Hopi Tribe, 8-3-1951, Petition Before the Indian Claims Commission. No. 196. Copy from Arnold and Porter Hopi Archive Box 336.

FILED
8-3-57

BEFORE THE

INDIAN CLAIMS COMMISSION

No. 196

THE HOPI TRIBE, AN INDIAN REORGANIZATION ACT CORPORATION, SUING ON ITS OWN BEHALF AND AS A REPRESENTATIVE OF THE HOPI INDIANS AND THE VILLAGES OF FIRST MESA (CONSOLIDATED VILLAGES OF WALPI, SHITCHUMOVI AND TEWA), MISHONGNOVI, SIPAULAVI, SHUNGOPAVI, ORAIBI, KYAKOTSMOVI, BAKABI, HOTEVILLA AND MOENKOPI, *Petitioner,*

v.

THE UNITED STATES OF AMERICA, *Defendant.*

PETITION

JOHN S. BOYDEN,
Attorney of Record.

WILKINSON, BOYDEN & CRAGUN,
Of Counsel.

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BEFORE THE

INDIAN CLAIMS COMMISSION

No.

THE HOPI TRIBE, AN INDIAN REORGANIZATION ACT CORPORATION, SUING ON ITS OWN BEHALF AND AS A REPRESENTATIVE OF THE HOPI INDIANS AND THE VILLAGES OF FIRST MESA (CONSOLIDATED VILLAGES OF WALPI, SHITCHUMOVI AND TEWA), MISHONGNOVI, SIPAULAVI, SHUNGOPAVI, ORAIBI, KYAKOTSMOVI, BAKABI, HOTEVILLA AND MOENKOPI, *Petitioner,*

v.

THE UNITED STATES OF AMERICA, *Defendant.*

PETITION

The Hopi Tribe respectfully represents:

COUNT 1

1. Petitioner, The Hopi Tribe, is a corporation organized under the Indian Reorganization Act of June 18, 1934 (48 Stat. 934), as amended by the Act of June 15, 1935 (49 Stat. 378), the majority of the members of which reside on the Hopi Reservation in Arizona. Petitioner is a tribal organization recognized by the Secretary of the

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Interior of the United States as having authority to represent such tribe. Prior to their being placed on the reservation they now occupy, its members, by permission of the tribe, used and occupied from time immemorial the lands described in paragraph 7 hereof.

2. Petitioner files this petition pursuant to the Act of August 13, 1946 (60 Stat. 1049; 25 U.S.C. Sec. 70), conferring jurisdiction on the Indian Claims Commission to hear and adjudicate claims against the United States. No claim asserted herein or any part thereof is included in any suit pending in the Court of Claims of the United States or pending in the Supreme Court of the United States; and no claim asserted herein or any part thereof has been filed in the Court of Claims under any legislation in effect on August 13, 1946.

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

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

5. At all times mentioned in this petition, defendant was guardian and trustee of the properties and affairs of petitioner and as such guardian and trustee was subject to a high degree of fiduciary obligation and required to deal honorably and fairly with the petitioner and its property.

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6. No action has been taken by the Congress or by any department of the Government with respect to the claims made herein except the Act of August 13, 1946, *supra*, which provides a forum to adjudicate such claims.

7. On July 4, 1848 and prior thereto from time immemorial, petitioner owned or continually held, occupied and possessed a large tract of land described generally as follows, to wit: Beginning at the juncture of the Colorado and Little Colorado Rivers; thence in a southeasterly direction along the said Little Colorado River to its juncture with the Zuni River; thence in a northeasterly direction along the said Zuni River to a point where the same now intersects the state line between the States of Arizona and New Mexico; thence in a northerly direction along said state line until said state line intersects the San Juan River; thence along the San Juan River in a general westerly direction to its juncture with the Colorado River; and thence in a southwesterly direction along the said Colorado River to the point of beginning.

8. On July 4, 1848, when the defendant obtained sovereignty over the area owned or occupied by the petitioner, the members of petitioner tribe were an agricultural and pastoral people who from time immemorial had lived in permanent dwellings and raised their crops and pastured their flocks on the surrounding land. Members of petitioner tribe were, at that time, ignorant and without knowledge as to the nature of legal land titles under United States law and relied upon and had confidence in the honesty and authority of the United States and its agents upon whom they relied for protection for their property.

9. After July 4, 1848, defendant took control of the aforesaid area held, occupied and possessed by petitioner, and converted the said lands to the use of the defendant without payment of just compensation or of any compensation agreed to by them.

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10. As a result of the conduct of defendant in converting petitioner's land to its own use as aforesaid, petitioner was damaged in an amount equal to the value thereof.

COUNT 2

11. Petitioner realleges paragraphs 1 to 9 hereof, inclusive.

12. In the taking of said lands from petitioner as aforesaid and in the said conduct of defendant under the circumstances, defendant dealt unfairly and dishonorably with petitioner.

13. As a result of defendant's failure to deal fairly and honorably with the petitioner as aforesaid, petitioner has been damaged in an amount equal to the value of said lands.

COUNT 3

14. Petitioner realleges paragraphs 1 to 9 hereof, inclusive.

15. The acts committed by defendant as hereinbefore alleged constituted a taking of the lands possessed by the petitioner. This taking was in violation of the obligations undertaken by defendant under the Treaty of Guadalupe Hidalgo (9 Stat. 922, 930) and of the Constitution of the United States, and constituted a taking by the defendant of lands occupied by the petitioner without payment of just compensation or of any compensation agreed to by them.

16. As a result of the conduct of defendant in so taking the land of petitioner as aforesaid, petitioner was damaged in an amount equal to the value thereof.

COUNT 4

17. Petitioner realleges paragraphs 1 to 9 inclusive and paragraph 15 hereof.

18. In the taking of said lands from petitioner as afore-

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said and in the said conduct of defendant under the circumstances, defendant dealt unfairly and dishonorably with petitioner.

19. As a result of defendant's failure to deal fairly and honorably with the petitioner as aforesaid, petitioner has been damaged in an amount equal to the value of said lands.

COUNT 5

20. Petitioner realleges paragraphs 1 to 8 hereof, inclusive.

21. After July 4, 1848, although petitioner retained and still retains its title to the lands described above, defendant seized for its own purposes and deprived petitioner of the use of said land.

22. As a result of the conduct of defendant in so seizing and depriving petitioner of the use of the lands as aforesaid, petitioner has been and still is being damaged in an amount equal to the value of the use of said lands.

COUNT 6

23. Petitioner realleges paragraphs 1 to 8 inclusive, and paragraph 21 hereof.

24. In the seizure for its own purposes and deprivation of the use of said lands by defendant as aforesaid, and in the said conduct of defendant, under the circumstances, defendant dealt unfairly and dishonorably with petitioner.

25. As a result of defendant's failure to deal fairly and honorably with the petitioner as aforesaid, petitioner has been and still is being damaged in an amount equal to the value of the use of said lands.

COUNT 7

26. Petitioner realleges paragraphs 1 to 8 inclusive, and paragraph 21 hereof.

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27. The acts committed by defendant as aforesaid, constituted a violation of petitioner's right to free enjoyment of its property. This failure on the part of the defendant to maintain and protect such right was in violation of the obligations undertaken by defendant under the Treaty of Guadalupe Hidalgo, *supra*, and of the Constitution of the United States.

28. As a result of the conduct of defendant in so seizing and depriving petitioner of the use of the lands as aforesaid, petitioner has been and still is being damaged in an amount equal to the value of the use of said lands.

COUNT 8

29. Petitioner realleges paragraphs 1 to 8 inclusive, paragraphs 21 and 27 hereof.

30. In the seizure for its own purposes and deprivation of the use of said lands by defendant as aforesaid, and in the said conduct of defendant, under the circumstances, defendant dealt unfairly and dishonorably with petitioner.

31. As a result of defendant's failure to deal fairly and honorably with the petitioner as aforesaid, petitioner has been damaged in an amount equal to the value of the use of said lands.

COUNT 9

32. At all times mentioned herein, the books of account and all other records pertaining to all moneys and financial transactions of and for petitioner, the Hopi Tribe, and property and transactions therein other than moneys have been in the exclusive possession and control of defendant. Proceeds of property of petitioner or of rents or other income therefrom have been payable to or collected by defendant, and by it dealt with and disposed of, including without limitation, proceeds and income from the sale of coal to traders and others and moneys payable under:

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Act of January 9, 1837, c. 1, § 1, 5 Stat. 135, and Sec. 2093 of the Revised Statutes (25 U.S.C. § 152);
Act of April 1, 1880, c. 41, 21 Stat. 70 (25 U.S.C. §161);
Act of March 3, 1883, § 1, c. 141, 22 Stat. 582, 590 (25 U.S.C. § 155);
Act of February 28, 1891, c. 383, § 3, 26 Stat. 794, 795 (25 U.S.C. § 397);
Act of March 2, 1899, c. 374, §§ 1-3, 30 Stat. 990, as amended (25 U.S.C. § 312);
Act of May 17, 1900, c. 479, § 1, 31 Stat. 179 (25 U.S.C. § 421);
Act of March 3, 1901, c. 832, § 3, 31 Stat. 1058, 1083 (25 U.S.C. § 319);
Act of March 11, 1904, c. 505, §§ 1-2, 33 Stat. 65, as amended (25 U.S.C. § 321);
Act of March 3, 1909, c. 263, 35 Stat. 781, as amended (25 U.S.C. § 320);
Act of June 25, 1910, c. 431, § 7, 36 Stat. 855, 857 (25 U.S.C. § 407);
Act of March 4, 1913, c. 165, § 2, 37 Stat. 1015, 1016, as amended (16 U.S.C. § 615);
Act of February 27, 1917, c. 133, § 4, 39 Stat. 944, 945 (30 U.S.C. § 86);
Act of June 30, 1919, c. 4, § 26, 41 Stat. 3, 31, as amended (25 U.S.C. § 399);
Act of June 10, 1920, c. 285, § 17, 41 Stat. 1063, 1072 (16 U.S.C. § 810);
Act of April 12, 1924, c. 93, 43 Stat. 93 (25 U.S.C. § 190);
Act of May 29, 1924, c. 210, 43 Stat. 244 (25 U.S.C. § 398);
Act of April 17, 1926, c. 156, 44 Stat. 300 (25 U.S.C. § 400a);
Act of March 3, 1927, c. 299, § 2, 44 Stat. 1347 (25 U.S.C. § 398b);

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Act of May 11, 1938, c. 198, § 2, 52 Stat. 347 (25 U.S.C. § 396b);
Act of June 14, 1934, c. 521, 48 Stat. 690.

33. At all times referred to herein, defendant has been under a duty to pay interest on funds of petitioner in accordance with the provisions of law, including without limitation the provisions of the following statutes:

Act of January 9, 1837, c. 1, § 3, 5 Stat. 135, and R. S. § 2095 (25 U.S.C. § 157);
Act of January 9, 1837, c. 1, § 4, 5 Stat. 135, and R. S. § 2096 (25 U.S.C. § 158);
Act of September 11, 1851, c. 25, § 2, 5 Stat. 465, and R. S. § 3659 (31 U.S.C. § 547a);
Act of June 10, 1876, c. 122, 19 Stat. 58 (25 U.S.C. § 160);
Act of April 1, 1880, c. 41, 21 Stat. 70 (25 U.S.C. § 161);
Act of May 25, 1918, c. 86, § 28, 40 Stat. 561, 591 (25 U.S.C. § 162).

34. Alternatively, defendant has at all times been under a duty to pay to or for the account and behalf of petitioner, interest on any and all sums of petitioner's money in the hands of defendant which it retained for its own uses and purposes, whether by way of interest or principal. Alternatively, defendant at all times has been under a duty, in paying out moneys of petitioner held by it or invested by it, to pay any sum or sums from the least productive funds or property of petitioner before proceeding to pay money from funds or property of greater productivity.

35. At all times referred to herein, defendant has been under a duty as guardian and trustee of petitioner and the property of petitioner promptly and providently to invest funds of petitioner coming into the hands of defendant and to reinvest the same, and any rents, issues or profits thereof.

36. Upon information and belief, petitioner alleges that

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defendant from time to time has collected or received or, in the exercise of its fiduciary duties ought to have collected or received, various property, including money, for or on behalf of petitioner, or defendant itself has become liable to pay moneys to or for or on behalf of petitioner. Defendant has failed to account for its management, handling and disposition of the said moneys and properties. As a result, petitioner has been damaged by having been deprived of the amount of money or value of other property, together with interest thereon, which may be shown to be owing to petitioner upon a proper accounting in accordance with the fiduciary duties and the liabilities herein set forth.

Wherefore, petitioner prays that it be awarded judgment against the defendant after the allowance of all just credits and offsets for (1) an amount which will provide just compensation for the lands taken from the petitioner by the defendant; or (2) an amount which will provide just compensation to the petitioner for the damages caused by the defendant's failure to deal fairly and honorably with petitioner in the taking of the petitioner's lands; or (3) an amount which will provide just compensation for the lands taken from the petitioner by the defendant in violation of the terms and obligations of the Treaty of Guadalupe Hidalgo; or (4) an amount which will provide just compensation to the petitioner for the damages caused by the defendant's failure to deal fairly and honorably with the petitioner in the taking of the petitioner's lands in violation of the terms and obligations of the Treaty of Guadalupe Hidalgo; or (5) an amount which will provide just compensation for the use of said lands to the date hereof; or (6) an amount which will provide just compensation to the petitioner for the damages caused by defendant's failure to deal fairly and honorably with the petitioner in depriving petitioner of the use of said lands to the date hereof; or (7) an amount which will provide just compensation to the

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petitioner for damages caused by defendant's seizing and depriving the petitioner of the use of said lands in violation of the terms and obligations of the Treaty of Guadalupe Hidalgo; or (8) an amount which will provide just compensation to the petitioner for the damages caused by the defendant's failure to deal fairly and honorably with the petitioner in the seizing and depriving of the use of said lands in violation of the terms and obligations of the Treaty of Guadalupe Hidalgo; and (9) that defendant be required to make a full, just and complete accounting for all property or funds received or receivable and expended for and on behalf of petitioner, and for all interest paid or due to be paid on any and all funds of petitioner, and that judgment be entered for petitioner in the amount shown to be due under such an accounting; and (10) for such other relief as to the Commission may seem fair and equitable.

Respectfully submitted,

JOHN S. BOYDEN,
744 Jackson Place,
Washington 6, D. C.,
Attorney of Record.

WILKINSON, BOYDEN & CRAGUN,
Of Counsel.

Service of Petition

John S. Boyden, being duly sworn, deposes and says that 15 copies of this petition were on Aug. 3, 1951, sent to The Attorney General of the United States by registered mail, return receipt requested.

Subscribed and sworn to before me this 3rd day of August, 1951.

RITA E. MOTHERWAY,
Notary Public.

My commission expires Jan. 14, 1956.

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SCHEDULE No. 1

Act of June 18, 1934

Section 16 of the Act of June 18, 1934 (48 Stat. 984) reads:

"Sec. 16. Any Indian tribe, or tribes, residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws, which shall become effective when ratified by a majority vote of the adult members of the tribe, or of the adult Indians residing on such reservation, as the case may be, at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and bylaws when ratified as aforesaid and approved by the Secretary of the Interior shall be revocable by an election open to the same voters and conducted in the same manner as hereinabove provided. Amendments to the constitution and by laws may be ratified and approved by the Secretary in the same manner as the original constitution and bylaws."

SCHEDULE No. 2

Guadalupe Hidalgo Treaty Provisions

Article VIII of the Treaty of Guadalupe Hidalgo reads:

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

"Those who shall prefer to remain in the said territories, may either retain the title and rights of Mexi-

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

"In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States." (9 Stat. 922, 929-930)

Article IX of the Treaty of Guadalupe Hidalgo reads:

"Mexicans who, in the territories aforesaid, shall not preserve the character of citizens of the Mexican republic, conformably with what is stipulated in the preceding article, shall be incorporated into the Union of the United States, and be admitted, at the proper time (to be judged of by the Congress of the United States) to the enjoyment of all the rights of citizens of the United States, according to the principles of the Constitution; and in the meantime shall be maintained and protected in the free enjoyment of their liberty and property, and secured in the free exercise of their religion without restriction." (9 Stat. 922, 930)

The protocol of Querétaro of the Treaty reads:

"The American Government by suppressing the IXth article of the Treaty of Guadalupe Hidalgo and substituting the IIId article of the Treaty of Louisiana, did not intend to diminish in any way what was agreed upon by the aforesaid article IXth in favor of the inhabitants of the territories ceded by Mexico. Its understanding is that all of that agreement is contained

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in the IIId article of the Treaty of Louisiana. In consequence all the privileges and guarantees, civil, political, and religious, which would have been possessed by the inhabitants of the ceded territories, if the IXth article of the treaty had been retained, will be enjoyed by them, without any difference, under the article which has been substituted." (Miller, Treaties and International Acts of the United States, Vol. 5, p. 381.)

Article III of the Treaty of Louisiana reads:

"The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property and the religion which they profess." (8 Stat. 200, 202)

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REFER IN REPLY TO THE FOLLOWING:

Tribal Relations
26019-47

ADDRESS ONLY THE
COMMISSIONER OF INDIAN AFFAIRS

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
Washington 25, D. C.

NOV 5 1947

Mr. James D. Crawford,
Supt., Hopi Agency,
Keams Canyon, Arizona.

My dear Mr. Crawford:

Perhaps you have already confronted with the problem of the Hopi Tribal organization. The difficulty of operating under the existing Hopi Constitution has up to this point baffled everyone and by now we are all convinced that the existing procedures cannot be made to work.

On July 9 Superintendent Ladd called attention to the necessity of working out a solution in order that the Hopis might take advantage of mineral leasing. He suggested two possible solutions: (1) legislation authorizing the Secretary of the Interior to sell mineral leases, and (2) separate organization by communities, i.e., each of the three mesas to organize separately. I understand also that a number of files have been sent to you and you have been asked to study these and to offer recommendations.

While you have these things in mind, I wish to report on some discussions in which I participated on the Hopi Reservation while Mr. Collier was still Commissioner in 1944. I refer particularly to a long meeting we had with the First Mesa people. What came out strongly was that the Kikmongwi was extremely reluctant to assume the role imposed upon him by Article III of the Constitution. That is, he wouldn't assume the leadership required in Section 3, Article III, neither would he act in the capacity required in Section 4, Article IV.

The speakers at this meeting felt however that there was a possibility of organizing the villages on a strictly political and secular pattern leaving the Kikmongwi out of it entirely. You will note that Section 4 of Article III provides that a village may organize where traditional government does not operate. Assuming that traditionally Hopi government never functioned in the political field, there would appear to be no reason why all the villages could not proceed to establish the type of organization contemplated by the Constitution.

HOPI INDIAN AGENCY

It is unlikely that the Kikmongwi would call an election and it is equally unlikely that 25% of the voting members of a village would call an election in opposition to the Kikmongwi or any other traditional leader. However, the provision brings the Superintendent into the situation by providing that he "shall make sure that all members have had ample opportunity

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to study the proposed constitution". I believe it would not be straining this language too far if the Superintendent took the initiative and called the election. Indeed the following sentence provides that the Superintendent shall call a special meeting for the purpose of voting on the Constitution.

In the discussions with the First Mesa people all the younger members, men like Tommy Preston, were enthusiastic about going ahead under the provision of the Constitution. They did not want to proceed without full discussions with the older people on the Mesa but they promised that such would be held. I was not able to keep in touch with Hopi developments, so I am not able to supply information on what took place. It may be that the matter was discussed and vetoed. I pass it along however as something which you might want to explore.

Sincerely yours,

D'Arcy McNickle,
Assistant to the Commissioner.

EXHIBIT 32b