statement was written in 1864 by Major Wallen.[28/] An English-speaking writer in 1869 referred to the Navajos as "Nabajo Apaches."[29/] Mateo Duran, a speaker of Spanish, used the term "Navajo Apache" to refer to the Navajos when giving testimony in 1870.[30/] Navajos were referred to as "Messen-Apaches" in 1885.[31/] Native New Mexican speakers of Spanish still use the term "Apache" to refer to Navajos, with or without modifications such as "de Navajo."[32/]

5. Some Navajo bands were referred to by names such as "Apaches de Cebolleta"[33/] and "Salinero Apache."[34/]

Conclusion

6. The Navajos, an Apachean tribe, were generally referred to in historical documents as "Apaches," "Apaches de Navajo," "Navajo Apaches," "Navajo," or as variants thereof.

28/ Navajo Ex. 335, Wallen to Assistant Adjutant General, April 26, 1864, p. 7.

29/ Hodge, supra, Note 4.

30/ Acoma-Laguna Jt. Ex. 530, Jenkins & Minge, Record of Navajo Activities Affecting the Acoma-Laguna Area, 1746-1910, p. 4.

31/ Hodge, supra, Note 4.

32/ Brugge, Tr. 9511-12.

33/ Def. Ex. E-39, Reeve, The Navaho-Spanish Peace: 1720's-1770's, p. 20; Def. Ex. G-132, ibid.; Def. Ex. S-651, ibid.; Reeve, Tr. 7781-82.

34/ Navajo Ex. 557, Brugge, Pottery Data, p. 12; Brugge, Tr. 6475-81.

282/ Haile, [illegible]

283/ Haile, supra note 281, at 3-7; Correll, [illegible] July 17, 1953.

284/ Navajo Ex. 520-C, Site Reports, W-LLC-MEC-UU; Navajo Ex. [illegible] Site Reports, W-LLC-UD-D; Brugge, Tr. 6409.

part of the Shoshone Tribe.[349/]

27. At all times material herein, the San Juan Band was absorbed into and was a part of the Navajo Tribe and ceased to be an identifiable band, having or claiming exclusive dominion or control of any area within the Navajo land claim.

C. Conclusion

28. The Navajo Tribe has, at all times material herein, been a well-defined entity with ethnic, linguistic, economic, religious, and political unity. It was recognized by non-Navajos as one people who occupied a well-defined territory. Spain, Mexico, and the United States dealt consistently with the Navajos, both in treaties and in other matters, as a Tribe.

349/ Stewart, Tr. 1129, 1132-34, Dockets 88 & 330 (Southern Paiute). See also the Findings of Fact and Opinion of the Indian Claims Commission in Dockets 326 & 327 (Shoshone).

E. Restitution and Reparations - Inequalities

11. The Government required the Navajo Tribe to make restitution of the total amount of all stock allegedly taken from whites by individual Navajos.[473] Many fraudulent claims against the Navajo Tribe were made and no adequate method for determining the justice of these claims was established.[474] But the Navajos were not compensated for stock taken from them.[475]

F. Conclusion

12. Primary causes and provocations which led to Navajo acts of warfare in self-defense, or to avenge the wrongs committed against the Navajos, were the innumerable acts of trespass and encroachment on Navajo lands by the United States Government, the seizure of Navajo livestock, the cutting of Navajo hay for Army livestock without compensation, and other acts of bad faith, some of which practices originated

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473/ Navajo Ex. 225, Baker to Collins, Aug. 8, 1859; Def. Ex. R-144, ibid.; Navajo Ex. 822, Meriwether to Manypenny, Feb. 28, 1855.

474/ Navajo Ex. 145, Davis to Manypenny, April 9, 1856; Baker, supra note 473; Navajo Ex. 236, Simonson to Wilkins, Sept. 9, 1859; Def. Ex. G-56, ibid.; Navajo Ex. 238, Kendrick to Greenwood, Oct. 4, 1859; Navajo Ex. 430, Miller to Pope, April 5, 1871; Meriwether, supra note 473; Navajo Ex. 837, Sykes to Wilkins, Jan. 30, 1860; Def. Ex. R-132, Dodge to Meriwether, Aug. 2, 1855.

475/ Simonson, supra note 474; Kendrick, supra note 474.

in the period of Spanish and Mexican occupation, but which were carried on vigorously by the defendant United States and permitted to be carried on by said defendant, after the acquisition of the Territory of New Mexico. The failure of the United States to protect the Navajos from such acts and practices of the United States, as well as other depredations,[476/] constituted violations on the part of the defendant United States of treaties with the Navajo Tribe[477/] and were continuous provocations or causes of counter-attacks by Navajos and the basic causes of the Navajo war which led to the military expedition of Colonel Christopher (Kit) Carson in 1863 and the captivity at Fort Sumner of a substantial portion of the Navajo Tribe from 1864 to 1868. The military actions by the Navajos were primarily by way of self-defense and retaliation.

476/ See Finding 5, *supra*.

477/ See Finding 9,B, *infra*.

"flying with their flocks" to escape the Army.[635] Again in 1863 the Navajos fled to escape the troops and their allies,[636] a situation which continued through 1864,[637] 1865,[638] and 1866.[639] It is evident that the frequent campaigns into, and invasions of, Navajo country required the Tribe to make provisions for retreat and concealment of its people from enemies, that these tactics were often utilized from at least as early as 1705, and that they continued into the Fort Sumner period when a substantial portion of the tribe did not go into captivity.

38. The Navajos made use of the vast extent of their country to hide their families and stock from enemy forces and seldom found it necessary to retreat beyond the boundaries of their own lands.[640]

D. Conclusion

Throughout the period that the whites occupied the Rio Grande

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635/ Navajo Ex. 245, Sibley to Maury, Sept. 29, 1860; Def. Ex. G-93, ibid.

636/ Navajo Ex. 303, Willis to Cutler, Oct. 6, 1863; Def. Ex. R-87, ibid.; Def. Ex. S-677, ibid.

637/ Navajo Ex. 321, Medina to Jones, Feb. 18, 1864; Navajo Ex. 346, Thompson to Abeytia, Sept. 15, 1864.

638/ Navajo Ex. 365, Questioning of Captive, July 9, 1865.

639/ Navajo Ex. 384, Butler to DeForrest, May 9, 1866.

640/ Correll, Tr. 5888, 5893-94; Kluckhohn, Tr. 946-50; Thomas, Tr. 3691-93. See also Finding 12, C, The "Flight Period" Theory.

Valley they were able, from time to time, to send large bodies of well-organized troops into Navajo country to attack the Navajos with superior weapons. In spite of this the Navajos developed defensive tactics that were sufficiently effective in protecting their lands, families, and property to prevent the whites from conquering the Navajo Tribe until the Carson Campaign of 1863-1864. A crucial factor in the defensive tactics employed by the Navajos was the vast extent of territory over which they exercised exclusive dominion and control.

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38a. In a letter written to his brother ten days following the signing of the Treaty of June 1, 1868, General Sherman admitted that the Navajos, by the terms of the treaty, had been deprived of much of the land they formerly controlled. He wrote:

> . . .They were formerly a numerous tribe occupying the vast region between New Mexico and the Colorado of the west, ... So of course we concluded to move them /from Fort Sumner/ - - after debating all the country at our option we have chosen a small part of their old Country, which is as far out of the way of the Whites, and of our future probable wants as possible and have agreed to move them there forthwith and have made a treaty which will save the heavy cost of their maintenance and give as much probability of their resuming their habits of industry as the case admits of. Inasmuch as Peonage is pretty well played out in this Country, the great temptation to invade their country for stealing their children is removed, and we are satisfied if the New Mexicans will refrain from stealing of them they will do the same. . . /emphasis added/ 804a/

C. Conclusion

39. Primary causes and provocations which led to Navajo acts of warfare in self-defense, or to avenge the wrongs committed against the Navajos, were the repeated failures of the United States Government to abide by and to enforce the terms of the Treaty of Guadalupe Hidalgo between the defendant United States and Mexico, proclaimed July 4, 1848, and of treaties negotiated by the United States with

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804a/ See Appendix O, pp. 1-4.

the Navajo Tribe, especially and with particular reference to failure of the defendant Government to "designate, settle, and adjust" the Navajo Tribe's territorial boundaries pursuant to Article VIII of the treaty ratified by the United States Senate September 9, 1850, while at the same time the defendant took full advantage of the treaty to establish "military posts and agencies, and authorize such trading-houses" in Navajo territory whenever and wherever the Government saw fit. The failures of the United States to carry out the provisions of the treaties and to protect the Navajos from depredations and other acts of violence[805/] constituted continuous provocations or causes of counter-attacks by Navajos on white settlements, the United States military forces, the Hopis and other Pueblos, and were the basic causes of the Navajo war which led to military expedition of Colonel Christopher (Kit) Carson in 1863 and the captivity at Fort Sumner of a substantial portion of the Navajo Tribe from 1864 to 1868. The military actions by the Navajos were primarily by way of self-defense and retaliation.

805/ See Findings 5 and 6, *supra*.

C. Conclusion

48. Navajo country is an area characterized by great contrasts in elevation, climate, topography, soil types, and vegetation. Because of this, resources of varied ecological and geological environments were available to the Navajos which greatly affected their way of life pursuing seasonal range advantages which erroneously caused some writers to refer to them as nomads. They had hogan bases from which they conducted grazing and other economic operations.[879/] The Navajos exercised dominion and control at all times material to this case over a territory consisting of a well-defined geographical entity, the exterior boundaries of which for the most part are marked by natural barriers such as rivers, mountain ranges, escarpments, and ecological changes.

49. There is a remarkable consistency in Navajo territorial descriptions by the military, Indian agents, other government officials, and Navajo traditionalists for the period material to this case. These territorial descriptions in the main are substantially coincident with the Claim boundary as shown on petitioner's exhibits 510 and 555.

879/ See Findings 16 and 17, *infra* regarding Navajo settlement patterns and economic activities.

had belonged to the Navajos prior to 1882.[1319/]

83. In 1880 Navajos were living at Alamo and Alamocito and claimed the country as far south as the San Mateo Mountains. Navajos had lived in that country for many years.[1320/] In 1885 Navajos had lived at Alamo Spring for years.[1321/]

D. Conclusion

84. The data clearly demonstrate that Navajo occupation of land in the eastern portion of the Navajo claim was of a permanent character, the same localities being used and occupied during the periods that New Mexico was ruled by Spain, Mexico and the United States.[1322/]

85. Until the Navajos were exiled to Fort Sumner the Pueblo Indians herded their livestock close to their villages and did not penetrate areas controlled by the Navajos. After the Navajos were sent to Fort Sumner, non-Navajos began to expand their land usage

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1319/ Navajo Ex. 452, Pass to Hunt by Eastman, Oct. 12, 1882.

1320/ Navajo Ex. 446, Tyler to Acting Assistant Adjutant General, July 25, 1880.

1321/ Navajo Ex. 797, Bowman to Crafton, Sept. 14, 1885.

1322/ There is, of course, no documentary data for the pre-historic period and knowledge of Navajo archaeology has not advanced to the point where it is possible to conclude with great certainty the full extent of Navajo distribution in prehistoric times, primarily due to the perishable nature of most Navajo structures.

into Navajo country.[1323/]

1323/ Rands, supra note 890, at 115; Kluckhohn, Tr. 994, 1197; Sarracino, Tr. 491-92, Dockets 266 & 227 (Acoma & Laguna).

H. Conclusion

248. The above data, conclusively demonstrates that the Navajos used, occupied. and exercised dominion and control throughout that part of the Navajo claim south of the San Juan and Colorado Rivers, and north of the Flagstaff area and the Little Colorado River at all times material to the issues of this case.

who was born at Bine'nii Bitoh or "Dripping Spring" near Monticello about 1870,[2978] and Hastiin Yellow Man's father, Silaao Bitsii'ischilii, who was born about 1868 in Horseshoe Canyon.[2979]

C. Conclusion

79. The above data clearly demonstrate that the Navajos used, occupied, and exerted dominion and control throughout that part of the Navajo claim that is north of the San Juan River at all times material to the issues of this case.

2978/ Beletso, Tr. 2670-71.

2979/ Yellow Man, Tr. 4854.

F. Conclusion

45. The above data clearly demonstrate that the Navajos used, occupied, and exerted dominion and control over that part of the Navajo claim south of the Little Colorado River to the Mogollon Rim and the southern boundary of the Navajo Land Claim at all times material to the issues of this case.

prior to the Carson campaign.[3225/]

D. Conclusion

22. The theory of a "flight period" beginning in 1858 is erroneous, for Navajos did not customarily seek refuge outside their own country. The only time during which Navajos did cross into the territories of other tribes in order to escape enemies was during the total disruption caused by the Carson campaign and the Fort Sumner exile. Even during this period many Navajos managed to hide within the more remote and less accessible portions of their own country.[3226/]

3225/ Navajo Ex. 673, Sapir & Hoijer, Navaho Texts, pp. 345-51; Navajo Ex. 677, Brewer, The "Long Walk" to Bosque Redondo, pp. 56-57; Havasupai Ex. 7, Spier, Havasupai Ethnography, pp. 362-68; Havasupai Ex. 173, Van Valkenburgh, Dine Bikeyah, p. 68; Def. Ex. E-62, Biye, The Ramah Navajo, p. 2; Def. Ex. G-205, Van Valkenburgh, A Short History of the Navajo People, p. 23.

3226/ Kluckhohn, Tr. 945-50; Longsalt, Tr. 5317.

E. Conclusion

89. Navajo economic requirements prior to 1848 and during the early American Period necessitated the utilization of a large territory as well as most of the natural resources therein in order to sustain life. Although Navajo economy was adapted to a mobility unlike the sedentary Hopis and other Pueblo groups, as stated in the preceding finding,[4576/] the Navajos were not nomadic. All areas within the exterior boundaries of the Navajo Claim, excepting those conceded by the Navajos to be exclusively Hopi, Acoma, Laguna, or Zuñi, were utilized by Navajos for agricultural pursuits, herding stock, hunting both large and small game, and gathering of several hundred varieties of plants and plant products. Over all such territory Navajo use and occupancy were exclusive, and subject to dominion and control by Navajos.

4576/ See Finding 16, A, "Navajo Settlement Patterns."

Conclusion

8. At all times material to the issues of this case tribes of the southwest recognized shrines or sacred places beyond the territorial boundaries of the areas over which each held dominion and control.

certainty as part of the occupancy complex established by these criteria.[4709/] Within the area of the Navajo claim 438 structures of these types were located and recorded.[4710/] In the few instances in which these structures were found not associated with other identifiable Navajo structures, pottery, artifacts, or were not identifiable by tradition, they were labelled by the Navajo archaeologists as "not diagnostically Navajo"[4711/] although a Navajo origin for them may be postulated on the basis of provenience.

3. Summary

27. Of the 1403 sites located and recorded within the area of the Navajo claim, 1299 are identifiable as unmistakably Navajo on the basis of structural types and architectural details, associations such as Navajo pottery or artifacts, and tradition or history. The remaining 104, although not diagnostically Navajo, comprising structures built by the Navajos as well as other ethnic groups,[4712/] can be postulated with reasonable certainty as Navajo in origin since they are located within areas of extensive Navajo

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4709/ Correll, Tr. 1803-05; 4157, 4166, 4210, 5617, 6200; Campbell, Tr. 3998.

4710/ Site Reports, supra note 4663.

4711/ Ibid.

4712/ See "Evaluation of Site" sections in Navajo Exs. 520-A through 520-W, Site Reports.

occupation and constitute a part of the overall complex of Navajo occupancy.

B. Tree-Ring Dates From Navajo Archaeological Sites

1. Interpretation

28. The meaning of tree-ring dates from Navajo sites becomes most significant when integrated, equated, and interpreted in relation to the cultural patterns of the Navajos.[4713/] In terms of Navajo cultural practices, their meaning arises from the association of the wood to Navajo "events,"[4714/] such as initial hogan construction, rebuilding, the addition of new structures to a site, re-use of timbers, or repairs to existing structures. There is no way to determine whether a number of structures on a Navajo archaeological site were built at the same time or at different times.[4715/] In the interpretation of tree-ring dates from Navajo structures, the archaeologist should possess a thorough understanding of the Navajo cultural environment.[4716/]

4713/ Def. Ex. G-145, Smiley, Geochronology, p. 188; Campbell, Tr. 3997-98; Euler, Tr. 945, Docket 91 (Havasupai); Smiley, Tr. 2077-79, 2087.

4714/ Smiley, supra note 4713, at 188. See also Correll, Tr. 5991; Smiley, Tr. 2079.

4715/ Correll, Tr. 1842, 1845-46, 5563.

4716/ Smiley, supra note 4713, at 190; Smiley, Tr. 2080.

E Conclusion

144. Of the 1403 sites comprised of 4729 structures or components[5265/] located and recorded during the Navajo archaeological survey of the claim area 1299 are identifiable as unmistakably Navajo in origin on the basis of structural types and architectural details associations such as Navajo pottery or artifacts, and tradition or history The remaining 104 sites[5266/] comprised only of windbreaks or other structures not diagnostic of any particular ethnic group can be postulated with substantial certainty as Navajo in origin on the basis of provenience, since they are located within areas of incontrovertible Navajo occupation and in areas for which no contrary archaeological evidence exists they constitute a part of the overall complex of Navajo exclusive use and occupancy.[5267/]

5265/ See Appendix I, Tabulation of Navajo Archaeological Type Structures for Sectors and Areas.

5266/ Navajo Exs. 520 A thru 520-W, Site Reports. See section on "Evaluation of Site."

5267/ See Finding 10,A, Proposed Findings of Fact in Behalf of the Navajo Tribe of Indians in Area of Hopi Overlap (Docket No. 196), Volume II, pp. 366-388 inclusive; Finding 6, Proposed Findings of Fact in Behalf of the Navajo Tribe of Indians in Area of Havasupai Overlap (Docket No. 91), pp. 143-186, inclusive; Finding 9, Proposed Findings of Fact in Behalf of the Navajo Tribe of Indians in Area of Chiricahua Overlap (Dockets 30 and 48), pp. 141-144, inclusive; and Appendix J, Comparative Data on Structural Types and Features; Navajo Structures vs Those of Adjacent or Neighboring Tribes for data sustaining the above conclusion.

145. Dating of the archaeological data in order to determine the period of Navajo occupation of the area was accomplished in accordance with established methods and techniques accepted and utilized by professional archaeologists. These techniques include dating by one or more of the following methods: (1) Tree-ring dates derived from Navajo hogans and other structures, (2) dating determinable on the basis of architectural typological features and characteristics, (3) dating on the basis of pottery or trade material associated with architectural remains, and (4) dating on the basis of Navajo tradition. On the basis of the archaeology dated by the above criteria, exclusive Navajo use and occupancy of the claimed area is demonstrated to have been continuous from well before the date material in this case.[5268/]

5268/ See Finding 10, B, C, D, Proposed Findings of Fact in Behalf of the Navajo Tribe of Indians in Area of Hopi Overlap (Docket No. 196), Volume II, pp. 389-509, inclusive, for data sustaining the above conclusion.

1832,[5530] 1835-1843,[5531] about 1836,[5532] about 1847,[5533] about 1848,[5534] about 1853,[5535] by 1857,[5536] prior to Fort Sumner,[5537] 1869,[5538] and 1886.[5539]

5. Conclusion

64. At the time of the American occupation of this territory in 1846 and at the time of the Treaty of Guadalupe Hidalgo with Mexico February 2, 1848 (9 Stat. 922), the Navajo Tribe exclusively used and occupied all of the area of the Laguna claim, as it is purportedly shown on Acoma-Laguna Joint Exhibit 528A, Laguna Site Map, excepting only a smaller area bounded on the north by Old San Jose, Cubero, Encinal, Cebolleta, the Cañada de Pedro Padilla, on the east by Mesa

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5530/ Twitchell, supra note 5338, at 380.

5531/ Navajo Ex. 520-J, Site Reports, E-RP-MP-F.

5532/ Navajo Ex. 467, Bryan to Atkins, May 12, 1886, p. 1.

5533/ Sandoval, Tr. 4510-11.

5534/ Chavez, Tr. 4373-74, 4433-34.

5535/ Chavez, Tr. 4382-83, 4416-17, 4433-34.

5536/ Sandoval, Tr. 4504-07.

5537/ Navajo Ex. 520-J, Site Reports, E-RP-MP-G, -H, -I, -J, -K, -L, -M, -EE, -JJ, -KK, -LL, -NN, -PP, -QQ, -RR, -TT, -UU, -VV, -WW; Navajo Ex. 555, Date Map.

5538/ Evans, supra note 5441.

5539/ Navajo Ex. 467, Bryan to Atkins, May 12, 1886.

8. Conclusion

179. Exclusive Navajo occupancy has been amply demonstrated from long prior to the American period to after the return from Fort Sumner for the entire area from the line alleged by Dr. Thomas, who appeared on behalf of the petitioners in Dockets 30 and 48, to have been the southern boundary of the Navajos, southward to the southern boundary of the Navajo claim (and in the Tularosa Valley even beyond that boundary), as detailed above and as mapped and listed in Navajo Exhibits 898, 898-A, 898-B, 898-C, 898-D, 898-E and 898-F.[6020/]

180. A sketch map done by Goodwin in 1932 shows the line he considered to be the western part of the northern boundary of the Chiricahuas as extending from about Luna to a point in the southwestern part of the Plains of San Augustine.[6021/]

181. According to one old Chiricahua Apache witness the

6020/ For data showing where Dr. Thomas, who testified on behalf of the Chiricahuas, placed the southern boundary of the Navajo, see Apache Ex. T-8, Dr. Thomas' Map; Thomas, Tr. 3562-63, 3618-21, 3626-29, 3652-58. The data on Navajo use and occupancy in the Ramah area has not been included in detail in the above narration as it is about on the line alleged by Dr. Thomas to have been the southern boundary of the Navajos, but is included in the Navajo Ex. 898 series. According to Mr. Correll, one of the high concentrations of Navajo population was in the Alamo-Salado area. Correll, Tr. 1897-98, 4158.

6021/ Navajo Ex. 895, Goodwin's Map from Dr. Opler's Files; Navajo Ex. 895B, Typescript of Goodwin's Handwritten Notes on Navajo Ex. 895; Navajo Ex. 898, Map Reflecting Data Relevant to Navajo Use and Occupancy.

northern boundary of the Chiricahuas ran from Springerville to Magdalena,[6022/] a line that would pass south of the concentrations of Navajo archaeological sites located by the Navajo archaeological survey.[6023/]

182. The United States finally recognized Navajo land rights in the Alamo area by allowing the Navajos there to obtain allotments. Applications for allotments were filed between May 22, 1910, and August 15, 1940, and many of these allotments were approved by the several Presidents of the United States between April 5, 1913, and January 26, 1942.[6024/] A Navajo Reservation was later established at Alamo.[6025/]

6022/ Tissnolthtos, Tr. 77, Dockets 30 & 48 (Fort Sill & Chiricahua Apaches).

6023/ Navajo Ex. 555, Date Map.

6024/ Data regarding these allotments have not been placed in evidence. Documents supporting their dates are on file at the United Pueblos Agency of the United States Bureau of Indian Affairs in Albuquerque, New Mexico.

6025/ Navajo Ex. 510, Place Name Map; Correll, Tr. 6051.

of hostility in Navajo-Western Apache relations.[6065/] It was fear of the Navajos that kept the Western Apaches from venturing beyond the lower edge of unbroken woodland into the open steppe grasslands of the Little Colorado River Valley.[6066/] Some older Navajo were better informed concerning the hostile encounters between the two tribes and emphasized these.[6067/] while others were more familiar with traditions relating to friendly encounters or even cooperation between the two.[6068/] Western Apache witnesses gave similar testimony.[6069/]

Conclusion

199. Thus, it is apparent that the Navajos and Western Apaches share a common origin and have long been in close contact.

6065/ Goodwin, supra note 6026, at 17; C. Begay, Tr. 5173.

6066/ Goodwin, supra note 6026, at 12-13, 15-16, 18, 21-23. See Correll, Tr. 6042-43, for correlation of northern section of Goodwin's line with the edge of the timber. Also, compare the Goodwin line with U. S. Geological Survey maps, Western United States, 1:250,000 scale, Holbrook, NI 12-5 and Saint Johns, NI 12-6. Dr. Aschmann failed to note the substantial correspondence between the northern section of the Goodwin line and the lower edge of the woodland, but his map (Def. Ex. Map HA-4, Docket 22-J) approximates the situation.

6067/ Navajo Ex. 677, Etsedi, The "Long Walk" to Bosque Redondo; Tsoh, Tr. 4945.

6068/ Navajo Ex. 520-O, Site Reports, S-MLC-CH-A; A, Tr. 5294.

6069/ Kindlay, Tr. 97, Docket 22; Randall, Tr. 542, Docket 22.

6274/ Little, supra note 6252; Hopi Ex. 41, Powell, Journal..., p. 19. Powell dates this event as 1866.

6275/ Ibid.

5. Conclusion

267. The Navajo have long been in contact with the Hopis and for all times material to this case have occupied lands surrounding the Hopi mesas and villages.

F. Utes

1. Identity

268. The Utes are known to the Navajo as Not-a, to the Hopi as Yutama, Yutamo, or Utsia, to the Jicarilla as Yo'ta, and to the Comanche as Yu'hta.[6348/] Although composed of a number of bands, only those occupying lands adjacent to the Navajo are considered here, namely the Moache, Capote and Tabeguache. These names for Ute bands were recognized as early as the Spanish period, although the collective term of Yuta (spelled variously) was more often used.[6349/]

6348/ Def. Ex. 3-B, Docket 91 (Havasupai), Hodge, Handbook of American Indians, Part II, p. 876; Def. Ex. 30, Dockets 227 & 266 (Acoma-Laguna), ibid.

6349/ Id. at 203, 664-65; Hopi Ex. 24, Bolton, Pageant in the Wilderness, pp. 30, 32, 142-44, 149, 236, and map; Havasupai Exs. 36 & 39, ibid.; Def. Ex. R-5, ibid.; Def. Ex. G-26, ibid.; Def. Ex. 13, Docket 91 (Havasupai), ibid.; Havasupai Ex. 111, A Map of the Internal Provinces of New Spain by Captain Zebulon M. Pike; Def. Ex. G-27, Alter, Father Escalante's Map; Def. Ex. S-595, Bancroft, History of Arizona and New Mexico, p. 665; Def. Ex. 8, Docket 91 (Havasupai), ibid.; Def. Ex. 66, Dockets 227 & 266 (Acoma-Laguna), ibid.; Def. Ex. G-10, Whipple, Eubank & Turner, Reports of Explorations and Surveys...Report Upon the Indian Tribes, p. 120; Hopi Ex. 27, ibid.; Def. Ex. S-90, Dockets 30 & 46 (Fort Sill & Chiricahua Apaches), ibid.; See also Chart infra.

421. Hodge gives the former range of the Utes as

> the entire central and western portions of Colorado and the east portion of Utah including the east part of Salt Lake Valley and Utah Valley. On the south they extended into New Mexico, occupying much of the upper drainage area of the San Juan. 6779/

The Capote, "Mountain People," formerly lived in the Tierra Amarilla and Rio Chama country; 6780/ the Wimenuche, also known as the Tabeguache, "People living on the Warm or Sunny Side of the Mountain," 6781/ formerly ranged "in southwestern Colorado, chiefly in the valley of the San Juan and its northern tributaries" including Los Pinos River. 6782/

422. All Utes ranging south of the Gunnison River came to be known as the "Southern Ute." 6783/

8. Summary and Conclusion

423. As of 1848 and until their involuntary retreat and forced abandonment of portions of their country, Navajos controlled the area of southeastern Utah, southwestern Colorado and northwestern New Mexico within the Navajo claim boundary. 6784/

6779/ Hodge, supra note 6348, at 874.

6780/ Id. at 203.

6781/ Id. at 664; Huscher, supra note 6353, at 137.

6782/ Hodge, supra note 6348, at 664, 956.

6783/ Opler, supra note 6354, at 126.

6784/ Correll, Tr. 5617, 5977; Kluckhohn, Tr. 742, 744-45, 946-47, 1039-40.

424. War with the Utes followed by alliance and re-arming of the Utes by the U S Military, who further cited them against the Navajos, forced the Navajos to abandon portions of their territory in the late 1850's and early 1860's.[6785/] "It wasn't a

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6785/ Navajo Ex. 172, Brooks to Assistant Adjutant General, July 22, 1858. Def. Ex. R-59, ibid. Def. Ex. G-55, ibid.; Navajo Ex. 174, Collins to Mix, Sept. 27, 1858, pp. 1, 9-10; Def. Ex. G-31, ibid.; Navajo Ex. 189, Cogswell to Backus, Nov. 8, 1858; Def. Ex. R-66, ibid.; Navajo Ex. 192, Miles to Wilkins, Nov. 15, 1858, p. 2; Navajo Ex. 193, Backus to Lane, Nov. 19, 1858; Def. Ex. R-66, ibid., Def. Ex. G-57, ibid.; Navajo Ex. 198, Miles to Wilkins, Nov. 23, 1858; Def. Ex. R-67, ibid.; Navajo Ex. 225, Baker to Collins, Aug. 8, 1859, p. 2; Def. Ex. R-144, ibid.; Navajo Ex. 233, Baker to Collins, Sept. 1, 1859; Def. Ex. R-22, ibid.; Def. Ex. G-32, ibid.; Navajo Ex. 246, Canby to Assistant Adjutant General, Oct. 4, 1860; Def. Ex. R-72, ibid.; Navajo Ex. 248, Tilford to Cressey, Oct. 20, 1860; Navajo Ex. 249, Maury to Fauntleroy, Oct. 20, 1860; Navajo Ex. 251, Canby to Assistant Adjutant General, Nov. 8, 1860; Def. Ex. R-74, ibid.; Def. Ex. G-95, ibid.; Navajo Ex. 275, Canby to Assistant Adjutant General, March 18, 1861; Def. Ex. S-682, ibid.; Navajo Ex. 296, Carleton to West, Aug. 7, 1863; Def. Ex. R-25, ibid.; Def. Ex. G-172, ibid.; Navajo Ex. 298, Carson to Cutler, Aug. 19, 1863; Hopi Ex. 35, ibid.; Def. Ex. R-166, ibid.; Navajo Ex. 299, Campbell to Carleton, Aug. 21, 1863; Navajo Ex. 354, Letter from Carleton, Feb. 15, 1865; Navajo Ex. 388, Butler to Carleton, July 12, 1866; Def. Ex. S-680, ibid.; Lindgren, supra note 6555; Navajo Ex. 502, Pfeiffer to DeForrest, Jan. 22, 1866; Sapir, supra note 6530, at 342-43; Def. Ex. E-119, Hill, Navajo Warfare, p. 4; Def. Ex. R-73, Canby to Assistant Adjutant General, Oct. 19, 1860; Def. Ex. R-116, Collins to Greenwood, Sept. 16, 1860; Def. Ex. R-138, Yost to Collins, Nov. 23, 1858; Def. Ex. G-86, ibid.; Reeve, supra note 6385, at 54-55, 57-58, 80; Def. Ex. R-165, Carson to Assistant Adjutant General, July 24, 1863; Def. Ex. G-34, Collins to Cole, Oct. 8, 1861, p. 735; Def. Ex. 37, Commissioner's Report for 1869, p 22; Def. Ex. G-37, Ayers to Parker, Aug. 16, 1869, p. 241; Def. Ex. G-107, Inspector Davis Report, 1869, p 4; Def Ex. G-37, ibid.; Kluckhohn, Tr. 946-47, 1114-15, 1118-21; E. Nakai, Tr. 2466; Rockwell, Tr 2415.

voluntary retreat. It was a forcible retreat, aided and abetted by the U. S. Government."[6786/] After the Navajos were driven south of "the San Juan by the onslaughts of the aggressive Utes,"[6787/] who burned the hogans left behind by the Navajos,[6788/] the country abandoned by the Navajos was overrun by the Utes.[6789/]

6786/ Correll, Tr. 5617, 5977.

6787/ Klackhchn, supra note 6407, at 60; Judd, supra note 6400, at 346, n. 70; Tse K'izzi, Tr. 151, Sept. 7, 1954.

6788/ Navajo Ex. 23, Statement of Happy Jack; Navajo Ex. 167, Ward to Yost, April 9, 1858; Def. Ex. R-136, ibid.; Navajo Ex. 225, Baker to Collins, Aug. 8, 1859, p. 2; Def. Ex. R-144, ibid.; Navajo Ex. 234, Kendrick to Collins, Sept. 24, 1859; Navajo Ex. 280, Chavez to Department Commander, Nov. 11, 1861; Navajo Ex. 534, Eaton to Cutler, Nov. 1, 1864; Navajo Ex. 844, Commissioner's Report for 1872; Reeve, supra note 6385, at 57-58; Bidaa', Tr. 5446-47; Farley, Tr. 5462-63, 5466; Goodman, Tr. 2861, 2835; Longsalt, Tr. 5334; Rockwell, Tr. 2405-06; Todicheenie, Tr. 4837.

6789/ Navajo Ex. 36, Bent to Buchanan, Oct. 15, 1846; Navajo Ex. 115, Graves to Manypenny, June 8, 1854; Def. Ex. G-12, pp. 385-92, ibid.; Navajo Ex. 126, Dodge to Manypenny, June 30, 1855; Def. Ex. R-110, ibid.; Navajo Ex. 234, Kendrick to Collins, Sept. 24, 1858; Navajo Ex. 790, Comandancia General of New Mexico to Comandancia General of Chihuahua, Sept. 11, 1844; Def. Ex. R-55, Brooks to Assistant Adjutant General, March 20, 1858; Def. Ex. R-56, Brooks to Assistant Adjutant General, April 4, 1858; Reeve, supra note 6385, at 50, 54; Def. Ex. R-155, Young to Lea, Sept. 29, 1852; Def. Ex. G-29, Calhoun to Brown, July 30, 1850, pp. 228-31; Def. Ex. G-37, Inspector Davis' Report, 1869; Def. Ex. G-107, ibid.; Def. Ex. G-65, Graham to McLaws, May 6, 1851; Def. Ex. G-103, Graves Report, Jan. 2, 1866; Def. Ex. G-170, Keam to Davis, Dec. 12, 1868; Steward, supra note 6368, at 1; Bancroft, supra note 6349, at 666; Hodge, supra note 6348, at 874; Farley, Tr. 5466; Sampson, Tr. 5411; Yellowman, Tr. 4861-63.

425. The Utes, expert in the use of firearms, were well supplied with rifles and ammunition as they had been since before the American Period began in 1848. The Navajos, with inferior bows and arrows and only a few rifles, were no match for the well-armed Utes.[6790/]

426. In addition to their alliance with the U. S. military who incited them against the Navajos,[6791/] white pressures of encroachment and settlement in Ute territory began during the Mexican Period with repeated attempts by the Whites to settle in the Conejos Valley.[6792/]

427. In the American Period, with the discovery of mineral wealth in the Ute country, along with expanding White settlement, pressures increased from the north, south, and east pushing Utes further south and west into Navajo country.[6793/]

6790/ Graves to Manypenny, supra note 6789; Dodge to Manypenny, supra note 6789, Reeve, supra note 6385, at 50; Farley, Tr. 5466; Sampson, Tr. 5411; Todicheenie, Tr. 4837-38; Yellowman, Tr. 4861-63.

6791/ See notes 6785 and 6786, supra.

6792/ Navajo Ex. 817, Greiner to Calhoun, March 25, 1852.

6793/ Ibid.; Navajo Ex. 174, Collins to Mix, Sept. 27, 1858; Def. Ex. G-31, ibid.; Navajo Ex. 428 and 428-A, Arny to Parker, July 19, 1870, and Map; Opler, supra note 6354, at 179-80; Def. Ex. G-32, Commissioner's Report for 1859, p. 734; Def. Ex. G-33, Carson to Collins, Aug. 29, 1860, pp. 387-89; Def. Ex. G-34, Head to Gilpin, Oct. 3, 1861, pp. 711-713; Def. Ex. G-97, Collins to Commissioner, April 7, 1861; Def. Ex. G-177, Watts to Mix, Aug. 19, 1857; Def. Ex. R-159, Otero to McClelland, Dec. 5, 1856; Def. Ex. S-683, Arny to Parker, 1870, pp. 7-8; Navajo Ex. 429, ibid.; Def. Ex. G-63, ibid.; Def. Ex. S-695, Arny to Webb, Aug. 31, 1868.

428. Beginning in 1856, the government's intention, supported by continued recommendations of government agents as well as public sentiment, was to "settle," "locate," "colonize," "confine," or "remove" the Utes away from the settlements to the agricultural districts of the San Juan River Valley.[6794/] If Utes were already living there, why was it necessary to "locate" them there?[6795/] especially when the Utes "would entertain no proposition for a treaty whatever that required them to settle for the purpose of agriculture."[6796/] That the Utes preferred the mountainous country to settling in the agricultural valleys of the San Juan, is evident from: "The chosen country of the Capote and Weeminutche Utes is on the head-waters of the San Juan and Chalmer /Chama/ rivers, and near the great spring of Pagosa" in the mountainous area, and they

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6794/ Navajo Ex. 174, Collins to Mix, Sept. 27, 1858; Def. Ex. G-31, ibid.; Navajo Ex. 215, Simonson to Wilkins, July 5, 1859; Navajo Ex. 216, Simonson to Collins, July 6, 1859; Def. Ex. R-142, ibid.; Navajo Ex. 301, Steck to Dole, Sept. 19, 1863; Def. Ex. G-36, ibid.; Def. Ex. R-117, Arny to Mix, Oct. 3, 1861; Def. Ex. R-140, Pfeiffer to Collins, May 1, 1859; Def. Ex. R-159, Otero to McClelland, Dec. 5, 1856; Reeve, supra note 6385, at 59; Def. Ex. S-695, Arny to Webb, Aug. 31, 1868, p. 170; Def. Ex. G-14, Commissioner's Report for 1857, p. 565; Def. Ex. G-36, Commissioner's Report for 1863, p. 244; Def. Ex. G-99, Evans to Dole, March 4, 1863; Def. Ex. G-100, Head to Dole, April 24, 1863; Def. Ex. G-101, Dole to Evans, July 22, 1863; Def. Ex. G-102, Steck to Dole, Oct. 10, 1863.

6795/ Kluckhohn, Tr. 1116.

6796/ Commissioner's Report for 1863, supra note 6794, at 244.

"are very desirous of remaining where they are."[6797] The headwaters of the San Juan, Piedra, Los Pinos,[6798] and the Las Animas are all outside the Navajo Claim boundary in broken, rugged, mountainous country. The Utes, who did not practice agriculture, favored the "rugged, mountainous, broken country" which abounded in wild game on which they depended for subsistence.[6799] References to Utes on these streams, beginning in 1853 and prior to the treaty of March 2, 1868,[6800] do not indicate specific location, but the headwaters

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6797/ Navajo Ex. 115, Graves to Manypenny, June 8, 1854; Def. Ex. G-12, ibid.; Def. Ex. G-37, Hunt to Parker, June 8, 1869, pp. 257-61; Def. Ex. G-37, Ayers to Parker, Aug. 16, 1869, pp. 24-43.

6798/ There is a second stream named Los Pinos, a southern tributary to the Conejos River, east of the Navajo Claim boundary in Ute Territory. It is not always evident in the documents which Los Pinos is intended.

6799/ Navajo Ex. 510, Place Name Map; Navajo Ex. 555, Date Map.

6800/ Royce, supra note 6701, at 848-49.

rather than the lower agricultural valleys are implied.[6801/]

429. Until late 1856, when war broke out between the Navajos and Utes, relations between the two tribes had been essentially friendly. Navajos went into Ute territory to trade, to visit, as allies of the Utes, or to hunt buffalo.[6802/] There was also some

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6801/ Navajo Ex. 92, Steck to Lane, May 20, 1853; Def. Ex. G-67, ibid.; Def. Ex. R-107, ibid.; Def. Ex. S-662, ibid.; Navajo Ex. 115, Graves to Manypenny, June 8, 1854; Def. Ex. G-12, ibid.; Navajo Ex. 215, Simonson to Wilkins, July 5, 1859; Navajo Ex. 216, Simonson to Collins, July 6, 1859; Def. Ex. R-142, ibid.; Navajo Ex. 223, Cogswell to Collins, Aug. 4, 1859; Def. Ex. R-143, ibid.; Navajo Ex. 233, Baker to Collins, Sept. 1, 1859; Def. Ex. R-22, ibid.; Def. Ex. G-32, ibid.; Navajo Ex. 530, Sibley to Rich, Nov. 12, 1860; Def. Ex. R-75, ibid.; Def. Ex. G-96, ibid.; Def. Ex. R-117, Arny to Mix, Oct. 3, 1861; Def. Ex. R-140, Pfeiffer to Collins, May 1, 1859; Def. Ex. R-147, Pfeiffer to Collins, Jan. 9, 1860; Reeve, supra note 6385, at 51, 53, 56-58; Eaton, supra note 6474, at 216; Def. Ex. G-14, Commissioner's Report for 1857, pp. 572-73; Def. Ex. G-32, Commissioner's Report for 1860, p. 703; Def. Ex. G-35, Commissioner's Report for 1862, pp. 384, 390-91; Def. Ex. G-36, Commissioner's Report for 1863, p. 269; Def. Ex. G-75, Bond for License to Trade to Bernardo Sanchez, Sept. 15, 1855; Def. Ex. G-254, ibid.; Def. Ex. R-125, ibid.; Def. Ex. G-78, Kendrick to Nichols, May 16, 1856; Def. Ex. G-97, Collins to Commissioner, April 7, 1861; Def. Ex. G-99, Evans to Dole, March 4, 1863; Def. Ex. G-100, Head to Cole, April 24, 1863; Def. Ex. G-104, Arny to Mix, Oct. 3, 1868; Def. Ex. R-117, ibid.; Kluckhohn Tr. 1118-19.

6802/ Navajo Ex. 104, Meriwether to Manypenny, Sept. 19, 1853; Def. Ex. R-108, ibid.; Navajo Ex. 123, Labadi to Meriwether, Feb. 24, 1855; Navajo Ex. 630, Allen, The American Bisons, Living and Extinct, pp. 72-73, 125-26; Navajo Ex. 632, Fishler, Navaho Buffalo Hunting, pp. 44, 46-47, 50-51, 53-54; Brugge, supra note 6387, at 93; Def. Ex. S-574, Journal Entry, 1844; Def. Ex. S-575, Journal Entry July 20, 1844; Def. Ex. S-578, Letter dated Nov. 21, 1845; Def. Ex. S-603, The Charles Bent

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Navajo raiding into Ute territory, and 6803/ later, after 1860, a few refugees, after making peace with the Utes, went among them to live rather than surrender to the military. 6804/ These associations, whether friendly or hostile, did not constitute occupancy nor provide a basis for Navajo claim to Ute territory.

430. Similarly, until hostilities broke out in 1856, Utes were found associated with Navajos in Navajo country; they came to visit, to trade, on an occasional raid, or as allies of the Navajos, and also as refugees to escape being identified with other Utes at

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6802/ (Continued from page 1184) Papers, 1837-46; Abel, supra note 1847; Abel, supra note 6460, at 208, 241; Def. Ex. G-65, Graham to McLaws, May 6, 1851; Def. Ex. G-78, Kendrick to Nichols, May 16, 1856; Def. Ex. G-176, Dodge to Davis, April 19, 1856; Def. Ex. R-112, ibid.; Reeve, supra note 6359, at 212, n. 17; Def. Ex. R-47, Assistant Adjutant General to Kendrick, June 11, 1856; Reeve, supra note 6385, at 41, 51-52; Def. Ex. R-161, Labadi to Meriwether, Aug. 7, 1856; Todicheenie, Tr. 4839.

6803/ Def. Ex. G-14, Commissioner's Report for 1857, p. 573; Def. Ex. R-131, Labadi to Meriwether, Oct. 20, 1856; Reeve, supra note 6385, at 53-54; Def. Ex. R-163, Labadi to Manypenny, Sept. 30, 1856; Def. Ex. R-164, Labadi to Manypenny, May 31, 1857; Antonito, Tr. 64, Sept. 6, 1954.

6804/ Navajo Ex. 198, Miles to Wilkins, Nov. 23, 1858; Def. Ex. R-67, ibid.; Navajo Ex. 534, Eaton to Cutler, Nov. 1, 1864; Navajo Ex. 582, Pfeiffer to DeForrest, Jan. 22, 1866; Reeve, supra note 6385, at 54-55; Def. Ex. G-98, Gilpin to Dole, June 19, 1861; Def. Ex. S-695, Arny to Webb, Aug. 31, 1868, p. 167.

war with the military.[6805/] Such associations did not establish Ute claim to Navajo territory.

431. Utes had raided into Navajo country since the 18th Century, but after the war began in 1856, Utes raided more frequently into Navajo country,[6806/] and beginning in 1858, Utes were in Navajo

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6805/ Navajo Ex. 64, Memorandum of a Talk, April 19, 1851; Navajo Ex. 63, Chandler to McLaws, April 19, 1851; Def. Ex. R-32, ibid.; Def. Ex. R-103, ibid.; Navajo Ex. 65, Chandler to McLaws, April 23, 1851; Def. Ex. R-31, ibid.; Navajo Ex. 69, Calhoun to Lea, May 4, 1851; Def. Ex. R-18, ibid.; Navajo Ex. 101, Journal of Lt. Ransom's March, July 31, 1853; Def. Ex. R-38, ibid.; Def. Ex. G-68, ibid.; Navajo Ex. 126, Dodge to Manypenny, June 30, 1855; Def. Ex. R-110, ibid.; Navajo Ex. 527, Ethan Pettit Diary, 1855; Brugge, supra note 6387, at 59; Twitchell, supra note 6385, at 517; Def. Ex. R-43, Kendrick to Assistant Adjutant General, Feb. 25, 1855; Def. Ex. G-70, ibid.; Def. Ex. R-44, Kendrick to Sturgis, March 22, 1855; Def. Ex. R-45, Kendrick to Sturgis, April 16, 1855; Def. Ex. G-72, ibid.; Def. Ex. R-124, Dodge to Meriwether, April 17, 1855; Def. Ex. R-125, Bond for License to Trade to Bernardo Sanchez, Sept. 15, 1855; Def. Ex. G-75, ibid.; Def. Ex. G-254, ibid.; Def. Ex. R-126, Dodge to Davis, Dec. 26, 1855; Reeve, supra note 6385, at 41, 48, 51, 53-54, 61; Def. Ex. R-156, Armstrong to Young, Sept. 30, 1855; Def. Ex. G-65, Graham to McLaws, May 6, 1851; Def. Ex. G-73, Meriwether to Manypenny, June 30, 1855; Def. Ex. G-76, Labadi to Manypenny, Nov. 29, 1855; Def. Ex. G-77, Letter from Labadi, Nov. 29, 1855; Def. Ex. G-173, Washington to Jones, Aug. 5, 1849; Def. Ex. G-175, Labadi to Davis, Nov. 29, 1855; Def. Ex. R-160, ibid.; Def. Ex. S-528, Letter, Apaches Attacked Navajos, 1793; Def. Ex. S-548, Letter, Utes With Navajos in Carrizos, 1818; Def. Ex. S-555, Letter, Navajos Report Raid at Abiquiu, Aug. 16, 1829; Def. Ex. S-558, Letter, Navajos Next to Utes, 1835; Kluckhohn, Tr. 742, 744-46, 1039-40, 1107.

6806/ Navajo Ex. 53, McCall to Crawford, July 15, 1850; Navajo Ex. 171, Brooks to Assistant Adjutant General, July 1, 1858; Navajo Ex. 222, Walker to Edson, Aug. 3, 1859; Def. Ex. G-58, ibid.; Def. Ex. R-70, ibid.; Navajo Ex. 281, Report of Julius C. Shaw, Dec. 14, 1861, p. 3; Navajo Ex. 297, Willis to Cutler, Aug. 19,

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country as allies of the U. S. Military.[6807/]

432. From 1782,[6808/] until September 29, 1854, when Meriwether delineated the first boundary for the Capote Utes,[6809/] no map or document specifically designates as Ute Territory any portion

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6806/ (Continued from Page 1186) 1863; Navajo Ex. 422, Bennett to Clinton, Oct. 7, 1869; Little, supra note 6545, at 7, Kluckhohn & Spencer, supra note 6363, at 8; Hopi Ex. 23-B, Adams & Chavez, The Missions of New Mexico, 1776, p. 210; Def. Ex. G-58, Commissioner's Report for 1870, p. 151; Reeve, supra note 6359, at 23, 33, 35; Def. Ex. G-138, Bartlett, Spanish Contacts With the Hopi, 1540-1823, p. 59; Def. Ex. G-180, Chavez to Department Commander, Nov. 11, 1861; Def. Ex. R-84, ibid.; Def. Ex. R-51, Kendrick to Nichols, Feb. 11, 1857; Def. Ex. R-55, Brooks to Assistant Adjutant General, March 20, 1858; Reeve, supra note 6385, at 51, 53-54, 59; Def. Ex. R-165, Carson to Assistant Adjutant General, July 24, 1863; Def. Ex. R-173, Baca to Davis, March 7, 1856; Reeve, supra note 6362, at 201-02, 219, 210, n. 28; Def. Ex. S-534, Letter, Navajos raid Alameda and Laguna, Dec. 22, 1804; Def. Ex. S-591, Thomas, The Plains Indians and New Mexico, 1751-1778, pp. 30, 124, 138.

6807/ Navajo Ex. 189, Cogswell to Backus, Nov. 8, 1858; Def. Ex. R-66, ibid.; Navajo Ex. 192, Miles to Wilkins, Nov. 15, 1858; Navajo Ex. 193, Backus to Lane, Nov. 19, 1858; Def. Ex. G-57, ibid.; Def. Ex. R-66, ibid.; Navajo Ex. 198, Miles to Wilkins, Nov. 23, 1858; Def. Ex. R-67, ibid.; Navajo Ex. 248, Tilford to Cressey, Oct. 20, 1860; Navajo Ex. 298, Carson to Cutler, Aug. 19, 1863; Hopi Ex. 35, ibid.; Def. Ex. R-166, ibid.; Navajo Ex. 299, Campbell to Carleton, Aug. 21, 1863; Lindgren, supra note 6555; Sapir, supra note 6530, at 342-43; Def. Ex. R-138, Yost to Collins, Nov. 23, 1858; Def. Ex. G-86, ibid.; Reeve, supra note 6385, at 54-55, 60; Def. Ex. R-165, Carson to Assistant Adjutant General, July 24, 1863; Def. Ex. E-119, Hill, Navajo Warfare, p. 4; E. Nakai, Tr. 2482-83, 2487, 2489, 2547.

6808/ Havasupai Ex. 40, Mascaro's Map of 1782.

6809/ Navajo Ex. 118, Meriwether to Manypenny, Sept. 29, 1854; Def. Ex. G-69, ibid.; Def. Ex. R-158, ibid.; Navajo Ex. 505, Meriwether's Map of 1854.

of the Navajo Claim area.

435. Meriwether and others acknowledged that Utes "wandered" or "roamed" over considerable territory,[6810] but in general, territory ascribed to the Utes up to Meriwether's time was the rugged, mountainous country northwest of Abiquiu, the upper Chama River area, the Conejos Valley, the headwaters of the San Juan River north and east of the Navajo claim, and the area between the headwaters of the San Juan and Arkansas Rivers.[6811] Using Parke's map of 1851, Meriwether's delineation of a Ute boundary on September 29, 1854,

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6810/ Navajo Ex. 53, McCall to Crawford, July 15, 1850; Kluckhohn, supra note 6407, at 52; Def. Ex. G-12, Commissioner's Report for 1854; Def. Ex. G-14, Commissioner's Report for 1857, at 572-73; Def. Ex. G-32, Commissioner's Report for 1860, p. 732; Def. Ex. G-38, Commissioner's Report for 1870, p. 154.

6811/ Navajo Ex. 53, McCall to Crawford, July 15, 1850; Navajo Ex. 114, Kendrick to Nichols, May 23, 1854; Def. Ex. R-42, ibid.; Navajo Ex. 115, Graves to Manypenny, June 8, 1854; Def. Ex. G-12, ibid.; Navajo Ex. 92, Steck to Lane, May 20, 1853; Def. Ex. G-67, ibid.; Def. Ex. R-107, ibid.; Def. Ex. S-662, ibid.; Navajo Ex. 503, Calhoun's Map of Oct. 15, 1849; Kluckhohn, supra note 6407, at 52; Navajo Ex. 817, Greiner to Calhoun, March 24, 1852; Havasupai Ex. 113, Fremont's Map of 1848; Havasupai Ex. 115, Parke's Map of Territory of New Mexico, 1851; Def. Ex. G-227, ibid.; Def. Ex. G-4, Washington-Simpson Map of 1849; Def. Ex. G-6, Topographical Engineers Map of 1850; Def. Ex. G-11, Commissioner's Report for 1853; Def. Ex. G-25, James Map of Mexico, California, and Oregon, 1848; Def. Ex. G-28, House of Representatives Ex. Doc. No. 17....., 1850, Map and p. 185; Def. Ex. G-188, Manuscript Document from Steck papers, June 28, 1852; Def. Ex. G-191, Steck to Lea, Feb. 7, 1853; Def. Exs. G-225-a & G-225-b, Maps, Texas, Oregon, and California, 1846 and 1849; Def. Ex. G-228, Eastman's Map of 1852; Eaton, supra note 6474, at 216; Abel, supra note 1847; Def. Ex. R-40, Blake to Nichols, Jan. 19, 1854; Reeve, supra note 6385, at 47.

to include territory claimed by the Navajos,[6812] was not only inconsistent with his own description of Ute territory on September 1, 1854,[6813] but also contrary to Ute territorial delineations made previously by others.[6814] Meriwether's was an attempt to "locate" the Capotes on lands "not actually occupied by the whites."[6815]

434. In concluding the treaty of August 8, 1855 with the Utes, Meriwether modified somewhat his boundaries for a "Capote Reserve" and added boundaries claimed by both that band, the Tabeguaches, and the Mchuache Utes. "In order to get a well defined boundary" and to include agricultural lands, he gave the Utes more territory than they asked for.[6816] The treaty boundary was Meriwether's second attempt to define a boundary "dividing the white people from the Indians of this Territory," by locating the Utes away from the White settlements.[6817]

6812/ Navajo Ex. 505, Meriwether's Map of 1854.

6813/ Def. Ex. G-12, Commissioner's Report for 1854.

6814/ See note 6811, supra.

6815/ Navajo Ex. 118, Meriwether to Manypenny, Sept. 29, 1854; Def. Ex. G-69, ibid.; Def. Ex. R-158, ibid.

6816/ Navajo Ex. 157, Meriwether to Manypenny, Dec. 30, 1856; Def. Ex. G-82, ibid.; Navajo Ex. 507, Meriwether's Map of 1856; Def. Ex. G-74, Meriwether to Manypenny, Aug. 14, 1855; Def. Ex. G-208, ibid.; Def. Ex. G-103, Graves Report, Jan. 2, 1866.

6817/ Navajo Ex. 157, Meriwether to Manypenny, Dec. 30, 1856; Def. Ex. G-82, ibid.

435. Other than Meriwether's boundary definitions for the Utes on September 29, 1854, and August 8, 1855,[6818] and Bonneville's modification of Meriwether's boundaries in 1857,[6819] the overwhelming number of Ute territorial descriptions in documents and Ute locations shown on maps after 1854, and before the Ute Treaty of 1868,[6820] are outside the Navajo Claim and in the San Juan drainage. In view of Ute preference for the higher mountain valleys[6821] there is no doubt that when these streams are mentioned as Ute locales, they refer to the headwaters of these streams.[6822]

6818/ Navajo Ex. 118, Meriwether to Manypenny, Sept. 29, 1854; Def. Ex. G-69, ibid.; Def. Ex. R-158, ibid.; Navajo Ex. 157, Meriwether to Manypenny, Dec. 30, 1856; Def. Ex. G-82, ibid.; Navajo Ex. 505, Meriwether's Map of 1854; Navajo Ex. 507, Meriwether's Map of 1856; Def. Ex. G-74, Meriwether to Manypenny, Aug. 14, 1855; Def. Ex. G-208, ibid.; Def. Ex. G-103, Graves Report, Jan. 2, 1866.

6819/ Hopi Ex. 62, Bonneville's Map of 1857; Def. Ex. G-21, ibid.; Def. Ex. G-74, Meriwether to Manypenny, Aug. 14, 1855; Def. Ex. G-208, ibid.

6820/ Meriwether, supra note 6819; Graves Report, supra note 6818.

6821/ See note 6797, supra for Ute type country.

6822/ Navajo Ex. 216, Simonson to Collins, July 6, 1859; Def. Ex. R-142, ibid.; Navajo Ex. 223, Cogswell to Collins, Aug. 4, 1859; Def. Ex. R-143, ibid.; Navajo Ex. 379, Newspaper clipping from The New Mexican, Jan. 5, 1866; Navajo Ex. 506, Gunnison's Map of 1855; Navajo Ex. 582, Pfeiffer to DeForrest, Jan. 22, 1866; Opler, supra note 6354, at 177; Havasupai Ex. 119, Johnson's Map of California, Territories of New Mexico, and Utah, 1862; Hopi Ex. 63, General Land Office Map of 1866; Def. Ex. R-117, Arny to Mix, Oct. 3, 1861; Def. Ex. R-140, Pfeiffer

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436. From 1855, and after the Navajos retreated south of the river, there were reports of Utes occupying areas within the Navajo claim boundary.[6823/] No identifiable Ute archaeological habitation structures dating prior to the Fort Sumner period have ever been reported or recorded within the exterior boundaries of the Navajo claim. Pre-Fort Sumner Navajo hogans within the area

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6822/ (Continued from Page 1190) to Collins, May 1, 1859; Def. Ex. R-147, Pfeiffer to Collins, Jan. 9, 1860; Reeve, supra note 6385, at 53, 56-58; Def. Ex. R-164, Labadi to Manypenny, May 31, 1857; Def. Ex. G-14, Commissioner's Report for 1857, pp. 572-73; Def. Ex. G-32, Commissioner's Report for 1860, pp. 703, 732; Def. Ex. G-34, Commissioner's Report for 1861, p. 712; Def. Ex. G-35, Commissioner's Report for 1862, pp. 384, 390-91; Def. Ex. G-36, Commissioner's Report for 1863, pp. 231, 269; Def. Ex. G-37, Commissioner's Report for 1869, pp. 245-55; Def. Ex. G-71, Letter from Labadi, 1855; Def. Ex. G-78, Kendrick to Nichols, May 16, 1856; Newberry, supra note 6631; Def. Ex. G-97, Collins to Commissioner, April 7, 1861; Def. Ex. G-98, Gilpin to Dole, June 19, 1861; Def. Ex. G-99, Evans to Dole, March 4, 1863; Def. Ex. G-100, Head to Dole, April 24, 1863; Def. Ex. G-104, Arny to Mix, Oct. 3, 1868; Def. Ex. R-117, ibid.; Def. Ex. G-106, Proceedings of an Interview, Dec. 23, 1868; Def. Ex. G-107, Inspector Davis Report, 1869; Def. Ex. G-37, ibid.; Def. Ex. G-112, Map of Utah Superintendency, 1861 or later; Def. Ex. G-170, Keam to Davis, Dec. 12, 1868; Def. Ex. G-230-A, Map, Public Surveys in New Mexico, 1856; Def. Ex. G-230-C, Map, Public Surveys in New Mexico, 1862.

6823/ Navajo Ex. 582, Pfeiffer to DeForrest, Jan. 22, 1866; Reeve, supra note 6385, at 51; Def. Ex. R-173, Baca to Davis, March 7, 1856; Def. Ex. S-695, Arny to Webb, Aug. 31, 1868; Def. Ex. G-76, Labadi to Manypenny, Nov. 29, 1855; Def. Ex. G-77, Letter from Labadi, Nov. 29, 1855; Def. Ex. G-175, Labadi to Davis, Nov. 29, 1855; Def. Ex. R-160, ibid.; Def. Ex. G-254, Bond for License to Trade to Bernardo Sanchez, Sept. 15, 1855; Def. Ex. G-75, ibid.; Def. Ex. R-125, ibid.

of Ute contact were burned by the Utes,[6824] which accounts in part for the relative sparseness of Navajo archaeological remains from southwestern Colorado identified and recorded to date.[6825]

G. Jicarilla Apaches

437. No conflict exists between the areas used and occupied by the Jicarilla Apache Tribe and by the Navajo Tribe.[6826]

H. Zuñis

1. Population

438. Zuni Pueblo is located on the Zuni River in the south-central portion of the Navajo Land Claim, about the center of their present reservation.[6827] The Zuni language is peculiar to the Zunis only.[6828] The following are the populations reported for it at various times through the historic period:

6824/ Tse K'izzi, Tr. 151, Sept. 7, 1954.

6825/ Navajo Exs. 520-C through 520-E, Site Reports.

6826/ 12 Ind. Cl. Comm. 439.

6827/ Navajo Ex. 510, Place Name Map; Navajo Ex. 555, Date Map.

6828/ Def. Ex. G-28, p. 215, Calhoun to Medill, Oct. 13, 1849.

of disputes between Zunis and Navajos.[6965/] Navajos prevented the Zunis from extending their lands far beyond their villages and the Zuni valley where they erected defenses.[6966/] Descriptions and maps of Zuni lands consistently show a relatively small area.[6967/]

4. Conclusion

473. It is therefore reasonable to conclude that the lands used and occupied by the Zuni Indians were those drained by the Zuni River from about Nutria and Pescado on the east to about Ojo Caliente on the west, an area which approximates their present reservation.[6968/]

6965/ Ibid.; Navajo Ex. 371; Hodt, supra note 6935; Eastman, supra note 6950; Van Valkenburgh, supra note 6955, at 108.

6966/ Calhoun, supra note 6873; Calhoun, supra note 6875; Carlisle, supra note 2908; Sitgreaves, supra note 6885, at 5; Whipple, supra note 6835, at 66-67; Def. Ex. G-29, Abel, The Official Correspondence of James S. Calhoun, p. 250; Beale, supra note 6909, at 38; Ten Broeck, supra note 6834, at 81; Kluckhohn, Tr. 922.

6967/ Meriwether Map, supra note 6901; Nichols, supra note 6906; Bonneville, supra note 6906; Def. Ex. G-233, Pueblo of Zuni Grant; Executive Orders..., supra note 2208; Def. Ex. S-683. Arny, Report No. 8, p. 18; Begay, Tr. 5172-73; Billy, Tr. 5207-08.

6968/ Navajo Ex. 555, Date Map.

F I N D I N G 22

Conclusion

1. From and after the ratification by the United States Senate of the Treaty of Guadalupe Hidalgo with Mexico February 2, 1948,[6994] and the treaty between the Navajo Tribe and the United States, September 9, 1950,[6995] the defendant United States failed and refused to carry out and to comply with its obligations to protect the title and land use rights of the Navajo petitioner from invasion, trespass, and usurpation by divers persons,[6996] and failed and refused to designate, settle, and adjust the territorial boundaries of the petitioner's lands,[6997] thereby confusing and beclouding the title and land use rights of the petitioner in the area to which the petitioner was rightfully and lawfully entitled.

2. Although the defendant received and accepted full consideration promised by the Navajo Tribe in the Treaty of 1850, namely the privilege of establishing forts within Navajo country

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6994/ 9 Stat. 922.

6995/ 9 Stat. 974, 2 Kappler 583 (1904).

6996/ Navajo Ex. 47, Treaty of 1850, art. VI.

6997/ Id., art. IX.

to "preserve tranquility and to afford protection to all the people and interests of the contracting parties....," [6998/] and the defendant did in fact establish forts by and with the consent of the Navajo Tribe, [6999/] the defendant at all times failed and refused to provide and give to the Navajo petitioner the consideration promised in the Treaty in exchange for the petitioner's approval and consent to the establishment of such forts, namely, the designation by the defendant of the boundary lines of the petitioner's lands and the protection of the petitioner's interests.

3. As direct and proximate results of the defendant United States' said failures

(1) divers persons committed and carried out trespasses, invasions, and usurpations of the Navajo petitioner's rightful title and land use rights continuously at all times after the American occupation of the Territory of New Mexico; (2) the depredations committed by residents of Spanish and Mexican descent

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6998/ Id. art. VIII.

6999/ Navajo Ex. 510, Place Name Map. Forts were established by the defendant at Ojo del Gallo, Ojo del Oso, and at Canyon Bonito.

continued and even increased, including the seizure and enslavement of Navajo children; (3) the Navajos were powerless to protect themselves effectively against such consequences of the defendant's neglect and failures to comply with the obligations of the treaties, and were thereby provoked and driven to acts of self-protection and retaliation which would not have occurred had the defendant protected the Navajo petitioner's rightful title and land use rights pursuant to the treaties; and (4) the war which was carried on by the defendant United States against the Navajo Tribe from 1863 to 1864 and which led to the captivity of a large portion of members of the Tribe at Fort Sumner from 1863 to 1868 resulted directly from the failures of the defendant to comply with the terms of the treaties.

4. At the time of the American occupation of New Mexico in 1846 and at the time of the Treaty of Guadalupe Hidalgo with

Mexico February 2, 1848,[7000/] the Navajo Tribe exclusively used and occupied, and exercised exclusive dominion and control over the area delineated by the solid black line on Navajo Exhibit 555, Date Map, as well as a small tract outside the above area bounded by the Navajo claim line from stations 22 to 24 on the north and east and by the Negrito, Tularosa and San Francisco Rivers on the southwest as depicted on map on page 1011, supra, with the exception of the areas occupied by various Pueblo enclaves within Navajo territory, these being the Acoma-Laguna area as depicted on map, page 923, supra, the Zuni area as described in Finding 20,H,4, supra and the Hopi area as depicted by the green line on Navajo Exhibit 555, Date Map.

5. After the release of that portion of the Navajo Tribe held in captivity at Fort Sumner from 1863 to 1868, many Navajos undertook to return to their former homes, but the defendant did not permit those in parts of the area described above which lie outside of the Navajo Reservation to reoccupy this area. The Navajo petitioner was, and ever since has been, wrongfully deprived by the defendant United States of title to and rights of use and occupancy of the area between the Navajo reservation

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7000/ 9 Stat. 922.

boundaries and the Navajo claim boundary as delineated on Navajo Exhibit 555, Date Map, as well as the small tract between the Navajo claim boundary and the Negrito, Tularosa and San Francisco Rivers depicted on the map on page 1011, supra, with the exception of the areas conceded to the pueblos of Laguna, Acoma and Zuni.

Respectfully submitted,

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