence in the overlap area.

8. Immediately north of the subject lands and extending roughly the entire length of the northern boundary of the overlap area are situated the contiguous principal pueblos of the Laguna, Acoma, and Zuni. The origin of these Pueblo Indians extends back into antiquity, and their continued presence in this part of New Mexico has been well documented throughout the periods of Spanish, Mexican and American sovereignty.

North and northwest of the Pueblos were the Navajos whose first coming into the Acoma-Laguna area occurred around the middle of the

18th century when some of them were settled at Encinal and Cebolleta in an abortive attempt by the Spanish to Christianize them. Although these missionary attempts had failed by 1750 and the Navajos had moved on westward, small Navajo bands and families did thereafter move in and out of the area north of the subject lands.

Around 1780 the Navajos began raiding the Pueblos and the ranches of the neighboring Spanish settlers for sheep and horses. Reports during this particular period show that the Navajo raids on the Laguna Pueblo emanated from the north, while the raids on the Acoma came from west of Mt. Taylor. At the same time Apaches were raiding from the south. Spanish troops were dispatched to protect the Pueblos, and their reports show military operations being conducted in the area north and northwest of, and well outside of the overlap area.

455

Navajo raiding upon the Pueblos and the Spanish settlements annexed thereto remained a common thing throughout the entire period of Spanish sovereignty and on into the Mexican period that began in 1821.

9. While the Spanish were able at times to check the frequency of Navajo raiding sorties, the Mexican officials considered themselves at war with Navajos during the entire period of Mexican sovereignty (1821-1846). Thus the Navajos, the Utes, and the Apaches continued to raid the Spanish and Pueblo Indian settlements. During the entire Mexican period, Navajo raids were carried on at Laguna, Acoma, Santa Ana, Abiquiu, Jemez, Cebolleta, Rita de Laguna, Socorro on

HP2461

the Rio Grande south of Albuquerque, along the San Jose River and the Rio Grande, all such site references being outside the overlap area.

In 1838, the Governor of New Mexico reported the Navajo had established their permanent winter quarters at Chuska and Ojo de Carrizo, Sierra de Tunecha and Canyon de Chelly, a large area situated well north and northwest of the Apaches and the subject lands, and extending into northern Arizona.

10. The advent of American sovereignty over the New Mexico Territory in 1846 brought promises of military protection against marauding tribes. In the same year a peace treaty was sought to be concluded with the Navajos. The treaty was actually signed but was never ratified. The Navajo thereafter continued their hostile incursions and raids upon the Pueblo Indians and the Spanish settlements. A second unratified treaty was negotiated in 1848, but a third concluded in 1849 was ratified on September 8, 1850. It proved worthless, as the Navajos continued their depredations along the Puerco Valley, stealing thousands of sheep from the Pueblos, killing several settlers and generally causing considerable trouble along the Rio Grande.

456

In 1855 the United States in another proposed treaty with the Navajo tribe sought to create the first Navajo reservation, the outlines of which were taken off an 1851 map of New Mexico prepared by

Lt. Parke of the Army topographical engineers. Parke's map shows that the so-called "Navajo Country" extended from the San Juan River in the north, to the Zuni Mountains and Mt. Taylor in the South; from Mesa de la Vaca or Black Mesa in the west to Canyon Largo and the Rio Puerco in the east -- again, an area situated north and northwest of the subject lands.

11. The period 1858-1868 was one of stress for the Navajos and has frequently been referred to as the "flight period." In the fall of 1862 the Navajos and Apaches intensified their raids upon the Rio Grande settlements, and in September 1863, General James Carleton conceived the idea of moving all the Navajos to Fort Sumner on the Pecos River in New Mexico. Accordingly, a reservation 40 miles square was set aside for the Navajos and the Mescalero Apaches at Bosque Redondo with Fort Sumner in the center.

457

Acting under General Carleton's orders, Colonel "Kit" Carson proceeded against the Mescalero Apaches, and after subduing them, he turned his attention to the Navajos who immediately scattered in all directions. Carson, however, pursued them vigorously, and his sorties carried deep into Navajo country north and northwest of the subject area.

Following his campaign into Canyon de Chelly, hundreds of Navajos began to turn themselves in at Fort Defiance, Arizona. By February 15, 1864, 1500 Navajo Indians were at Fort Defiance, and by March 6, 1865, there were 2400 Navajo Indians who had started the arduous 300 mile trek eastward to Fort Sumner. An additional 700 Navajos embarked on

HP2462

the same eastward journey on March 14, 1864, and on the following day some 2300 more Navajos arrived at Fort Defiance.

12. The mounting campaign to round up the Navajos and move them to the Bosque Redondo reserve caused many of these Indians to relocate in areas not previously occupied to any extent by the Navajos. We find reports of Navajos seeking refuge in the Escudilla Mountains and in the Apache country south of the Zuni. Other Navajo families fled into the Datil Mountains in the northern part of the overlap area. Their presence caused many of the Apaches to remove themselves to the Apache lands further south.

458 History is rather silent with respect to the extent of general Navajo displacement of Apaches in the northern portion of the overlap area. The archaeological evidence of record, including the extensive tree ring data, was inconclusive in identifying specific Apache and Navajo sites in the overlap area. The similarity in Apache and Navajo artifacts found in excavated ruins was frequently noted, and the identifiable Navajo sites were for the most part linked with Navajo usage during and after the Navajo incarceration at Fort Sumner in 1868. The evidence of record also fails to establish the extent of any Apache attempts to relocate in the northern portion of the overlap area at any time prior to the September 4, 1886 date of taking of the subject lands.

13. On June 1, 1868 a treaty was concluded at Fort Sumner between the United States and the Navajo Nation (15 Stat. 667).

Under Article 2 of the treaty, a reservation was set apart in northeastern Arizona and northwestern New Mexico for the Navajos and for any other Indians the Navajos may wish to admit among them. As consideration for the benefits conferred by the treaty the Navajo relinquished under Article 9 of the treaty all occupancy rights to lands outside of the Article 2 reservation, while at the same time retaining qualified hunting rights to unoccupied lands contiguous to the reservation. The lands reserved, Royce Area 518, and the lands ceded to the United States, Royce Area 519, are situated well north and outside of the overlap area. It was the conclusion of the 1868 treaty that facilitated the release of the Navajos at Fort Sumner, and 459 the majority of these Indians ultimately returned to their old country and the new reservation in the Canyon de Chelly, the Chucka Mountains, Ojo de Oso and the Tunicha Mountains.

14. Based upon the foregoing findings of fact, and all the evidence of record, the Commission finds that, as of September 4, 1886, the plaintiffs held aboriginal title to the following described tract within the overlap area and lying north of and contiguous to that tract previously awarded to the Apache plaintiffs in Docket Nos. 30-A and 48-A (Commission's Finding 13(a), 19 Ind. Cl. Comm. 212, 241, 242):

> Beginning at a point as shown on Plaintiffs' Exhibit 434 where the southern boundary line of Township 4 South, Range 15 West of the New Mexico Principal Meridian intersects with the claimed boundary line of the "Navajo Overlap" as depicted by the "dashed green line",

HP2463

thence on a line due north to state highway 12, thence east and northeast on state highway 12, to the town of Datil, thence east on U. S. highway 60 to its intersection with the aforementioned "dashed green line", thence south, southwest following said "dashed green line" to the point of beginning.

The evidence of record does not support the Apache plaintiffs aboriginal title claims to the balance of the lands in suit herein.

CONCLUSION

The Commission concludes that, the Apache plaintiffs are entitled under the Indian Claims Commission Act (60 Stat. 1049) to bring and maintain this suit in their own behalf; as of September 4, 1886 the date of taking herein, the plaintiffs held Indian title to lands described in Finding 14, supra; as of September 4, 1886, the United States without the payment of any compensation took from the Apache plaintiffs the lands described in Finding 14, supra; the United States is liable to the Apache plaintiffs for the fair market value of the aforesaid lands as of September 4, 1886, less allowable offsets; and, the Apache plaintiffs did not have aboriginal title to the balance of the lands in suit herein.

460

Jerome K. Kuykendall, Chairman

Margaret H. Pierce, Commissioner

John T. Vance, Commissioner

Brantley Blue, Commissioner

Richard W. Yarborough, Commissioner

BEFORE THE INDIAN CLAIMS COMMISSION

THE FORT SILL APACHE TRIBE OF THE STATE OF OKLAHOMA,	)	
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THE CHIRICAHUA APACHE BAND, Ex Rel. ROBERT GOODAY, DAVID CHINNEY, CASPER CALIO,	)	
Petitioners,	)	
v.	)	Docket Nos. 30-A and 48-A
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

461

Decided: June 28, 1968

Appearances:
Abe W. Weissbrodt
Attorney for Petitioners

I. S. Weissbrodt and Morton Liftin
of Weissbrodt, Weissbrodt & Liftin
Roy T. Mobley, Esquire
James L. Kunen
of Martin, Kunen and Whitfield
Rodey, Dickason, Sloan, Akin & Robb
Of Counsel

Howard G. Campbell, with whom was associated
Mr. Assistant Attorney General Clyde O. Martz,
Attorneys for Defendant.

OPINION OF THE COMMISSION

Scott, Commissioner, delivered the Opinion of the Commission.

HP2464