

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
OFFICE OF THE SOLICITOR  
WASHINGTON

April 5, 1941.

MEMORANDUM for Mr. Woehlke,  
Office of Indian Affairs.

I can give you only a few comments in the brief time available this morning on the memorandum you sent me informally today on the Navajo Hopi land use question and on the proposed order defining boundaries of the Hopi Land Management District.

In regard to your comment on the first part of the Solicitor's Memorandum of February 12, 1941, I should like to point out that the sentence you quote concerning the setting apart of lands for Indian use by the Secretary of the Interior is in the past tense and, as indicated in the text of the opinion, it refers to the authority of the Secretary prior to the passage of the 1918 and 1927 acts. The Solicitor has specifically held in a Memorandum for the Secretary dated December 19, 1938, relating to the temporary withdrawal of public lands in New Mexico in aid of legislation to add such lands to the Navajo Reservation, that such a temporary withdrawal did not create an Indian reservation for the reason that it did not establish any Indian use rights in the land. Such a withdrawal was held to be simply administrative action for administrative purposes. It was held that the Secretary could not create any Indian use rights by such a withdrawal in view of the 1927 act. The proposed order defining the use rights between the Navajo and Hopi Indians was not a temporary withdrawal of public lands for administrative purposes but an attempt to define the use rights of the Indians themselves. The significant difference, therefore, between what is discussed in the Solicitor's memorandum of February 12, 1941, and the withdrawals discussed in your present memorandum to the Commissioner is that the proposed Hopi-Navajo order dealt with Indian ownership of the land, i.e., their occupancy rights, and the withdrawals are simply administrative mechanisms and do not involve any possessory rights of the Indians. If there is any danger on account of these withdrawals from the statements in the Solicitor's opinion of February 12, it is due to a misconstruction and misapplication of that opinion, which we can counteract by explanation and clarification. I therefore do not see any reason for rejecting any part of the Solicitor's opinion of February 12. However, I am sure Mr. Margold would be glad to talk to you and Mr. Collier about it if you are not satisfied with it.

As for the order you now propose to define the boundaries of the Hopi Land Management District, the chief problem is, of course, the disturbance of the Hopis and Navajos who had settled outside the respective districts after 1926. On this point the proposed order does not entirely conform with the suggestions in the memorandum of February 12. Particularly, there is no provision for consent of the Hopis to the exclusion of Hopis from the Hopi Reservation outside the Hopi District, and there is no provision for compensation for the disruption of the farming activity of the Navajos and Hopis to be uprooted.

Unfortunately I do not have opportunity this morning to consider the matter in detail but will be glad to give it further consideration when you can leave the question with me for a longer period. As you requested, I am returning the papers with these comments today.

*Charlotte T. Lloyd*  
Charlotte T. Lloyd,  
Assistant Solicitor.

Attachment.

22031-1

returned 5/5/41 4/11  
To be returned

L. M. Hutchinson  
Land Division

5/5 - WVW L. M. Hutchinson

Navajo Hopi case 1000

or 600 by 2 Hutchinson

Stewart 1000 - L. M. Hutchinson

WVW's 1000 4/3/41

L. M. Hutchinson 5/6/41

L. M. Hutchinson