

BEFORE THE INDIAN CLAIMS COMMISSION

THE FORT SILL APACHE TRIBE OF THE)
STATE OF OKLAHOMA,)

THE CHIRICAHUA APACHE TRIBE, EX REL.)
SAM HAOZOUS, BENEDICT JOHZE,)
JAMES KAYWAYKLA, ROBERT GOODAY,)
DAVID CHINNEY,)

THE WARM SPRINGS APACHE BAND, EX REL.)
SAM HAOZOUS, BENEDICT JOHZE,)
RAYMOND JOHN LOCO,)

THE CHIRICAHUA APACHE BAND, EX REL.)
ROBERT GOODAY, DAVID CHINNEY,)
CASPER CALIO,)

Docket Nos. 30 and 48

THE NAVAJO TRIBE OF INDIANS,)
Plaintiffs,)

Docket No. 229

v.)

THE UNITED STATES OF AMERICA,)
Defendant.)

Decided: April 1, 1970
Appearances:

Abe W. Weissbrodt, Attorney for
Petitioners in Dkt. Nos. 30 and 48

I. S. Weissbrodt and Morton Liftin
of Weissbrodt, Weissbrodt & Liftin,
Roy T. Mobley, Esquire,
James L. Kunen, Esquire,
of Martin, Kunen and Whitfield,
Rodey, Dickason, Sloan, Akin & Robb,
Of Counsel;

Norman M. Littell, Esquire, and Leland
O. Graham, Esquire, Attorneys for the
Navajo Tribe of Indians, Docket No. 229,

Howard G. Campbell, Esquire, with whom
was associated Assistant Attorney General
Clyde O. Martz, Attorneys for Defendant.

pueblo of Acoma, down through the Magdalena Mountains, and in the northern portion of the subject lands. Later, the presence of other Indians, particularly the Navajos, is indicated.

Commencing about 1700 the Navajos in greater numbers began to venture southward into north central New Mexico, but it was not until after the middle of the nineteenth century that they began to appear north of and within the northern sector of the overlap area. During the Spanish and Mexican period, the Navajos constantly raided and terrorized the Indian pueblos and Spanish settlements just north of the overlap area. With the advent of American sovereignty in 1848, strenuous efforts on the part of the United States military authorities finally quelled further Navajo raiding activity. The southern movement of Navajos, individually and in groups, became more pronounced during the so-called "flight period" (1858-1868), a time when they were fleeing in all directions from the troopers to escape incarceration at Bosque Redondo (Fort Sumner). While the Navajos were moving into the northern reaches of the overlap area, the Apaches were exiting southward to avoid contact with them.

The Navajo Tribe has presented for our consideration a great deal of archaeological evidence, including extensive tree ring data, in order to establish the validity and the antiquity of Navajo habitats and sites within the overlap area. In most instances, however, many of the alleged Navajo sites proved to be non-Navajo, or at least their identity was conjectural. Other sites seemed to be temporary

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habitats that were utilized during the "flight period".

However, the Navajo presence in the northern portion of the overlap did cause the Apaches to leave and to recede further south nearer the Apache homeland. Even after the Navajos had settled their differences with the United States under the Treaty of January 1, 1868 (15 Stat. 667), and had begun to move on to their new reservation northwest of the overlap area, there is little if anything in the record to show that prior to the 1886 date of taking the Apaches made any serious attempts to reclaim the northern portion of the subject tract.

From a consideration of all the evidence, the Commission is of the opinion that the Apache plaintiffs, as of September 4, 1886, the applicable date of taking, held Indian title to that portion of the overlap area which is described by metes and bounds in our Finding of Fact No. "14". We further conclude that on the aforementioned date of taking the United States extinguished the plaintiffs' Indian title to said lands without the payment of any compensation.

As to the balance of the overlap area, which is roughly the northern portion thereof, the evidence does not support Apache title claims. Furthermore, we think that the failure of the Apaches to return to the northern portion during a twenty year period prior to