U.S. Attorney General's Office, 1-25-1957, Motion to Consolidate Dockets 229, 196, and 210. Before the Indian Claims Commission. RG 279, Records of the Indian Claims Commission, Box 1166. National Archives, Washington, D.C.

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FILED
JAN 2 [illegible] 1957
James A. Langston, Clerk
By [illegible] Asst. Clerk
INDIAN CLAIMS COMMISSION

BEFORE THE INDIAN CLAIMS COMMISSION

THE NAVAJO TRIBE OF INDIANS, Petitioners v. THE UNITED STATES OF AMERICA, Defendant	)	No. 229
THE HOPI TRIBE, ET AL, Petitioners v. THE UNITED STATES OF AMERICA, Defendant	)	No. 196
HOPI VILLAGE OF SHIMGOPOVI, Petitioners v. THE UNITED STATES OF AMERICA, Defendant	)	No. 210

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MOTION TO CONSOLIDATE

Comes now the defendant, by its Assistant Attorney General, and moves the Commission for an order consolidating the above cases for the trial of all overlapping claims based upon alleged aboriginal ownership of land as set forth in the petitions and maps filed in such cases.

In support of said motion defendant calls to the attention of the Commission the following facts:

1. In Docket No. 229, the petitioners (Navajos) 1/ have filed a map with the Commission showing the exterior boundaries of the lands claimed by virtue of alleged aboriginal ownership.

2. In Docket No. 196, the petitioners (Hopi) assert a claim based upon alleged aboriginal ownership of land. This land, described in paragraph 7 of the petition, is also claimed in its entirety by the Navajos in Docket No. 229.

3. In Docket No. 210, the petitioners (Hopi) assert what may be deemed a claim based upon aboriginal ownership of land. The area which may be claimed is shown on a map annexed to the petition and is also claimed in its entirety by the Navajos in Docket No. 229.

By reason of the foregoing, defendant, although it denies the validity of any of the foregoing claims:

1. Is or may be exposed to multiple liability;

2. Is or may be required to present at three separate trials the same evidence involving the same tribes, areas and facts;

1/ The name generally applied to the Indians through whom the claimants allegedly derive their claims will be noted in each instance for the convenience of the Commission.

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3. (a) Is or may be required to wait for years, until all overlapping claims are tried, before the Commission may make any determination as to the aboriginal title, if any, to the lands embraced within the overlapping claims; and thus (b) will or may be denied a prompt and expeditious determination of its liability, if any;

4. May be required to expend unnecessarily large sums to prepare and present at separate trials the same evidence and witnesses;

5. Will be denied the presentation at one trial of all of the facts relating to the aboriginal ownership and occupancy of the areas claimed by two or more Indian tribes or groups, since some of the facts may be in the possession of only one of the claimants;

6. May be denied an opportunity to have witnesses testifying adversely to any particular claimant subjected to cross-examination by such claimant;

7. Respectfully requests that all aboriginal claims in Dockets 196, 210 and 229 be heard at a single trial.

WHEREFORE, defendant prays

1. That the Commission enter an order consolidating for purposes of trial all aboriginal land claims in Dockets 196, 210 and 229, and

2. That oral argument be had hereon.

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POINTS AND AUTHORITIES

The petitions in Dockets 196 and 210 (Hopi) assert a claim against the defendant based upon alleged ownership, by virtue of aboriginal Indian title, to land which is all included within the aboriginal Indian title claim set forth in the petition and map filed in Docket 229 (Navajo).

While the defendant does not admit the validity of any of these claims, the pendency thereof obviously may expose the defendant to multiple liability for the same land as well as to the other disabilities set forth in the motion. Under these circumstances it is clearly necessary that the overlapping claims should be consolidated for purposes of trial.

This Commission and the courts have stated that a claimant to Indian title must show actual occupancy and control of a definable area to the exclusion of other Indian tribes. United States v. Santa Fe Railroad Co., 314 U.S. 339, 345 (1941); Choctaws, et al. v. United States, 34 C. Cls. 17, 51 (1899); The Wichita Indians, et al. v. United States, 89 C. Cls. 378, 414-419 (1939); Alcea Band of Tillamooks, et al v. United States, 103 C. Cls. 494, 550, 551 (1945); Quapaw Tribe v. United States, 1 Ind. Cl. Com. 469, 481. Since two separate Indian tribes or groups apparently claim exclusive occupancy of the same area, an issue is raised as to which tribe or group, if any, actually had aboriginal possession thereof.

It is well established that the Commission has the power to order the consolidation herein requested. The Court of Claims in C. W. McGhee, et al. v. The Creek Nation and the United States, 122 C. Cls. 380, 394 (1952) recognized this power in the Commission when it stated:

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> A continuous integrated process of litigation is greatly to be desired in settling these Indian claims, and the allowance of the intervention by a group who claim an interest in the judgment or who will be adversely affected by its disposition, is one of the steps in the attainment of this objective. As a matter of justice, and to bring about a thorough administration of the law laid down by the Indian Claims Commission Act, we think that where all interested persons have not been made parties to the proceeding by joining in the original petition, the Commission has full power to allow such persons, constituting an identifiable group of Indians such as we have here, to intervene or be made parties regardless of the lack of specific language to that effect in the Act, or the failure of the Commission to formulate rules relating to intervention."

While it is true that the facts of the McGhee case concerned intervention by parties who claimed the right to share in any judgment that might be made after trial, yet the principles enunciated by the court apply equally to a situation where two tribes present antagonistic claims to the same area.

The Commission has heretofore recognized that justice and equity may best be served by consolidation. The language of the Commission's Order of Consolidation dated November 30, 1953, in consolidating Dockets 198 and 264 for trial expresses clearly the purposes and necessity for consolidating overlapping aboriginal claims for trial. The Commission there stated:

> Whereas, all evidence with reference to the aboriginal use and occupancy of the same area of land claimed by each of the respective plaintiffs should be before this Commission before the determination of the respective rights of the claimants can be fairly, justly and completely made;
>
> THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Commission upon its own motion, that Dockets 198 and 264 shall be consolidated for the purposes of trial insofar as the claims in each case overlap."

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In the Ottawa case, 2 Ind. Cl. Com. 461, 480, the Commission specifically recognized that the claims " . . . which bands other than the Grand River Band may be able to show an interest in . . ." should be consolidated ". . . and the respective rights of the bands shall be determined after all evidence is adduced upon the consolidated trial of said causes."

Accordingly, it is respectfully submitted that the defendant is entitled to the relief herein sought.

William H. Lundin

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Attorney

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