BEFORE THE INDIAN CLAIMS COMMISSION

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,	)	
Plaintiff,	)	Docket No. 196
THE NAVAJO TRIBE OF INDIANS,	)	
Plaintiff,	)	Docket No. 229
v.	)	
THE UNITED STATES OF AMERICA,	)	
Defendant.	)	

Decided: June 29, 1970

Appearances:

John S. Boyden, Attorney for Plaintiff in Docket No. 196; Wilkinson, Cragun & Barker, of Counsel; Don A. Stringham on the Brief.

Norman M. Littell, Attorney for Plaintiff in Docket No. 229; Joseph F. McPherson and Charles J. Alexander, of Counsel; Leland O. Graham, on Briefs; Harold E. Mott entered Appearance.

Walter A. Rochow and William H. Lundin, with whom were Assistant Attorneys General Edwin L. Weisl, Jr., and Ramsey Clark, Attorneys for Defendant.

OPINION ON TITLE

Chairman Kuykendall delivered the Opinion of the Commission.

rights to their sacred places as long as spiritual attachment or rapport is sustained. However, even if we were to accept Hopi spiritual attachment as an indicia of aboriginal ownership, the Hopis in our judgment have failed to meet the evidentiary burden of showing continuous and exclusive use of their outlying and remote shrine area. The Confederated Tribes of the Warm Springs Reservation of Oregon v. United States, 177 Ct. Cl. 184 (1966), The Sac and Fox Tribe of Indians of Oklahoma, et al., v. United States, 161 Ct. Cl. 189, 315 F. 2d 896 (1963), cert. denied, 350 U.S. 848. In fact the archaeological evidence of record points to the presence of many abandoned Navajo sites throughout the perimeter of the subject tract although the actual use dates of many of these sites are strictly conjectural.

The Commission is of the opinion that as of December 16, 1882, when the Presidential Order was issued setting up the 1882 Executive Order Reservation, the Hopi Tribe held the Indian title only to those lands within the overlap area as described in the Commission's Finding No. 20. The Commission further concludes that the issuance of the December 16, 1882, Presidential Order setting up the Executive Order Reservation for the benefit of the Hopi Tribe, and for such Indians as the Secretary of Interior might see fit to settle thereon, had the effect of extinguishing, without the payment of any compensation, the Hopi Indian title to all those lands described in the Commission's

Finding No. 20 lying outside the boundaries of the 1882 Executive Order Reservation.

Following the issuance of the 1882 Presidential Order, certain events and happenings transpired which finally deprived the Hopi Tribe of a major part of its aboriginal title lands within the 1882 Executive Order Reservation. There has been placed in the record in this case a copy of the findings of fact, opinion, and conclusions of law, issued in the case of Healing v. Jones, 210 F. Supp. 125 (1962), Aff'd. 373 U.S. 758 (1963), a matter of which this Commission takes judicial notice. The Healing case was a special action brought by the Hopi Tribe against the Navajo Tribe and the United States before a special three judge court convened pursuant to the Act of July 22, 1958, 72 Stat. 402, for the purpose of resolving the competing Hopi and Navajo claims in and to the 1882 Executive Order Reservation. Where pertinent and material to the disposition of title issues in this case, and where consistent with the record and the law of the case, the Commission had adopted as its own, either in part or in total, directly or indirectly, certain findings of fact and conclusions of law rendered by the court in Healing v. Jones, supra.

In the Healing case, the Court found, and the Commission concurs, that; (1) The Navajo population in the Executive Order Reservation increased steadily from 1882 from 300 Indians to 8,800 Indians by

1958, and the Hopi population increased from about 1800 Indians to over 3,200 during the same period; (2) while Navajo Indians were allowed to move on to part of the Executive Order Reservation after 1882, it was not until June 2, 1937, that the Secretary of Interior by the issuance of certain grazing regulations impliedly settled the Navajo Tribe on a part of the Executive Order Reservation pursuant to the valid exercise of the authority conferred in the Secretary by the December 16, 1882 Presidential Order; (3) that Hopi non-use of a large part of the 1882 Reservation can be attributed to Hopi superstition and fear of the more warlike and aggressive Navajos and not to Hopi abandonment of the land; (4) that part of the Executive Order Reservation upon which the Navajo Tribe was officially settled was segregated from that part of the reservation where the Hopi villages and population were concentrated; and (5) that the limitation upon the Navajo tribal use area within the Executive Order Reservation was administratively fixed on April 24, 1943, by the Bureau of Indian Affairs when it circumscribed the boundaries around an area encompassing the Hopi villages, said area being designated as "land management district 6".

In the Commission's judgment, Hopi aboriginal title to the 1882 Executive Order Reservation lands, except for those lands within "land management district 6", was extinguished, without the payment of any compensation, by administrative action on June 2, 1937 when the Navajo Tribe was legally settled on the Hopi reservation.

The case shall now proceed to a determination of the acreage and the December 16, 1882 fair market value of the lands awarded to the Hopi Tribe as set forth in the Commission's Finding 20 lying outside the 1882 Executive Order Reservation; to a determination of the June 2, 1937 fair market value of some 1,868,364 acres 4/ of Hopi aboriginal title lands within the 1882 Reservation but lying outside the boundaries of land management district 6, and, to a determination of all other issues bearing upon the defendant's liability to the Hopi Tribe.

Jerome K. Kuykendall, Chairman

Concurring:

John T. Vance, Commissioner

Richard W. Yarborough, Commissioner

Margaret H. Pierce, Commissioner

Brantley Blue, Commissioner

4/ The 1882 Executive Order Reservation contained 2,499,558 acres, and "land management district 6" contained 631,194 acres, Comm. Finding 23.