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U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

OCT 19 1992
FILED 10/19/92
DOCKETED DATE INITIAL

VERNON MASAYESVA, Chairman of)
the Hopi Tribal Council of the)
Hopi Indian Tribe, for an on)
behalf of the Hopi Indian)
Tribe, including all villages)
and clans thereof and on)
behalf of any and all Hopi)
Indians claiming any interest)
in the lands described in the)
Executive Order dated)
December 16, 1882,)

No. 90-15304

D.C. No. CV-58-0579-EHC

REPORT OF MEDIATOR

Plaintiff-Appellee,)

v.)

LEONARD HASKIE, Chairman of)
the Navajo Tribal Council of)
the Navajo Indian Tribe, for)
and on behalf of the Navajo)
Indian Tribe, including all)
villages and clans thereof,)
and on behalf of any and all)
Navajo Indians claiming any)
interest in the lands)
described in the Executive)
Order dated December 16, 1882,)

Defendant-Appellant.)

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BY GENERAL COUNSEL

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1 resolved to satisfy the Hopi Pre-Conditions.

2 The mediator immediately accepted the United States'
3 offer to assist and facilitate the actions required by the
4 Navajos to satisfy the Hopi Pre-Conditions and to keep the
5 Hopi Tribe apprised of progress.

6 The original mediation order provided a 120 day period in
7 which to resolve the dispute before the Court. After the
8 first few meetings with the parties, it became obvious to the
9 mediator that the list of Hopi Pre-Conditions could not be
10 satisfied voluntarily in the 120 day time period. The
11 political system that has evolved within The Navajo Nation is
12 grounded upon the concept of consensus. It is truly a
13 participatory democracy, this means that all of the
14 individuals affected by the decisions of the leadership must
15 have input of "a say" in the formulation of the decision.
16 Each of the pre-conditions could only be satisfied with the
17 advice and consent of the individual Navajo families that
18 would be affected.

19 The mediator travelled many gruelling miles to meet with
20 and discuss the need for and solicit the cooperation of the
21 affected families. The transportation and communication
22 systems that are taken for granted in San Diego and Phoenix
23 are virtually non-existent in the geographic areas involved.
24 The United States, The Navajo Nation and The Hopi Tribe
25 cooperated fully in the logistical effort to select sites,
26 notify widely dispersed individuals, arrange for food and
27 water and provide benches so that the tribal leaders and the

1 mediator could meet and talk with the Navajo people directly.
2 Space does not permit a recital of the details of each and
3 every meeting; it is sufficient to say that the determined
4 efforts of the Navajo leadership and the forbearance of the
5 Hopi Tribe resulted in substantial compliance with the Hopi
6 Pre-Conditions by The Navajo Nation and the Navajo people on
7 the Hopi Partitioned Land. At this time the following Hopi
8 concerns have been identified and solutions provided:

9 1. Eagle gathering problems have been identified; and
10 the Navajo Nation has pledged to allow the Hopi Tribe free
11 access, without harassment, to the nesting areas on the NPL.

12 2. Full access to the Hopi religious shrine to the Water
13 Spirit has been provided (the Cliff Spring site on the NPL).
14 The wall barring access to the spring has been removed. The
15 Hopis had mistakenly believed that it was the Navajos who
16 erected the wall in 1960 to prevent Hopi access. The
17 mediator convened a meeting at this site, and it was then
18 determined that the Indian Health Services had in fact
19 erected the wall in the belief that it was protecting the
20 health of the users of the spring (birds, animals and
21 people).

22 3. The main structure at the Big Mountain Survival Camp
23 (the gathering point for the relocation resistance movement)
24 was removed.

25 4. The Navajo Nation developed and adopted Grazing
26 Regulations.

27 5. The large majority of Navajo residents on the HPL

1 have acknowledged in writing, individually, the Hopi Tribe's
2 civil and criminal jurisdiction over them, so long as the
3 individual lives on the HPL.

4 6. Mae Tso's hogan has been removed. The removal of
5 this structure was delayed due to the tragic accident
6 involving Mae Tso and her children.

7 7. The boundary fence between the Navajo and Hopi
8 reservation has been completed without violence and with the
9 assistance of the Navajo families who were leaders in the
10 1986 disturbance, which caused the United States to abandon
11 the project out of concern for further violence.

12 8. A long-standing dispute between the two tribes
13 involving distribution and accounting for fees and profits
14 from the Joint Use Area has been settled.

15 There have been additional signs of cooperation between
16 the leadership of the two nations.

17 Finally, the mediator concluded that the good faith of
18 The Navajo Nation was demonstrated sufficiently to justify
19 the preparation of an offer by The Navajo Nation to the Hopi
20 Tribe to settle the disputes on the HPL and all other related
21 disputes currently in the trial court.

22 A proposal was made to The Hopi Tribe that was based upon
23 an exchange of land and the payment of monies. This initial
24 proposal was rejected by the Hopi Tribe. The rejection was
25 accompanied by a Hopi counter-proposal to lease certain areas
26 of the HPL to the Navajo residents under certain terms and
27

1 conditions. This was a manifestation of the Hopi Tribe's
2 good faith and negotiations continued.

3 A series of lease proposals were thereafter submitted by
4 The Navajo Nation and the Navajo HPL residents. This process
5 is presently on-going, and the mediator strongly believes and
6 feels that this type solution, worked out by consensus with
7 the people most directly affected, is the only peaceful way
8 this long-standing problem can be resolved. Mandated
9 solutions and legislation have not been effective in the
10 past, and there is absolutely no reason to believe they will
11 be effective in the future.

12 It is the conclusion of the mediator that the process of
13 developing a consensus between the Navajo and Hopi be allowed
14 to continue, despite the fact that it has seemingly consumed
15 so much time. It was 124 years ago that the United States
16 released the Navajo from the Bosque Redondo, provided them
17 with a few tools, a flock of sheep and allowed them to return
18 to Arizona from New Mexico, thus setting the stage for
19 today's disputes.

20 Respectfully submitted,

21 

22 HARRY R. MCCUE, Mediator