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Letter of November 23, 1951 to the Secretary of the Interior from Mr. Ned Nayatewa, Chief of First Mesa, pertaining to Hopi Affairs.

A number of long-standing issues in Hopi affairs are reopened by Mr. Nayatewa in his letter of November 23, 1951. A review of pertinent file and record materials discloses that the Bureau adopted an approach of expedience to these issues apparently with the result that an impasse is now confronted in Hopi affairs. It is suggested, therefore, that prior to preparing a reply to Mr. Nayatewa's letter, the current status of the Bureau's program with respect to Hopi affairs be ascertained and the Bureau's approach to the Hopi problems be reappraised.

In accordance with a previous discussion with you on this subject, a review of the salient points in the whole matter is presented below.

A. - Chronology of significant events:

1. By executive order of December 16, 1882, a reservation of 2,472,320 acres was created from public domain "for the use and occupancy of the Moqui (Hopi) and such other Indians as the Secretary of the Interior may see fit to settle thereon."
2. A series of executive orders enlarged a reservation established for the Navajos to the east of the Hopi area by a treaty of June 1, 1868, so that the Navajo Reservation came to encircle completely the reservation established in 1882 by the executive order of December 16, 1882.
3. The pressure of increasing population led to growing Navajo infiltration of the 1882 executive order reservation, causing serious friction with the Hopi over disputed land use rights within the area.
4. The Hopi Tribe adopted a constitution and by-laws under IRA on October 24, 1936, and this constitution and by-laws was approved December 19, 1936. By this instrument, the Tribal Council became the official representative body of the tribe and was authorized to negotiate for an area for the exclusive use and occupancy of the Hopi.
5. Land management units were set up by the Navajo service in 1936; District No. 6, containing 499,248 acres, was designated as the "Hopi unit" and tacitly understood to be for the exclusive use and occupancy of the Hopi Indians.

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6. On June 2, 1937, special grazing regulations were established for the Hopi and Navajo Reservations. The Commissioner of Indian Affairs was thereby authorized to establish land management districts based upon social and economic requirements of the Indians and the necessity of rehabilitating grazing lands.

7. As a result of increasing seriousness of friction between the Navajo and Hopi over disputed use of grazing land along the boundaries of District No. 6, a special committee of range experts from the Department of Agriculture conducted a survey of land use on District No. 6 and districts adjoining it, resulting in the Rachford report which was submitted in December, 1939, recommending that District No. 6 be increased from 499,248 acres to 528,823 acres. The Rachford report was rejected as unacceptable by the Hopi Tribal Council in a resolution dated March 23, 1942.

8. A proposed order dated October 9, 1940, defining areas within the 1882 reservation for the exclusive use and occupancy of the Hopi and Navajo Indians respectively was submitted to the Secretary for approval. A solicitor's opinion dated February 12, 1941, was returned rejecting the proposed order as being without the authority of the Secretary and in violation of Hopi rights, but suggesting that the problem of Navajo and Hopi friction might be administratively met by amendments to the grazing regulations so as to exclude Navajos from District No. 6, restrict Hopi grazing permits to District No. 6 only, and enlarge District No. 6 to include the slightly larger area of the Hopi unit proposed in the rejected order. It was specified that restriction of Hopi livestock grazing to District No. 6 would require the assent of the Tribe. The opinion further found that Hopi interest in the 1882 reservation was the usual "Indian title" and extended over the whole area.

9. A letter of January 8, 1942, directed to the Hopi Superintendent and stating that Navajos would not be allowed to settle on the 1882 executive order reservation after October 24, 1936, the date of ratification of Hopi constitution, became the first official restriction upon Navajo movement to the 1882 reservation.

10. A reappraisal of the District No. 6 boundary question resulted in the Centerwall report of July 22, 1942, in which an addition of 142,549 acres to District No. 6 was recommended. This report was approved by the Chairman of the Hopi Tribal Council, later said not to have acted in his official capacity.

EXHIBIT 52 b

11. On April 1, 1943, the special grazing regulations established on June 2, 1937, were rescinded insofar as application to District No. 6.

12. On April 24, 1943, an adjustment of District No. 6 boundaries based on the Rachford and Centerwall surveys, with some modifications, was approved, and District No. 6 was increased to 631,194 acres. There is no evidence that Hopi assent was obtained.

13. A stock reduction program for District No. 6 was begun in the fall of 1943. Hopis of the Third Mesa were vociferous in their opposition and the Tribal Council organization, never firmly entrenched, collapsed completely.

14. In 1944, the relocation of 16 families of Hopi Indians to the Colorado River Reservation project was begun in an effort to relieve the pressure of an increasing population upon the inadequate Hopi land resources.

15. In the early part of 1944, major oil companies became interested in the oil potential of the 1882 executive order reservation and began pressing for some assurance of leasing opportunities. Obstacles to leasing were posed by the disputed Hopi and Navajo interests in the mineral estate and the lack of authoritative representation for the Hopi Tribe and Navajos on the 1882 reservation since authority of an authorized spokesman or agent was required under the Act of May 11, 1938.

16. In 1945, an AAA fencing project for certain portions of the boundary of District No. 6 on the Second Mesa, although approved by Hopi individuals involved, was bitterly opposed by other members of the tribe who, moreover, requested removal of the Superintendent and his assistant.

17. In November, 1945, an investigation and report of the charges against the Superintendent and his assistant by Mr. William H. Zeh exonerated these individuals and, instead, commended them.

18. On June 11, 1946, a second solicitor's opinion held that the rights of the Navajos within the area "who settled in good faith prior to October 24, 1936, are co-extensive with those of the Hopis with respect to the natural resources of the reservation." This opinion did not define the comparative rights of the two Indian groups however.

19. In February of 1950, the Hopi Superintendent attempted to reconstitute the Tribal Council in order to provide for an authoritative voice for the whole tribe. Delegates were appointed to the Council from 6 of the 11 villages, but the opposition voiced such strong protests through Congressional and other channels that it was deemed necessary to withhold official Bureau recognition of the new Council.

EXHIBIT 52c

20. The Navajo-Hopi Rehabilitation Act was passed April 19, 1950, and contained a section stating that "the Tribal Councils of the Navajo and Hopi Tribes and the Indian communities affected shall be kept informed and afforded opportunity to consider from their inception plans pertaining to the program.....the Secretary of the Interior shall consider the recommendations of the tribal councils and shall follow (them).....whenever...feasible and consistent with the objectives of this Act."

21. On July 27, 1951, a claims attorney contract for the Hopi Indians was approved and a petition submitted to the Indian Claims Commission. The unrecognized Tribal Council and seven villages signed on behalf of the Hopis, while five villages abstained. One village, Shungopavi, submitted a separate petition.

B. - Factors underlying problems in Hopi affairs:

1. Inadequate resource base for both Hopi and Navajo on the 1882 executive order reservation.

(a) The 2,472,320 acres or 3,860 square miles set aside in 1882 to accommodate approximately 1,800 Hopis and a few hundred Navajos then resident are not sufficient ~~to support~~ to support the approximately 3,000 ⁴⁰⁰⁰ Hopis and 4,000 Navajos now occupying the reservation.

(b) The land, chiefly suited for grazing with some farming, by the late 1930's had been denuded by overgrazing and erosion; livestock thereby requiring increasingly larger areas for adequate forage.

(c) The institution of land management districts combined with a drastic stock reduction has led to frequent trespass by livestock over unfenced boundaries causing continuous friction and dispute between Hopi and Navajo Indians.

2. Long standing conflict in land claims and traditional antagonism of Hopi and Navajo Indians.

(a) Hopis traditionally claim an area five times the size of the 1882 reservation, while Navajos lay claim to a large portion of the same area.

(b) Official cognizance of Navajo rights on the 1882 executive order reservation has made the Hopi unhappy.

(c) The establishment of District No. 6 and the denial of the rest of the 1882 executive order reservation for Hopi grazing use, ipso facto, has been regarded by the Hopi as an unfriendly act of the Government.

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(d) The traditional antagonism between the Hopi and Navajo has continued to color all relationships between these two tribes.

(e) The Hopi Indians have been extremely reluctant to accept any measure that might embarrass their traditional/claims to and have regarded the issue of District No. 6 as a threat to these claims.

3. Factionalism within the Hopi tribe itself.

(a) The eleven separate Hopi villages have never acted in tribal unity and have shown themselves to be divided between extremes of progressivism and traditionalism.

(b) The constitution adopted in 1936 was an apparently unsuccessful attempt to achieve a unified tribal representation with which the Government could deal. The constitution made the Tribal Council the sole authoritative general voice for the Hopi Tribe.

(c) In consequence, administrative measures of expedience have been the only recourse in matters requiring tribal participation or assent; e. g., the promulgation of law and order and grazing regulations subject to modification or rescission upon subsequent action of the Tribal Council and the necessity of obtaining the signatures of both Tribal Council officers and individual village spokesmen to sign as one party on behalf of the Hopi Tribe in order to contract for the claims attorney.

(d) The schism in the matter of authoritative representation for the Hopi Tribe is very definite, apparently, and the factions so nearly even in strength that any immediate resolvment is obviated and the Department has deemed it politic to withhold official recognition of the reconstituted Tribal Council.

4. Hopi distrust of the Bureau of Indian Affairs, and the Window Rock Area Office in particular.

(a) The persistent Hopi feeling of fear and resentment toward the Navajo is transposed to the Window Rock Area Office with an added suspicion of favoritism to the Navajo.

(b) The historical experience of the Hopi in the failure of the Federal Government to adequately protect them against encroachment of the Navajo further contributes to their lack of trust in the Bureau of Indian Affairs.

EXHIBIT 52e

(c) The measures of administrative expedience that have been necessitated in the face of the disunity of the Hopi Tribe have served to deepen Hopi distrust of the Government.

The theme that the Bureau has continued to act in Hopi affairs without Hopi participation and concurrence, and not only neglected the Hopi Indians but also remained deaf to their petitions is consistent throughout Mr. Nayatewa's letter. In reply to his letter, the failure of the Tribe to act responsibly in the matters cited in the letter may be pointed out, and the implication given that any new moves to resolve their problems are up to the tribe. On the other hand, the reply may be formulated in a manner pointing out previous deficiencies on the part of the tribe, and at the same time giving assurance of positive Bureau action to resolve their problems and satisfy their complaints if feasible. Should it be desired that the reply be cast in the latter approach it may be wise to indicate what measures, if any, can and will be taken by the Bureau.

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