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1975

LAST BEST OFFER OF THE HOPI TRIBE.

In view of the continued bad faith demonstrated by the Navajo Tribe in the joint tribal negotiations required under P.L. 93-531, the Hopi Tribe deems it advisable to submit its "last best offer."

Navajo Bad Faith

The negotiation provision in the Statute was inserted during the Senate Interior Committee mark-up at the urging of Navajo lobbyists. Navajo supporters on the House side also argued for a "negotiations" provision. The Hopis opposed such a provision, asserting that it would only result in lost time, effort, and resources.

From the outset of negotiations, the good faith of the Navajo Tribe was in question. Having had three months to prepare for negotiation meetings following the passage of the bill, the Navajo Tribe was nonetheless totally unprepared for joint meetings. Time after time, the Navajo negotiations demonstrated unfamiliarity with problems and lack of information essential to progress.

In addition, Navajo breaches in the confidentiality of the meetings became commonplace, causing further lack of progress in the sensitive joint meetings.

Perhaps the most serious indication of bad faith, however, arose at the first Flagstaff meeting. In the prior meeting at Kayenta, the Navajo Tribe advised the Hopi Tribe that to be



acceptable, a partition proposal from the Hopis could not affect any more than 1,300 improvements (out of a total of approximately 4,600 in the Joint Use Area). The Hopis then responded with such a proposal. At Flagstaff, the Navajos stated that the Hopi proposal was not acceptable and that only 900-1,000 improvements would be acceptable.

This step backward was also reflected in other inconsistencies and changes in the Navajo position which appeared during the negotiations.

In short, it has become obvious to everyone that the Navajo Tribe has no intention of reaching agreement in these meetings. These meetings are being used by the Navajo Tribe as an attempt to further delay the day when the Hopi Tribe will achieve that to which it rightfully is entitled. As a result, this "last best offer" has been prepared by the Hopi Tribe disregarding other proposals made during the negotiations and represents the Hopi position in anticipation of litigation.

Partition

Attached hereto as Exhibit A is a map, representing the Hopis' last offer to the Navajos for partition. The Mediator has announced that he intends to recommend a 50-50 partition to the Court. The proposal is consistent with that announcement and is intended to represent a 50-50 partition of the area with an effort to equalize the quality of land, to maximize the concept

of contiguity, to simplify fencing, and to avoid population concentrations. One of the most difficult problems faced in the partition is the fact that the Navajo people have crowded into the choice areas with respect to land quality. Avoiding population centers and also dividing quality becomes almost impossible to achieve. The Hopi proposal affects approximately _____ improvements, substantially below 50% of the total and specifically avoids the centers of White Cone and Pinon.

Hardship

The Hopi Tribe believes that due consideration has been given to hardship in its proposal. First, the number of families affected by the proposal is estimated to be _____, which is far below the number contemplated in the Statute.

Second, the two main population centers have been avoided. Third, the line has been drawn in such a way so that no Navajo family would have to relocate more than 10-15 miles from their present location. Most would only be required to move a few miles and many only a few hundred yards.

The funds available (nearly \$30,000 per household) will more than offset any possible economic loss.

By agreeing to a partition, the Navajo Tribe would substantially lessen the hardship to its people. Livestock reduction probably could be slowed and controlled on the Navajo side. New construction could eventually commence. With litigation, the Navajos have no control over either.

Hopi hardship cannot be underemphasized. For years, by force the Navajos have and continue to prevent Hopi use of the area. Hopis have thus been prevented from using their aboriginal lands. This hardship has been ignored by the Navajos. It would, of course, be only partially eliminated by a partition.

Sacred Places

The Navajos have submitted a map with four sacred places identified. One of these is located inside District 6 and it is not protected under the Statute.

The other three sacred places are Hopi Buttes, Star Mountain, and Black Mountain on Black Mesa. Only Star Mountain lies wholly within the proposed Hopi area.

The Hopi Tribe is continuing to prepare its sacred places map. A preliminary copy was shown to the mediators at Tucson during the first round off negotiations.

The Hopis are fearful that the showing of their map of sacred places will result in further desecration by Navajos and others of their sacred shrines.

The Hopis propose that the Navajos have access to the designated sacred place inside the Hopi Area (Star Mountain) provided the Navajos specify frequency and intended use of that place.

The Hopis would also be entitled to access to the sacred places shown on the Hopi map for the purposes and frequency indicated when the map is finalized.

No other access would be permitted as a matter of right, but only would be allowed with the consent of the Tribal land owner.

Under the Statute, the Hopis have explicit rights to the Cliff Spring area. These would be unaffected by the Hopi proposal.

No workable solution exists for any commission, which has been suggested by the Navajos in joint meetings. The Hopis believe that such a commission is unnecessary. It is absolutely essential that both tribes be bound by their maps of sacred places. Navajos have shown a propensity in the past to manufacture new shrines or adopt Hopi shrines. An obvious opportunity to gain access to the Hopi area on an unlimited basis would exist without the limitation of the maps.

Life Estates and Leases

The statute permits life estates and leases in exceptional cases of personal hardship. The Navajos have not demonstrated any such case. Attempts by the Hopis to resolve these issues by broad general guidelines have met with no success.

Thus, the Hopis believe that no life estates should be granted.

Each Navajo head of household would receive \$30,000. This would more than offset any hardship caused by relocation. In addition, since the statute would permit a life estate for residential purposes only, the lack of grazing area and farm area would in effect create a greater hardship on most people than would relocation.

Similarly, no leases should be granted. The problems of relocation would only be multiplied by the granting of a lease. Requiring Navajos to leave at the termination of a lease would be as difficult as it has been to enforce the orders of the Court. Because of the long history of Navajo atrocities which have been documented and incorporated in the findings of the United States District Court, the Hopis are strongly desirous of avoiding a situation where by having Navajos living within Hopi territory, continued theft and destruction will be encouraged.

Joint Navajo-Hopi Families

The Hopis propose that if one member of a family is Hopi, then the family may elect to continue to reside on the Joint Use Area. The following criteria would apply:

- (a) One spouse must be an enrolled Hopi.
- (b) Husband and wife must be living together in a permanent residence on the Joint Use Area, occupying said residence on a continuing basis. Any individual interest in real property in the Hopi area must be owned by the Hopi spouse.
- (c) Children of such marriages may remain on land only until they reach 18 years of age unless they are enrolled in the Hopi Tribe. If children marry a non-enrolled Hopi prior to their 18th birthday, they may not continue to reside in the Hopi area.
- (d) No Navajo will be entitled to any stock rights

on the Hopi area. If livestock are solely owned by the Hopi enrolled spouse, he or she may make application for a permit, and such application will be acted upon by the Hopi Tribe.

- (e) No Navajo spouse may have any grazing rights or residence on any other reservation.
- (f) In the event of divorce or separation, the non-Hopi spouse must leave the Hopi area immediately.
- (g) Such persons will be subject to the jurisdiction of the Hopi Tribe.

Water

Since the lands are to be partitioned equally as to quality and quantity, Winters Doctrine water rights determined on the basis of irrigable acreage in accordance with Ariz. v. Cal., 10 L.ed 2d 542 should attach to the lands distributed to the respective tribes. However, since present litigation concerning other and further Indian water rights has not been concluded, no further recommendations concerning water are advisable at this time. Each tribe should be permitted to pursue its own course in further determination of water rights to which it may lawfully be entitled.

Relocation and New Construction

It is the mutual intent of the Navajo and Hopi Tribes to expedite the relocation of any Navajos affected by the partition of the 1882 Joint Use Area. As an added incentive for

individual tribal members to relocate, the Hopi Tribe desires to approve a schedule of new construction in the 1882 Joint Use Area pursuant to certain conditions outlined herein.

All Navajo families residing within the Hopi-designated area would be identified, to the extent presently possible, on a separate list, which would be attached hereto and made a part hereof as Exhibit B.

The following schedule of "construction releases" within the Navajo-designated area shall prevail:

- (a) Immediately: roads, bridges and other highway improvements may be made.
- (b) When 20% of all families identified immediately above have relocated: renovation and expansion of existing homes and other private structures may be made.
- (c) When 40% of all families identified immediately above have relocated: utilities such as power lines, sewer lines, water lines, and telephone lines may be installed.
- (d) When 60% of all families identified immediately above have relocated: community service and commercial structures such as factories, stores, trading posts, garages, offices, community centers, chapter houses, and clinics may be constructed.
- (e) When 80% of all families identified immediately above have relocated: schools and related buildings may be constructed, enlarged, and renovated.

(f) When all Navajo families residing in the Hopi-designated area, ~~who do not hold a life estate and who are not residing in any leased area,~~ have relocated, then all remaining restrictions upon construction shall be released, including new housing.

Any family who has contracted to move from the Hopi-designated area to the Navajo-designated area shall be entitled to construct a new home outside the Hopi-designated area, notwithstanding any other provisions of this agreement. Such new home may not be occupied until said family relocates to it and may be occupied only by such relocated family until the conditions of Section (f) above are achieved.

"Construction" as used herein shall include, but not be limited to, the repair, expansion, erection, or placement of any existing or new structure or improvement.

The Relocation Commission established under P.L. 93-531 shall certify each family which has been relocated and the percentages referred to above shall be computed upon the basis of such certification.

DATED: September 4, 1975

The Hopi Negotiating Committee