

BEFORE THE INDIAN CLAIMS COMMISSION

THE HAVASUPAI TRIBE OF THE HAVASUPAI)	
RESERVATION, ARIZONA,)	Docket No. 91
)	
THE NAVAJO TRIBE OF INDIANS,)	Docket No. 229
)	
Petitioners,)	
)	
v.)	
)	
THE UNITED STATES OF AMERICA,)	
)	
Defendant.)	

Decided: December 30, 1968

Appearances:

Royal D. Marks, Attorney of Record for
Havasupai Petitioner

Norman M. Littell, Attorney of Record
for Navajo Petitioner

Walter A. Rochow, with whom was Mr.
Assistant Attorney General Clyde O.
Martz, Attorneys for Defendant

OPINION OF THE COMMISSION

Yarborough, Commissioner, delivered the Opinion of the
Commission.

The Havasupai Tribe of the Havasupai Reservation, Arizona,
timely filed a petition with the Indian Claims Commission under the
Act of August 13, 1946. In this petition, the Havasupai Tribe
alleges that the defendant, the United States, wrongfully deprived

and dating by Mr. Correll of most of the sites in the overlap area. Their general conclusion was that such sites as could be identified as Navajo were a result of the Navajo occupation of the area since the late 1850's. They both relied on the same information in the above exhibits as did Mr. Correll.

As we have stated in previous cases, the nature of archeological evidence such as herein presented is such that experts can sharply disagree, and honestly so, on the meaning of the evidence. The many variables in this kind of evidence make it impossible, in most cases, to ascertain with scientific preciseness either the date of a site or the exact tribal identity of the Indians who inhabited it on a particular date. Dendrochronology as a means of dating is inexact because of the nature of the wood samples, the probable use by the Indians of trees which had been dead for some time, and the habit of carrying used wood from one site to another. Pottery and structural features are also fallible means of identifying or dating a site. It is not always clear to which Indian tribe a particular pottery sherd belongs, but even when this can be determined with reasonable exactness, there was so much trading of pottery among the Indian tribes of this area that identification of a site by this means would still be speculative. There was an overlapping of the periods when the particular types of pottery

were in vogue so that precise dating based on pot sherds alone is almost impossible. Different tribes living in the same general area tended to borrow from each other some structural features in building habitation sites so there is no consensus among the experts as to which site complexes in the overlap area are typically Navajo or Havasupai. The Commission appreciates the great diligence of the parties in amassing the archeological evidence presented, but this evidence does little to add any precision to our effort to ascertain the probable boundaries of exclusive use and ownership at the relevant dates.

Evidence of Havasupai use is spread thinly throughout the area claimed; undoubtedly they had exclusive use of it at one time. Also, we do not question that there was a general movement westward by the Navajo during the 19th century. In the eastern Havasupai claim area Navajo presence during the 19th century is so well established in certain locations, around Grey Mountain and parts of the Upper Coconino Basin, that we cannot say the Havasupai had maintained their exclusive use of the area as of the date of taking. On the other hand, sparse or uncertain evidence of Navajo presence in other parts of the overlap does not convince us that as of the date of taking the Havasupai should not be considered still the exclusive aboriginal owners of that area, even though individual