Hopi Tribe et al (Petitioners in No. 196), 10-15-1958, Motion to Remove Case from Hearing Calendar. In Navajo Tribe of Indians, Hopi Tribe, et al v. the U.S.A (Dockets 229 and 196). RG 279, Records of the Indian Claims Commission, Box 1865, file 1, Hopi Tribe 196, Original Papers. National Archives, Washington, D.C.

FILED
OCT 1 6 1958
Jean R Hanna Asst Clerk
INDIAN CLAIMS COMMISSION

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS, Petitioners,	)	Docket No. 229
THE HOPI TRIBE, ET AL., Petitioners,	)	Docket No. 196
v.	)	
THE UNITED STATES OF AMERICA, Defendant.	)	

MOTION TO REMOVE CASE FROM HEARING CALENDAR

Petitioners in No. 196, The Hopi Tribe, et al., move to remove the above-captioned cases from the calendar for hearing on the issue of title on Monday, May 18, 1959.

In support of the foregoing motion petitioners respectfully show:

This case was set for hearing by order dated October 13, 1958 (received October 15, 1958), pursuant to motion of petitioners (The Navajo Tribe) in No.229, absent an objection of defendant, and without awaiting response by these petitioners within the time accorded by Rules 503.22(a)(1) and 503.5(d). [The certificate of service asserts that the motion was served October 3, 1958, by mail--which, if true, gives 10 days under Rule 503.22(a) plus 3 days under Rule 503.5(d) within which response may be made, or until October 16, 1958. The motion was received October 6, 1958, by counsel for petitioners in No.196 in an envelope

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bearing a postmark of October 4, 1958--which, if taken as the date of service, would give until October 17 for response.]

Actually, there are compelling reasons why the issue of title should not be set for trial by this Commission prior to the time a federal court recently invested with jurisdiction over a substantial part of the claim shall have determined a case recently filed between the parties petitioner.

Under date of July 22, 1958, by Public Law 85-547, Congress adopted "An Act to determine the rights and interests of the Navajo Tribe, Hopi Tribe, and individual Indians to the area set aside by Executive order of December 16, 1882, and for other purposes." Thereby, the two tribes and the United States were authorized to commence or defend in the United States District Court for the District of Arizona an action against each other for the purpose, among others, "of determining the rights and interests of said parties in and to said lands". The action is to be heard by a special three-judge District Court under 28 U.S.C. § 2284, with direct appeal to the Supreme Court by any party. Nothing in the act shall be deemed a Congressional determination of conflicting tribal claims to the lands or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

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Under date of August 1, 1958, the case of Sekiestewa, Chmn.Hopi Tribal Council, &c. v. Jones, Chmn. Navaho Tribal Council &c. was filed in the U.S. District Court, Ariz., Docket No. 579 Pct., and was duly served. Thereafter, counsel for the Navaho (in that case and here) obtained the consent of counsel for the Hopi (in that case and here) to an extension of time to answer until December 1, 1958.

The lands in suit in the U.S District Court, Arizona, are claimed by both petitions pending before this Commission. Any judgment of that court would be res judicata and binding on both the Navajo and Hopi in the proceedings here. A duplication of energies of both the special three-judge United States District Court and this Commission to determine this issue would be an imposition upon the time of one or the other.

While apart from the outcome of the Arizona litigation the Navajo are known to be wealthy and fully able to finance duplicative and distracting maneuvres in both forums at the same time, the Hopi are miserably poor and unable to afford similar luxury. To force counsel for the Hopi to hearing in such circumstances effectively means a denial of the hearing envisaged by Congress both under this Commission's Act and the recent Act of July 22, 1958.

In its most recent pronouncement, Congress manifestly has contemplated that the issue of title to the Executive-order

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reservation would be determined by a three-judge District Court with appeal of right to the Supreme Court of the United States, rather than by this Commission under the earlier jurisdiction.

JOHN S. BOYDEN,
Attorney of Record for The Hopi Tribe, et al., No.196,

351 South State St., Salt Lake City, Utah, and
744 Jackson Pl., N.W. Washington 6, DC

By John W Cragun
John W Cragun
744 Jackson Pl., N. W.,
Washington 6, D C.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing motion on counsel for defendant, Honorable Perry W Morton, Assistant Attorney General, Department of Justice, Washington 25, D. C , and on Norman M. Littell, Esq., 1826 Jefferson Place, N. W., Washington 6, D C., with copy to Marvin J. Sonosky, Esq., 1028 Connecticut Ave., N W., Washington 6, D C., by mailing a copy to each, postage prepaid, this 15th day of October, 1958.

John W Cragun
John W Cragun

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