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Contents

Preface 7*

The Garland American Indian Ethnohistory Series

General Nature and Content of the Series
David Agee Horr 9

The Indian Claims Commission, *Ralph A. Barney* 13

Introduction to the Ethnohistorical Reports on the Land Claims Cases, *Robert A. Manners* 17

Background Material on the Hopi Indians as of 1953

Map showing 1950 location and estimated original range 20

Historical and Population Information 21

The Reports

The Hopi: Their History and Use of Lands
Florence H. Ellis 25

Hopi Ethnobotany and Archaeological History, *Harold S. Colton* 279

Commission Findings on the Hopi Indians 387

*Garland Publishing has repaginated this work (at outside center) to facilitate scholarly use. However, original pagination has been retained for internal reference.

HP4363

TABLE IV

HOPI SITES OCCUPIED AFTER 1700

N.A. 1040	Payupki
N.A. 1513	Walpi
N.A. 1914	Sichomovi
N.A. 1515	Tewa (Hano)
N.A. 1516	Mishongnovi, New
N.A. 1517	Shipaulovi
N.A. 1518	Shungopovi, New
N.A. 1519	Kikochomovi
N.A. 1521	Hotavilla
N.A. 1522	Bakabi
N.A. 1523	Moenkopi

COMMISSION FINDINGS

Also see Findings for Navajo, Pueblo, and Apache Indians.

HP4364

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,	)	
Plaintiff,	)	Docket No. 196
THE NAVAJO TRIBE OF INDIANS,	)	
Plaintiff,	)	Docket No. 229
v.	)	
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: June 29, 1970

Appearances:

John S. Boyden, Attorney for Plaintiff in Docket No. 196; Wilkinson, Cragun & Barker, of Counsel; Don A. Stringham on the Brief.

Norman M. Littell, Attorney for Plaintiff in Docket No. 229; Joseph F. McPherson and Charles J. Alexander, of Counsel; Leland O. Graham, on Briefs; Harold E. Mott entered Appearance.

Walter A. Rochow and William H. Lundin, with whom were Assistant Attorneys General Edwin L. Weisl, Jr., and Ramsey Clark, Attorneys for Defendant.

OPINION ON TITLE

Chairman Kuykendall delivered the Opinion of the Commission.

HP4365

This consolidated case involves the overlapping aboriginal title claims of the Hopi Tribe, the plaintiff in Docket No. 196, and the Navajo Tribe of Indians, the plaintiff in Docket No. 229, to a large tract of land in northeastern Arizona and southern Utah.

The Hopi plaintiff contends that, following the attachment of American sovereignty over the area in suit in 1848 by virtue of the Treaty of Guadalupe Hidalgo (9 Stat. 922), the United States thereafter by a series of Presidential executive orders, administrative actions, and the enactment of certain legislation, deprived the Hopi Tribe step by step of all its aboriginal lands without the payment of any compensation. Recovery is sought under Section (2)(4) of the Indian Claims Commission Act. On the other hand the Navajo plaintiff alleges that by virtue of the Navajo Treaty of July 1, 1868 (15 Stat. 667) the
390 Navajo Tribe ceded to the United States its aboriginal rights to the Hopi-Navajo claimed area for an unconscionable consideration for which additional compensation is sought under Sec. 2(3) of the Act. The contested area in this law suit represents the totality of Hopi aboriginal land claims in Docket No. 196, which area is located within and consists of about one-third of a much larger area that is the subject matter of the claims asserted by the Navajo plaintiff in Docket No. 229.

The Hopi or "Moqui" Indians belong to the Pueblo culture, speak a Shoshonean dialect, and are one of the few American Indian tribes still residing in a major portion of their ancestral home. The Hopi origins are lost in antiquity, and their first recorded contact with the white man occurred in 1541, when a Spanish detachment stationed at

Zuni east of the Hopi Tribe was sent by Coronado to visit the province of Tusayan as the Hopi country was referred to. Upon their arrival the Spaniards found the Hopis gathered in permanent villages on three principal mesa tops. These Hopi mesas are situated in the center of the overlap area, and extend upward six hundred feet above the surrounding valleys and range lands. Throughout the period of Spanish rule over the southwestern part of the country, the Mexican period (1821-1848), and even after American sovereignty attached under the provisions of the 1848 Treaty of Guadalupe Hidalgo, the Hopi Indians have been pictured as a relatively inoffensive and timid people, living in six or seven permanent village sites on the Pueblo mesas in the heart of their country. Their agricultural subsistence was supplemented by cattle and sheep raising in the nearby valleys, with some hunting and food gathering in the outer or peripheral areas away from the village 391
sites. While the Hopi were a religious tribe, they resisted to a marked degree the efforts of the Spanish missionaries to convert them to the tenents of Christianity. The focal point of Hopi worship was the eagle, considered the most sacred of birds and a sun symbol. The Hopis had numerous eagle shrines which they visited periodically. Many of these shrines were located at great distances from their village sites, some being located as far west as the San Francisco Mountains and as far south as Chevelon Creek southeast of Winslow, Arizona, both sites being well beyond the boundaries of the area in suit. Many of the outlying shrine areas were also visited by the Navajo, Zunis, Acomas

HP4366

and other Pueblo and Apache groups. Many of the Hopi shrines had been abandoned some years prior to the time American sovereignty attached in 1848. 1/

The United States officials had but little contact with Hopi Indians during the early years of American sovereignty over the New Mexico Territory. The Hopis, who numbered about 2,500 souls, were then living in seven villages; namely, Walpi, Sichomovi and Hano on the First Mesa; Mishovgnovi, Shungopovi and Shipaulovi on Second Mesa; and Oraibi on Third Mesa. What contact there was usually resulted from Hopi complaints of Navajo raiding, an activity which the Navajo had regularly pursued during both the Spanish and Mexican periods of sovereignty.

392

The Navajos first entered the southwestern part of the United States sometime between 1300 to 1500 A.D. They are a branch of the Athapaskan people who apparently migrated into the southwestern part of the United States from Canada. With the Apaches the Navajos make up one linguistic group who were first contacted by the Spanish south of the San Juan River early in the seventeenth century.

The Spanish had found the Navajos to be an aggressive people who shunned attachment to permanent village sites. They moved about a

1/ By 1848 the Hopi had abandoned the Navajo Mountain shrine on the northern boundary of the overlap area, and the San Francisco Mountain and Chevelon Creek shrines west and south of the claimed area.

great deal gathering food and hunting where the opportunity availed itself. During the Spanish era, the Navajos acquired horses and sheep. The horses provided them with even more mobility, and as the Navajo population increased their territorial demands likewise increased. It was inevitable that there would soon be conflict between the warlike Navajos, the neighboring Indian tribes and the Spanish authorities.

History has shown that Navajo territorial expansion was in a westerly direction. The Utes to the north and Apaches to the south contained Navajo tribal movement in those directions, while the Spanish and Pueblo Indian settlements to the east near the Rio Grande River proved to be a formidable barrier to any eastward Navajo expansion.

In 1848 the heart of the Navajo country lay east of the lands in suit being generally identified as that area in northwestern New Mexico and northeastern Arizona in the vicinity of the San Juan River and its tributary streams west of the Rio Grande, and including Blanco Canyon, Canyon de Chelly, and the Tunicha Mountains. By 1854 the Navajo Tribe numbered 8,000 to 10,000 Indians who could be found as far south and southwest in New Mexico and Arizona as the 35° parallel of north latitude just outside the overlap area. 393

For all intents and purposes the United States officials inherited the Navajo situation that had plagued the prior Spanish and Mexican authorities for years. There was constant turmoil and warfare between the Navajos, the New Mexican settlers and the neighboring tribes. It was a period when the Hopis to the west were beginning to feel the

HP4367

mounting pressure from the Navajos. A treaty of peace concluded with the Navajo Tribe in 1849 had failed to stem Navajo raiding activity. In an attempt to check further Navajo encroachments Fort Defiance had been established in 1851 in Arizona at a point just west of the present New Mexico-Arizona boundary line.

In 1855 Governor David Merriwether sought by treaty to establish a Navajo reservation. The western boundary of the proposed new reservation was described as a line running north and south in Arizona, between the confluence of the San Juan River and the Rio de Chelly and the confluence of the Zuni River and the Little Colorado River. This western boundary, as drawn, is situated approximately 20 miles east of the nearest Hopi villages and within the eastern boundary of the lands in suit. As such it represents a compromise of what was believed to be the
394 western limits of Navajo country as gleaned from earlier maps and other information then available. Due to an unfavorable Committee report the proposed 1855 Treaty was never ratified by the United States Senate.

Trouble with the Navajos continued through the 1850's and into the 1860's. In 1863 the military authorities conceived the idea of removing all Navajos and relocating them east of the Rio Grande River on the Pecos River at the Bosque Redondo in New Mexico. Colonel Kit Carson was placed in charge of field operations. By April of 1864 several thousand Navajo Indians had been rounded up and interned at Fort Sumner at Bosque Redondo. Thousands of other Navajos had managed to elude

Carson's troopers by scattering to the winds and moving into remote areas where they had never been seen before.

Faced with the enormous problem of caring for thousands of dissatisfied Navajos interned at Fort Sumner, the United States authorities decided that a permanent Navajo reservation should be established, one that would essentially embrace the limits of lands traditionally associated with the Navajo Tribe. On June 1, 1868, the United States entered into a treaty with the Navajos at Fort Sumner under the terms of which the Navajo Tribe was granted a sizeable reservation lying east of and adjacent to the lands in suit. In exchange for this new reservation the Navajo Tribe agreed to relinquish all occupancy rights to lands situated outside of the reservation except the limited right to hunt on unoccupied lands contiguous thereto. 2/ Within a short period those Navajo Indians interned at Fort Sumner were released and moved to the 395
newly established reservation. Estimates of the overall Navajo population in 1868 place the figure at twelve to thirteen thousand Indians.

An 1878 Executive Order reestablished the western boundary of the 1868 Navajo Reservation further west at the 110° West Longitude, and an 1880 Executive Order added more land to the southwest part of the reservation. As enlarged the 1868 Navajo Reservation amounted to roughly eight million acres. Despite the vast size of this reservation

2/ 15 Stat. 667.

HP4368

many Navajos ignored its boundaries and moved westward encroaching more and more upon lands considered to have belonged to Hopi Indians. The Indian agents in residence near the Hopi villages began to relay to their superiors in Washington an increasing number of Hopi complaints concerning Navajo encroachments on Hopi lands.

By 1876 it had been recommended that the Hopi Indians be given a reservation to protect them against Navajo trespasses and white intermeddlers. Nothing came of this or subsequent proposals until December 16, 1882, when President Arthur, acting upon the recommendations of Agent J. H. Fleming, issued an Executive Order setting up by metes and bounds a new Indian reservation of roughly 2-1/2 million acres for the immediate benefit of the Hopis ". . . and such other Indians
396 as the Secretary of Interior may see fit to settle thereon." (I Kappler 805) This new Executive Order Reservation rests in the center of the overlap area and abuts the Navajo Reservation on the west, the common boundary line being the 110° of West Longitude. As established the 1882 Reservation contains within its boundaries all of the Hopi permanent villages, the agency buildings at Keams Canyon, and what Agent Fleming considered to be sufficient land to meet the needs of the Hopi population which then numbered about 1800 Indians. In addition to the Hopis, there were approximately 300 Navajo Indians living in the Executive Order Reservation as of 1882.

In the Commission's judgment the formal issuances of the December 16, 1882 Presidential Order effectively terminated and put to rest

all Hopi aboriginal title claims beyond the limits of the 1882 Hopi Executive Order Reservation.

The Commission concludes that the record herein does not support the large aboriginal land area contended for by the Hopi plaintiff. In awarding a much smaller area, we considered among other things the fact that the Hopi Indians were a relatively small tribe, probably never exceeding 2500 Indians prior to 1882, and that by nature the Hopis were inoffensive and somewhat timid Indians whose pueblo oriented culture and environment confined them to permanent village sites.

The Hopis grazed sheep and cattle in the valleys below the mesas and the Commission is of the opinion that its boundary lines include the land used for these purposes. 3/

Finally the Commission does not agree with the Hopi plaintiff 397
that the sporadic and intermittent visits of Hopi Indians to sacred shrines in the outer reaches of the overlap area substantiates Hopi aboriginal title to all those lands lying between the village sites and these distant shrine areas. First of all the record clearly documents a long time Hopi abandonment of many shrine areas as well as common usage by other tribes of other shrines. While admitting to actual physical abandonment of shrines, the Hopi plaintiff insists that Hopi Indian presence is unnecessary to sustain ownership

3/ We note in this connection that Hopi Indian agent J. H. Fleming in a letter to the Indian Commissioner Price on December 4, 1882, indicated that boundaries of the proposed new Hopi Reservation embraced sufficient land for their agricultural and grazing purposes. Healing v. Jones, 210 F. Supp. 125 (1962) Aff'd 373 U.S. 958, Hopi E. 78.

HP4369

rights to their sacred places as long as spiritual attachment or rapport is sustained. However, even if we were to accept Hopi spiritual attachment as an indicia of aboriginal ownership, the Hopis in our judgment have failed to meet the evidentiary burden of showing continuous and exclusive use of their outlying and remote shrine area. The Confederated Tribes of the Warm Springs Reservation of Oregon v. United States, 177 Ct. Cl. 184 (1966), The Sac and Fox Tribe of Indians of Oklahoma, et al., v. United States, 161 Ct. Cl. 189, 315 F. 2d 896 (1963), cert. denied, 350 U.S. 848. In fact the archaeological evidence of record points to the presence of many abandoned Navajo sites throughout the perimeter of the subject tract although the actual use dates of many of these sites are strictly conjectural.

The Commission is of the opinion that as of December 16, 1882,
398 when the Presidential Order was issued setting up the 1882 Executive Order Reservation, the Hopi Tribe held the Indian title only to those lands within the overlap area as described in the Commission's Finding No. 20. The Commission further concludes that the issuance of the December 16, 1882, Presidential Order setting up the Executive Order Reservation for the benefit of the Hopi Tribe, and for such Indians as the Secretary of Interior might see fit to settle thereon, had the effect of extinguishing, without the payment of any compensation, the Hopi Indian title to all those lands described in the Commission's

Finding No. 20 lying outside the boundaries of the 1882 Executive Order Reservation.

Following the issuance of the 1882 Presidential Order, certain events and happenings transpired which finally deprived the Hopi Tribe of a major part of its aboriginal title lands within the 1882 Executive Order Reservation. There has been placed in the record in this case a copy of the findings of fact, opinion, and conclusions of law, issued in the case of Healing v. Jones, 210 F. Supp. 125 (1962), Aff'd. 373 U.S. 758 (1963), a matter of which this Commission takes judicial notice. The Healing case was a special action brought by the Hopi Tribe against the Navajo Tribe and the United States before a special three judge court convened pursuant to the Act of July 22, 1958, 72 Stat. 402, for the purpose of resolving the competing Hopi and Navajo claims in and to the 1882 Executive Order Reservation. 399
Where pertinent and material to the disposition of title issues in this case, and where consistent with the record and the law of the case, the Commission had adopted as its own, either in part or in total, directly or indirectly, certain findings of fact and conclusions of law rendered by the court in Healing v. Jones, supra.

In the Healing case, the Court found, and the Commission concurs, that; (1) The Navajo population in the Executive Order Reservation increased steadily from 1882 from 300 Indians to 8,800 Indians by

HP4370

1958, and the Hopi population increased from about 1800 Indians to over 3,200 during the same period; (2) while Navajo Indians were allowed to move on to part of the Executive Order Reservation after 1882, it was not until June 2, 1937, that the Secretary of Interior by the issuance of certain grazing regulations impliedly settled the Navajo Tribe on a part of the Executive Order Reservation pursuant to the valid exercise of the authority conferred in the Secretary by the December 16, 1882 Presidential Order; (3) that Hopi non-use of a large part of the 1882 Reservation can be attributed to Hopi superstition and fear of the more warlike and aggressive Navajos and not to Hopi abandonment of the land; (4) that part of the Executive Order Reservation upon which the Navajo Tribe was officially settled was segregated from that part of the reservation where the Hopi villages and population were concentrated; and (5) that the limitation upon the Navajo tribal use area within the Executive Order Reservation was administratively fixed on April 24, 1943, by the Bureau of Indian Affairs when it circumscribed the boundaries around an area encompassing the Hopi villages, said area being designated as "land management district 6"

400

In the Commission's judgment, Hopi aboriginal title to the 1882 Executive Order Reservation lands, except for those lands within "land management district 6", was extinguished, without the payment of any compensation, by administrative action on June 2, 1937 when the Navajo Tribe was legally settled on the Hopi reservation.

The case shall now proceed to a determination of the acreage and the December 16, 1882 fair market value of the lands awarded to the Hopi Tribe as set forth in the Commission's Finding 20 lying outside the 1882 Executive Order Reservation; to a determination of the June 2, 1937 fair market value of some 1,868,364 acres 4/ of Hopi aboriginal title lands within the 1882 Reservation but lying outside the boundaries of land management district 6, and, to a determination of all other issues bearing upon the defendant's liability to the Hopi Tribe.

Jerome K. Kuykendall, Chairman

Concurring:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

401

4/ The 1882 Executive Order Reservation contained 2,499,558 acres, and "land management district 6" contained 631,194 acres, Comm. Finding 23.

HP4371

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,	)	Docket No. 196
Plaintiff,	)	
THE NAVAJO TRIBE OF INDIANS,	)	Docket No. 229
Plaintiff,	)	
v.	)	
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: June 29, 1970

FINDINGS OF FACT

The Commission makes the following findings of fact.

402

1. The Hopi Tribe, the plaintiff in Docket No. 196, 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), the majority of whose members reside on the Hopi Reservation in Arizona. The Hopi Tribe is recognized by the Secretary of Interior as having the authority to represent said Hopi Indians, and as such the Hopi Tribe has the right and capacity under the Indian Claims Commission Act (60 Stat 1049) to bring and maintain this action.

2. The Navajo Tribe of Indians, the plaintiff in Docket No. 229 is a tribe of American Indians that possesses a tribal organization recognized by the Secretary of Interior as having the authority to

represent and to act on behalf of said tribe. The Navajo Tribe of Indians has the right and capacity under the Indian Claims Commission Act, supra, to bring and maintain the claims asserted herein.

3. The lands to which the Hopi Tribe asserted aboriginal or Indian title, and, which said tribe claims the United States took without the payment of any compensation, are located in Arizona and Utah. This landed area is bordered on the north and west by the San Juan and Colorado Rivers, on the south by the Little Colorado and Zuni Rivers, and on the east by the "Merriwether Line", a line that extends from the confluence of the San Juan and Rio de Chelly Rivers on the north to the confluence of the Little Colorado and Zuni Rivers on the south.

This tract of land that is aboriginally claimed by the Hopi Tribe in Docket No. 196 lies totally within a larger area to which the Navajo plaintiff in Docket No. 229 is asserting Indian title. In order to resolve all title claims against the United States to this overlap area, or subject tract, the Commission ordered consolidation of the above dockets. (Commission's Order of May 31, 1957.)

403

4. The Hopi or "Moqui" Indians are a remnant of the western branch of an early house building race which once occupied the southwestern table lands and canyons of New Mexico and Arizona. The Hopi Indians belong to the Pueblo culture, speak a Shoshonian dialect, and are one of the Indian tribes of North America still residing in their ancestral home.

HP4372

5. Before 1300 A.D. the ancestors of the Hopi were identified in the area between Navajo Mountain in the northwest corner of the overlap area and the Little Colorado River to the south, and between the San Francisco Mountains well south of the overlap area and the Luckachuais Mountains in the northeast portion of the subject tract.

Archaeological evidence indicates that the Hopi village of Oraibi has existed in its present form since the 12th century. Oraibi is located near the center of the subject area and within the confines of the Hopi Reservation that was established by the Executive Order of December 16, 1882 (I Kappler 805).

6. It was in the summer of 1541 that the Hopi Indians first became known to white men. At that time, General Francisco Coronado sent Don Pedro de Tovar and a small detachment westward from the Zuni country to investigate the seven Pueblos in the province of Tusayan, as the Hopi country was then referred to, for the purpose of gaining information relative to the area and its people. There Tovar found the Hopis in villages on the mesa tops. The level summits of these mesas rise about six hundred feet above the surrounding valleys and range lands. The individual village houses, made of stone and mud, were two or three stories high and grouped together in typical pueblo fashion. The Hopis, who are ordinarily a timid and inoffensive people, were at first unfriendly to the Spaniards, but this soon changed and de Tovar's party remained with the Indians, learning from them, among other things, of the existence of the Grand Canyon.

De Tovar found that Hopis of this period wore cotton garments and that they possessed such things as dressed hides, flour, salt, pinon nuts, fowl and jewelry. They also cultivated fields of maize, beans, peas, melons, and pumpkins. The areas away from their village sites provided the Hopi Indians with a hunting ground for bears, mountain lions, wild cats, and other wild life.

In 1582 the Spanish merchant, Antonio de Espejo, journeyed from the Zuni village in New Mexico to the Hopi villages of Awatovi, Walpi, Shungopovi, Mishongnovi, and Oraibi. While there Espejo traveled to the Hopi silver mines that were located on Anderson Mesa near the San Francisco peaks, a location situated southwest of and outside the overlap area.

In 1598 the Spanish Governor and colonizer of New Mexico, Onate, visited the Hopi villages and took possession of the country in the name of the Crown of Spain.

In 1629 the Franciscan missionaries established a series of three missions in the Hopi villages of Awatovi, Shungopovi, and Oraibi. Father Benavides, one of the most important Spanish chroniclers of this period, had visited the Hopis in 1628 and 1630, but in 1633 he was killed at the village of Awatovi.

7. In 1680 the Pueblo Indians of New Mexico rebelled against the Spanish Government. The Hopi Indians joined in the rebellion which resulted in the temporary withdrawal of the Spanish from New Mexico. In 1692 Don Diego de Vargas returned, reconquered New Mexico for Spain,

HP4373

and reestablished Sante Fe as the capital.

The Spanish reconquest of New Mexico in the 1690's led many of the Pueblo Indians in the Upper Rio Grande Valley to seek protection among the Hopi. About the year 1700 the Tewa Indians, who had come to the "First Mesa" in the heart of the Hopi country at the invitation of the inhabitants of the Hopi village of Walpi, established the village of Hano. Here they have continued to live ever since. During this period the pueblos of the ancient Tusayan (Hopi) province, as known to the Spanish, consisted of Walpi, Sichomovi, and Hano, on First Mesa; Mishongnovi, Shungopovi, and Shipaulovi on Second Mesa; and Oraibi on Third Mesa, all such sites being situated in the center of the Hopi claimed area and within the confines of the 1882 Hopi Executive Order Reservation, supra. The ancient village of Awatovi
406 was destroyed in 1700.

During the years 1775 and 1776, two Catholic priests, Fathers Escalante and Garces, sought to open a way from California to the Hopi villages and on to Santa Fe, New Mexico. Father Escalante started from New Mexico and spent eight days in the Hopi towns. Father Garces started from California and traveled eastward across the Little Colorado River north of the Cameron and arrived at the Hopi village of Oraibi.

8. Although the Hopi Indians are pre-eminently a religiously oriented people, the Spanish missionaries had very little success in converting these Indians to the tenets of Christianity.

The Hopi worship was centered primarily on the eagle, it being considered the most sacred of birds. The Hopi Tribe had many eagle shrines that were visited periodically, although in the minds of the Hopi Indian one's actual presence at the particular shrine was not needed in order to satisfy the required religious attachment. In the buttes and higher mountain regions there were found many eagle shrines that were located forty miles or so from the nearest Hopi village claiming the ownership thereof. Such of the Hopi shrines as were located in San Francisco Peaks, west of the claimed area and at Chevelon Creek southeast of Winslow, Arizona, were quite remote from the principal Hopi villages. Many of these shrines had been physically abandoned over the years and long before the United States acquired sovereignty over the southwest portion of our country. Abandoned Hopi shrines can be found on Navajo Mountain, on the northwest perimeter 407
of the overlap area, in the San Francisco Mountains, and around Winslow, Arizona in the Little Colorado Valley. The Hopi villages that had been located along the Little Colorado near Winslow were moved on to the Hopi mesas and further north to Oraibi, and into the Jeddito Valley, these locations being well within the subject tract and the confines of the 1882 Hopi Executive Order Reservation. In addition to the Hopi, other southwest tribes, such as the Navajos, Zunis, Acomas, Lagunas, and the Apache groups visited religious shrines that were located on many of the prominent mountain peaks.

HP4374

9. The Navajo Indians, a branch of the Athapaskan people, and, who with the Apaches make up one linguistic unit, apparently migrated into the southwest from Canada. Just when the Navajos entered New Mexico is problematical, perhaps as early as 1300 A.D., or as late as 1500 A.D. Traditionally the Navajos refer to the upper Blanco and Largo Canyons in northern New Mexico as their ancestral lands, an area well east of the Hopi-Navajo claimed area that is involved therein. The lower Navajo Dam Reservoir region, also in New Mexico and east of the overlap area, was first settled by the Navajos in the 1500's and subsequently abandoned in the later 1700's probably due to the increasing hostilities with the Utes. In any event, the Navajos began to range further south and southwestward from the upper San Juan River areas during the Spanish period of sovereignty.

408

10. It was sometime during the early years of Spanish rule that the Navajo Indians were first introduced to horses and sheep, two items that would markedly increase their tribal mobility and foster a more nomadic existence.

As their population and animal stock increased in number, Navajo territorial demands increased accordingly. They grew more aggressive and warlike, and began with increasing regularity to raid and harass the Spanish settlements and the Pueblo Indian villages lying west of the Rio Grande River. Spanish reprisals against the Navajos were almost immediate, and as the colonial population grew in the Rio Grande Valley, the Navajos were compelled to move farther westward in order

to find the necessary range and to elude their enemies. Spanish slave raids against the Navajos,which were frequently carried out with the assistance of the Pueblo Indians, created more antagonism.

From 1720 until about 1750 an era of relative peace prevailed between the Spanish and the Navajos. This favorable situation was occasioned for the most part by the open hostility of the Ute Indians, who, coming down from the north, kept the Navajos busy and compelled them to move further south.

By the 1740's very few Navajo Indians remained in the Governador-La Jara area, most of them having receded southward toward the Big Bead Mesa and into the Cebolleta mountain region east of Mt. Taylor, an area somewhat east of the contested lands in this law suit.

Efforts by the Spanish missionaries in the 1740's to Christianize the Navajos living in the Cebolleta Mountains ultimately failed, and with the Spanish population in the Rio Grande Valley continuing to increase in the years that followed, territorial demands upon the Navajos and the other nomadic Indian tribes caused further migration south and west.

409 9

11. There was a renewal of Navajo raiding activity upon the Spanish colonial settlements and the neighboring Pueblo Indian villages that continued intermittently through the remainder of the Spanish regime as well as the entire 1821-1846 period of Mexican sovereignty.

Mexican officials considered themselves at war with the Navajos throughout the entire Mexican period, having conducted campaigns against

HP4375

them in 1823, 1833, 1836 and 1838. It was also a period when the Hopi villages were no longer immune to Navajo raiding and hostility, although generally speaking the territory of the Navajos was still to the east of the Hopi mesas.

12. It was during the Mexican War between 1846 and 1848 that the Hopi Indians became better known to American authorities. In 1846, Charles Bent, the Superintendent of Indian Affairs for the New Mexico Territory reported to the Commissioner of Indian Affairs as follows:

> 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.

410

Apparently the Navajo had not yet settled to any extent in the Hopi country, their territory being described as to the east and at Canyon de Chelly. The Navajos along with the Apaches were still raiding the Rio Grande Pueblos to the east, and the Zuni Pueblo to the south. To the west the Navajos were raiding near the Hopi villages, while at the same time they were avoiding any contact with the warlike Utes to the north.

The United States had commenced exerting military pressure against the Navajos as early as 1846. A treaty of peace with the Navajos was sought in the same year but failed ratification. A second peace

treaty in 1848 also failed to be ratified.

13. With the advent of American sovereignty over the Southwest in 1848 under the Treaty of Guadalupe Hidalgo (9 Stat. 922), Navajo depredations seem to increase in frequency despite military operations against them. Ute and Apache raiding activities contributed to the general unrest.

In 1849 American authorities concluded a peace treaty with the Navajo tribe at Canyon de Chelly in the very heart of the Navajo country. This treaty was ratified in 1850 but failed to halt Navajo raids. In the same year a deputation of Hopi Indians arrived in Santa Fe, New Mexico, to complain bitterly to the authorities of the Navajo raiding and stealing in their country.

In an effort to check further Navajo raiding, Fort Defiance was established in 1851 in Arizona at a point just west of the present Arizona- 411
New Mexico boundary line. The military operations emanating from Fort Defiance had a two-fold effect. The Navajo began to range further south, west, and northwest, and the military authorities were brought into closer contact with the Hopi Indians. It was the beginning of the period when the military reported more accurately the movement of the Navajos who obviously were ranging well into the overlap area.

In 1851 Navajos were reported pitching tents on both sides of the Rio de Chelly. In 1853 they were reported west of Jacobs Well (Ojo Redondo) in the southern part of the Hopi-Navajo claimed area. An 1851 map submitted by Lt. John G. Parke of the topographical engineers

HP4376

depicts the so-called "Navajo country" as extending from the San Juan River and the lower reaches of its northern tributaries in the north to the Zuni Mountains, and Mt. Taylor in the south, and from Canyon Largo and Rio Puerco in the east, to Mesa de La Vaca or Black Mesa in the west. Black Mesa is situated well into the Hopi-Navajo overlap area within the northern boundary of the 1882 Hopi Executive Order Reservation.

A second base map of New Mexico that was prepared by the same Lt. Parke was utilized by Governor David Merriwether in 1855 when he sought by treaty to separate and identify the lands of Indian tribes residing in the New Mexico Territory, among them being the Hopi and Navajo. While the 1855 Merriwether Treaty failed to be ratified, it was the initial attempt by the United States to set up a Navajo reservation, the western boundary of which was a line that began at the mouth of Zuni River where it enters the Colorado River and ran north to the mouth of the Rio de Chelly where it enters the San Juan River. The "Merriwether Line" is almost parallel to and less than 20 miles east of the eastern boundary line of the 1882 Hopi Executive Order Reservation.

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14. By 1858 Navajo were reported in the northern part of the overlap area around Calabasa Mesa, North Pass and north of the Hopi villages. To the south of the Hopi villages the Navajo could be located west of Jacobs Well, Navajo Springs and the Puerco River area. In the years that followed the Navajo Indians progressively moved into much

of the area surrounding the Hopi lands, being found even west of the Hopi villages.

The period 1858-1868 can be characterized as the Navajo flight period, one in which the United States military operations finally succeeded in quieting the Navajo raiding, and one in which a permanent Navajo Reservation was finally established.

In the summer of 1863, General James Carleton conceived the idea of collecting all Navajos and placing them on a new reservation on the Pecos River in New Mexico. An area forty miles square was thereafter set aside for the Navajo and the Mescalero Apaches at the Bosque Redondo with Fort Sumner in the center. Colonel Kit Carson was charged with the responsibility of carrying out the new plan. As a result of Carson's determined efforts, more than 8000 Navajos were at Fort Sumner by the end of April 1864.

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Meanwhile, the United States had established an Indian agency for the benefit of the Hopi Tribe, with the headquarters at Keams Canyon which is twelve miles east of the nearest Hopi village and well within the area in suit.

15. The Navajos were not happy at Fort Sumner. Confinement in this manner was alien to their nomadic way of life. The fact that many of their fellow tribesmen were still at large only added to their discontent.

In 1868 the Congress sought to settle all matters of mutual concern when it authorized a commission to treat with the Navajo chieftains

HP4377

at Fort Sumner. The result was the Navajo Treaty of June 1, 1868, (15 Stat. 667). Under the 1868 Treaty, a new Navajo Indian Reservation, some one hundred miles square, was established in northwestern New Mexico and northeastern Arizona, the boundaries of which were to encompass the heartland of what was traditionally considered to be Navajo country. In exchange for this new reservation, the Navajo Tribe agreed among other things to relinquish all occupancy rights to other lands outside of the reservation except the right to hunt on unoccupied lands contiguous thereto.

Following the conclusion of the 1868 Treaty, those Navajo Indians who had been confined at Fort Sumner, were released and began to move on to the new reserve. At this time the overall Navajo population was estimated at between twelve to thirteen thousand souls.

414 Despite the size of their new reservation, many Navajo Indians failed to acknowledge its boundaries and continued to move into other areas where some established farms. Other Navajo Indians, as was their custom, moved sizeable herds of livestock in a seasonal manner from mountain to valley. A steady stream of Navajo family groups began to move into the Black Mesa region in the northern part of the overlap area, and into the Jeddito Valley to the south.

16. In an effort to cope with the rapidly increasing Indian population and the steady pressure from nearby Mormon settlements, the Indian Agent at Fort Defiance, Arizona, recommended in 1876 that a reservation fifty miles square be set aside for the benefit of the

Hopi Tribe. A second recommendation for a Hopi reservation was forwarded to Washington in 1878. Nothing came of either of these proposals.

By an Executive Order issued on October 29, 1878 (1 Kappler 175) the western boundary line of the 1868 Navajo reservation was extended further west. This new line (110° west longitude) later became the eastern boundary of the 1882 Hopi Executive Order Reservation. More land was added to the southwest corner of the Navajo Indian reservation by another Executive Order issued on January 6, 1880 (1 Kappler 876). These two additions to the 1868 Navajo Indian reservation enlarged it to about 11,875 square miles or 8,000,000 acres.

17. Despite the increased size of the Navajo reservation at this time, it was incapable of supporting the burgeoning Navajo population. By 1882 approximately one half of the Navajo population had camps and farms outside of the reservation, some as far away as one hundred fifty 415 miles. On March 22, 1882, the Hopi Indian Agent, J. H. Fleming, addressed a letter to the Secretary of Interior recommending that a Hopi reservation be established that would include within its boundaries all of the Hopi Pueblos, the agency buildings at Keams Canyon, and sufficient lands for agricultural and grazing purposes. Agent Fleming cited the need of protecting the Hopis from the intrusions of other Indians, Mormon settlers, and white intermeddlers. Other responsible government officials voiced their support for such a reservation.

18. On December 16, 1882, President Arthur issued an Executive Order setting aside for the Hopi Tribe and such other Indians as the

HP4378

Secretary of Interior may see fit to settle thereon the following reserve in Arizona (I Kappler 805):

> "...beginning on the hundred and tenth degree of longitude west from Greenwich, at a point 36 degrees and 30 minutes north, thence due west to the one hundred and eleventh degree of longitude west, thence due south to a point of longitude 35 degrees and 30 minutes north, thence due east to the one hundred and tenth degree of longitude, and thence due north to the place of beginning...

The area so described contains 2,499,558 acres. Some 1800 Hopi Indians and at least 300 Navajo Indians were residing on the new Hopi reservation when the Executive Order was issued. The Hopi Indian population figures of 1882 show a marked decline from figures available for prior years. An 1846 estimate had fixed the Hopi Indian population
416 at 350 families or roughly 2450 Indians. In 1852 the Indian Agent had listed the Hopi population at 2500 Indians.

19. The Navajo Tribe has presented considerable archaeological evidence in support of its title claims to the overlap area. This evidence is recorded upon site sheet reports covering twenty-three volumes. There is included in this archaeological evidence a great deal of "tree ring" data, that was based upon a dendrochronological study of several thousand selected tree ring specimens cut from wood found from abandoned Indian dwellings and alleged to have been Navajo. A separate study was made by the Navajo plaintiff of ancient Indian pottery that had been recovered from various abandoned Indian sites

throughout the overlap area. All such archaeological evidence was supported by the testimony of the Navajo expert witness who made the particular study and prepared the accompanying exhibits. Apart from seeking to identify abandoned Indian sites within the subject tract as being Navajo, this archaeological evidence was also utilized for dating purposes. The Commission has found after careful consideration of all such evidence that the identity as well as the date of construction and date of actual use of many of the abandoned Indian sites within the subject tract was still a matter of conjecture. And even when specific Navajo sites were identified, frequently these Navajo sites were interspersed with non-Navajo sites, and their actual construction dates uncertain. The Commission has concluded that the weight of this archaeological evidence failed to overcome the many historical accounts written during this early American period which do 417 9
not show any substantial Navajo tribal movement into the overlap area prior to the establishment of the 1868 Navajo Treaty Reservation.

20. Based upon the preceding findings of fact and all the evidence of record, the Commission finds that the issuance of the Presidential order on December 16, 1882, establishing the Hopi Executive Order Reservation effectively terminated and extinguished, without the payment of any compensation to the Hopi Tribe, its aboriginal title claims to all lands situated outside of said reservation. As of December 16, 1882, the Hopi Tribe had Indian

HP4379

title to the following described tract of land.

> Beginning at the northeast corner of the 1882 Hopi Executive Order Reservation, 110° W. Longitude and 36° 30' N. Latitude, thence due south on the 110 W. Longitude to its intersection with the Pueblo Colorado Wash, thence southwesterly following the Pueblo Colorado Wash and the Cottonwood Wash to the Little Colorado River, thence northwesterly along the Little Colorado River to its intersection with 111° 30' W. Longitude, thence northeasterly on a line to the intersection of Navajo Creek and 111° W. Longitude, thence southeasterly to the place of beginning.

The evidence of record does not substantiate Hopi aboriginal title claims to the balance of the overlap area.

21. Disagreement continued between the Hopis and the Navajos as to their respective rights to the 1882 Executive Order Reservation. Navajo Indians had been using parts of the 1882 Reservation prior to its establishment, and the Navajo population in the reservation
418 had been increasing steadily, growing from about 300 in 1882 to about 8,800 Indians by 1958. During the same period the Hopi population in the reservation grew from about 1800 to over 3,200 Indians. In order to judicially settle all matters of conflict between the two tribes as to their rights in the 1882 Reservation, Congress passed the Act of July 22, 1958 (72 Stat. 402). Under "sec. 1" of said Act a three judge Court was convened to hear and entertain a suit brought by the Hopi Tribe against the Navajo Tribe. The United States was joined as a nominal or passive defendant. The judgment rendered by the three judge court is reported in the case of Healing v. Jones, 210 F. Supp. 125 (D. Ariz. 1962), Aff'd 373 U. S. 758 (1963). A copy of the

Court's findings of fact, conclusions of law, and judgment appear in the record of this case as "Hopi Ex. 78". The Commission takes judicial notice of all the proceedings and determinations in the case of Healing v. Jones, supra, and hereinafter adopts in whole or in part, directly or indirectly, where pertinent and material to issues to be resolved in the instant case, the Court's findings of fact and conclusions of law.

22. Although there were Navajo Indians living on the 1882 reservation at the time it was created, neither they nor the Navajo Tribe were mentioned in the December 16, 1882 Executive Order. Any rights that the Navajos might enjoy in 1882 Reservation would have to be rights acquired in futuro under that part of the Executive Order reading "and such other Indians as the Secretary may see fit to settle thereon." (I Kappler 805) 419

Between the years 1882 and 1931 no Secretary of Interior, or any official acting in his behalf, took any action either expressly or by implication, to settle Navajo Indians or the Navajo Tribe on the 1882 Reservation pursuant to his discretionary authority under the 1882 Executive Order.

23. Around the year 1890, Indian agents and other officials assigned to the Hopi-Navajo area began to send back to Washington an increasing number of Hopi complaints of the steady Navajo encroachment upon Hopi grazing and agricultural lands within the 1882 Reservation.

HP4380

The best grazing lands were in the valleys near the washes below the Hopi mesas. The Hopis' refusal to leave their pueblo villages on the Mesa tops and to take up residence in the valleys had been predicated partly on superstition and partly on their fear of the bolder, more aggressive Navajo Indians. Following repeated exhortation on the part of Government officials to take the initiative and leave their mesa villages, the Hopis began in the late 1920's and early 1930's to move down into the valley areas and to reclaim and use former Hopi lands within the reservation now partly in Navajo hands. The Hopi Tribe never abandoned its right to use and occupy the 1882 Reservation prior to the time the Secretary of Interior settled the Navajos on the reservation as hereinafter indicated.

24. On February 7, 1931, the Secretary of Interior and the
420 Commissioner of Indian Affairs jointly accepted a recommendation that the 1887 Reservation be divided between the Navajos and the Hopis but "that there should be set aside and fenced for the exclusive use of the Hopis a reasonable and fair area of land". (Healing v. Jones, 210 F. Supp. 125, 156).

Under Section 6 of the Indian Reorganization Act of June 18, 1934, (48 Stat. 984) the Secretary of Interior was directed to make rules and regulations for the administration of Indian reservations with respect to forestry, livestock, soil erosion and other matters. On November 6, 1935, the Secretary issued general grazing regulations affecting the carrying capacity and management of the Navajo range, and setting up

separate land management districts, the boundaries of which were undefined at that time. Early in 1936 the boundaries of these land management districts were defined, the result being that the boundaries of "land management district 6" lay entirely within the 1882 Reservation so as to encompass the Hopi villages and all lands used by the Hopi Indians. As originally established "land management district 6" contained about 500,000 acres. On April 24, 1943, the Office of Indian Affairs approved the new boundaries of district 6, and as presently constituted "land management district 6" embraces 631,194 acres. A detailed description of the boundaries of "land management district 6" is set forth in the Court's Finding of Fact "41" in Healing v. Jones, supra, (Hopi Ex. 78, pp. 217-219), and is depicted on the map of the 1882 Executive Order Reservation reproduced in the official report of that case, a copy of which is attached herein at the end of the 421
Commission's findings of fact.

25. Commencing on February 7, 1931, when the Secretary of Interior approved a recommendation calling for a Navajo-Hopi division of the 1882 Executive Order Reservation, administration officials followed a policy designed primarily to exclude Hopi Indians from that part of the 1882 Reservation upon which Navajo Indians were being settled with implied Secretarial consent. This policy of segregating the two tribes was pursued further with the issuance of grazing regulations designed to control the grazing capacity of the lands within the newly formed "land management district 6", which district insofar as the grazing

HP4381

regulations were concerned was designated as a "Hopi Reservation". The Commission finds that administration action on June 2, 1937, effectively terminated all Hopi aboriginal title to the lands within the 1882 Executive Order Reservation outside the boundaries of "land management district 6" as established and approved by the Office of Indian Affairs on April 24, 1943. The entire 1882 Executive Order Reservation contained 2,499,558 acres, and the area outside of "land management district 6" totaled 1,868,364 acres.

26. Pursuant to the provisions of "Sec. 2" of the Act of July 22, 1958, supra, the Court in Healing v. Jones entered a judgment wherein the Hopi Tribe was decreed to be the exclusive owner of the land in "land management district 6" and said tribe was awarded reservation title thereto. (Hopi Ex. 78, p. 223.) The Court further
422 decreed that the Hopi Tribe and the Navajo Tribe held a joint, undivided and equal interest to the balance of the 1882 Reservation. (Hopi Ex. 78, p. 224)

CONCLUSIONS OF LAW

The Commission concludes that the Hopi Tribe is entitled to bring and maintain the suit herein; as of December 22, 1882, the Hopi Tribe held the Indian title to the lands described in Finding of Fact 20, supra; on December 22, 1882, the United States extinguished the Hopi Indian title without payment of compensation to those lands described in Finding of Fact 20 lying outside the boundaries of the

1882 Executive Order Reservation; on June 2, 1937 the United States extinguished the Hopi Indian title to 1,868,364 acres of land in the 1882 Executive Order Reservation, lying outside the boundaries of "land management district 6"; under the decree of the Court in the case of Healing v. Jones, supra, the Hopi Tribe has reservation title to the lands in "land management district 6" and a joint, undivided, and equal interest with the Navajo Tribe to the balance of the lands within the 1882 Executive Order Reservation; and, the Hopi Tribe did not have Indian title to the balance of the lands in suit herein.

Jerome K. Kuykendall, Chairman

John T. Vance, Commissioner

423

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

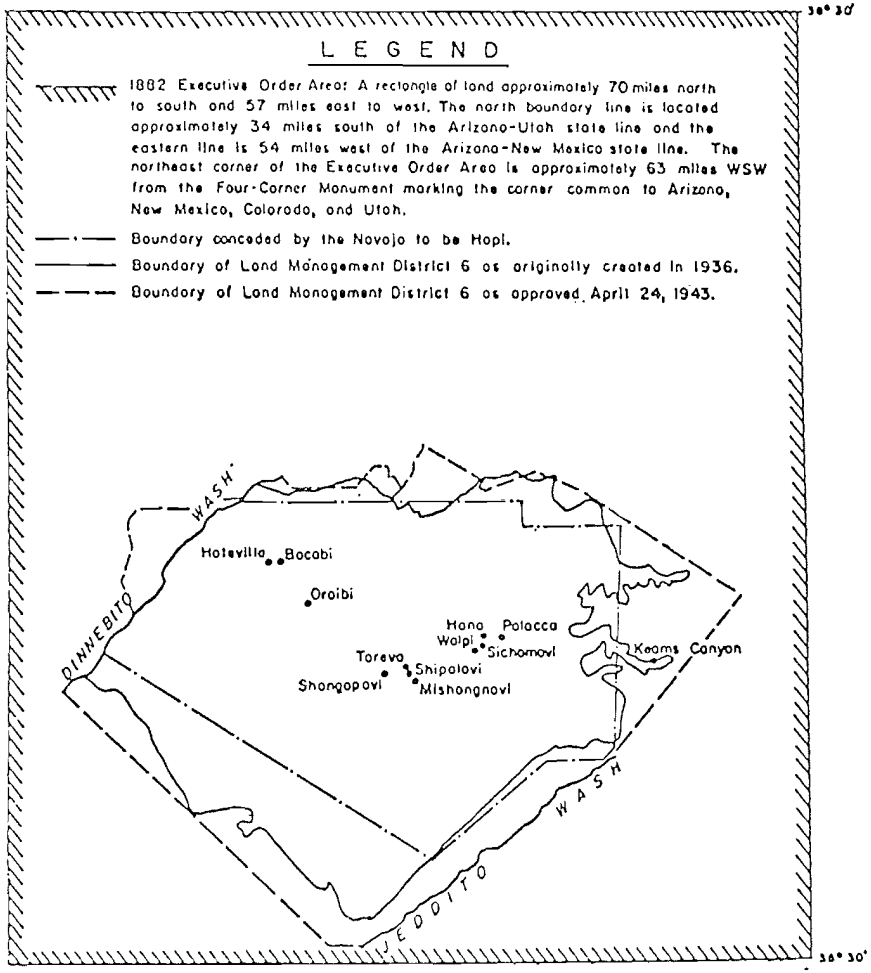
Brantley Blue, Commissioner

HP4382

MAP OF LAND MANAGEMENT DISTRICT 6

(from Opinion in Healing v. Jones, 210 F. Supp. 133)

....containing lands conceded to Hopis by Defendant (United States) in Ind. Cl. Comm. Dockets 196, 229.



Note- This map represents a simplified version of one in larger scale filed in the records of the case pursuant to stipulation of counsel for the parties dated August 15, 1962.

HP4383