CV-6417-201

UNITED STATES DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 14, 1972.

Hon. WAYNE N. ASPINALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of this Department on H.R. 11128, a bill "To authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purposes."

H.R. 11128 attempts to resolve two longstanding disputes between the Hopi and Navajo Tribes. We are most anxious that these disputes be resolved quickly and in a manner which is fair and equitable to both tribes. We feel that H.R. 11128 is one such solution and therefore support it as such, with certain amendments which will be discussed below. We also recognize, however, that other solutions may also be equitable particularly if they are arrived at in voluntary negotiation between the two tribes. The Committee may wish to consider establishing an arbitration procedure as another effective solution and allow sufficient time for a full exploration of this and other alternatives.

The two disputes involved and the relevant provisions of the bill will be dealt with in separate sections of this report.

I. THE 1882 HOPI RESERVATION

On December 16, 1882, President Chester A. Arthur signed an Executive Order establishing a reservation in the Territory of Arizona for the use and occupancy of the Hopi and such other Indians as the Secretary of the Interior saw fit to settle thereon. Even as early as this date, approximately 300 Navajos were living on this land. The number grew steadily over the years; by 1930 there were 3,300 Navajos and by 1958, 8,800. Relations between the two tribes were often hostile. In 1891, officials of the Department of the Interior drew a boundary line, reflecting the location of most of the Hopis, which the Navajos were forbidden to cross. The Navajos have conceded that the Hopis have exclusive rights to the land within this boundary, and it is not involved in this bill.

Although several Administrations contemplated removal of all Navajos from the reservation, this action was never taken. By the 1920's it was assumed that all Navajos living on the reservation had been settled thereon by an implied exercise of the Secretary's discretion to settle other Indians on the reservation. On February 7, 1931, a joint letter from the Secretary of the Interior and the Commissioner of Indian Affairs to a special Indian commissioner who had been asked to make a recommendation on the Hopi-Navajo problem effected an implicit legal settlement of all Navajos then residing on the portion of the reservation which lies outside the exclusive Hopi section.

By the Act of July 22, 1958 (72 Stat. 403), Congress authorized each tribe to institute or defend an action against the other "for the purpose of determining the rights and interests of such parties in and to said lands and quieting title in the tribes or Indians establishing such claims pursuant to such Executive order as may be just and fair in law and equity * **." The result of this authorization was *Healing* v. *Jones*, 210 F. Supp. 125 (D. Ariz. 1962), aff'd 363 U.S. 758 (1963), in which a three-judge court held, inter alia: (1) that the Navajo and Hopi Tribes have joint, undivided and equal rights and interests in that portion of the reservation which lies outside the exclusive Hopi area; and (2) the court was without jurisdiction to partition the area held jointly.

The Navajo Tribe has exercised exclusive control of the joint-use area for all practical purposes, however—including surface leasing and granting rights-of-way without consulting the Hopi Tribe—since the 1962 decision. In March 1970, the Hopi Tribe petitioned the District Court to issue a writ of assistance enforcing the Hopi rights to the joint-use area. The Court dismissed this petition in August 1970, on the ground that it had no jurisdiction over the question of tribal control of the disputed area. On December 3, 1971, the Court of Appeals for the Ninth Circuit reversed this decision, holding that the District Court has authority to issue a writ of assistance and remanded the matter for further proceedings. (This decision, however, has not altered the District Court's holding that it was without

power to partition the area.) The Navajo Tribe asked for a rehearing of this decision, and their request has recently been denied. The route of certiorari to the United States Supreme Court is still open. Whether or not this route is taken, the proceedings on remand before the District Court (which would again be subject to review) could be very time-consuming. It appears that under any course of action by the two tribes, there will be a substantial lapse of time before a writ of assistance issues (if one issues at all), to effectuate the rights of the Hopis.

H.R. 11128 is an equitable solution of that controversy. In the years since the decision in *Healing* v. *Jones*, this Department has carried on exhaustive consultations and hearings, with both tribes participating, on the 1882 reservation problem. Efforts to assist the tribes in reaching a solution agreeable to both have not been successful. However, this bill has been designed to meet, as far as possible, the objections voiced by the tribes over the years. Although the tribes have not approved the bill, they are aware of its provisions by virtue of the protracted negotiations. Nonetheless, the Committee will doubtless wish to hear the views of representatives from the two tribes.

H.R. 11128 would partition the joint-use area between the two tribes. Section 2 describes that portion of the area which will be held in trust exclusively for the Hopi Tribe. This land represents 49.627 percent of the total land in the joint-use area; 52.736 percent of the grazing capacity; and involves about 3,900 Navajo Indians out of a total of approximately 10,000 now residing on the joint-use area. Section 3 describes the remainder of the joint-use area, which will be held in trust exclusively for the Navajo Tribe.

Section 4 provides that all mineral interests in the joint-use area shall continue to be held in trust jointly for the two tribes. Since mineral leasing in the joint-use area currently requires the consent of both tribes, this activity has not presented a management problem. Maintenance of this arrangement for the management of minerals permits the partition of the joint-use area with one primary goal in mind—the dislocation of as few Indians as possible.

II. THE 1934 NAVAJO RESERVATION

When the boundaries of the Navajo Reservation in Arizona were established, by the Act of June 14, 1934 (48 Stat. 960), vacant land within the boundaries was permanently withdrawn for the benefit of the Navajos and such other Indians as were already located thereon. (Thus, unlike the executive order creating the 1882 reservation, this legislation granted contemporaneous rights in the reservation area to more than one tribe.) Several Hopi Indians were then located in an area, known by the village names of Moencopi and Tuba City, which lies to the west of the 1882 reservation and on land between these villages and the reservation. The coexistence of the two tribes in this area has also been a source of controversy and quarrels, and H.R. 11128 seeks to solve this problem by a partition of the 1934 reservation.

Section 5 defines the area within the 1934 reservation traditionally occupied by Hopi Indians and attaches thereto a corridor connecting with the Hopi "half" of the partitioned joint-use area of the 1882 reservation. This contiguity insures that the two groups of Hopis are not separated by Navajo-held land and is essential for proper management of Hopi-held land.

Also within the boundaries of the 1934 reservation are located certain Paiute Indians whose use dates back to antiquity. Section 6 provides for allotments to these Paiute Indians in accordance with the General Allotment Act of February 8, 1887.

III. OTHER PROVISIONS

Section 8 instructs the Secretary of the Interior to remove all Navajo Indians from the areas set apart exclusively for the Hopi Indians. The removal would be accomplished over a period of 10 years with approximately 10 percent being moved each year. In light of our conviction that the relocation of Indians pursuant to this Act should be accomplished as quickly as possible, we recommend that the 10 percent per year directive be omitted and the timing of the movement be left to the discretion of the Secretary. (See discussion of section 12 of the bill, infra.) No additional Navajo Indians will be permitted to move onto the areas, and none of them will be permitted to increase the number of livestock which graze on the areas. This latter restriction is necessary for two reasons. First, the areas are badly overgrazed at the present time. Second, it is planned to permit Hopis to assume use rights as the Navajos are moved. This could be frustrated by an increase in the livestock owned by unrelocated Navajos.

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Section 9 instructs the Secretary of the Interior to remove all Hopi Indians from the areas set apart exclusively for the Navajo Indians. This would be accomplished over a period of 2 years, with half of the Hopis to be moved each year. As in the case of the Navajos, we believe that the movement of the Hopis should be left to the discretion of the Secretary rather than fixed on a percentage basis each year. No additional Hopi Indians will be allowed to increase their livestock grazing on the areas concerned.

Section 10 deals with the impact of the relocation of Navajos upon the Navajo Indian Irrigation Project. Authorized by the Act of June 13, 1962 (76 Stat. 96), as amended by the Act of September 25, 1970 (84 Stat. 867), the project contemplates the irrigation of 110,630 acres of land with water stored in the Navajo Reservoir. It is estimated that water will first be delivered to lands in the project area in fiscal year 1976. The pressure of a rapidly increasing population is already sapping the resources of the Navajo Reservation, which cannot be expected to assimilate all of the relocated Navajos. Some of the relocated Navajos may wish to move to the irrigation project area rather than to the reservation proper, and section 10 is designed to encourage and accommodate such moves.

Section 3(a) of the Act authorizing the project, as amended, directs the Secretary to declare that any legal subdivisions or unsurveyed tracts of federally owned irrigable land outside of the Navajo Reservation in New Mexico and located in certain townships shall be held in trust for the Navajo Tribe upon payment by the Tribe of the full appraised value thereof. The minerals in such land are to be reserved to the United States. Section 10(a) of H.R. 11128 provides that Navajo Indians relocated under the provisions of the bill shall be given priority in receiving assignments within the Navajo Indian Irrigation Project. The Secretary and the Navajo Tribal Council are to cooperate in determining how large the assignments should be to enable the relocated Indans to earn a living. Section 10(b) of H.R. 11128, in effect, waives the requirement that the Navajo Tribe pay for the lands described in Section 3(a) of the 1962 Act if they are assigned to Indians moved pursuant to the proposal. We believe that the United States bears a major responsibility for the conditions that necessitate the enactment of this legislation and should provide land at its own expense on which to relocate displaced Navajo Indians.

Section 3(b) of the 1962 Act, as amended, authorized the Navajo Tribe to convey to the U.S. in trust any irrigable land within the above-mentioned townships which the tribe acquired at its own expense in fee simple. Section 10(c) of H.R. 11128 allows a credit for the value of any such lands assigned to relocated Navajos against amounts owed under section 3(b) of the 1962 Act.

Section 3(c) of the 1962 Act, as amended, authorizes the Secretary to acquire any other irrigable land in the specified townships by purchase, exchange, or condemnation and to hold such lands in trust for he Navajo Tribe. Section 10(d) of H.R. 11128 provides that the Secretary may declare that any federally owned nonirrigable lands within the specified townships are also held in trust for the Navajo Tribe. Section 10(e) authorizes the Secretary to acquire for the tribe non-Government, nonirrigable lands within the areas, such lands to be held in trust for the tribe; and section 10(f) provides that lands acquired pursuant to section 10(e) shall be available for assignment to Navajo Indians moved pursuant to the Act, who do not desire to or cannot be accommodated on the irrigation project lands. These sections provide a logical blocking up of ownership interests and help to meet the great need of land on which to relocate Navajos.

Section 15 authorizes court actions in the U.S. District Court by either tribe for specified purposes. Section 15(a) authorizes the Hopi Tribe to seek an accounting for all sums collected by the Navajo Tribe from the joint-use area of the Hopi Reservation subsequent to September 28, 1962, the date of the decision in *Healing* v. *Jones*. Section 15(b) authorizes the Hopi Tribe to seek recovery of the value of one-half of the Navajo Tribe's grazing use of the joint-use area since 1962. And section 15(c) authorizes the bringing of other actions to adjudicate any other claims either tribe may have against the other for damage to lands in the joint-use area arising subsequent to 1936, which is the year grazing districts were created under the Indian Reorganization Act.

We propose the following amendments to H.R. 11128.

For clarity and conformity with preceding language in section 4, line 5 on page 7 should be stricken and the following substituted therefor: "All such coal, gas and all other minerals within or underlying said lands shall be."

Section 12 of the bill is designed to ease the hardship which moving will cause to Hopis and Navajos by bringing them under the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act. It should be noted that this Act cannot be applied to H.R. 11128 in its terms—a necessary precondition for application of the Act, the purchase of real property for a Federal program by the Government, is not present here. However, we believe that the relocation of the Navajos and Hopis that the bill would effect is analoguous to such a taking of real property. Moreover, as indicated in the history of the tribes' dispute, set out supra in this report the Federal Government bears some of the responsibility for the tense situation that exists today. Therefore, we support the application to this situation of the kind of benefits which he Uniform Relocation Act provides. However, we do not believe a lump payment of $3,000 to every family moved pursuant to the Act is justified. Rather, in light of the long period of time in which the Hopi rights to the joint-use area have been declared but not realized, we recommend that such a payment be utilized as a inducement for Indians to move to the appropriate section of the joint use area as soon as possible. Specifically, we suggest that families which contract with the Secretary between January 1, 1974, and June 30, 1974, to relocate be paid $4,000 per family upon the date of such relocation as determined by the Secretary between July 1, 1974, and July 1, 1975 to relocate be paid $3,000 per family upon the date of such relocation as determined by the Secretary. Families which fail to agree prior to July 1, 1975 to relocate receive no such bonus payment. We also recommend that section 12 of H.R. 11128 be technically rewritten to enable the Secretary to dispose of acquired property.

The new section 12 would read as follows:

"Sec. 12(a) The United States shall purchase from each head of a household his habitation and other improvements owned by him on the area from which he is being moved. The purchase price shall be the fair market value of such improvements.

(b) In addition to the payments made pursuant to subsection (a), the Secretary shall—

(1) Reimburse each head of a household and his family moved pursuant to this Act for their actual reasonable moving expenses as if they were displaced persons under section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894); and

(2) Pay to each head of a household moved pursuant to this Act the amount, if any, not in excess of $15,000 which when added to the fair market value of the dwelling purchased equals the reasonable cost of a comparable replacement dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced household, provided, however, that the additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe and sanitary not later than the end of the 1 year period beginning on the date on which he receives from the Secretary final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(c) In implementing subsections (b)(1) and (b)(2) of this section, the Secretary shall establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Act of 1970.

(d) The Secretary is authorized to dispose of dwellings and other improvements acquired pursuant to this Act, in such manner as he sees fit including resale of such improvements to persons moved pursuant to this Act at prices no higher than their acquisition costs.

(e) In addition to the above payments, the Secretary shall make additional payments according to the following schedule:

(1) The sum of $5,000 to each head of a household who prior to January 1, 1974, contracts with the Secretary to relocate. Such payment shall be made upon the date of such relocation as determined by the Secretary.

(2) The sum of $4,000 to each head of a household who between January 1, 1974, and July 1, 1974, contracts with the Secretary to relocate. Such payment shall be made upon the date of such relocation as determined by the Secretary.

(3) The sum of $3,000 to each head of a household who between July 1, 1974, and July 1, 1975, contracts with the Secretary to relocate. Such payment shall be made upon the date of such relocation as determined by the Secretary.

In order to bring sections 8 and 9 into conformity with the proposed new section 12(e), supra, we recommend that they be amended as follows. First, in section 8, page 10, lines 13 and 14, strike "with approximatley 10 per centum of the Navajo occupants to be removed each year," and substitute therefor, "as deter-

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mined by the Secretary in his discretion.". Second, in section 9, page 11, lines 1 and 2, strike "with approximately 50 per centum of the Hopi occupants to be removed each year." and substitute therefor, "as determined by the Secretary in his discretion.".

We do not believe that section 19, which directs the Secretary to survey, monument, and fence the boundaries of the areas set aside for exclusive Hopi use and to construct a service road along the fence is necessary at this time. We believe that the Department already has authority to build needed roads on Indian reservations, and that this matter would be best considered in the Department's annual budget request for those purposes. Moreover, fencing of boundaries may not be necessary at this time. Accordingly, we recommend that section 19 be stricken and section 20 be renumbered accordingly.

There are a few errors in the description of land in the bill.

In section 2, page 3, line 7, the word "northwest" should be replaced by "north". On the same page, line 13, "¼" should be "4 & ¼".

In section 5, page 9, line 8, the following should be added after the semicolon: "thence southwesterly along Buck Pasture Fence to a point where said fence intersects the south boundary of section 5, township 29 north, range 12 east;".

The citations in the last two lines of Section 6, page 9, are erroneous. The phrase "331, 348, and 349 of title 25, United States Code." should be deleted and the following substituted therefor: "1, 5, and 6 of that Act, as amended.".

During fiscal year 1973 we expect to be engaged in initial organizational activities in carrying out the bill and thus do not anticipate a need for any additional appropriation of funds.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the administration's program.

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

Mr. HALEY. This bill involves a dispute between the Navajo Tribe and the Hopi Tribe over land. The dispute has been going on for a long, long time.

The land involved in the dispute is a part of the reservation that was established by an 1882 Executive order for the Hopi Indians and for such other Indians as the Secretary may see fit to settle thereon.

The reservation was established primarily for the benefit of the Hopis. Although approximately 300 Navajos were living on the 1882 reservation at the time it was established, the Secretary never took any affirmative action to settle them, or any other Navajos, on the reservation. Nevertheless, the Navajos continued to come into the area, and 1958 their number had increased from 300 to 8,800.

Relations between the two tribes were often hostile, and in 1958 Congress enacted a statute authorizing litigation in a special three-judge Federal court to determine their respective rights. The litigation was concluded in 1962, and the decision was affirmed by the Supreme Court. The Court decided that the Hopis had an exclusive title to the area that is known as Grazing District No. 6, and that the Hopi and Navajo Tribes have joint and equal rights in the rest of the reservation.

In spite of the court's decision, the Hopis have not been allowed to exercise their equal rights in the joint-use area. The Navajos were in possession for all practical purposes, and the Secretary did not exercise his trust responsibility to protect the Hopi interest.

For 10 years the two tribes have attempted to resolve their conflict by negotiation, but the negotiations failed.

H.R. 11128, which is now before us, would resolve the conflict over the joint-use area by partitioning it, giving approximately half to each tribe. The partition would apply only to the surface estate. The subsurface estate would continue to be owned jointly.

The bill would also partition a joint title area outside the 1882 reservation located in the vicinity of the villages called Moencopi and Tuba City.

Before calling our first witness, the gentleman from Arizona is recognized for any statement he cares to make.

STATEMENT OF HON. SAM STEIGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. STEIGER. Thank you, Mr. Chairman.

I have a prepared statement which, with the chairman's permission, I will offer for the purposes of the record.

Mr. HALEY. Without objection the statement will be received as part of the record at this place in the proceedings.

(The statement follows:)

STATEMENT OF HON. SAM STEIGER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

There is little point in my attempting to fix the blame for the long standing dispute between the Hopi and Navajo peoples over the joint-use lands surrounding the Hopi Reservation. Suffice it to say, a very real problem exists.

The land in dispute totals approximately 2 million acres. The Federal Court decreed in 1962 that they be used jointly by the two tribes. The Court directed the Bureau of Indian Affairs to administer these lands equitably.

The BIA has done nothing to administer the lands either equitably or unfairly. As a result the Navajo tribe uses the entire joint-use area to the virtual exclusion of the Hopi.

Congress acknowledged the problem by forming the Joint Committee on Navajo-Hopi Indian Administration. To the best of my knowledge, the Committee has never met. I know that it has not met for the past five years, during which I have been a member.

I must tell you of my pride and satisfaction at the courage and understanding displayed by Mr. Haley, Chairman of the Indian Affairs Subcommittee, and by Mr. Aspinall, Chairman of the Full Committee. Despite a massive and sophisticated campaign on the part of the Navajo Tribal Chairman and his battery of attorneys, Mr. Haley has refused to procrastinate. Under similar circumstances, most elected officials would leap at the chance to do just that. But he recognizes, as does Mr. Aspinall, that the conflict between the two tribes has reached the point of violence. He understands that if there is to be a solution negotiated by the two tribes, it will come only under the pressure of congressional action. Mr. Haley prefers action to delay.

Were I a Navajo, I would undoubtedly prefer delay. Any compromise means the abandonment of some portion of the joint-use area by the Navajo, for they use it all. Further delay would benefit the Navajo.

The judgment that must be made in this committee room is how best to resolve the conflict. H.R. 11128 offers a specific, permanent solution. You will be told by Navajo spokesmen that they want to negotiate with their Hopi friends. If such negotiations could be fruitful and secure the rights of both tribes as laid down by the Court, then I would be the first to agree that there is no need for this, or any other, boundary bill.

At any rate, beware that, in spite of some supposedly humorous references to Indian vs. Indian warfare, there is nothing funny about the violence that has already transpired—livestock mutilations, corral burnings, fence destruction, water tank drainings, and at least one shooting incident.

If we permit ourselves to be seduced into some kind of legal procrastination and someone is killed, I am sure we would then assume the responsibility that is patently ours. Let us not wait for that kind of catalyst.

Mr. STEIGER. I would simply like to state, Mr. Chairman, as I did in my prepared testimony that I see little point in trying to fix the blame for the dispute. The chairman has outlined the problem certainly very specifically.

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I would stipulate at the outset that I, as one member, and a member of this committee and in the Congress who happens to represent a great majority of the Navajos and all of the Hopis, that I would much prefer to see a solution arrived at by mutual consent of the Navajo Tribe and the Hopi Tribe.

I will also tell the chairman and the record that I am convinced, unless there is significant pressure from somewhere, negotiations are not going to be achieved as the chairman pointed out.

I will also say for the record, if I were a leader of the Navajos, I would attempt to procrastinate and delay because any compromise at all arrived at means that I, as a Navajo, would have to abandon some portion of the joint-use land because the Navajos use it all for all intents and purposes.

Mr. Chairman, with a great deal of respect for you for being willing to bite this particular unsavory bullet, and with a great deal of sympathy for BIA and the Interior Department, and a feeling of sympathy I don't normally feel or express, that I simply tell my colleagues on the committee hopefully in this room in the next 2 days you will resolve what in this member's opinion has become a conflict that, if it is not resolved, will result in physical violence to our everlasting discredit.

Again I think that the chairman is to be congratulated, perhaps more than anybody, and I understand that the Bureau is to be congratulated for coming up with a report. Hopefully as a result of whatever we do here we will have resolved this very nitty-gritty problem. I will tell my colleagues, it is a totally politically unprofitable venture. Many of my colleagues might be interested to know there are in excess of 120,000 Navajos, at least 100,000 of whom probably reside in Arizona in my congressional district and there are some 6,000 Hopis whose interest is fairly basic.

I will recite again, it is to the Navajo's advantage to delay a solution. Therefore, it is fair to say that Mr. Steiger is not the most popular man in the Navajo reservation at this time.

I thank the chairman.

Mr. HALEY. I thank my colleague. All my life I have had to bite the bullet, so if I have to bite it here, it is all right with me.

The first witness is Assistant Secretary for Public Land Management, Department of the Interior, Mr. Loesch, accompanied by Commissioner of Indian Affairs, Mr. Bruce.

STATEMENT OF HARRISON LOESCH, ASSISTANT SECRETARY FOR LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY LOUIS R. BRUCE, COMMISSIONER OF INDIAN AFFAIRS

Mr. LOESCH. Thank you, Mr. Chairman.

As you said, I am accompanied by Louis R. Bruce, Commissioner of Indian Affairs. I know it is customary, and I usually do, to say we are happy to be before the committee to testify. In this particular instance, of course, it represents a certain amount of mixed feelings. I might say I am glad to be a part of what I hope will be a permanent solution of a longstanding difficulty.

As you gentlemen know, Mr. Chairman, I am accustomed to putting my statement in the record and commenting on it. I think this morning I will present the statement to the committee.

Mr. HALEY. Yes, I think that will be fine, Mr. Secretary. I believe we just received it this morning.

Mr. LOESCH. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee. The hearing this morning is on a problem that has been characterized by the court as "the greatest title problem of the West." Certainly this is true simply in terms of the size of the area, 2,472,095 acres. It is even more true in terms of the human problems involved. The Hopis have lived on this land since long before the coming of the Spaniards. They are a small tribe of 6,000, primarily farmers and herdsmen, living in villages on high mesas.

The Navajo entered what is now Arizona in the last half of the 18th century. Over a long period of time many Navajos, in pursuit of the nomadic way of life and pressed by white settlers, moved on the Hopi Reservation and beyond. By 1930 there were over 3,300 Navajos living on the 1882 so-called Hopi Reservation. There were frequent confrontations, with competition for the land increasing over the years. By 1958 over 8,800 Navajos had located on this reservation.

Today the Navajo Tribe numbers about 128,000 and has its own reservation, bigger than a number of the New England States combined. It completely surrounds the Hopi.

The Indian people of both tribes have a very deep attachment to the land. It pervades their whole way of life—religious, social, and economic. Deep emotions are aroused over the ownership of this land.

This dispute has been the most difficult and vexing human problem we face in Indian Affairs. It has sadly, if humorously, been referred to in the Bureau of Indian Affairs, for years as the "no-hope" problem. With each passing year it has gotten more critical and more difficult to solve because, of course, more people are continuously involved.

With this brief background as to what has occurred on the land, let me turn now and briefly outline the efforts that have been made to resolve the matter. The Congress in 1958 passed a jurisdictional act setting up a special three-judge court "for the purpose of determining the rights and interests of such parties in and to said lands and quiet title in the tribes or Indians establishing such claims pursuant to such Executive order as may be just and fair in law and equity. * * *" This referred only to the Hopi 1882 Executive order reservation. The court found in brief:

1. That the Hopi tribe had exclusive right and interest in that part of the reservation known as Land Management District No. 6. I may say that Land Management District No. 6 is not in issue before this committee today.

2. That the Secretary of the Interior had impliedly settled Navajo Indians on the remainder of the reservation commencing on February 7, 1931.

3. That the Navajo and Hopi Tribes had joint, undivided, and equal rights and interests in and to all of the reservation outside of district 6.

4. That no other Indians had any right or interest in the reservation.

5. That the Court was without jurisdiction to physically partition the reservation.

The opinion of the Court contained this comment: "It will now be for the two tribes and Government officials to determine whether, with

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these basic issues resolved, the area lying outside district 6 can and should be fairly administered as a joint reservation. If this proves impractical or undesirable, any future effort to partition the jointly held area by agreement, subsequently authorized suit, or otherwise, will be aided by the determination in this action of the present legal rights and interests of the respective tribes."

In the period between 1930 and 1969, 10 separate efforts were made to negotiate the dispute. All types of arrangements were tried—direct discussions between tribal chairmen, negotiating committees from each tribe, with and without Government officials, and with and without attorneys, et cetera. Only one thing could be agreed upon or at least was agreed upon in the negotiations, and that was the joint managing and leasing of the mineral estate.

My comments thus far have dealt with the 1882 Executive order reservation. There is another disputed area between the Navajo and Hopi as indicated on the displayed map. This is within the exterior boundaries of a reservation defined in a 1934 act, "for the Navajo and such other Indians as may already be located thereon." The bill now before this committee would physically partition the land in the disputed area in both the 1882 and 1934 reservations.

I will not spend this committee's time reviewing our Department's report on the bill or summarizing the provisions of the bill itself. We feel that H.R. 11128 is a solution and, therefore, support it as such, if amended as we suggest. We recognize, however, that other solutions may also be equitable, particularly if they are arrived at in voluntary negotiation between the two tribes. The Congress may wish to consider arbitration as another solution.

This is a problem that we cannot resolve administratively. It is going to take a joint effort by the Congress, the administration, and the courts. This bill would, if enacted, physically partition the land between the two tribes and further will give us the tools we need to bring about the difficult adjustments for the people involved.

I have with me the Commissioner of Indian Affairs, Louis R. Bruce. He, of course, has the administrative and direct operating responsibilities, and in this particular instance at least this is surely one of the most difficult jobs in Government. I would like for him to outline for the committee briefly what he has been able to do and not do and provide you with the answers, insofar as he is able, to the questions your committee will have concerning the problems that he had faced in carrying out his responsibilities.

Before turning to the Commissioner, however, I might explain the map we have here.

The whole area outside the colored section is Navajo country, the Navajo Reservation. The rectangular area shown in blue, orange, and white is the 1882 reservation. The small area to the west in green is a portion of the 1934 reservation which is described in the bill before the committee, H.R. 11128, as what should be given exclusively to the Hopi.

District 6 is exclusively Hopi in the 1882 reservation. There is no argument about that before this committee.

The blue area is the boundary line set forth in the bill which would be under the provisions of the bill exclusively Hopi. The orange area

is the remainder of 1882 reservation and under the terms of the bill would be exclusively Navajo.

The acreage shown in blue amounts to just under 50 percent of the remaining land in the 1882 reservation; 49.7 percent I think it carries at the present time, under the figures the Bureau has, about 52 percent of the grazing capacity.

With that, Mr. Chairman, I will complete my statement and ask that the Commissioner make his statement.

Mr. HALEY. Commissioner Bruce.

Mr. BRUCE. Mr. Chairman and members of the subcommittee.

Assistant Secretary Loesch has sketched out the early history of the disputed area. The 1882 reservation was set aside "for the Hopi Indians and such other Indians as the Secretary sees fit to settle thereon." This reservation was necessitated by the fact that the Hopi people were being pressed from the east by the growing Navajo tribe and its flocks and from the south and west by non-Indian settlers. It was clear that the Hopis' rights needed to be protected from the pressures.

Almost from the creation of the 1882 reservation, there have been disputes over the meaning of the Executive order wording that created the reservation. The Hopis claim that the 1882 reservation was created for them and they have from the beginning claimed it in its entirety, while the Navajos, some of whom were living within the boundaries of the reservation at the time of its creation, have claimed an unspecified interest in the reservation.

The rapid expansion of livestock numbers in the reservation area, the 1882 reservation as well as the Navajo Reservation, made overgrazing a problem even before the creation of the 1882 reservation. However, not much was done about the overgrazing problem until the 1930's. Beginning with the 1930's the first serious efforts were made to control the grazing of livestock, particularly sheep and horses on the Navajo Reservation. This effort was begun under the special Navajo grazing regulation promulgated in 1935. This was started by laying out the whole reservation area, including the 1882 reservation, in 19 grazing districts.

At this time, the whole area was administered by the same agency. At this point in time, district No. 6 was created and was occupied and used exclusively by the Hopis. After the 19 grazing districts were established, a range study was made and an overall carrying capacity for each of the districts was set.

A list of all the persons grazing livestock in each grazing district and the number of livestock that each person grazed was compiled. Then, by a mathematical formula, each person grazing livestock in each of the districts had the number of livestock he was allowed to graze reduced to a number that would total the carrying capacity of each of the grazing districts. When this listing of persons grazing livestock and the number they would be allowed to graze was completed, a serious effort was made to bring the actual grazing down to the carrying capacity of each district. Sheep were forcibly taken away from Navajo families and a long, terribly bitter feud started between the Bureau of Indian Affairs and the Navajo people.

This program had been completely abandoned by 1948, and its results, were at best, spotty. Today, there is overgrazing over a large part of the area, while in some areas the grazing is pretty well con-

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trolled and within the district's carrying capacity. The entire area of the 1882 reservation, except for the area within district 6, is the only area not severely overgrazed.

It is well to note that under the provision of the Navajo grazing regulations, a carrying capacity was set for each of the 19 districts covered by the regulations and every person grazing livestock in any of the districts was given a permit to graze a set number of livestock, but the permits did not and never have contained a geographic area limitation. This means that any person holding a grazing permit can graze the number of livestock allowed by his permit at any place within the district.

The permits issued pursuant to the Navajo grazing regulations area are annual permits that are automatically renewed on an annual basis until canceled. The permits may be transferred or be inherited with the approval of the district grazing committee, which committees are headed by Navajos in every district except district 6, and the superintendent of the agency. Grazing violations within the area covered by the Navajo grazing regulations—this does not include any of the 1882 reservation—are controlled by the Navajo Tribal Council and the Navajo Tribal Court in accordance with the provisions of the Code of Federal Regulations. Navajo grazing regulations differ from the general grazing regulations of the Bureau of Indian Affairs, in that the general grazing regulations define the area covered by a grazing permit.

On September 19, 1969, the Navajo special grazing regulations were amended and all of the land within the Executive order of December 16, 1882, was removed from the control of the special Navajo grazing regulations and this action automatically placed the area of the 1882 reservation under the control of the provisions of the general grazing regulations.

Actually, although there was a change in the regulation that covered the 1882 reservation, there was no change in the grazing in the grazing practices in the joint-use area of the 1882 reservation. The reason that there has been no change is because no one has been able to determine how to move the approximately 1,000 Navajo families and their livestock from one-half of the joint use area. So, as a practical matter, the grazing practices in the joint-use area of the 1882 reservation are the same as they have been for the past 90 years.

Once it became clear that the forced stock reduction program was not going to work, an extensive program of conservation education was begun in an effort to get voluntary compliance with the grazing regulations. This education program met with only limited success, succeeding in some areas and failing in others. One of the areas in which it failed was the joint-use area of the 1882 reservation.

The *Healing* v. *Jones* decision left the Bureau of Indian Affairs and the Department of the Interior the job of administering an area on which Navajo people had been settled and were using almost exclusively but in which the Hopi Tribe had an undivided one-half interest, a one-half interest that the Secretary of the Interior had a duty to protect but no way of protecting. Neither the Secretary of the Interior nor his agent, the Commissioner of Indian Affairs, had any way of placing the Hopis in possession of their one-half of the joint-use area as they rightfully demanded because all of the land was occupied by Navajos.

The Secretary of the Interior has never had the right of self-help and has relied on the Federal courts in trespass cases. Since there has been no partition in this case, the Secretary is not able to determine just what Navajo is trespassing on what land. About all the Department of the Interior can do is what it has done since 1962, and that is to try and persuade the Navajos to allow the Hopis some possession. One of the reasons we are here today is because this persuasion has not been to anyone's satisfaction.

Until 1934, the Navajo Reservation in Arizona had been created by a collection of treaties, acts of Congress, and Executive orders. In 1934, Congress enacted legislation which established the Arizona part of the Navajo Reservation by a description that started at the Four Corners between Colorado, Utah, Arizona, and New Mexico, then due west along the north boundary of Arizona to the Colorado River, down the Colorado River to the mouth of the Little Colorado River, up the Little Colorado River to a certain point, then along an established line running east to the New Mexico-Arizona line, then north to the point of beginning, excluding the area of the 1882 reservation.

The act of June 14, 1934 (48 Stat. 960) stated that the reservation was "for the Navajo Indians and such other Indians that have already settled thereon." At the time of the 1934 act, a band of Hopi Indians was located in two small villages at a place called Moencopi. This village adjoins the Navajo town of Tuba City. Several efforts have been made over the years, since 1934, to delineate the exact area of the Hopi village. These efforts have not been successful.

This concludes my statement of the general history of the Navajo-Hopi problem. I stand ready to answer any questions you might have on the history of this problem or any other facet of it.

The preceding material has to do with the facts pertaining to our consideration of the situation of the Hopi and the Navajo people. I would like to add, briefly, remarks of a more philosophical nature.

It has been the aim of this administration and of our office to, at long last, bring our people to a point where they, as do other citizens, make decisions for themselves concerning aspects of daily life—granted this may require time and it may not be without error.

I hope that it is not completely unrealistic to hope and pray that some part of the situations being considered by us today can be corrected and solved by negotiation and mutual agreement between the parties concerned. As one of our public figures I want to say at this point in time, and with unprecedented changes occurring in many areas, it would be my hope that under able and enlightened leadership the Navajo and Hopi people might be led to a more amicable agreement and solution to their problems than has been possible in the many years of effort by various departments of the Government. I am certain that past Commissioners have all had this wish.

I am hopeful we will move ahead to attempt to do this by legislation and possible negotiation. I feel very strongly that it may be possible, more hopeful than I have been.

I want to say for the record that in 1947 and 1948, I was Chairman of Secretary Krug's Advisory Committee on Indian Affairs. We did do some work on this. I did experience and witness some of the attempts we made at that time to limit the stock on the reservation. I know something about it firsthand why it failed.

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Mr. HALEY. Thank you, Mr. Commissioner.

Mr. Secretary, as I understand it, this reservation includes 2,472,095 acres of land; is that correct?

Mr. LOESCH. Yes, sir, that is the 1882 Executive order reservation.

Mr. HALEY. What is the approximate acreage of the Hopi Reservation?

Mr. LOESCH. The district 6, the area in the 1882 reservation, that is exclusively for Hopi use at this time, is something over 600,000 acres; 650,000 acres.

Mr. HALEY. Mr. Secretary, on page 2 of your statement in speaking about this dispute you said, "It has sadly, if humorously, been referred to in the Bureau of Indian Affairs for years as the no-hope problem." You also state each year it is getting worse.

Do you feel, Mr. Secretary, that under the court's decision you have done all that could be done to enforce the orders of the court?

Mr. LOESCH. No. sir, I don't. I am frank to say that it is my feeling, and has been since I first became acquainted with this problem in 1969, that every administration before and after *Healing-Jones* decision had simply avoided the problem. It is a very tense situation. The human dislocations are troublesome, it is hard to really take a hard line.

The Bureau's experience in the thirties and forties in reducing Navajo horse and sheep herds was a traumatic experience to everyone concerned, and I think that that experience, coupled with the simple fact that all of us are human and don't like to tackle hard problems, caused everyone to avoid it.

I think the Secretary of the Interior and the Bureau of Indian Affairs as his administering arm has the authority to assign grazing rights to particular allotments just as the Bureau of Land Management does, and that it has full authority to reduce grazing capacity. None of this has been done.

I think that the *Healing-Jones* decision should have been implemented by reduction of the Navajo herds in the 1882 era forthwith simply because, as has been repeated this morning, the problem gets worse every year. But I also am convinced that without the full tools, the help of the Congress and the courts, no administration could do it on its own from a sheer executive standpoint.

Mr. HALEY. Mr. Secretary and Mr. Commissioner, taking both your statements together, wouldn't it seem to a fairminded person that the Hopis have been deprived of the use of a half interest in lands which they should have, and the Navajos, by the overpowering numbers you might say, have just denied these people their rights?

Mr. LOESCH. From my standpoint that is an absolutely accurate statement, Mr. Chairman.

Mr. HALEY. It is a regrettable thing that on 2½ million acres of land these individuals could not have in some way, somehow, resolved their differences rather than having to bring them here for Congress to make a decision. As far as I am concerned, we are going to make one.

Do you believe, Mr. Secretary, that there must be a partition of this land in order to give the Hopis the rights to which they think they are entitled? Is that correct?

Mr. LOESCH. Yes, sir. I see no other solution. In looking back at the history of this thing I find it difficult to believe the attitude

of the Department and the Congress and everybody else concerned at the time of the passing of the Healing-Jones bill. There was originally in that bill a provision for partition which at the request of the Department in its report was deleted in the final version. I think that was a great mistake.

Mr. HALEY. As this committee knows, I have only two Indians in my district. I only had one and I have two now. I just want to say to the gentleman from Arizona that he has certainly shown a desire to treat everybody right and shown a great deal of courage in bringing this matter before the Congress at this particular time. I want to compliment him on that because I can realize with an election coming up it might not be the most popular time to do it, but something must be done.

The gentleman from Montana.

Mr. MELCHER. Thank you, Mr. Chairman.

Mr. Secretary, when were these districts established?

Mr. LOESCH. The districts were established in 1935.

Mr. MELCHER. And when they were established the districts didn't pay any attention to the 1882 reservation?

Mr. LOESCH. No, sir. There are 19 grazing districts which comprise the Navajo Reservation. I believe seven of them impinge on the 1882 area.

Mr. MELCHER. Seven districts do?

Mr. LOESCH. Besides district 6. So it is eight altogether. District 6 is the only one wholly within the 1882 area.

Mr. MELCHER. Then this point that you brought out, that while the number of livestock permitted to individuals to graze is set, they do have that right to graze in any portion of that district; is that right?

Mr. LOESCH. Yes, sir. Up to the northeast of the colored area there you see district 8 which comes into the 1882 area. Any Navajo granted a permit to graze in district 8 can graze his livestock anywhere in district 8 including the 1882 area, and similarly for all of the other districts.

Mr. MELCHER. Does the proposed bill change anything on the grazing districts themselves?

Mr. LOESCH. No, sir.

Mr. MELCHER. Nor the procedure of each individual that has grazing rights grazing anywhere he wants to in the grazing district?

Mr. LOESCH. The bill does not address that, Mr. Melcher. I think this would be a pretty simple administrative matter. You remember in the Commissioner's statement it was set forth that in 1969 the special Navajo grazing regulations were abolished as to the 1882 area. This has the effect of reverting the administration of the 1882 area to the general grazing regulations of the Indian Bureau which apply to other reservations. And those regulations require the assignment of a particular area for each permittee to graze upon, but we have never enforced that revision since 1969.

Mr. MELCHER. What is the significance of the green area in district 3 outside of the boundary of district 3, outside of the boundary of 1882 reservation?

Mr. LOESCH. That is the second part of the bill which addresses itself to Hopi rights in what we refer to as the 1934 boundary bill.

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And I can say, I think in fairness, that the size of the green area on the map is sort of a judgment call. That area developed as a result of hearings and discussions on the land use pattern, the pattern by which the Hopis used the land in 1934 as nearly as can now be determined.

I was instrumental in the final delineation of that line to a degree, but I am the first to admit that I was the recipient of a lot of prior information. Former Commissioner Bennett established a line which I modified very slightly, and then in the bill there as added, and in my view wisely, an area to the east right against the blue part of the 1882 area so that, if the bill passes, the entire Hopi Reservation would be contiguous.

The land use pattern in 1934, while I say it is a judgment call, did not necessarily show Hopi use right up against the 1882 area on the east side of the green area as nearly as we could determine. But as I stated, it certainly would be my recommendation that if the Congress sees fit to pass the bill at all, it ought to include whatever description it comes up with, it ought to fix it so that the Hopi Reservation is contiguous.

Mr. MELCHER. Then if I understand you correctly, Mr. Secretary, the green, the blue, and the white area, if the bill were passed, would be Hopi Reservation?

Mr. LOESCH. Yes, sir.

Mr. MELCHER. Most of the livestock grazed there are sheep or cattle?

Mr. LOESCH. Mostly sheep in the entire area. It is pretty much sheep country. However, I don't know so much about the Hopis. The Navajos have a good many horses and some cattle, and of course in calculating carrying capacity on the Navajo Reservation, we use sheep units, and a horse is considered to be five sheep units and a cow is considered to be four sheep units.

Mr. MELCHER. Is the coyote considered to be a serious predator?

Mr. LOESCH. I think they are now considered to be a game animal.

Mr. MELCHER. Does the Executive order concerning control of predators by poisons extend to these two tribes?

Mr. LOESCH. I have enough trouble this morning without that question, Mr. Melcher. [Laughter.]

Mr. MELCHER. I think I can interpret that answer any way I want to. Thank you, Mr. Secretary.

Mr. HALEY. Mr. Secretary, before I turn you over to the tender mercies of the gentleman from Arizona, let me ask you this question, and you too Mr. Bruce: This land now is way overgrazed; is that correct?

Mr. LOESCH. There is no question about it, Mr. Chairman. The range has continuously deteriorated in this area since the 1882 set-aside. According to the Bureau of Indian Affairs range people, the carrying capacity in the 1882 area outside district 6 is now approximately 22,000 sheep units. It is easily capable of producing 100,000 sheep units if brought back as it should be.

There are at present grazing on the area, so I am informed, some 87,000 sheep units. So it is about four times overgrazed.

Mr. HALEY. District 6 then is not overgrazed, is that correct?

Mr. LOESCH. It is overgrazed but nothing to the extent outside district 6. The range people believe that district 6 may be overgrazed

considering climatic conditions at this time, which as you know ar drought, about 25 percent.

Mr. HALEY. The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. Secretary, if I understand your statement, you are saying tha the bill is a solution but that you also would prefer some kind of negotiated settlement between the principals? Is that correct?

Mr. LOESCH. Yes, Mr. Steiger. If the Hopis and the Navajos coulc agree in fairness on a proposed division in the light of the *Healing* v. *Jones* decision and could come to the Department or the courts o the Congress with that decision, nobody could be as happy as I.

Mr. STEIGER. Mr. Secretary, in light of your knowledge and your reviewing of the history of the situation, all else aside—your personal judgment with regard to the likelihood of such negotiation proving fruitful in the absence of legislation or the absence of some kind of mandate—do you think it is likely negotiations would prove fruitful?

Mr. LOESCH. Mr. Steiger, I think there are certain questions involved here on which negotiation would be fruitful. For example, I would believe that settlement could be reached on money matters which are now in question.

Mr. STEIGER. Excuse me. I don't think either of us know. I suspect I would stipulate and I expect you would too that negotiations could always potentially be fruitful. My question was, Do you feel that any negotiations could be fruitful in the absence of pending legislation or the absence of some kind of specific pressure?

Mr. LOESCH. Not based on my personal experience or the reading of history.

Mr. STEIGER. That is why I was seeking your personal view.

Mr. Commissioner, again I would like to seek your personal view. Do you feel with your knowledge of the situation it is likely that negotiations in the absence of some kind of pressure, in this case legislation—I know of no other—have any hope at all? Your personal view now.

Mr. BRUCE. Since I have followed this thing for a number of years and not been involved in it only in the last 2½ years, somehow in the back of my own mind I am optimistic enough to feel that if we really tackled this business of negotiating, if we didn't just call people together and say "You agree to this and so forth," and we go away and forget it like we have done over the years in some of these negotiation sessions, if we really tackled it the way I feel it could be. I would say that is my position.

Mr. STEIGER. What you are saying is that even in the absence of any legislation you feel optimistic, and you are basing that on a feeling rather than on history?

Mr. BRUCE. Yes, an awful lot of optimism.

Mr. STEIGER. You have to be optimistic to live in this town.

Mr. Secretary, your personal view again, sir. Do you recognize the intensity of the feeling of the people who are directly involved, both Navajo and Hopi, with regard to the bitterness on both sides? Are you aware of the destruction of property, draining of water tanks, and utilization of livestocks, the laying on of hands in a few cases as far as incarcerating or attempted incarceration? In other words, are you

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aware of the potential of physical violence and do you see it as a situation that must be coped with?

Mr. LOESCH. Yes, sir, I am well aware of it. I have been concerned all winter that something rather drastic might happen on the ground.

Let me elaborate a little by saying that I believe both the Navajo and the Hopi leadership are greatly concerned about this possibility and don't want it to happen. I think neither leadership is perhaps able as high as passions rise on the ground to control the individual tribal members that are directly concerned. It is this fear of what those individuals may do.

And the reason this is such a problem is, of course—I don't blame the individual Navajo. He has lived there, he has grazed livestock there, he has done it with the tacit consent, if not the encouragement of the Secretary of Interior for 90 years or up to 90 years, when it never should have been allowed in the first place.

And so in the meantime the Hopis have been getting pressed back and back so far as their view of the situation is concerned. There comes a time no matter what type of person you are when you are going to take your stand.

What I have been concerned about is that that time has arrived on the ground, and that we might have egg all over our face before we get through if something wasn't done about it.

Mr. STEIGER. I will say that is exactly my feeling, and frankly the prime motivation for whatever role I played in this is my own personal feeling for to procrastinate further is to invite what you describe, when clearly there is a remedy at hand.

Mr. Commissioner, do you subscribe to one of the options that has often been stated in the last 30 days that we should indeed return to the courts in some way and seek remedy there rather than through legislation? Again, obviously, Mr. Commissioner, I don't intend to put you in conflict with anything the Department has arrived at. I think your personal view of this would be of value. Would you share with us your personal view of the likelihood of success if we attempt to adjudicate rather than legislate?

Mr. BRUCE. I would not rule out legislation as a way. My own impression is that we have negotiated over a period of years. The Secretary and I had a meeting last Friday. Out of that meeting I felt a little progress can be made.

Mr. STEIGER. Excuse me. I wasn't discussing negotiation as an option, I was discussing the third option which is adjudication in the courts. I would like to get your feeling of the likelihood of success, timely success, in light of Mr. Loesch's and my last dialog, if timely success is likely of achievement in the courts at this point. I am not talking about direct negotiation or accommodation between the parties. I am talking about the application to the courts.

What is your feeling about the likelihood of timely success if that avenue were adopted?

Mr. BRUCE. I think we need to take a look at it going to the courts as a possible solution to this problem.

Mr. STEIGER. Mr. Secretary, on the scale of 1 to 3, where would you place the desirability of court action as opposed to legislation and/or negotiation?

Mr. LOESCH. Mr. Steiger, in the first place, the specially constituted court in *Healing* v. *Jones*, which decision was affirmed by the U.S. Supreme Court, held that it did not have authority under the 1958 act to partition the land. There is, therefore, now no existing court which has any legal authority to partition this land.

In consequence, if you are going to leave it to the courts, you are going to have to pass an act giving the court jurisdiction to begin with. And to me it seems like a long-term proposition. You are going to have presumably the same trouble passing that act as you would any other act, and then the courts go through the hearing process and so on. It seems to me it could be telescoped, if that was the desire, by passing a law.

Mr. STEIGER. I thank the gentleman because that is my interpretation of the *Healing* v. *Jones* decision and review. It would seem to me like it would be unproductive for those of the committee to say that is a nice way to tackle it. It is my personal view that would be again a ducking of the responsibility which everybody seems to have done very adroitly in the past.

Mr. Chairman, I want to publicly commiserate with both of you, but I will tell you that somewhere there is a place where good bureaucrats go and review past successes, and hopefully this will be a star in your crown or on the end of your pitchfork, or whatever it is good bureaucrats get.

I would tell you I find myself sympathetic to the problem and am proud of the way the Bureau has responded at least in part.

I have no further questions.

Mr. HALEY. The gentleman from Alaska.

Mr. BEGICH. In your negotiation last Friday, what seemed to be the basic area of difference between the two groups? You said you made some progress.

Mr. BRUCE. Let me say this: We were meeting primarily because of our concern with the present situation in trying to cool it off a little bit to see how we could work out some area of agreement between the two groups.

Mr. LOESCH. We were primarily concerned, Mr. Begich, with the lessening of tension on the ground during consideration of this bill by the Congress. In other words, we didn't want anybody to get hurt or any more property to be destroyed while it was under consideration.

So we were primarily talking of whether there was anything the Bureau or the Department could do or the respective leaders of the tribe could do to achieve this in the meantime. It was in that area and not in the context of the overall problem that we were conferring on Friday.

Mr. BEGICH. Thank you, Mr. Chairman.

Mr. HALEY. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman.

We have been discussing the option of going to court, but in light of your summarization of the previous decision when they said let the tribes and the proper Government officials decide this question, it reminds me of the court decision some 2,000 years ago when another judge washed his hands of the whole thing.

I am not sure, but perhaps that decision came out all right because it fulfilled the prophecy of the Old Testament but I don't know where we are going to go with this one. I suppose that is why we have it back today.

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These are some of the problems that are bothering me, Mr. Secretary. How many Navajos live in the blue area?

Mr. LOESCH. We are estimating somewhere up to—it is an outside figure—5,500, Mr. Lujan. I don't have any exact figures. I have been advised there are 1,079 Navajo families in that area.

Mr. LUJAN. What do you propose doing with them if this bill goes through?

Mr. LOESCH. I was afraid somebody would ask me that this morning. Of course, that is the hardest of all problems. We are talking about moving people. The proposed amendments to the bill that we have put forth in our report, which I am sorry to say the committee didn't receive until Saturday, and members of the committee perhaps until this morning, proposes a bonus arrangement.

First of all, anybody moved would come under the full provisions of the Federal Relocation Act itself. But in addition to that there is a bonus arrangement for any Navajo family who cared to move and who are willing to contract to move at the convenience of the Secretary.

The reason that is at the convenience of the Secretary is if we have an agreement with the Navajo family to move but don't have a place for it right then, it would give us a little running room to obtain a place to relocate.

If you ask me to specify where and how we are going to relocate these people, I can't answer you. We are investigating the possibilities, which seem to me good, of relocating some of them in the area of the Navajo irrigation project which should come on the line in 1975 in its first phase.

There is another factor involved in this, and that is that with the development of the job ethic and so on, a great many of these Navajo people who are now living in the disputed area do not rely in full for their livelihood, such as it is, and it isn't very good—but they do not rely in full on their flocks and herds. Almost every family, I am advised, has at least one wage earner in it who has a wage job in addition to the livestock. It is not going to be easy.

Mr. LUJAN. It goes beyond that to those that may not want to move.

Mr. LOESCH. That is true, sir. I will tell you quite frankly I don't kid myself that there is going to be any substantial number of these folks at all that want to move. They, like the Hopi, have a feeling for the land. They don't take care of it too well, but just the same they have a feeling for it and they don't want to get off their land, what they consider to be their land any more than you would.

Mr. LUJAN. The secondary thing then, what do you consider fair joint use, 50–50 or 6,000 over 125,000 which is the proportion of the population?

Mr. LOESCH. In that regard, Mr. Lujan, I go solely by the Healing against Jones decision which held, and I said was affirmed by the Supreme Court, that the Hopis had a 50–50 joint equal interest in this area.

Mr. LUJAN. In the permits, how many animal units a month do the Navajos have and how many do the Hopis have?

Mr. LOESCH. As I said a while ago, we don't handle it the same way we do in the Bureau of Land Management on the basis of animal unit months. They are simply sheep units year around.

Mr. LUJAN. How many sheep are owned by Navajos and how many sheep are owned by Hopi?

Mr. LOESCH. You are speaking now in the disputed area?

Mr. LUJAN. Yes.

Mr. LOESCH. In the disputed area there are approximately 87,000 sheep units owned and grazed by Navajos and virtually none owned and grazed by Hopis.

Mr. LUJAN. So therefore we would push all of those 87,000 into what is shown as the orange area?

Mr. LOESCH. Yes. Responsible administration would require the immediate reduction of the 87,000 units to 22,000 in the first place because there are only 22,000 sheep units available that graze on the entire blue and orange disputed area. As a matter of fact, if I were running the thing totally and were able to do so, I would immediately reduce the total graze to about 11,000 or so until the range comes back.

Mr. LUJAN. Even if that were not the case, even if it were good range, you could still not graze 87,000 on the approximately 1 million acres left in what it now the orange area. So you would have to reduce the number of Navajo permits. Is there any provision for compensation for that?

Mr. LOESCH. Not in the bill. But Mr. Lujan, I don't see why the Navajos in this regard should be any different from any other rancher or the Hopis for that matter. I think it is a crime to overgraze causing erosion and all of the ills that comes from serious overgrazing.

Mr. LUJAN. We are talking about a different problem now in moving those permits to a smaller area. We are not talking about reduction of permits because of range conditions. This is a shifting by an administrative decision or a congressional decision rather than by an act of God such as lack of rain.

Mr. LOESCH. I disagree with you to this extent, Mr. Lujan: I said awhile ago that in my view a proper solution of this problem required the joint operations of the executive, legislative, and judicial branches of the Federal Government. It is my opinion that one of the things that the executive branch can do, and hasn't done because of the history which I have related, is responsible administration in this area of the grazing permits, because I don't care how hard it is, how tough it is on the individual involved, I do not believe that a responsible public administrator can stand by continuously and see lands destroyed.

Mr. LUJAN. That is very true and nobody is suggesting that land be destroyed. Certainly we know in the final analysis it is bad policy, but I think that the Department should be ready to transfer those permits into some other area. I don't believe in depriving someone of their livelihood.

Mr. LOESCH. Let's equate it to Bureau of Land Management operation. After the Taylor Grazing Act was passed in 1934 and the district advisory boards were set up, there was a great yell all over the West—and these were not Indians, just ordinary stock people that were not Indians and were not on Indian reservations.

But they were given a permit for a particular place to graze so many head and if they had more livestock, they had to get rid of it. They weren't allowed to graze it on the public range.

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By the way, back in 1934 and at the time the Navajo reductions were being carried out, range science was no way near what it is today. And I believe that Indian grazing from the standpoint of future generations should be handled responsibly, the same as I believe that public lands for the benefits of future generations should be handled responsibly.

So I think whatever happens, the grazing in this area ought to be reduced. Our range experts believe that properly handled, the disputed area can produce at least 100,000 sheep units. If the estimates are accurate on the division, that would mean that in the orange area there could eventually be at least 50,000 sheep units against 87,000 that is on the whole area right now.

Mr. LUJAN. Getting over to some other way of settling it, we have talked about arbitration and the two tribes getting together. Has anyone proposed any other kind of a plan to the Department on which one side or the other would agree? Has either side proposed any kind of an arrangement exclusive of this legislation?

Mr. LOESCH. No, sir. It was my information, and it is my information, that the Navajo Tribe may present this committee, when it has a chance to speak, its version of how the matter should be settled, but I am not acquainted with that.

Mr. LUJAN. Do you know if the Hopis would present their version or is this their version?

Mr. LOESCH. I think it probably would be fair to say that this—you always have to have wheels within wheels. The Hopis probably would accept this version, but the Hopis, of course, from the history and legality and so on readily claim the entire 1882 areas plus so much of the other area as their use patterns show. I think they would accept this as a fallback position.

Mr. LUJAN. Thank you, Mr. Chairman. I think my 5 minutes are up.

Mr. HALEY. The gentleman can have more time if he wants.

The gentleman from Oklahoma.

Mr. CAMP. Mr. Secretary, did the problem arise originally from the grazing permits?

Mr. LOESCH. No, sir; it is a human problem, Mr. Camp. The problem arose because of the increase in numbers of the Navajo Tribe, the fact that it was a nomadic people or was to a degree, the fact that this whole area is not the best land in the United States, it is barren and dry in good part. And simple population pressure really gave rise to this problem coupled with the failure of every administration to act.

Mr. CAMP. Who issues the permits to graze?

Mr. LOESCH. Grazing permits. I have to go back a little on that. The technical effect of the order in 1969 placing the disputed area under the general Bureau of Indian Affairs grazing regulations, technically that acted to cancel at the end of their annual term all of the outstanding grazing permits. As I said, nobody ever attempted to enforce that at all.

Now the grazing permits would be issued by the Superintendent with the advice and input of the grazing board for the district.

Mr. CAMP. Is this white men or red men?

Mr. LOESCH. They are all Navajo except in district 6. District 6 is all Hopi.

Mr. STEIGER. I think it is important that the record reflect, that regardless of the grazing permits issued, the numbers of livestock have little or no relationship to the numbers on the grazing permits issued? Would you say that is a fair statement?

Mr. LOESCH. So I am advised. People got a grazing permit like for instance for 40 or 60 or 80 sheep units. It is my advice the same people or the heirs, or sons are grazing maybe double, triple, quadruple that number under this same permit at this time. The permits were issued back in the thirties and they were automatically renewed unless canceled and they were never canceled.

Mr. CAMP. I understand they were never renewed.

Mr. STEIGER. I think it is important we recall the Commissioner's statement in which he pointed out no permit has ever been canceled. I think that is significant. I also think the Secretary's statement of the fact it would be at least improper to rely on the figures as represented in grazing permits as being accurate as to the number of livestock being grazed.

Mr. LOESCH. I have one more observation to make. I have been criticized and the Commissioner has been criticized because in some way we have not declared the issuance of Hopi grazing permits in the disputed area. That is a useless thing and harmful thing do do. It exacerbates the arguments on the ground when you are already overgrazing to such a terrific extent that there is not room for another sheep anywhere.

Mr. CAMP. If we find a solution to the problem of the two tribes——

Mr. LOESCH. I will buy it.

Mr. CAMP. But if we continue to issue or allow the grazing as we do at the present time, have we cured the problem?

Mr. LOESCH. Mr. Camp, no. As I have said before, I think that the statute is simply one tool. I think we have to have that tool. But some kind of legislative solution I think we have to have. In addition to that, I am convinced that we have to take administrative action to get the grazing in relation to the productiviy of the land.

Mr. STEIGER. Will he gentleman yield?

Mr. CAMP. Yes.

Mr. STEIGER. I hope the gentleman in his pinpointing the problem as he has done also recognizes that if we attempt to solve both of these very significant problems, we will be here, I think, longer than we can afford to be. It seems logical to settle the disputed situation and then confront the grazing situation because the one simply compounds the other.

If we attempt to equate them in some way other than historically, if we attempt to do it legislatively, which I expect the gentleman is headed for, I am afraid we are going to burden this legislation unnecessarily, which is already going to be tough.

Mr. CAMP. I grant that, Mr. Steiger, but again I have had pretty good knowledge of the area, because one of my family has lived in the Grand Canyon area. What I observed in that country was it has completely been overgrazed to a place where maybe a lot of it will never come back.

I also have information from some of the Navajo people that in the past at one time the grass was belly deep to a pony.

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Mr. LOESCH. History indicates that when the Lieutenant Wyatt, I think his name was, came through there—this was before the migration of the population—it was wonderful grazing in some areas and it is not now.

Mr. CAMP. I think we should try to make some effort with whoever are the ones to issue the permits that immediately in regard to saving what grazing there is and promoting a policy whereby we can bring some of the grazing back, if we don't get through solving the tribes' problem in the next year. I will go along with Mr. Steiger who doesn't want to burden the legislation with anything to slow it down.

Thank you.

Mr. LUJAN. Mr. Secretary, what we are talking about is equalizing the benefits that are to be derived from the land; not necessarily setting up a line that this belongs to this one and this belongs to the other one. If we could equalize those benefits that would undoubtedly be the best solution, similar to mining properties equalize the grazing.

The reason has been stated that these benefits can't be equalized because this would be unenforceable. We have areas of 2 million acres of land that are enforced. Why can't this be enforced? What is the reason for it?

Mr. LOESCH. Mr. Lujan, let us recognize that at the date of the *Healing against Jones* decision, that is 1962, at that time just as today the entire disputed area was fully occupied by Navajos. Under the terms of the decree, the Department had no authority to move any Navajo off in any way because the Navajo as well as the Hopis have joint and equal rights to the use of the land.

Mr. LUJAN. We are not talking about the relocation, we are talking in this particular case of the grazing permits, and it has been said that this could not be enforced. Why can't it be enforced?

Mr. LOESCH. I didn't say it couldn't be enforced. There is a cost to everything. The cost of enforcing at the level that needs to be enforced the Bureau and apparently the Department were unwilling to pay because of the very, very deep scarcity and wounds left by the enforcement or the attempted enforcement of the grazing regulations in the thirties and forties.

I am advised that when Commissioner Collier went into the livestock reduction program on the Navajo reservation in the 1930's, which was at the time these 19 grazing districts were set up, the bittnerness became so great—I think it was 1937 that enforcement commenced. The bitterness and the troubles became so deep and so great that by 1941 the administration was already slowing down the process. It continued to slow down before the proper results were achieved and was totally and officially abandoned as a policy in 1948.

Apparently for the reason of the deep distrust and wounds sustained by the Navajos and their feelings toward the Bureau of Indian Affairs, nobody wanted to tackle it again since 1962. And believe me, I sympathize with the Bureau as well as with the Navajos on this. There comes a time where it depends whether it is worth it or not.

When there was no way, since we had a joint-use area, to secure to the Hopi their share without in effect dispossessing Navajos, when we had no authority to dispossess Navajos, we found ourselves with an insoluble administrative problem. It is for this reason, Mr. Lujan, that while I certainly am sympathetic to and would be willing to explore

in any way I could other solutions besides a partition of the land——

Mr. LUJAN. Did you say that all of the board members that regulate the permits are Navajo? If that is the case, wouldn't putting a few Hopis on the board be advisable? Who appoints the board?

Mr. LOESCH. What I think probably ought to happen maybe, as we said there are seven grazing districts which run into the disputed area besides district 6 which is wholly within it.

Mr. LUJAN. And all of the board members controlling the permits in the blue area as I understand from an earlier statement are Navajos?

Mr. LOESCH. All of the board members in every one of the 19 districts on the Navajo Reservation including these are Navajos with the exception of district 6 which is solely Hopi.

Mr. LUJAN. Doesn't that really tell you what the problem is?

Mr. LOESCH. Sure, but the Hopis don't have any interest or at least no recognized interest—you wouldn't get the Hopis to agree—they have no interest up in district 2.

Mr. LUJAN. I am just talking about the blue area.

Mr. LOESCH. The blue area is not a delineated district.

Mr. STEIGER. I would like to point out what you are suggesting is BIA place Hopi members on Navajo grazing districts in order to solve the problem. There are two chances of that happening: slim and none.

The gentleman has arrived at a decision in very logical fashion but the gentleman must understand that there is no possibility of intruding and shouldn't be a possibility of this body or the BIA forcing on to the Navajo Nation people who are not Navajo to act in an administrative capacity. That is what the gentleman is suggesting.

Mr. LUJAN. I would point out to the Secretary that it is certainly logical that if it is a joint-use area, there be representatives of the two tribes. I am not talking about the whole Navajo Nation, I am talking about the joint-use area.

Mr. LOESCH. What I think should have happened years ago, and that again I look upon a deficiency in administration, no less in this administration but no more in this administration—I think that the grazing districts should have been reorganized so that outside of district 6 in the 1882 area there should have been one or two grazing districts whose boundaries were the same as the 1882 area itself. Whereupon I think they should have been jointly administered by Hopi and Navajo with due attention to grazing capacity.

Mr. STEIGER. I think it is most important my colleagues understand that, because it is clearly that upon the final decision of the *Healing-Jones* decision, which included a specific mandate for the Administration of the Interior Department, the BIA, to establish the very thing the gentleman from New Mexico is talking about—joint boards for grazing—an administrative device for seeing that the land was used equitably. That has never been done. It would be very unprofitable for us to sit here and condemn the situation for having occurred. I do that with some satisfaction in certain forms.

But the point is that the situation does exist and now we have to solve it by some arbitrary, and I suspect some unpalatable method, unpalatable to both parties, as in the case of almost any situation in which two aggrieved parties are aggrieved as a result of a deficiency of a third party, which in this case is, if you will, past and present executive departments of Government.

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But there is no profit in simply saying they did a lousy job, let's hope it can be done better. The pressures are very genuine, they are very real. It seems to me we can theorize on what would be desirable, and it would be theory I assure you. Hopefully we will not condemn any further but will press on.

Mr. CAMP. Would the gentleman from Arizona say that he feels there is a possibility that the two tribes involved could sit down around the table and solve this problem?

Mr. STEIGER. I think it is a very fair question. Negotiation is always possible. In this instance there is no reason for the Navajo to negotiate unless there is sufficient pressure to require him to negotiate because he will feel he can possibly do better by negotiation than he can by legislation.

If I were a Navajo, I would insist upon doing that which would delay a compromise because I am using the land. It is really that simple.

I will tell the gentleman, of course, conversation is always possible of success. History has shown it hasn't been successful to date, but it is perfectly conceivable, and the Commissioner believes it is possible now. I would say it is possible now if there is a reason for it. If there is no reason for it, it is not possible.

Mr. CAMP. Would you say the BIA should be the instigator of the negotiation?

Mr. STEIGER. I don't think the BIA can do anything to force the negotiations by itself because the BIA has proven conclusively it is not capable of resisting the pressures being generated on both sides. This is without regard to any personalities because it isn't a matter of specific personalities. It is a matter of the structure and this structure has now hardened and, therefore, the BIA is part of that hardening. They have sanctioned what is going on. It is very difficult for them because regardless of what the feeling is in the Commissioner's office and Assistant Secretary's or the Secretary's office or the White House, and they have been all messing in this thing, I will tell you the people whom they will look to for the decisions in the Bureau are people who have lived with the problem, actually some of them since 1934, but certainly since 1958. What they have said, and what they will live and die by, the people in the field, is "don't get involved, it's too tough." We will just stay out of the road and let them have at it. That is their attitude.

I will tell my friend in the BIA to make a flat statement that the BIA is unable to force negotiations of any kind in the absence of legislation.

Mr. CAMP. Then we have only one way to go and that is pass the legislation.

Mr. STEIGER. I would say that would be a fair solution.

Mr. CAMP. Thank you very much.

Mr. HALEY. Mr. Lujan.

Mr. LUJAN. Since this legislation was introduced, would you say the negotiations have intensified or not?

Mr. BRUCE. Yes; I think so.

Mr. LUJAN. Have the two tribes——

Mr. BRUCE. Made more attempts to get together?

Mr. LUJAN. Yes.

Mr. BRUCE. Yes; I would say so.

Mr. LUJAN. Thank you.

Mr. HALEY. Mr. Sigler.

Mr. SIGLER. I would like to pursue the grazing issue just a little bit farther.

If I understand the testimony correctly, Mr. Secretary, the Navajos are in possession of substantially all of the joint-use area and they have been in possession for many years?

Mr. LOESCH. Yes. With the increase in population, the possession has intensified and it does intensify every year.

Mr. SIGLER. And I understand the testimony to be that the joint-use area is now overgrazed approximately 400 percent. If there were no Hopi interest involved, if you just had Navajos living in the joint-use area and overgrazing the area 400 percent as you testified, would there be any solution?

Mr. LOESCH. Yes; there would be, Mr. Sigler. The solution is very hard, very difficult. It is the same solution, and I know of no other, that was tried in the thirties and forties. I do devoutly hope we do not have to get ourselves into the same situation that the Bureau got into then. But in some way, by education by the Navajo leadership of the tribal people, by furnishing other supplementary means of livelihood besides livestock, in some manner on some day the grazing in this area must be reduced to the carrying capacity.

Mr. SIGLER. Let me ask my question a little differently. If the grazing capacity must be reduced as you say, and if reducing the grazing capacity requires——

Mr. LOESCH. Grazing pressure.

Mr. SIGLER. Grazing pressure. If that reduction requires 1,000 families to move, have you any way of moving them now or causing them to move?

Mr. LOESCH. No.

Mr. SIGLER. So as a practical matter, then, my inference from your statement is that there is no practical way to reduce the grazing within the joint-use area that is now taking place by the Navajo occupants because you have no place to put them?

Mr. LOESCH. You are correct.

Mr. SIGLER. If the Hopi interest is recognized—the Hopis have by judicial decree a one-half interest in the joint-use area. They have been given that one-half interest. You have no way of putting them in possession without moving some of the Navajo occupants?

Mr. LOESCH. No way.

Mr. SIGLER. And you would have to move those Navajo occupants regardless of the Hopis if you restored the carrying capacity of the land?

Mr. LOESCH. Yes, to this extent: It would be necessary either to move the Navajos off the land or to take away their livestock. If you take away their livestock——

Mr. SIGLER. Doesn't that make them move if you take away their livestock?

Mr. LOESCH. I suppose so.

Mr. SIGLER. One other point I want to be sure I am clear on for the record.

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The *Healing* decision was in 1962. Were there at that time grazing permits outstanding in the hands of individual Navajos?

Mr. LOESCH. Yes.

Mr. SIGLER. The Navajos were using those permits. I think I heard you say they were overusing them, that is, they were grazing more stock than the permits contemplated.

Mr. LOESCH. This is my information that that is the case today and it is my information it was in 1962.

Mr. CAMP. There is no way to police it, is there?

Mr. LOESCH. Practically speaking, no.

Mr. SIGLER. When the *Healing* decision came saying the Hopis were entitled to a half interest in the joint-use area, I understood the testimony to be that the Department did nothing to help or permit the Hopis to use that one-half interest.

Mr. LOESCH. That is so. There were more or less attempts in all of the 10 years since the *Healing* against *Jones* decision. The Bureau people representing in effect the Hopis in the Hopi Agency have complained and attempted to get something done but nothing ever really happened.

Mr. SIGLER. But very specifically the Bureau or the Department did not cancel any outstanding Navajo permits and issue permits to the Hopis in lieu of them?

Mr. LOESCH. Correct.

Mr. SIGLER. I think that was the testimony.

Mr. LOESCH. Absolutely correct.

Mr. SIGLER. So in effect the Department has acquiesced in continued Navajo exclusive possession of the area that the court said was joint-use area.

Mr. LOESCH. Yes; that is true.

Mr. SIGLER. That is all I want to do on that subject.

One other question. Have you any estimate of the number of dollars that would be in volved if the bill is enacted in the form you recommend?

Mr. LOESCH. Yes. I have an idea. We had calculated the bill as originally introduced to carry a tab of somewhere around $18 million. With the amendments we propose—and in calculating that we were figuring approximately $3 million, a little over $3 million for the bonuses to the Navajo families.

Mr. SIGLER. Is that the $3,000 bonus?

Mr. LOESCH. $3,000 bonus. Now the tab would be the same as we propose except that you would have a potential for another $2 million if every single Navajo signed up to get the $5,000. Frankly, I don't think that will happen, Mr. Sigler, at all.

Mr. SIGLER. Let me be sure I understand. Under your original calculation the bonus would be $3,000 to each family?

Mr. LOESCH. Yes.

Mr. SIGLER. Your recommendation is that the bonus be increased from $3,000 to $5,000 in some cases depending upon the rapidity with which the Navajos moved?

Mr. LOESCH. Yes. This is a sliding scale thing. This wasn't my idea. I am in favor of it, but I want to make it clear to the committee that I do not feel myself that this is a money matter or that the money, a little this way or that way, will make any particular difference.

Mr. SIGLER. I understand you.

Would you give me those figures once more? Your original estimate was around $18 million.

Mr. LOESCH. Yes; over the entire term.

Mr. SIGLER. And you think that the added bonus might raise it how much, another $2 million?

Mr. LOESCH. Yes. That would be the potential if every Navajo family signed up during the $5,000 period, they would get $2,000 more than the original bill and that amounts to approximately $2 million. So it would be roughly $2 million more potentially.

Mr. SIGLER. Would you break down that cost exclusive of the bonus for me?

Mr. LOESCH. The original bill provided for about $1 million worth of fence. It provided for the application of the provisions of the Federal Relocation Act.

Mr. SIGLER. And they were what?

Mr. LOESCH. I might have to supply this in detail, but my memory is we thought the full application of the Federal Relocation Act would be somewhere in excess of $12 million.

Mr. SIGLER. Does that Federal Relocation Act involve the $15,000 per family plus actual costs of moving?

Mr. LOESCH. Yes. It involves basically three things. It involves the purchase at fair market value of the assets of the man that is going to get moved.

Mr. SIGLER. In this case it is the house, the improvements on the land?

Mr. LOESCH. Yes. Houses, corrals, and this and that. That is one item.

It provides for his reasonable and necessary moving expenses, and it provides for up to $15,000 extra for the providing of another house.

Mr. SIGLER. That plan which you have just outlined is the law today with respect to persons who occupy lands that are acquired by the United States?

Mr. LOESCH. That is true. It has been used very substantially when the Government has taken over land for reservoirs when a dam was to be built and so on.

Mr. SIGLER. That is all I have, Mr. Chairman.

Mr. HALEY. Does any member have any questions?

For the record, I might state that the Chair has three bills I believe on the calendar today, and Mr. Melcher has a bill on suspension I believe. We hope they will go rather rapidly. I think probably they should be disposed of by 2:30, at least we hope so, and we will get back here just as soon as we can close to that time of day, and the Navajos will be the first witness.

With that explanation the committee stands in recess until 2:30 this afternoon.

(Whereupon, at 11:50 a.m. the subcommittee recessed, to reconvene at 2:30 p.m. the same day.)

AFTERNOON SESSION

Mr. HALEY. The committee will be in order.

I might say for the benefit of our friends in the audience that we had hoped we could dispose of some of these bills on the floor, but it looks like we are going to have maybe several rollcalls. Whenever

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the bells ring, the committee will have to rise in response to the call of the House.

The first witness is Chairman Peter MacDonald of the Navajo Tribe. Will you bring with you whoever you want to accompany you.

STATEMENT OF PETER MacDONALD, CHAIRMAN, NAVAJO TRIBAL COUNCIL, NAVAJO INDIAN TRIBE

Mr. MacDonald. Honorable members of this subcommittee, my name is Peter MacDonald. I am chairman of the Navajo Tribe Council of the Navajo Indian Tribe. I have come here today with a delegation of members of the Navajo Tribe to present the views of the Navajo people on the merits of H.R. 11128, the bill introduced by Representative Steiger to partition the 1882 Executive order reservation.

In 1958, as you know, the Congress passed an act for the purpose of initiating a resolution of the dispute concerning the Executive order reservation, and in 1962, the district court for Arizona entered a decision determining the relative rights and interests of the Navajo and Hopi Tribes in the 1882 reservation.

This decision, *Healing* v. *Jones*, is both voluminous and complex. It is also a decision which has been grossly misunderstood in many circles. Before presenting my full statement to this subcommittee, therefore, I would like to introduce the attorneys for the Navajo Tribe. They will discuss the court decision in *Healing* v. *Jones*, and the reasons why that decision did not suggest, not to say compel, that the rights and interests of the Navajo Tribes in the 1882 area be allocated in the manner proposed by the bill introduced by Representative Steiger. The attorneys also will discuss other legal questions raised by H.R. 11128. After the lawyers have made their presentation, I will resume my statement. Other members of the Navajo Tribe will then testify to some of the pain and grief which H.R. 11128, proposed to visit upon the Navajo people.

May I introduce to you vice chairman of the Navajo Tribal Council who will also be a witness here, Mr. Wilson Skeet and Mr. George Vlassis, our general counsel, accompanying me here, and Mr. Richard Schifter, Washington counsel, who will at this time make a presentation on the *Healing* v. *Jones*.

After he gets finished I will make a formal statement, a copy of which you have, Mr. Haley.

Mr. Haley. We have a number of witnesses and our time is going to be somewhat curtailed with the situation on the House floor. Make it as brief as you possibly can.

STATEMENT OF RICHARD SCHIFTER, ATTORNEY FOR THE NAVAJO TRIBE

Mr. Shifter. The bill which is now before you, H.R. 11128, deals with two distinct problems, which from a legal point of view are unrelated to each other. Sections 1, 2, 3, and 4 attempt to make a final disposition of the lands set aside by the Executive order of December 16, 1882. Sections 5, 6, and 7 attempt to make a similar disposition of the lands permanently withdrawn by the act of June 14, 1934, 48 Stat. 960. The remainder of the bill deals with the consequences of both dispositions. This statement will address itself first to the Executive order reservation of 1882 and then deal, separately, with the questions raised by those sections which relate to the 1934 withdrawal.

In attempting to resolve the complex problems which surround the 1882 reservation, this committee is, of course, aware of the fact that it must proceed within the framework provided by an earlier statute, the act of July 22, 1958, Public Law 85–547, and a court decision rendered thereunder, *Healing* v. *Jones*, 210 F. Supp. 125 (D. Ariz. 1962). The court decision in *Healing* v. *Jones* plays a most important role in determining the legislative questions before you because the drafters of H.R. 11128, seem to have thought that the present formulation of sections 1–4 of the bill or a reasonable approximation thereof is required if Congress is to carry out the court's mandate.

I want to say in this connection, Mr. Chairman, Congressman Steiger made the remark this morning that the specific mandate of *Healing* v. *Jones* was to arrange for joint use and joint management of the area. The thrust of my statement will be that is not what *Healing* v. *Jones* decided.

May I say in that connection I have been involved in this matter and my firm has been involved in this matter for only approximately the last half year. So I came rather fresh and new to the matter. I have talked to a great many people around town about their understanding of *Healing* v. *Jones* and I find that myths have grown up around that decision. What I really would hope is that we can focus on what is really decided and what it is that the freedom of this committee really is, the freedom of Congress in settling this particular problem.

Mr. Haley. You know the freedom of this Congress is what the Congress decides.

Mr. Schifter. That is right. What I am trying to say is that some people seem to think you have a mandate here you have to follow. What I am going to try to explain is that the mandate is far broader than some people seem to think.

My purpose in presenting this statement is to demonstrate that Congress has far broader options before it than simply to adopt H.R. 11128 in its present form.

To analyze these options and also to determine what the equities are, it would be helpful to review the history of the relations between the United States, on one hand, and the Hopis and Navajos, on the other, and to examine just what it was that the court in *Healing* v. *Jones* really decided.

It was in 1868 that the United States entered into a treaty with the Navajo Tribe under which the original Navajo Indian Reservation was established (treaty of June 1, 1868, 15 Stat. 667). The reservation was enlarged in 1880, but even then it was recognized, as the court in *Healing* v. *Jones* said, that "this semiarid land * * * was incapable of providing support for all of the Navajos" (210 F. Supp. 125, 135). As the reservation lines were not distinctly marked, "great numbers of the Navajos wandered far beyond the paper boundaries of the Navajo Reservation as it existed in 1880" (ibid.).

The Navajos were a migratory, pastoral people, engaged largely in livestock herding. Their mode of living was then, as it is now, sharply different from that of the Hopis, a sedentary group living in villages on mesa tops, cultivating fields, and depending to a much lesser extent

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on livestock herding. No reservation had been created for the Hopis prior to 1882.

It was on December 16, 1882, that President Arthur signed an Executive order which "set apart" about 2,500,000 acres, or 3,900 square miles, "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." At that time the area so set apart was occupied by Hopis as well as Navajos.

There is no doubt that the Hopis, because of their sedentary, agricultural way of life, used only a small portion of the huge area set apart in 1882. Nevertheless the *Healing* court held that the very language of the Executive order gave the Hopis the right to use the entire reservation, not just those portions which constituted the actual area of Hopi occupancy. But the court further held that the right of the Hopis was not a vested right and could be terminated by the Congress or the President without any legal liability by the U.S. Government for compensation.

Following the establishment of the Executive order reservation in 1882, the Hopis continued to use and occupy the area which had been their traditional domain, the area surrounding their villages. The remainder of the reservation, on the other hand, was populated by Navajos then and continued to be populated by them ever since. What's more, the Navajo population grew faster, as their birth rate substantially exceeded that of the Hopis. During the 76 years which elapsed between the establishment of the Executive order reservation and the enactment of Public Law 85–547, the Hopi population about doubled. The Navajo population, by contrast, multiplied fivefold.

Navajos, as I have already pointed out, are a pastoral people. There was only one way in which they could support their increased population and that was by increasing their livestock herds. Increased herds, in turn, mean an increasingly intensified use of all available grazing areas. The area of the Executive order reservation, though vast by eastern standards, does not support much grass. Before long, Navajo herds made full use of that portion of the land which lay beyond the area immediately surrounding the Hopi villages.

In *Healing* v. *Jones*, the Court engages in a learned discussion of the question of whether and when these Navajos were "settled" on the reservation within the meaning of the 1882 Executive order. The evidence on which the Court relies consists entirely of pronouncements of Government officials. After analyzing these pronouncements, the Court concludes that the Navajos were legally "settled" on the reservation in 1931. The formal secretarial act on which the Court places its conclusion is a letter, dated February 7, 1931, signed by the Secretary of the Interior and the Commissioner of Indian Affairs, in which these officials agree that the 1882 reservation should be divided between the Hopis and the Navajos. The proposal which was before them and which they indicated they were "disposed to accept" called for an area of 438,000 acres, including the Hopi villages and adjacent lands, to be set aside for the Hopis, while the remainder of the reservation would be available for Navajo use.

Thus, under the conclusions of the *Healing* court, the Navajo Tribe was "settled" on the 1882 reservation in 1931. From that time on, the Court further concluded, Navajos had rights on the Executive order reservation similar to those of the Hopis.

For purposes of this analysis, it may not make much differences as to whether Navajos were "settled" in 1882 or in 1931. Yet there is a certain amount of irony in the Court's decision on this issue. As the court pointed out, "[t]he evidence is overwhelming that Navajo Indians used and occupied parts of the 1882 reservation, in Indian fashion, as their continuing and permanent area of residence, from long prior to the creation of the reservation in 1882, to July 22, 1958, when any rights which any Indians had acquired in the reservation became vested," 210 F. Supp., at 144–5. A Navajo, whose parents had grazed the vast areas of the 1882 reservation which were being used exclusively by Navajos, who was born in this Navajo-populated area in 1882, and who never knew of the official correspondence and statements which subsequently occupied the attention of the *Healing* court, would surely have been surprised if he had been told, at the age of 49, that he had just been "settled" at the place of his birth.

Be that as it may, between February 7, 1931, and April 24, 1943, the Office of Indian Affairs proceeded slowly but surely to carry out a policy to split the 1882 reservation into a Hopi and a Navajo area of use and occupancy. That split was largely based on preexisting land use patterns of the two tribes. Specifically, in 1936 the Navajo Reservation and the 1882 reservation were lumped together for the purpose of creating so-called land management districts. One such district, Land Management District 6, lying entirely within the 1882 reservation, was predominantly Hopi. The remainder of the 1882 reservation was joined with parts of the Navajo Reservation in constituting Land Management Districts 1, 2, 3, 4, 5, and 7. These districts were settled by Navajos.

Between 1936 and 1943, the boundaries of the land management districts and the administrative policies governing them were further refined. The final plan, approved on April 24, 1943, enlarged district 6 to 631,194 acres. I believe Mr. Loesch this morning said 650,000 acres. I believe this figure is the correct one.

Hopis were to have the exclusive use of district 6 and Navajos of the remainder of the 1882 reservation. This arrangement did not come about without serious hardships for a number of Indian families, mostly Navajos. As the *Healing* v. *Jones* opinion points out:

> A considerable adjustment in place of residence and range use was therefore made by both Hopis and Navajos in order to accommodate themselves to the new district 6 boundaries and the associated administrative policy of exclusive occupancy. Many Navajo families, probably more than 100, then living within the extended part of district 6, were required to move outside the new boundaries, and severe personal hardships were undoubtedly experienced by some." At 166.

What the various Interior Department measures which led up to the April 24, 1943, order sought to accomplish was to unscramble the problems created by the 1882 Executive order which had created nonexclusive rights in the Hopis and subsequently in the Navajos. Henceforth it was to be clear which area was to be reserved for exclusive Hopi use and which area was to be reserved for exclusive Navajo use. Tribal leaders and tribual lawyers might still argue over such abstractions as what rights the 1882 Executive order conveyed, but in the field the issue was settled. And it was settled largely in keeping with what had been the prevailing pattern of occupancy of the Executive order reservation for decades.

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Unfortunately, lines can be drawn more clearly on maps than they can be on the ground. And it is particularly difficult to get livestock to respect such lines. Trespassing by livestock has been a continuing problem between the Navajos and the Hopis, particularly as in a number of instances the most easily accessible water is on the Hopi side of the boundary line.

I am not suggesting to this committee that the continuing view of the Hopis that under the 1882 Executive order they had some right to the entire reservation rather than merely to district 6, did not affect their feelings toward their neighbors. What I am saying is that the paramount problem has been and still is the problem of livestock trespassing along an essentially unmarked line. The difficulties which have been recently encountered would face us even if there were no 1882 Executive order. These difficulties would also be with us irrespective of where on a map the demarcation line is drawn, unless a system is set up under which the line is clearly marked on the ground and is properly policed. A recommendation to that effect has recently been made by Chairman MacDonald of the Navajo Tribe to Chairman Hamilton.

But while the day-to-day problem of trespass exercised the livestock herders in the field, the tribal leadership concerned itself also with the broader problem of the respective legal interests of the Hopis and Navajos in the entire Executive Order Reservation. As a result of the latter concern, Congress, in 1958 enacted the aforementioned Public Law 85–547, which gave jurisdiction to a three-judge district court to hear and determine the conflicting claims of the Hopis and Navajos to the Executive Order Reservation. The new law did more than that. It also created, for the first time, compensable legal interests in the Executive Order Reservation.

The district court rendered its decision in 1962 in the case styled *Healing* v. *Jones*. The decision was summarily affirmed by the U.S. Supreme Court in 1963. What the court decided was (1) that the Hopi Tribe was the sole owner of the area of district 6, and (2) that the remainder of the 1882 Executive Order Reservation was owned by the Hopis and the Navajos and was "joint, undivided and equal."

H.R. 11128 attempts to carry out the mandate of the court in *Healing* v. *Jones*. What I would now like to stress to this committee is that H.R. 11128 does not provide you with the only framework to carry out the judicial mandate. There are other ways of complying with the court decision, ways which from a human point of view, considering the untold hardships which H.R. 11128 would create, are far preferable.

The only constraint under which Congress operates as a result of the court decision in *Healing* v. *Jones* is that it must recognize that both tribes now have compensable interests in the 1882 Executive Order Reservation which are protected under the fifth amendment. Beyond that Congress may, in the exercise of its plenary powers in the field of Indian affairs, make such disposition of the reversation land as it considers right and proper.

The question of how the portion of the Executive Order Reservation in which the two tribes hold "joint, undivided, and equal" interests is to be divided for future use and occupancy is thus not a legal but a policy question.

Under H.R. 11128 the Executive order area outside district 6 would, approximately, be split in two. One-half of the surface rights would be awarded to the Hopis and one-half to the Navajos. The subsurface rights would continue to be jointly held.

I most respectfully request that in reviewing H.R. 11128 and in making its decision on the policy to be adopted by the Congress, this committee consider the following factors:

(1) As the *Healing* court conceded, the Navajos have occupied the entire area in question here since long before 1882.

(2) The Hopis made intensive use of the area immediately surrounding their villages, all located within district 6, and did not venture out for grazing or farming into the further reaches of the 1882 Executive Order Reservation.

(3) While it may very well be true that Navajo presence in some areas of the reservation discouraged Hopis from entering those areas, it is also true that the Hopis' essentially agricultural life style and their practice of living in villages made it most unlikely that they would make use for farming or grazing of significantly larger portions of the reservation than the area of district 6. Furthermore, as the data already referred to shows, the population pressure for expanded land use was far greater among the Navajos than it was among the Hopis.

(4) The Secretary of the Interior accepted the presence of the Navajos on the land in question here prior to 1931, legally settled them on it in 1931, and from 1943 on reserved the land for exclusive Navajo use.

Thus, it is clear that the entire area which H.R. 11128 would now split in half was at all historically relevant times occupied by Navajos. Why, then, did the court say that the Hopis had an interest in that land? The answer to that question is that the *Healing* court based its decision on one phrase and one phrase alone; namely, the words "set apart 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," which appear in the 1882 Executive order. The fact that the Hopis did not actually use and occupy the entire area the court found immaterial. Though the privilege granted them in 1882 was not exercised as to most of the reservation, though the United States could have revoked the privilege at will prior to 1958, it ripened, according to the court's opinion, into a vested, compensable right as a result of Public Law 85–547.

The decision of the *Healing* court is, of course, law and to the extent to which it vests constitutionally protected rights in the Navajo and Hopi tribes, that decision must be respected by Congress. But the Congress is not required to close its eyes to erroneous findings of the court. Congress can make its own assessment of the facts and, more particularly, of its own legislative intent and permit that assessment to serve as its guide in formulating its own policy, provided that the course thus followed does not conflict with the Constitution.

It is with the foregoing considerations in mind that we ask you now to examine some of the crucial findings of *Healing* v. *Jones*. Assuming that the court concluded correctly that the Navajos and Hopis had under Public Law 85–547 a joint and undivided interest in the Executive order area outside district 6, what factual or legal basis is there

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for the further holding that the interests are "equal," meaning, apparently, that each tribe owns a one-half portion? The answer is that there is no recitation of facts or statement of law to support the court's holding on the size of the Hopi interest.

Let us keep in mind, at this point, that the court has decided that the legal rights of the tribes vested on July 22, 1958, by action of the Congress. As a number of members of this committee including the committee chairman and the subcommittee chairman, were here in 1958, they may indeed have some personal recollections of the events that surrounded the enactment of Public Law 85–547. That law, *Healing* v. *Jones* tells us, created the rights over which we are now arguing.

As I have just said, the *Healing* court decided that prior to July 22, 1958, the Congress was completely free to take such action with regard to the 1882 Executive Order Reservation as it considered wise, without creating any valid claim against the United States. What the court further decided was that the Congress then proceeded in dealing with the 8,800 Navajos and 3,500 Hopis on the reservation, by giving the Hopis an exclusive interest in 631,194 (district 6) acres and one-half interest in 1,822,080 acres and giving the Navajos the other one-half interest in the 1,822,080 acres. In terms of acres per person, the court decided that Congress gave the Hopis an interest in 441 acres for every man, woman, and child, and the Navajos an interest in 104 acres. Does this result make sense? Why should Congress, which in 1958 still had the power to wipe the slate clean and start from the beginning, have conveyed to the Hopis, on a *per capita* basis, more than four times as much land than it did to the Navajos, particularly when we consider that the Navajos had for decades been living on the land in which the Hopis were now given an equal vested right? I respectfully submit that there is no indication that there was any rational reason for making such a disposition, particularly if we consider (1) that the land of the Hopis is at least equal in quality to the land of the Navajos, and (2) Hopis are farmers as well as livestock herders, while Navajos are exclusively livestock herders and thus need more land per capita rather than less. It is simply inconceivable that Congress, in 1958, intended to make such an unequal disposition of the land in the Executive Order Reservation.

It could be said that all that Congress tried to do in 1958 is convert into vested rights whatever privileges had accrued to the tribes under the 1882 Executive order. If that is the case, I seriously doubt that Congress was aware of the record of bureaucratic sloppiness from which these privileges would have to be gleaned. The record which unfolded before the court consists of a mass of confusing and contradictory statements by Government officials. None of these officials had presumably any notion that his pronouncement might some day attain legal significance. Yet these are the statements which the court tried to rationalize to produce a meaningful result.

Courts are not infallible. The holding that the Congress in 1958 gave 3,500 Hopis exclusive ownership of 631,194 acres and, on top of that, a one-half interest in an additional 1,822,080 acres, while 8,800 Navajos would get only the other half interest in the 1,822,080 acres, simply makes no sense. Assuming that the Hopis did have a continuing interest in the area outside district 6, the court had no basis for holding that it was a one-half interest. In holding that it was, the

court erred and our plea, at this time, is that the Congress not compound the error.

The notion which has somehow been advanced is that the Navajos are brash, pushy people, who have continuously taken advantage of their neighbors. The fact is that the Navajo livestock herders on the 1882 reservation are a poor, hard-working group of people, eking out a meager living on inhospitable soil. They are there because white settlement has driven Navajos from other areas and they are trying to get the most out of the land because that is the only way to support their increasing population.

H.R. 11128 provides for the transfer and resettlement of the Navajos who now live in the area which would be conveyed to the Hopis. About 6,331 people are to be uprooted from their homes, not to make room for other homeless people—no, the Hopis, after all, will continue to live in their villages. The Navajo families will be uprooted merely to let the Hopis expand their herds and have more grazing areas available to them. This cannot possibly be what the Congress wants to do.

The bill provides for millions of dollars to resettle the displaced families. But the cost of the expulsion of the Navajos, the cost of uprooting people who will find it extremely difficult to fit into new surroundings, cannot be measured easily. And, Mr. Chairman, I want to say that you and the gentlemen here have been familiar with the circumstances among the Oglalla Sioux, who in 1942 were uprooted in the aerial gunnery range for years and years, were not able to fit in on the Pine Ridge Reservation. You have a very similar situation proposed to be developed here. I just want to emphasize that a good many of us in the predominant culture of this country can move easily from place to place and can fit in wherever we go. You are dealing here with a group of people who will find it very, very hard, if not impossible, to be moved.

The people who are to be moved will be livestock men. There is, unfortunately no room for them on the Navajo Reservation. If no rangelands are found for them, their herds will have to be liquidated, and these former livestock men, who have no other skills, will be unable to fit in anywhere. They will be displaced and dislocated. The damage of the move will affect not only the present generation but surely the next generation as well. The price which the taxpayers will pay is not only the amount stated in the bill, it will be reflected in increased welfare and other social costs for years to come.

My plea to you, Mr. Chairman and members of the committee, is not to go down this road. The district court erred in holding that the two tribes have equal rights in the disputed area, but nothing in that decision requires you to divide the surface rights equally between the tribes. Your very able counsel, Mr. Sigler, while still serving with the Solicitor's Office of the Interior Department, pointed out that the area could be divided by giving surface rights to one group and increasing the subsurface rights of the other. (Quote in footnote 93 of *Healing* v. *Jones*, at p. 191). Which demonstrates, Mr. Chairman, that the court was aware there are other ways of handling this problem, not just splitting the surface down the middle.

Therefore, do not compound the court's error by taking the further step of splitting the surface rights and displacing thousands of people who cannot be effectively relocated.

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That is not to say that we should not face up to the problem which *Healing* v. *Jones* presents. The Hopis do have a compensable right and there are ways in which this right can be recognized. But let us do so without inflicting suffering on thousands of human beings.

As Chairman MacDonald has said, the present administration of the Navajo Tribe regrets that almost 9 years have passed since the decree in *Healing* v. *Jones* became final without any action having been taken to follow through on its findings. It wants to assure you that it is prepared to negotiate a settlement which will be in the mutual interest of both tribes. We ask you to use your good offices to encourage such a settlement. We are deeply concerned that favorable action on H.R. 11128 would not accomplish that end.

I have so far addressed myself only to those portions of the bill that relate to the 1882 Executive order reservation. As I said at the outset, the bill attempts to dispose of lands in the 1934 reservation. On that point, let me merely call your attention to the fact that these sections of the bill would as now drafted unnecessarily invite further litigation, as the lines drawn by them are supported neither by an actual use pattern nor by judicial decree. This problem, too, should be referred to the parties for further negotiation.

In summary, let me say that I am aware that this committee is rightfully impatient about the long period of inaction which followed *Healing* v. *Jones*, but that is surely no reason why the tragic consequences of H.R. 11128 should be visited upon thousands of innocent people.

Mr. HALEY. Thank you very much.

The members will have to recess to answer the bells.

Mr. HALEY. The committee will resume its hearing.

Mr. Schifter, you had finished your testimony; is that right?

Mr. SCHIFTER. Yes, I completed my prepared statement.

Mr. HALEY. On page 16 you state, "Assuming that the Hopis did have a continuing interest in the area outside district 6, the court had no basis for holding it was a one-half interest. In holding that it was, the courts erred, and our plea at this time is that Congress not compound the error."

You admit that this case went all the way to the Supreme Court—is that correct?

Mr. SCHIFTER. I said this at the outset, Mr. Chairman. The Supreme Court confirmed the decision in *Healing* v. *Jones* by summary affirmment.

Mr. HALEY. Some of us in my part of the country feel the Court errs in many instances but they are still trying to follow the law as they see it.

Mr. SCHIFTER. I am not suggesting that they do not. What I am saying is that we have to recognize that the Court said that there was a one-half compensable interest in the Hopis.

Mr. HALEY. I recognize the gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

By way of comment, Mr. Schifter, I will simply say in my opinion you do your client a disservice with this statement. This is my personal opinion as a layman because you constantly refer to what the chairman referred to as the error of court as though some way that will justify circumvention of the law if you will.

The point is, as you well know, regardless of how you may feel about the decision or regardless of the manner in which the decision was based, *Healing* v. *Jones* is a reality and the decision is a reality and the language does not talk about one-half compensable, the language talks about a one, undivided, interest.

If we are to proceed, and we want to proceed, I think you made some very valid points with regard to the human suffering. But you do your client a disservice when you tell him this is a bad judgment and therefore somehow we will be able to rectify it on that basis. This is the law, and like it or not I think you of all people should recognize as a member of the bar that the law is to be obeyed.

Mr. SCHIFTER. Congressman Steiger, I was not suggesting anything like the notion that the law not be obeyed. Perhaps I do not make myself clear. Let me make myself clear therefore.

I read *Healing* v. *Jones* and it is my opinion as a lawyer all there is in *Healing* v. *Jones* is a recognition of a one-half compensable right in the Hopis. That is it. There is no mandate as you suggested this morning, Mr. Steiger, to the Congress to split the surface 50–50. That is what I am saying.

What I am saying now is that the Congress should recognize in deciding the policy matter that there was an error in *Healing* v. *Jones* and that that error shouldn't be compounded at this time, and it can be handled constitutionally, legally, by settling it in a way other than your bill.

Mr. STEIGER. I am going to interrupt you, and I don't want to belabor this, and we will press on. But here you keep talking about the faulty judgment of the court. If you want to base your judgment as to what is proper and right for the Navajo on interpretation of the *Healing* v. *Jones*, fine, but for you to sit here and tell this body that because that was a bad decision we should take certain action is not responsible. It is not responsible for you as a member of the bar and it darn sure isn't responsible for you as a representative of your client.

I will tell you it is not going to be very persuasive and I suggest there is not much point in belaboring this, and I yield back the balance of my time.

Mr. HALEY. The gentleman from New Mexico.

Mr. LUJAN. I just have one question, Mr. Schifter. One of the statements you make is that the Hopis do have a compensable right and there are ways in which this right can be recognized. I therefore gather from that, that you have a solution to this problem other than the passage of this legislation. If you do, might we hear it?

Mr. SCHIFTER. Congressman, one of the things I had very definitely in mind in that connection is a solution which was developed at a time when your own State, as a matter of fact the area from which you come faced the same problem. I am now referring to the way the problems were handled under the Pueblo Lands Act of 1924. What you had there, you know the history of that, was the U.S. Supreme Court decision in *United States* v. *Joseph* in 1878 holding that Pueblo Indians were not Indians within the framework of the Indian Intercourse Act of 1834 and therefore it was possible for Pueblo land to be alienated. Subequently in the *United States* v. *Sandoval* case in 1915 that decision was overruled by the Supreme Court with the result that all

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of the people who had settled in one way or another on Pueblo land suddenly found themselves without legal title to the land which they thought was their own. They could have been evicted, every one of them, at the time.

As you know, for the period 1913 to 1924 the Congress wrestled with this problem and in 1925 came up with the solution, and the solution was one that would be apt to be applied right here and would be perfectly legal, would be recognizing what *Healing* v. *Jones* really says and not what it doesn't say, and that is that you pay people off for their compensable right.

Mr. LUJAN. What you are saying then, in effect, is that your solution is that someone—and I suppose by that someone you mean the Federal Government—pay the Hopis for their interest in the land. Is that the recommended course?

Mr. SCHIFTER. That is one way of solving it and that is the way as I say the very similar situation in your home State was solved back in 1924 under the Pueblo Lands Act.

Mr. LUJAN. So one solution is to pay one side or the other whoever is willing to give up their rights.

Mr. STEIGER. I think the record should be clear. Counsel hasn't suggested that Navajos be compensated for giving up the land. Has counsel suggested that?

Mr. SCHIFTER. No, sir. I am suggesting that the Pueblo Lands Act be followed which is to recognize the people who are on the land. That is what the United States did with regard to the white settlers on Pueblo lands. In other words——

Mr. STEIGER. I am familiar with the situation.

Mr. SCHIFTER. There is another way. Mr. Sigler suggested it back in 1957. I am not saying my client——

Mr. LUJAN. The division of the subsurface rights and the surface rights not necessarily in equal proportion?

Mr. SCHIFTER. Exactly.

Mr. LUJAN. Any other suggested solutions?

Mr. SCHIFTER. Those are the two possibilities that come to mind.

Mr. HALEY. Are there other questions?

Mr. STEIGER. A couple of questions if I may. I want to be sure the record reflects accurately what Mr. Schifter was saying.

As I understand it, Mr. Shifter, you recognize that *Healing* v. *Jones* is the law today and under that law the Navajos and the Hopis have joint but equal rights in the land. Am I correct?

Mr. SCHIFTER. That is right.

Mr. STEIGER. And your proposal is not that this committee establish law differently from the law as announced in that case?

Mr. SCHIFTER. That is right, I certainly do not. Any inference to the contrary is incorrect.

Mr. STEIGER. That is all I have, Mr. Chairman.

Mr. HALEY. The gentleman from Alaska.

Mr. BEGICH. No questions.

Mr. HALEY. Thank you.

The next witness is Mr. Vlassis.

STATEMENT OF GEORGE VLASSIS, GENERAL COUNSEL OF THE NAVAJO TRIBE

Mr. VLASSIS. Honorable members of the subcommittee:

I am a partner in the law firm of Brown, Vlassis & Bain which has acted as general counsel for the Navajo Tribe since March of 1971. During the course of such representation we have had cause to become familiar with the 1882 Executive order dispute. I am not here for providing alternative solutions to the problem at hand, I am here because I am the first witness I have heard today that spends any appreciable amount of time on the reservation itself. I want to give you some understanding that I think otherwise would be impossible of why the long lapse of time from the decision of *Healing* v. *Jones* in 1962 to the concession that is the law of the land today.

I should also like to make a few other general comments but I would make the formal request at this time, Mr. Chairman, to have the opportunity to amplify the record by written material because I have been barred from using one of the witnesses that I had planned to use in the presentation today.

Mr. HALEY. Let me understand. You have a written statement here?

Mr. VLASSIS. That is correct.

Mr. HALEY. Without objection we will allow you 5 days to submit an additional written statement.

First, I feel obligated to reveal to you that upon being engaged by the Navajo Tribe we were instructed to review the dispute and particularly the case of *Healing* v. *Jones*. We were astonished, as I am sure you are now, that most Navajos—even the majority of councilmen, most of whom were elected since the 1962 decision—had little or no knowledge of the *Healing* case. Apparently in the preceding 8 or 10 years, neither the tribal administration nor the Bureau of Indian Affairs made any extensive effort to explain the impact of the decision to any of the Navajo people, either within or without the disputed area. In the past 6 months, in accordance with Chairman MacDonald's instructions, we have engaged in an intensive educational campaign, the benefit of which has been dissipated to a great degree by the relatively swift appearance of H.R. 11128 and the various livestock disputes which have been created along the district 6 boundary line.

In response to Mr. Steiger's statement that the Navajo Tribe and its "battery of attorneys" has created a "massive and sophisticated campaign" to procrastinate, I can only respond that until a few months ago I couldn't find the 1882 area on the map without assistance.

In fact, when Mr. John Boyden, counsel for the Hopis for many, many years, discussed several intertribal matters with me shortly after we were engaged by the Navajo Tribe, he mentioned the possible advisability of erecting a fence along the district 6 boundary line. Necessarily, my response was noncommital at least until I could locate district 6 and discovered that he was referring to straying livestock.

Once I had the opportunity to review the matter I recommended, and the Navajo Tribal Council endorse the idea, that such a fence should be built to avoid incidents like the recent arrest of Teinnayinna Yazzie, a 97-year-old Navajo and the impounding of all his worldly

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goods, consisting of a blanket, a horse and 75 sheep. He was arrested within the last few days.

I suggested to the Hopi attorney that such provocative incidents might be avoided by the erection of a fence, as he had earlier suggested. He reversed his field and said "No."

Just last March 13, 1972 I met with Mr. Boyden and certain Government officials and offered a livestock fence or partial fence, the location of which could be designated by the Hopis, or joint Navajo-Hopi line riders, to replace the armed white man hired by the Hopis to patrol the border. That is about the best way I can think of provoking an incident. I then offered to propose a resolution to the Navajo Tribal Council for the establishment of a Hopi-Navajo joint grazing permit committee for the 1882 area which would allow either tribe to apply for permits—again the answer was "no." Finally, I proposed the creation of a "third" reservation which would be governed jointly and equally by Hopi and Navajo representatives. Once again, I was met with refusal.

Yet, as I come before the committee I am met with Mr. Steiger's statement which, perhaps, inadvertently implies that we have not tried to open negotiations—but it takes two to negotiate.

Again, on the one hand Mr. Steiger says the BIA has done nothing to administer the lands "either equitably or unfairly," while Assistant Secretary of the Interior Loesch says his "Department has carried on exhaustive consultations and hearings, with both tribes . . ." I am perplexed, but then perhaps all of this took place before Mr. Steiger took office and we began our representation of the Navajos.

The point I wish to make is very simple—a long time has passed since the *Healing* decision but the witnesses who come before you today are not at fault for the delay in following up the decision. If there is fault it lies with the Department who supports H.R. 11128, a well-intentioned but ill-conceived piece of legislation, which will only confuse matters further at this time, as you will be hearing from the witnesses. Neither of the Tribes, nor the Department of the Interior, is sufficiently informed to offer a fair and equitable proposal at this time. And a perfect example if the lack of information that is available to the subcommittee today is this inadequate map which does not reveal in any sense the resources that are available either on the surface or underneath of the land which is proposed to be divided.

For instance, (1) the departmental report suggests "only" 3,900 Navajos out of 10,000 would be dislocated, yet the Navajo Area office of the BIA indicates not 3,900 but at least 6,327 Navajos (per an April 1970 survey); (2) the departmental report suggests that dislocated pastoral Navajos may move to the Navajo Irrigation Project, yet the same area report states that the Irrigation Project "does not replace the pastoral economy, but rather supplements it . . ." and further states that "[t]here are no other areas on the [Navajo] Reservation where residence and employment would be available."

With the apparent conflict in facts, even as between branches of the same administrative agency and the obvious conflicting testimony you are about to hear and the lack of facts—the fact I was unable to produce an expert witness from the Bureau of Indian Affairs because the Bureau of Indian Affairs barred that man, Ed Plummer, from testifying at this hearing makes it extremely difficult to advise the client, let alone recommend for or against the bill. The bill itself speaks of Paiute Indians. I know very little about them, but I thought since the bill talks about them I had better find out something.

I discover among others there are Shivwits, Koosharem, Indian Peaks, or Kanosh Banks, all of whom are terminated in 1957 or some other related group of presently unknown size and location. I suspect there is no one in this room that knows that fact. If these are the Paiutes referred to in the bill, we are concerned with what happened to their land that was put in trust in the Walker Bank and Trust Co. in Salt Lake City, and wonder why they should receive Navajo land.

I would respectfully suggest that any action on H.R. 11128 should be considered premature, although certainly the tribes should be encouraged to reconcile their differences while an accurate and detailed review of the situation is made by the agency or agencies charged with such responsibilities in coordination with tribal officials.

Mr. HALEY. Does that complete your statement?

Mr. VLASSIS. Yes, sir.

Mr. HALEY. When did you become the attorney for the tribe?

Mr. VLASSIS. In March.

Mr. HALEY. Of this year?

Mr. VLASSIS. Of 1971.

Mr. HALEY. You state on page 2:

> The benefits which have been dissipated to a great extent by the relatively swift appearance of H.R. 11128 and the various livestock disputes which have been created among the district 6 boundary line.

You are aware of the fact that H.R. 11128 was introduced by the author of the bill on October 1, 1971?

Mr. VLASSIS. I am now, sir.

Hr. HALEY. Are you also aware of the fact that under date of March 16 I wrote the chairman of the tribal council telling him of these hearings and the bills that would be presented, and again on March 29 I informed Mr. MacDonald of these hearings?

Mr. VLASSIS. Yes, sir, I am familiar with that fact, and I would like to respond to that if I may.

Mr. HALEY. You may.

Mr. VLASSIS. In that connection I would myself normally consider the notice more than adequate except for the fact that in order to decide what to do with the land besides the pretty colors on the map, it is necessary to know what the value of that land is both underneath the surface and on the top of the surface. And during the period of time from your notice until the time I addressed this group today, there was no way for me to ascertain those facts except to the extent that I employed Mr. Plummer to help me with those facts and then found he was barred from testifying.

Mr. HALEY. I ask unanimous consent that copies of these two letters be made a part of the record at this point in the proceeding.

Without objection it is so ordered.

(The letters follow:)

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., March 16, 1972.

Mr. PETER MACDONALD,
Chairman, Navajo Tribal Council,
The Navajo Nation, Window Rock, Ariz.

DEAR MR. MACDONALD: Hearings have been scheduled on H.R. 11128, to partition the Navajo-Hopi joint use area.

The hearings will be held on April 17 and 18, 1972 in Room 1324, Longworth House Office Building, beginning at 9:45 a.m.

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Please let us know the name of the tribal witnesses who wish to testify, and in accordance with our Committee Rules, fifty (50) copies of each witness' statement should be received by the Committee not later than April 12.

Sincerely yours,

JAMES A. HALEY,
Chairman, Subcommittee on Indian Affairs.

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C., March 29, 1972.

Mr. PETER MACDONALD,
Chairman, Navajo Tribal Council,
The Navajo Nation, Window Rock, Ariz.

DEAR MR. MACDONALD: On March 16, 1972, I notified you of the hearing on April 17 and 18, 1972 on the Navajo-Hopi partition bill, and asked for the names of your witnesses. I shall appreciate receiving this information as promptly as possible.

I should also like to indicate that we expect the hearings to be completed on the scheduled dates. The unusually long advance notice of the hearing was given in order that the tribal witnesses for both the Navajo and Hopi Tribes would have ample time to prepare. We shall therefore expect all relevant information to be presented at that time.

Sincerely yours,

JAMES A. HALEY,
Chairman, Subcommittee on Indian Affairs.

Mr. HALEY. The gentleman from Alaska.

Mr. BEGICH. No questions.

Mr. HALEY. Mr. Steiger.

Mr. STEIGER. I would like to question counsel.

You say in your statement that the Navajo has been willing to negotiate and you demonstrate the three options that you personally have offered, and I know Mr. MacDonald has met with Mr. Hamilton and with their lawyers and without the lawyers. I am aware of that. Even in your limited exposure do you know of any effort to negotiate prior to January 1 of this year, any formal effort officially?

Mr. VLASSIS. No; I can't say that I do.

Mr. STEIGER. Do you suspect that the possibility that these hearings were going to be held on the bill might have had something to do with the interest in negotiations?

Mr. VLASSIS. Very little.

Mr. STEIGER. What then was the motivating factor with regard to the sudden interest in negotiations?

Mr. VLASSIS. Two things—the change in the general counsels of the tribe itself.

Mr. STEIGER. That is a change by your testimony which took place in March 1971?

Mr. VLASSIS. I understand that.

Mr. STEIGER. What motivated the council between March of 1971 and March of 1972?

Mr. VLASSIS. The fact I had at least two opportunities to explain to the council as a whole what *Healing* v. *Jones* meant. Absent that knowledge they had no reason to negotiate.

Mr. STEIGER. What you are saying is that the legislation proposed here had no effect on you at all? Obviously you testified to that.

Mr. VLASSIS. It had very little.

Mr. STEIGER. Very little effect on you, and the tribe followed your lead in generating the interest in negotiation, is that correct?

Mr. VLASSIS. I don't think the tribe follows my lead. All I do is advise them with respect to legal matters, and the tribal council makes up its own mind.

Mr. STEIGER. I would tell you for the record that in my conversation with the chairman he made it very, very clear to me that he felt negotiations were the proper way to proceed, and he felt that he had made some honest atempts to negotiate and it was difficult. He also felt the presence of this bill was a hinderance to negotiations because that made the Hopis feel secure and therefore in no position to negotiate.

He also indicated very clearly he felt the presence of the bill was a definite stimulus to his negotiations. I suspect his candor was greater than yours.

Perhaps you would like to consider the fact that the meetings you referred to have all taken place, if I am correct, after it became very apparent that the chairman of the subcommittee was going to hold hearings. Is that not correct?

Mr. VLASSIS. Not exactly, Congressman Steiger. What I would like to say, and why I held up this brief, is that this is a petition for writ of certiorari to the U.S. Supreme Court in *Nakai* v. *Hamilton* which is sort of the tail on the dog of the *Healing* v. *Jones* case.

In trying to manage the tribal affairs, my job is roughly equivalent to that of the attorney general of a major State. While this problem is of paramount importance at the particular time of this day, there are a great number of things that we do that motivate our priorities.

I personally felt that my negotiations with counsel for the Hopis were not being terribly successful because of the pending bill. Had I been in his place I would have acted exactly the same way.

But my reasoning in connection with the negotiations is to attempt to figure out some way to resolve this lawsuit.

It happens because of the timing we are talking about the lawsuit and we are talking about legislation at the same time.

Mr. STEIGER. I must confess my interest in your remark about while you are managing the affairs of the Navajo and you make the equation of the attorney general. You, of course, mean the legal affairs of the Navajos?

Mr. VLASSIS. That is correct.

Mr. STEIGER. You don't envision yourself as a general tribal manager?

Mr. VLASSIS. I am not the assistant chairman.

Mr. STEIGER. I would suggest a more accurate description would come if you consult with Mrs. Wauneka. She will straighten you out on it.

I would like to return if I might to the proposition that the interest in negotiating and the appearance of this bill is just coincidental. Who uses the joint use of the land now? Which tribe occupies it?

Mr. VLASSIS. The Navajo.

Mr. STEIGER. What would happen in the event of any alteration in any conformity to *Healing* v. *Jones* with regard to the use of the land?

Mr. VLASSIS. I have already had some meetings with the vice chairman, Wilson Skeet, in connection with taking the first steps to estab-

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lish a joint committee to consider the application of Hopis for grazing in a joint use area.

Mr. STEIGER. Fine. Let's assume that is adopted. That would mean by implication at least the Hopis would be permitted to graze livestock where Navajos now graze livestock; is that correct?

Mr. VLASSIS. If you presume there is enough grass, that is correct.

Mr. STEIGER. That means the Navajo must give up something. Any negotiations involve the Navajo giving up something if surface rights are involved in the negotiations.

Mr. VLASSIS. If *Healing* v. *Jones* means anything as we both have said, yes, it does mean giving up something.

Mr. STEIGER. To be objective for a moment and stand off on a plateau, if your client was in a position where he had possession of an entity and he was to enter into negotiations for the abandonment of a certain portion of that entity, would it seem to you to be responsible legal advice to advise your client the more methodically he went about the research and study, the longer he could enjoy the resource? Would that be responsible legal advice?

Mr. VLASSIS. No; that should not be the objective.

Mr. STEIGER. That wouldn't enter into your consideration of the program, the longer delay, the longer they can use the land?

Mr. VLASSIS. My program for the Navajo Tribe is to eliminate this problem as fast as I can in any manner that is reasonably acceptable to the tribal council.

Mr. STEIGER. Why do you see it as a problem?

Mr. VLASSIS. Well, I am sitting here.

Mr. STEIGER. At so much an hour plus expenses. I am serious. Why do you see it as a problem for the Navajo people?

Mr. VLASSIS. Because it distracts them from their own economic progress.

Mr. STEIGER. How does it distract them?

Mr. VLASSIS. Because it is a continued item of discussion. One of the reasons it is a continued item of discussion, I go back to the same relatively insignificant sounding fact of the engagement of the Anglo armed range rider and the impoundment technique that has been chosen by the Hopi. That is just like goring a bull and expecting him to sleep.

Mr. STEIGER. You are concerned then about Hopi provoked incidents of violence; is that correct?

Mr. VLASSIS. Absolutely correct.

Mr. STEIGER. Are you aware of the alleged draining of the Hopi water tanks?

Mr. VLASSIS. Yes, I am. As a matter of fact there have been a number of other allegations which Mr. Boyden and I have discussed on several occasions, and my general response, if not spoken to him at least to myself, is that is an interesting allegation, and that perhaps the incident took place. But I have no more idea whether a Navajo did it or a delinquent Hopi child.

Mr. STEIGER. But you are concerned about violence at least against the Navajo people as their counsel?

Mr. VLASSIS. I am concerned about violence either way.

Mr. STEIGER. One of your concerns as stated by you is the potential violence and past disruption; is that correct?

Mr. VLASSIS. That is correct.

Mr. STEIGER. I share that concern.

You are aware that that tension has existed long before March of 1971, I am sure?

Mr. VLASSIS. Except if I may interject.

Mr. STEIGER. Certainly.

Mr. VLASSIS. Not to the extent that it is magnified in the public relations campaign. I think you will find from the testimony of the traditional Navajos that you will hear shortly that there is a substantial difference between what is read in the newspaper and what happens as between neighbors. That is not to say there have been no instances.

Mr. STEIGER. I agree there is a substantial difference between what one reads in the newspapers and what actually occurs.

With your limited exposure to the problem and to your position, do you feel that in the absence of any incentive—and by incentive I mean the existence of a bill such as this or some sort of departmental order which would involve the removal of some Navajos from the surface rights of joint use, would be a definite threat to Navajo occupancy—will you tell this committee for the record that negotiations could proceed without that kind of incentive at this time?

Mr. VLASSIS. I would expect that incentive to exacerbate the situation and make it worse. Not from the point of view of the attorney but from the point of view of the grassroots people.

Mr. STEIGER. I will try again.

Do you feel that negotiations are possible of some kind of successful fulfillment in the absence of a specific provocation by the Congress or by the department?

Mr. VLASSIS. Yes.

Mr. STEIGER. What makes you feel that way?

Mr. VLASSIS. I suppose one thing that makes me feel that is that my philosophy as an attorney is to spend the least amount of time in the courthouse that I can, and to make an amicable resolution of any situation, whether it be between Indian tribes or whether it be between individual clients.

Mr. BEGICH. The committee will take a short recess.

(A brief recess was taken.)

Mr. MELCHER. The committee will come to order.

The gentleman from Arizona.

Mr. STEIGER. I normally don't do this, that is respond to specific complaints about my behavior because that would keep me so busy I wouldn't have time for anything else.

But I would point out you indicate some kind of a discrepancy in the fact I say the BIA has done nothing to administer the lands either equitably or unfairly and Secretary Loesch's statement that the department has carried on exhaustive consultations and hearings. My statement that BIA has done nothing refers back to the period from 1962 to the present. The exhaustive consultation Mr. Loesch refers to, I am certain, are those which have taken place in the last 90 days.

So BIA as far as I am concerned, not just this BIA but all BIA's since 1962 have been derelict in their duty. Clearly the Congress has been derelict in its duty. I am surprised nobody has mentioned this but Congress typically refused to face the situation clearly. They formed a Navajo-Hopi boundary commission composed of members of both houses. I have only been a member of that body for 5 years, but

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we have never met in 5 years. I don't know if they ever met before or not.

But I would tell you it is at least a cosmetic effort to appear to be studying the problem. I would tell you nobody has been exposed to this problem with the exception of yourself and therefore you are in a rather unique position—you believe that meaningful negotiations can be entered into and completed successfully without a change in the pressures which are now upon both parties.

I simply offer that to you as from some people who have also dealt with the problem for whatever it is worth. I have no further questions.

Mr. MELCHER. Mr. Sigler, do you have questions?

Mr. SIGLER. Yes, Mr. Chairman.

Mr. Vlassis, I would like to ask you the same question I asked Mr. Schifter a moment ago. Under Healing against Jones, the two tribes have a joint and equal interest. You agree to that reading of Healing against Jones?

Mr. VLASSIS. That is correct.

Mr. SIGLER. Do you agree that is the law today?

Mr. VLASSIS. That is correct.

Mr. SIGLER. Under that law the Navajos and the Hopis have equal but undivided interests. Do the Hopis now have any use of the property that is involved.

Mr. VLASSIS. Nominal at best.

Mr. SIGLER. In order to give the Hopis the right to exercise their equal but undivided interest, one way is to enact the Steiger bill which is to divide the lands and let the Hopis have an equal share with the Navajos. Is there any other way?

Mr. VLASSIS. Of course there is the way that Mr. Schifter mentioned in connection with dividing the subsurface from the surface.

Mr. SIGLER. That is still dividing the land.

Mr. VLASSIS. There is also another way—to provide compensatory land in another area.

Mr. SIGLER. A second alternative as I understand it would be to allow the Navajos to retain their exclusive use of the area and to pay the Hopis for their joint interest.

Mr. VLASSIS. Or provide them with equal land someplace else.

Mr. SIGLER. That would be the same. Under our constitutional system you pay them the money and let them pay for land elsewhere.

Mr. VLASSIS. That is right.

Mr. SIGLER. Is it your understanding that the Navajos are unwilling to give up any grazing controls of the area?

Mr. VLASSIS. I say without the formation of this joint grazing committee I just talked about a few minutes ago, the answer to that would be yes.

Mr. SIGLER. Yes, the Navajos are insisting on retaining the full grazing privilege in the joint use areas.

Mr. VLASSIS. Unless this committee made a recommendation to the Tribal Council to the contrary. But at the present time, as you ask it, the surface is something that the Navajo want to keep.

Mr. SIGLER. May I state it this way? I have the impression from the testimony that the two realistic alternatives are to pay the Hopis for their interest, pay them in some manner either in land or in money, and allow the Navajos to retain the area; is that correct.

Mr. VLASSIS. That is correct.

Mr. SIGLER. That is one alternative and the other is to divide surface between the two Tribes. I haven't heard any other alternatives. Do you know of any?

Mr. VLASSIS. I can think of one but I don't know it would be satisfactory from the point of view of my own client. Do it the other way. You provide compensatory lands to be contiguous to the Navajo Reservation.

Mr. SIGLER. Compensatory land or money for Navajos?

Mr. VLASSIS. Right.

Mr. SIGLER. My purpose in asking these questions, Mr. Chairman, is to try to pinpoint the possible alternatives for negotiation and to find out whether there is any basis for negotiation other than a purchase arrangement where one interest is purchased by the other.

That is all I have, Mr. Chairman.

Mr. MELCHER. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. VLASSIS. If there were no mineral value to the land at all——

Mr. LUJAN. If there were no mineral value?

Mr. VLASSIS. That is correct. That is the only way I can answer the question. I would make a rough guess it was in the vicinity of $20 an acre.

Mr. LUJAN. That would be $36 million. That is the total value of the half interest?

Mr. VLASSIS. I am talking on a per acre basis. It can be computed on half acre or full acre.

Mr. LUJAN. So the full interest would be $36 million and half 18 we would say. Are the Navajos willing to pay the Hopis for that?

Mr. VLASSIS. I don't know that is the case. I am not well qualified as a real estate appraiser.

Mr. LUJAN. Let's assume we are not too far away. Are the Navajos willing to pay that? Have they offered this solution to the Hopis?

Mr. VLASSIS. I can't make that decision.

Mr. LUJAN. That is a possible solution.

Mr. VLASSIS. That is correct, but as far as the price is concerned, that is the client's decision, not mine.

Mr. LUJAN. Has any offer been made by the Navajos to buy the half interest regardless of what the price might be?

Mr. VLASSIS. None that I know of.

Mr. LUJAN. So that alternative hasn't been pursued?

Mr. VLASSIS. After being turned down on the alternatives I had in my prepared statement I made no more approaches.

Mr. LUJAN. What do you mean by a third reservation in your statement?

Mr. VLASSIS. I was considering the possibility of establishing a third reservation which would be jointly administered by a council of Navajos and Hopis.

Mr. LUJAN. The area in dispute to be a reservation by itself?

Mr. VLASSIS. That is a lawyer's idea, not a client's endorsement.

Mr. LUJAN. I gathered from your statement that you believe that there are more minerals under what is shown as the blue area than the orange area?

Mr. VLASSIS. One thing I think I can tell you for a fact without having my expert here, if you look at the green area over there where the chimney is that runs up from the three—you can't exactly call

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water a mineral, nevertheless it happens that the major part of the water in that area is in that funny looking chimney. It strikes me as a peculiar way to draw a line.

Do you see what I mean by that?

Mr. LUJAN. You say water is plentiful there?

Mr. VLASSIS. Compared to the rest of the area.

Mr. LUJAN. What about minerals? I gather that you felt there were more minerals in the blue that in the orange area. Do you have some basis for that?

Mr. VLASSIS. Only the inquiries that are normally made in the course of my work in talking about prospecting permits.

Mr. LUJAN. I am not talking of any proofs. Is it your opinion that there are more minerals in the blue than in the orange?

Mr. VLASSIS. I think it likely.

Mr. LUJAN. The bill does not call for any partition of mineral rights does it?

Mr. VLASSIS. No.

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. MELCHER. I have no questions. Thank you very much, Mr. Vlassis.

We are to hear next from Chairman Peter MacDonald and Vice Chairman Wilson Skeet, along with tribal members John Smith, Mr. Begay, and Mrs. Wauneka.

Would all five of you approach the table and prepare for your testimony.

Mr. STEIGER. Mr. Chairman, while the witnesses are assembling at the table I would like to take this opportunity to introduce formally Mr. Peter McDonald, chairman of the Navajo Nation, and a man uniquely qualified to hold that position, an engineer by training, a man who has developed part of his professional expertise in the administration of the Federal OEO program on the Navajo Reservation, and a man who clearly represents all that is spoken about in the general rhetoric as the new modern concept of the Indian leader.

I have known Peter, I have been on both sides of arguments with him, I much prefer to be with him than against him. I campaigned for him during his election, and in testimony to his political skill, he was able to survive my support and win.

I tell you I agreed with the general image of Peter MacDonald as an Indian leader not only worthy of an Indian leader but very worthy as any non-Indian leader in the country. I tell you that very sincerely, Peter, and without any notion it will persuade you, this is a good bill.

Mr. HALEY. Mr. MacDonald, you have a 20-page document here as your testimony. Why not make this a part of the record as given because we are going to run out of time here very shortly?

STATEMENT OF PETER MacDONALD, CHAIRMAN, NAVAJO TRIBAL COUNCIL, NAVAJO INDIAN TRIBE, ACCOMPANIED BY WILSON SKEET, VICE CHAIRMAN; JOHN SMITH, TRIBAL MEMBER; MR. BEGAY, TRIBAL MEMBER; AND MRS. WAUNEKA, TRIBAL MEMBER

Mr. MACDONALD. Mr. Chairman, I would prefer reading it and take some of the other witnesses' time if that is permissible.

Mr. HALEY. What about the other witnesses? Mr. MacDonald, I am merely trying to expedite this matter to get as much before the subcommittee as I possibly can. We probably will have maybe five more votes today, unfortunately, in the situation we are in. You have a perfect right if you want, to insist on your right to read the whole statement, but I prefer that it be made a part of the record and that you summarize it.

Mr. MACDONALD. I will go over it very quickly.

First of all, Mr. Chairman, Congressman Steiger, I want to thank you for the wonderful and kind words you have spoken. Second, I want to make it clear that what our attorneys have stated here as to how much we value the land and what we are willing to pay for it and what the alternatives of the Navajo Tribe may want to pursue really rested with the Navajo people. Sometimes Anglo lawyers, if they come aboard for 2 or 3 months or weeks or even years, they become Indian experts. I am certainly opposed to that kind of thing. I believe that the attorneys do not manage Indian affairs, shouldn't ever manage Indian affairs because the management of Indian affairs rests with the tribal council and the chairman and executive staff.

With this I would like to make a statement.

Mr. Chairman, members of the committee, We have severe objections to particular provisions of the bill, H.R. 11128. But before listing these objections, let me speak to a more fundamental objection.

Any legislation which arbitrarily draws a line between us and the Hopis would be objectionable for two reasons. First, it is not our way, nor is it the way of the Hopis to draw lines upon land. There is no word in the Navajo language or the Hopi language for trespass or overgraze. You draw lines upon a piece of paper and divide the earth—while the divisions we recognize are those of the land itself—of nature—the line of mountain and mesa, of river, and valley, canyon and plain.

Your lawyers talk about "alienating land," but to think that way is to be alienated from the land. And we are still a people of the land; the land is our mother, the sky our father. Both the Navajo way and the Hopi way share this in common. A line upon the land is an injury to us both.

Second, the line this bill would establish is a line imposed externally—as indeed, all the lines have been.

Our existence has been defined by lines drawn for us by others—by courts and legislatures and the executive branch which others controlled.

Much effort and much money has been spent in efforts to divide the Navajos and Hopis, one from the other. It would be good if the same amount of effort and resources had gone into helping us find ways to live together in peace and harmony.

The administration had made a commitment to a principle we believe to be sound: Indian solutions to Indian problems. We believe that is the correct principle to apply now. The history of Indians for the past two centuries has been a history of solutions—imposed by others. Those solutions have not worked; they have produced injustice and hardship. If any line has to be drawn—and I would hope that it would not be—then it is better that the Navajos and Hopis draw that line themselves. For if they do, they will find a way to live together in spite of that line—and that will be better than if the wisest man in the world drew that line for us.

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Finally, the terms of the bill are unjust, inequitable, and will cause pointless hardship and anguish to my people. All of us, I honestly believe, seek a just solution, and honorable solution to this situation. And by all of us, I want to make clear I include Congressman Sam Steiger.

But this proposal, this bill, H.R. 11128 is a monstrosity. It is not a just settlement. It is not evenhanded or equitable. It is a direct and brutal attack upon the Navajo people.

It begins by uprooting over 6,000 of our people and placing them on a forced march. Is this legal? Is this constitutional? Is this justice? I do not think so. The U.S. Government for the first time in history during a time of peace is asserting the power to tell people to pick up and move.

It has picked those people by drawing some arbitrary lines on a piece of paper. And by virtue of whether you are on one side of that line or the other, you are given instant property rights on one hand or instant punishment on the other.

I say that such action violates the equal protection clause of the U.S. Constitution. It discriminates against more than 6,000 people because they just happen to be on the wrong side of some line that never existed before.

But it is worse than merely constitutional discrimination.

What does it do? It tells the Navajo people to go—move. The U.S. Government banishes them from where the Government has not taken the property for its own use. It has not condemned the land. It is saying, get off Hopi land. The Hopis have not said that either. And the Hopis would not even have power to say that unless the person had violated a Hopi law and unless that person were given due process. The Navajo tribe has recently been told in the case of *Dodge* v. *Nakai* that it could not remove a non-Indian and expel him from its premises without giving him due process. Yet, this bill proposes to banish, exile, expel over 6,000 Navajos from the land where they now live though they have committed no crime, done no wrong, and have not even been asked to go by the Hopis.

That is not merely deprivation of property without due process and without just compensation. Because never, I say never, is provision made for payment of just compensation for Navajo ownership rights in the land, for property rights, customary use, which can be inheritable under Navajo law. But it is worse than deprivation of property. It is deprivation of liberty without due process.

It is punitive, and it is clearly aimed at Navajos. There are perhaps 10,000 Navajos in this area, and less than 20 Hopi families. So over 6,000 Navajos are singled out, like Jews in Nazi Germany, and are told to march—go. But the law is worse than that. If you are one of the few Hopi families who might be moved, you at least get assurance of land with an adequate economic base. If you are a Navajo you don't get that assurance. There is no provision of an economic base for them.

And then, to make things worse, we are told that like our cattle, we may not stray across or walk, drive, ride, or fly into Hopi territory without express written permission of the Hopi council. I did not know that people could not cross boundaries before. I know of no State that can keep people out just because they are Navajo or Hopis.

But now—simply because we are Navajos—we may not cross into Hopi territory as proposed in section 8 of your bill. I call that discrimination and if you are Hopi, you may not cross into Navajo land without written permission. That is not just discrimination on account of race. That is not merely a violation of the commerce clause. That is madness. That is a declaration of war. Because do you think for one moment once you have set this insane process in motion that any Hopi will get permission to cross over Navajo territory to get to the outside world or any Navajo will get permission to cross Hopi land. We are landlocked both way. The Hopis are landlocked and surrounded by Navajos and we cannot cross Hopi territory. And believe me, the so-called Cuban quarantine was nothing compared to what Navajos or Hopis are prepared to do because of the incitement of this act. Why do you set us against each other? Why do you want to provoke us? Why do you make it impossible to work out our differences? Yet, this is just the beginning of what this bill does.

It permits the Hopis to sue us for one-half of all the fees we have collected from traders and for any other fees for doing business in the disputed area. It does not give the Navajos a similar right—I suppose because there were no Hopi traders and no Hopi fees collected. But what does that tell you? The Hopis are being told that they can tax the Navajos for Navajo-generated economic activity. Do you think for one moment we would have permitted people to go on to that land if we were to be told later that we had to forfeit half of the tribal revenue generated from that activity? Of course not. Do you think the Navajo people will take kindly—having paid thousands upon thousands of dollars to Navajo traders to be told that the fee which a trader pays to the tribal government must now be turned over to the Hopis. That is not merely an ex post facto law. That is economic war. That is giving the Hopis open license to drain us, tax us, take our dollars. But you are not even content with that.

We are told that we must pay rent for any Navajo who stays in the Hopis part of the joint-use area once it is partitioned. That means that the Navajo Tribe will be paying rent for 10 years. Since only 10 percent of the Navajos presently on that land will have to leave during any year, that means that the Navajo Nation will be paying rent for approximately 4,500 Navajos the first year, 4,000 Navajos the second, and so on for at least 10 years. The tribal government will be paying that—you understand?

And what about the Hopis? We are told that we have only 2 years to tax them because all Hopis will be removed within 2 years. I hardly think we will get enough revenue from those Hopis to pay the bill for the Navajos. But pay we will.

And what about the Federal Government? Will it pay? If you assume that the Hopis did not enjoy an equal share in the use of that land, whose fault was that? Was it because they did not need the land being a small tribe? Was it because the Federal Government did not at least keep that land empty and unused so they could enjoy it if they ever wanted to? Should the Federal Government pay for failure to protect that use?

Do you realize that it would take all 6,000 Hopis moving off the mesa into the joint-use areas to equal the number of Navajos from whom the Navajo Tribe is told that it will have to pay back rent and back fees or else be sued in a court of law?

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Do you begin to understand why we do not believe this to be a fair and evenhanded bill? Do you begin to understand why we do not believe this to be an equitable settlement?

It is a nightmare, and this is just the beginning.

It is not bad enough that the Hopis have open season on us, or that we lose part of the irrigation project, or that we will be sued for every cent we have while our people are banished and exiled and our economy is disrupted, but apparently it is all right to relocate Navajos. But what about the Hopis who live over in Moencopi. Not only do they get the right to stay there—and this is in the 1934 area where the rights of the parties have not been before a court. They get increased land—and in order to keep them and help them stay in touch with their fellow Hopi 60 miles away, this bill carves out a corridor of Navajo land from Moencopi to the Hopi area.

No one would dream of relocating them onto land adjoining the Hopi reservation so that the Hopi would have one compact area. No channel must be created so that we can have constant irritation, constant new incidents, and constant hostility.

That does not look evenhanded to me. And you will note that Hopis living in that area will enjoy the same expansive rights to property even though the respective claims of Navajos and Hopis have never been adjudicated.

It is not enough for the Hopis to pick over our corpse, banish our people, and raid our treasury.

This bill declares open season on Navajo land to the Paiutes as well. It picks out another area of Navajo land and says to all the Paiutes, come and stake out a piece of land on the Navajo Reservation and we will give you an allotment. If there are any Paiutes living there now, they are not to be relocated. Apparently that is only for the Navajo.

That is a special treatment saved for Navajos and, at most, 50 Hopis. But for Paiutes, they are told: it is time to hunt up as many kinfolk, children, and relatives as you can find. Search all over—and each of us can grab off a piece of Navajo land and declare it our own under the allotment act. The claims of the Paiutes to this land—or any land have never been determined. If they had any claims to land that the Government ignored, it is too late for them to get money by going to the Claims Commission. But it is not too late to steal from the Navajos. That is now to become the great national pastime. Why should the Government permit itself to be sued by the Paiutes when it can authorize them to steal from the Navajos? I don't know if the Paiutes have any valid rights. No court has ever passed on that question. I do not even know how many Paiutes there were back in 1882 or 1934 or how many there are now. But I can assure you that the lawyer for the Hopi and the lawyer for the Paiutes are happy over this. Because they get 10 percent of the value of all the land that now becomes Hopi or Paiute land. And by a strange coincidence the Hopi lawyer is Mr. John Boyden—and the Paiute lawyer who is busy finding Paiutes is Boyden's son, Steven Boyden.

They have done a good job between the two of them. Because if this bill does nothing else, it creates enough legal problems to keep them at work—and to keep all the law firms in Washington, Albuquerque, and Phoenix busy filing litigation and creating new land claim fees for the next 50 years.

And this is how you propose to solve a problem. I wonder what you can do when you decide to create one. This is madness. We Navajos—and, for that matter, the Hopis—do not believe in drawing lines upon the land. No wonder lawyers speak of alienating land—they have it backward; because it is you who are alienated from the land, and it is you who will not let two peoples for whom the land is indivisible and who revere the land as their mother and the sky as their father—you will not let us alone to honor the earth and seek a way of living with each other.

If you would spend even one fraction of the time and resources and energy helping us to find ways to live together as you have in finding ways to divide us from each other, we would be able to live together once again in harmony and peace.

Instead, what you do is carve up the land into pieces; move us about like pawns on a chessboard. And then, you tell us that you are helping us by maintaining an undivided interest in the resources. What resources? I notice you do not mention water, our most precious resource. But you do mention oil and coal and other minerals. And I suspect that the reason no one will divide these rights up is because you want to make sure that we cannot use them ourselves for our own development. Instead, you set Hopi against Navajo and Navajo against Hopi, and then you give each of us a veto over any use of any mineral resources by the other. It does not take great wisdom to guess the result.

We will be unable to use them, and so, they will stay undeveloped until the Great White Father—our trustee—sees fit in his wisdom to develop them for the use of your energy-starved cities. We will be paid, of course, but we will have no say over the use of those resources, and we will end up paying those dollars over to our lawyers anyway.

This is just a partial list of what this bill proposes to do. It is evil. It is unfair. It is biased. It is wrong, wrong, wrong. It is illegal and unconstitutional. I don't understand why no one saw this before. Don't you have lawyers to read these bills? Or is it that you think that the law does not exist for the protection of Navajos? You may be right, but I would like to believe that it was blindness rather than hostility which produced this bill.

I did not know that one law could be illegal in so many ways. But this one violates the equal protection clause, the due process clause, and the commerce clause. It is an unconstitutional ex post facto law. And above all, it is a bill of attainder, imposing on the Navajo people a bill of pains and sufferings, of fines and forfeiture—a bill that attains us and banishes us and exiles us and impoverishes us—by legislative fiat with no trial and for no known crime, except the crime of being Navajo and living on the wrong side of an ill-conceived line.

And so I ask you: Will you stop drawing lines? Will you stop trying to impose solutions on us? Our existence has been defined by lines drawn for us by others.

For a time, I believed the administration had made a commitment to the principle that Indians should determine their own destiny and work out Indian solutions to Indian problems. I note that the statement of Harrison Loesch acknowledges that another kind of solution—a solution that looks to negotiation and arbitration, might be acceptable.

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But I am deeply disturbed by the unqualified and enthusiastic and virtually unqualified support which he has—and the Interior Department have given to this bill.

Over the past weeks, this bill has caused my people much anguish. We have been accused of trying to drag our feet, of trying to avoid a settlement, of trying to overwhelm the Hopis with our numbers and our strength. That is pure propaganda—myth—utterly without basis in fact.

We have sought to build for ourselves and for all Indians a better future. Now, because of this controversy, our image has been severely tarnished. Our reputation as an honorable and gentle people has been injured. And so, I welcome the opportunity to come before this committee to clear the good name of my people, the Navajo people.

Nothing will be gained by going over those charges one by one—by disapproving them, by denying them, or by making countercharges. If I thought it would serve any useful purpose, I would do so now. But in order to remove the cloud that has been cast on our honor, we must do with deeds, not with words. That is why I come today with another proposal. It is not a proposal for delay; it is a proposal for action, for immediate action.

Solutions, irrespective of their merits, should not be imposed externally. And that is why the proposal I am making today is a process-oriented solution. And I am pleased to see that the administration, in commenting upon the bill before you, has also recognized that another kind of solution—a solution that looks to arbitration would be equitable and worthy of this committee's consideration. They are honoring their commitment to the principle: Indian solutions to Indian problems.

Today, I am proposing such a solution. I am proposing legislation that looks toward the immediate beginning of a process whereby our two peoples, the Navajos and the Hopis, can work together toward a just and equitable solution—a solution that will enable us to live together in peace and harmony over the decades and centuries to come.

I would like to outline the general principles that I believe should govern this process. I would hope that if, after listening to this approach, that Congressman Steiger believes it to represent a fair and equitable approach to the problem, that he would honor this proposal by being its sponsor and introducing it on behalf, not simply of the Navajo people, but of the Hopi people, too. For I want to believe that he has no interest at heart other than a fair and equitable solution, one that can heal old scars, and bring an end to old conflicts.

The first principle—perhaps the most important one—is that the process must begin promptly, on a day certain, and must be set to end within a reasonable time, on a day certain. The only basis for extending the process should be at the mutual request and with the mutual consent of both the Navajos and the Hopis. We must bind ourselves legally to a process and a timetable so that no one can claim that the negotiants are only part of a delaying tactic intended to place the Hopis at a disadvantage. We do not seek delay; we are not interested in a battle of attrition.

Second, there must be a cooling-off period of about 90 days. It will take time to spread the word, to calm people's nerves and quiet their tempers. Equally important, it will take time to establish a mechanism

that prevents future incidents from generating new conflict. We propose that a Navajo and a Hopi ride the district 6 boundary together so as to keep cattle from wandering over the boundary line. But this will take time to set up. We may need to provide additional water and feed, possibly to keep the cattle from wandering over to drink at Hopi water holes or graze on "lush grass." We may need to drill wells or somehow secure additional water to keep cattle from crossing over the boundary. It can be done—and 12 weeks seems reasonable—to wind down from the present state of conflict—and to prepare for the round of negotiations that are to following.

Third, negotiations should begin with a factfinding period—so that we can begin to ascertain how many people and how many cattle are involved, what the needs are and what the magnitude of the problem is in devising any kind of a solution. We need to begin locating various alternative land, if that is required—and we need to get a clearer picture of the sources of conflict that have brought this to a head at this time. If they can be resolved, we need to know—but at the very least, we need to know what those sources of tension and conflict are.

Following the period of cooling off and factfinding, we should establish a timetable and a calendar for regular negotiating sessions—and also, for open hearings where we could receive suggestions, and explore alternatives. We need the ideas of others—but equally, we need our people to have a sense of the process we will be going through if we ever hope to achieve an acceptable result.

The period of negotiation, and hearings should be limited in duration—I would propose that it be no longer than 18 months. If, at the end of that time, both parties desire a bit longer, then it should be extended. But otherwise that deadline ought to set the outer limits for negotiations looking toward a voluntary settlement.

Special provision should be made to hear from those most directly affected by this decision—those who live in the areas—and from sizable factions within the tribe such as the traditional Hopis who have strong convictions and stand for much that is good and honorable. They need to have an opportunity to be heard, to speak out, and also to help, if possible in exploring alternative proposed agreements.

If agreement is reached, some procedure should be established for ratification of the agreement—by either the chapter houses or by the tribal government. There should be a special effort to hear from those who might otherwise not be heard, who feel themselves to be disenfranchised, and who will be most keenly affected by the outcome. And then, that agreement should be given the force of law—either by congressional enactment or by issuance of an Executive order.

Finally, if negotiations do not produce an agreement within that period, then we should look to a process of arbitration with each party picking a representative and with those representatives picking a third.

An arbitration tribunal will have to be established. Arbitrators must be selected by a special procedure using specific criteria. Procedural rules must be spelled out. And the method of enforcing the decision of the arbitrators will have to be made enforceable. But all of this can be done readily by adapting standard arbitration rules to meet the unique Indian context of this problem.

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I know that you are wondering—just as I am wondering—will it work? After all, nothing has happened for 10 years. Why should a miracle occur now?

Let me be perfectly candid. I cannot guarantee that the Navajo people and Hopi people will miraculously come to agreement. I have had only 1 year to try—not 10. And during that year, there has been no incentive for the Hopis to reach a negotiated agreement because their attorney had doubtless told them that there was no need to negotiate; they only had to wait for the legislation to pass.

I cannot guarantee agreement. But I cannot fail worse than this bill does. I only ask that we be given a real chance to negotiate, to bargain in good faith, to see if we cannot sort out our differences.

And I am saying that if we fail, if we do not agree within a specified period, then we will look to the process of arbitration. Whether it is a negotiated agreement or one reached by arbitration, at least we will have had a voice in shaping it. And those who arbitrate will have the benefit of our fact-finding and our suggestions.

In other words, I am not saying gamble on a miracle. I am saying, give the miracle a chance to happen. And if it does not, there is no risk. The arbitration machinery will be set in motion to reach a final resolution.

And in doing so you may have provided us with a unique opportunity to seek a new unity and a new kinship between our peoples. I want to say this is very necessary because the two tribes in the entire area outside district 6 have a joint interest in the subsurface minerals, and if the two tribes are to manage the subsurface minerals together for the best interest of the two tribes, then the two tribes must work closely together, must be trusting, must be understanding. This is the reason I am concerned that we are being divided and I believe we need to get together to accomplish these good things for both tribes.

But let me further say that I believe there is a good chance that negotiations can in fact work.

We simply have not had a chance to explore ideas, to try out new possibilities.

To me it is somewhat ironic that when the issue is fundamentally a problem of where cattle graze, that it is people who have to be relocated. Why can't the cattle be relocated and the people stay where they are? We are not overpopulated and it seems absurd to make people give up their homeland to which they are attached and the communities they have known since birth because the cattle—not the people—need more land. I think we have things turned upside down.

Let us suppose, however, that we reach another solution, either by negotiation or arbitration. Let us suppose we agree in one way or another that the land must be divided with Hopis on one side of the line and Navajos on the other. Does that mean that every Navajo or every Hopi on the wrong side of the line must be forceably removed? I hope not. We have had one long walk at gunpoint. We do not desire another long walk for even the fewest of our people.

If the land is divided, there is no reason why those living on it now cannot be given a life estate so that those presently living there can live out their days on the land they know, while those yet unborn can inherit land set aside elsewhere. At least we need not uproot them. And there is no reason why we cannot give them a choice, the choice

of a life estate on the land they now have with their children to inherit land elsewhere. You all know the story of Solomon and the child whom two women claimed as theirs. Do we have to cut the baby in half? Cannot those who desire to live out their days in peace be permitted to do so?

I cannot honestly believe that the Hopis have a desire to uproot us, swiftly and cruelly, merely to cause pain. I, for one, think that we can find ways to live together and to work out these problems. In my talks with the traditional Hopis I find that they, too, believe that more binds us together than divides us. And I do not really believe that Chairman Hamilton who is married to a Navajo finds us Navajos so distasteful that he would uproot us from any area that was determined to be Hopi land.

We need for the sake of our own humanity and our own traditions to try to seek a solution. We do not seek delay, or a postponement. We only seek a new beginning. And we seek it now.

Thank you very much.

Mr. HALEY. Mr. MacDonald, of course we don't have the wisdom of Solomon, because if I recall the Bible story, when the child was going to be split in half the real mother said, no, give it to the other because I want the child to live.

Is that your understanding of what the Bible says?

Mr. MACDONALD. Yes, the child was not split in half.

Mr. HALEY. As I say, we don't have the wisdom of that great man but we are trying to reach a solution of this problem which has been a problem for a long, long time. We have not seen much progress being made and something must be done to bring about a settlement of this serious situation. We realize what you said here, people don't want to be uprooted. I judge from your statement you would rather relocate cattle and let the people live in their present homes during their lifetime. Is that what you are saying?

Mr. MACDONALD. That is one of the solutions, to relocate cattle and if the land be divided in some way or another, give life estate to those living there while new land is being sought for those now presently unborn. That is just one of the solutions.

Mr. HALEY. It is easy to say relocate cattle but, according to the testimony before us now, the land is overgrazed so I don't know where we are going to relocate cattle.

The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

Peter, I think you obviously put together a very thoughtful statement and I am impressed with much of what you say. I will tell you that I recognize the solution offered in the bill before us I know must be offensive to the people who live in the area to be uprooted.

However, I think it is a little overdrawn to compare the movement of these people to the long march as I find it $5,000 ahead and transportation in some kind of a comfortable vehicle—I won't tell you I think the uprooting from the land is not just as painful, but the journey will be somewhat more cushiony.

I also tell you that your suggestion of legislation that would require negotiation for a period with some arbitration mechanism in it is a valuable suggestion. I certainly think it is something that the committee could consider in amendments to this particular piece of legis-

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lation. Because you see, Peter, my main concern, as I have reiterated to you many times, is that regardless of what motive you lay to it or what caused it, feeling between the involved people is becoming increasingly tense, and I think we simply must do something to demonstrate that the uncertainty is going to be ended.

So I would say your suggestion certainly contributes to that end.

I will tell you that in the process of legislation, such as you well know, the 90-day cooling off period, et cetera, is built into the mechanism in the way we operate here in this body and the other body. There is no way this bill could become law in 90 days that I know of. So I will simply tell you, whatever happens in this committee, the option for a negotiation is very much alive at this point. In fact I would anticipate at this time that I would accept some kind of language in this bill that would require negotiation that would offer the possibility of successful negotiations and mutual agreement that would eliminate some of the objectionable parts of this bill. I am simply not technician enough to tell you the language I think would be desirable.

I would say it is my view, even though an official delay or an official negotiating period, the mechanism which you describe, I am not certain would satisfy the problem. I would like to discuss it with you and I would like to deal with some of the others of your people, Wilson, and see what members of the council think about the likelihood of success. I would like to hear what the Hopis have to say about it. It is not something I say I would reject out of hand personally. Since you did ask the question in the statement, I would respond by saying I would not reject it out of hand.

I think you have come to us as a concerned leader facing the problem and the first leader to face the problem in my knowledge. So I compliment you for that.

I will tell you I think this committee is determined to find a solution and that solution is going to be of a nature to make any future conflict difficult. At least that is the feeling I get from the committee.

I think you have made a contribution and I have no further questions.

Mr. HALEY. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman.

As Mr. MacDonald was reading his proposal it occurred to me that although the Navajos may not like the bill, perhaps it was that new beginning you are talking about, because if we all did a little more thinking about it—and certainly you did—we could all come up with a specific proposal. Maybe out of things we don't like sometimes a few good things come.

Just for the record let me ask you, Pete, this is the only official recommendation of the tribe, and the ones we were discussing earlier were just off the top of the head recommendations. But this one is the official position of the Navajo tribe. Is that correct?

Mr. MACDONALD. That is right, sir.

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. HALEY. Mr. Sigler.

Mr. SIGLER. Thank you, Mr. Chairman.

Mr. MacDonald, in *Healing* v. *Jones* it of course held that the Navajos and the Hopis have an equal right to the use of this joint-use area. Are you willing to accept that decision?

Mr. MACDONALD. The Navajo Tribe have accepted that decision, that the decision was made. The merits of it our attorney has discussed here. But we are aware that the decision has been made and that the district 6 is exclusively Hopi and the area outside in the 1882 reservation is jointly held by the Navajos and the Hopis.

Mr. SIGLER. This morning I am sure you heard the testimony to the effect that at the present time the joint-use area is exclusively occupied by Navajos. Do you share that view?

Mr. MACDONALD. That is right.

Mr. SIGLER. If the Navajos are exclusively occupying the joint-use area and if you agree that the Hopis have a right to an equal use of that area, are you willing that they be given equal rights with the Navajos?

Mr. MACDONALD. That is right providing that the acquisition of that right has a process rather than just moving on in without any kind of mechanism set up by the two tribes.

Mr. SIGLER. I wasn't asking about any mechanism for acquisition, I was addressing myself to the situation as it exists today. Today the Hopis have as a legal matter a right to equal use of that area. Are you willing that they exercise that right or do you insist that the Navajos retain exclusive control of the areas?

Mr. MACDONALD. If they have a need for that use, yes.

Mr. SIGLER. I didn't say if. I am asking are you willing to permit the Hopis to use any of that joint-use area?

Mr. MACDONALD. Yes. We have passed a resolution, the Advisory Committee of the Navajo Tribal Council and the Resources Committee of the Navajo Tribal Council jointly passed a resolution indicating that if the Hopis want to move into the joint-use area, there be a system set up by which they move into the joint-use area.

Mr. SIGLER. What do you mean by a system?

Mr. MACDONALD. The system is to set up a board consisting of Hopis and Navajos and one from each BIA agent area office.

Mr. SIGLER. What would that board do?

Mr. MACDONALD. This would then determine by its evaluation where the Hopi will move and where the Navajos who are using the area will have to move without creating a conflict by further discussion.

Mr. SIGLER. Does that mean if the board is unable to agree that a Hopi may move into the area, then the Hopi could not move in?

Mr. MACDONALD. I don't know what that would mean. I was hoping the board will agree in some way.

Mr. SIGLER. At the present time the Navajos are using the area under permits that were issued a long time ago during the 1930's and the 1940's. Would you have any objection to the Secretary issuing a permit to a Hopi to use the same area just as he issued the permits to the Navajo?

Mr. MACDONALD. If the Secretary feels this is necessary, I am sure we would make room for each other some way, somehow.

Mr. SIGLER. If the Secretary decides, as Mr. Loesch testified this morning, that the joint-use area is overgrazed to the extent of somewhere near 400 percent, and if the Secretary decided that the Navajo use of that area must be reduced, say taking three out of every four Navajos out of the area, would you be willing that that be done?

Mr. MACDONALD. No, because the people are not overpopulated.

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Mr. SIGLER. Let me change my question. Would you be willing to take three out of every four cattle and sheep out of the area?

Mr. MACDONALD. If a new place is provided for them, yes.

Mr. SIGLER. That is an if. What if there is no new place?

Mr. MACDONALD. Then I throw the question back to the U.S. Government. Then why tinker with it because it is a dead end. If we are going to solve the problem that is there, then we have to be open minded about it and see what we can do rather than just ask the people to drop their means of existence and not make any provision or other overtures in the way of easing the pain that is going to be experienced by whatever action is taken on that.

Mr. SIGLER. If I understand you, the proposal to move the cattle is about the same thing as the proposal to move the people, is it not?

Mr. MACDONALD. No.

Mr. SIGLER. Could you move the cattle without moving the people?

Mr. MACDONALD. Yes.

Mr. SIGLER. Do you think it is feasible then to reduce the number of Navajo cattle that may use the joint-use area and leave the people living there?

Mr. MACDONALD. Definitely.

Mr. SIGLER. Would you be willing to—I don't mean to put this as a commitment, but do you think it is feasible to take half of the Navajo cattle out of the area and allow the Hopis to put an equal number of cattle in the area and move no people?

Mr. MACDONALD. That is possible providing Secretary Loesch gives us more grass and water in the area.

Mr. SIGLER. Mr. Loesch can't provide the grass.

Mr. MACDONALD. He ought to provide something.

Mr. SIGLER. What I am really trying to ask Mr. MacDonald is, the courts have said that the Navajos and the Hopis have equal rights in the area. The Hopis do not exercise those rights now and they have not exercised those rights for the past 10 years, longer in fact. Aside from how it is done, are you willing that the Hopis be permitted to use half of that area?

Mr. MACDONALD. If the court decision is to be implemented, that is the only course.

Mr. SIGLER. You do agree that the court decision should be implemented?

Mr. MACDONALD. If it is going to be implemented, that is the basis of this discussion here, then the only solution is to make this equitable arrangement, so that there is an accomplishment.

Mr. SIGLER. You say if the court decision is to be implemented. Are you willing to implement it?

Mr. MACDONALD. Yes, but implementing in the way the Navajo and Hopis desire to have it implemented.

Mr. SIGLER. As I understand it, the Hopis have expressed strongly one desire and that is to have half of the grazing capacity.

Mr. MACDONALD. Yes, that is the desire expressed through their attorneys and through a promise of a bill that would pass in legislation.

Mr. SIGLER. Do you think it would be equitable, fair, to give the Hopis half of the grazing capacity?

Mr. MACDONALD. If there is no disruption in the economy of the people and the relocation of the people, yes, we are willing to enjoy and share what there is in that area.

Mr. SIGLER. Do I understand correctly then that if half of the cattle and sheep belonging to the Navajos could be moved to some other part of the Navajo Reservation but the people left where they are, and the Hopi cattle then brought into the joint-use area and the Hopi people left where they are, what I am saying is move only cattle but leave the people where they are, would you agree to that?

Mr. MACDONALD. Yes, I think it is easier to move cattle than to move people.

Mr. SIGLER. Thank you.

Mr. STEIGER. Along those lines, Chairman MacDonald, in your opinion if the Tribal Council, grazing districts and the chapters not only in the joint-use area but all over the Navajo Reservation, decided that overgrazing was a problem and that stocking had to be reduced, do you honestly believe that the tribe, assuming they are in agreement—I realize it is a big assumption—do you believe that a ruling significantly reducing the number of livestock permitted by the individual Navajo cowman and sheepman could be enforced knowing the people as you do?

Mr. MACDONALD. No, I don't believe the Navajos will accept livestock reduction. We have experienced that, and I myself as chairman would not allow any livestock reduction because first of all, if you will ask the Navajo people in the area, are you overgrazing, they will say no. So the people who are with the land everyday and almost know every tree in the area, if they don't sense they are overgrazing, they are not going to reduce or make any effort to reduce.

So if someone up here is worrying about overgrazing, you cannot make the people understand down there without having some kind of an education process, without have a machine which would rove the area and say this is undergrazed or overgrazed or whether it is. It is just impossible to determine from this point or from any point that the land is overgrazed unless it is done with the people.

Mr. STEIGER. I appreciate your candor and I agree with your answer.

Mr. LUJAN. I want to clear up something, Mr. Chairman, because I thought it was a little strange. Mr. Sigler asked, as I understand the question, if you had to cut half the Navajo animals on the joint-use area, if you were willing to accomplish that by moving them onto some other Navajo land. You could not support them in some other Navajo land. The answer would probably be to find some other BLM land or something somewhere else to replace the grazing capacity for those animals. Is that not right?

Mr. MACDONALD. That is right, sir. Perhaps I had better make the record clear that the Navajos in the 1882 area I am positive are willing to take all of their cattle in that area if a new piece of land where grazing is much better is found, and they are willing to put their cattle in that area, and that would reduce the number of livestock in the area tremendously.

If you are talking about taking Navajo cattle out of the joint-use area and putting them someplace else on Navajo land, then I would say the way the present use area is distributed it would be very difficult to move in on someone else's use land.

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Mr. LUJAN. I wanted to clear up that point, that we are not taking about moving from joint-use land area into Navajo area.

Mr. STEIGER. I want to congratulate the chairman of the Tribal Council on the employment of Mr. Pipestem. Not only is he mighty in bulk but mighty in brain. I would much rather to have him with me than against me.

Mr. HALEY. Mr. Sigler.

Mr. SIGLER. Mr. MacDonald, on page 12 of your prepared statement at the top you say, "This bill violates the equal protection clause, the due process clause, and the commerce clause. It is an unconstitutional ex post facto law." Those are legal conclusions and as I understand it you are not a lawyer. May I ask who gave you that advice?

Mr. MACDONALD. I took that as a jailhouse lawyer.

Mr. SIGLER. You mean it is your own belief?

Mr. MACDONALD. It is my own belief that this violates protecting both tribes equally or parties equally and that we are not given due process as spelled out in various courts and what have you to move us out.

Mr. SIGLER. You have not been advised of that conclusion by any lawyer?

Mr. MACDONALD. No.

Mr. SIGLER. Thank you, Mr. Chairman.

Mr. MACDONALD. In fact, I didn't want my lawyers to see my speech.

Mr. HALEY. I know we cannot finish this bill today by any means and we didn't expect to. So I am going to recess this committee until 9:45 tomorrow. I hope that everyone that is interested will be here and I am sorry the time has run out.

The committee stands in recess until 9:45 tomorrow.

(Whereupon, at 5:30 p.m. the committee recessed, to reconvene at 9:45 a.m., Tuesday, April 18, 1972.)

PARTITION OF RIGHTS BETWEEN HOPI AND NAVAJO TRIBES

TUESDAY, APRIL 18, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS OF
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in Room 1324, Longworth House Office Building, Honorable James A. Haley (chairman of the subcommittee) presiding.

Mr. HALEY. The committee will be in order.

Mr. Sigler, have you finished with Mr. MacDonald?

Mr. SIGLER. Yes, I have finished my questions, Mr. Chairman.

Mr. HALEY. Mr. MacDonald, I would like to ask you a question or two. In your statement I see no place where you are willing, or the Navajos are willing, to do anything to bring about a better situation as far as the grazing of this land is concerned.

Now, I think the testimony is pretty clear that the land has and is being overgrazed. You have also stated that if these cattle are taken away, somebody should pay for them. Who do you expect to pay, when the Navajos brought about this kind of a situation?

Mr. MACDONALD. Mr. Chairman, I would expect that the U.S. Government Interior would pay for acquiring additional land for gazing purposes.

Mr. HALEY. Why do you think the general taxpayers of the United States ought to be put to the expense of buying more land, when you've overgrazed land and overstocked land that you have?

Mr. MACDONALD. First of all, they are our trustee. They are managing our affairs for these many years, and as such. I feel that they have just as much responsibility as we have.

Mr. HALEY. Why do you think that the Federal Government has to assume this responsibility—no, the general taxpayers of this country?

Do you take the position that the Federal Government put these Navajos on this reservation?

Mr. MACDONALD. Yes, they did, by virtue of various acts and various Executive orders and treaties the Navajos were placed on that reservation.

Mr. HALEY. I find nothing in your testimony so far to indicate that the Federal Government put these Navajos on this reservation. It's true they said yes, you can come; but I don't think that the Federal Government moved a single, solitary Navajo on that reservation.

They came there of their own free will. Now, you've overstocked the

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grazing as I see it, and that's what the testimony reveals; yet you think now the Federal Government should go ahead and put out several million dollars to do something that your tribe is responsible for, and I can't see it.

Mr. MacDonald. I'm sorry, sir; but the way I see it, it's the other way around. Because even though the Federal Government did not put the Navajos there—of course, the Navajos were there before the Federal Government even existed. And the thing that happened is that the Federal Government, as it became part of the States, put a line around the Navajos so that the Navajos would not move out to put their livestock elsewhere.

So as a consequence we were then confined to that area. As a result, we have to live, we have to eat, we have to feed our children; and the only way these people can do it with the present economy that is there is to raise sheep and cattle.

Mr. Haley. Now, Mr. MacDonald, you and your tribe are well aware of the fact that the courts of the United States—the highest tribunal—have ruled that the Hopis had an equal and undivided half interest in this grazing. You were aware of that, weren't you?

Mr. MacDonald. Yes. And it's no fault of ours and no fault of the Hopis and the Navajos that that decision was made.

Mr. Haley. Do you have any further questions?

Mr. Steiger. No, sir.

Mr. Haley. Mr. MacDonald, I think my reputation and my interest in Indians are well known throughout every Indian reservation in the United States. As a matter of fact, I'm considered one of the most conservative of all the Democrats in Congress. I would open the Treasury doors to Indians, but I take the position that we do owe them something, and I would rather be a little more generous than too tight.

But this thing disturbs me because you can't forever do what you should know is wrong and then expect somebody to come along and pick up the tab. I am getting a little tired of being accused of opening the door for Indians anytime they come in here.

Mr. Steiger. Would the chairman yield on that point?

Mr. Chairman, I think that there is no way that you can know or the rest of the committee can know. I think the record ought to reflect that from personal knowledge I know the great majority of the Navajo people, including the leadership of the previous administration, was told by their prior counsel that in effect the Navajo had won in *Healing* versus *Jones*.

So for a long time—how long, I don't know—but for a long time, the fault of their failure to comply with *Healing* versus *Jones* was, in my estimation, a fault in which they absolutely got bad information. I don't know if it was what they wanted to hear or what the motivation was—I can't tell you, Mr. Chairman.

It wasn't a case of just blatantly disregarding the verdict and the findings. This was a matter of just blatant misinformation, and if the chairman would like, I think I can get some correspondence in which a prior counsel actually indicated in writing over his signature that this was a victory for the Navajo.

I've seen some correspondence on that. I would just tell that to the chairman, so he doesn't feel that this was a blatant situation.

Mr. Haley. I agree that what the gentleman says is true, but I also lay a great deal of blame on the Department for not enforcing the law that they knew of; and they've allowed this thing to drift on simply because they didn't want to bite the bullet. They should have been down there enforcing the decree of the court.

Mr. Steiger. The chairman is absolutely right. There is no excuse in view of the action of the Department.

Mr. Sigler. Let me ask one or two questions to see if Mr. MacDonald shares my view. I don't want to oversimplify it, but it seems to me the problem boils down to this situation: The Navajos are in possession of the joint-use area and have been for a long time. The Hopis are entitled to a one-half interest in the land, and the Hopis are not in possession of any of it. They are not getting their one-half interest.

It seems to me that there are only two realistic alternatives. One is: the Navajos are there, they can be left there, and the Hopis can be paid off for their share in the land. That's one possibility. The Hopis, I understand, don't like that alternative.

The other alternative is to let the Hopis have half of the land as this bill would do, that is partition the land and allow the Hopis to have half of it and require the Navajos to move off of that half. As I understand it, the Navajos do not like that alternative.

As I see it, that's about where we are. The Navajos would like to retain possession of all of the land, and perhaps pay or have somebody pay the Hopis for their interest. The Hopis would like to have the Navajos move off of half the land and let the Hopis have their half.

Would you share that analysis?

Mr. MacDonald. Yes, sir.

Mr. Sigler. Thank you, Mr. Chairman.

Mr. Haley. If there are no further questions, we will move on to the next witness. Vice Chairman Wilson Skeet; is that right?

Mr. Skeet. Yes, sir.

Mr. Haley. You have a written statement there?

Mr. Skeet. Yes, I have a written statement.

Mr. Haley. You may proceed. You're the vice chairman of the Navajo Council; is that correct?

Mr. Skeet. Yes, sir.

Mr. Haley. All right, you may proceed.

STATEMENT OF WILSON C. SKEET, VICE CHAIRMAN, NAVAJO TRIBE

Mr. Skeet. Mr. Chairman and members of the committee, I am Wilson Skeet, vice chairman of the Navajo Tribal Conference. Before becoming vice chairman, I served also, 4 years as a Navajo Tribal Council, serving with the Resources Committee from 1967 to 1971. And then prior to my being a councilman, I served since 1958, as a member of Land Board District 16 Committee. I live south of the city of Gallup and have a ranching business there.

You have heard and will hear from other witnesses about the serious problems that this bill will cause if thousands of people are moved from their land, the land which they and their ancestors have occupied and used for many, many years.

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What I would like to speak to you about is the solution which H.R. 11128 proposes in section 10, namely that the Navajos who would be displaced from their homeland in Arizona would be moved to Indian irrigation project in New Mexico.

In my official jobs for the last 8 years I have been acutely involved in work on the Navajo Indian irrigation project. I know it well. I am trying to now work on solutions to the economic problems of our tribe which can be found within the framework of the irrigation project.

As a matter of fact, the chairman of the tribe has assigned to me specific responsibility for heading up, on behalf of the tribe, the job of resource development. In that context, the Navajo Indian irrigation project is one of my major responsibilities.

The Navajo irrigation project, as you may know, is designed to put a total of 110,630 acres under irrigation. The job is expected to be totally developed by about 1985. The first portion of the land, 10,000 acres, is expected to become available in 1975.

From then on, over a period of 10 years, the project is expected to grow by about 10,000 acres a year. The project is a tribal enterprise exclusively and will operate in a similar manner to a complete agribusiness. The enterprise will be operated in accordance with a flexible plan which will involve individual Indians in production only, not ownership of the land.

When the project is completed, we expect to grow within that area a feed crop, vegetable, melons, and a variety of other crops. We also expect to operate a livestock feedlot with all related processing plants there. All in all we estimate that by the time the project is completed, we shall have jobs there for approximately 8,000 people.

I want this committee to know that we have been planning ahead on this point. I know my people. The other officials who work with me know our people, too. We know that it is very important for the success of the Navajo Indian irrigation project that we select the right kind of people to work there and that we make sure that they are properly prepared and trained.

If our project is to be an economic success and if it is going to meet the needs of the people who will be working there, we will, first of all, need to bring in people who are prepared to dedicate their life to being farmers. It takes a certain framework of mind to want to be a farmer.

It also takes certain abilities and skills to be able to do all the work that has to be done if a farmer is to be a successful farmer. There are many young members in our tribe who will be eager and anxious to qualify for jobs in the irrigation project. I know that if we train them properly, they will succeed.

But, as I say it takes a certain type of people to go into farming or into the other jobs that the project will provide. It takes a person who is young, energetic, and who has made an adjustment to the modern way of life. But if you go out to the 1882 Executive order reservation, if you think of the kind of people whom this bill would remove from their homes and who would have to resettle, let me tell you that they just won't fit into the work that has to be done in the irrigation project.

The people who live on the Executive order reservation are people who are living the traditional Navajo life. They are livestock herders. That is what they have done all their life and that is the only thing they know how to do.

Many of them still do not speak the English language. Few, if any, have had the opportunity to get an education. Those that had a chance to receive an education, those who are interested in a different way of life have already left.

They are the ones who might now be in Window Rock or in other places like that on the reservation, looking for other jobs. The ones that stayed behind are the ones that just do not fit into a modern way of life or modern economy. If you force them into it, by taking them off their land, you will ruin them.

Let me, therefore, say to you that I understand the purpose of section 10 of H.R. 11128. I understood the good intentions of the people who drafted that section. But as one who has responsibility for making the Navajo Indian irrigation project work, let me tell you that section 10 of H.R. 11128, just won't work.

If the millions of dollars which are being invested in the project are going to serve a useful purpose, we need to employ people in the project who will make the project succeed. As I have told you, there are many young Navajos who are eager to make the irrigation project a great success, both for the tribe and for themselves.

But you cannot expect the livestock herders from the Executive order reservation, the families who are still in their old traditional ways, to fit into this work. If we were to try to do it, as section 10 suggests, it would be a disaster for the individuals involved as well as the project.

Mr. Chairman, I would like to also state that the Navajo Tribe has been in the land acquisition program to acquire all the irrigatable land as well as the nonirrigatable land in between these project areas.

As of today, the Navajos have acquired three ranches, and the Navajo Tribes are cooperating and working very good with the ranchers in that area to acquire these lands.

Mr. HALEY. The chairman of the subcommittee is well aware of that fact. You might be surprised. I've been on the reservation several times, and I know about the situation.

Thank you very much. Are there any question?

The next witness then is John Smith. Mr. Sigler, do you have any questions?

Mr. SIGLER. No, sir.

Mr. HALEY. Mr. Smith, do you have a written statement?

Mr. SMITH. Sir, I do not have a written statement.

Mr. HALEY. You do not have a written statement?

Mr. SIGLER. Mr. Chairman, a written statement was submitted on behalf of Mr. Smith, but as I understand it, he did not prepare the statement and does not want to give that statement. He wishes to give one of his own.

Mr. HALEY. Well, let me be fair here. The Navajos have spent practically all of yesterday morning or a good bit of yesterday morning and yesterday afternoon. Now, we have several witnesses here, and I think that the Hopis have a perfect right to have some time, too. So I'm going to limit these witnesses appearing on behalf of the Navajo

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Tribe—I'm going to allow them 5 minutes, and in the 5 minutes—Mr. Sigler, you have a good watch. Would you tell me when that 5 minutes is up?

So on that basis, Mr. Smith, you may proceed.

STATEMENT OF JOHN SMITH, NAVAJO, THROUGH AN INTERPRETER

Mr. SMITH. Mr. Chairman, members of the committee. I had no idea of appearing here as we are doing this morning or today. I never had wished that I would be far from home here to come before a body such as this.

I had voted in the national elections for Mr. Sam Steiger, and I expect much from this gentleman and had assumed that he would honor my position that I support his political handling of the welfare of my people. I assume that we had befriended one another, and I expected much from him.

But, to my surprise, he has suddenly brought about something that is very upsetting to me. I just cannot understand why he would take such a drastic move, that is disturbing and creating confusion such that I am just appalled at what he appears to be doing.

I had respected his political party and felt that his party would be very helpful in handling matters for the welfare of myself as well as the other people. But to my dismay, what he has done caused me to travel from my home. have to bear heavy expenses, expenses that I have never known before.

It meant getting airplane flights, arriving in the early hours of the morning in a strange place. So I am very much concerned about what Mr. Sam Steiger has caused in a personal way.

Now, getting back to the issue at hand, I certainly wish to bring forth the fact that we have lived the lands which we are talking about and have used it for the welfare of everyone—Navajos and Hopis.

It was a peaceful area. People have lived together in harmony. There was no thought of any differences as to ownership of land or anything of that sort.

People have befriended one another. They've traded one another. We visit one another. One another into our homes. We welcome these visitors, and we're received the same way.

Mr. SIGLER. Mr. Chairman, the time has expired.

Mr. SMITH. We wish to remain to have that same relationship.

Mr. HALEY. Gentlemen, the time has expired.

Now, if you are the interpreter for Mr. Smith, will you inform him that the record will stay open for him to submit a written statement, if he cares to, in addition to the remarks that you've made.

The next witness is Mr. Begay. Mr. Begay, you've heard the time limit that I've placed on the other witness. It's 5 minutes.

You have a written statement here that I will include in the record as if given orally from you, and you may comment if you care to.

Without objection, the document is submitted and will be made a part of the record at this point.

(The information referred to follows:)

STATEMENT OF BAHOZONIE BEGAY, NAVAJO[1]

I am engaged in operating with cattle and sheep. I have been at my present location for the last 42 years; before that, of course, I was within the District 6 area when asked to move. I don't exactly know the number of years ago that was.

My area is the Coal Mine Chapter area. Presently, there are about 103 families; if you could count per head, about 600 people. I am not presently a Chapter officer. I have previously served as a Navajo Councilman for a four-year period. I later served as Chapter President up to the last elections.

I am a Medicine Man, along with some of the major Medicine Men in the Tribe. In the beliefs of a Medicine Man, anything that is done by a Medicine Man or anyone in that field has only just one purpose, and that is never to harm anything or anyone. The old idea is in the belief of the good that you can cause; that we wish and seek peace, beauty, the land of plenty. So, never would I have a purpose to think evil against the people or anyone. So, you shouldn't upset the manner of things in any way.

Any time that there is a thing like that happen or if anyone suspects there is something evil going to happen to him, usually anyone sensing that, they would approach us to do what we can to seek help spiritually. Then it is us who do everything in our power to seek assistance to not allow this to happen.

I have friends in District 6 because I have lived within that District. I was born there. I often revisit the place where I was born. I have lived for 77 years and understand that my birthdate is Christmas Eve. (Within District 6, less than a mile). Ever since I can remember, I have found that we were living with the Hopi members, mixed there, lived together and by that way, got to know many members. Most of them have now died of old age.

I am very much involved in the problems caused by straying cattle. Many others have the same problem. In a situation where Valley leads into District 6. When Navajo livestock stray, they are impounded by Hopis. I have lost livestock; several lost completely. That was the reason we thought the way to stop or resolve the problem was to build a fence. Half the construction was burned. This was done by the Hopi members, along with two white men. They were seen doing it on T.V. I would have difficulty in pronouncing the names of the Hopis whom I know. They are white men's names. The two who were responsible for this, I am aware of them. They have cattle there. They graze their cattle into this area. That is where our problem is. There is one Hopi I know very well. He doesn't mind my cattle coming into his area. I don't mind his stock coming into my area.

There is this court order which we all seem to recognize and say that we should do something about. Meanwhile, in continuing with this Steiger bill, our position is that we are opposed to it. I have heard from many leaders of the Hopi Tribe who have already voiced their position regarding the Steiger bill. They are opposed to it. Opposed to the Hopi Chairman. The matter should be left with the Hopi and the Navajo to work out solutions. I am trying very hard; trying to think how we can go ahead with that idea. There is a way to get at this by joining together and going over the problems together. That is what I am trying to think now.

It was a complete hardship suffered by everyone when the Navajos were moved from District 6 in 1943. There was no transportation but wagons. We had a house from which we had to move. We lost the farm and the orchards and vineyards. We were driven off from there. Overpowering type of work was created for us which we had to do. We lost the farm completely. It was a move of possibly two miles, and we resettled there and have been there since. Most of the people are livestock owners and a few have farms.

They say you are going to move some people. Then where do you move them? Where is the place for them? Even if it means just by myself, I can't see my moving again anywhere. Therefore, I would think: Look what this involves. The improvements I have made, the home and farm, the children. It is uprooting them; but to do so, my question is where is there to go. What else is there but farming and herding? The people face starvation. It is like condemning a person altogether. It is the end of your existence.

[1] Translated verbatim from Navajo language.

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STATEMENT OF BAHOZONIE BEGAY, NAVAJO

Mr. BEGAY. Mr. Chairman, thank you very much for this opportunity and I briefly would like to say that I have now finally recognized Mr. Sam Steiger. This is the first time I've seen him.

But I understand that he is sponsoring a bill which is all together bad news to the Navajo people. The entire area was completely alarmed about what was happening when they heard about it.

I, too, am very much concerned and upset about this idea of his. I am not serving as an official statesman in any form for the Navajo tribe, such as being a council member or a chapter officer or a grazing committee member.

What I am is a Navajo medicine man, serving for the welfare of my people and for others as well. And I, too, am very much concerned about the matter which has been brought about through this introduction of an issue caused by the gentleman that I named.

What I am here for is to seek and to ask that the whole matter be restored where we could again continue to live in harmony with our neighbors. In other words, the Hopis and the Navajos have lived peaceably without knowledge of things like this before.

That is all I seek, and certainly I never had any idea of traveling this far to be talking about matters such as this; but it is a very drastic move, such that I feel that I must come here and ask for my people to plead with anyone who is involved or causing this to happen to resolve this by removing this idea that was introduced.

Certainly, I don't wish to have any harm come to Hopi members as well as Navajo members. This is not my idea of living with my fellow men. We are all human beings and as such, we wish to live in peace and in harmony as we have for a long while.

And this is the reason why I am very much concerned, and I am asking the gentleman who has this bill to withdraw it. This is what I am seeking.

Mr. SIGLER. Mr. Chairman, the time has expired.

Mr. HALEY. Thank the gentleman for his testimony and his written statement, which I understand was translated verbatim from the Navajo language.

Next witness is Mrs. Annie Wauneka.

STATEMENT OF MRS. ANNIE DODGE WAUNEKA, NAVAJO

Mrs. WAUNEKA. Thank you, Mr. Chairman and Mr. Steiger and the gentleman from Alaska. I am sorry we are allowed only 5 minutes.

I have a written statement here that contains about six pages. Would that take 5 minutes?

Mr. STEIGER. Mr. Chairman, I would ask unanimous consent that Mrs. Wauneka be given an additional 5 minutes plus whatever time necessary to question her. I consider her to be one of the most knowledgeable and valuable members of the Navajo tribe.

Mr. HALEY. Without objection, so ordered.

Mrs. WAUNEKA. Mr. Chairman and members of the subcommittee, my name is Annie Dodge Wauneka. I am a member of the Navajo Tribal Council; but in this statement I am giving you my own personal views of what ought to be done about the Navajo-Hopi dispute.

In the first place, this isn't an Indian dispute; it's a white man's dispute. We Navajos and Hopis, like all neighbors, had our quarrels, but for the most part we lived side by side in peace for 500 years until white administrators, lawyers, and Congressmen persuaded some of us that the situation couldn't be tolerated for another 5 minutes.

The jurisdictional act that authorized the Navajo-Hopi lawsuit of 1962 was a mistake. It was lobbied through by white lawyers, and has only benefited white lawyers. The Hopis won and we Navajos lost; but the average Hopi, like the average Navajo, doesn't have one bit better life now than before the lawsuit.

The bill, H.R. 11128, is even worse than the jurisdictional act. It would provide for the physical removement of 8,000 to 10,000 people from their homes—about the same number of Navajos as were marched to Fort Sumner in 1864 under the Army's bayonets.

There has been nothing like this bill since the Communists overran eastern Europe. A whole area—in the United States of America—is to be cleared of its population in order to be resettled by people of another language. This bill is unbelievable. The Indian Removal Act of 1972.

It's a divide and conquer bill. Of course, it is also a white lawyer's bill. The Indians are to be driven out into the desert, while the lawyers are guaranteed job security by provisions in sections 15 and 16 for at least three monster lawsuits. I say, let us Indians work this problem out ourselves, without lawyers or legislation.

This bill is a perfect example of a white man's solution to the Indian problem. You wonder why the problem never gets solved. It's because every white man is an expert on Indian problems, but nobody listens to the Indians. Now, please tear up this stupid bill and listen to an Indian.

We Indians are poor because we don't have enough land. You white people took too much from us. You took so much you have to pay farmers not to grow crops on it. Why not give some of it back to us?

Why pit Navajos and Hopis against each other to fight over their respective shares of poverty? Why not share a small part of your excessive land with us?

I know it is said that letting Indians have adequate land retards their assimilation. We should be forced into the melting pot, and so forth. You can swallow this rubbish only if you sincerely believe it is better to have an Indian on welfare in a city slum than out in the country making his own living.

We Indians know how to make our living off the land. Don't waste money trying to force us to do something else we don't want when we already have this skill.

Take relocation: that program removed 92,645 Indians from the reservations to the ghettos—some of them several times—at a cost of $94,087,773. Over 40 cents of every dollar went for overhead.

During the Depression, the Government tried a white man's solution to our Navajo overgrazing. It took our livestock. In Navajo Canyon, in 1934, Federal agents shot and left to rot 3,500 female goats, including the milk goats we used to feed our babies. This was only a small portion of the animals the Government seized from us. Today the maximum any Navajo is allowed to run on the reservation is 300 sheep or 60 cattle and horses. And very few of us own that many.

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It was after stock reduction that the Government turned to Indian removal. First there was relocation, and now it's the Steiger bill.

You have never tried the real solution: give us enough land.

The Federal Government still owns 159,138,835 acres of vacant public domain outside Alaska. It has granted the exclusive grazing privileges on this public property to less than 23,132 livestock operators.

In contrast, the 436,500 reservation Indians are squeezed onto 51,237,694 acres of Indian-owned and adjacent Federal land.

The 23,132 figure includes all permittees in Taylor grazing districts, which embraces an additional 124,769,419 acres of reserved Federal land and non-Federal land besides the vacant public domain. It includes only 500 Indians and Mexican-Americans, the "free use permittees," who own less than 100 sheep or 20 cows each. This leaves 22,632 white stockmen. If each one's family consists of five persons, then a mere 113,160 white people are making their living on 283,903,254 acres of land—all of it seized from us Indians in the Indian wars. Each white family member draws on 2,455 acres for his support; each Indian on a mere 117 acres. Is it any wonder that Indians are always on the brink of starvation? We have to earn our living on 117 acres of land in country where it takes 10 acres to feed one sheep.

If anyone should give up raising livestock and relocate in the cities it is the non-Indian permittees on the lands the Government stole from us. Which is just what I propose. These people are white, well-educated, and affluent. They will have no serious readjustment problem. If they do, pay them the $3,000 per family the Steiger bill would award to displaced Navajos. Or extend BLA relocation services to them. But give us back our land.

Return to us Navajos our original country between the four sacred mountains.

After our ancestral lands are returned, the lands outside their borders should be granted to the Hopis. The Navajos are the people who need the land most urgently, for there are 130,000 of us and only 6,500 Hopis.

The Indian Claims Commission has already said we owned much of the land among the sacred mountains. Let the proceedings before that Commission stop where they are. We don't want the value of the area as of 1868, when your ancestors stole it from us, paid, like all Indian Claims Commission awards, without interest, dollar for dollar in devaluated, inflated 1972 paper money. We want justice, gentlemen.

We want our land back.

Mr. HALEY. Thank you very much, young lady.

The gentleman from Montana.

Mr. MELCHER. No questions, Mr. Chairman.

Mr. HALEY. The gentleman from Arizona?

Mr. STEIGER. Just one question, Mrs. Wauneka.

Were you aware of the significance of the *Healing* versus *Jones* decision—the legal significance of that decision in 1963?

Mrs. WAUNEKA. Yes.

Mr. STEIGER. Were you on the council then?

Mrs. WAUNEKA. Yes.

Mr. STEIGER. Did the council ever discuss any action to be taken or was it just—what was the feeling of the council at that time?

Mr. WAUNEKA. They never discussed anything.

Mr. STEIGER. It was never discussed.

Did any BIA people ever indicate that it ought to be discussed?

Mrs. WAUNEKA. No.

Mr. STEIGER. Did the Hopis every try and discuss it with the council?

Mrs. WAUNEKA. No.

Mr. Steiger, may I say one more thing and then I will be through.

That—beautiful colors over there, that blue area there and the green area, according to my understanding is done by the Bureau of Indian Affairs but the Navajos were never contacted, were never advised that the BIA was withdrawing that land for the Hopis and part of it for the Navajos. The yellow is for the Navajos.

That little yellow under 5 as you see—I understand that's nothing but sand dunes and then this other area is about the same and George Falassas pointed out that the little chimney is the only available water there is for that total of area there.

And the Navajos were never advised, were never even asked to consider where the lands were being drawn and that's ridiculous. Why weren't we advised?

Maybe we would change a line there. We were never advised to my surprise. Thank you.

Mr. STEIGER. Mrs. Wauneka, let me tell you this. I personally discussed this with your tribal leaders in August of last year and again in October. I told them what I was doing and I asked them to introduce a bill that they felt would be fair to the Navajos. I told them I would sponsor such a bill and I never got any response. I tell you this because this isn't secondhand. This is exactly what happened.

I felt that the best way to arrive at a settlement was if we could have two bills and result in compromise. I hope that's what will happen here. It's not fair to say the tribe was not aware of what was happening and didn't have the opportunity to provide the information. I can tell you the information was not provided.

That is true.

Thank you, Mr. Chairman.

Mr. HALEY. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman. I do have some questions for Mrs. Wauneka, because I think she has a real feel for what the council would be willing to approve. Since adjourning yesterday, I've gone over the bill pretty carefully, after listening to some of the arguments and I had some questions as to what things might be acceptable to the Navajo Tribal Council.

I'm going to ask the same question when the Hopis testify so if you would be on the lookout and do some thinking about the questions before it's the Hopis' turn.

Section 5 of the bill deals with what is shown on the map as a green area. That area has not been the subject of the *Healing* versus *Jones* decision. In your opinion, Mrs. Wauneka, would it be the feeling of the Navajo Tribe that that particular area, since it has not been the subject of any court litigation, be set aside and not considered in this bill?

Mrs. WAUNEKA. Correct.

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Mr. LUJAN. The Navajos would want that part of it.

Mrs. WAUNEKA. Yes, we want that part stricken.

Mr. LUJAN. Yesterday, Mrs. Wauneka, during testimony, I think it was Mr. MacDonald who brought up the point that there is no Paiute problem in these lands.

Do you feel the same way and would the Navajo Tribal Council, in your opinion, be in favor of not dealing with the Paiute question in this bill?

Mrs. WAUNEKA. No; I would say no. I understand they had in 1934 area, they have been litigated into a Navajo, so to speak.

Mr. LUJAN. Now, they're all Navajos?

Mrs. WAUNEKA. That's what I understand and that also should be deleted from the bill.

Mr. LUJAN. Would you agree with Mr. MacDonald's answer yesterday that before any moving of livestock, that the land should be made available where these animals could be grazed?

Mrs. WAUNEKA. That is the reason why I say, give us back our land.

Mr. LUJAN. How do you feel about another proposition that was made where you would not displace anyone, either Navajos nor Hopis?

Specifically, because I'm sure you would say don't move the Navajos—would the Navajo Tribal Council have any objections to leaving Hopis on Navajo land and not move either one—anybody that's there not move them at all?

Mrs. WAUNEKA. I would say no objection because we've been there all this time.

Mr. LUJAN. The section 15, which provides for payment of rent, would you comment on that? I don't know how else to put the question.

Mrs. WAUNEKA. What does the bill say?

Mr. LUJAN. The bill provides that rent be paid by one tribe to the other. My thought is that it would continue to breed difficulties between the two tribes. Perhaps I might ask you if you agree with that: that it would continue to breed difficulties and that perhaps we do away with any rental arrangement from one tribe to the other?

Mrs. WAUNEKA. I don't think it's right. I think it should be done away with.

Mr. LUJAN. And there's a large amount of money, whatever it may come to, probably $18,000—$18 million, excuse me, for relocation costs as a result of this step. If we were able to solve the problem of relocation for both the Hopis and the Navajos, that is, if we would agree that no one had to move and that is a big "if," but if we were able to agree on that, would you favor using that money saved in relocation to provide other lands for the Navajos to graze their cattle?

Mrs. WAUNEKA. That's what I'm saying. Give us our land back.

Mr. LUJAN. The thing that I was trying to point out is that there was money in the bill, if we're able to solve the relocation problems, there would be money to acquire the lands.

Thank you, Mr. Chairman.

Mr. HALEY. Mr. Sigler?

Mr. SIGLER. No questions, Mr. Chairman.

Mr. HALEY. Thank you very much, young lady.

Mrs. WAUNEKA. Thank you very much.

Mr. HALEY. I have several more statements here from Navajos and I ask that they be made a part of the record. Without objection, so ordered.

(The statements and a resolution of the Navajo Tribal Council follow:)

STATEMENT OF LAWRENCE ISAAC, SR.

My name is Lawrence Isaac. I am 62 years of age. I live at Cow Springs Coal Mine Junction in the northern part of the joint-use area. I have been engaged in the livestock and sheep-raising business for as long as I can remember. All of our family depends solely on the same livelihood. I have six children and twenty-two grandchildren.

Our family will not be moved under H.R. 11128 from the area in which we now live. However, we will be seriously affected by that bill. Our grazing permit, upon which the whole family depends, covers lands which will be given to the Hopis by the bill. If this occurs, we would have no lands on which to graze our sheep and cattle. We could not use the lands which other Navajos have permits to graze because these lands are already used to their capacity. Furthermore, many of the people who are moved will want to share these lands also.

I also come to speak for the members of the Shonto Chapter of the Navajo Indian Tribe. About 400 members of that Chapter will be moved by H.R. 11128 from the land on which they have lived for decades. They have told me to tell this Subcommittee that they have always gotten along with the Hopis and treated them as brothers and that they don't believe that the Hopis want the Navajos moved off the land. They also told me to tell you that the United States should not do to them what H.R. 11128 would do if only for the fact that thousands of Navajos have died in serving in the United States armed forces. Even now, many of their sons are serving abroad in the armed forces and might return to find themselves without a home.

STATEMENT OF CARL TODACHEENE

My name is Carl Todacheene. I am Chairman of the Resources Committee of the Tribal Council of the Navajo Tribe, a veteran, a disabled veteran, and a winner of the Purple Heart. I want to say a word to this Subcommittee on behalf of Navajo veterans such as myself.

Is it worth anything to this Subcommittee that there are over 10,000 Navajo veterans, dead and alive, who have fought to defend this country and its values in Vietnam, Korea, and World War II? We also risked our lives as code-talkers for the U.S. Marines. We supplied many of the people who fought on the battlefields, manned arsenals, defense plants and who put together materials of war in the defense of the U.S. It is extremely difficult for Navajo veterans to believe that after this disproportionate service on behalf of the United States (when compared with the rest of the population), in return the United States cannot allocate to us a sufficient amount of the lands we have protected so as to avoid disputes such as this now before this subcommittee.

We Navajos too have contributed much to the American way of life and economy. We have not shut ourselves off from the mainstream like many other Indians. We feel that mainstream America should not now turn its back on us.

RESOLUTION OF THE NAVAJO TRIBAL COUNCIL

To Provide for an Equitable Settlement of the Dispute Between the Navajo and Hopi Tribes and Members Thereof in Connection with the 1882 Executive Order Area & the Hearing on H.R. 11128 ("The Steiger Bill") to be Held in Washington, D.C. on April 17 & 18, 1972; and to Authorize the Chairman of the Navajo Tribal Council and its General Counsel to offer testimony in Support of Such Equitable Settlement

Whereas:

1. The United States District Court for the District of Arizona on September 8, 1962, entered a judgment in *Healing* v. *Jones*, 210 F. Supp. 125 (1962), decreeing that the Navajo and Hopi Tribes have joint, undivided and equal interests in

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that portion of the 1882 Executive Order area lying outside Management District No. 6; and

2. Even though pursuant to the Act of July 22, 1958, the Navajo Tribe and the Hopi Tribe were respectively declared owners of one-half interests in the 1882 Executive Order area outside Land Management District No. 6, the people who have been living on the land for more than a century have been predominantly Navajos, most of whom are livestock herders; and

3. There is no additional range land available on the Navajo Reservation and residents of the 1882 Executive Order area outside Land Management District No. 6 could, therefore, not continue as livestock men on the Navajo Reservation, and explusion from the area on which they and their ancestors have lived for decades would be a serious hardship on the Navajo families affected; and

4. The courts, by reason of lack of jurisdiction, may not have the power to partition the area outside Land Management District No. 6, and appropriate action must be taken to resolve the disputes between the Navajo and Hopi Tribes.

Now, therefore, be it resolved that:

1. The Navajo Tribal Council, on behalf of the Navajo Nation, hereby goes on record as being firmly and unalterably opposed to H.R. 11128 (known as the Steiger Bill) which was conceived without the participation of the two tribes affected by the bill.

2. The Steiger Bill is not good legislation because it was drafted unilaterally without giving either tribe any opportunity to resolve their own problem within the concepts of their own culture.

3. The Navajo Tribal Council hereby authorizes and directs the Chairman of the Navajo Tribal Council, its General Counsel and its Washington Delegation of Tribal representatives to oppose with great vigor and force the enactment of the Steiger Bill so that proper negotiation can take place between the two tribes.

4. The Chairman of the Navajo Tribal Council and its General Counsel are hereby directed to present testimony through Tribal representative and others to demonstrate the inappropriateness of the Steiger Bill so that an opportunity may be provided for the two Tribes to mediate the matters in controversy in Indian harmony.

5. The Navajo Tribal Council further authorizes the Chairman of the Navajo Tribal Council, its General Counsel and all designated witnesses to make detailed statements of opposition and to do all and everything necessary to achieve an equitable settlement between the two tribes, in lieu of the Steiger Bill.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona) at which a quorum was present and that same was passed by a vote of 62 in favor and 0 opposed this 13 day of April, 1972.

PETER MACDONALD,
Presiding Chairman.

The first witness for the Hopi Delegation is Clarence Hamilton, chairman of the tribal council and John S. Boyden.

Mr. Hamilton, I understand that you have a prestatement and then Mr. Boyden is going to make a statement on behalf of the tribe, is that correct?

Mr. HAMILTON. Yes, it is.

Mr. HALEY. Give your name to the reporter, who you represent if other than yourself.

STATEMENT OF CLARENCE HAMILTON, CHAIRMAN, HOPI TRIBE

Mr. HAMILTON. Chairman and members of the committee, my name is Clarence Hamilton. I feel that I should take this opportunity to explain my position as the chairman of the Hopi Tribe. I wish to summarize my written statement already filed with the committee.

I was born on my Hopi Reservation and have been active in Hopi affairs practically all my life. In order to explain my position as the

chairman of the Hopi Tribe, we need to talk a little politics which I am sure is not a strange topic to most of you.

I was first elected to the Hopi Tribal Council from the village of First Mesa in 1967. Prior to 1969, each of the several villages elected the members of the tribal council and the chairman was elected within the council by the council members. According to those procedures then, I was subsequently elected to tribal chairman by the tribal council.

In 1969, however, these elections procedures were changed by the amendment to the Hopi constitution and in the chieftain of the village who determined that the vice chairman of the Hopi Tribe should be elected by the people and by the popular vote. That amendment was adopted by popular referendum at the election called by the Secretary of the Interior. The amendment provided that the tribal chairman should be elected by the popular vote with all the members of the tribe over 21 years of age be eligible to vote.

In November of 1969, I was again elected tribal chairman in this first popular election in the tribe.

We stand alone defending our life and property without the aid of the usual law and order forces which protect other citizens of this country. We present our case today with a lingering hope and fervent prayer that you will be incensed by the shameful treatment we have received at the hands of the Bureau of Indian Affairs in Washington.

In 1935, during the reduction of the livestock, I personally was affected by this program. Of the 300 head of sheep, I was only allowed to retain 35 head of sheep in my herd, while the Navajos were allowed to keep their herds by spreading them among the members of the family.

These bureaucrats depend upon the fact that the Hopi Indians have always cooperated with the United States and will continue to suffer in silence. As the Navajo Tribe continued to rebel and refuse to conform to the grazing regulations of the Supreme Court of the United States, we have asked our tribal attorney to outline our case on our behalf. This statement will be supported by members of the tribe as spokesman for that purpose.

Other members are here lending their moral support.

Thank you, Mr. Chairman.

Mr. HALEY. Thank you, Mr. Hamilton. I notice that you more or less summarized your statement, so without objection, the written statement by Mr. Hamilton will be made a part of the record at this point in the proceedings.

(The statement follows:)

STATEMENT OF CLARENCE HAMILTON, CHAIRMAN, HOPI TRIBE

My name is Clarence Hamilton. I feel that I should take this opportunity to explain my position as the Chairman of the Hopi Tribe. You may have heard the charges that have been raised against the Hopi Tribal Council as we have worked through this conflict, including charges against me, that I am not Hopi and that I do not represent the Hopi Tribe.

To answer the allegation as to whether or not I am, in fact, Hopi, it is necessary to go into a little southwest Indian history. Almost three hundred years ago, the Tewa Pueblo Indians were living in what was to become southern New Mexico along the Rio Grande River. A portion of the Tewas during the Pueblo revolt of 1680 to 1692 moved to the pueblo of Hano on First Mesa in the Hopi Country where they have ever since remained. The tradition of various Hopi clans as to the reasons for, and circumstances of the move may differ

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somewhat, but it cannot be denied that we have been a part of the Hopi tribe for nearly 300 years.

My ancestors were members of those villages who joined the Hopis. The two tribes were related than; and, in the 300-minus intervening years, those Tewas, myself included, have certainly been accepted as, and have, in fact, become Hopi. When the Hopi Constitution was adopted in 1936 the Consolidated First Mesa Villages of Walpi, Shitchumovi and Tewa, which is the village of Hano, were included as recognized villages under that Constitution.

I was born on the Hopi Reservation and have been active in Hopi affairs practically all of my life.

In order to explain my position as Chairman of the Hopi Tribe, we need to talk a little politics, which I am sure is not a strange topic to most of you. I was first elected to the Hopi Tribal Council from the village of Polacca in 1967. Prior to 1969, each of the several villages elected members of the Tribal Council and the Council itself elected the Chairman.

According to those procedures, then, I was subsequently elected Tribal Chairman by the Tribal Council. In 1969, however, these election procedures were changed by amendment to the Hopi Constitution. That amendment was adopted by popular referendum at an election called by the Secretary of the Interior. The amendment provided that the Tribal Chairman should be elected by popular vote, with all members of the Tribe over 21 years of age eligible to vote.

In November, 1969, I was again elected Tribal Chairman in this, first popular election in the Tribe. I admit that only 30 percent of the eligible voters participated in this election. But, when compared with the fact that only 32.6 percent of the eligible voters voted in the last Phoenix City election and that only 13.9 percent of the eligible voters cast their ballots in the Los Angeles special election of January 18, 1972, the Hopi voting record is not too bad.

Now, based on the facts that my ancestors were Tewas and that fewer than 50 percent of the voters participated in my election, 22 members of the Hopi Tribe have asked for my resignation, saying that I do not represent the true interests of the Hopis. I hope that you will agree with me, based on the information that I have just given, that I am the duly elected leader of the Hopi Tribe and that I do legitimately represent the Tribe's interests.

Concerning the 22 Hopis who have asked for my resignation, I suppose that there are not many public officials in this country who have less than 22 members of their particular constituency willing to ask for their resignation.

This Committee knows that even when the legislation authorizing the *Healing* v. *Jones* suit against the Navajo was passed the same dissident group, with a General Holdridge as a spokesman, desperately tried to prevent the passage of the bill. Historically at the turn of the century, we were called the "Friendlies" while they were termed as the "Hostiles" to the Federal Government when we wanted our children educated. This committee also knows that the only progress the Hopi Tribe has made has been over the objections of these people who refuse to acknowledge the facts as they are.

There is a conspiracy and agitation, motivated primarily by outside sources with extreme ecology and personal axes of their own to grind, to over-throw the present Hopi government. If these same methods were used against the United States Government, the activists would surely be vigorously prosecuted and the offenders imprisoned.

We stand alone defending our life and property without the aid of the usual law and order forces which protect other citizens of this country. We present our case today with a lingering hope and fervent prayer that you will be incensed by the shameful treatment we have received at the hands of the Bureau of Indian Affairs in Washington. These bureaucrats depend upon the fact that the Hopi Indians have always cooperated with the United States and will continue to suffer in silence. As the Navajo Tribe continues to rebel and refuse to conform to grazing regulations and the decisions of the Supreme Court of the United States, the Bureau of Indian Affairs and the Office of Management and Budget seeks to appease the Navajo at the expense of the Hopi.

We have asked our tribal attorney to outline our case in our behalf. His statement will be supported by members of the tribe selected as spokesmen for the purpose. Other members are here to lend their moral support. Since we have divided responsibility to avoid repetition, we hope, Mr. Chairman, that questions can be reserved until all of our testimony has been concluded.

Mr. HALEY. Any questions?

Mr. LUJAN. Yes, Mr. Chairman.

Mr. Hamilton, do you believe as has been stated before, that negotiations could produce a solution to this problem, or do you feel that we ought to settle it through legislation?

Mr. HAMILTON. I think to my own opinion that negotiations have been exhausted. I have met with both the chairman and the vice chairman of the Navajo Tribe four times and never have come out with any kind of fruitful negotiation between those two people, so the only thing that I feel right now is this legislation.

Mr. LUJAN. You heard the questions that I asked Annie Wauneka when she was testifying. I would like to get the Hopi position on those questions.

The 1934 Boundary Act property, which is the green area on the map, is it your feeling that that shall remain as a part of the legislation or should that be treated differently?

Mr. HAMILTON. I should think it would remain on the legislation. I feel it myself because within 20 years the population would be tripled in that area.

Mr. LUJAN. One of the sections deals with the Paiute problem, and it has been stated in testimony that there is no problem there. Do you feel that that should remain in the legislation, or that that should not be a part of the legislation?

Mr. HAMILTON. I think it should. I think it should still be under the legislation.

Mr. SIGLER. Would you have any objection to some wording in the legislation that the Navajos be provided alternate lands to graze their cattle if those permits are reduced?

Mr. HAMILTON. I think they have sufficient land. They claim that they have 25,000 square miles on the Navajo Reservation, and I think they have room for those people to move into.

Mr. LUJAN. I'm talking about the cattle now.

Mr. HAMILTON. Well, this is about the same thing.

Mr. LUJAN. Probably the crucial question is dealing with the Hopi Tribe as far as relocation is concerned. What would be the feeling of the Hopis if the legislation provided for Navajos to stay in the land that might be conveyed to the Hopis perhaps for their lifetime at least?

Mr. HAMILTON. I think that's going to create more problems because right now the Hopis haven't been using their rights according to the *Healing* v. *Jones* decision.

Mr. LUJAN. Do you think it would be better to relocate all of the Navajos that are in what would be Hopi land, and relocate all Hopis in areas that would become Navajo land?

Mr. HAMILTON. Yes, sir.

Mr. LUJAN. The question of one tribe paying rents to the other—do you think that that subject should remain in the legislation?

Mr. HAMILTON. That's right.

Mr. LUJAN. Do you feel that that would be the answer—the answer that you have given would be the general attitude of the Hopis and I suppose particularly the governing bodies of the Navajo Tribe—I mean, the Hopi Tribe?

Mr. HAMILTON. Yes, sir.

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. HALEY. Mr. Sigler, do you have a question?

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Mr. SIGLER. No questions, Mr. Chairman.

Mr. HALEY. The next witness then is the attorney for the tribe, John S. Boyden.

Mr. Boyden, if you will give your name and who you represent other than yourself, and also I would like to have your résumé.

STATEMENT OF JOHN S. BOYDEN

Mr. BOYDEN. My name is John S. Boyden. I am a resident of Salt Lake City. I have been employed by the Navajo Tribe—by the Hopi Tribe; my work for the Navajo Tribe has been gratuitous, your honor. I have been employed by the Hopi Tribe under contract as their General Counsel since 1951. I am also their claims counsel.

Mr. HALEY. That contract has been OK'd by the Secretary of the Interior, is that right?

Mr. BOYDEN. It has, and the talk about 10 percent is something that I've just heard here. Well, I did hear it once more when Mr. MacDonald gave it over the radio, but there is nothing to that.

I am retained as a General Counsel, win or lose. It makes no difference on how much I get.

Mr. HALEY. You may proceed, sir. And you have a written statement.

Mr. BOYDEN. I had a written statement, your honor. I believe I can shorten it considerably—I can talk faster than I can read, and if I might move to where I could point to the map, I think that I could move along pretty fast.

Mr. HALEY. Now, Mr. Boyden, we want the Hopi Tribe to have full discussion and hearing in this thing. If you feel that you can put your statement in the record and then summarize it, why, that's your privilege and you probably will save some time, but remember, we want to hear the full story for the Hopi Tribe.

Without objection, the written statement of Mr. Boyden, consisting of 12 pages, will be made a part of the record at this point in the proceedings.

(The statement follows:)

STATEMENT OF JOHN S. BOYDEN

My name is John S. Boyden. I am an attorney at law, duly licensed to practice in the State of Utah, in various federal Courts of Appeals, and the Supreme Court of the United States. I have represented the Hopi Indian Tribe of Arizona as their general legal counsel under contract approved by the Secretary of the Interior since the first day of September 1951. I was instrumental in negotiation for, and drafting of the Act of July 22, 1958 (72 Stat. 402) which authorized the judicial determination of the rights and interests of the Navajo and Hopi tribes and all individual Indians claiming any interest in the area set aside by the Executive Order of December 16, 1882. I was the chief trial and appellate attorney in the case of *Healing* v. *Jones*, the action commenced pursuant to the authority of the aforementioned act. I am also the approved claims counsel for the Hopi Indian Tribe, and I was the trial attorney in the case of *Hopi Indian Tribe* v. *The United States of America*, Docket 196, before the Indian Claims Commission. As a result of my experience in the preparation and trial of those cases, I am familiar with the history of the Hopi people and their controversies with the Navajo Indian Tribe.

Healing v. *Jones* was an action commenced by Dewey Healing, Tribal Chairman of the Hopi Tribal Council for and 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 against Paul Jones, 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. The decision was rendered in that case on the 28th day of September 1962, 210 Fed. Supp 125, and was affirmed by the Supreme Court of the United States the following year, 373 U.S. 758. The Narrative Account of the Hopi-Navajo Controversy rendered by the court states that the ancestors of the present Hopi tribe occupied the southwestern table lands and canyons of New Mexico and Arizona before 1300 A.D. and perhaps as far back as 600 A.D., between Navajo Mountain and the Little Colorado River, and between the San Francisco Mountains and the Luckachukas. The court further stated that from all historic evidence, it appears that the Navajo first entered what is now Arizona in the last half of the 18th century.

Before the Treaty of Guadalupe Hidalgo in 1848 (9 Stat. 922), the United States Army was called upon to protect the settlers of New Mexico from the marauding Navajo tribe. Many Navajos were driven from the New Mexico territory to areas they had not previously occupied west of the New Mexico-Arizona state line. The raiding and pillaging was then transferred with increasing intensity from the New Mexico communities to the Hopi country. I do not imply that there had never been raids upon the Hopi prior to that time. Early reports indicate that the Hopi Indians had been the subject of attack, robbery and theft by the Navajo and other Indians many years before.

The relative position of the Navajos is shown by the fact that in 1858, Lt. Ives traveled east from First Mesa one day and then 24 miles on the next day before he reached the edge of the Navajo country which was then all east of the Hopi villages.

By 1882, the Navajo imposition on the Hopi became so desperate that Agent J. H. Flemming threatened to resign unless something was done to protect the Hopi interests. The Executive Order Hopi Reservation of 1882 was created for the specific purposes, among others, of reserving for the Hopis sufficient living space as against advancing Navajos and minimizing Navajo depradations against the Hopi; however, the Secretary of the Interior was also authorized in his discretion to settle other Indians in the area. (*Healing* v. *Jones*, finding 16) That particular clause was customary in executive orders at that time.

But there was then no intent to settle the Navajos within the 1882 Moqui or Hopi Reservation. Secretary of the Interior William F. Vilas unequivocally stated to the Secretary of War as follows:

"The reservation of Moquis Indians was set apart by Executive Order of October 16, 1882, for them, and such other indians as the Secretary of the Interior may see fit to settle thereon. It comprises no land set apart for the Navajos, and no Navajos have been settled thereon by the Department, nor have they any right to drive or graze their flocks and herds over the Moqui lands.

"A recent investigation of the Affairs of the Navajo Agency, under whose jurisdiction the Moquis reservation and Indians are, has brought to the attention of the Department similar information of depredations by Navajos upon the lands, crops and other property of the Moqui Indians, and further, that the Navajo Agent, whose Agency is at considerable distance from the Moqui reservation, is not able, with his police, to correct the abuses * * *."

"In view of this condition of affairs I believe the suggestion made by Mr. Welsh is a wise one, and I therefore have the honor to request that you will give the necessary orders for the movement of a company of troops or such other force as may be deemed necessary for the purpose, under the command of a judicious, discreet, and firm officer with instructions to visit the Moqui reservation and also the Navajo reservation and especially those portions of each lying adjacent the one to the other, and to remove all Navajo Indians found trespassing with their herds and flocks on the Moqui reservation and to notify them that their depradations must cease and that they must keep within their own reservation."

Time will not permit a detailed review of facts showing why and how the Secretarial order was aborted, but the record clearly reveals that Hopi rights were sadly neglected and nothing of consequence was done to hold the Navajo within legal bounds.

From hundreds of exhibits, several pretrials and one solid month of testimony the three judge federal court made the following findings:

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"21. None of the twenty-one Secretaries of the Interior who served from December 16, 1882 to July 22, 1958, or any official authorized to so act on behalf of any of these Secretaries, expressly ordered, ruled or announced, orally or in writing, personally or through any other official, that, pursuant to the discretionary power vested in him under the executive order he had "settled" any Navajos in the 1882 reservation, or had authorized any Navajos to begin, or continue, the use and occupancy of the reservation for residential purposes.

"45. Congress at no time enacted legislation designed to, or having the effect of, terminating Hopi rights of use and occupancy anywhere in the 1882 reservation.

"49. The failure of the Hopis, prior to the settlement of Navajos, to use a substantially larger part of the 1882 reservation than is embraced within district 6, was not the result of a free choice on their part. It was due to fear of the encircling Navajos and inability to cope with Navajo pressure."

The next chapter in the fraud on the Hopi people will serve to explain the present Hopi "fear of the fence." At the time grazing District 6 was created the Superintendents of the Navajo and Hopi Reservations recommended a plan of administration for the Hopi and Navajo Reservation. That plan provided:

"The Hopi Superintendent will have jurisdiction throughout District #6, and that the Navajo Superintendent will have jurisdiction in the other land management districts. This arrangement will be tentative until the definite boundary of the Hopi-Navajo reservation shall have been determined. This arrangement is established as a matter of administrative expediency and convenience and shall not be construed in any way as fixing an official boundary between the two tribes, or as prejudging in any way the boundary which is ultimately established."

The grazing regulations provided:

"For the purpose of these regulations District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and bylaws of the Hopi Tribe."

Hopi Supt. A. G. Hutton soon complained to Navajo Supt. E. R. Fryer:

"We have had several cases in the past few months whereby the Navajo Indians are moving into areas occupied by the Hopis * * *.

"At the time of the district division I told the Hopis that this division was on a land management basis and not as a definite reservation boundary which explanation they accepted, however, when other Indian Service employees tell them the contrary it puts me in a bad light."

Supt. Fryer replied:

"The new Grazing regulations provide that, for the purpose of the regulations only, District 6 shall be considered as the Hopi Reservation * * *.

"District 6 should not be recognized by any of our people as being a reservation. It is merely an area which defines land use as between Navajo and Hopi Indians * * *."

The Hopi Tribal Chairman complained to the Commissioner of Indian Affairs that District 6 did not include nearly all of the area that had been occupied by the Hopi Indians for a good many years, especially grazing lands and water holes. The Hopi Chairman further complained that the Navajos claimed District 6 established a boundary line between the two tribes. The Hopi Tribal Council passed a resolution protesting the limitations placed upon the Hopi and the lack of effort being made to keep Navajo Indians from moving from their districts into the Hopi Reservation and building homes there. Commissioner John Collier, Assistant Commissioner Walter V. Woehlke, Navajo Superintendent E. R. Fryer, Assistant Commissioner William Zimmerman, Jr., Commissioner Wm. Brophy and other BIA officials repeatedly assured the Hopi that any fences built around District 6 would in no way be construed as establishing District 6 as the Hopi Reservation, or as jeopardizing any claims which the Hopi may have to other lands.

With all the facts before it, the Court in *Healing* v. *Jones* nevertheless found:

"37. The events and official pronouncements between February 7, 1931 and July 22, 1958, indicate that all Navajos entering the reservation for purposes of permanent residence were impliedly settled therein by the Secretary or his authorized representative, at or shortly after the time of entry, and that on July 22, 1958, all Navajos residing in the 1882 reservation were accordingly settled therein pursuant to the Executive Order of December 16, 1882."

Thus the Hopi Exclusive Area was limited to District 6. But the court also found;

"22. Prior to the years 1909 to 1911, while the second allotment project in the 1882 reservation was in progress, neither the Secretary of the Interior nor any

authorized representative of the Secretary, acting in the exercise of the authority reserved under the executive order, expressly or by implication, authorized the Navajo Indian Tribe or any Navajos whether or not then living in the reservation area, to use and occupy any part of the 1882 reservation for residential purposes."

Obvious misstatements as to Navajo rights in the Executive Order Reservation were made and repeated by many officials, including those as high as the Commissioner of Indian Affairs, but the implied settlement did not take place until after 1931. (*H.* v. *J.*, Finding 37).

The court in explaining the treatment of the Hopi at the hands of its guardian and the aggressive Navajo specifically held:

"50. After the official settlement of Navajos in the 1882 reservation, the failure of the Hopis to make substantial use of the area beyond district 6 was not due to a lack of desire or a disclaimer of rights on their part, but to their exclusion from that area by Government officials. Throughout this entire period they continued to assert their right to use and occupy the entire reservation area. These Hopi protestations would doubtless have been even more persistent and vehement had it not been for the constant assurances given to them by Government officials, that their exclusion from all but district 6 was not intended to prejudice the merits of the Hopi claims.

"51. As a practical matter, the Secretarial settlement of Navajos in the part of the 1882 reservation outside of district 6, even without Governmental restraint, probably would have greatly limited the amount of surface use the Hopis could have made of that part of the reservation. But there still would unquestionably have been a substantial movement of Hopis into the area had it not been for the administrative barrier and improper Navajo pressure.

"52. Neither before nor after the Secretarial settlement of Navajos, did the Hopis abandon their previously existing right to use and occupy that part of the 1882 reservation in which Navajos were settled."

Healing v. *Jones* is now the law. Its decree precludes the Hopi from recovering the greater part of the lands that were once his. He now fights to retain and repossess that which the Supreme Court of the United States has affirmed to be his. That judgment is:

"1. The Hopi Indian Tribe, for the common use and benefit of the Hopi Indians, but subject to the trust title of the United States, has the exclusive right and interest, both as to the surface and subsurface, including all resources, in and to that part of the executive order reservation of December 16, 1882, lying within land management district 6, as defined on April 24, 1943 * * *.

"2. Title in and to the part of the 1882 reservation described in the preceding paragraph of this judgment is quieted in the Hopi Indian Tribe for the common use and benefit of the Hopi Indians, subject to the trust title of the United States, and such land is henceforth a reservation for the Hopi Indian Tribe.

"3. The Hopi Indian Tribe and the Navajo Indian Tribe, for the common use and benefit of their respective members, but subject to the trust title of the United States, have joint, undivided and equal rights and interests both as to the surface and subsurface, including all resources, in and to all of the executive order reservation of December 16, 1882, lying outside of the boundaries of land management district 6, as defined on April 24, 1943, such boundaries being described in paragraph 1 of this judgment, and title in and to all of that reservation except the described district 6, is accordingly quieted in the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike, subject to the trust title of the United States, as a reservation."

It seems ludicrous that we should stand here, ten years after the court of last resort in this land has spoken, trying to obtain that which the court has legally determined is ours.

The Navajo Tribe still wants to build its fences around district 6, but even the Navajo living within the exclusive Hopi area continue to abuse the judicial process, by procrastination and will not voluntarily obey the court order of ejectment.

Negotiations between the two tribes have become a mockery because the Navajos continue to withhold the Hopi one half interest outside of district 6 and the Washington Bureau of Indian Affairs will neither reduce the devastating overgrazing by Navajo herds nor grant grazing permits to the rightful Hopi stockmen. All this is the problem even though the court has clearly pointed the way in the following conclusions of law:

"12. The virtual exclusion of Hopi Indians, accomplished by administrative action extending from 1937 to 1958, from use and occupancy, for purposes of

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residence and grazing, of that part of the 1882 reservation lying outside of district 6, as defined on April 24, 1943, has at all times been illegal.

"13. Neither the Navajo Indian Tribe nor any individual Navajo Indians have the exclusive interest in and to any part of the 1882 reservation."

Congress has protected the rights of the Hopi Tribe in the area outside the 1882 Executive Order Reservation and particularly around Moencopi, but the administrative handling is tainted with the same political expediency, lax enforcement of orders and general lethargy.

The Act of June 14, 1934 permanently withdraw from all forms of entry or disposal for the benefit of the Navajo and "such other Indians as may already be located thereon" all of the lands described in the act, without affecting the title to the Hopi Executive Order Reservation of 1882. The Hopi Tribe was then and still is situated within the area. The Solicitor of the Department of the Interior rendered his opinion that the "other Indians" provision of the act was "without quibble" for the protection of the Hopi interest in the Western Navajo Reservation. That Hopi interest has been recognized by the Commissioner of Indian Affairs, the Secretary of the Interior and outside parties but it has never been defined.

This bill delineates a Hopi boundary. The Hopi Tribe does not agree with the small area given to the Hopi Tribe under the bill, as a witness from Moencopi will explain. Nevertheless, the Tribal Council is unanimous in its opinion that a partition of this area without resort to further extended and expensive litigation is an absolute necessity. The Navajos continue to flock to every inch of land in the vicinity of Hopi Indians smothering Hopi existence in the same manner that has proved so fruitful for the Navajo in the past. Secretarial orders to desist construction in the Moencopi area unless authorized by both tribes have been violated by the Navajos while the Hopi Tribe respects and obeys authority.

The recent concentration of Navajo growth around Moencopi and District 6 suggests a deliberate plan to stifle Hopi activity and at the same time plead extreme hardship in relocating Navajos from their "ancestral" homes.

Navajo tradition provides a very convenient way of acquiring property that does not belong to the Navajos. A person who establishes residence will raise a family, then each of his daughters at a very early age selects a mate bringing the man to the same area as her father and there raise their family. In this manner all of the new people who are brought in as husbands for the Navajo women and their children claim direct relationship to the original settler and assert the right to all the land they can use in the area.

The Hopi Tribe does have a Writ of Assistance pending final action by the Supreme Court in an ancillary proceding of *Healing* v. *Jones*, and the United States has pending in the same court a Writ of Ejectment against Navajos in District 6. But we all know partition is the only practical solution for dealing with two tribes with such opposing cultures and a history of endless confrontations. Neither the legislation nor the court action alone is sufficient. They compliment each other.

The attorneys for the Navajo have suggested to the Supreme Court that Congress is responding to the situation and they have in fact included a copy of their bill in the appendix to their petition for a Writ of Certiorari. Do they now want the Congress to believe the court is taking care of the situation?

We are submitting in writing certain proposed amendments which we hope you will carefully consider. Particularly we draw to your attention that the bill permits the Navajo another ten years to tender the lands he has already preempted for ten years since the final decree of the court. The excuses and further impositions to be conjured up during the further extended period, perhaps beyond the activity of many of us who have first hand knowledge, will overwhelm the novice in this fray. What other group in this great country of ours is given twenty years to comply with a court decree? To ask Congress to undo the long litigation accomplished with sacrifice, heavy expense and outstanding patience is unconscionable.

May I close by quoting, in part, from a recent resolution of the Hopi Tribal Council:

Lonely in the forsaken remnant of what was once our mother land but braced by our faith in God and the ultimate triumph of right we inform all who are willing to hear:

We pledge our unity for the good of all Hopi people notwithstanding the subversive attacks of the misinformed and the malicious.

We will continue livestock roundups of trespassing animals on our exclusive area and will render meaningful the judicial phrase of "quieting title in the Hopi Indian Tribe for the common use and benefit of the Hopi Indians."

We will resolutely assert our decreed right in the joint use area with Hopi occupation, judicial process, political action and Tribal administrative courage destroying every fence constructed to obstruct our lawful use.

We refuse to be further intimidated in the vicinity of Moencopi. Secretarial directives must be observed by both the Navajo and Hopi Tribes or by neither.

We unequivocally commit ourselves to the seemingly fruitless task of convincing the Washington BIA and the Office of Management and Budget that Hopi Indians are entitled to equal protection of the law under the Constitution of the United States.

We beg of Congress to partition our joint use lands that living therein may be tolerable and to equitably define and legally protect our interests in the vicinity of Moencopi.

May the Great Spirit chart our course.

Be It Thus Unanimously Resolved.

Mr. HALEY. You may comment orally, sir.

Mr. BOYDEN. First of all, in the case of *Healing* v. *Jones* where this case—whole case—was heard, the Court states that the Moqui Indians who were the Indians who are now called the Hopis, occupied this entire territory clear up in the Lukachukai Mountains down to Colorado, the Little Colorado River and clear from the Navajo Mountain so that this whole territory in Arizona that we're talking about was Hopi clear back as far as 1300 and perhaps as far as the year 300 or 600, the Court held. The Hopi had some proof even beyond that so that this was—when we're talking about ancestral homes, we can go back as far as we like and this is what the Court has said about it, and that other tribe in the United States has a more authenticated history than this group has in this area.

It was in the last part of the 18th century that the Navajos began to come into the—what is now Arizona so that this is a situation that was confronting the people at this time.

Now, I don't want to spend a lot of time on there and I will skip a lot of that and go clear down to 1882 because in 1882, it was just ahead of 1882, when the United States, for example, just ahead of 1848, the Treaty of Guadalupe Hidalgo, that they were having trouble down in New Mexico and so they sent the U.S. Army to protect the citizens down there and they did drive Navajos into territory they hadn't occupied before. This is clear history.

Now, the Navajos then were beginning to bother the Hopis more than ever. They had done some raiding ahead of that. The history shows it, and I have the documents to show that but they began to get very serious so in 1882, Agent Fleming said unless something is done about this to protect the Hopis from what the Navajos are doing to them, I'm going to resign. So as a result, the 1882 reservation was established for the Hopi Indians.

Now, there can't be any question as to what the purpose of that was. There were three or four statements put in there, they were afraid about two people who were causing some difficulties—two individuals. They were afraid about white settlement, and they were afraid about the depredations of the Navajos upon the Hopi Indians and they were afraid—it was stated in two different ways.

In other words, two of the four reasons given for establishing the reservation were that it was to protect the Hopis against the Navajos.

Now, there can't be any question as to how this was done and I want

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to read just one thing that is in the statement to emphasize what I'm saying: The Secretary Vilas. William F. Vilas who was Secretary of the Interior wrote to the Secretary of War 6 years after this was established and this is what he said: "The reservation of Moqui Indians was set apart by Executive order of December 16, 1882, for them, and such other Indians as the Secretary of the Interior may see fit to settle thereon. It comprises no land set apart for the Navajos, and no Navajos have been settled thereon by the Department, nor have any of them any right to drive or graze their livestock or herds over the Moqui lands.

A recent investigation of the affairs of the Navajo agency under whose jurisdiction the Moquis reservation and Indians are, has brought to the attention of the Department similar information of depredadations by Navajos under the lands, crops, and other property of the Moqui Indians, and further that the Navajo agent, whose agency is at considerable distance from the Moqui Reservation, is not able, with his police, to correct the abuses.

In view of this condition and remember this is a communication of the Secretary of the Wars—"of affairs I believe the suggestion made by Mr. Welsh is a wise one, and I therefore have the honor to request that you will give the necessary orders for the movement of a company of troops or such force as may be deemed necessary for the purpose, under the command of a judicious, discreet, and firm officer with instructions to visit the Moqui Reservation and also the Navajo Reservation and especially those portions of each lying adjacent the one to the other, and remove all Navajo Indians found trespassing upon—with their herds and flocks on the Moqui Reservation and to notify them that their depradations must cease and that they must keep within their own reservations."

Now, that is just about as clear as it can possibly be put in 1882. I will summarize quickly what happened after that, and I have all the documents here and I would like to file them and make them a part of the record rather than reading from them all.

Mr. HALEY. Without objection, the documents will be received and made a part of the record at this point in the proceedings.

DEPARTMENT OF THE INTERIOR,
INDIAN SCHOOL SERVICE,
OFFICE OF SUPERINTENDENT,
KEAMS CANON, A.T.
October 17, 1894.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: In compliance with the eighth suggestion in your circular letter of July 27 marked "Education No. 1" I have to further report concerning the filling of this school.

Neither this report is, nor were my former ones, intended as complaints, but simply reports of the actual state of affairs.

There are now twelve children in school, more than a month since the first of the term. The chiefs in council told me that they would not fill the school so long as the Navajos were allowed to depridate upon them. This they did knowing full well that they had promised you that they would fill the school and that I would report their talk promptly to you. They are certainly keeping their word to me. The second mesa people and the Oriba's positively refused to be enumerated by the census enumeration and we had to stop that work when less than half accomplished. They treat us kindly personally but as to doing anything which the Government wants they positively refuse so long as certain wrongs from the Navajos are unredressed.

The police force is utterly worthless. I have sent two policemen here after runaway children and they returned saying the children did not want to come and hence they could not bring them. The lawless Navajo around here have, I am informed, successfully resisted arrest by U.S. troops within the last year, and now they are utterly regardless of any power and not only do the Moquis suffer but white people are not wholly safe. Not long ago they attacked some Moquis, in the Moqui corn fields, and beat them unmercifully leaving one early dead. He came in here completely exhausted from loss of blood and covered from head to feet with dried blood, to report the affair. The agent was promptly informed and sent back word that he would be over on the 5th of Oct. or sooner with troops to put the Navajos off the Moqui reservation. He has not come yet and the Moquis are more disgusted than ever with the U.S. Government. And the School stands a pretty poor chance of being filled unless something is done.

I can see no practical solution for the difficulty other than to have enough troops sent to arrest these lawless Navajos and take them to prison, put the others off the Moqui reservation and keep them off and then at the same time force the Moquis to fill their school at once and they have plenty of children and a large delegation away also. In your letter of Sept. 2d 1890 you say that some compulsion will be necessary with the Moquis. This is certainly true.

Whether my suggestion is the best solution of the difficulty or not you of course are the judge.

Command me to do anything you may see fit and it shall be done to the best of my ability and power.

Yours very respectfully,

RALPH P. COLLINS,
Supt.

CHILOCCO, INDIAN TERRITORY,
November 17, 1890.

Hon. R. V. BELT,
Commissioner Indian Affairs
Washington, D.C.

DEAR SIR: As you know, the Moquis live in villages on the summit of high mesas. The three which I visited on the first mesa are said to be 700 feet above the plain, are built on the solid rock where there is no vegetation of any character, and are approached by long tedious, tortuous ways. All supplies of every kind are either carried up by the women, taken up on the backs of burros, or drawn up in wagons, and the people subsist upon what they can raise in the little unfenced fields in the plain below.

The most vital points connected with the situation here seem to be the following:

First, the water supply. At the foot of the first mesa are two natural springs, which furnish water for the people and beasts in common. These should be reamed out, sunk deeper, walled with stone, covered over, and supplied with pumps. Along the valley of Keam's Canon for several miles there are mountain springs, which can doubtless be made to produce a larger flow of water than at present. In the opinion of Gen. McCook, Lieut. Baker, (a civil engineer) and myself it is possible to obtain water in numerous places in the valleys, at a very moderate expense. I gave directions in regard to commencing some test operations at once. The work can be done under the direction of an intelligent farmer and I have instituted inquiries to find a suitable man. Mr. Cooper, the so-called farmer, whom I found there, is utterly incompetent and was doing nothing whatever for the Government, although he was said to be working for the trader. I ordered him to report at once to the Supt. of the school, who was authorized to furnish him employment, and I will dismiss him as soon as I can supply his place.

Second, next in importance to the water supply, is wire enough to fence in their improvements, in order to protect them from the stock which runs at large. They will procure the posts and construct their own fences if supplied with wire. If this can be done this winter, a very considerable body of land will be enclosed and cultivated next Spring.

Third, several families are ready, I think, to come down from the mesa and make permanent homes in the valleys, if they can have lumber for roofs, floors, casings, etc. for their houses.

Fourth, the Moquis live more than 100 miles from the Agency, seldom see the Agent, and get very little help from him. In some way I think they should be cared for by the Supt. of the school, who is a man of superior intelligence, strict

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integrity, and sincerely interested in their welfare. He is gradually winning their respect and confidence, no easy thing to do after the unfortunate experience they have had with former Superintendents.

Heretofore not only has little of profit been done for these people, but there has been constant waste as well as dishonesty. Many of the supplies sent to them have been unsuited to their use and have been thrown away; the money paid to the farmers has accomplished almost nothing; the $10.000 paid for the old and almost worthless buildings was a misuse of public funds, and the last Supt. was not only incompetent but dishonest. I am glad to say that I believe the present Supt. will be able, not only to make a good school, but to help these Indians in a variety of practical ways, and what is done for them should be done through him. More can be accomplished through the school, however, than in any other way. It should be enlarged and if necessary be kept filled by force. But of this I have already written in a separate communication.

Fifth. The Moquis complain with justice of the Navajoes, who encroach upon their reservation, take from them their water supply, steal the products of their farms and maltreat them generally. They are indignant at the Government and have lost faith in its promises because it has failed to protect them against their unfriendly neighbors. Some vigorous steps should be taken to prevent this state of things, and, although the task is a difficult one, I do not despair of being able to devise a scheme by which it can be effectively done.

Sixth. Their reservation is much larger than they use or will ever need, and it would be a great benefit to them if a portion of it could be disposed of and its equivalent were given to them in such improvements as I have already indicated. They are now in a condition to make profitable use of wagons, harness, and some simple agricultural implements, plows, hoes, spades, axes, etc., but these should be selected with judgment, properly stored, and distributed with some discrimination, and not thrown away as heretofore.

Seventh. At Holbrook I met Mr. Zuck, who had been commissioned by the Census Bureau to enumerate the Moquis. He had just returned from the trip and reported that he had been successful on the first mesa, tolerably successful on the second, but that entire failure had rewarded his efforts at the third. Orabi, where it is estimated there are as many Indians as on the other two combined. They are the most civilized and have a deep seated distrust and hatred of the Government. Their Chief, Lalolamy, who visited Washington last summer, has lost his opposition to civilization, while I was there brought three children. one of them his own, the first from the tribe, to school, and seems desirous to have his people adopt the white man's ways. In the council which I held, however. he made a strong and eloquent plea for protection by the Government against the Navajoes, saying that its failure to do so was the reason his people had refused to send their children to school.

The Moquis are peaceable, industrious, thrifty and provident, and I saw stored away in their rooms supplies sufficient to last them until another harvest. They are self supporting and with judicious help and direction they can be made fairly prosperous. They are ninety miles from the railroad and are dependent for what they buy, aside from their barter with their neighbors, upon a single trader. Unaided by the Government they will doubtless continue to subsist as in the past and to maintain their snake dances and other pagan customs, but will make little, if any, progress in civilization. Even with Government aid their progress will almost necessarily be slow, and yet I believe, as already said, that a little judicious help and protection will greatly improve their present condition. A vigorous school, thoroughly equipped and properly maintained for ten years, cannot fail to make a vast change for the better.

Very respectfully,

I. J. MORGAN, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
INDIAN SCHOOL SERVICE,
OFFICE OF SUPERINTENDENT,
Keams Canon, Ariz., November 28, 1890.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: Since your visit here I have the honor to report concerning affairs.

The people of the second Mesa and Oriba made no moves toward bringing in children, but Io Lolomi sent word that his people in council threatened to kill him if he sent any more children. The same men threatened to kill the other friends of

the school also. I, with the assistance of Mr. Keam and Mr. Scott went to Oriba and arrested the two worst men and am now holding them prisoners until the Oribas shall bring in their quota of children.

The example set before the second Mesa people of their Oriba brothers as prisoners had a good effect and now the three villages of the second Mesa have their full quota of pupils in school. Altogether we have now 59.

The first Mesa people are beginning to move down now. Three families are now camped below the school working at getting out posts for fences. One man is ready for wire and anxious to get to work on his spring.

I would like instructions as to how to proceed to get piping, pumps, wire, lumber, etc.

I believe that if encouraged now and helped they will move down as fast as we can provide for them.

I wish also to state concerning the Navajos that, notwithstanding your orders, they have been moving their herds out among the Moquis ever since you left. Until now they have eaten the last vestige of the Moqui corn stalks and the most of their winter grass. They are a standing insult to the Government and robbers of the weak and the complaints of the Moquis are not only just but call for most decisive action on the part of the Government.

I certainly think that troops should be sent out over to drive the Navajo herds from among the Moquis even though the Department should not be ready to deal with the whole Navajo tribe.

Very respectfully,

RALPH P. COLLINS, *Superintendent.*

[Telegram]

KEAMS CANON, ARIZ., *December 16, 1890.*

COMMISSIONER, INDIAN AFFAIRS,
Washington, D.C.:

A company of soldiers should be sent at once to remove trespassing Navajos from among the Moquis and arrest rebellious Oriebas any further delay in this action will work irreparable injury to the whole work among the Moquis.

PARKER, *Special Agent.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 18, 1890.

To the Hon. SECRETARY OF THE INTERIOR.

SIR: I learn that a troop of cavalry has been ordered to Keam's Canon in response to a request from this Office transmitted by you to the Honorable Secretary of War.

The situation at that place is substantially as follows:

First: The Navajos have been for some time intruding upon the Moqui reservation, pasturing their herds, appropriating to themselves the water supply, in some instances stealing the farm products of the Moquis, and in one instance at least which came to my knowledge while there, assaulting violently one of the Moquis. The Moquis are a peaceable, law-abiding people, utterly unable to cope with the Navajos, and they have complained very bitterly at what they regard as the neglect of the Government to protect them from their insolent, aggressive neighbors.

It is very desirable that the Navajos should be forced to retire from the Moqui reservation, and, if practicable, those who have despoiled the Moquis should be arrested and punished by at least compelling them to restore the equivalent of what they have taken. Whether this is practicable or not I do not know.

Second. Recently the Moquis known as the Oreibes who live on the farthest mesa from Keam's Canon refused to allow Mr. Zook, the representative of the Census Bureau, to take a census of the village, saying that the white people were all liars and coyotes and that they would have nothing to do with them. They showed at that time a decidedly rebellious and ugly spirit.

Third. Up to the present year the Oreibes have positively refused to send any of their children to the school which has been established for them at Keam's Canon. During my recent visit, Lolomy, the chief of the Oreibes, brought in his

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own son and two others to the school and promised to bring others from his village. He subsequently brought others to the school. I learned that for this he was arrested and imprisoned and otherwise mistreated by members of his tribe and that two or three of the ringleaders threatened violence both to him and to others in case any further effort should be made to secure children for the school.

I think it desirable that these ringleaders should be arrested and kept in confinement until it is deemed best to release them. My impression is that they have already been arrested and are now in confinement at Keam's Canon awaiting the coming of the soldiers.

Fourth: The school at Keam's Canon is now in good condition, the buildings have been renovated, enlarged and furnished, and the school can accommodate perhaps 75 pupils. On my visit there I found only 14 children. I sent out and had 11 more brought in and required the different tribes to send in enough to fill the school. The people living on the first and second mesas have complied with this request and there are now 56 pupils in the school. It is very desirable that the people living on the farther mesa, the Oreibes, shall be required and compelled if necessary to furnish their quota so that the school may be filled. I do not think that it will be necessary to use any force to accomplish this but that the presence of the troops at that place will be sufficient to secure the end.

There is no agent for the Moquis proper. The agent for the Navajos who has also the Moquis under his charge, lives 90 miles away and cannot give to these people the attention which the present emergency requires.

I suggest, therefore, that the officer in command of the troops be directed to co-operate with Mr. R. P. Collins, Superintendent of the school at Keam's Canon and take his advice as to what is most desirable to be done. Superintendent Collins has had large experience in dealing with Indians, is a very competent man of excellent judgment and I think he will not request anything of the military authorities which is unwise.

Special Agent Parker is now there and will assist by his advice and cooperation.

I do not anticipate that there will be any conflict or that the Oreides will resist the troops or make any disturbance. If they can be given to understand that the troops are there to protect them from their enemies, the Navajos, I think they will be glad at once to comply with the wishes of the Government regarding their children, and that they will offer no objection to the punishment of those who, without sufficient cause, have shown a rebellious spirit and have perpetrated acts of violence.

The Moquis are a very interesting people, industrious, frugal, thrifty, peaceable, even timid, and have made very little if any progress for many years, but they not have reached a stage when, if their children can be kept in school and the progressive element among them can be encouraged, they will make very satisfactory progress in the ways of civilization.

To secure this it may be desirable that a small body of troops should be stationed there for a few months until the matters suggested have been fully accomplished.

I have written thus fully with the hope that you would transmit this letter to the Honorable Secretary of War to be by him forwarded to the commanding officer in charge of the troops at Keam's Canon, in order that he may know somewhat fully the wishes of this Office and be prepared to act intelligently.

Very respectfully,

T. J. MORGAN, *Commissioner.*

KEAMS CANON, A.T.,
December 18, 1890.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: In complying with instructions in telegram of the 7th. I have the honor to state that I can do nothing further in rendering assistance to Supt. Collins in receiving children from among the Moquis. He has in regular attendance now (73) seventy three and I never saw any more promising children in an Indian school. If it is possible for the Government to send a company of soldiers here to remove the Navajos from this valley I am satisfied the Moquis will continue to move down from their villages on the cliffs to the valleys & erect buildings & fences & get their land under cultivation. At the sight of the troops I am satisfied that the Oribas who are now rebellions moved immediately succumb & concede to any demand made of them & they would in all probability bring in to school more children than Mr. Collins can accommodate with his present quarters. He is not taking into school any more boys at the present time.

The Navojos increase their dipectations on the Moquis. A reliable Navojos yesterday gave us the names of three of his people (Navojos) who have recently stolen (11) horses from the Moquis in addition to those reported a few days since. He sent the two medicine men (Oribas) who had been arrested for threatening the lives of the citizens over to the agent (Navajo agency) to be held for a time in confinement. Mr. and Mrs. Collins are very earnest & efficient workers in this field, and if it were possible for Mr. Collins to be appointed to the agency of the Moquis in addition to his duties as superintendent it would be a great benefit to this people & I am satisfied would tend greatly to their advancement in civilization & self support. If some soldiers can be sent here they should be permitted to remain at least two months to guard against the immediate return to the Navojos, and to convince the Moquis that the removal was permanent.

Very respectfully,

GEO. W. PARKER,
Special agent.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 22, 1890.

GEO. W. PARKER, ESQ.
U.S. Special Indian Agent,
Keams Canon, Arizona Territory.

SIR: I am in receipt of your letter dated December 14, 1890, in which you refer to your telegram of the same date, asking that a company of troops be sent to remove Navajos from the Moqui Reservation &c., and stating that nothing but the sight of soldiers will suppress the bad conduct of the Navajos, and that the Moquis are dissatisfied because a promise to remove the Navajos has not been fulfilled.

You further state that the friends of the school among the Moquis are in the ascendant, but that the enemies of the same are as rebellious as ever, &c.

In reply I have to say that under date of November 29, 1890, this office submitted a report to the Department concerning the condition of things at Keams Canon as reported by R. P. Collins, Esq., Superintendent of the school there with a view to the military authorities taking proper action in the matter, and on receipt of your telegram of the 14th instant, I telegraphed General McCook at Los Angeles, California, as follows: "Have troops been sent to Keams Canon, Greatly needed" to which he replied on the 17th instant as follows: "All the cavalry and one hundred eight mules have left Wingate for the Sioux country; a troop from Apache will proceed to Keams Canon via Holbrook where my written instructions will meet commanding officer of the troops".

On the 18th instant I submitted a full report on the subject to the Department stating that it was deemed very desirable that the Navajos should be forced to retire from the Moqui country, and if practicable those who had despoiled the Moquis arrested, &., and the school protected, and suggesting that the officer in command of the troops be directed to co-operate with Mr. Collins and take his advice in the matter of what was best to be done, and that you were there and would assist by your advice and co-operation. On the same date I transmitted a copy of the report referred to to Mr. Collins for his information and guidance.

You are instructed to co-operate with said commanding officer and Mr. Collins, in such manner as may be proper to eject the Navajos from the Moqui country to protect the Moquis from the former, and to protect said school and as far as may be practicable secure redress from the Navajos for wrongs done to them. This office will rely upon your wisdom and judgment to cooperate in such manner with the commanding officer of the troops and Mr. Collins, as to prevent any conflict of authority with the military in the premises and to effect a full settlement of the trouble on the Moqui reservation if possible, and for that this office is determined to protect them fully from the wrongs of the Navajos and endanger an outbreak by them, but you will assure the Moquis that this office is determined to protect them fully from the wrongs of the Navajos, and to properly protect said school.

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You are instructed to remain at Keams Canon until further directed in the premises by this office.

You will report your action in the matter.

Very respectfully,

T. J. MORGAN,
Commissioner.

TROOP "H" 10TH CAVALRY,
Keams Canon, Ariz., December 28, 1890.

The ASSISTANT ADJUTANT GENERAL,
Department of Arizona,
Los Angeles, Calif.

SIR: I have the honor to report that pursuant to telegraphic instructions from your office dated December 17th, I was placed in command of Troops H, 10th Cavalry, and left Fort Apache, A. T. with it, en route to Keams' Canon the 18th instant; arriving at Holbrook Sunday the 21st, I received your letter of the 19th containing the instructions of the Department Commander, and reached this place December 24th.

Upon consulting Mr. R. P. Collins, Superintendent of the Indian School, it was learned that La-lo-mi, headman of the village of Areibi, who has been friendly to the school established here by the Government had been held a prisoner by the opponents of the school two days. La-lo-mi and his immediate realtives, notwithstanding the threats of the disaffected portion of the village, send their children to school, but he could not pursuade the other members of the tribe to allow theirs to attend and thus fill the quota that had been designated as the proper proportion from that village.

Since the establishment of the school there has been opposition to it by the Areibis, who live most remote and are less progressive than the other villages. La-lo-mi with four others were recently taken to Washington and since his return has been anxious to have his children and those of the tribe receive the benefits of the school. The opposing faction went so far as to say they would kill La-lo-mi if he sent his children to school, and did confine him as before stated in one of their "estufas" or secret chambers until it was reported to Mr. Collins by some frineds of the school, whereupon he was released. This happened about a month ago.

As the rest of the village had manifested no intention of complying with the directions of Mr. Collins it was believed that only a display or use of force could bring them to terms. Accordingly with Lieut. Rowell, 30 men Troop H, 10th Cavy., and Special Agent G. W. Parker, Mr. Collins, Mr. Keams, as Interpreter, I marched to the vicinity of the village Friday, camping for the night at the foot of the Mesa upon which it is situated. Word was sent to La-lo-mi that Mr. Collins had come to receive the remainder of the children, twenty-eight girls and eight boys. Early yesterday morning La-lo-mi came to came and said that he had been able to get a portion of the children, but none from any of the people that had opposed him. He was told that those were the children that must be forthcoming. He then returned to the village. At 9 o'clock A.M. we, accompanied by 20 dismounted troopers ascended to the town and found the entire populace assembled in the central portion, lining the streets, house-tops and all available standing space, except that apparently reserved for us. La-lo-mi at once stated that all the village had come together and were friendly to him, would do as he said and that the children were ready. The children were promptly placed to one side, examined by Mr. Collins, and sent to our camp.

As the census enumerator failed to obtain a count of this village, at Mr. Parker's request, they filed by and were counted by him. They numbered 750 men, women and children.

A friendly feeling was apparent and evidenced by the handshaking which followed. We were in the village a couple of hours.

La-lo-mi also said that as his people had done what the Government desired he wished the Government to do something for them as they were poor and weak they want the Navajoes kept from the land they cultivate and the waters they use; some axes, stoves and hoes. He said that some of his people would be glad to move down into the valleys if a little lumber could be given them to build.

The Navajoes have undoubtedly at times annoyed the Moquis in many ways, especially during the planting season when the water holes and springs are nearly dry by their numerous herds of sheep, and have committed depredations

to a greater or less degree upon them always. I saw no Navajo herds in the vicinity of the Moqui Villages.

The Government school here under the supervision of Mr. Collins is now filled to its utmost capacity and appears to be in a thriving condition. There are children from all the Moqui villages, 42 from Areibi, 102 in all. I am confident that Mr. Collins will have no further trouble in keeping his school filled.

Very respectfully, your obedient servant,

CHAS. H. GRIERSON,
1st Lt. 10th Cavalry,
Commanding Troop H.

HOLBROOK, A.T., *December 31, 1890.*

GENERAL MCCOOK,
Los Angeles, Calif.

Lieut. Grierson is here and has completed his instructions splendidly one hundred and two children in school. Oreibas obedient and happy. He should be instructed to remove intruding Navajos from among the Moquis before leaving.

COLLINS, *Superintendent.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 31, 1890.

The Honorable, the SECRETARY OF THE INTERIOR.

SIR: For your information and with the recommendation that the Honorable Secretary of War be advised thereof, I have to say that I am in receipt of the following telegram from George E. Parker, Esq., U.S. Special Indian Agent, dated Keams Canon, Arizona, December 30, 1890:

"On Friday Lieut. Grierson and command accompanied Supt. Collins and myself to Oreiba village where we camped for the night at the foot of the mesa and had a conference with Chief La-Lu-Lu-My who expressed some doubts as to the results of our visit but upon marching up into the village in the morning we found Oreibas all assembled who greeted us cordially, offered us all the children we wanted, announced obedience in the future to any demands of the government. We took (20) twenty girls and nine (9) boys, total number now in school one hundred and two (102). We took census. Office letter of 22 received. We will handle Navajo question all right. No danger of any conflict. Soldiers must be permitted to remain for a while."

Very respectfully, Your obedient servant,

S. J. MORGAN,
Commissioner.

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Calif., December 31, 1890.

Lt. CHARLES H. GRIERSON,
Commanding Troop H, 10th Cavalry,
Keams' Canon, A.T.

SIR: During the Department Commander's interview with the principal men of the Moqui Village at Keams' Canon last November, complaints were made against certain Navajo Indians for trespassing upon the land cultivated by members of the Moqui villages and for grazing horses and sheep within the limits of the Moqui Reservation.

This business, as you are aware, belongs more particularly to the Interior Department, and should be attended to by the Agent of the Navajo and Moqui Indians stationed at Fort Defiance, Arizona, but, as you are on the ground, the Department Commander directs that you hold interviews with the Navajoes who are reported as trespassers upon the Moqui lands and explain to them that they should cease molesting the Moquis or interfering with them in their pursuits. It is known that the Navajoes and Moquis have intermarried and that there is continuous trading between them, and with this understanding you will be very guarded in your action, especially towards the Navajoes, and under no circumstances, if it can be avoided, will any harsh measures be taken towards them at this time. The lines separating the Navajo and Moqui reservations are not marked with a degree of plainness that an ordinary Indian can understand. There was no

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But I am deeply disturbed by the unqualified and enthusiastic and virtually unqualified support which he has—and the Interior Department have given to this bill.

Over the past weeks, this bill has caused my people much anguish. We have been accused of trying to drag our feet, of trying to avoid a settlement, of trying to overwhelm the Hopis with our numbers and our strength. That is pure propaganda—myth—utterly without basis in fact.

We have sought to build for ourselves and for all Indians a better future. Now, because of this controversy, our image has been severely tarnished. Our reputation as an honorable and gentle people has been injured. And so, I welcome the opportunity to come before this committee to clear the good name of my people, the Navajo people.

Nothing will be gained by going over those charges one by one—by disapproving them, by denying them, or by making countercharges. If I thought it would serve any useful purpose, I would do so now. But in order to remove the cloud that has been cast on our honor, we must do with deeds, not with words. That is why I come today with another proposal. It is not a proposal for delay; it is a proposal for action, for immediate action.

Solutions, irrespective of their merits, should not be imposed externally. And that is why the proposal I am making today is a process-oriented solution. And I am pleased to see that the administration, in commenting upon the bill before you, has also recognized that another kind of solution—a solution that looks to arbitration would be equitable and worthy of this committee's consideration. They are honoring their commitment to the principle: Indian solutions to Indian problems.

Today, I am proposing such a solution. I am proposing legislation that looks toward the immediate beginning of a process whereby our two peoples, the Navajos and the Hopis, can work together toward a just and equitable solution—a solution that will enable us to live together in peace and harmony over the decades and centuries to come.

I would like to outline the general principles that I believe should govern this process. I would hope that if, after listening to this approach, that Congressman Steiger believes it to represent a fair and equitable approach to the problem, that he would honor this proposal by being its sponsor and introducing it on behalf, not simply of the Navajo people, but of the Hopi people, too. For I want to believe that he has no interest at heart other than a fair and equitable solution, one that can heal old scars, and bring an end to old conflicts.

The first principle—perhaps the most important one—is that the process must begin promptly, on a day certain, and must be set to end within a reasonable time, on a day certain. The only basis for extending the process should be at the mutual request and with the mutual consent of both the Navajos and the Hopis. We must bind ourselves legally to a process and a timetable so that no one can claim that the negotiants are only part of a delaying tactic intended to place the Hopis at a disadvantage. We do not seek delay; we are not interested in a battle of attrition.

Second, there must be a cooling-off period of about 90 days. It will take time to spread the word, to calm people's nerves and quiet their tempers. Equally important, it will take time to establish a mechanism

that prevents future incidents from generating new conflict. We propose that a Navajo and a Hopi ride the district 6 boundary together so as to keep cattle from wandering over the boundary line. But this will take time to set up. We may need to provide additional water and feed, possibly to keep the cattle from wandering over to drink at Hopi water holes or graze on "lush grass." We may need to drill wells or somehow secure additional water to keep cattle from crossing over the boundary. It can be done—and 12 weeks seems reasonable—to wind down from the present state of conflict—and to prepare for the round of negotiations that are to following.

Third, negotiations should begin with a factfinding period—so that we can begin to ascertain how many people and how many cattle are involved, what the needs are and what the magnitude of the problem is in devising any kind of a solution. We need to begin locating various alternative land, if that is required—and we need to get a clearer picture of the sources of conflict that have brought this to a head at this time. If they can be resolved, we need to know—but at the very least, we need to know what those sources of tension and conflict are.

Following the period of cooling off and factfinding, we should establish a timetable and a calendar for regular negotiating sessions—and also, for open hearings where we could receive suggestions, and explore alternatives. We need the ideas of others—but equally, we need our people to have a sense of the process we will be going through if we ever hope to achieve an acceptable result.

The period of negotiation, and hearings should be limited in duration—I would propose that it be no longer than 18 months. If, at the end of that time, both parties desire a bit longer, then it should be extended. But otherwise that deadline ought to set the outer limits for negotiations looking toward a voluntary settlement.

Special provision should be made to hear from those most directly affected by this decision—those who live in the areas—and from sizable factions within the tribe such as the traditional Hopis who have strong convictions and stand for much that is good and honorable. They need to have an opportunity to be heard, to speak out, and also to help, if possible in exploring alternative proposed agreements.

If agreement is reached, some procedure should be established for ratification of the agreement—by either the chapter houses or by the tribal government. There should be a special effort to hear from those who might otherwise not be heard, who feel themselves to be disenfranchised, and who will be most keenly affected by the outcome. And then, that agreement should be given the force of law—either by congressional enactment or by issuance of an Executive order.

Finally, if negotiations do not produce an agreement within that period, then we should look to a process of arbitration with each party picking a representative and with those representatives picking a third.

An arbitration tribunal will have to be established. Arbitrators must be selected by a special procedure using specific criteria. Procedural rules must be spelled out. And the method of enforcing the decision of the arbitrators will have to be made enforceable. But all of this can be done readily by adapting standard arbitration rules to meet the unique Indian context of this problem.

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I know that you are wondering—just as I am wondering—will it work? After all, nothing has happened for 10 years. Why should a miracle occur now?

Let me be perfectly candid. I cannot guarantee that the Navajo people and Hopi people will miraculously come to agreement. I have had only 1 year to try—not 10. And during that year, there has been no incentive for the Hopis to reach a negotiated agreement because their attorney had doubtless told them that there was no need to negotiate; they only had to wait for the legislation to pass.

I cannot guarantee agreement. But I cannot fail worse than this bill does. I only ask that we be given a real chance to negotiate, to bargain in good faith, to see if we cannot sort out our differences.

And I am saying that if we fail, if we do not agree within a specified period, then we will look to the process of arbitration. Whether it is a negotiated agreement or one reached by arbitration, at least we will have had a voice in shaping it. And those who arbitrate will have the benefit of our fact-finding and our suggestions.

In other words, I am not saying gamble on a miracle. I am saying, give the miracle a chance to happen. And if it does not, there is no risk. The arbitration machinery will be set in motion to reach a final resolution.

And in doing so you may have provided us with a unique opportunity to seek a new unity and a new kinship between our peoples. I want to say this is very necessary because the two tribes in the entire area outside district 6 have a joint interest in the subsurface minerals, and if the two tribes are to manage the subsurface minerals together for the best interest of the two tribes, then the two tribes must work closely together, must be trusting, must be understanding. This is the reason I am concerned that we are being divided and I believe we need to get together to accomplish these good things for both tribes.

But let me further say that I believe there is a good chance that negotiations can in fact work.

We simply have not had a chance to explore ideas, to try out new possibilities.

To me it is somewhat ironic that when the issue is fundamentally a problem of where cattle graze, that it is people who have to be relocated. Why can't the cattle be relocated and the people stay where they are? We are not overpopulated and it seems absurd to make people give up their homeland to which they are attached and the communities they have known since birth because the cattle—not the people—need more land. I think we have things turned upside down.

Let us suppose, however, that we reach another solution, either by negotiation or arbitration. Let us suppose we agree in one way or another that the land must be divided with Hopis on one side of the line and Navajos on the other. Does that mean that every Navajo or every Hopi on the wrong side of the line must be forceably removed? I hope not. We have had one long walk at gunpoint. We do not desire another long walk for even the fewest of our people.

If the land is divided, there is no reason why those living on it now cannot be given a life estate so that those presently living there can live out their days on the land they know, while those yet unborn can inherit land set aside elsewhere. At least we need not uproot them. And there is no reason why we cannot give them a choice, the choice

of a life estate on the land they now have with their children to inherit land elsewhere. You all know the story of Solomon and the child whom two women claimed as theirs. Do we have to cut the baby in half? Cannot those who desire to live out their days in peace be permitted to do so?

I cannot honestly believe that the Hopis have a desire to uproot us, swiftly and cruelly, merely to cause pain. I, for one, think that we can find ways to live together and to work out these problems. In my talks with the traditional Hopis I find that they, too, believe that more binds us together than divides us. And I do not really believe that Chairman Hamilton who is married to a Navajo finds us Navajos so distasteful that he would uproot us from any area that was determined to be Hopi land.

We need for the sake of our own humanity and our own traditions to try to seek a solution. We do not seek delay, or a postponement. We only seek a new beginning. And we seek it now.

Thank you very much.

Mr. HALEY. Mr. MacDonald, of course we don't have the wisdom of Solomon, because if I recall the Bible story, when the child was going to be split in half the real mother said, no, give it to the other because I want the child to live.

Is that your understanding of what the Bible says?

Mr. MACDONALD. Yes, the child was not split in half.

Mr. HALEY. As I say, we don't have the wisdom of that great man but we are trying to reach a solution of this problem which has been a problem for a long, long time. We have not seen much progress being made and something must be done to bring about a settlement of this serious situation. We realize what you said here, people don't want to be uprooted. I judge from your statement you would rather relocate cattle and let the people live in their present homes during their lifetime. Is that what you are saying?

Mr. MACDONALD. That is one of the solutions, to relocate cattle and if the land be divided in some way or another, give life estate to those living there while new land is being sought for those now presently unborn. That is just one of the solutions.

Mr. HALEY. It is easy to say relocate cattle but, according to the testimony before us now, the land is overgrazed so I don't know where we are going to relocate cattle.

The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

Peter, I think you obviously put together a very thoughtful statement and I am impressed with much of what you say. I will tell you that I recognize the solution offered in the bill before us I know must be offensive to the people who live in the area to be uprooted.

However, I think it is a little overdrawn to compare the movement of these people to the long march as I find it $5,000 ahead and transportation in some kind of a comfortable vehicle—I won't tell you I think the uprooting from the land is not just as painful, but the journey will be somewhat more cushiony.

I also tell you that your suggestion of legislation that would require negotiation for a period with some arbitration mechanism in it is a valuable suggestion. I certainly think it is something that the committee could consider in amendments to this particular piece of legis-

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lation. Because you see, Peter, my main concern, as I have reiterated to you many times, is that regardless of what motive you lay to it or what caused it, feeling between the involved people is becoming increasingly tense, and I think we simply must do something to demonstrate that the uncertainty is going to be ended.

So I would say your suggestion certainly contributes to that end.

I will tell you that in the process of legislation, such as you well know, the 90-day cooling off period, et cetera, is built into the mechanism in the way we operate here in this body and the other body. There is no way this bill could become law in 90 days that I know of. So I will simply tell you, whatever happens in this committee, the option for a negotiation is very much alive at this point. In fact I would anticipate at this time that I would accept some kind of language in this bill that would require negotiation that would offer the possibility of successful negotiations and mutual agreement that would eliminate some of the objectionable parts of this bill. I am simply not technician enough to tell you the language I think would be desirable.

I would say it is my view, even though an official delay or an official negotiating period, the mechanism which you describe, I am not certain would satisfy the problem. I would like to discuss it with you and I would like to deal with some of the others of your people, Wilson, and see what members of the council think about the likelihood of success. I would like to hear what the Hopis have to say about it. It is not something I say I would reject out of hand personally. Since you did ask the question in the statement, I would respond by saying I would not reject it out of hand.

I think you have come to us as a concerned leader facing the problem and the first leader to face the problem in my knowledge. So I compliment you for that.

I will tell you I think this committee is determined to find a solution and that solution is going to be of a nature to make any future conflict difficult. At least that is the feeling I get from the committee.

I think you have made a contribution and I have no further questions.

Mr. HALEY. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman.

As Mr. MacDonald was reading his proposal it occurred to me that although the Navajos may not like the bill, perhaps it was that new beginning you are talking about, because if we all did a little more thinking about it—and certainly you did—we could all come up with a specific proposal. Maybe out of things we don't like sometimes a few good things come.

Just for the record let me ask you, Pete, this is the only official recommendation of the tribe, and the ones we were discussing earlier were just off the top of the head recommendations. But this one is the official position of the Navajo tribe. Is that correct?

Mr. MACDONALD. That is right, sir.

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. HALEY. Mr. Sigler.

Mr. SIGLER. Thank you, Mr. Chairman.

Mr. MacDonald, in *Healing* v. *Jones* it of course held that the Navajos and the Hopis have an equal right to the use of this joint-use area. Are you willing to accept that decision?

Mr. MACDONALD. The Navajo Tribe have accepted that decision, that the decision was made. The merits of it our attorney has discussed here. But we are aware that the decision has been made and that the district 6 is exclusively Hopi and the area outside in the 1882 reservation is jointly held by the Navajos and the Hopis.

Mr. SIGLER. This morning I am sure you heard the testimony to the effect that at the present time the joint-use area is exclusively occupied by Navajos. Do you share that view?

Mr. MACDONALD. That is right.

Mr. SIGLER. If the Navajos are exclusively occupying the joint-use area and if you agree that the Hopis have a right to an equal use of that area, are you willing that they be given equal rights with the Navajos?

Mr. MACDONALD. That is right providing that the acquisition of that right has a process rather than just moving on in without any kind of mechanism set up by the two tribes.

Mr. SIGLER. I wasn't asking about any mechanism for acquisition, I was addressing myself to the situation as it exists today. Today the Hopis have as a legal matter a right to equal use of that area. Are you willing that they exercise that right or do you insist that the Navajos retain exclusive control of the areas?

Mr. MACDONALD. If they have a need for that use, yes.

Mr. SIGLER. I didn't say if. I am asking are you willing to permit the Hopis to use any of that joint-use area?

Mr. MACDONALD. Yes. We have passed a resolution, the Advisory Committee of the Navajo Tribal Council and the Resources Committee of the Navajo Tribal Council jointly passed a resolution indicating that if the Hopis want to move into the joint-use area, there be a system set up by which they move into the joint-use area.

Mr. SIGLER. What do you mean by a system?

Mr. MACDONALD. The system is to set up a board consisting of Hopis and Navajos and one from each BIA agent area office.

Mr. SIGLER. What would that board do?

Mr. MACDONALD. This would then determine by its evaluation where the Hopi will move and where the Navajos who are using the area will have to move without creating a conflict by further discussion.

Mr. SIGLER. Does that mean if the board is unable to agree that a Hopi may move into the area, then the Hopi could not move in?

Mr. MACDONALD. I don't know what that would mean. I was hoping the board will agree in some way.

Mr. SIGLER. At the present time the Navajos are using the area under permits that were issued a long time ago during the 1930's and the 1940's. Would you have any objection to the Secretary issuing a permit to a Hopi to use the same area just as he issued the permits to the Navajo?

Mr. MACDONALD. If the Secretary feels this is necessary, I am sure we would make room for each other some way, somehow.

Mr. SIGLER. If the Secretary decides, as Mr. Loesch testified this morning, that the joint-use area is overgrazed to the extent of somewhere near 400 percent, and if the Secretary decided that the Navajo use of that area must be reduced, say taking three out of every four Navajos out of the area, would you be willing that that be done?

Mr. MACDONALD. No, because the people are not overpopulated.

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Mr. SIGLER. Let me change my question. Would you be willing to take three out of every four cattle and sheep out of the area?

Mr. MACDONALD. If a new place is provided for them, yes.

Mr. SIGLER. That is an if. What if there is no new place?

Mr. MACDONALD. Then I throw the question back to the U.S. Government. Then why tinker with it because it is a dead end. If we are going to solve the problem that is there, then we have to be open minded about it and see what we can do rather than just ask the people to drop their means of existence and not make any provision or other overtures in the way of easing the pain that is going to be experienced by whatever action is taken on that.

Mr. SIGLER. If I understand you, the proposal to move the cattle is about the same thing as the proposal to move the people, is it not?

Mr. MACDONALD. No.

Mr. SIGLER. Could you move the cattle without moving the people?

Mr. MACDONALD. Yes.

Mr. SIGLER. Do you think it is feasible then to reduce the number of Navajo cattle that may use the joint-use area and leave the people living there?

Mr. MACDONALD. Definitely.

Mr. SIGLER. Would you be willing to—I don't mean to put this as a commitment, but do you think it is feasible to take half of the Navajo cattle out of the area and allow the Hopis to put an equal number of cattle in the area and move no people?

Mr. MACDONALD. That is possible providing Secretary Loesch gives us more grass and water in the area.

Mr. SIGLER. Mr. Loesch can't provide the grass.

Mr. MACDONALD. He ought to provide something.

Mr. SIGLER. What I am really trying to ask Mr. MacDonald is, the courts have said that the Navajos and the Hopis have equal rights in the area. The Hopis do not exercise those rights now and they have not exercised those rights for the past 10 years, longer in fact. Aside from how it is done, are you willing that the Hopis be permitted to use half of that area?

Mr. MACDONALD. If the court decision is to be implemented, that is the only course.

Mr. SIGLER. You do agree that the court decision should be implemented?

Mr. MACDONALD. If it is going to be implemented, that is the basis of this discussion here, then the only solution is to make this equitable arrangement, so that there is an accomplishment.

Mr. SIGLER. You say if the court decision is to be implemented. Are you willing to implement it?

Mr. MACDONALD. Yes, but implementing in the way the Navajo and Hopis desire to have it implemented.

Mr. SIGLER. As I understand it, the Hopis have expressed strongly one desire and that is to have half of the grazing capacity.

Mr. MACDONALD. Yes, that is the desire expressed through their attorneys and through a promise of a bill that would pass in legislation.

Mr. SIGLER. Do you think it would be equitable, fair, to give the Hopis half of the grazing capacity?

Mr. MACDONALD. If there is no disruption in the economy of the people and the relocation of the people, yes, we are willing to enjoy and share what there is in that area.

Mr. SIGLER. Do I understand correctly then that if half of the cattle and sheep belonging to the Navajos could be moved to some other part of the Navajo Reservation but the people left where they are, and the Hopi cattle then brought into the joint-use area and the Hopi people left where they are, what I am saying is move only cattle but leave the people where they are, would you agree to that?

Mr. MACDONALD. Yes, I think it is easier to move cattle than to move people.

Mr. SIGLER. Thank you.

Mr. STEIGER. Along those lines, Chairman MacDonald, in your opinion if the Tribal Council, grazing districts and the chapters not only in the joint-use area but all over the Navajo Reservation, decided that overgrazing was a problem and that stocking had to be reduced, do you honestly believe that the tribe, assuming they are in agreement—I realize it is a big assumption—do you believe that a ruling significantly reducing the number of livestock permitted by the individual Navajo cowman and sheepman could be enforced knowing the people as you do?

Mr. MACDONALD. No, I don't believe the Navajos will accept livestock reduction. We have experienced that, and I myself as chairman would not allow any livestock reduction because first of all, if you will ask the Navajo people in the area, are you overgrazing, they will say no. So the people who are with the land everyday and almost know every tree in the area, if they don't sense they are overgrazing, they are not going to reduce or make any effort to reduce.

So if someone up here is worrying about overgrazing, you cannot make the people understand down there without having some kind of an education process, without have a machine which would rove the area and say this is undergrazed or overgrazed or whether it is. It is just impossible to determine from this point or from any point that the land is overgrazed unless it is done with the people.

Mr. STEIGER. I appreciate your candor and I agree with your answer.

Mr. LUJAN. I want to clear up something, Mr. Chairman, because I thought it was a little strange. Mr. Sigler asked, as I understand the question, if you had to cut half the Navajo animals on the joint-use area, if you were willing to accomplish that by moving them onto some other Navajo land. You could not support them in some other Navajo land. The answer would probably be to find some other BLM land or something somewhere else to replace the grazing capacity for those animals. Is that not right?

Mr. MACDONALD. That is right, sir. Perhaps I had better make the record clear that the Navajos in the 1882 area I am positive are willing to take all of their cattle in that area if a new piece of land where grazing is much better is found, and they are willing to put their cattle in that area, and that would reduce the number of livestock in the area tremendously.

If you are talking about taking Navajo cattle out of the joint-use area and putting them someplace else on Navajo land, then I would say the way the present use area is distributed it would be very difficult to move in on someone else's use land.

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Mr. LUJAN. I wanted to clear up that point, that we are not taking about moving from joint-use land area into Navajo area.

Mr. STEIGER. I want to congratulate the chairman of the Tribal Council on the employment of Mr. Pipestem. Not only is he mighty in bulk but mighty in brain. I would much rather to have him with me than against me.

Mr. HALEY. Mr. Sigler.

Mr. SIGLER. Mr. MacDonald, on page 12 of your prepared statement at the top you say, "This bill violates the equal protection clause, the due process clause, and the commerce clause. It is an unconstitutional ex post facto law." Those are legal conclusions and as I understand it you are not a lawyer. May I ask who gave you that advice?

Mr. MACDONALD. I took that as a jailhouse lawyer.

Mr. SIGLER. You mean it is your own belief?

Mr. MACDONALD. It is my own belief that this violates protecting both tribes equally or parties equally and that we are not given due process as spelled out in various courts and what have you to move us out.

Mr. SIGLER. You have not been advised of that conclusion by any lawyer?

Mr. MACDONALD. No.

Mr. SIGLER. Thank you, Mr. Chairman.

Mr. MACDONALD. In fact, I didn't want my lawyers to see my speech.

Mr. HALEY. I know we cannot finish this bill today by any means and we didn't expect to. So I am going to recess this committee until 9:45 tomorrow. I hope that everyone that is interested will be here and I am sorry the time has run out.

The committee stands in recess until 9:45 tomorrow.

(Whereupon, at 5:30 p.m. the committee recessed, to reconvene at 9:45 a.m., Tuesday, April 18, 1972.)

PARTITION OF RIGHTS BETWEEN HOPI AND NAVAJO TRIBES

TUESDAY, APRIL 18, 1972

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS OF
THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to call, at 10 a.m., in Room 1324, Longworth House Office Building, Honorable James A. Haley (chairman of the subcommittee) presiding.

Mr. HALEY. The committee will be in order.

Mr. Sigler, have you finished with Mr. MacDonald?

Mr. SIGLER. Yes, I have finished my questions, Mr. Chairman.

Mr. HALEY. Mr. MacDonald, I would like to ask you a question or two. In your statement I see no place where you are willing, or the Navajos are willing, to do anything to bring about a better situation as far as the grazing of this land is concerned.

Now, I think the testimony is pretty clear that the land has and is being overgrazed. You have also stated that if these cattle are taken away, somebody should pay for them. Who do you expect to pay, when the Navajos brought about this kind of a situation?

Mr. MACDONALD. Mr. Chairman, I would expect that the U.S. Government Interior would pay for acquiring additional land for gazing purposes.

Mr. HALEY. Why do you think the general taxpayers of the United States ought to be put to the expense of buying more land, when you've overgrazed land and overstocked land that you have?

Mr. MACDONALD. First of all, they are our trustee. They are managing our affairs for these many years, and as such. I feel that they have just as much responsibility as we have.

Mr. HALEY. Why do you think that the Federal Government has to assume this responsibility—no, the general taxpayers of this country?

Do you take the position that the Federal Government put these Navajos on this reservation?

Mr. MACDONALD. Yes, they did, by virtue of various acts and various Executive orders and treaties the Navajos were placed on that reservation.

Mr. HALEY. I find nothing in your testimony so far to indicate that the Federal Government put these Navajos on this reservation. It's true they said yes, you can come; but I don't think that the Federal Government moved a single, solitary Navajo on that reservation.

They came there of their own free will. Now, you've overstocked the

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grazing as I see it, and that's what the testimony reveals; yet you think now the Federal Government should go ahead and put out several million dollars to do something that your tribe is responsible for, and I can't see it.

Mr. MacDonald. I'm sorry, sir; but the way I see it, it's the other way around. Because even though the Federal Government did not put the Navajos there—of course, the Navajos were there before the Federal Government even existed. And the thing that happened is that the Federal Government, as it became part of the States, put a line around the Navajos so that the Navajos would not move out to put their livestock elsewhere.

So as a consequence we were then confined to that area. As a result, we have to live, we have to eat, we have to feed our children; and the only way these people can do it with the present economy that is there is to raise sheep and cattle.

Mr. Haley. Now, Mr. MacDonald, you and your tribe are well aware of the fact that the courts of the United States—the highest tribunal—have ruled that the Hopis had an equal and undivided half interest in this grazing. You were aware of that, weren't you?

Mr. MacDonald. Yes. And it's no fault of ours and no fault of the Hopis and the Navajos that that decision was made.

Mr. Haley. Do you have any further questions?

Mr. Steiger. No, sir.

Mr. Haley. Mr. MacDonald, I think my reputation and my interest in Indians are well known throughout every Indian reservation in the United States. As a matter of fact, I'm considered one of the most conservative of all the Democrats in Congress. I would open the Treasury doors to Indians, but I take the position that we do owe them something, and I would rather be a little more generous than too tight.

But this thing disturbs me because you can't forever do what you should know is wrong and then expect somebody to come along and pick up the tab. I am getting a little tired of being accused of opening the door for Indians anytime they come in here.

Mr. Steiger. Would the chairman yield on that point?

Mr. Chairman, I think that there is no way that you can know or the rest of the committee can know. I think the record ought to reflect that from personal knowledge I know the great majority of the Navajo people, including the leadership of the previous administration, was told by their prior counsel that in effect the Navajo had won in *Healing* versus *Jones*.

So for a long time—how long, I don't know—but for a long time, the fault of their failure to comply with *Healing* versus *Jones* was, in my estimation, a fault in which they absolutely got bad information. I don't know if it was what they wanted to hear or what the motivation was—I can't tell you, Mr. Chairman.

It wasn't a case of just blatantly disregarding the verdict and the findings. This was a matter of just blatant misinformation, and if the chairman would like, I think I can get some correspondence in which a prior counsel actually indicated in writing over his signature that this was a victory for the Navajo.

I've seen some correspondence on that. I would just tell that to the chairman, so he doesn't feel that this was a blatant situation.

Mr. Haley. I agree that what the gentleman says is true, but I also lay a great deal of blame on the Department for not enforcing the law that they knew of; and they've allowed this thing to drift on simply because they didn't want to bite the bullet. They should have been down there enforcing the decree of the court.

Mr. Steiger. The chairman is absolutely right. There is no excuse in view of the action of the Department.

Mr. Sigler. Let me ask one or two questions to see if Mr. MacDonald shares my view. I don't want to oversimplify it, but it seems to me the problem boils down to this situation: The Navajos are in possession of the joint-use area and have been for a long time. The Hopis are entitled to a one-half interest in the land, and the Hopis are not in possession of any of it. They are not getting their one-half interest.

It seems to me that there are only two realistic alternatives. One is: the Navajos are there, they can be left there, and the Hopis can be paid off for their share in the land. That's one possibility. The Hopis, I understand, don't like that alternative.

The other alternative is to let the Hopis have half of the land as this bill would do, that is partition the land and allow the Hopis to have half of it and require the Navajos to move off of that half. As I understand it, the Navajos do not like that alternative.

As I see it, that's about where we are. The Navajos would like to retain possession of all of the land, and perhaps pay or have somebody pay the Hopis for their interest. The Hopis would like to have the Navajos move off of half the land and let the Hopis have their half.

Would you share that analysis?

Mr. MacDonald. Yes, sir.

Mr. Sigler. Thank you, Mr. Chairman.

Mr. Haley. If there are no further questions, we will move on to the next witness. Vice Chairman Wilson Skeet; is that right?

Mr. Skeet. Yes, sir.

Mr. Haley. You have a written statement there?

Mr. Skeet. Yes, I have a written statement.

Mr. Haley. You may proceed. You're the vice chairman of the Navajo Council; is that correct?

Mr. Skeet. Yes, sir.

Mr. Haley. All right, you may proceed.

STATEMENT OF WILSON C. SKEET, VICE CHAIRMAN, NAVAJO TRIBE

Mr. Skeet. Mr. Chairman and members of the committee, I am Wilson Skeet, vice chairman of the Navajo Tribal Conference. Before becoming vice chairman, I served also, 4 years as a Navajo Tribal Council, serving with the Resources Committee from 1967 to 1971. And then prior to my being a councilman, I served since 1958, as a member of Land Board District 16 Committee. I live south of the city of Gallup and have a ranching business there.

You have heard and will hear from other witnesses about the serious problems that this bill will cause if thousands of people are moved from their land, the land which they and their ancestors have occupied and used for many, many years.

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What I would like to speak to you about is the solution which H.R. 11128 proposes in section 10, namely that the Navajos who would be displaced from their homeland in Arizona would be moved to Indian irrigation project in New Mexico.

In my official jobs for the last 8 years I have been acutely involved in work on the Navajo Indian irrigation project. I know it well. I am trying to now work on solutions to the economic problems of our tribe which can be found within the framework of the irrigation project.

As a matter of fact, the chairman of the tribe has assigned to me specific responsibility for heading up, on behalf of the tribe, the job of resource development. In that context, the Navajo Indian irrigation project is one of my major responsibilities.

The Navajo irrigation project, as you may know, is designed to put a total of 110,630 acres under irrigation. The job is expected to be totally developed by about 1985. The first portion of the land, 10,000 acres, is expected to become available in 1975.

From then on, over a period of 10 years, the project is expected to grow by about 10,000 acres a year. The project is a tribal enterprise exclusively and will operate in a similar manner to a complete agribusiness. The enterprise will be operated in accordance with a flexible plan which will involve individual Indians in production only, not ownership of the land.

When the project is completed, we expect to grow within that area a feed crop, vegetable, melons, and a variety of other crops. We also expect to operate a livestock feedlot with all related processing plants there. All in all we estimate that by the time the project is completed, we shall have jobs there for approximately 8,000 people.

I want this committee to know that we have been planning ahead on this point. I know my people. The other officials who work with me know our people, too. We know that it is very important for the success of the Navajo Indian irrigation project that we select the right kind of people to work there and that we make sure that they are properly prepared and trained.

If our project is to be an economic success and if it is going to meet the needs of the people who will be working there, we will, first of all, need to bring in people who are prepared to dedicate their life to being farmers. It takes a certain framework of mind to want to be a farmer.

It also takes certain abilities and skills to be able to do all the work that has to be done if a farmer is to be a successful farmer. There are many young members in our tribe who will be eager and anxious to qualify for jobs in the irrigation project. I know that if we train them properly, they will succeed.

But, as I say it takes a certain type of people to go into farming or into the other jobs that the project will provide. It takes a person who is young, energetic, and who has made an adjustment to the modern way of life. But if you go out to the 1882 Executive order reservation, if you think of the kind of people whom this bill would remove from their homes and who would have to resettle, let me tell you that they just won't fit into the work that has to be done in the irrigation project.

The people who live on the Executive order reservation are people who are living the traditional Navajo life. They are livestock herders. That is what they have done all their life and that is the only thing they know how to do.

Many of them still do not speak the English language. Few, if any, have had the opportunity to get an education. Those that had a chance to receive an education, those who are interested in a different way of life have already left.

They are the ones who might now be in Window Rock or in other places like that on the reservation, looking for other jobs. The ones that stayed behind are the ones that just do not fit into a modern way of life or modern economy. If you force them into it, by taking them off their land, you will ruin them.

Let me, therefore, say to you that I understand the purpose of section 10 of H.R. 11128. I understood the good intentions of the people who drafted that section. But as one who has responsibility for making the Navajo Indian irrigation project work, let me tell you that section 10 of H.R. 11128, just won't work.

If the millions of dollars which are being invested in the project are going to serve a useful purpose, we need to employ people in the project who will make the project succeed. As I have told you, there are many young Navajos who are eager to make the irrigation project a great success, both for the tribe and for themselves.

But you cannot expect the livestock herders from the Executive order reservation, the families who are still in their old traditional ways, to fit into this work. If we were to try to do it, as section 10 suggests, it would be a disaster for the individuals involved as well as the project.

Mr. Chairman, I would like to also state that the Navajo Tribe has been in the land acquisition program to acquire all the irrigatable land as well as the nonirrigatable land in between these project areas.

As of today, the Navajos have acquired three ranches, and the Navajo Tribes are cooperating and working very good with the ranchers in that area to acquire these lands.

Mr. HALEY. The chairman of the subcommittee is well aware of that fact. You might be surprised. I've been on the reservation several times, and I know about the situation.

Thank you very much. Are there any question?

The next witness then is John Smith. Mr. Sigler, do you have any questions?

Mr. SIGLER. No, sir.

Mr. HALEY. Mr. Smith, do you have a written statement?

Mr. SMITH. Sir, I do not have a written statement.

Mr. HALEY. You do not have a written statement?

Mr. SIGLER. Mr. Chairman, a written statement was submitted on behalf of Mr. Smith, but as I understand it, he did not prepare the statement and does not want to give that statement. He wishes to give one of his own.

Mr. HALEY. Well, let me be fair here. The Navajos have spent practically all of yesterday morning or a good bit of yesterday morning and yesterday afternoon. Now, we have several witnesses here, and I think that the Hopis have a perfect right to have some time, too. So I'm going to limit these witnesses appearing on behalf of the Navajo

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Tribe—I'm going to allow them 5 minutes, and in the 5 minutes—Mr. Sigler, you have a good watch. Would you tell me when that 5 minutes is up?

So on that basis, Mr. Smith, you may proceed.

STATEMENT OF JOHN SMITH, NAVAJO, THROUGH AN INTERPRETER

Mr. SMITH. Mr. Chairman, members of the committee. I had no idea of appearing here as we are doing this morning or today. I never had wished that I would be far from home here to come before a body such as this.

I had voted in the national elections for Mr. Sam Steiger, and I expect much from this gentleman and had assumed that he would honor my position that I support his political handling of the welfare of my people. I assume that we had befriended one another, and I expected much from him.

But, to my surprise, he has suddenly brought about something that is very upsetting to me. I just cannot understand why he would take such a drastic move, that is disturbing and creating confusion such that I am just appalled at what he appears to be doing.

I had respected his political party and felt that his party would be very helpful in handling matters for the welfare of myself as well as the other people. But to my dismay, what he has done caused me to travel from my home. have to bear heavy expenses, expenses that I have never known before.

It meant getting airplane flights, arriving in the early hours of the morning in a strange place. So I am very much concerned about what Mr. Sam Steiger has caused in a personal way.

Now, getting back to the issue at hand, I certainly wish to bring forth the fact that we have lived the lands which we are talking about and have used it for the welfare of everyone—Navajos and Hopis.

It was a peaceful area. People have lived together in harmony. There was no thought of any differences as to ownership of land or anything of that sort.

People have befriended one another. They've traded one another. We visit one another. One another into our homes. We welcome these visitors, and we're received the same way.

Mr. SIGLER. Mr. Chairman, the time has expired.

Mr. SMITH. We wish to remain to have that same relationship.

Mr. HALEY. Gentlemen, the time has expired.

Now, if you are the interpreter for Mr. Smith, will you inform him that the record will stay open for him to submit a written statement, if he cares to, in addition to the remarks that you've made.

The next witness is Mr. Begay. Mr. Begay, you've heard the time limit that I've placed on the other witness. It's 5 minutes.

You have a written statement here that I will include in the record as if given orally from you, and you may comment if you care to.

Without objection, the document is submitted and will be made a part of the record at this point.

(The information referred to follows:)

STATEMENT OF BAHOZONIE BEGAY, NAVAJO[1]

I am engaged in operating with cattle and sheep. I have been at my present location for the last 42 years; before that, of course, I was within the District 6 area when asked to move. I don't exactly know the number of years ago that was.

My area is the Coal Mine Chapter area. Presently, there are about 103 families; if you could count per head, about 600 people. I am not presently a Chapter officer. I have previously served as a Navajo Councilman for a four-year period. I later served as Chapter President up to the last elections.

I am a Medicine Man, along with some of the major Medicine Men in the Tribe. In the beliefs of a Medicine Man, anything that is done by a Medicine Man or anyone in that field has only just one purpose, and that is never to harm anything or anyone. The old idea is in the belief of the good that you can cause; that we wish and seek peace, beauty, the land of plenty. So, never would I have a purpose to think evil against the people or anyone. So, you shouldn't upset the manner of things in any way.

Any time that there is a thing like that happen or if anyone suspects there is something evil going to happen to him, usually anyone sensing that, they would approach us to do what we can to seek help spiritually. Then it is us who do everything in our power to seek assistance to not allow this to happen.

I have friends in District 6 because I have lived within that District. I was born there. I often revisit the place where I was born. I have lived for 77 years and understand that my birthdate is Christmas Eve. (Within District 6, less than a mile). Ever since I can remember, I have found that we were living with the Hopi members, mixed there, lived together and by that way, got to know many members. Most of them have now died of old age.

I am very much involved in the problems caused by straying cattle. Many others have the same problem. In a situation where Valley leads into District 6. When Navajo livestock stray, they are impounded by Hopis. I have lost livestock; several lost completely. That was the reason we thought the way to stop or resolve the problem was to build a fence. Half the construction was burned. This was done by the Hopi members, along with two white men. They were seen doing it on T.V. I would have difficulty in pronouncing the names of the Hopis whom I know. They are white men's names. The two who were responsible for this, I am aware of them. They have cattle there. They graze their cattle into this area. That is where our problem is. There is one Hopi I know very well. He doesn't mind my cattle coming into his area. I don't mind his stock coming into my area.

There is this court order which we all seem to recognize and say that we should do something about. Meanwhile, in continuing with this Steiger bill, our position is that we are opposed to it. I have heard from many leaders of the Hopi Tribe who have already voiced their position regarding the Steiger bill. They are opposed to it. Opposed to the Hopi Chairman. The matter should be left with the Hopi and the Navajo to work out solutions. I am trying very hard; trying to think how we can go ahead with that idea. There is a way to get at this by joining together and going over the problems together. That is what I am trying to think now.

It was a complete hardship suffered by everyone when the Navajos were moved from District 6 in 1943. There was no transportation but wagons. We had a house from which we had to move. We lost the farm and the orchards and vineyards. We were driven off from there. Overpowering type of work was created for us which we had to do. We lost the farm completely. It was a move of possibly two miles, and we resettled there and have been there since. Most of the people are livestock owners and a few have farms.

They say you are going to move some people. Then where do you move them? Where is the place for them? Even if it means just by myself, I can't see my moving again anywhere. Therefore, I would think: Look what this involves. The improvements I have made, the home and farm, the children. It is uprooting them; but to do so, my question is where is there to go. What else is there but farming and herding? The people face starvation. It is like condemning a person altogether. It is the end of your existence.

[1] Translated verbatim from Navajo language.

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STATEMENT OF BAHOZONIE BEGAY, NAVAJO

Mr. BEGAY. Mr. Chairman, thank you very much for this opportunity and I briefly would like to say that I have now finally recognized Mr. Sam Steiger. This is the first time I've seen him.

But I understand that he is sponsoring a bill which is all together bad news to the Navajo people. The entire area was completely alarmed about what was happening when they heard about it.

I, too, am very much concerned and upset about this idea of his. I am not serving as an official statesman in any form for the Navajo tribe, such as being a council member or a chapter officer or a grazing committee member.

What I am is a Navajo medicine man, serving for the welfare of my people and for others as well. And I, too, am very much concerned about the matter which has been brought about through this introduction of an issue caused by the gentleman that I named.

What I am here for is to seek and to ask that the whole matter be restored where we could again continue to live in harmony with our neighbors. In other words, the Hopis and the Navajos have lived peaceably without knowledge of things like this before.

That is all I seek, and certainly I never had any idea of traveling this far to be talking about matters such as this; but it is a very drastic move, such that I feel that I must come here and ask for my people to plead with anyone who is involved or causing this to happen to resolve this by removing this idea that was introduced.

Certainly, I don't wish to have any harm come to Hopi members as well as Navajo members. This is not my idea of living with my fellow men. We are all human beings and as such, we wish to live in peace and in harmony as we have for a long while.

And this is the reason why I am very much concerned, and I am asking the gentleman who has this bill to withdraw it. This is what I am seeking.

Mr. SIGLER. Mr. Chairman, the time has expired.

Mr. HALEY. Thank the gentleman for his testimony and his written statement, which I understand was translated verbatim from the Navajo language.

Next witness is Mrs. Annie Wauneka.

STATEMENT OF MRS. ANNIE DODGE WAUNEKA, NAVAJO

Mrs. WAUNEKA. Thank you, Mr. Chairman and Mr. Steiger and the gentleman from Alaska. I am sorry we are allowed only 5 minutes.

I have a written statement here that contains about six pages. Would that take 5 minutes?

Mr. STEIGER. Mr. Chairman, I would ask unanimous consent that Mrs. Wauneka be given an additional 5 minutes plus whatever time necessary to question her. I consider her to be one of the most knowledgeable and valuable members of the Navajo tribe.

Mr. HALEY. Without objection, so ordered.

Mrs. WAUNEKA. Mr. Chairman and members of the subcommittee, my name is Annie Dodge Wauneka. I am a member of the Navajo Tribal Council; but in this statement I am giving you my own personal views of what ought to be done about the Navajo-Hopi dispute.

In the first place, this isn't an Indian dispute; it's a white man's dispute. We Navajos and Hopis, like all neighbors, had our quarrels, but for the most part we lived side by side in peace for 500 years until white administrators, lawyers, and Congressmen persuaded some of us that the situation couldn't be tolerated for another 5 minutes.

The jurisdictional act that authorized the Navajo-Hopi lawsuit of 1962 was a mistake. It was lobbied through by white lawyers, and has only benefited white lawyers. The Hopis won and we Navajos lost; but the average Hopi, like the average Navajo, doesn't have one bit better life now than before the lawsuit.

The bill, H.R. 11128, is even worse than the jurisdictional act. It would provide for the physical removement of 8,000 to 10,000 people from their homes—about the same number of Navajos as were marched to Fort Sumner in 1864 under the Army's bayonets.

There has been nothing like this bill since the Communists overran eastern Europe. A whole area—in the United States of America—is to be cleared of its population in order to be resettled by people of another language. This bill is unbelievable. The Indian Removal Act of 1972.

It's a divide and conquer bill. Of course, it is also a white lawyer's bill. The Indians are to be driven out into the desert, while the lawyers are guaranteed job security by provisions in sections 15 and 16 for at least three monster lawsuits. I say, let us Indians work this problem out ourselves, without lawyers or legislation.

This bill is a perfect example of a white man's solution to the Indian problem. You wonder why the problem never gets solved. It's because every white man is an expert on Indian problems, but nobody listens to the Indians. Now, please tear up this stupid bill and listen to an Indian.

We Indians are poor because we don't have enough land. You white people took too much from us. You took so much you have to pay farmers not to grow crops on it. Why not give some of it back to us?

Why pit Navajos and Hopis against each other to fight over their respective shares of poverty? Why not share a small part of your excessive land with us?

I know it is said that letting Indians have adequate land retards their assimilation. We should be forced into the melting pot, and so forth. You can swallow this rubbish only if you sincerely believe it is better to have an Indian on welfare in a city slum than out in the country making his own living.

We Indians know how to make our living off the land. Don't waste money trying to force us to do something else we don't want when we already have this skill.

Take relocation: that program removed 92,645 Indians from the reservations to the ghettos—some of them several times—at a cost of $94,087,773. Over 40 cents of every dollar went for overhead.

During the Depression, the Government tried a white man's solution to our Navajo overgrazing. It took our livestock. In Navajo Canyon, in 1934, Federal agents shot and left to rot 3,500 female goats, including the milk goats we used to feed our babies. This was only a small portion of the animals the Government seized from us. Today the maximum any Navajo is allowed to run on the reservation is 300 sheep or 60 cattle and horses. And very few of us own that many.

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It was after stock reduction that the Government turned to Indian removal. First there was relocation, and now it's the Steiger bill.

You have never tried the real solution: give us enough land.

The Federal Government still owns 159,138,835 acres of vacant public domain outside Alaska. It has granted the exclusive grazing privileges on this public property to less than 23,132 livestock operators.

In contrast, the 436,500 reservation Indians are squeezed onto 51,237,694 acres of Indian-owned and adjacent Federal land.

The 23,132 figure includes all permittees in Taylor grazing districts, which embraces an additional 124,769,419 acres of reserved Federal land and non-Federal land besides the vacant public domain. It includes only 500 Indians and Mexican-Americans, the "free use permittees," who own less than 100 sheep or 20 cows each. This leaves 22,632 white stockmen. If each one's family consists of five persons, then a mere 113,160 white people are making their living on 283,903,254 acres of land—all of it seized from us Indians in the Indian wars. Each white family member draws on 2,455 acres for his support; each Indian on a mere 117 acres. Is it any wonder that Indians are always on the brink of starvation? We have to earn our living on 117 acres of land in country where it takes 10 acres to feed one sheep.

If anyone should give up raising livestock and relocate in the cities it is the non-Indian permittees on the lands the Government stole from us. Which is just what I propose. These people are white, well-educated, and affluent. They will have no serious readjustment problem. If they do, pay them the $3,000 per family the Steiger bill would award to displaced Navajos. Or extend BLA relocation services to them. But give us back our land.

Return to us Navajos our original country between the four sacred mountains.

After our ancestral lands are returned, the lands outside their borders should be granted to the Hopis. The Navajos are the people who need the land most urgently, for there are 130,000 of us and only 6,500 Hopis.

The Indian Claims Commission has already said we owned much of the land among the sacred mountains. Let the proceedings before that Commission stop where they are. We don't want the value of the area as of 1868, when your ancestors stole it from us, paid, like all Indian Claims Commission awards, without interest, dollar for dollar in devaluated, inflated 1972 paper money. We want justice, gentlemen.

We want our land back.

Mr. HALEY. Thank you very much, young lady.

The gentleman from Montana.

Mr. MELCHER. No questions, Mr. Chairman.

Mr. HALEY. The gentleman from Arizona?

Mr. STEIGER. Just one question, Mrs. Wauneka.

Were you aware of the significance of the *Healing* versus *Jones* decision—the legal significance of that decision in 1963?

Mrs. WAUNEKA. Yes.

Mr. STEIGER. Were you on the council then?

Mrs. WAUNEKA. Yes.

Mr. STEIGER. Did the council ever discuss any action to be taken or was it just—what was the feeling of the council at that time?

Mr. WAUNEKA. They never discussed anything.

Mr. STEIGER. It was never discussed.

Did any BIA people ever indicate that it ought to be discussed?

Mrs. WAUNEKA. No.

Mr. STEIGER. Did the Hopis every try and discuss it with the council?

Mrs. WAUNEKA. No.

Mr. Steiger, may I say one more thing and then I will be through.

That—beautiful colors over there, that blue area there and the green area, according to my understanding is done by the Bureau of Indian Affairs but the Navajos were never contacted, were never advised that the BIA was withdrawing that land for the Hopis and part of it for the Navajos. The yellow is for the Navajos.

That little yellow under 5 as you see—I understand that's nothing but sand dunes and then this other area is about the same and George Falassas pointed out that the little chimney is the only available water there is for that total of area there.

And the Navajos were never advised, were never even asked to consider where the lands were being drawn and that's ridiculous. Why weren't we advised?

Maybe we would change a line there. We were never advised to my surprise. Thank you.

Mr. STEIGER. Mrs. Wauneka, let me tell you this. I personally discussed this with your tribal leaders in August of last year and again in October. I told them what I was doing and I asked them to introduce a bill that they felt would be fair to the Navajos. I told them I would sponsor such a bill and I never got any response. I tell you this because this isn't secondhand. This is exactly what happened.

I felt that the best way to arrive at a settlement was if we could have two bills and result in compromise. I hope that's what will happen here. It's not fair to say the tribe was not aware of what was happening and didn't have the opportunity to provide the information. I can tell you the information was not provided.

That is true.

Thank you, Mr. Chairman.

Mr. HALEY. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman. I do have some questions for Mrs. Wauneka, because I think she has a real feel for what the council would be willing to approve. Since adjourning yesterday, I've gone over the bill pretty carefully, after listening to some of the arguments and I had some questions as to what things might be acceptable to the Navajo Tribal Council.

I'm going to ask the same question when the Hopis testify so if you would be on the lookout and do some thinking about the questions before it's the Hopis' turn.

Section 5 of the bill deals with what is shown on the map as a green area. That area has not been the subject of the *Healing* versus *Jones* decision. In your opinion, Mrs. Wauneka, would it be the feeling of the Navajo Tribe that that particular area, since it has not been the subject of any court litigation, be set aside and not considered in this bill?

Mrs. WAUNEKA. Correct.

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Mr. LUJAN. The Navajos would want that part of it.

Mrs. WAUNEKA. Yes, we want that part stricken.

Mr. LUJAN. Yesterday, Mrs. Wauneka, during testimony, I think it was Mr. MacDonald who brought up the point that there is no Paiute problem in these lands.

Do you feel the same way and would the Navajo Tribal Council, in your opinion, be in favor of not dealing with the Paiute question in this bill?

Mrs. WAUNEKA. No; I would say no. I understand they had in 1934 area, they have been litigated into a Navajo, so to speak.

Mr. LUJAN. Now, they're all Navajos?

Mrs. WAUNEKA. That's what I understand and that also should be deleted from the bill.

Mr. LUJAN. Would you agree with Mr. MacDonald's answer yesterday that before any moving of livestock, that the land should be made available where these animals could be grazed?

Mrs. WAUNEKA. That is the reason why I say, give us back our land.

Mr. LUJAN. How do you feel about another proposition that was made where you would not displace anyone, either Navajos nor Hopis?

Specifically, because I'm sure you would say don't move the Navajos—would the Navajo Tribal Council have any objections to leaving Hopis on Navajo land and not move either one—anybody that's there not move them at all?

Mrs. WAUNEKA. I would say no objection because we've been there all this time.

Mr. LUJAN. The section 15, which provides for payment of rent, would you comment on that? I don't know how else to put the question.

Mrs. WAUNEKA. What does the bill say?

Mr. LUJAN. The bill provides that rent be paid by one tribe to the other. My thought is that it would continue to breed difficulties between the two tribes. Perhaps I might ask you if you agree with that: that it would continue to breed difficulties and that perhaps we do away with any rental arrangement from one tribe to the other?

Mrs. WAUNEKA. I don't think it's right. I think it should be done away with.

Mr. LUJAN. And there's a large amount of money, whatever it may come to, probably $18,000—$18 million, excuse me, for relocation costs as a result of this step. If we were able to solve the problem of relocation for both the Hopis and the Navajos, that is, if we would agree that no one had to move and that is a big "if," but if we were able to agree on that, would you favor using that money saved in relocation to provide other lands for the Navajos to graze their cattle?

Mrs. WAUNEKA. That's what I'm saying. Give us our land back.

Mr. LUJAN. The thing that I was trying to point out is that there was money in the bill, if we're able to solve the relocation problems, there would be money to acquire the lands.

Thank you, Mr. Chairman.

Mr. HALEY. Mr. Sigler?

Mr. SIGLER. No questions, Mr. Chairman.

Mr. HALEY. Thank you very much, young lady.

Mrs. WAUNEKA. Thank you very much.

Mr. HALEY. I have several more statements here from Navajos and I ask that they be made a part of the record. Without objection, so ordered.

(The statements and a resolution of the Navajo Tribal Council follow:)

STATEMENT OF LAWRENCE ISAAC, SR.

My name is Lawrence Isaac. I am 62 years of age. I live at Cow Springs Coal Mine Junction in the northern part of the joint-use area. I have been engaged in the livestock and sheep-raising business for as long as I can remember. All of our family depends solely on the same livelihood. I have six children and twenty-two grandchildren.

Our family will not be moved under H.R. 11128 from the area in which we now live. However, we will be seriously affected by that bill. Our grazing permit, upon which the whole family depends, covers lands which will be given to the Hopis by the bill. If this occurs, we would have no lands on which to graze our sheep and cattle. We could not use the lands which other Navajos have permits to graze because these lands are already used to their capacity. Furthermore, many of the people who are moved will want to share these lands also.

I also come to speak for the members of the Shonto Chapter of the Navajo Indian Tribe. About 400 members of that Chapter will be moved by H.R. 11128 from the land on which they have lived for decades. They have told me to tell this Subcommittee that they have always gotten along with the Hopis and treated them as brothers and that they don't believe that the Hopis want the Navajos moved off the land. They also told me to tell you that the United States should not do to them what H.R. 11128 would do if only for the fact that thousands of Navajos have died in serving in the United States armed forces. Even now, many of their sons are serving abroad in the armed forces and might return to find themselves without a home.

STATEMENT OF CARL TODACHEENE

My name is Carl Todacheene. I am Chairman of the Resources Committee of the Tribal Council of the Navajo Tribe, a veteran, a disabled veteran, and a winner of the Purple Heart. I want to say a word to this Subcommittee on behalf of Navajo veterans such as myself.

Is it worth anything to this Subcommittee that there are over 10,000 Navajo veterans, dead and alive, who have fought to defend this country and its values in Vietnam, Korea, and World War II? We also risked our lives as code-talkers for the U.S. Marines. We supplied many of the people who fought on the battlefields, manned arsenals, defense plants and who put together materials of war in the defense of the U.S. It is extremely difficult for Navajo veterans to believe that after this disproportionate service on behalf of the United States (when compared with the rest of the population), in return the United States cannot allocate to us a sufficient amount of the lands we have protected so as to avoid disputes such as this now before this subcommittee.

We Navajos too have contributed much to the American way of life and economy. We have not shut ourselves off from the mainstream like many other Indians. We feel that mainstream America should not now turn its back on us.

RESOLUTION OF THE NAVAJO TRIBAL COUNCIL

To Provide for an Equitable Settlement of the Dispute Between the Navajo and Hopi Tribes and Members Thereof in Connection with the 1882 Executive Order Area & the Hearing on H.R. 11128 ("The Steiger Bill") to be Held in Washington, D.C. on April 17 & 18, 1972; and to Authorize the Chairman of the Navajo Tribal Council and its General Counsel to offer testimony in Support of Such Equitable Settlement

Whereas:

1. The United States District Court for the District of Arizona on September 8, 1962, entered a judgment in *Healing* v. *Jones*, 210 F. Supp. 125 (1962), decreeing that the Navajo and Hopi Tribes have joint, undivided and equal interests in

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that portion of the 1882 Executive Order area lying outside Management District No. 6; and

2. Even though pursuant to the Act of July 22, 1958, the Navajo Tribe and the Hopi Tribe were respectively declared owners of one-half interests in the 1882 Executive Order area outside Land Management District No. 6, the people who have been living on the land for more than a century have been predominantly Navajos, most of whom are livestock herders; and

3. There is no additional range land available on the Navajo Reservation and residents of the 1882 Executive Order area outside Land Management District No. 6 could, therefore, not continue as livestock men on the Navajo Reservation, and explusion from the area on which they and their ancestors have lived for decades would be a serious hardship on the Navajo families affected; and

4. The courts, by reason of lack of jurisdiction, may not have the power to partition the area outside Land Management District No. 6, and appropriate action must be taken to resolve the disputes between the Navajo and Hopi Tribes.

Now, therefore, be it resolved that:

1. The Navajo Tribal Council, on behalf of the Navajo Nation, hereby goes on record as being firmly and unalterably opposed to H.R. 11128 (known as the Steiger Bill) which was conceived without the participation of the two tribes affected by the bill.

2. The Steiger Bill is not good legislation because it was drafted unilaterally without giving either tribe any opportunity to resolve their own problem within the concepts of their own culture.

3. The Navajo Tribal Council hereby authorizes and directs the Chairman of the Navajo Tribal Council, its General Counsel and its Washington Delegation of Tribal representatives to oppose with great vigor and force the enactment of the Steiger Bill so that proper negotiation can take place between the two tribes.

4. The Chairman of the Navajo Tribal Council and its General Counsel are hereby directed to present testimony through Tribal representative and others to demonstrate the inappropriateness of the Steiger Bill so that an opportunity may be provided for the two Tribes to mediate the matters in controversy in Indian harmony.

5. The Navajo Tribal Council further authorizes the Chairman of the Navajo Tribal Council, its General Counsel and all designated witnesses to make detailed statements of opposition and to do all and everything necessary to achieve an equitable settlement between the two tribes, in lieu of the Steiger Bill.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona) at which a quorum was present and that same was passed by a vote of 62 in favor and 0 opposed this 13 day of April, 1972.

PETER MACDONALD,
Presiding Chairman.

The first witness for the Hopi Delegation is Clarence Hamilton, chairman of the tribal council and John S. Boyden.

Mr. Hamilton, I understand that you have a prestatement and then Mr. Boyden is going to make a statement on behalf of the tribe, is that correct?

Mr. HAMILTON. Yes, it is.

Mr. HALEY. Give your name to the reporter, who you represent if other than yourself.

STATEMENT OF CLARENCE HAMILTON, CHAIRMAN, HOPI TRIBE

Mr. HAMILTON. Chairman and members of the committee, my name is Clarence Hamilton. I feel that I should take this opportunity to explain my position as the chairman of the Hopi Tribe. I wish to summarize my written statement already filed with the committee.

I was born on my Hopi Reservation and have been active in Hopi affairs practically all my life. In order to explain my position as the

chairman of the Hopi Tribe, we need to talk a little politics which I am sure is not a strange topic to most of you.

I was first elected to the Hopi Tribal Council from the village of First Mesa in 1967. Prior to 1969, each of the several villages elected the members of the tribal council and the chairman was elected within the council by the council members. According to those procedures then, I was subsequently elected to tribal chairman by the tribal council.

In 1969, however, these elections procedures were changed by the amendment to the Hopi constitution and in the chieftain of the village who determined that the vice chairman of the Hopi Tribe should be elected by the people and by the popular vote. That amendment was adopted by popular referendum at the election called by the Secretary of the Interior. The amendment provided that the tribal chairman should be elected by the popular vote with all the members of the tribe over 21 years of age be eligible to vote.

In November of 1969, I was again elected tribal chairman in this first popular election in the tribe.

We stand alone defending our life and property without the aid of the usual law and order forces which protect other citizens of this country. We present our case today with a lingering hope and fervent prayer that you will be incensed by the shameful treatment we have received at the hands of the Bureau of Indian Affairs in Washington.

In 1935, during the reduction of the livestock, I personally was affected by this program. Of the 300 head of sheep, I was only allowed to retain 35 head of sheep in my herd, while the Navajos were allowed to keep their herds by spreading them among the members of the family.

These bureaucrats depend upon the fact that the Hopi Indians have always cooperated with the United States and will continue to suffer in silence. As the Navajo Tribe continued to rebel and refuse to conform to the grazing regulations of the Supreme Court of the United States, we have asked our tribal attorney to outline our case on our behalf. This statement will be supported by members of the tribe as spokesman for that purpose.

Other members are here lending their moral support.

Thank you, Mr. Chairman.

Mr. HALEY. Thank you, Mr. Hamilton. I notice that you more or less summarized your statement, so without objection, the written statement by Mr. Hamilton will be made a part of the record at this point in the proceedings.

(The statement follows:)

STATEMENT OF CLARENCE HAMILTON, CHAIRMAN, HOPI TRIBE

My name is Clarence Hamilton. I feel that I should take this opportunity to explain my position as the Chairman of the Hopi Tribe. You may have heard the charges that have been raised against the Hopi Tribal Council as we have worked through this conflict, including charges against me, that I am not Hopi and that I do not represent the Hopi Tribe.

To answer the allegation as to whether or not I am, in fact, Hopi, it is necessary to go into a little southwest Indian history. Almost three hundred years ago, the Tewa Pueblo Indians were living in what was to become southern New Mexico along the Rio Grande River. A portion of the Tewas during the Pueblo revolt of 1680 to 1692 moved to the pueblo of Hano on First Mesa in the Hopi Country where they have ever since remained. The tradition of various Hopi clans as to the reasons for, and circumstances of the move may differ

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somewhat, but it cannot be denied that we have been a part of the Hopi tribe for nearly 300 years.

My ancestors were members of those villages who joined the Hopis. The two tribes were related than; and, in the 300-minus intervening years, those Tewas, myself included, have certainly been accepted as, and have, in fact, become Hopi. When the Hopi Constitution was adopted in 1936 the Consolidated First Mesa Villages of Walpi, Shitchumovi and Tewa, which is the village of Hano, were included as recognized villages under that Constitution.

I was born on the Hopi Reservation and have been active in Hopi affairs practically all of my life.

In order to explain my position as Chairman of the Hopi Tribe, we need to talk a little politics, which I am sure is not a strange topic to most of you. I was first elected to the Hopi Tribal Council from the village of Polacca in 1967. Prior to 1969, each of the several villages elected members of the Tribal Council and the Council itself elected the Chairman.

According to those procedures, then, I was subsequently elected Tribal Chairman by the Tribal Council. In 1969, however, these election procedures were changed by amendment to the Hopi Constitution. That amendment was adopted by popular referendum at an election called by the Secretary of the Interior. The amendment provided that the Tribal Chairman should be elected by popular vote, with all members of the Tribe over 21 years of age eligible to vote.

In November, 1969, I was again elected Tribal Chairman in this, first popular election in the Tribe. I admit that only 30 percent of the eligible voters participated in this election. But, when compared with the fact that only 32.6 percent of the eligible voters voted in the last Phoenix City election and that only 13.9 percent of the eligible voters cast their ballots in the Los Angeles special election of January 18, 1972, the Hopi voting record is not too bad.

Now, based on the facts that my ancestors were Tewas and that fewer than 50 percent of the voters participated in my election, 22 members of the Hopi Tribe have asked for my resignation, saying that I do not represent the true interests of the Hopis. I hope that you will agree with me, based on the information that I have just given, that I am the duly elected leader of the Hopi Tribe and that I do legitimately represent the Tribe's interests.

Concerning the 22 Hopis who have asked for my resignation, I suppose that there are not many public officials in this country who have less than 22 members of their particular constituency willing to ask for their resignation.

This Committee knows that even when the legislation authorizing the *Healing* v. *Jones* suit against the Navajo was passed the same dissident group, with a General Holdridge as a spokesman, desperately tried to prevent the passage of the bill. Historically at the turn of the century, we were called the "Friendlies" while they were termed as the "Hostiles" to the Federal Government when we wanted our children educated. This committee also knows that the only progress the Hopi Tribe has made has been over the objections of these people who refuse to acknowledge the facts as they are.

There is a conspiracy and agitation, motivated primarily by outside sources with extreme ecology and personal axes of their own to grind, to over-throw the present Hopi government. If these same methods were used against the United States Government, the activists would surely be vigorously prosecuted and the offenders imprisoned.

We stand alone defending our life and property without the aid of the usual law and order forces which protect other citizens of this country. We present our case today with a lingering hope and fervent prayer that you will be incensed by the shameful treatment we have received at the hands of the Bureau of Indian Affairs in Washington. These bureaucrats depend upon the fact that the Hopi Indians have always cooperated with the United States and will continue to suffer in silence. As the Navajo Tribe continues to rebel and refuse to conform to grazing regulations and the decisions of the Supreme Court of the United States, the Bureau of Indian Affairs and the Office of Management and Budget seeks to appease the Navajo at the expense of the Hopi.

We have asked our tribal attorney to outline our case in our behalf. His statement will be supported by members of the tribe selected as spokesmen for the purpose. Other members are here to lend their moral support. Since we have divided responsibility to avoid repetition, we hope, Mr. Chairman, that questions can be reserved until all of our testimony has been concluded.

Mr. HALEY. Any questions?

Mr. LUJAN. Yes, Mr. Chairman.

Mr. Hamilton, do you believe as has been stated before, that negotiations could produce a solution to this problem, or do you feel that we ought to settle it through legislation?

Mr. HAMILTON. I think to my own opinion that negotiations have been exhausted. I have met with both the chairman and the vice chairman of the Navajo Tribe four times and never have come out with any kind of fruitful negotiation between those two people, so the only thing that I feel right now is this legislation.

Mr. LUJAN. You heard the questions that I asked Annie Wauneka when she was testifying. I would like to get the Hopi position on those questions.

The 1934 Boundary Act property, which is the green area on the map, is it your feeling that that shall remain as a part of the legislation or should that be treated differently?

Mr. HAMILTON. I should think it would remain on the legislation. I feel it myself because within 20 years the population would be tripled in that area.

Mr. LUJAN. One of the sections deals with the Paiute problem, and it has been stated in testimony that there is no problem there. Do you feel that that should remain in the legislation, or that that should not be a part of the legislation?

Mr. HAMILTON. I think it should. I think it should still be under the legislation.

Mr. SIGLER. Would you have any objection to some wording in the legislation that the Navajos be provided alternate lands to graze their cattle if those permits are reduced?

Mr. HAMILTON. I think they have sufficient land. They claim that they have 25,000 square miles on the Navajo Reservation, and I think they have room for those people to move into.

Mr. LUJAN. I'm talking about the cattle now.

Mr. HAMILTON. Well, this is about the same thing.

Mr. LUJAN. Probably the crucial question is dealing with the Hopi Tribe as far as relocation is concerned. What would be the feeling of the Hopis if the legislation provided for Navajos to stay in the land that might be conveyed to the Hopis perhaps for their lifetime at least?

Mr. HAMILTON. I think that's going to create more problems because right now the Hopis haven't been using their rights according to the *Healing* v. *Jones* decision.

Mr. LUJAN. Do you think it would be better to relocate all of the Navajos that are in what would be Hopi land, and relocate all Hopis in areas that would become Navajo land?

Mr. HAMILTON. Yes, sir.

Mr. LUJAN. The question of one tribe paying rents to the other—do you think that that subject should remain in the legislation?

Mr. HAMILTON. That's right.

Mr. LUJAN. Do you feel that that would be the answer—the answer that you have given would be the general attitude of the Hopis and I suppose particularly the governing bodies of the Navajo Tribe—I mean, the Hopi Tribe?

Mr. HAMILTON. Yes, sir.

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. HALEY. Mr. Sigler, do you have a question?

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Mr. SIGLER. No questions, Mr. Chairman.

Mr. HALEY. The next witness then is the attorney for the tribe, John S. Boyden.

Mr. Boyden, if you will give your name and who you represent other than yourself, and also I would like to have your résumé.

STATEMENT OF JOHN S. BOYDEN

Mr. BOYDEN. My name is John S. Boyden. I am a resident of Salt Lake City. I have been employed by the Navajo Tribe—by the Hopi Tribe; my work for the Navajo Tribe has been gratuitous, your honor. I have been employed by the Hopi Tribe under contract as their General Counsel since 1951. I am also their claims counsel.

Mr. HALEY. That contract has been OK'd by the Secretary of the Interior, is that right?

Mr. BOYDEN. It has, and the talk about 10 percent is something that I've just heard here. Well, I did hear it once more when Mr. MacDonald gave it over the radio, but there is nothing to that.

I am retained as a General Counsel, win or lose. It makes no difference on how much I get.

Mr. HALEY. You may proceed, sir. And you have a written statement.

Mr. BOYDEN. I had a written statement, your honor. I believe I can shorten it considerably—I can talk faster than I can read, and if I might move to where I could point to the map, I think that I could move along pretty fast.

Mr. HALEY. Now, Mr. Boyden, we want the Hopi Tribe to have full discussion and hearing in this thing. If you feel that you can put your statement in the record and then summarize it, why, that's your privilege and you probably will save some time, but remember, we want to hear the full story for the Hopi Tribe.

Without objection, the written statement of Mr. Boyden, consisting of 12 pages, will be made a part of the record at this point in the proceedings.

(The statement follows:)

STATEMENT OF JOHN S. BOYDEN

My name is John S. Boyden. I am an attorney at law, duly licensed to practice in the State of Utah, in various federal Courts of Appeals, and the Supreme Court of the United States. I have represented the Hopi Indian Tribe of Arizona as their general legal counsel under contract approved by the Secretary of the Interior since the first day of September 1951. I was instrumental in negotiation for, and drafting of the Act of July 22, 1958 (72 Stat. 402) which authorized the judicial determination of the rights and interests of the Navajo and Hopi tribes and all individual Indians claiming any interest in the area set aside by the Executive Order of December 16, 1882. I was the chief trial and appellate attorney in the case of *Healing* v. *Jones*, the action commenced pursuant to the authority of the aforementioned act. I am also the approved claims counsel for the Hopi Indian Tribe, and I was the trial attorney in the case of *Hopi Indian Tribe* v. *The United States of America*, Docket 196, before the Indian Claims Commission. As a result of my experience in the preparation and trial of those cases, I am familiar with the history of the Hopi people and their controversies with the Navajo Indian Tribe.

Healing v. *Jones* was an action commenced by Dewey Healing, Tribal Chairman of the Hopi Tribal Council for and 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 against Paul Jones, 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. The decision was rendered in that case on the 28th day of September 1962, 210 Fed. Supp 125, and was affirmed by the Supreme Court of the United States the following year, 373 U.S. 758. The Narrative Account of the Hopi-Navajo Controversy rendered by the court states that the ancestors of the present Hopi tribe occupied the southwestern table lands and canyons of New Mexico and Arizona before 1300 A.D. and perhaps as far back as 600 A.D., between Navajo Mountain and the Little Colorado River, and between the San Francisco Mountains and the Luckachukas. The court further stated that from all historic evidence, it appears that the Navajo first entered what is now Arizona in the last half of the 18th century.

Before the Treaty of Guadalupe Hidalgo in 1848 (9 Stat. 922), the United States Army was called upon to protect the settlers of New Mexico from the marauding Navajo tribe. Many Navajos were driven from the New Mexico territory to areas they had not previously occupied west of the New Mexico-Arizona state line. The raiding and pillaging was then transferred with increasing intensity from the New Mexico communities to the Hopi country. I do not imply that there had never been raids upon the Hopi prior to that time. Early reports indicate that the Hopi Indians had been the subject of attack, robbery and theft by the Navajo and other Indians many years before.

The relative position of the Navajos is shown by the fact that in 1858, Lt. Ives traveled east from First Mesa one day and then 24 miles on the next day before he reached the edge of the Navajo country which was then all east of the Hopi villages.

By 1882, the Navajo imposition on the Hopi became so desperate that Agent J. H. Flemming threatened to resign unless something was done to protect the Hopi interests. The Executive Order Hopi Reservation of 1882 was created for the specific purposes, among others, of reserving for the Hopis sufficient living space as against advancing Navajos and minimizing Navajo depradations against the Hopi; however, the Secretary of the Interior was also authorized in his discretion to settle other Indians in the area. (*Healing* v. *Jones*, finding 16) That particular clause was customary in executive orders at that time.

But there was then no intent to settle the Navajos within the 1882 Moqui or Hopi Reservation. Secretary of the Interior William F. Vilas unequivocally stated to the Secretary of War as follows:

"The reservation of Moquis Indians was set apart by Executive Order of October 16, 1882, for them, and such other indians as the Secretary of the Interior may see fit to settle thereon. It comprises no land set apart for the Navajos, and no Navajos have been settled thereon by the Department, nor have they any right to drive or graze their flocks and herds over the Moqui lands.

"A recent investigation of the Affairs of the Navajo Agency, under whose jurisdiction the Moquis reservation and Indians are, has brought to the attention of the Department similar information of depredations by Navajos upon the lands, crops and other property of the Moqui Indians, and further, that the Navajo Agent, whose Agency is at considerable distance from the Moqui reservation, is not able, with his police, to correct the abuses * * *."

"In view of this condition of affairs I believe the suggestion made by Mr. Welsh is a wise one, and I therefore have the honor to request that you will give the necessary orders for the movement of a company of troops or such other force as may be deemed necessary for the purpose, under the command of a judicious, discreet, and firm officer with instructions to visit the Moqui reservation and also the Navajo reservation and especially those portions of each lying adjacent the one to the other, and to remove all Navajo Indians found trespassing with their herds and flocks on the Moqui reservation and to notify them that their depradations must cease and that they must keep within their own reservation."

Time will not permit a detailed review of facts showing why and how the Secretarial order was aborted, but the record clearly reveals that Hopi rights were sadly neglected and nothing of consequence was done to hold the Navajo within legal bounds.

From hundreds of exhibits, several pretrials and one solid month of testimony the three judge federal court made the following findings:

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"21. None of the twenty-one Secretaries of the Interior who served from December 16, 1882 to July 22, 1958, or any official authorized to so act on behalf of any of these Secretaries, expressly ordered, ruled or announced, orally or in writing, personally or through any other official, that, pursuant to the discretionary power vested in him under the executive order he had "settled" any Navajos in the 1882 reservation, or had authorized any Navajos to begin, or continue, the use and occupancy of the reservation for residential purposes.

"45. Congress at no time enacted legislation designed to, or having the effect of, terminating Hopi rights of use and occupancy anywhere in the 1882 reservation.

"49. The failure of the Hopis, prior to the settlement of Navajos, to use a substantially larger part of the 1882 reservation than is embraced within district 6, was not the result of a free choice on their part. It was due to fear of the encircling Navajos and inability to cope with Navajo pressure."

The next chapter in the fraud on the Hopi people will serve to explain the present Hopi "fear of the fence." At the time grazing District 6 was created the Superintendents of the Navajo and Hopi Reservations recommended a plan of administration for the Hopi and Navajo Reservation. That plan provided:

"The Hopi Superintendent will have jurisdiction throughout District #6, and that the Navajo Superintendent will have jurisdiction in the other land management districts. This arrangement will be tentative until the definite boundary of the Hopi-Navajo reservation shall have been determined. This arrangement is established as a matter of administrative expediency and convenience and shall not be construed in any way as fixing an official boundary between the two tribes, or as prejudging in any way the boundary which is ultimately established."

The grazing regulations provided:

"For the purpose of these regulations District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and bylaws of the Hopi Tribe."

Hopi Supt. A. G. Hutton soon complained to Navajo Supt. E. R. Fryer:

"We have had several cases in the past few months whereby the Navajo Indians are moving into areas occupied by the Hopis * * *.

"At the time of the district division I told the Hopis that this division was on a land management basis and not as a definite reservation boundary which explanation they accepted, however, when other Indian Service employees tell them the contrary it puts me in a bad light."

Supt. Fryer replied:

"The new Grazing regulations provide that, for the purpose of the regulations only, District 6 shall be considered as the Hopi Reservation * * *.

"District 6 should not be recognized by any of our people as being a reservation. It is merely an area which defines land use as between Navajo and Hopi Indians * * *."

The Hopi Tribal Chairman complained to the Commissioner of Indian Affairs that District 6 did not include nearly all of the area that had been occupied by the Hopi Indians for a good many years, especially grazing lands and water holes. The Hopi Chairman further complained that the Navajos claimed District 6 established a boundary line between the two tribes. The Hopi Tribal Council passed a resolution protesting the limitations placed upon the Hopi and the lack of effort being made to keep Navajo Indians from moving from their districts into the Hopi Reservation and building homes there. Commissioner John Collier, Assistant Commissioner Walter V. Woehlke, Navajo Superintendent E. R. Fryer, Assistant Commissioner William Zimmerman, Jr., Commissioner Wm. Brophy and other BIA officials repeatedly assured the Hopi that any fences built around District 6 would in no way be construed as establishing District 6 as the Hopi Reservation, or as jeopardizing any claims which the Hopi may have to other lands.

With all the facts before it, the Court in *Healing* v. *Jones* nevertheless found:

"37. The events and official pronouncements between February 7, 1931 and July 22, 1958, indicate that all Navajos entering the reservation for purposes of permanent residence were impliedly settled therein by the Secretary or his authorized representative, at or shortly after the time of entry, and that on July 22, 1958, all Navajos residing in the 1882 reservation were accordingly settled therein pursuant to the Executive Order of December 16, 1882."

Thus the Hopi Exclusive Area was limited to District 6. But the court also found:

"22. Prior to the years 1909 to 1911, while the second allotment project in the 1882 reservation was in progress, neither the Secretary of the Interior nor any authorized representative of the Secretary, acting in the exercise of the authority reserved under the executive order, expressly or by implication, authorized the Navajo Indian Tribe or any Navajos whether or not then living in the reservation area, to use and occupy any part of the 1882 reservation for residential purposes."

Obvious misstatements as to Navajo rights in the Executive Order Reservation were made and repeated by many officials, including those as high as the Commissioner of Indian Affairs, but the implied settlement did not take place until after 1931. (*H.* v. *J.*, Finding 37).

The court in explaining the treatment of the Hopi at the hands of its guardian and the aggressive Navajo specifically held:

"50. After the official settlement of Navajos in the 1882 reservation, the failure of the Hopis to make substantial use of the area beyond district 6 was not due to a lack of desire or a disclaimer of rights on their part, but to their exclusion from that area by Government officials. Throughout this entire period they continued to assert their right to use and occupy the entire reservation area. These Hopi protestations would doubtless have been even more persistent and vehement had it not been for the constant assurances given to them by Government officials, that their exclusion from all but district 6 was not intended to prejudice the merits of the Hopi claims.

"51. As a practical matter, the Secretarial settlement of Navajos in the part of the 1882 reservation outside of district 6, even without Governmental restraint, probably would have greatly limited the amount of surface use the Hopis could have made of that part of the reservation. But there still would unquestionably have been a substantial movement of Hopis into the area had it not been for the administrative barrier and improper Navajo pressure.

"52. Neither before nor after the Secretarial settlement of Navajos, did the Hopis abandon their previously existing right to use and occupy that part of the 1882 reservation in which Navajos were settled."

Healing v. *Jones* is now the law. Its decree precludes the Hopi from recovering the greater part of the lands that were once his. He now fights to retain and repossess that which the Supreme Court of the United States has affirmed to be his. That judgment is:

"1. The Hopi Indian Tribe, for the common use and benefit of the Hopi Indians, but subject to the trust title of the United States, has the exclusive right and interest, both as to the surface and subsurface, including all resources, in and to that part of the executive order reservation of December 16, 1882, lying within land management district 6, as defined on April 24, 1943 * * *.

"2. Title in and to the part of the 1882 reservation described in the preceding paragraph of this judgment is quieted in the Hopi Indian Tribe for the common use and benefit of the Hopi Indians, subject to the trust title of the United States, and such land is henceforth a reservation for the Hopi Indian Tribe.

"3. The Hopi Indian Tribe and the Navajo Indian Tribe, for the common use and benefit of their respective members, but subject to the trust title of the United States, have joint, undivided and equal rights and interests both as to the surface and subsurface, including all resources, in and to all of the executive order reservation of December 16, 1882, lying outside of the boundaries of land management district 6, as defined on April 24, 1943, such boundaries being described in paragraph 1 of this judgment, and title in and to all of that reservation except the described district 6, is accordingly quieted in the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike, subject to the trust title of the United States, as a reservation."

It seems ludicrous that we should stand here, ten years after the court of last resort in this land has spoken, trying to obtain that which the court has legally determined is ours.

The Navajo Tribe still wants to build its fences around district 6, but even the Navajo living within the exclusive Hopi area continue to abuse the judicial process, by procrastination and will not voluntarily obey the court order of ejectment.

Negotiations between the two tribes have become a mockery because the Navajos continue to withhold the Hopi one half interest outside of district 6 and the Washington Bureau of Indian Affairs will neither reduce the devastating overgrazing by Navajo herds nor grant grazing permits to the rightful Hopi stockmen. All this is the problem even though the court has clearly pointed the way in the following conclusions of law:

"12. The virtual exclusion of Hopi Indians, accomplished by administrative action extending from 1937 to 1958, from use and occupancy, for purposes of

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residence and grazing, of that part of the 1882 reservation lying outside of district 6, as defined on April 24, 1943, has at all times been illegal.

"13. Neither the Navajo Indian Tribe nor any individual Navajo Indians have the exclusive interest in and to any part of the 1882 reservation."

Congress has protected the rights of the Hopi Tribe in the area outside the 1882 Executive Order Reservation and particularly around Moencopi, but the administrative handling is tainted with the same political expediency, lax enforcement of orders and general lethargy.

The Act of June 14, 1934 permanently withdraw from all forms of entry or disposal for the benefit of the Navajo and "such other Indians as may already be located thereon" all of the lands described in the act, without affecting the title to the Hopi Executive Order Reservation of 1882. The Hopi Tribe was then and still is situated within the area. The Solicitor of the Department of the Interior rendered his opinion that the "other Indians" provision of the act was "without quibble" for the protection of the Hopi interest in the Western Navajo Reservation. That Hopi interest has been recognized by the Commissioner of Indian Affairs, the Secretary of the Interior and outside parties but it has never been defined.

This bill delineates a Hopi boundary. The Hopi Tribe does not agree with the small area given to the Hopi Tribe under the bill, as a witness from Moencopi will explain. Nevertheless, the Tribal Council is unanimous in its opinion that a partition of this area without resort to further extended and expensive litigation is an absolute necessity. The Navajos continue to flock to every inch of land in the vicinity of Hopi Indians smothering Hopi existence in the same manner that has proved so fruitful for the Navajo in the past. Secretarial orders to desist construction in the Moencopi area unless authorized by both tribes have been violated by the Navajos while the Hopi Tribe respects and obeys authority.

The recent concentration of Navajo growth around Moencopi and District 6 suggests a deliberate plan to stifle Hopi activity and at the same time plead extreme hardship in relocating Navajos from their "ancestral" homes.

Navajo tradition provides a very convenient way of acquiring property that does not belong to the Navajos. A person who establishes residence will raise a family, then each of his daughters at a very early age selects a mate bringing the man to the same area as her father and there raise their family. In this manner all of the new people who are brought in as husbands for the Navajo women and their children claim direct relationship to the original settler and assert the right to all the land they can use in the area.

The Hopi Tribe does have a Writ of Assistance pending final action by the Supreme Court in an ancillary proceding of *Healing* v. *Jones*, and the United States has pending in the same court a Writ of Ejectment against Navajos in District 6. But we all know partition is the only practical solution for dealing with two tribes with such opposing cultures and a history of endless confrontations. Neither the legislation nor the court action alone is sufficient. They compliment each other.

The attorneys for the Navajo have suggested to the Supreme Court that Congress is responding to the situation and they have in fact included a copy of their bill in the appendix to their petition for a Writ of Certiorari. Do they now want the Congress to believe the court is taking care of the situation?

We are submitting in writing certain proposed amendments which we hope you will carefully consider. Particularly we draw to your attention that the bill permits the Navajo another ten years to tender the lands he has already preempted for ten years since the final decree of the court. The excuses and further impositions to be conjured up during the further extended period, perhaps beyond the activity of many of us who have first hand knowledge, will overwhelm the novice in this fray. What other group in this great country of ours is given twenty years to comply with a court decree? To ask Congress to undo the long litigation accomplished with sacrifice, heavy expense and outstanding patience is unconscionable.

May I close by quoting, in part, from a recent resolution of the Hopi Tribal Council:

Lonely in the forsaken remnant of what was once our mother land but braced by our faith in God and the ultimate triumph of right we inform all who are willing to hear:

We pledge our unity for the good of all Hopi people notwithstanding the subversive attacks of the misinformed and the malicious.

We will continue livestock roundups of trespassing animals on our exclusive area and will render meaningful the judicial phrase of "quieting title in the Hopi Indian Tribe for the common use and benefit of the Hopi Indians."

We will resolutely assert our decreed right in the joint use area with Hopi occupation, judicial process, political action and Tribal administrative courage destroying every fence constructed to obstruct our lawful use.

We refuse to be further intimidated in the vicinity of Moencopi. Secretarial directives must be observed by both the Navajo and Hopi Tribes or by neither.

We unequivocally commit ourselves to the seemingly fruitless task of convincing the Washington BIA and the Office of Management and Budget that Hopi Indians are entitled to equal protection of the law under the Constitution of the United States.

We beg of Congress to partition our joint use lands that living therein may be tolerable and to equitably define and legally protect our interests in the vicinity of Moencopi.

May the Great Spirit chart our course.

Be It Thus Unanimously Resolved.

Mr. HALEY. You may comment orally, sir.

Mr. BOYDEN. First of all, in the case of *Healing* v. *Jones* where this case—whole case—was heard, the Court states that the Moqui Indians who were the Indians who are now called the Hopis, occupied this entire territory clear up in the Lukachukai Mountains down to Colorado, the Little Colorado River and clear from the Navajo Mountain so that this whole territory in Arizona that we're talking about was Hopi clear back as far as 1300 and perhaps as far as the year 300 or 600, the Court held. The Hopi had some proof even beyond that so that this was—when we're talking about ancestral homes, we can go back as far as we like and this is what the Court has said about it, and that other tribe in the United States has a more authenticated history than this group has in this area.

It was in the last part of the 18th century that the Navajos began to come into the—what is now Arizona so that this is a situation that was confronting the people at this time.

Now, I don't want to spend a lot of time on there and I will skip a lot of that and go clear down to 1882 because in 1882, it was just ahead of 1882, when the United States, for example, just ahead of 1848, the Treaty of Guadalupe Hidalgo, that they were having trouble down in New Mexico and so they sent the U.S. Army to protect the citizens down there and they did drive Navajos into territory they hadn't occupied before. This is clear history.

Now, the Navajos then were beginning to bother the Hopis more than ever. They had done some raiding ahead of that. The history shows it, and I have the documents to show that but they began to get very serious so in 1882, Agent Fleming said unless something is done about this to protect the Hopis from what the Navajos are doing to them, I'm going to resign. So as a result, the 1882 reservation was established for the Hopi Indians.

Now, there can't be any question as to what the purpose of that was. There were three or four statements put in there, they were afraid about two people who were causing some difficulties—two individuals. They were afraid about white settlement, and they were afraid about the depredations of the Navajos upon the Hopi Indians and they were afraid—it was stated in two different ways.

In other words, two of the four reasons given for establishing the reservation were that it was to protect the Hopis against the Navajos.

Now, there can't be any question as to how this was done and I want

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to read just one thing that is in the statement to emphasize what I'm saying: The Secretary Vilas. William F. Vilas who was Secretary of the Interior wrote to the Secretary of War 6 years after this was established and this is what he said: "The reservation of Moqui Indians was set apart by Executive order of December 16, 1882, for them, and such other Indians as the Secretary of the Interior may see fit to settle thereon. It comprises no land set apart for the Navajos, and no Navajos have been settled thereon by the Department, nor have any of them any right to drive or graze their livestock or herds over the Moqui lands.

A recent investigation of the affairs of the Navajo agency under whose jurisdiction the Moquis reservation and Indians are, has brought to the attention of the Department similar information of depredadations by Navajos under the lands, crops, and other property of the Moqui Indians, and further that the Navajo agent, whose agency is at considerable distance from the Moqui Reservation, is not able, with his police, to correct the abuses.

In view of this condition and remember this is a communication of the Secretary of the Wars—"of affairs I believe the suggestion made by Mr. Welsh is a wise one, and I therefore have the honor to request that you will give the necessary orders for the movement of a company of troops or such force as may be deemed necessary for the purpose, under the command of a judicious, discreet, and firm officer with instructions to visit the Moqui Reservation and also the Navajo Reservation and especially those portions of each lying adjacent the one to the other, and remove all Navajo Indians found trespassing upon—with their herds and flocks on the Moqui Reservation and to notify them that their depradations must cease and that they must keep within their own reservations."

Now, that is just about as clear as it can possibly be put in 1882. I will summarize quickly what happened after that, and I have all the documents here and I would like to file them and make them a part of the record rather than reading from them all.

Mr. HALEY. Without objection, the documents will be received and made a part of the record at this point in the proceedings.

DEPARTMENT OF THE INTERIOR,
INDIAN SCHOOL SERVICE,
OFFICE OF SUPERINTENDENT,
KEAMS CANON, A.T.
October 17, 1894.

HON. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: In compliance with the eighth suggestion in your circular letter of July 27 marked "Education No. 1" I have to further report concerning the filling of this school.

Neither this report is, nor were my former ones, intended as complaints, but simply reports of the actual state of affairs.

There are now twelve children in school, more than a month since the first of the term. The chiefs in council told me that they would not fill the school so long as the Navajos were allowed to depridate upon them. This they did knowing full well that they had promised you that they would fill the school and that I would report their talk promptly to you. They are certainly keeping their word to me. The second mesa people and the Oriba's positively refused to be enumerated by the census enumeration and we had to stop that work when less than half accomplished. They treat us kindly personally but as to doing anything which the Government wants they positively refuse so long as certain wrongs from the Navajos are unredressed.

The police force is utterly worthless. I have sent two policemen here after runaway children and they returned saying the children did not want to come and hence they could not bring them. The lawless Navajo around here have, I am informed, successfully resisted arrest by U.S. troops within the last year, and now they are utterly regardless of any power and not only do the Moquis suffer but white people are not wholly safe. Not long ago they attacked some Moquis, in the Moqui corn fields, and beat them unmercifully leaving one early dead. He came in here completely exhausted from loss of blood and covered from head to feet with dried blood, to report the affair. The agent was promptly informed and sent back word that he would be over on the 5th of Oct. or sooner with troops to put the Navajos off the Moqui reservation. He has not come yet and the Moquis are more disgusted than ever with the U.S. Government. And the School stands a pretty poor chance of being filled unless something is done.

I can see no practical solution for the difficulty other than to have enough troops sent to arrest these lawless Navajos and take them to prison, put the others off the Moqui reservation and keep them off and then at the same time force the Moquis to fill their school at once and they have plenty of children and a large delegation away also. In your letter of Sept. 2d 1890 you say that some compulsion will be necessary with the Moquis. This is certainly true.

Whether my suggestion is the best solution of the difficulty or not you of course are the judge.

Command me to do anything you may see fit and it shall be done to the best of my ability and power.

Yours very respectfully,

RALPH P. COLLINS,
Supt.

CHILOCCO, INDIAN TERRITORY,
November 17, 1890.

HON. R. V. BELT,
Commissioner Indian Affairs
Washington, D.C.

DEAR SIR: As you know, the Moquis live in villages on the summit of high mesas. The three which I visited on the first mesa are said to be 700 feet above the plain, are built on the solid rock where there is no vegetation of any character, and are approached by long tedious, tortuous ways. All supplies of every kind are either carried up by the women, taken up on the backs of burros, or drawn up in wagons, and the people subsist upon what they can raise in the little unfenced fields in the plain below.

The most vital points connected with the situation here seem to be the following:

First, the water supply. At the foot of the first mesa are two natural springs, which furnish water for the people and beasts in common. These should be reamed out, sunk deeper, walled with stone, covered over, and supplied with pumps. Along the valley of Keam's Canon for several miles there are mountain springs, which can doubtless be made to produce a larger flow of water than at present. In the opinion of Gen. McCook, Lieut. Baker, (a civil engineer) and myself it is possible to obtain water in numerous places in the valleys, at a very moderate expense. I gave directions in regard to commencing some test operations at once. The work can be done under the direction of an intelligent farmer and I have instituted inquiries to find a suitable man. Mr. Cooper, the so-called farmer, whom I found there, is utterly incompetent and was doing nothing whatever for the Government, although he was said to be working for the trader. I ordered him to report at once to the Supt. of the school, who was authorized to furnish him employment, and I will dismiss him as soon as I can supply his place.

Second, next in importance to the water supply, is wire enough to fence in their improvements, in order to protect them from the stock which runs at large. They will procure the posts and construct their own fences if supplied with wire. If this can be done this winter, a very considerable body of land will be enclosed and cultivated next Spring.

Third, several families are ready, I think, to come down from the mesa and make permanent homes in the valleys, if they can have lumber for roofs, floors, casings, etc. for their houses.

Fourth, the Moquis live more than 100 miles from the Agency, seldom see the Agent, and get very little help from him. In some way I think they should be cared for by the Supt. of the school, who is a man of superior intelligence, strict

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integrity, and sincerely interested in their welfare. He is gradually winning their respect and confidence, no easy thing to do after the unfortunate experience they have had with former Superintendents.

Heretofore not only has little of profit been done for these people, but there has been constant waste as well as dishonesty. Many of the supplies sent to them have been unsuited to their use and have been thrown away; the money paid to the farmers has accomplished almost nothing; the $10,000 paid for the old and almost worthless buildings was a misuse of public funds, and the last Supt. was not only incompetent but dishonest. I am glad to say that I believe the present Supt. will be able, not only to make a good school, but to help these Indians in a variety of practical ways, and what is done for them should be done through him. More can be accomplished through the school, however, than in any other way. It should be enlarged and if necessary be kept filled by force. But of this I have already written in a separate communication.

Fifth. The Moquis complain with justice of the Navajoes, who encroach upon their reservation, take from them their water supply, steal the products of their farms and maltreat them generally. They are indignant at the Government and have lost faith in its promises because it has failed to protect them against their unfriendly neighbors. Some vigorous steps should be taken to prevent this state of things, and, although the task is a difficult one, I do not despair of being able to devise a scheme by which it can be effectively done.

Sixth. Their reservation is much larger than they use or will ever need, and it would be a great benefit to them if a portion of it could be disposed of and its equivalent were given to them in such improvements as I have already indicated. They are now in a condition to make profitable use of wagons, harness, and some simple agricultural implements, plows, hoes, spades, axes, etc., but these should be selected with judgment, properly stored, and distributed with some discrimination, and not thrown away as heretofore.

Seventh. At Holbrook I met Mr. Zuck, who had been commissioned by the Census Bureau to enumerate the Moquis. He had just returned from the trip and reported that he had been successful on the first mesa, tolerably successful on the second, but that entire failure had rewarded his efforts at the third, Orabi, where it is estimated there are as many Indians as on the other two combined. They are the most civilized and have a deep seated distrust and hatred of the Government. Their Chief, Lalolamy, who visited Washington last summer, has lost his opposition to civilization, while I was there brought three children, one of them his own, the first from the tribe, to school, and seems desirous to have his people adopt the white man's ways. In the council which I held, however, he made a strong and eloquent plea for protection by the Government against the Navajoes, saying that its failure to do so was the reason his people had refused to send their children to school.

The Moquis are peaceable, industrious, thrifty and provident, and I saw stored away in their rooms supplies sufficient to last them until another harvest. They are self supporting and with judicious help and direction they can be made fairly prosperous. They are ninety miles from the railroad and are dependent for what they buy, aside from their barter with their neighbors, upon a single trader. Unaided by the Government they will doubtless continue to subsist as in the past and to maintain their snake dances and other pagan customs, but will make little, if any, progress in civilization. Even with Government aid their progress will almost necessarily be slow, and yet I believe, as already said, that a little judicious help and protection will greatly improve their present condition. A vigorous school, thoroughly equipped and properly maintained for ten years, cannot fail to make a vast change for the better.

Very respectfully,

I. J. MORGAN, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
INDIAN SCHOOL SERVICE,
OFFICE OF SUPERINTENDENT,
Keams Canon, Ariz., November 28, 1890.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: Since your visit here I have the honor to report concerning affairs.

The people of the second Mesa and Oriba made no moves toward bringing in children, but Io Lolomi sent word that his people in council threatened to kill him if he sent any more children. The same men threatened to kill the other friends of

the school also. I, with the assistance of Mr. Keam and Mr. Scott went to Oriba and arrested the two worst men and am now holding them prisoners until the Oribas shall bring in their quota of children.

The example set before the second Mesa people of their Oriba brothers as prisoners had a good effect and now the three villages of the second Mesa have their full quota of pupils in school. Altogether we have now 59.

The first Mesa people are beginning to move down now. Three families are now camped below the school working at getting out posts for fences. One man is ready for wire and anxious to get to work on his spring.

I would like instructions as to how to proceed to get piping, pumps, wire, lumber, etc.

I believe that if encouraged now and helped they will move down as fast as we can provide for them.

I wish also to state concerning the Navajos that, notwithstanding your orders, they have been moving their herds out among the Moquis ever since you left. Until now they have eaten the last vestige of the Moqui corn stalks and the most of their winter grass. They are a standing insult to the Government and robbers of the weak and the complaints of the Moquis are not only just but call for most decisive action on the part of the Government.

I certainly think that troops should be sent out over to drive the Navajo herds from among the Moquis even though the Department should not be ready to deal with the whole Navajo tribe.

Very respectfully,

RALPH P. COLLINS, *Superintendent.*

[Telegram]

KEAMS CANON, ARIZ., *December 16, 1890.*

COMMISSIONER, INDIAN AFFAIRS,
Washington, D.C.:

A company of soldiers should be sent at once to remove trespassing Navajos from among the Moquis and arrest rebellious Oriebas any further delay in this action will work irreparable injury to the whole work among the Moquis.

PARKER, *Special Agent.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 18, 1890.

To the Hon. SECRETARY OF THE INTERIOR.

SIR: I learn that a troop of cavalry has been ordered to Keam's Canon in response to a request from this Office transmitted by you to the Honorable Secretary of War.

The situation at that place is substantially as follows:

First: The Navajos have been for some time intruding upon the Moqui reservation, pasturing their herds, appropriating to themselves the water supply, in some instances stealing the farm products of the Moquis, and in one instance at least which came to my knowledge while there, assaulting violently one of the Moquis. The Moquis are a peaceable, law-abiding people, utterly unable to cope with the Navajos, and they have complained very bitterly at what they regard as the neglect of the Government to protect them from their insolent, aggressive neighbors.

It is very desirable that the Navajos should be forced to retire from the Moqui reservation, and, if practicable, those who have despoiled the Moquis should be arrested and punished by at least compelling them to restore the equivalent of what they have taken. Whether this is practicable or not I do not know.

Second. Recently the Moquis known as the Oreibes who live on the farthest mesa from Keam's Canon refused to allow Mr. Zook, the representative of the Census Bureau, to take a census of the village, saying that the white people were all liars and coyotes and that they would have nothing to do with them. They showed at that time a decidedly rebellious and ugly spirit.

Third. Up to the present year the Oreibes have positively refused to send any of their children to the school which has been established for them at Keam's Canon. During my recent visit, Lolomy, the chief of the Oreibes, brought in his

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own son and two others to the school and promised to bring others from his village. He subsequently brought others to the school. I learned that for this he was arrested and imprisoned and otherwise mistreated by members of his tribe and that two or three of the ringleaders threatened violence both to him and to others in case any further effort should be made to secure children for the school.

I think it desirable that these ringleaders should be arrested and kept in confinement until it is deemed best to release them. My impression is that they have already been arrested and are now in confinement at Keam's Canon awaiting the coming of the soldiers.

Fourth: The school at Keam's Canon is now in good condition, the buildings have been renovated, enlarged and furnished, and the school can accommodate perhaps 75 pupils. On my visit there I found only 14 children. I sent out and had 11 more brought in and required the different tribes to send in enough to fill the school. The people living on the first and second mesas have complied with this request and there are now 56 pupils in the school. It is very desirable that the people living on the farther mesa, the Oreibes, shall be required and compelled if necessary to furnish their quota so that the school may be filled. I do not think that it will be necessary to use any force to accomplish this but that the presence of the troops at that place will be sufficient to secure the end.

There is no agent for the Moquis proper. The agent for the Navajos who has also the Moquis under his charge, lives 90 miles away and cannot give to these people the attention which the present emergency requires.

I suggest, therefore, that the officer in command of the troops be directed to co-operate with Mr. R. P. Collins, Superintendent of the school at Keam's Canon and take his advice as to what is most desirable to be done. Superintendent Collins has had large experience in dealing with Indians, is a very competent man of excellent judgment and I think he will not request anything of the military authorities which is unwise.

Special Agent Parker is now there and will assist by his advice and cooperation.

I do not anticipate that there will be any conflict or that the Oreides will resist the troops or make any disturbance. If they can be given to understand that the troops are there to protect them from their enemies, the Navajos, I think they will be glad at once to comply with the wishes of the Government regarding their children, and that they will offer no objection to the punishment of those who, without sufficient cause, have shown a rebellious spirit and have perpetrated acts of violence.

The Moquis are a very interesting people, industrious, frugal, thrifty, peaceable, even timid, and have made very little if any progress for many years, but they not have reached a stage when, if their children can be kept in school and the progressive element among them can be encouraged, they will make very satisfactory progress in the ways of civilization.

To secure this it may be desirable that a small body of troops should be stationed there for a few months until the matters suggested have been fully accomplished.

I have written thus fully with the hope that you would transmit this letter to the Honorable Secretary of War to be by him forwarded to the commanding officer in charge of the troops at Keam's Canon, in order that he may know somewhat fully the wishes of this Office and be prepared to act intelligently.

Very respectfully,

T. J. MORGAN, *Commissioner.*

KEAMS CANON, A.T.,
December 18, 1890.

HON. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: In complying with instructions in telegram of the 7th. I have the honor to state that I can do nothing further in rendering assistance to Supt. Collins in receiving children from among the Moquis. He has in regular attendance now (73) seventy three and I never saw any more promising children in an Indian school. If it is possible for the Government to send a company of soldiers here to remove the Navajos from this valley I am satisfied the Moquis will continue to move down from their villages on the cliffs to the valleys & erect buildings & fences & get their land under cultivation. At the sight of the troops I am satisfied that the Oribas who are now rebellions moved immediately succumb & concede to any demand made of them & they would in all probability bring in to school more children than Mr. Collins can accommodate with his present quarters. He is not taking into school any more boys at the present time.

The Navojos increase their dipectations on the Moquis. A reliable Navojos yesterday gave us the names of three of his people (Navojos) who have recently stolen (11) horses from the Moquis in addition to those reported a few days since. He sent the two medicine men (Oribas) who had been arrested for threatening the lives of the citizens over to the agent (Navajo agency) to be held for a time in confinement. Mr. and Mrs. Collins are very earnest & efficient workers in this field, and if it were possible for Mr. Collins to be appointed to the agency of the Moquis in addition to his duties as superintendent it would be a great benefit to this people & I am satisfied would tend greatly to their advancement in civilization & self support. If some soldiers can be sent here they should be permitted to remain at least two months to guard against the immediate return to the Navojos, and to convince the Moquis that the removal was permanent.

Very respectfully,

GEO. W. PARKER,
Special agent.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 22, 1890.

GEO. W. PARKER, ESQ.
U.S. Special Indian Agent,
Keams Canon, Arizona Territory.

SIR: I am in receipt of your letter dated December 14, 1890, in which you refer to your telegram of the same date, asking that a company of troops be sent to remove Navajos from the Moqui Reservation &c., and stating that nothing but the sight of soldiers will suppress the bad conduct of the Navajos, and that the Moquis are dissatisfied because a promise to remove the Navajos has not been fulfilled.

You further state that the friends of the school among the Moquis are in the ascendant, but that the enemies of the same are as rebellious as ever, &c.

In reply I have to say that under date of November 29. 1890, this office submitted a report to the Department concerning the condition of things at Keams Canon as reported by R. P. Collins, Esq., Superintendent of the school there with a view to the military authorities taking proper action in the matter, and on receipt of your telegram of the 14th instant, I telegraphed General McCook at Los Angeles, California, as follows: "Have troops been sent to Keams Canon, Greatly needed" to which he replied on the 17th instant as follows: "All the cavalry and one hundred eight mules have left Wingate for the Sioux country; a troop from Apache will proceed to Keams Canon via Holbrook where my written instructions will meet commanding officer of the troops".

On the 18th instant I submitted a full report on the subject to the Department stating that it was deemed very desirable that the Navajos should be forced to retire from the Moqui country, and if practicable those who had despoiled the Moquis arrested, &., and the school protected, and suggesting that the officer in command of the troops be directed to co-operate with Mr. Collins and take his advice in the matter of what was best to be done, and that you were there and would assist by your advice and co-operation. On the same date I transmitted a copy of the report referred to to Mr. Collins for his information and guidance.

You are instructed to co-operate with said commanding officer and Mr. Collins, in such manner as may be proper to eject the Navajos from the Moqui country to protect the Moquis from the former, and to protect said school and as far as may be practicable secure redress from the Navajos for wrongs done to them. This office will rely upon your wisdom and judgment to cooperate in such manner with the commanding officer of the troops and Mr. Collins, as to prevent any conflict of authority with the military in the premises and to effect a full settlement of the trouble on the Moqui reservation if possible, and for that this office is determined to protect them fully from the wrongs of the Navajos and endanger an outbreak by them, but you will assure the Moquis that this office is determined to protect them fully from the wrongs of the Navajos, and to properly protect said school.

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You are instructed to remain at Keams Canon until further directed in the premises by this office.

You will report your action in the matter.

Very respectfully,

T. J. MORGAN,
Commissioner.

TROOP "H" 10TH CAVALRY,
Keams Canon, Ariz., December 28, 1890.

The ASSISTANT ADJUTANT GENERAL,
Department of Arizona,
Los Angeles, Calif.

SIR: I have the honor to report that pursuant to telegraphic instructions from your office dated December 17th, I was placed in command of Troops H, 10th Cavalry, and left Fort Apache, A. T. with it, en route to Keams' Canon the 18th instant; arriving at Holbrook Sunday the 21st, I received your letter of the 19th containing the instructions of the Department Commander, and reached this place December 24th.

Upon consulting Mr. R. P. Collins, Superintendent of the Indian School, it was learned that La-lo-mi, headman of the village of Areibi, who has been friendly to the school established here by the Government had been held a prisoner by the opponents of the school two days. La-lo-mi and his immediate realtives, notwithstanding the threats of the disaffected portion of the village, send their children to school, but he could not pursuade the other members of the tribe to allow theirs to attend and thus fill the quota that had been designated as the proper proportion from that village.

Since the establishment of the school there has been opposition to it by the Areibis, who live most remote and are less progressive than the other villages. La-lo-mi with four others were recently taken to Washington and since his return has been anxious to have his children and those of the tribe receive the benefits of the school. The opposing faction went so far as to say they would kill La-lo-mi if he sent his children to school, and did confine him as before stated in one of their "estufas" or secret chambers until it was reported to Mr. Collins by some frineds of the school, whereupon he was released. This happened about a month ago.

As the rest of the village had manifested no intention of complying with the directions of Mr. Collins it was believed that only a display or use of force could bring them to terms. Accordingly with Lieut. Rowell, 30 men Troop H, 10th Cavy., and Special Agent G. W. Parker, Mr. Collins, Mr. Keams, as Interpreter, I marched to the vicinity of the village Friday, camping for the night at the foot of the Mesa upon which it is situated. Word was sent to La-lo-mi that Mr. Collins had come to receive the remainder of the children, twenty-eight girls and eight boys. Early yesterday morning La-lo-mi came to came and said that he had been able to get a portion of the children, but none from any of the people that had opposed him. He was told that those were the children that must be forthcoming. He then returned to the village. At 9 o'clock A.M. we, accompanied by 20 dismounted troopers ascended to the town and found the entire populace assembled in the central portion, lining the streets, house-tops and all available standing space, except that apparently reserved for us. La-lo-mi at once stated that all the village had come together and were friendly to him, would do as he said and that the children were ready. The children were promptly placed to one side, examined by Mr. Collins, and sent to our camp.

As the census enumerator failed to obtain a count of this village, at Mr. Parker's request, they filed by and were counted by him. They numbered 750 men, women and children.

A friendly feeling was apparent and evidenced by the handshaking which followed. We were in the village a couple of hours.

La-lo-mi also said that as his people had done what the Government desired he wished the Government to do something for them as they were poor and weak they want the Navajoes kept from the land they cultivate and the waters they use; some axes, stoves and hoes. He said that some of his people would be glad to move down into the valleys if a little lumber could be given them to build.

The Navajoes have undoubtedly at times annoyed the Moquis in many ways, especially during the planting season when the water holes and springs are nearly dry by their numerous herds of sheep, and have committed depredations

to a greater or less degree upon them always. I saw no Navajo herds in the vicinity of the Moqui Villages.

The Government school here under the supervision of Mr. Collins is now filled to its utmost capacity and appears to be in a thriving condition. There are children from all the Moqui villages, 42 from Areibi, 102 in all. I am confident that Mr. Collins will have no further trouble in keeping his school filled.

Very respectfully, your obedient servant,

CHAS. H. GRIERSON,
1st Lt. 10th Cavalry,
Commanding Troop H.

HOLBROOK, A.T., *December 31, 1890.*

GENERAL MCCOOK,
Los Angeles, Calif.

Lieut. Grierson is here and has completed his instructions splendidly one hundred and two children in school. Oreibas obedient and happy. He should be instructed to remove intruding Navajos from among the Moquis before leaving.

COLLINS, *Superintendent.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 31, 1890.

The Honorable, the SECRETARY OF THE INTERIOR.

SIR: For your information and with the recommendation that the Honorable Secretary of War be advised thereof. I have to say that I am in receipt of the following telegram from George E. Parker, Esq., U.S. Special Indian Agent, dated Keams Canon, Arizona, December 30, 1890:

"On Friday Lieut. Grierson and command accompanied Supt. Collins and myself to Oreiba village where we camped for the night at the foot of the mesa and had a conference with Chief La-Lu-Lu-My who expressed some doubts as to the results of our visit but upon marching up into the village in the morning we found Oreibas all assembled who greeted us cordially, offered us all the children we wanted, announced obedience in the future to any demands of the government. We took (20) twenty girls and nine (9) boys, total number now in school one hundred and two (102). We took census. Office letter of 22 received. We will handle Navajo question all right. No danger of any conflict. Soldiers must be permitted to remain for a while."

Very respectfully, Your obedient servant,

S. J. MORGAN,
Commissioner.

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Calif., December 31, 1890.

Lt. CHARLES H. GRIERSON,
Commanding Troop H, 10th Cavalry,
Keams' Canon, A.T.

SIR: During the Department Commander's interview with the principal men of the Moqui Village at Keams' Canon last November, complaints were made against certain Navajo Indians for trespassing upon the land cultivated by members of the Moqui villages and for grazing horses and sheep within the limits of the Moqui Reservation.

This business, as you are aware, belongs more particularly to the Interior Department, and should be attended to by the Agent of the Navajo and Moqui Indians stationed at Fort Defiance, Arizona, but, as you are on the ground, the Department Commander directs that you hold interviews with the Navajoes who are reported as trespassers upon the Moqui lands and explain to them that they should cease molesting the Moquis or interfering with them in their pursuits. It is known that the Navajoes and Moquis have intermarried and that there is continuous trading between them, and with this understanding you will be very guarded in your action, especially towards the Navajoes, and under no circumstances, if it can be avoided, will any harsh measures be taken towards them at this time. The lines separating the Navajo and Moqui reservations are not marked with a degree of plainness that an ordinary Indian can understand. There was no

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person at or near Keams' Canon known to the Department Commander who could even indicate points on boundary lines, and until this line is distinctly marked only pursuasive measures will be used towards the Navajoes in this regard.

This important duty is entrusted to you, hoping that your presence there will prove as beneficial and crowned with equal success as rewarded your actions towards the disaffected Oreiba Indians, who so opposed the efforts of the Indian Department in its endeavors to instruct them and bring their lives more in harmony with the laws of civilization.

Please acknowledge receipt.

Very respectfully, your obedient servant,

H. K. BAILEY,
Captain, U.S. Army, A.A.A. General.

LOS ANGELES, CALIF., *December 31, 1890.*

T. J. MORGAN,
Commissioner, Indian Affairs,
Washington, D.C.:

Foregoing just received and repeated for your information. General McCook. Lieut. Grierson is here and has completed his instructions splendidly one hundred and two children in school Oreiba's obediant and happy. He should be instructed to move intruding Navajos from among the Moquis before leaving, signed Collins, supt.

McCOOK,
Brigadier General, Commanding Officer.

LOS ANGELES, CALIF., *January 15, 1891.*

BRIG. GEN. A. McD. McCOOK,
Commanding Department, Arizona.

In compliance with instructions of the Major General Comdg. the Army, reports upon letter from Interior Dept. of Dec. 18, 1890, requesting use of troops at Keams Canyon, Arizona, to remove trespassing Navajoes from among the Moquis, and to arrest certain rebellious Oreibis and make certain recommendations.

Official copy:

J. C. KELTON,
Adjutant General.

A. G. Office, January 13, 1891.
For the Interior Department.

[1st Indorsement]

WAR DEPARTMENT,
January 16, 1891.

Respectfully referred to the Honorable the Secretary of the Interior in connection with his letter on the subject dated the 18th ultimo whose attention is invited to the copy of the endorsement of the Commanding General Department of Arizona dated January 3, 1891, on page 4 of this report.

REDFIELD, PROCTOR.
Secretary of War.
E. M. DAWSON,
Chief Clerk.

[3rd Endorsement]

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Calif., January 3, 1891.

Respectfully returned to the Adjutant General of the Army, inviting attention to the enclosed copy of the report of 1st Lieut. Chas. H. Grierson, 10th Cavalry, of December 28, 1890, and copy of my instructions to him of the 31st ultimo.

It is recommended that the line of demarkation between the Navajo and Moqui reservation be distinctly marked by indestructable monuments upon

the natural elevations along the lines, and that the water in the neighborhood of the line and lying east thereof be reserved for the Navajoes, and that to the west for the Moquis. Until this is done I do not deem it wise to use force to prevent the Navajoes from grazing near the Moqui reservation.

The Navajoes or Moquis do not know where the line between their reservations is, nor do I; hence any coercive action on our part would not be wise until the line is definitely settled.

The presence of troops near the Moqui villages would certainly prevent Navajoes from using personal violence against the Moquis, or plundering from or destroying their crops, and it is my intention to take necessary action to prevent this.

A. McD. McCOOK,
Brigadier General, Commanding.

FORT WINGATE, N. MEX.,
November 15, 1888.

ADJUTANT GENERAL,
Department of Arizona,
Los Angeles, Calif.

Referring to instructions just received to carry out the request of the Secretary of the Interior, dated October tenth, ult., which is to remove all Navajo Indians found trespassing with their herds and flocks on the Moqui reservation and to notify them that their depredations must cease and that they must keep within their own reservation, I propose to send Captain Wm. M. Wallace, Sixth Cavalry, with fifty men, Infantry, Cavalry and Scouts. My interpreter, Henry Dodge, commonly called Chee who is a man of prominence among the Navajos, tells me that he thinks there are five or six hundred Navajos comprising a hundred families, probably more, now living on the Moqui reservation; that most of these families have resided there for many years; that they had their homes there before the Moqui reservation was set apart; that they have continued there by sufferance and have never so far as he knows received positive orders to vacate. He says that to remove them now that the severity of the winter is almost upon us, would be a great hardship, and that he believes the Moquis do not wish the Navajos to be removed summarily nor that they would benefit, at least not during the present winter, by such removal, as they would not move from their villages to the detached ranches of the Navajos; that the Navajos have built their winter homes as the General observed when on his trip to Defiance, and it is now late in the season to move to other places and build new houses; also that the hundred or more families ejected would be unable to find new locations except by crowding other Navajos and not only causing suffering to the people and their flocks and herds now settled for the winter, but creating great dissatisfaction among the whole tribe.

It will be observed that Mr. Herbert Welsh in his letter, a copy of which was furnished me, does not recommend the removal of the Navajos, but to hold a council and give them distinctly to understand that their depredations must cease or that in future the wrong-doers must expect punishment for every offence. As there is no time to spare and I must proceed at once to the execution of my orders, I deem it my duty to telegraph this in order that if approved by my military superiors, my views may be submitted to the Honorable Secretary of the Interior, they are with great respect, that it may be more just and humane as well as more politic to hasten slowly and at least hear the Navajos before subjecting them to eviction amid the rigors of winter which we have unquestionably before us, the task of rounding up the whole Navajo tribe and bringing it within bounds. The Zunis complain as much as the Moquis. but the citizens of the region complain much more loudly and they will soon make themselves heard by the Government. Navajos live and roam far to the south-east and west of here and are accused not only of consuming the grass and injuring the timber, but of living on the cattle and stealing the horses of the settlers. Should the recommendation of General Grierson in his annual report be observed, there will be little trouble in corralling them, but if they are to be all brought within the bounds of their present reservation, I would give them this winter to deliberate and to decide where the families outside should be located within its limits, which will I assure be a difficult problem; meantime would assemble a considerable force in sight of the Navajos so that bloodshed might be averted.

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If practicable Captain Wallace will move November seventeenth, will be at Defiance about the eighteenth, communicate with the Agent there and will council with the Navajo Chief Ganando-Mucho and Sam McConley and perhaps some of the Moqui Chiefs about the twenty-first, so there will be time to modify the instructions if desired.

(Signed) CARR, *Commanding.*

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Calif., November 16, 1888.

COMMANDING OFFICER
Fort Wingate, N.M.

You will interpret your instructions of November 10th from these Headquarters, in accordance with the letter of Mr. Welsh upon which they were based. The actual removal of any Navajos who have had homes for a long time upon the Moqui reservation, will be deferred until Spring at least. Should any Navajos be found trespassing, depredating, or in any way doing injury to the persons or property of the Moquis, they should be removed to the Navajo Reservation and required to remain there. Acknowledge receipt and report action.

By command of Brig. Genl. Miles:

(Signed) VOLKMAR,
Assistant Adjutant General.

HEADQUARTERS DEPARTMENT OF ARIZONA,
November 17, 1888.

Official copies respectfully furnished Headquarters Division of the Pacific for information, in accordance with instructions contained in endorsement of October 23rd ultimo, from Division Headquarters.

NELSON A. MILES,
Brigadier General, Commanding.

[1st Indorsement]

HEADQUARTERS DIVISION OF THE PACIFIC,
San Francisco, Calif., November 20, 1888.

Respectfully forwarded to the Adjutant General of the Army, in connection with the instructions from his office of October 17th, 1888.

O. O. HOWARD,
Major General, Commanding.

SAN FRANCISCO, CALIF., *November 20, 1888.*

Maj. Gen. O. O. HOWARD,
Commanding Officer Pacific Division

Forwards copies of telegrams (from Cmdg. Officer, Ft. Wingate, to A.A.G. Dept. Ariz., and reply thereto) on the subject of the removal of trespassing Navajos on the Moqui reservation.

Official copy:

R. L. DICKSON,
Adjutant General.

A.G. Office, December 3, 1888.
For the Honorable Secretary of the Interior.

WAR DEPARTMENT, *December 7, 1888.*

Official copy respectfully furnished for the information of the Honorable the Secretary of the Interior.

N. C. ENDICOTT,
Secretary of War.

DEPARTMENT OF THE INTERIOR,
December 8, 1888.

Respectfully referred to the Commander of Indian affairs.

E. A. HOWARD, *Chief Clerk.*

[Western Union telegram]

LOS ANGELES, CALIF.,
November 17, 1888.

COMMANDING OFFICER,
Fort Wingate, N. Mex.

Department Commander says there is no necessity for haste in making the movement; that the military force employed may be reduced to thirty men who should be supplied with abundance of wagon transportation now, supply Sibley Touts.

VOLKMAR,
Asst. Adjutant.

LETTER TO SECRETARY OF WAR, OCTOBER 10, 1888

WASHINGTON, D.C., *September 26, 1888.*

Herbert Welsh, Kearns Canon, Ariz., calls attention to action of Navajos in over-running Moqui lands with their herds & destroying their crops & grass and suggesting orders be issued to military to visit Navajo reservation, near the Moquis, & give them to understand the depredations must cease.

KEAM'S CANON, ARIZ.,
September 26, 1888.

Hon. WILLIAM F. VILAS,
Secretary of the Interior.

DEAR SIR: I have just returned from a visit to the Moqui villages Tawa, Wolpi, Mishonjnavi, Shipulavi, and Oreibi; and I write immediately to acquaint you with the conclusion to which my conference with the leading men of these communities has led me. I believe that these conclusion may be of service to you in framing the policy of the Government toward these Indians and toward their neighbors the Navajos, & I therefore respectfully submit the following for your consideration. At each one of the communities mentioned the complaint of the people was the same—the injuries which are inflicted upon them by the continued intrusions and depredation of the Navajos who steal their corn, their melons, their horses, and who in many instances have settled upon their reservations.

And treat the Moqui lands as though making use of the Moqui water, springs and driving the lawful owners from them. They belonged to them. The Moquis are too gentle and timid apeople and too few in number to resent these wrongs. For years they have received assurances from the Government that the Navajos shall be restrained but without result. From my observations upon the ground I am convinced that there is urgent need for a prompt and effective fulfillment of these promises and that joint good in many ways will result from such action. It will prove a great incentive to the Moquis to aid the school work which the Government has established at this point, and which has been conducted during the past year by Superintendent Gallaher with zeal and success. At Oreibi (a village hitherto inaccessible and hostile to civilized ideas) Mr. Keam and Mr. Gallaher, who accompanied me upon my recent visit, succeeded in securing a promise from Leelulami, the leading chief, of several children for the school, upon the understanding that the Government would, at length, fulfil its promise to restrain the Navajos from further depradations.

It is of the utmost importance that the Government should make its influence felt in this the largest of all the Moqui villages, if its policy of educating the Indian children is to be successfully carried out.

In conclusion may I suggest a practical and feasible method by which the desired end may be secured, if the same shall meet with your approval! Orders might be issued to some suitable military officers—a discreet, firm man—the Commanding officer at Fort Wingate, or some one suggested by Gen. Miles, to visit that part of the Navajo reservation (with sufficient force of soldiers) which is contiguous to the Moqui reservation hold a council with the Navajos and give them distinctly to understand that their depredations must cease or that in future the wrong doers may expect punishment for every offense.

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I believe that the greatest good will result from such a course should it be carried out immediately, not only to the Moquis but to the Navajos themselves. A feeling is gaining ground among the younger members of the latter tribe that the command of the Government may be disregarded with impunity. This would be a convenient moment to show them that in this understanding they are mistaken.

I will state in closing that this suggestion which I have taken the liberty to submit to you is heartily concurred in by Mr. Gallaher, Mr. Keam, and all well informed and trustworthy observers at this place. I write under the strong impression of its importance, and therefore by that you will pardon bluntness or crudeness in the tone of my letter.

Respectfully yours,

HERBERT WELSH.

KEAMS CANON, A.T.,
January 13, 1890.

Hon. T. I. MORGAN,
Commissioner of Indian Affairs,
Washington, D.C.

DEAR SIR: During my stay in Washington last summer, I talked with you in reference to a promise made some of the principal Chiefs of the Moqui Indians. This way that they should visit Washington, and talk with their Great Chief on matters of importance to them.

At that time you desired me to write you this winter on the subject, as in the multiplicity of business it would no doubt pass from your mind.

When the matter was brought forward, and recommended by Mr. Oberly last winter, there were no incidental funds available for that purpose. Mr. Belt then informed me, he was not generally in favor of Indians visiting the East, but with the Moquis he considered it an exceptional case, and when funds were available he favored it.

On my return here I told the Chiefs of the result of my talk, and they said they would wait anxiously for the time.

I rarely make a visit to the villages but they remind me of this promise, and say, that Indians from all the surrounding tribes have visited the Great Father in the East; they alone have not; although they have always been friendly, and do as the Great Chief desires.

One of the principal objects of this visit is, they tell me, to talk with you and settle the matter of yearly encroachments by Navajo herds, on the land and waters close to their villages. They also desire to see how the white man lives, and how he makes the different articles of clothing; implements they have seen here.

As none of this tribe has ever been East of Albuquerque, New Mexico; I believe it would result in great good. Being one of the most remote from civilization, and rarely leaving their homes, they have not the least idea, of this great country or its people. It would also have a beneficial effect on the school, which for some cause, the attendance is less now than at any time since its establishment. I have asked them why they do not send more children, when they express dislike for the Superintendent and his wife but fail to give me the reason. The Orabis have not sent a child yet, and say when asked, "the Government does not protect us against the encroachments of the Navajos.

Agent Vandever visited here a short time ago and I talked with him on this matter, he expressed a desire to have the Moquis visit the East; also some of the leading Navajos, and settle the matter of Navajo encroachment on Moquis land, and thereby prevent serious trouble, between the Moquis and surrounding Navajos.

Should you favor this visit, I would suggest the following head men of the Moquis; Shimo, Amowita, Polacca, La-lo-lame, and Honani. These are the rulers and leading men from different villages, and represent the whole tribe.

Very respectfully, your obedient servant,

THOMAS V. KEAM.

P.S. I have written this at the expressed wish of the chiefs.

KEAM'S CANON, A.T., *January 13, 1890.*

LETTERS FROM THOS. V. KEAM

Asking that certain Indians be allowed to visit Washington.
To Superintendent Baker, January 28, 1890.
To Secretary, February 17, 1890.
Letter to Agent Tankover, March 8, 1890.

DEPARTMENT OF THE INTERIOR,
INDIAN SCHOOL SERVICE,
OFFICE OF SUPERINTENDENT,
KEAM'S CANON, A.T., *January 14, 1891.*

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: In connection with my semi weekly report I have the honor to state that I have since last report been out over the reservation. Some, interesting different localities on and within the boundaries immediately reserved for the Moquis. I am satisfied that there can be a great deal done to advantage by properly directed efforts in opening up the springs to greatly increase the volume of water, and think Mr. Collins has the right man there now to attend to this work in the selection of Mr. Staufer whose name has already been sent to the Office I think.

Every thing is quiet. School flourishing, children ambitious, contented and happy. Several of the prominent Navajos who could not attend the council, sent representatives (some of them did not arrive till the next day after the council) notifying their brethren who had been occupying the Moquis grounds, that they must obey promptly the orders of the Government, to vacate the lands of the Moquis that the orders were perfectly just and right and at the same time assuring us a full and hearty cooperation in all that we are doing.

Very respectfully,

GEO. W. PARKER,
Special Agent.

KEAM'S CANON, A.T., *January 14, 1891.*

Relative to opening springs to Moquis Reservation and to council held with Navajo Indians relative to trespasses on the Moquis Reservation.

GEO W. PARKER.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 14, 1890.

CHARLES E. VANDEVER, ESQ.,
U.S. Indian Agent, Navajo Agency,
Gallup, N. Mex.

SIR: I am in receipt of a petition from Messrs. A. S. Martin, A. D. Wolfe and thirty-seven other citizens of Arizona Territory, dated Navajo Springs in said Territory, June 26, 1889, and of one from Mr. Frank A. Brown, Dr. E. D. Harper and fifty-one others, citizens of New Mexico Territory dated Gallup, New Mexico June 27, 1889, in which complaint is made that the Navajo Indians roam over the country outside the limits of their reservation with their flocks of sheep and herds of horses, much to the annoyance of the settlers whose interests conflict with those of the Indians, and that owing to this and the fact that the two races do not understand each others language frequent quarrels and fights occur, and that the whites are continually annoyed and menaced, and said citizens urgently request that measures be adopted to keep the Indians on their reservation with the exception of those who have taken up claims under the homestead laws outside the limits thereof.

I am also in receipt by reference from the Department—of a letter of the same tenor from John H. Borman, Esq., dated January 3rd, 1890, addressed to Hon.

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Lewis Wolfley, Governor of Arizona, with the suggestion indorsed thereon of Hon. Nathan O. Murphy, Secretary and Acting Governor of the Territory, that in the interests of the public welfare too great care and caution could not be observed (in dealing) with the powerful Navajo tribe; also bearing Governor Wolfley' indorsement requesting that proper instructions be given to keep the Indians within the lines of their reservation.

In view of the number and character of these Indians and of the fact that they have heretofore in a great measure roved where they pleased in the country adjacent to their reservation, and that the same is now being rapidly filled with settlers who object most strenuously to the presence of the Indians among them, and are jealous of the latter enjoying any of the benefits of the country outside of the limits of the reservation set apart for them by the Government, a grave question is presented as to the means which should be adopted to keep the Indians on their reservation, and prevent friction between the two races, which may resu't in bloodshed, and be otherwise disastrous to both.

The matter is referred to you with directions to immediately take energetic and proper steps to keep the Indians—with the exception of those who have settled upon lands outside of their reservation for the purpose of taking homesteads—within the limits of their reservation, and to return roving Indians to the reservation.

You will however do nothing which in your opinion would endanger the peace. You are instructed to see that the Indians fully understand where the boundaries of their reservation run, and you will inform them that the lands within the same do apply sufficient for their needs, that white persons have no right to settle therein, and that the Indians should restrict themselves to their own country—except in cases where they take homesteads outside of same—and that should they fail to do so and continue to wander around in the vicinity of the white settlements, the Government would regard such conduct as a defiance of its authority, and a rejection by the Indians of a proper measure adopted for their own good and prosperity, and that such conduct would discourage their friends and weaken their power to help them.

Very respectfully,

T. J. MORGAN,
Commissioner.

DEPARTMENT OF INTER'OR,
September 10, 1888.

The Honorable the SECRETARY OF WAR.

SIR: I have the honor to transmit herewith a copy of a communication of 26th ultimo, from Herbert Welsh Esq., Corresponding Secretary of the Indian Rights Association relative to the action of the Navajo Indians in overrunning the Moqui reservation and the cultivated tracts with their herds and flocks, and destroying their crops and grass which he thinks should be promptly corrected, and for this purpose he suggests that the military authorities cause a force of troops under a discreet and firm officer to visit that portion of the Navajo reservation contiguous to the Moqui lands and give them to understand that the depredations must cease.

The reservation of Moquis Indians was set apart by Executive Order of October 16, 1882, for them, and such other indians as the Secretary of the Interior may see fit to settle thereon. It comprises no land set apart for the Navajos, and no Navajos have been settled thereon by the Department, nor have they any right to drive or graze their flocks and herds over the Moqui lands.

A recent investigation of the Affairs of the Navajo Agency, under whose jurisdiction the Moquis reservation and Indians are, has brought to the attention of the Department similar information of depredations by Navajos upon the lands, crops and other property of the Moqui Indians, and further, that the Navajo Agent, whose Agency is at considerable distance from the Moqui reservation, is not able, with his police, to correct the abuses.

The inspector further reports that the Navajo's have become so defiant that the Agent with the assistance of a small detail of troops has been unable to arrest parties violating the intercourse laws in selling whiskey members of that tribe on their reservation.

In view of this condition of affairs I believe the suggestion made by Mr. Welsh is a wise one, and I therefore have the honor to request that you give the necessary orders for the movement of a company of troops or such other force as may be deemed necessary for the purpose, under the command of a

judicious, discreet, and firm officer with instructions to visit the Moqui reservation and especially those portions of each lying adjacent the one to the other, and to remove all Navajo Indians found trespassing with their herds and flocks on the Moqui reservation and to notify them that their depredations must cease and that they must keep within their own reservation. (Emphasis added.)

I will thank you at the same time to cause the officer who may be intrusted with this duty, to report his action in the matter, and to his observations as to the conduct, habits and the extent of the industrial pursuits of the Indians visited by him, and to make such suggestions, as, in his judgment will lead to the abatement of the causes of the complaints and to the permanent advancement of the Indians.

When his report is made, this Department will thank you to furnish, for its information a copy thereof.

WM. F. VILAS, *Secretary.*

Mr. BOYDEN. What happened is they sent the Army out there and who did they get in contact with—Miss Waukena's father, Chief Dodge, who was the Chief of the Navajo Indians at this particular time, and he told them what a hardship it would be to take these 300 Indians out of here and in the middle of the wintertime and they ought to wait till spring.

Well, to cut the story short, it rained and the weather was inclement, the Army didn't think they ought to do it at this particular time and this was the first war in the history of the United States that was called off on account of rain. [Laughter.]

Now after this area was established in this way, then the Court held in *Healing* versus *Jones*, and I read from finding 21:

> None of the 21 Secretaries of the Interior who served from December 16th, 1882 until July 22nd, 1958 or any official authorized to act on behalf of any of these Secretaries expressly ordered, ruled, or announced orally or in writing personally or through any official, that pursuant to the discretionary power vested in him under the Executive Order, he had settled any Navajos in the 1882 reservation, or had authorized any Navajos to begin, or to continue to use or occupy the reservation for residential purposes.

And then in finding 45, the case also held: "Congress at no time enacted legislation designed to or having the effect of terminating Hopi rights or use or occupany anywhere in the 1882 reservation." Then it says in 49, "The failure of the Hopi, prior to the settlement of the Navajos, to use a substantially larger part of the 1882 reservation that is embraced within district 6, was not the result of free choice on their part, it was due to the fear of the encircling Navajos and inability to cope with the Navajo pressure." That's what that Court held.

Now, to illustrate now, the present fear of the fence that the Hopis have around district 6, notwithstanding all of this that was said.

Then the things that happened in 1937—I'm moving rather rapidly here but the part in between, as well as in my statement—it's to document what I'm saying—when you get to 1936, we had grazing problems and they were overgrazed then considerably, and so they decided they had to do something about it and so they established district 6 and they assured the Hopis that that would have nothing to do with their territorial claims, nor the final settlement of the boundary between them and the Navajos.

Mr. STEIGER. Excuse me, Counselor, if I may, Mr. Chairman, you say they, is that——

Mr. BOYDEN. I'm going to tell you who they are. I'm going to name them right now.

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First of all, the plan was provided as to how this could be done to save the forage. It was done between the superintendents of the Navajo and the Hopi; and the plan said this:

The Hopi superintendent will have jurisdiction throughout District 6 and the Navajo superintendent will have jurisdiction of the other land management districts. This arrangement will be tentative until a definite boundary of the Hopi-Navajo Reservation shall have been determined.

This arrangement is established that as a matter of administrative expediency and convenience, and shall not be construed in any way as fixing an official boundary between the two tribes, or as prejudicing in any way the boundary which is ultimately established.

And then the regulations themselves wrote it into it. For the purpose of these regulations, district 6 is now established for the Navajo service shall constitute—district 6 shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with article I of the Constitution and the bylaws which provide the Hopi—of the Hopi Tribe which provided for negotiations —that's in the 36 to show the futility of the negotiations.

Now, then Hutton said then, he was then the superintendent of the Hopi and he said this:

We have had several cases in the past few months whereby the Navajo Indians are moving into and across into the Hopis' area and then at the time of the district division, I told the Hopis that this division was on land management basis and not as a definite reservation boundary, which explanation they accepted. However, when Indian Service employees tell them contrary, it puts me in a bad light to which Mr. Fryer, the Superintendent of the Navajo Reservation replied: "The new grazing regulations provide that for the purpose of regulations only, District 6 shall be considered as the Hopi Reservation."

District 6 should not be recognized by any of our people as a reservation. It is merely an area which defines land use as between these Indians.

Now, I have another group of documents here which I want to have permission to file with the Commission, which the two Commissioners of Indian Affairs, William Brofey and John Collier, assured them that this would not establish their reservation, and letters from Mr. Wilkie and others all assured the Hopi that this would not establish the line of their reservation if they consented to stay in district 6, because they were saying, look here, taking us from the outside of this district and bringing us in here, and I want that to show on the record also. And if I may file that without reading, I would do that.

Mr. HALEY. Without objection, it will be received and made part of the record at this point in the proceedings.

(The information follows:)

[National Archives, BIA. Record Group 15, Classified Files, 1907—. File Mark 10527–37–066 Navajo]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 5, 1937.

MEMORANDUM: RECOMMENDING PLAN OF ADMINISTRATION FOR HOPI AND NAVAJO RESERVATIONS

* * *

III

General Principles Underlying Proposed Set-up: With these factors conditioning the problem as outlined in Section II, and with the general background of the problem, as outlined in Section I, it is intended that this plan shall rest upon the following principles:

* * *

2. That all administrative matters which affect the Hopis and Navajo Indians jointly shall be distributed between the two superintendents on the principle that *the Hopi Superintendent will have jurisdiction in the other land management districts. This arrangement will be tentative until the definite boundary of the Hopi-Navajo reservation shall have been determined. This arrangement is established as a matter of administrative expediency and convenience and shall not be construed in any way as fixing an official boundary between the two tribes, or as prejudging in any way the boundary which is ultimately established.*

* * *

Recommended for approval by the undersigned:

WM. G. MCGINNIES,
Director, Land Management Service, Navajo Service.
ALLAN G. HARPER,
Field Representative.
E. REESEMAN FRYER,
Superintendent, Navajo Service.
A. G. HUTTON,
Superintendent, Hopi Reservation.

Approved: JOHN COLLIER, *Commissioner.*
Date: March 3, 1937.
[Italic—Emphasis added.]

[Wilmington Federal Records Center. BIA Field Records. Navajo Service, Window Rock, Ariz. FRC No. 72920, File 080]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington.
(Rec'd) Navajo Service, *March 16, 1937.*

Mr. E. REESEMAN FRYER,
Superintendent, Navajo Agency.

DEAR MR. FRYER: I am pleased to advise you that I have approved the "Memorandum" Recommending Plan of Administration for Hopi and Navajo Reservations" which was transmitted to me by Field Representative Harper from Window Rock, under date of February 17, 1937, on behalf of Superintendent Hutton, Dr. McGinnies and yourself.

In approving the Memorandum, I believed it advisable to add a new sub-section (7) to Section III, in which I have further emphasized a thought which the memorandum itself has suggested; namely, the necessity of adjusting all plans and projects for the Hopis to their particular background and psychology. In mimeographing the Plan for circulation to Divisional heads, I have incorporated this additional sub-section in its proper place in the text.

Approval of the Plan carries with it authority to delimit an area to be reserved exclusively for the Moencopi Hopis. I would like you, Superintendent Hutton, and Dr. McGinnies to give this proposal further, careful thought, especially in regard to the problem of securing the concurrence of the Navajos in the proposal. I have no doubt of the advisability of delimiting such an area for the Moencopis; I am only anxious that the adjustment be made so as to avoid the possibility of conflict between the two tribes or future doubt as to the validity of the reserved area.

May I congratulate you and the other signers of the Plan upon your success in working out this very difficult problem.

Sincerely yours,

JOHN COLLIER, *Commissioner.*

[Italic—Emphasis added.]

[Wilmington Federal Records Center. BIA. Field Records. Navajo Service, Window Rock, Ariz. FRC No. 72954]

62000–35–301 (Amended 1–28–38) 16092.

U. S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington.

GRAZING REGULATIONS FOR THE NAVAJO AND HOPI RESERVATIONS

(Approved *June 2, 1937*)

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Authority

The Secretary of the Interior has the authority to regulate the grazing of livestock on tribal lands within Indian reservations so as to prevent overgrazing and the destruction of the soil through erosion. * * *

Hopi Reservation

For the purpose of these regulations District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and By-laws of the Hopi Tribe.

(Signed) *John Collier,*
Commissioner of Indian Affairs.

Approved: June 2, 1937.
(Signed) OSCAR L. CHAPMAN, *Assistant Secretary of the Interior.*
[Italics—Emphasis added.]

HOPI INDIAN AGENCY,
Keam's Canyon, Ariz., June 28, 1937.

Mr. E. R. FRYER,
General Superintendent, Navajo Service,
Window Rock, Ariz.

DEAR MR. FRYER: *We have had several cases in the past few months whereby the Navajo Indians are moving into areas occupied by the Hopis.* I have taken this matter up previously, however, I seem unable to get any consideration or any satisfactory action taken on the part of the land management people.

You will remember at the Flagstaff conference I stated at that time that the Hopis should not move out and the Navajos should not move in. While your district map shows all the land beyond the Denebito Wash as Navajo area, it is a gross error because the Hopis have farmed beyond the Denebito Wash for many years.

Recently a Navajo moved near the Denebito Wash and planted a new field, lying adjacent to land being farmed by Hopis, and this tract of land had been cleared and had been farmed by the Hopis themselves. When this matter was first taken up with the Navajos by my representatives the Navajos told us that Mr. Griffin from Pinon advised that they were to go down there and plant. A few days later Mr. McKinney went out and went into the situation and he told the Navajo his sheep could graze in that area and that they would have to give up the farming land to the Hopis. Another meeting was held on June 21st, at which were present Mr. Frazier from Tuba City, Mr. Griffin from Pinon, and several other head men from the Navajos, and they had never notified this Agency about this meeting. At this meeting Mr. Frazier stated that the Navajos should stay there and the Hopis should release it, and were told to get out pending further action. According to Mr. Miller of this Agency, Mr. Frazier further stated that if there were any more difficulties he would move the Navajos back and the Hopis across the Denebito Wash. He further stated that you would back him in anything he did along this line, and while I know the division of this land is a difficult matter, I feel that the Hopis are getting a raw deal all the way through.

Another case that took place the past winter was when a Navajo moved approximately eight miles from the Oraibi Wash to the Polacca Wash and established headquarters in an area on which the Hopis had grazed their cattle for the past thirty years. The cattle were run out of the area, and as a result the Hopis lost nearly a hundred head of cattle due to the moving from first one place to another, and Mr. McKinney approved of the Navajos moving clear in the area, which according to the interpretations of the Navajo grazing rules and regulations is entirely wrong.

The Hopi people are peaceful and want to abide by proper decision, however, I think it is time that either some of the district supervisors should stop saying certain land is the definite Hopi reservation, which has been brought to your attention before and that when a Navajo moves on to the Hopi's domain that he be forceably moved out.

There are several other cases of Navajos moving on to Hopi territory and grazing grounds, however, we are helpless in getting any action taken toward

having them removed. We certainly receive a lot of criticism from the Hopis because we allow these Navajos to come into their territory when they have little enough as it is.

I will be very pleased to hear from you and try to carry out any suggestions you have to make in this matter. I know we must work this thing out together, and I am sure that you and I will not have a great deal of trouble in reaching a fair decision, however, I have felt that some of your district supervisors have wanted to adhere to your lines, as set up in your map, and as I have said previously, the Hopis have farmed beyond the Denebito Wash for a great many years and there are farms beyond the district line as set up in practically all directions, and if the attitude is going to prevail that the district boundary lines as established are final then it is time to change the lines so as to at least include all the land the Hopi has been occupying the past few years and not try to squeeze them more and more every year.

At the time of the district division I told the Hopis that this division was on a land management basis and not as a definite reservation boundary which explanation they accepted, however, when other Indian Service employees tell them the contrary it puts me in a bad light.

The Hopi Tribal Council is quite upset about the present situation and anxious to bring the matter before the Indian Office, however, I have induced them to withhold taking any steps until you and I have had the opportunity to go into the cases and try to reach a satisfactory agreement.

With kindest personal regards, I remain

Yours very truly,

A. G. HUTTON, *Superintendent.*

[Italic—Emphasis added.]

WINDOW ROCK, ARIZ., *July 20, 1937.*

Mr. A. G. HUTTON,
Superintendent, Hopi Indian Agency,
Keams Canyon, Arizona.

DEAR MR. HUTTON: I feel rather negligent in this Hopi-Navajo Boundary matter. I had intended, long before this, to make a trip over to Keams Canyon and discuss with you a number of things which need to be "ironed out" relative to Navajo and Hopi use. As you perhaps know, I went in to Washington for what was presumed to be a week's business, and was held over for the Senate Committee's inquisition which lasted, in all, almost six weeks.

None of our people have any authority beyond that which has been recognized by both you and myself to make any decision relative to Navajo-Hopi boundary matters.

The new Grassing regulations provide that, for the purpose of the regulations only, District 6 shall be considered as the Hopi Reservation. These regulations, as you will note, were also drawn with careful consideration of Article I of the Hopi Constitution, which provides for the determination of the reservation in fact only by triangular action of the Hopi Council, the Navajo Tribal Council, and the Commissioner of Indian Affairs.

District 6 should not be recognized by any of our people as being a reservation. It is merely an area which defines land use as between Navajo and Hopi Indians. If you will let me know when it is convenient for you, Mr. Kouliarnies and I will come over to Keams Canyon, and attempt to work out with you a scheme which, as nearly as possible, will be agreeable to both sides.

Sincerely yours,

E. R. FRYER,
General Superintendent.

[Italics—Emphasis added.]

U.S. DEPARTMENT OF THE INTERIOR,
INDIAN FIELD SERVICE,
NAVAJO SERVICE,
Window Rock, Ariz. August 25, 1937.

Memorandum to: Mr. Hutton, and District Supervisors Frazer, Griffin, Thomason, and Stocks.

At a meeting which Mr. McGinnies and I held on August 12 with Superintendent Hutton and the Hopi Council, *it was evident that much confusion exists as to the exact meaning of the boundaries of District 6. The belief seems to exist,*

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among the Hopis, that the Navajo Service has created a reservation for the Hopi Indians; that, as a consequence to this assumed action, all Hopi Indians living outside of District 6 would be forced back inside of this boundary. Nothing is further from the truth.

District 6 is just another Land Management District. We did attempt to include all Hopi range use. In several instances, however, this was impossible and there are still Hopi Indians living outside of District 6 ranging their stock and farming in other land management districts.

Hopis living in Districts 3, 4, 5, or 7 would have range rights equal to the Navajos in those districts. By the same token, Navajos living in District 6 (and there are many of them ranging their sheep well within the boundaries) would have the same rights and privileges as the Hopis. District boundaries merely hold existing use in status quo.

While from the land management standpoint District 6 is identical to all other districts, from a strictly administrative standpoint it is entirely separate from all other districts. Hopi Indians are responsible only to Superintendent Hutton, who is in no way administratively responsible to the Navajo Agency.

As previously stated, Hopis living in Districts 3, 4, 5, and 7 would have status identical to that of the Navajos; their livestock will be charged to those districts. They will therefore be subject to the maximum limits of the districts in which they range.

Land Management Districts were set up primarily for the purpose of controlling range use. District lines do not prevent the free movement of people from one district to another to get wood, or for social purposes. Therefore, Hopi Indians can go outside District 6 for wood. We shall, however, attempt to set aside an area somewhere adjoining District 6 for the exclusive use of the Hopi Indians. In order to do this, it will be necessary to obtain the consent of the Navajo Tribal Council. Until this is done, no attempt should be made to restrict the Hopis or Navajos from cutting dry wood. The cutting of green timber has been covered in previous memoranda from the Forestry Division.

The following are examples of some of the complaints made by the Hopis:

1. A Hopi Indian, who claimed to be ranging in District 4, complained that he had been refused the right to place his bucks in one of our buck pastures.
2. Another Indian complained that when he attempted to cultivate his farm on the Dinnebito, he was told most emphatically to "get back inside of the boundary." According to Supt. Hutton, this man has farmed the place in question for a number of years.
3. The Hopis are being refused the use of a stock tank nine miles southwest of the Moencopi village.
4. Tribal delegates complained that they have not been notified of the location of District boundaries.
5. "A Navajo ate my green watermelons: then he stole my corn. But that isn't all; he sold me his hogan."

Summary

1. Navajos in District 6 remain where they are.
2. Hopis outside District 6 remain where they are.
3. The boundaries of District 6 do not prevent Hopis from going outside the District for wood.
4. Hopis ranging in Districts other than District 6 can participate in buck pastures and any other project offered Navajo stockmen.

Unquestionably, many controversies will arise between the Navajos and the Hopis until a reservation boundary for the Hopis is actually established and fenced. The Hopis, at this meeting, showed little inclination to consider a specific Hopi boundary. Most of them think only of their traditional "boundary", and may not wish, for some time, to consider objectively conditions as they actually exist. In the meantime, when controversies arise, it is suggested that the District Supervisor concerned get in touch with Superintendent Hutton and "iron out" the trouble on the ground. Settle the controversy and mail this office a memorandum stating the action taken.

E. R. FRYER,
General Superintendent.

[Italics—Emphasis added.]

[Wilmington Federal Records Center, BIA, Field Records, Navajo Service, Window Rock, Ariz. FRC No. 72920, File 080]

TOREVA, Ariz., *October 5, 1937.*

Commissioner of Indian Affairs,
Washington, D.C.

SIR: *A special meeting of the Hopi Tribal Council was held at Oraibi, Arizona, on October 5, 1937, and the question of the land management districts as set up by the Navajo Service and Soil Conservation Service was discussed, and the Council passed a resolution that since these districts were created without the approval of the Hopi Tribal Council that they should not be recognized as setup at present for the following reasons:*

1. *It gives control of the greater part of the Hopi Reservation to the Navajo people, resulting in more Navajos settling on the Hopi Reservation, which will make a satisfactory settlement of the land question more difficult than ever.*
2. *District Six, as set up, does not include nearly all of the area that has been occupied by the Hopi Indians for a good many years. This especially includes grazing land and water holes.*
3. *When difficulties arise between Hopi and Navajos it is impossible to reach a satisfactory settlement where two different agencies are concerned.*
4. *The Navajos in all districts bounding District Six claim that the boundary line of District Six established a definite Hopi Reservation and the Hopi people have not conceded any part of their reservation to the Navajos.*
5. *It is depriving many of the Hopi Indians of the use of land on which they have been making a living from their livestock, with the result that they have had to sell large numbers of cattle, making it almost impossible to earn a living in the livestock industry in District Six, leaving them in an unsettled frame of mind as to the future of themselves and their children as they fear further reductions will be made and leave them without any possibilities of their livelihood.*

If the Hopi people are to live in peace and harmony with those adjoining them and with themselves, it will be necessary that definite boundary lines be set up, giving the Hopi sufficient area on which they can carry on livestock and farming operations so that all the people may be able to make a living, and until such time it is requested that your Office leave the entire Hopi Reservation under the supervision of our Hopi Superintendent.

Very respectfully yours,

(Signed) WESLEY PONEOMA,
Acting Chairman, Hopi Tribal Council.

[Italic—Emphasis added.]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE COMMISSIONER OF INDIAN AFFAIRS,
Washington, December 28, 1937.

Mr. E. R. FRYER,
Superintendent, Navajo Service.

DEAR MR. FRYER: Pursuant to Sections 1 and 2 of the Grazing Regulations for the Navajor and Hopi Reservations, I have signed and herewith am promulgating the map, establishing land-management districts within the Navajo and the Pueblo Indian reservations, and setting down the carrying capacity for livestock in each of the districts.

It is understood that the district boundaries as promulgated are subject to change from time to time, and also that the carrying capacities are subject to amendment from time to time.

It is understood also, and it should be clearly explained to the Navajo and Hopi Councils, that the delineation of District No. 6 is not a delineation of a boundary for the Hopi Tribe, but is exclusively a delineation of a land-management unit.

Sincerely yours,

/s/ JOHN COLLIER,
Commissioner.

I certify that this is a true and exact copy of the original letter.

P. E. FOLMAN.

Subscribed and sworn to before me this __ day of April, 1938.

_____,
Notary Public.

EXHIBIT —

[Italic—Emphasis added.]

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ORAIBI, ARIZ., *March 1, 1938.*

RESOLUTION OF THE HOPI TRIBAL COUNCIL

Whereas, the agreement of the Navajo and Hopi Agencies of March 5, 1937, for the transfer of the work of several divisions of the Indian service for the Hopi Tribe to the Navajo Service, although theoretically satisfactory, has not proved to the best interest or greater benefit of the Hopi Tribe, namely:

1. Because the expenditure of $60,000 of Road Funds appropriated for the Hopi Reservation has been mainly used for construction of roads on the Navajo Reservation.
2. The maintenance of Hopi roads has stopped since before February 1, 1938, due to expenditure of Hopi Road Funds elsewhere.
3. All heavy timber purchased with Hopi funds in previous years has been hauled to the Navajo Reservation, leaving bridges in a dilapidated condition in the Hopi Area.
4. CCC–ID work the past year has been small and at present the few Hopi men employed by CCC–ID are working for the benefit of the Navajo Reservation while no work of CCC–ID is being carried on for the Hopi Reservation.
5. *The Indian Office has administered the Hopi Reservation by Soil Conservation districts, limiting the territory and movement of the Hopi Indians without the advice, consent, or previous knowledge of the Hopi Tribal Council or Indians, although the Hopi Indians have not relinquished any rights or claims to the Hopi Reservation.*
6. *No effort is being made to keep Navajo Indians from moving from their districts into the Hopi Reservation and building homes there.*
7. And because, no status quo of residence in each district can be kept without the complete authority and supervision by one person.

The Hope Tribal Council respectfully petition the Office of Indian Affairs that beginning July 1, 1938, all funds appropriated for the Hopi Tribe and Reservation be allocated to the Superintendent of the Hopi Agency for expenditure for the benefit of the Hopi Tribe and Reservation, as previously expended before the Navajo Service Agreement of March 5, 1937. This includes all funds for Roads, CCC–ID, Extesion, Irrigation, Health, Education, Administration, etc. *Furthermore that the Superintendent of the Hopi be given full authority over the Hopi Reservation and that all Land Management Plans for the entire Hopi Reservation be administered by its Superintendent.*

PETER NAVAMSA, *Chairman, Hopi Tribal Council.*
SAM SHINGOITEWA, *Secretary, Hopi Tribal Council.*

Proposed by: Jackson Lomakema.
[Italic—Emphasis added.]

[Wilmington Federal Records Center. BIA Field Records. Navajo Service. Window Rock, Ariz. FRC No. 72920, File 080]

Commissioner John Collier's meeting with the Hopi Indians at Oraibi, Arizona, July 14, 1938

* * *

(Commissioner Collier:)

* * * *Next comes the boundary question. Nothing in the above paragraphs which I have read pre-determines or settles anything with regard to the ultimate Hopi Tribal boundary.* It is suggested that the Hopi Council shall designate a committee on boundary and that the Navajo Tribal Council shall designate a committee on boundary and that these committees enter into negotiations upon the matter of boundary. The Commissioner of Indian Affairs will be prepared to designate a representative to work with these negotiation committees. You see, the question of a boundary has to be approached from both sides, both tribes, and it has to be handled with some kind of help with both sides taking part. The Council could appoint such a committee and could limit the authority of such a committee any way it wanted to. I would not have the least idea that complete agreement could be reached between the Hopi and Navajo, but they might make some agreement. I am sure that in the long run the thing has to be settled by the Secretary of the Interior, but it ought to be proceded by a negotiation between the two tribes.

Now in the matter of the shrines and certain other things, I have this to suggest—It is suggested the boundary negotiating committees above proposed, that is the committee of the Hopi Council when appointed, shall go to work and prepare the description of each Hopi shrine and eagle hunting ground and any timber and wood privileges which are needed by the Hopis, with a view to negotiating for any needed protection or privilege in these matters.

I want to throw in just one remark aside from this paper about the boundary question which I have been hearing about for fifteen years at least. Almost everywhere that I go among Indian tribes, almost everywhere, or everywhere, I find that the tribes assert that they have by ancient right occupied, and all that, an area of land much larger than their reservation. I do not believe that there is a single exception to that. Frequently the boundary that they claim lies way off among lands owned by whites; sometimes it even includes great cities within its boundary. The Hopis are not very differently situated from all the tribes. They have a rightful claim to a larger area than it is possible for them to get. so a complete fulfillment of the Hopi wishes in regard to the boundary is not to be expected. The boundary that the Navajos claim goes clear out to the city of Albuquerque and includes the Jicarilla Apache Reservation. They can't have that, but we are trying to get more for the Navajo and I believe that the Hopi jurisdiction can be made to include more than District Six.

* * *

(Commissioner Collier:)

* * *

In the Navajo we have had a strong and very able, determined Superintendent and an able staff and they have been looking out after the Navajo interests with great strength, while in the Hopi for a good while past we have not had a strong, capable superintendent and because we did not have a good superintendent your requests did not reach us, explanations were not give to you and you were not taken into the confidence of your Indian Service friends. I do not mean that a lot of good things have not been going on. You have been getting all kinds of improvements in the last three years—roads, schools, etc., but the Hopis themselves have not been taken into the confidence of the Indian Bureau and they have felt that they were in the dark.

* * *

(Byron Adams:)

Of all the things presented this morning the most important one is the matter of the Hopi reservation boundary. The final statement that in the end the Secretary of the Interior will have to determine those boundaries, I admit that I think that will be the case, but we feel that we have a right to voice what we believe is necessary and right. I want to take up the matter of the district units outlined by the Navajo Agency. From time im(me)morial the Hopi has looked back to the beginning of life when their prophets told them the conditions and advised them not to take any land to live on that was rich or fertile soil but to take land where they would have a hard time making a living and because of such conditions no one would try to take the land away from them. This message is sacred to the people. It is sacred to the chiefs and in the worship of their gods they hold and that are dear to their hearts.

The original executive Hopi reservation records 38,060 square miles or 227,220 acres. That is the area of the original executive order and now the present District #6 just takes in the actual land that the Hopis are using, regardless of the fact that a certain government organization signed a contract that any area used ouside of District #6 would be fully protected and recognized. That contract was drawn and we know that 30% of the Hopi interests are outside of District #6. We have been assured that we must not confuse this district line with the Hopi boundary line. I believe all the people are in favor of asking the Commissioner and the superintendent and representatives from the Navajo Agency, before the boundary lines are definitely settled, would it not be a good plan to take the boundary lines of the executive order as the district lines also. It would mean nothing to those living in District #6 because the Navajos will continue to be there and the Hopis will be there also and be benefitted by the removal of the small areas such as District #6. We believe that the Government recognized the fact that when this area was laid out the Government sent men out here, men that had sense, men who possessed physical capacity for endurance as there were no roads over which to travel. This was not easy. They proceeded with burros over these hills to survey land and to secure other valuable

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data and it took time and courage to go over these mountains and hills. We must give credit to these men in laying out this big area and country.

No doubt consideration was given to the natural watersheds in this northern district. Here are the Hopi lands and these natural watersheds are composed of five big washes which in the early days supplied the means for farming in this small district. If you combined this small area with the present area and diverted these dams that supply the Hopis, what is going to become of the Hopis with their natural supply of flood waters shut off? The allotment of funds for various developments in District #6 should be combined with that of District #4 and used on the Executive Order reservation as one district unit for the benefit of the Indians in that district, with the provision that it is a Hopi unit and in the selection of grazing range the Hopi shall have first choice. We must remember this, we are at the village of Oraibi, right out here is that big rock hill on which no vegetation will grow. These things must be taken into consideration. I believe our cause is just in asking that the whole area be assigned to us as a land management district instead of the small circle as given us now.

Two years ago Mr. Collier told us that the Hopis were just as important as the Navajos. We feel it too, and in this new day and age I believe our humble request should receive due consideration and the people dealt with through fairness and sympathy by the Government—the fairness that has been broken down in the last three years. We are too easy that we take the white man at his word too often. Mr. Collier has been fair in the policy which he said would be put on record and copies made and handed out so that "you will hold me at my word". Never in all my contact with "civilized life" have I met a man that made such a statement when it involves people who are still ignorant in the ways of civilized life and who depend on the administration for the improvement of conditions on the reservation. If that will be considered in the light of a request when the matter of the boundary and districts is settled we want it to receive some consideration.

Outside of what has been given us in District No. 6 there is very little hope and you may say "you Hopis are to blame for not taking advantage of the area given you". True, but don't condemn us too easily, because we are a peace-loving people and the Navajo is a fighter and because we do not want to commit murder we have withdrawn in order to have peace with the Navajo and he has taken advantage of us and has been given preference over all former rights that the Hopis had. When the Government confirms all this settlement of the Navajo the Government approves the illegitimacy of children. The Navajos are polygamous and because of the rapid increase of the tribe we have been made to suffer because the Government has not done its duty in demanding proper family life of the Navajo.

And another thing, the Executive Order of 1882 very plainly states that it is set aside for the Hopi and any other Indians that the Secretary of the Interior may designate. We do not know what that wording means, but our people know this; that at the time that order was made there were two tribes of Indians among the Hopis who had established residence here. The first is Hano, the second is Tewa. The Tewa still maintain their own language and characteristics. How do we know but what the wording means these two tribes. If it had meant the Navajo as the other tribe? If it can not, the Hopis think that the Navajos who are residing on the reservation are trespassing. Those are our complaints that our older men would like to make to you representatives from Washington. It is far from us to say anything that would be disagreeable to you, and if anything has been said that is amiss we want you to overlook our ignorance and view it from the point of what we try to say to you. I did not intend to say anything but pressure was brought to bear that I speak for them and I am sure that I have spoken the sentiment of the Indians here, and I hope that in the matter of the boundary and the district line, this little appeal should be thoroughly considered for the benefit of the Hopi tribe.

* * *

(Commissioner Collier:)

Now, the matter of the district and boundary. I am glad that Mr. Adams brought that up. We all know that the matter can not be settled today. What I would point out is this—Suppose, as a practical matter, that we make your Superintendent the Superintendent of the same area that Mr. Miller was superintendent of. You would have a condition where he would be Superintendent of the Hopis and about as many Navajos, and, as in the old situation, would be economically responsible for the Hopis and the Navajos in that area—the very

things you wouldn't want because the Navajos are there. What we are trying to do is to devise an arrangement whereby the Hopis will be administered by the Hopi Superintendent in cooperation with the Hopi Council. Then when the final boundary is laid down, whatever it is, that will be the jurisdiction of the Hopi Superintendent. In the mean time, there would be nothing but grief to try to make him Superintendent of about 3,000 Navajos now living on the so-called Hopi Reservation.

My information may not be correct. At the time it was created, the area was occupied by Hopis and Navajos, way back in 1881. It was not created exclusively for the Hopis, and that fact was recognized by Congress through successive statutes as you will find in the Appropriation Act year after year. Appropriations made for this jurisdiction were for Navajos and Hopis.

All of that has no bearing on the question of what the ultimate boundary will be. I am sure that the first step in arriving at a satisfactory solution will be the appointment of this boundary committee to negotiate with the boundary committee of the Navajos with a representative of the Commissioner helping them. In the meantime, that boundary committee of the Hopis can take steps necessary to protect their shrines. That does not have to wait the final settlement of the boundary question.

* * *

(Chairman:)

In connection with the district unit No. 6, it has been told to me by one of the Government officials that those grazing permits still can be given to us beyond the district line. Permits have been given to stockmen to establish their ranch houses. If the Navajos residing outside of that district line would come to the Hopis and say to these men they can not build their ranch houses, then it would have to come back to the Council and I want to know whether I have the authority back of me to back me on that. I am not positive and I would like to get more information.

(Collier:)

I think that can be answered. The Council will have authority and the Government will back them. There are Hopis who do graze their animals beyond the boundary and they graze them under permits reaching beyond the boundary. Not only will the Hopi Superintendent have the power and the duty of protecting them in those permits, but it will be the duty of the Navajo Superintendent, also, to protect them in those permits. You have authority to protect them and your Superintendent will help you. If the Hopi goes beyond the boundary he must have permission from the Government. I understand that these permits are issued from the Government. If they build houses on their ranches to live in while they are with the sheep on the range I can not see that there would be any objection to that.

(Chairman:)

Also, I want to ask in regard to the question between the district and the reservation. As I understand it, the district does not mean our reservation. It was to be used only as a unit so that it would be recognized as a number to work on. Now, we have in the past passed a resolution in regard to the district set-up but we have not been given any definite answer from it and the reservation beyond that is inhabited by the Navajos. Could it be recognized as a district unit?

(Commissioner Collier:)

It could be, but it would not solve your problem any because you would still have the problem of the Navajos who are there.

Now we have this to speak about. The Navajo. As long as we have the Navajos residing on our reservation there is going to be trouble between the Navajos and the Hopis. Therefore, the reservation ought to be defined first and whatever policy comes from the Indian Office to our reservation we will be very glad to take up, but as the situation is, we can not be happy in dealing with the problem of definite progress on the so-called reservation. I do not believe there is any way we can thrash this thing out until we get a definite boundary.

(Fred Lomayesva, in Hopi language:)

Why should we settle this with the Navajos? It is our land and we should be able to settle it ourselves. It is ours and why must we get permits from them to graze on our own land.

(George, in Hopi language:)

I am going to ask the Commissioner this question. We have been discussing District #6 and we have District #6 on our minds. Do I get it that we must recognize District #6 as the Hopi reservation? Do we have no access to the land outside of District #6? Some of the Hopis have established homes outside of

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District #6. I want you to answer my question, Commissioner. Here is the question—Isn't it right that those having established homes outside of District #6 have a right to be there. I thought that the land that these Hopis have occupied and established homes on belonged rightfully to the Hopis. Why is it that they have to have a permit to live outside of District #6. You mentioned about having a negotiation with the Navajos and a Government representative about determining the Hopi reservation. Well, it seems that you are stressing that same thing in our minds—that we have to get permits even to get out of District #6. It seems that we are negotiating now. I would like to have an answer to that.

(Commissioner Collier:)

I will try to answer that again. District #6, which I call the Hopi Land Management District, is at present the area over which the Hopi Superintendent has administrative control. Any land lying outside of what you call District #6 is under the jurisdiction of the Navajo Superintendent for the present. Whenever a final boundary is decreed, then in that final boundary the jurisdication will be with the Hopi Superintendent and outside of it will be the Navajo Service. The matter of permits is quite distinct. Under the grazing regulations promulgated by the Secretary of the Interior ultimately all grazing of livestock on the Hopi as well as on the Navajo will be governed by permits issued to the owner of the livestock, just as it is done in every part of the Indian and white country. Where an Indian resident in one land management district needs to move across into another district he gets authority and that comes from the Government. This authority is attested by a paper—a permit. Eventually all grazing will be under permit. That has nothing to do with the reservation boundary. I am afraid the matter is still confused, but I have given you the best answer that I am able.

(Mr. Willard W. Beatty:)

The question was, if I have a home outside of District #6, do I own it or dont' I?

(Commissioner Collier:)

Inside of District #6 you have some Navajos. If there is a Navajo in this district who has an established right to stay there that right is not affected. If a Hopi has a property right established for grazing or farming outside of District #6 he stays there and it will be the duty of the Hopi Council and the Superintendent to look after him. When disagreement arises between him and a Navajo the matter will be referred to the Hopi Superintendent.

Representative Pabanale:)

We had a meeting with the Navajo Superintendent last summer and it was thoroughly understood between the two superintendents and the people in general that an agreement was made and that those who had established homes outside of the district line are to stay there, and it was also thoroughly understood that those who do not belong within the district lines should be moved. Since this agreement was made no effort has been made to get those who have drifted in removed. The Navajos are the favorites of this controversy now. Whenever a Hopi wanted to get out of District #6 always a word came back and he would not be permitted to do so.

(Commissioner Collier:)

Yesterday I saw Mr. Fryer and he told me what steps they had been taking to remove one Navajo family that had drifted in here and had been put back. That agreement referred to is obviously the right agreement, and if it has not been enforced it should be and will be.

U.S. Department of the Interior,
Office of Indian Affairs,
Keam's Canyon, Ariz., March 10, 1939.

Commissioner of Indian Affairs,
Washington, D.C.

Attention: Mr. W. V. Woehlke

Dear Sir: In discussing Soil Conservation projects with the Hopi people, we find them quite disturbed because the work so far as they are concerned is confined to District six.

They are especially reluctant to approve drift fences. It is my opinion, and the opinion of the Soil Conservation technicians, that for better range management, some drift fences are necessary. The Hopis seem to feel that any fence may become a part of the boundary for the Hopis. I have reassured them that no project undertaken by the Soil Conservation will in any way affect the final boundary settlement.

I believe that it would aid us greatly, and set the minds of the Hopis at peace, if you would write and assure the Tribal Council that nothing the Soil Conservation, or that any of the other Government agencies does in the way of developing work projects in District six will have any effect on the boundary settlement.

I should appreciate an answer by return mail, if possible.

Respectfully,

Seth Wilson, *Superintendent.*

[Italic—Emphasis added.]

March 20, 1939.

Mr. Seth Wilson,
Superintendent, Hopi Agency.

Dear Mr. Wilson: *In connection with the proposed construction of certain drift fences in District No. 6, it has been reported to me that the Tribal Council of the Hopis fears that such drift fences might become the boundaries of the Hopi Reservation. Will you please assure the Hopi Tribal Council that no drift or other fences built by the Soil Conservation Service, the Civilian Conservation Corps or any other Governmental agency will have any effect on the determination of the boundary of the Hopi Reservation. It may be necessary and desirable for good range management to build several drift fences, but there is no connection between fences built for better management of the range and the determination of the Hopi boundary. In fact, none of the work projects, undertaken by Governmental agencies in District No. 6, will be allowed to have any effect on the boundary settlement. Will you please bring this letter to the attention of the Hopi Tribal Council?*

Sincerely yours,

(Signed) John Collier,
Commissioner.

[Italic—Emphasis added.]

July 1, 1940.

Mr. Seth Wilson,
Superintendent, Hopi Agency.

Dear Mr. Wilson: Mr. Stewart and I have been giving a great deal of consideration to the execution of the proposed division of use-rights between the Hopis and the Navajos in line with the Rachford recommendations. In order to accomplish this division of use-rights, we have been thinking of submitting to the Secretary an order phrased in line with the attached draft.

You will notice that the language of this order does not attempt to set up the Hopi Reservation, but rather to limit the use-rights of the Navajos on the Moqui (or Hopi) Reservation as established by Executive Order in 1882. In this manner the sensibilities of the Hopis will not be affected.

You will also notice that in the draft of the order we have described the area from which the Navajos are excluded by metes and bounds. We have taken this description from the description of the area established by Mr. Stewart in 1930 when he endeavored to bring about the same result which we are aiming at now. It will be necessary to produce a new description of the line as recommended by Mr. Bachford and as modified by joint agreement between you and Mr. Fryer. Mr. Stewart suggests that you run this line, with the assistance of Mr. Simington, and using CCC and SCS personnel, if available, for this task. Will you let Mr. Stewart know when you can undertake this job and when you want Mr. Simington's assistance?

I also want to call your attention to Article I of the Hopi Constitution. This article reads as follows:

"The authority of the Tribe under this Constitution shall cover the Hopi villages and such land as shall be determined by the Hopi Tribal Council in agreement with the United States Government and the Navajo Tribe, and such lands as may be added thereto in future. The Hopi Tribal Council is hereby authorized to negotiate with the proper officials to reach such agreement, and to accept it by a majority vote."

I would like to have your advice as to the procedure. Should we submit the text of the proposed secretarial order, together with the description of the line which you and Mr. Fryer will supply to the Hopi Tribal Council and request that the

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Hopi Council would not be in a position to take any action on this matter because of psychological and traditional reasons. If this is the case, should we proceed to promulgate the order in its final form and thereafter ask the Tribal Council to accept jurisdiction over the area delineated by this line, plus Mosecepi? This phase will have to be decided by you as we, at this distance, cannot answer the question whether the Hopi Council will or will not act on this matter.

Again there arises the question whether the text of this order should be submitted to the Navajo Council. That is a question which Mr. Fryer must answer, but as this order does not in any way affect the title to the lands involved, as it does not endeavor to set up a Hopi Reservation and exclude Navajos from this reservation, as the sole objective of the order is the proper regulation and distribution of use-rights as between certain claimants, I believe that it would not be necessary to obtain the consent of the Navajo Council. However, we would be guided largely by your reaction.

Sincerely yours,

WALTER V. WOEHLKE,
Assistant to the Commissioner.

[Italic—Emphasis added.]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Window Rock, Ariz., July 26, 1940.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

Attention: Mr. Walter V. Woehlke.

SIR: This will reply to your letter of July 1 concerning the division of use-rights as between Navajos and Hopis.

This matter will be covered more fully, no doubt, by Mr. Wilson in his letter of transmittal to you, to which will be attached a copy of a proposed Order which has been given our joint consideration and approval. We do not believe that the Secretarial Order proposed by Mr. Stewart would achieve the purposes of the Rachford study.

It would be a mistake, in my opinion, to present this matter to the Navajo Council since the only purpose of the Order is to effect a distribution of use rights as between the Navajo and Hopi tribes.

Sincerely yours,

E. R. FRYER,
General Superintendent.

[Italic—Emphasis added.]

HOPI AGENCY FILES,
Keams Canyon, Ariz., September 4, 1941.

Mr. E. R. Fryer,
Superintendent, Navajo Agency.

MY DEAR MR. FRYER: Reference is made to recent correspondence regarding proposed modification of the boundary of Land Management District No. 6 (Hopi), and to the proposed changes in the boundaries of a number of other districts as recommended in your letter of July 19.

In regard to the proposed modification in the boundary of District No. 6, your attention is invited to Article X of the Constitution of the Hopi Tribe which reads as follows:

"The authority of the Tribe under this Constitution shall cover the Hopi villages and such land as shall be determined by the Hopi Tribal Council in agreement with the United States Government and the Navajo Tribe, and such lands as may be added thereto in future. The Hopi Tribal Council is hereby authorized to negotiate with the proper officials to reach such agreement, and to accept it by a majority vote."

Your attention is also invited to Subsection (g). 25 CFR 72.13 of the Grazing Regulations of the Navajo and Hopi Reservation which reads as follows:

"For the purpose of the regulations in this part. District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and Bylaws of the Hopi Tribe."

Since it is prohibited by law to establish Indian reservations without specific authorization from Congress, and in view of the fact that the Solicitor has held that this law applies to the proposed establishment of the boundary of the Hopi Reservation as provided for in the above quotation from the tribal constitution and the grazing regulations, the proposed adjustment in the boundary cannot, therefore, be considered as a permanent adjustment of the reservation boundary but must be considered merely as a change in the land management district. In view of the foregoing, and since the constitution of the Hopi Tribe provides that the Hopi Tribal Council shall negotiate with the United States Government and the Navajo Tribe for the establishment of the boundaries of the reservation, it appears that the proposed changes in the boundaries of District No. 6 should be submitted to the Tribal Council for consideration and approval by an appropriate resolution. * * *

Sincerely yours,

WILLIAM ZIMMERMAN, Jr.,
Assistant Commissioner.

[BIA.FR. Hopi Agency Keams Canyon, Arizona FRC No. 73598, File 342]

FEBRUARY 14, 1945.

BURTON A. LADD,
Superintendent Hopi Agency.

DEAR MR. LADD: This is in reply to your letter of January 13 concerning the proposal to construct certain fences with AAA assistance.

The proposed structures are in the nature of drift fences. Their construction will in no way affect any of the land claims of the Hopis and will not mean that the Hopis agree to the legal establishment of any boundaries to the Hopi reservation. These fences are designed to protect the interest of the Hopi stockmen and to prevent additional encroachments of Navajo livestock on Hopi ranges. In our judgment the proposed fences will have no effect on Hopi land claims, but will prove to be of great practical value to the Hopi stockmen.

I hope that arrangements can be completed so that work on the construction of these fences can be started at an early date.

Sincerely yours,

WALTER V. WOEHLKE,
Assistant to the Commissioner.

[Italic—Emphasis added.]

[Hearing before the Committee on Indian Affairs, House of Representatives 79th Congress, First Session, Oct. 29, 1945, p. 27]

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D.C., April 26, 1945.

MR. ROGER QUOCHYTEWA,
Governor of Oraibi (through Superintendent, Hopi Agency),
Keams Canyon, Ariz.

DEAR MR. QUOCHYTEWA: I have been awaiting receipt of your letter, which you stated in your telegram of April 5 that you were sending, protesting against the fencing in of district 6.

I assume that your objection to the fences is based on your fear that the building of such fences will in some way affect the claims of the Hopis to lands outside of district 6 within the Executive order reservation.

I want to assure that any fences built will in no wise be construed as establishing district 6 as the Hopi Reseravtion, or jeopardize any claims which you may have to other lands. The purpose of the fence is not to mark off the boundaries of the reservation, but merely to prevent cattle and horses from straying: to assist the stockmen in improving the quality of their herds, and in controlling the breeding program by preventing inferior sires from mixing with the herds.

It is not compulsory that a fence be built. Assistance can be obtained from the Agricultural Adjustment Administration which will almost pay the entire cost of the fencing, and it is an opportunity which the Hopi stockmen should take advantage of. Should the stockmen in the area desire to build the fence, I hope that you will not interpose objection.

Again let me assure you that the building of this fence will in no way affect your land claims.

Sincerely yours,

WILLIAM A. BROPHY, *Commissioner.*

[Italic—Emphasis added.]

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FORESTRY AND GRAZING,
October 27, 1941.

Mr. SETH WILSON,
Superintendent, Hopi Agency.

MY DEAR MR. WILSON: Reference is made to the letter of September 23 signed by you, the Chairman, Vice Chairman, and Secretary of the Hopi Tribal Council in reply to our letter of September 4 regarding proposed changes in Land Management District No. 6 (Hopi).

The ten questions asked in your letter are answered in the order enumerated:

1. Is the authority to establish new reservations or modify the Executive Order Reservation of 1882 "for Hopi and other Indians" vested only in Congress?

By Executive Order dated December 16, 1882, approximately 2,500,000 acres of land were set apart 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." By the Act of May 25, 1918 (40 Stat. 570), Congress provided that no Indian reservation shall be created nor shall any addition be made to one heretofore created, within the limits of the States of New Mexico and Arizona except by Act of Congress. Also, the Act of March 3, 1927 (44 Stat. 1347), prohibits any change in the boundaries of the reservation except by Act of Congress. Under date of February 12, 1941, the Solicitor of the Department of the Interior held that the prohibition of the 1918 and 1927 Acts is applicable to the Hopi Reservation.

2. Does the Secretary of the Interior recognize as legal residents of the Executive Order Reservation approximately 4,000 Navajos and 3,000 Hopis?

In effect the Solicitor, in the opinion referred to in the answer to question No. 1, held that where a statute or Executive Order created a reservation for a designated tribe or tribes, such tribes have the usual Indian title of use and occupancy even though the Secretary is privileged to settle further Indians upon the land and that such tribes have been considered as having the usual tribal property rights. In connection with the view expressed in this opinion I quote therefrom the following:

". . . I do not maintain that in this case the rights of the Hopis have become exclusive rights since there were Navajos upon the reservation at the time the 1882 order was promulgated, and Navajos have continued within the reservation in increasing numbers.

"My conclusion on this point is that, while the Secretary may control the settlement upon the reservation of the Navajo Indians, he may not deny the use and occupancy of any part of the reservation to the Hopi Indians without their voluntary action, as such denial would be an alienation of their property beyond the authority of the Secretary."

3. Does the Navajo Tribe as mentioned in Article I of the Hopi Constitution and By-laws refer to the Navajo residents of the Executive order reservation or the entire Navajo tribe?

It is our opinion that only the individual Navajos residing on the 1882 Reservation on October 24, 1936, the date of the ratification of the Constitution of the Hopi Tribe by the Hopi Indians, and the descendants of such Navajos, have rights on the Reservation. Since, however, such Navajo Indians do not have a separate organization but are governed by the general Navajo tribal organization, Article I of the Hopi Constitution referred to the "Navajo Tribe" means the general Navajo tribe organization.

4. Does the authority of the Hopi Tribe in Article I give the council the right to negotiate for a permanent reservation or only the right to negotiate for use rights in the Executive Order Reservation?

The Hopi Tribal Council has the right to negotiate for a permanent reservation, but such boundaries as may be determined upon through such negotiations would not become final unless approved by Congress.

5. Is the Executive Order of 1882 the only legal recognition of rights to land of the Hopi Tribe?

It appears that the Executive Order of 1882 and the approved Constitution are the only positive acts taken by the Government in recognition of the rights of the Hopi Indians.

6. If the proposed changes in the present District require the approval of the Hopi Tribal Council, why didn't the original District require the approval of the Council?

The Grazing Regulations for the Navajo and Hopi Reservation (25 C.F.R. 72.5) provide that "The Commissioner of Indian Affairs shall establish land management districts within the Navajo and Hopi Reservation, based upon the

social and economic requirements of the Indians and the necessity of rehabilitating the grazing lands." Section 72.13 (g), Title 25, C.F.R., provides "For the purpose of the regulations in this part, District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and By-laws of the Hopi Tribe? In view of this declaration any changes now proposed in the boundary of the district should meet with the approval of the Hopi Tribal Council.

7. *If the Hopi Tribal Council approves the changes in the District Boundary, would that mean that Article I of the Constitution has been complied with?*

Since the proposed change in the boundary of District 6 has no bearing on the establishment of the reservation boundary, the answer to this question is in the negative.

8. What farming rights do the Hopis have in the Executive Order Reservation of 1882? What grazing rights?

This question is closely related to question and answer No. 2. Farming and grazing rights of both the Hopi Indians and the Navajo residents must be recognized and not discriminated against.

9. Would approval of these proposed changes by the Superintendent bind the Hopi Tribe and nullify rights under Article I of the Hopi Constitution and By-laws?

Approval of the proposed changes in the boundary of District 6 would not nullify or affect the rights of the Hopi Indians under Article I of their Constitution. As stated in our letter of September 4, "Since it is prohibited by law to establish Indian reservations without specific authorization from Congress, and in view of the fact that the Solicitor has held that this law applies to the proposed establishment of the boundary of the Hopi Reservation as provided for in the above quotation from the tribal Constitution and the grazing regulations, *the proposed adjustment in the boundary cannot, therefore, be considered as a permanent adjustment of the reservation boundary but must be considered merely as a change in the land management district.*"

10. How can the Hopi Tribal Council go about complying with Article I of the Hopi Constitution and By-laws?

If the Hopi Indians are desirous of establishing for their exclusive use an area out of the Executive Order Reservation of 1882, the first step to take would be negotiations between the two Councils. You, as Superintendent, with the cooperation of the Superintendent of the Navajo Agency, should take steps to bring the two Councils together and should make available the data, etc., necessary to the negotiations, with a view to entering into a formal agreement as to the location of the boundary of the proposed reservation. Upon completion of the negotiations and execution of formal agreement the matter should then be referred to the Office for initiation of the necessary legislation.

In closing we wish to reiterate that approval by the Hopi Council of the proposed changes in District 6 will in no way affect the rights of the Hopi Indians under Article I of their Constitution. It should also be borne in mind that the proposed changes in the boundary add 29,575 acres which has a carrying capacity of 1,655 sheep units yearlong. If, however, there is still any apprehension on the part of the Hopi Council regarding a possible loss of rights safeguarded by Article I of the Hopi Constitution, a formal resolution of acceptance is not necessary. If such is the only reason for not desiring to sanction the change in the proposed boundary of District 6, the Council could adopt a resolution providing in effect that it will interpose no objection to the change with a specific provision in the resolution that such action in no way affects the rights of the Hopi Indians under Article I of their Constitution.

Sincerely yours,

(Signed) JOHN COLLIER,
Commissioner.

Approved: January 8, 1942.

(Signed) OSCAR L. CHAPMAN,
Assistant Secretary.

[Italic—Emphasis added.]

Mr. BOYDEN. Now, withstanding that, we know that in *Healing* v. *Jones*, even though the Court has said this is how it all happened and they affirmed it, they said this, the course of events and official pronouncements between February 7, 1931, and July 22, 1958, indicate

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that all Navajos entering the reservation for purposes of permanent residents were impliedly settled thereon by the Secretary or his authorized representative, at or shortly after the time of entry, and that on July 22, 1958, all Navajos residing in the 1882 reservation were accordingly settled therein pursuant to the Executive order of December 16, 1882.

Now, that was the decision of the Court, which certainly has taken into consideration all of the things that have been said here about the difficulties of moving.

The Hopis had a right to that reservation which the Navajos had forcibly taken over, and the Secretary of the Interior—not one of them ever had the nerve to say we settled the Navajos. They just recognized them and sat quietly in Washington while this took place and let the Hopi land go. And when that is all done, then the Court says, well, your action has been such that you have settled those people there. So after hearing everything that's been said here, and a whole lot more in hundreds of exhibits and 1 solid month of testimony at Prescott in the *Healing* v. *Jones* case, the Court heard all of this and then they did what we very often do, take into consideration the hardships on the Navajos, and that's how the Navajos got the one-half interest in this reservation.

And after that's all done, then for us now to say, this is the time to compromise. This is the time to negotiate, after we have lost half of this reservation by the aggression of the Navajos and by the tolerance of the Secretary of the Interior without protecting the rights of the Hopis.

Now, the Hopis' attitude has always been one of trying to get along. They have pursued the long and the hard way. And let me say this, that when you come into district 6, they say that's not disputed.

Well, that's ours. That's what they say here. But as Shakespeare said, "How can I hear what you say, when what you are saying is ringing in my ears."

There were 15 people in there, the Navajos who were joined in a suit called the Kibitto suit to try to get them out of this exclusive area, and they fought it and they're still applying to the Court, the U.S. Supreme Court, for a writ of certiorari after 10 years of litigation of the United—with the United States, and they're still in that area and not only those, but they have added to it and brought in other Navajos that are not named in the exclusive area, which we say is not in controversy here. And yet, we are pursuing this—we have left them in there, done nothing with them except to serve notice under our exclusion ordinance which allowed us to put them out, but we didn't do it because we didn't want to create the tension that is now boiling.

So we went the long way about; came to Washington, get permission at the Department of the Interior to request the Department of Justice to institute a suit of ejectment, which they did. And, then, because the Navajo Tribunal Council had difficulty in selecting a new attorney, they waited for a long period of time. And, finally, when it got to the judge, the judge said: Why, that's all determined, it's res judicata. I will issue a writ of ejectment; and that he did.

So they appealed it to the ninth circuit court of appeals. And when they appealed it to the ninth circuit, the ninth circuit affirmed it and

said, that's correct. So then, they asked for a rehearing. The ninth circuit said, you can't have a rehearing. They give three words. They said it's all been adjudicated once before; and so now they go back to the Supreme Court of the United States again.

Now, this abuse of judicial process is the thing that is exhausting the patience of the Hopi Tribe; and since Biblical quotations had been stated here, may I say one at this time: "How long, oh Lord, how long?" That's what the Hopis are asking me.

Because we're trying to do it the legal way. We're going about it without violence. There is where we stand now with respect to district 6.

Now, with respect to what we can do here—I'm not going to try to cover everything I have in the examination, or in my testimony as recorded. I do have some other documents that show that the Hopis made proper application immediately and asked for this, and we had a hearing in Scottsdale, notwithstanding the testimony that was here, we have volumes of negotiation, and in Scottsdale, the Commissioner of Indian Affairs said, I will set up someone to take care of this joint-use area right away. But, the Navajos had the power and the force to stop every bit of it, and they have had it just a lawless area.

The Navajos have had what they wanted there, and we haven't been able to do a thing with it. We've made our application here, rather the communications, enclosing the applications, and all that we are told by the Department is this—Here is a letter dated 1964:

> Reference is also made your inquiry regarding grazing permits for Hopi livestock owners on the joint-use portion of the 1882 Executive order reservation. Until appropriate adjustments are worked out and the overgrazing condition there corrected, the Bureau is not in a position to approve such permits.

That is the only answer they get to all the applications. May all of this correspondence also be made a part of the record?

Mr. HALEY. Without objection, so ordered.

(The correspondence follows:)

OCTOBER 27, 1964.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: Enclosed is a copy of a letter dated September 30, 1964, from Superintendent H. E. O'Harra, of the Hopi Agency.

Copies of the four applications for Range Allocation are also enclosed.

Other members of the Hopi Tribe have verbally requested their desire to use portions of their share of the 1882 Executive Order Area outside of District Six.

The regular three-year Hopi (District Six) permits expire on October 31, 1964. About 50 percent of the Hopi livestock operators have submitted their applications for grazing allocations on District Six. A plausible reason for this laxity is probably due to the fact that the Navajos are using unauthorized Hopi range without regards to permit, range control or grazing fees.

This situation places us and the Agency Superintendent in a vulnerable position when we try to impose proper application of 25 CFR 151 on the Hopi livestock operators.

We realize this condition cannot be remedied immediately but advice from our office is requested as to how we should proceed.

Sincerely yours,

W. WADE HEAD,
Area Director.

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U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
HOPI INDIAN AGENCY,
Keams Canyon, Ariz., September 30, 1964.

Mr. W. WADE HEAD,
Area Director, Phoenix, Ariz.
(Attention: Land Operations (Range)).

DEAR MR. HEAD: We are enclosing four Applications for Allocation of Grazing Privileges forms for that portion of district 3 lying within the Joint Use Area of the 1882 Executive Order Reservation. These applications are from Hopi Indians who desire the privilege of using a portion of the Joint Use Area.

At the present time, only Mr. Albert, who resides at Moenkopi, has a permit on this portion. He is, however, requesting that his permit be increased to the maximum of 350 sheep units. All four of these applications are for the maximum of 350 sheep units.

Mr. Albert and Mr. Talawepi have talked to the Credit Officer here at the Agency regarding a loan for livestock. Our Credit Officer has assured them that when they are granted these permits, she will accept their applications for a loan. Both applicants have a good record of loan repayments.

We believe that Mrs. Smith has the ways and means of filling her permit when it is granted. As to Mr. and Mrs. Honeyestewa's plans on acquiring livestock for their permit, we are uncertain but presume they will also make application for a loan.

We believe that these applications should be submitted to the Area Director at the Gallup Area Office. It is our opinion that these applications should be decided on by the two Area Offices rather than being sent on to the Navajo Agency for their decision. We state this in view of the fact that the Joint Use Area of the 1882 Executive Order Reservation is supposed to have a Special Administrator whose duties were to include the administration of the grazing program, but who has not been appointed to date.

It will be greatly appreciated if you can keep us informed of the status of these applications. We will be very interested in seeing the outcome on them.

Sincerely yours,

H. E. O'HARRA,
Superintendent.

(Italic—emphasis added)

Form 5-235
(April 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ALLOCATION OF GRAZING PRIVILEGES

Navajo-Hopi AGENCY Navajo-Hopi Joint Use RESERVATION

I (We) the undersigned Indian(s) enrolled on the said reservation hereby make application for an allocation of grazing privileges without competitive bidding as authorized by 25 CFR 151.11 and 151.13. I (We) believe that I (We) come within the requirements of the regulations authorizing such allocation of grazing privileges without competitive bidding. I (We) desire the grazing privileges on the following described lands:

District No. 3 Grazing Season Year long
(Show range unit number or area)

I (We) certify that the number of livestock over 6 months of age owned by me (us) and to be grazed under my (our) exclusive control and supervision are as follows:

Number of Livestock	Kind of Livestock	Ownership of Brand	Holder of Mortgage or Other Lien Against Livestock
2	Cattle	Walter Albert	None

I (We) own or control the following described land:

(Show legal subdivision and area)

Do you manage the livestock yourself? (This includes riding, herding, branding, rounding up, feeding.)

Answer Yes or No. Yes

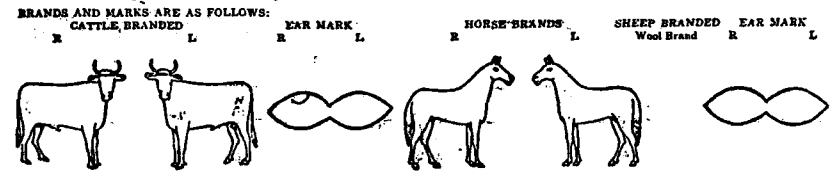
If you do not manage your livestock, who does it for you? Together with Walter Albert. Box 436, Tuba City, Arizona (Name and address)

Is your husband (or wife) a non-Indian? Answer Yes or No. No

If your husband (or wife) is an Indian is he (or she) enrolled at this agency? Yes

I (We) agree to acquaint myself (ourselves) with the requirements of the regulations and to abide by the same, and further understand that if a grazing permit is issued that I (We) will pay the grazing rentals annually in advance each year and to comply fully with the terms of the permit.

BRANDS AND MARKS ARE AS FOLLOWS:



WITNESS: Date September 28, 1964

(Applicant)

(Applicant)

(Any Additional Comments May Be Written on Reverse Side) 16—78767-1 GPO

SEPTEMBER 28, 1964.

To whom it may concern:

I would like to acquire a grazing permit in District No. 3 in the Navajo-Hopi Joint Use Area of the 1882 Executive Order Reservation. I would like to have this permit for the maximum 350 sheep units. When I am granted this permit, I would like to be assigned my own brand.

PAUL HOPI TALAWEPI.

NN010533

Form 5-535
(April 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ALLOCATION OF GRAZING PRIVILEGES

Navajo and Hopi AGENCY Navajo-Hopi Joint Use RESERVATION

I (~~We~~) the undersigned Indian(s) enrolled on the said reservation hereby make application for an allocation of grazing privileges without competitive bidding as authorized by 25 CFR 151.11 and 151.13. I (~~We~~) believe that I (~~We~~) come within the requirements of the regulations authorizing such allocation of grazing privileges without competitive bidding. I (~~We~~) desire the grazing privileges on the following described lands:

District No. 3 Grazing Season Year long
(Show range unit number or area)

I (~~We~~) certify that the number of livestock over 6 months of age owned by me (~~us~~) and to be grazed under my (~~our~~) exclusive control and supervision are as follows:

Number of Livestock	Kind of Livestock	Ownership of Brand	Holder of Mortgage or Other Lien Against Livestock
40	Cattle	Thd Chet Smith	Maricopa Credit Union

I (We) own or control the following described land:

(Show legal subdivision and area)

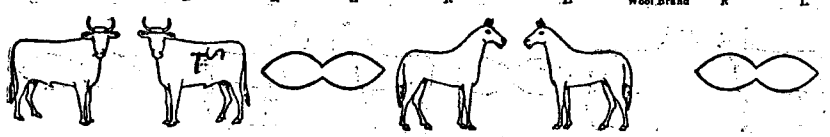
Do you manage the livestock yourself? (This includes riding, herding, branding, rounding up, feeding.)

Answer Yes or No. No
If you do not manage your livestock, who does it for you? Walter Albert, Box 436, Tuba City, Arizona
(Name and address)

Is your husband (or wife) a non-Indian? Answer Yes or No. No
If your husband (or wife) is an Indian is he (or she) enrolled at this agency? No

I (~~We~~) agree to acquaint myself (~~ourselves~~) with the requirements of the regulations and to abide by the same, and further understand that if a grazing permit is issued that I (~~We~~) will pay the grazing rentals annually in advance each year and to comply fully with the terms of the permit.

BRANDS AND MARKS ARE AS FOLLOWS:
CATTLE BRANDED R L EAR MARK R L HORSE BRANDS R L SHEEP BRANDED Wool Brand EAR MARK R L



WITNESS: Date September 28, 1964

Ruth N. Smith
(Applicant)

(Applicant)

(Any Additional Comments May Be Written on Reverse Side) 16—75767-1 GPO

SEPTEMBER 28, 1964.

To whom it may concern:

I would like a permit for the maximum number of sheep units (350) for the Navajo-Hopi Joint Use, Portion of District No. 3 of the 1882 Executive Order Reservation. At the present time, I have 40 head of cattle I would like to transfer into this area.

RUTH N. SMITH.

Form 5-535
(April 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ALLOCATION OF GRAZING PRIVILEGES

Navajo-Hopi AGENCY Navajo-Hopi Joint Use RESERVATION

I (~~We~~) the undersigned Indian(s) enrolled on the said reservation hereby make application for an allocation of grazing privileges without competitive bidding as authorized by 25 CFR 151.11 and 151.13. I (~~We~~) believe that I (~~We~~) come within the requirements of the regulations authorizing such allocation of grazing privileges without competitive bidding. I (~~We~~) desire the grazing privileges on the following described lands:

District No. 3 Grazing Season Year long
(Show range unit number or area)

I (~~We~~) certify that the number of livestock over 6 months of age owned by me (~~us~~) and to be grazed under my (~~our~~) exclusive control and supervision are as follows:

Number of Livestock	Kind of Livestock	Ownership of Brand	Holder of Mortgage or Other Lien Against Livestock
None			

I (~~We~~) own or control the following described land:

(Show legal subdivision and area)

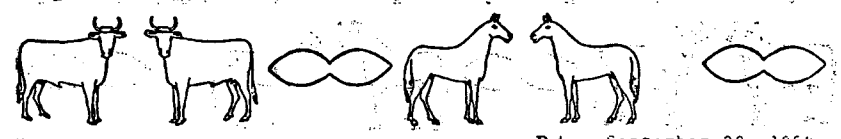
Do you manage the livestock yourself? (This includes riding, herding, branding, rounding up, feeding.)

Answer Yes or No. No
If you do not manage your livestock, who does it for you? My husband, Ned Honeyestewa, c/o Hoteville, Arizona
(Name and address)

Is your husband (or wife) a non-Indian? Answer Yes or No. No
If your husband (or wife) is an Indian is he (or she) enrolled at this agency? Yes

I (~~We~~) agree to acquaint myself (~~ourselves~~) with the requirements of the regulations and to abide by the same, and further understand that if a grazing permit is issued that I (~~We~~) will pay the grazing rentals annually in advance each year and to comply fully with the terms of the permit.

BRANDS AND MARKS ARE AS FOLLOWS:
CATTLE BRANDED R L EAR MARK R L HORSE BRANDS R L SHEEP BRANDED Wool Brand EAR MARK R L



WITNESS: Date September 28, 1964

Mollie Honeyestewa
(Applicant)

(Applicant)

(Any Additional Comments May Be Written on Reverse Side) 16—75767-1 GPO

SEPTEMBER 28, 1964.

To whom it may concern:

At the present time, I do not have a permit. However, my husband and I would like a permit for 350 sheep units in District No. 3 of Navajo-Hopi Joint Use, Area of the 1882 Executive Order Reservation. When we are granted this permit, we will also need to be assigned a brand for our livestock.

MOLLIE HONEYESTEWA.

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NN010534

CV-6417-201

Form 5-535
(April 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ALLOCATION OF GRAZING PRIVILEGES

Navajo-Hopi AGENCY Navajo-Hopi Joint Use RESERVATION

I (We) the undersigned Indian(s) enrolled on the said reservation hereby make application for an allocation of grazing privileges without competitive bidding as authorized by 25 CFR 151.11 and 151.13. I (We) believe that I (We) come within the requirements of the regulations authorizing such allocation of grazing privileges without competitive bidding. I (We) desire the grazing privileges on the following described lands:

District No. 3 (Show range unit number or area) Grazing Season Year long

I (We) certify that the number of livestock over 6 months of age owned by me (us) and to be grazed under my (our) exclusive control and supervision are as follows:

Number of Livestock	Kind of Livestock	Ownership of Brand	Holder of Mortgage or Other Lien Against Livestock
5	Cattle	Walter Albert	None
3	Horses	Walter Albert	

I (We) own or control the following described land:

(Show legal subdivision and area)

Do you manage the livestock yourself? (This includes riding, herding, branding, rounding up, feeding.)

Answer Yes or No. Yes

If you do not manage your livestock, who does it for you? (Name and address)

Is your husband (or wife) a non-Indian? Answer Yes or No. No

If your husband (or wife) is an Indian is he (or she) enrolled at this agency? Yes

I (We) agree to acquaint myself (ourselves) with the requirements of the regulations and to abide by the same, and further understand that if a grazing permit is issued that I (We) will pay the grazing rentals annually in advance each year and to comply fully with the terms of the permit.

BRANDS AND MARKS ARE AS FOLLOWS:

CATTLE BRANDED R L EAR MARK R L HORSE BRANDS R L SHEEP BRANDED Wool Brand EAR MARK R L

WITNESS: Date September 28, 1964

(Applicant)

(Applicant)

(Any Additional Comments May Be Written on Reverse Side)

16—75787-1 GPO

SEPTEMBER 28, 1964.

To whom it may concern:

I would like to increase my grazing permit to the maximum of 350 sheep units. At the present time, I have five (5) head of cattle.

WALTER S. ALBERT.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., March 3, 1965.

MR. W. WADE HEAD,
Area Director, Phoenix, Ariz.

DEAR MR. HEAD: On September 16, 1960, the Hopi Tribal Council adopted Resolution No. H-12-60, pursuant to authorization contained in their Tribal Constitution and By-Laws, establishing a grazing system in accordance with 25 CFR 151 and the approved range management plan for the Hopi Reservation.

Part 151.13 of the Code of Federal Regulations provides among other things that prior to the beginning of each new permit period the Indians in General Council or their duly authorized representatives shall authorize the following for tribal lands:

(*a*) The allocation of range units to Indian permittees eligible therefor pursuant to 151.11.

(*b*) The kind or kinds of livestock that will be allowed to graze on each range unit.

(*c*) The rate per head to be charged for allocations authorized under paragraph (*a*) above.

(*d*) The number of years for which grazing privileges are to be authorized subject to the maximum number of years prescribed by law and the limitation that all permits shall expire within the permit period established for the reservation.

(*e*) The number of livestock which may be grazed free of charge on range units comprised of tribal lands or on the tribal lands in range units comprised of tribal and other lands operated by Indian families, subject to the limitations of 151.9.

The matters thus determined will be entered in the official minutes of the meeting, and the action taken shall be final for the period concerned unless authority to modify such action is granted by the Commissioner.

The record indicates that permits were issued in accordance with Tribal Resolution H-12-60. Those permits expired on October 31, 1962. Resolution H-11-62 was enacted in September 1962, authorizing permits for another two-year period. Many of the eligible Indians have failed to sign their permits in the four-year period since November 1, 1960, because of lack of understanding of the permit system and its advantages to the livestock operators. Such operators have been in a state of trespass, but no action has been taken by the council or the Bureau because it was recognized that this was a transition period and the people needed time to accept the new procedure.

We understand the council has not yet enacted a new grazing resolution covering the period beginning November 1, 1964. Such a resolution is required by the General Grazing Regulations and Tribal Resolution H-12-60. Every effort should be made to obtain this resolution from the tribe. Permits should then be promptly prepared and given to each eligible tribal member. These permits not only provide for orderly use of the range, but protect the Indian livestock operators interest in the range. As the demand for range increases approved permits are the livestock operators' only insurance for continued use.

Please provide this office with a copy of the new resolution for the period beginning November 1, 1964, as soon as it is enacted, together with a copy of the schedule of allocations. We also would appreciate a subsequent report on the number of allocatees who failed to sign their permits, together with your comments and recommendations for action to obtain full compliance.

Reference is also made to your inquiry regarding grazing permits for Hopi livestock owners on the joint use portion of the 1882 Executive Order Reservation. Until appropriate adjustments are worked out and the overgrazed conditions there corrected, the Bureau is not in a position to approve such permits.

Sincerely yours,

WILL J. PITNER,
Acting Assistant Commissioner.

(Emphasis added.)

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CV-6417-201

MAY 27, 1965.

Mr. W. WADE HEAD, *Area Director,*
Phoenix, Ariz.,
Attention: Tribal Operations Officer.

DEAR MR. HEAD: We enclose two copies of approved minutes of the Hopi Tribal Council meeting of April 22, 1965.

We are also enclosing two copies of these minutes and the applications for grazing privileges which were acted upon by the Council at this meeting. Please route these items to the Branch of Land Operations.

The applications are for the following people:

Vernon Albert	Alfred Kaye, Sr.
Jacob B. Coochise	Julia K. Yestewa
Paul S. Humphrey	Raleigh H. Puhuyouma
Joe Komaquaptewa	Ferrell Secakuku
Thornton Naho	Charley Sekenvoyeuma
Leonard K. Mase	Elliott B. Suetopka
Fielding Q. Nehoitewa	Roy Tuchawena, Jr.
Roland A. Nehoitewa	

Enclosed also are six copies of the minutes for Central Office.

Sincerely yours,

CLYDE W. PENSONEAU,
Superintendent.

(Emphasis added.)

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
HOPI INDIAN AGENCY,
Keams Canyon, Ariz., July 26, 1965.

Mr. W. WADE HEAD,
Area Director, Phoenix, Ariz.,
Attention: Branch of Land Operations (Range).

DEAR MR. HEAD: *Enclosed are two copies of the approved Minutes of the Hopi Tribal Council Meeting of June 7, 1965, pertaining to the approval of Grazing privileges for the Joint Use Area of the 1882 Executive Order Reservation.*

Also enclosed are two copies each of the Applications which the Council acted upon at this Meeting:

Ollie Talashie
Simon E. Scott
Bryan W. Scott
Bill W. Scott

These Applications are in the same category as the other twenty-five that have been submitted. To date, we have not received any indication as to what action we should take on these Applications.

Sincerely yours,

CLYDE W. PENSONEAU,
Superintendent.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
HOPI INDIAN AGENCY,
Keams Canyon, Ariz., November 17, 1965.

Mr. W. WADE HEAD,
Area Director, Phoenix, Ariz.,
Attention: Land Operations (Range).

DEAR MR. HEAD: Enclosed are two copies of the approved minutes of the Hopi Tribal Council meeting held on August 4, 10, and 13, 1965. *Three applications for grazing privileges were approved by the Tribal Council for the joint use area of the 1882 Executive Order Reservation. We are also enclosing two copies each of the applications on which the Council acted.*

These applications are for the following people and sheep units:

Trester N. Hamana—325 sheep units
Neal A. Naha—130 sheep units
Alton and Daniel Honahni—320 sheep units

This makes a total of 29 applications that have been submitted to the Area Office by this office. Total sheep units requested in these applications are 9709.

What action should we take on these applications? To date, we have not received an indication as to the procedure we should follow in processing such applications.

Sincerely yours,

CLYDE W. PENSONEAU,
Superintendent.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Phoenix, Ariz., March 5, 1970.

Mr. JOHN S. BOYDEN,
El Paso Natural Gas Building,
Salt Lake City, Utah.

DEAR MR. BOYDEN: As per your request we are enclosing copies of 32 applications for Grazing Allocations from Hopi people desirous of running livestock on the Hopi share of the Executive Order 1882 area. A list of these applicants is attached showing the number of cattle and horses each applicant has or would like to graze.

In addition the following correspondence is enclosed which refers to the applications:

September 30, 1964 letter from Superintendent O'Harra to Mr. Head.
May 27, 1965 letter from Superintendent Pensoneau to Mr. Head.
July 28, 1965 letter from Superintendent Pensoneau to Mr. Head.

The other correspondence pertaining to the billing for grazing sent by the Hopi Tribe to the Navajo Tribe covering the years 1963, 1964 and 1965 were mailed to you on March 2, 1970.

Sincerely yours,

GEORGE W. HEDDEN,
Assistant Area Director.

LIST OF HOPI PEOPLE REQUESTING GRAZING PERMITS ON THE EXECUTIVE ORDER AREA EXCLUDING DISTRICT 6
(SUBMITTED TO PHOENIX AREA OFFICE)

	Cows	Horses
Applied about Sept. 28, 1964:		
1. Walter S. Albert	84	3
2. Ruth N. Smith	87	0
3. Paul Hopi Talawepi	87	0
4. Mollie Honeyestewa	87	0
Applied about Feb. 18, 1965:		
1. Raymond M. Lalo	84	3
2. Leon Howato	87	4
3. Robinson M. Lalo	50	1
4. Glen Seweingyauma	85	2
5. Theodore Namingha	85	2
6. Ramson R. Honahne	85	2
Applied about May 27, 1965:		
1. Vernon Albert	85	2
2. Jacob B. Coochise	85	2
3. Paul S. Humphrey	85	3
4. Joe Komaqueptewa	100	4
5. Thornton Maho	60	4
6. Leonard K. Mase	85	1
7. Fielding Q. Nehoitewa	80	0
8. Roland A. Nehoitewa	80	0
9. Alfred Kaye, Sr	26	2
10. Julia K. Yestewa	12	0
11. Raleigh H. Pubuyouma	85	2
12. Ferrell Secakuku	25	0
13. Charley Sekenvoyouma	100	4
14. Elliott L. Suetopka	85	2
15. Roy Tuchawena, Jr	85	2
Applied about June 7, 1965:		
1. Ollie Talashie	78	2
2. Simon E. Scott	80	0
3. Bryan W. Scott	80	0
4. Bill W. Scott	80	1
Applied about Nov. 17, 1965:		
1. Trestor N. Hamana	75	5
2. Neal A. Naha	30	2
3. Alton and Daniel Honahne	75	4
Total	[1] 2,425	(54)72
Total, all animal units		2,497

[1] A.U.Y.L.

Mr. BOYDEN. Now, this is the situation you have here. The Navajos have illustrated amply by their own testimony here, that they are unwilling to reduce to carrying—the carrying capacity. We will have a witness who will show you that the carrying capacity has so reduced from this period of time that they cannot put near the number off, and in round numbers, they say it's 400 percent.

NN010536

CV-6417-201

It isn't 400, it is 400 times—I mean 400 percent times the carrying capacity. It would be 300 percent above, roughly. It comes to 338.

Well, now, we have a dry year this year. The Navajos just don't have the feed to feed the cattle that are on there, and that's what's coming on to district 6, because we have taken care of it.

We do have overgrazing at the present time because in the last few years, the Hopis have aid, it looks to us like you only get it by getting out and putting your cattle on it, instead of obeying the law. So we do have a little problem that we've got to control ourselves but it's nothing like the Navajos.

Now, this in a dry year, with no place to feed those cattle, they are either going to steal from the Hopis or they're going to haul hay to them. It's just that serious. And if they don't do something about reducing, and I think it ought to be restored to this bill and we're going to submit an amendment to that purpose, that the Secretary proceed immediately to reduce the carrying capacity. Because it's just foolhardy for the Navajos, not just for the Hopis, to say that we will put 400 head of cattle where you only can have 100 head. Because we are not only using up everything; but during this dry year we will have a bunch of starved cattle unless they steal from somebody, or are furnished hay, or you're going to have a situation where we are going to have chaos and every time that they get onto this reservation, the Hopis says that they are going to pick them up.

And the reason they don't like the white rider is because they've enabled—the Hopis to tip over their wagons when they've been hauling wood in an area where it was agreed that they had a right to haul it. Every time the Hopis do something, they do something in retaliation. I don't say it's the tribal council, but somebody does it, and this year, to drain a water tank and then just say, well, I don't know who did it.

Well, that's pretty easy to say, but we know who did it without any question. And when we arrest people from over here, we arrest them and put them in our court, we have jurisdiction when they come into our reservation. But we were good enough, the judge was, to release them on bond and get them over here, and then, when we come back for trial, the DNA comes over, or the legal aid comes over and says we didn't bring the defendant with us. So it being a misdemeanor, we went ahead and tried him and convicted him without the defendant. And after the conviction, we asked the Navajo Police to deliver the prisoner to us and they returned the warrants and say, we don't have time to deliver it.

That's the kind of law and order the Government is furnishing us in this area. Well, that's the situation, and the possibility of negotiation is simply a mockery, because the Navajo will do absolutely nothing unless you tell him how he's going to feed this overgrazing cattle. He has hurt himself terribly, and this is something of which I testify of my own knowledge.

Back in the 1940's, I was assistant U.S. attorney for the District of Utah, and I was called to prosecute such an action to stop this overgrazing. We had a very interesting experience at that time, that the Navajos absolutely refused to go along with the decree and nothing further was done by the Interior Department in following through the judgments that were obtained.

So this is the kind of situation we have here.

Now, let me just briefly say what we have over in the 1934 reservation.

The 1934 reservation was not directly described by the Commissioner of Indian Affairs. The information he gave was misleading and let me tell you why, he said that the 1934 reservation described this land—I have that on another map—but it comes down in here like this, and he said that that land was set aside for the Navajos and such other Indians who were settled thereon except this reservation here.

Congress was very careful to protect the Hopi interest in that regard and this is what they said, they didn't say Congress was protecting the Hopi Indian because they knew what the rights were in that area, and this is what they did say, describing all of that land including this 1882 reservation, they said:

> All vacant, unreserved, and unappropriated public lands, including all temporary withdrawals of public lands in Arizona heretofore made for Indian purposes by Executive order, or otherwise, within the boundaries defined by the Act, and that defined the whole thing, are hereby permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as may already be located thereon.

And then, instead of saying—excepting the land, they said "however, nothing herein contained shall affect the existing status of the Moqui land."

You see the legal difference? It was set aside for all the people who resided here, and they didn't except the land out. So that whatever they were protecting, they were protecting the rights of the Hopi Tribe, not just a couple of bands of Hopis that were settled at Mocachokle. That's the way the law reads and it's plain to read, and that is, if I may refer to it, that is the act of June 14, 1934.

Now, in doing this, this is the orange line here, is what is described in the Steiger bill and I want to tell you about the spring that we're talking about, that that is the water over there. Why, of course, that's the water over there.

The Hopis are the farmers and they are the ones that used it. And they're the ones that have maintained it. And no Navajo has ever used that water except he has paid the Hopi for the use of it. So they came with a good sneaker on us at one time and put a bill in here; and they got it by the House in which they said, all water and waterworks on the Navajo Reservation is turned over to the tribe. We didn't even hear about it until it had passed the House. So when we learned, we rushed back here, and we went to Senator Anderson and explained it to him and said, "Why, look, we have just this year put in a certain amount of money."

We are the people who operate it, we are the people who have used it. And to give that to a Navajo tribe simply takes it away from the Hopi. And we've got a right in that interest, and interest in that reservation; just as Congress has given it to us. So they amended the bill in the Senate, when they got that information, and they took that out. Congress, then, of course, in its usual procedure, sent it back to the House and when the House found that; they readily concurred. So that's how we didn't lose it before. We've already had a congressional determination on that particular water that's in that area and it's still being used by the Hopis and, still being used for that purpose. But here is the latest aggression that we have.

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They have now come over and taken it over and said that any Hopi that wants to fish in that has got to have a Navajo license, and we're going to take control of the reservoir.

That's one thing that we're having real difficulty with at this time. And so, to me, to say that that covers the spring, we plead guilty. Of course it covers that water. But the Hopis were over here years, and years, and years before the Navajos ever came there; and when we talk about the Paiutes, that's only in there because of fairness, Mr. Lujan.

The only reason the Paiutes are in there is because the Willow Springs Paiutes were in there ahead of the Navajos, and this bill simply protects their rights. That's all. It has nothing to do—I don't represent them—my son does not represent them—as stated.

We have represented other Paiute Indians, but these are the Willow Springs Paiute Indians who have lived in there and are using that land. As far as the Navajos are concerned, they don't know they're there, but I wouldn't expect it because they don't even know the Hopis are there.

This is a real problem, that you don't recognize the facts as they are. They think they have taken that over, and if those people want anything they've got to get it through the Navajo Tribe. So we don't want to represent the Paiutes. We're only saying that that ought to be in the bill out of fairness and justice because it says in the act itself, for those who are located thereon—for those who are located thereon—the language that I read to you.

In other words, it's under "and the Indians" who already may be located thereon. The Paiute Indians were located thereon and the Congress made that determination in 1934. So this bill says if they were there in 1934, they are still there and thy ought to have their rights recognized, and that's because Congress recognized and not because of the whim of the Hopi, we're just recognizing what is fair. And I know this—if the Hopi gets what they want, some of that is going to come out of, maybe a good portion of that, of what the Hopis will get.

But you can't take away what legally belongs to people, and the Hopis have no intention of so doing. Now, I think the rest that I have is pretty well covered.

I want to say this, as far as negotiations are concerned; we've had negotiations with attorneys, without attorneys. Quite a few aspersions have been made with respect to the attorneys and, of course, I think that it comes as a result of what's happened in the lawsuits, not only in *Healy* versus *Jones* but the present two that are here, where the court is already ordering and saying that the Department of Interior must do something about this. They have got to implement that decision. And then, the *Kibitto* case is getting down to where it's awfully short.

And so I think that rather than answer to any charges that may have been made to any of the attorneys, I think I will quote one thing that has been said in better language than I can do it: He who feels the halter draw has ill opinion of the law.

And I think that's the situation that we have over here.

Now about negotiation, can we negotate? The Navajos are saying you've backed us into a corner. We have used the white man's procedures. We have reduced, when you didn't make the Navajo reduce and

it was hard on us, but we didn't cry crocodile tears. We took it on the nose and then we have preserved the carrying capacity of our part. And, now, the Navajos say, just because we can't get rid of our cattle they will not comply. They are now entitled to what we have preserved.

The courts—this has all been adjudicated. There is no need for any further negotiation. We can't get anywhere. We tried it with and without. We have tried it with Government officials present and nothing happens because the Navajos always say we're not going to move until you find grass to put us on. And that was repeated yesterday by the tribal chairman.

We're not here asking for sympathy. We are just asking for simple justice that the Supreme Court of the United States has said is ours in this area. And in the other area we're asking not for another heyday for lawyers, as it might be said, that we can go ahead and have litigation in this area for long periods of time trying to determine what's a fair amount. You would have to have a bill from Congress to authorize such a lawsuit and then you would have years, like you have now, and many of us who know most about it would be gone by the time it's all done.

And this isn't the fair way to treat these people. This is what the Navajos are doing at this time. They are moving right around Tuba City, moving in—building contrary to the rules, contrary to the instructions of the Secretary of the Interior, while the Hopi sits there and obeys the instructions, they disobey them, and settle around that district.

They're doing it. You can take an airplane and go around district 6 and see the same thing. No wonder they want the fences in here. The Hopis have retreated as far as they intend to retreat. The portion of the resolution that they passed is in the last part of my statement.

I'm not trying to make drama out of this so I will not try to read it, but the whole piece in that very last statement has said this: "We will not move off another inch of our land and every time they try to build a fence on there to stop us from going out into the land that belongs to us, we'll tear it down," and that's what they're doing at the present time. The Navajos are building and the Hopis are tearing down right at the present time.

Gentlemen, it seems to me that a partition is absolutely the only way that this can be done. These are people of different cultures. They have demonstrated that whenever you have the Hopis outnumbered, they are simply backed into a corner and it's taken away from them.

I don't believe the Congress of the United States is going to justify any further aggression or any further steal.

Thank you.

Mr. HALEY. Mr. Boyden, you've made a very fine statement. We appreciate you're summarizing your statement to save time.

Do you think that you have had ample time to explain your position of the Navajo, is that correct—I mean the Hopis?

Mr. BOYDEN. I think we have, if our statements are read, yes.

Of course, there are others here who would like to say a few words.

Mr. HALEY. Yes, I'm going to get to them if timing will permit.

Correct me if I'm wrong; but it seems to me, Mr. Boyden, that if the Department having charge of these reservations had enforced the

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decrees of the Court this legislation would not have been necessary. Is that correct?

Mr. BOYDEN. I don't think that's quite correct.

I think that even if they had reduced, and we have had Navajos and Hopis on there, I do believe that we would have the continual difficulties between the individuals who are involved, irrespective of tribal organizations. And I say that because of the history.

For example, we had an agreement between the superintendents of both reservations, that there be a certain area where the Hopis could gather wood, and it was agreed by both. The Hopis would go up with their wagons, load up with wood, and in would come a bunch of Navajos and tip the wagon over. You just can't operate under that kind of a situation.

I think that a line of demarcation is necessary for the protection of the Hopi people.

Mr. HALEY. In other words, you strongly feel—the Hopis strongly feel that they are entitled to at least half of this area; is that correct?

Absolute control of it; is that correct?

Mr. BOYDEN. That's right.

Mr. HALEY. The gentleman from Montana.

Mr. MELCHER. No questions from Montana.

Mr. HALEY. The gentleman from Arizona?

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. Boyden, have you any idea how many Paiutes we're talking about?

In terms of number?

Mr. BOYDEN. I have a rough idea, and it's not very many. We're talking about almost what you can count on your hands who are still living at the Willow Springs, but there are witnesses who know more about it than I do.

Mr. STEIGER. If they're going to testify, we can find out.

VOICE. They are probably about 30 families—people.

Mr. BOYDEN. Probably 30 people altogether, not families.

Mr. STEIGER. Would you address yourself to what has really motivated the change of mood in the Hopis, which, of course, you did record in the resolution in which they have indicated this is their last stand. I think it would be important that the committee understand the change, or mood that has led to the likelihood of continued physical problems.

Would you address yourself to that?

Mr. BOYDEN. May I say this: the Hopi, Moqui which later became the Hopi, Hopi if literally translated means, "the peaceful one," or "the saint," and the Hopi has always prided himself in not protecting his rights. They wait until the day of purification and the Great Maker would take care of them.

But I would say this, that this is much the same as some wild animals that will run unless you get them cornered, and when you get them finally cornered they will spring. And I think that the Hopis are cornered. They feel that their very existence is here, that if after they have had all this expense, all of this time, and we've been working on this for some 20 years, and we are now in this position for them to begin to talk compromise and to get us the land the Court has given us, and it's sustained by the highest Court. I think the Hopis are in a position

to fight and there will unquestionably be further incidents if anybody tries to take it away from them.

Mr. STEIGER. What incidents do you know, of your own knowledge, that have occurred in the last 6 months?

Mr. BOYDEN. I have pictures in my briefcase in this room of after the Hopis had rounded up Navajo cattle that were on the district 6—that the corral of the Hopi that was used to round those cattle up was burned.

I have pictures of the burned corral to show how it was done. I also know that one of the fellows whose corral was used, Mr. Mahoo, his ranchhouse in the area has also been burned.

I also know that I have been asked—the tribal attorney has asked to prosecute the cases against the people who came in, some of them interfering with the roundup, and this is when the shot took place, one shooting. It didn't hit anybody but a revolver was found on the premises after. And so I do know that that has taken place and, I do also know this, not of my own knowledge, but reported to me immediately as tribal attorney, that not only was the one water tank for stock drained, but another man, who is Hopi Indian, they had gone into his ranchhouse and drained his water tank down to a certain point before it was caught when they fixed the drain on that.

Now, I know those incidents have occurred and I know the situation out there at the present time is electric.

Mr. STEIGER. Thank you.

Would you, as tribal attorney, advise your client during the legislative process of whatever we do here, that he not continue to attempt to negotiate?

Mr. BOYDEN. I would never advise a client not to negotiate. But I would say that unless the Navajos, as a prerequisite to the negotiation, will admit the decision of the Supreme Court of the United States, there is no point in negotiating.

Mr. STEIGER. Well, I think it's important that—let me make this very clear, without any precondition, would you advise your client to continue an effort to negotiate?

Mr. BOYDEN. I certainly would.

Mr. STEIGER. I tell you that personally, because it is my personal feeling, I do subscribe to the fact—not optimistically—but I do subscribe to the fact that the most desirable solution is one that could be arrived at mutually by the principals without interference of any non-Indians.

That is a very palatable solution. I also recognize that you cannot look at the history of this dispute without recognizing the past total failure of these negotiations. I have stated also, Mr. Boyden, in my opening statement, that I really believe the one thing I don't want is to have a death, or deaths, being the final trigger to force the people who have the authority do something.

Do you believe that it is possible that violence could be such that there would indeed be successful shootings or killings?

Mr. BOYDEN. Not only possible, but if nothing is done it's very probable.

Mr. STEIGER. I have no further questions, Mr. Chairman.

Mr. HALEY. The gentleman from New Mexico.

Mr. LUJAN. Thank you, Mr. Chairman.

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I want to review page 5 of your statement, Mr. Boyden, where you quote as to what the plan is to provide it. It says, "This arrangement will be tentative until the definite boundary of the reservation shall have been determined.

"This arrangement to establish as a matter of administrative expediency and convenience and shall not be construed in any way as fixing an official boundary between the two tribes, or as prejudging in any way the boundary which is ultimately established," that refers to section 6—or district 6, excuse me.

By that statement, I would gather that district 6 is part of that overall area but is reserved for exclusive Hopi use. Is that correct?

Mr. BOYDEN. That is correct.

Mr. LUJAN. The property that has been referred to, as the property described in the 1934 Boundary Act, is actually in dispute, is it not?

It is not exclusively——

Mr. BOYDEN. May I get the first part of that question. I'm not sure to which area you are referring now.

Mr. LUJAN. I'm referring to the eastern end, the 1934 land, now there is a dispute in that land and it's not readily conceded by both sides, that it is exclusive Hopi land. There is a dispute between the Navajos and the Hopi land.

Mr. BOYDEN. The Indian Claims Commission has held that a good portion of that—well, they've come to a decision of how it was in 1868 and 1888, but the interest of the Hopi and the Paiutes who were both there when they established the 34 reservations has never been determined.

It's an undetermined interest.

Mr. LUJAN. Do the Navajo—have the Navajos indicated an interest in that property?

Mr. BOYDEN. They occupy it.

Mr. LUJAN. All right.

So we're talking——

Mr. BOYDEN. All except the villiage. In 1934 there was considerably more grazing than there is at the present time, at the time that act was passed for the Hopi.

Mr. LUJAN. So both tribes claim it—a common interest in it.

Mr. BOYDEN. That's correct.

Mr. LUJAN. So that, therefore, the whole area is in dispute. And I wonder if you are aware of what we are doing under 11128.

We are saying there, that there are a total of some—let me not give the total because I don't have it—but the part that's being divided is 904,000 to the Navajos, 904,000 to the Hopis.

Mr. BOYDEN. That's all in the 1882 reservation.

Mr. LUJAN. Yes, sir.

We are then saying in the legislation that these 700,000, approximately 700,000, acres of disputed land will also belong to the Hopis.

Then we're saying that all of the land, 650,000 acres in district 6, will also belong to the Hopis, and so what we're really saying when we total the 904,000, the 700,000 and the 650,000——

Mr. STEIGER. Would the gentleman yield for the record—I want it to be right.

There can't be 700,000 acres in 1934 lands because—as outlined by that—have you any idea, does anybody have any idea what the

acreage is in the 1934 land just for the purpose of the record in this matter?

VOICE. 305,000 acres, approximately.

Mr. BOYDEN. 134,000.

Mr. LUJAN. Let's take 250,000.

Let me correct that then, to say that the bill calls for giving a total of 1.8 million acres to the Hopis. That the 1934 lands, 250,000, section 6, 650,000 acres, and half of the rest.

That totals to 1.8 million and the bill gives to the Navajos 900,000.

Mr. BOYDEN. The only trouble with that is that the Hopis have an undivided interest in all of this land out here, because that is—the 1934 land. Reservation preserved that. Under the bill you give all of that to the Navajos and clear their title on that. And if you don't think that's real; when they wanted to have these powerlines over here, they went to the Navajos and got permission. And as soon as they did I said to the utilities, we have an interest in this and I want to show you why, and I showed them why. And when we got through showing them, they paid us $160,000 for the right-of-way up here which we are claiming.

Mr. LUJAN. So you're saying that by the decision of the utility company, you have an interest in that land.

Mr. BOYDEN. I didn't say anything of the kind. I said the utility companies are smart enough to know, and read the legislation of 1934 to know that we have an interest in the whole thing and they were willing to pay it.

They don't pay that for nothing.

And what we are doing is quick-claiming all of the interest in all this up here down here. When you add that up, remember that you are adding up less than was set aside—the $2.6 million, and that's what the Hopis believe they have. And what the *Healing* versus *Jones* took away from them out here, they're saying add it to us out here so we get what they said was our fair amount in 1882.

Mr. LUJAN. Did *Healing* versus *Jones* say that that area outside this square is also joint-use land?

Mr. BOYDEN. *Healing* versus *Jones* had nothing to do with that.

Mr. LUJAN. There's no decision then, that it is joint-use land.

Mr. BOYDEN. There is no decision. All you have is the law of Congress, which I read to you.

Mr. LUJAN. Thank you.

Mr. HALEY. Any more questions? Mr. Sigler?

Mr. SIGLER. May I pursue that subject just a little bit further? I'm not quite clear.

The law of Congress enacted in 1934, which you referred to, if I recall correctly, said that the 1934 Reservation, I will call it, was for the Navajos and the other Indians who were then established there.

Mr. BOYDEN. Living thereon.

Mr. SIGLER. Is there a dispute now between the Navajos and the Hopis about the right of the Hopis within that area?

Mr. BOYDEN. Well, I suppose every claim we have is disputed with the Navajos.

Mr. SIGLER. Well, have the Navajos said anything or done anything with respect to the Hopi occupancy of that area?

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Mr. BOYDEN. They've said a lot less than they've done. They've taken it over, most of it, and they keep moving in further, moving in around Moenkopi until we have no breathing room.

Mr. SIGLER. Does that mean then, as a factual matter, the conflict between the two tribes is the same in this Moenkopi-Tuba City area as it is in the 1882 Reservation?

Mr. BOYDEN. Exactly.

Mr. SIGLER. That is, it's a joint-use area in both cases. In the 1882 Reservation case there is a court decision saying it's a joint-use area.

Mr. BOYDEN. And 50–50 there.

Mr. SIGLER. And in the other case, Congress has said it's a joint-use area, and that is not disputed by anyone so far as you know.

Mr. BOYDEN. Well, I suppose the Navajos do dispute it.

Mr. SIGLER. But the statute says it's for both groups.

Mr. BOYDEN. That's right.

Mr. SIGLER. I just wanted to be sure what the factual situation is.

That's all I have, Mr. Chairman.

Mr. HALEY. No other questions?

Thank you very much, Mr. Boyden.

The committee will recess until 2 o'clock this afternoon. Now, I want to again say I want to hear all of the witnesses if possible, but I'm going to continue this afternoon with the witnesses from the Hopi Reservation.

I want to give them approximately an equal amount of time as the Navajos have had to present their views on this. So the first witness that we'll call will be Logan Koopee, who is the vice chairman of the Hopi Tribe; and I will ask the gentleman from Arizona to assist me in the pronunciation of the names from there on down.

The committee stands at recess until 2 o'clock.

(Whereupon, at 12 o'clock, the hearing in the above-entitled matter was recessed, to reconvene at 2 p.m. the same day.)

AFTERNOON SESSION

Mr. HALEY. The committee will be in order.

May the Chair make this observation. I'm afraid very shortly we're going to have to vote on a bill that is now in the House. It's debated under the 1-hour rule, and I'm reasonably sure that there will be a formal rollcall for us, so you will have to understand if we suddenly get up and leave, after the bells ring, that we will be back.

If we haven't heard all the witnesses, we'll be back just as soon as we possibly can. The first witness we have is the vice chairman of the Hopi Tribal Council, and I'm going to ask the gentleman from Arizona to pronounce his name.

Mr. STEIGER. Mr. Logan Koopee, who is an old friend of mine and a longstanding elected official. I've forgotten how many offices you've held in the tribe over the many years. He's represented the Hopi people for a long time and is certainly qualified to speak for them and about them.

We're glad to have you here. Would you introduce the gentleman with you, Logan? I don't know him.

Mr. KOOPEE. To my right is Ferrell Secakuku.

Mr. HALEY. You may proceed.

STATEMENT OF LOGAN KOOPEE, VICE CHAIRMAN OF THE HOPI TRIBAL COUNCIL

Mr. KOOPEE. Mr. Chairman, members of the Subcommittee of Indian Affairs of the Committee on Interior and Insular Affairs.

I will make my pleadings of the situation from my standpoint of view.

My name is Logan Koopee, vice chairman of the Hopi Tribal Council. I am from First Mesa Consolidated Villages which is still organized under the traditional Hopi pattern and belief of our ancestors.

I appear here in the behalf of bill H.R. 11128, to authorize the partition of the surface rights in the joint-use area of the 1882 Executive order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes.

The basic issue is land. The Navajo wants land. The Hopi wants his one-half interest in the 1882 reservation and his interest in the Western Navajo Reservation. Basically, we both want land.

The very fact that the Hopis were living here from time immemorial seems to give the Hopis the right to say this is our land. Now, it seems hard to convince some people that we are proud to be Hopis, that we love our homestead, and that we will fight to keep our right and property.

There is no question that the political power of Navajo Tribe is growing bigger and stronger each year, and the problem of getting just adjudication of Hopi land rights becomes more difficult. Politics is a strong weapon; Navajo have all these and the Hopis do not. The Navajos are getting our land through sheer weight of population.

We do not want joint ownership because it is not practical; it is no good, because we are dominated in the area. We want exclusive use of our one-half interest which has been determined by the U.S. district courts and confirmed by the U.S. Supreme Court.

The Hopis have lived on this land since time immemorial. The Hopi people certainly have a strong moral claim to the area and now a legal claim as found by the courts, since the land was given to the Hopis.

To every sound-minded person, the right and interest of the Hopis to all the land now under consideration cannot be justly denied. The Hopis occupied it and held it against all encroachment, until someone in Washington opened it to "such other Indians," which has been a very difficult problem for us.

Now, there are so many things that have been said and written about Hopi history and culture by the so-called Indian experts and by our own uninitiated Hopis, yet so many things are wrong and misinterpreted. Our Hopi culture and tradition is so complex and is pretty hard to understand unless you are initiated into the Hopi society where legends and traditions are told by the proper clan and religious leaders, who are the only ones who have authority to tell about the tradition and religion.

We believe it is an established fact that the entire area which is now joint-use area has been for some years overpopulated and is overgrazed, and the land is damaged. Doesn't the Navajo Tribe have the responsibility of stopping this overgrazing to prevent eventual, complete depletion of the range, irrespective of the court decision? Today,

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the Navajos continue to have full use and occupancy of the entire area, half of which by law belongs to the Hopis.

I am a Hopi and have the heart of the Hopi; as I think of the problems, my only interest is the welfare of all the Hopi people. The Hopi people do not intend that they shall be further stripped of their land.

We have been struggling for many years to own land. Because we have been very much concerned with the land, we went to court in 1962 to settle the dispute. On June 3, 1963, the U.S. Supreme Court confirmed the district court's decision. To date, after 10 years, the Hopi derived no benefit from that portion of the judgment.

I am merely asking as a citizen seeking that basic justice be done to the Hopi nation, which always being friendly to this country and to its laws.

The grazing rights in the joint-ownership area can be administered effectively if a division of the area is accomplished. Shall the Hopi now stand to be recognized as a law-abiding citizen who deserves his rights and recognition? It is time now for the members of the committee and our true white friends to unite in one voice and take a firm stand in our support to legislation which will give us relief.

This is the situation; I am a Hopi and have the heart of a Hopi; my interest and security is land in which I live. I am poor but not without ambition; I am suffocated along with my fellow tribesmen; I need a breathing space.

Has the Congress of the United States ever found it worthwhile or important enough to consider whether justice has been done to the Hopis?

Now, will the Bureau and the U.S. Congress recognize our pleadings and consider very carefully the position taken by the governing body of the Hopi Tribe. To neglect us would be unjust and un-American, who are trying to go forward to make progress.

We only plead for a voice for justice in defending of our rights and property. We are not asking for anything that does not belong to us by all rules of justice and fair play.

I have another material here, which according to the time limitation, I will not get into, but I will submit this before the committee for their use. This is Hopi-Navajo peace treaty, which is handed down to us.

Mr. HALEY. Without objection, the document will be received and made a part of the record at this point in the proceedings.

(The document referred to follows:)

NAVAJO—HOPI—PEACE—TREATY

The Navajos made a Peace Treaty with the Hopi Tribe after they returned from imprisonment at Fort Sumner.

Seven Navajo Leaders came to Walpi to offer Peace Treaty. They told of their experience and hardship in prison. While in captive, women and children were crying every day because of the misery and hardship. Every day they were pleading to the officer in charge, saying that, should they be released and allowed to come home, they will not cause trouble anymore, but try to live a peaceful life. After convincing the man in charge, they were released and allowed to come home.

The Navajos with their peace offer came to snake clan at Walpi. They said, "Now my brother and my friend, I came here to live side by side with you peacefully." "We will live side by side and enjoy many good things together." The Navajo said, "I have learn my lesson, as a result of imprisonment because I have lived in the way that is not right."

The Hopis listened very carefully, but they did not believe the Navajo's pledgings. The Hopis said to them, "It is just like yesterday that we were at war with one another." The Hopis did not believe that they could form friendship between them.

The Hopis then recalled back to the early days when these same yo-ta-ha-ne, (Navajo) took the perfect ear of corn for himself. Pas-pee-you-ta-ha-nee, ah-na-qua-pue-nee-eh-kats-qua-not-ho-zar-zar-ta-wee. It brought to their mind that what life he has leading is true, though he is on his back, he will still be resisting and kicking. The Navajos cannot forget his way of life.

At this first approach, they made no peace terms, but the Navajos kept on insisting. The Navajo does not stop when he desire to put something over because he is very aggressive. He kept it up continually until the 4th time and in order to convince the Hopi he brought with him an emblem Tee-po-nee, similar to the one possessed by the Hopi Chiefs, and presented it to Snake Chief. He came with this emblem because of what he has said and how he will behave.

The Navajos persuaded the Hopis to accept the peace term. Because the emblem signify all those thing, is the reason why the Hopis were willing to accept the peace term.

The Hopis warned the Navajos: "If you really are sincere and honest in what you have stated and recognize this emblem as a truce. We will accept it, but on top of that I have something to say to you. Should you do otherwise and repeat what you have done after making these promises of how you would conduct yourself we will have to remind you of your promises that you have made to us and the thing that you placed here with us. I will have to consider your actions in case you repeat what you have done. In that case you will forfeit your rights and we will have to demand to have you taken off this land and placed away from here where you belong." After saying this he took the emblem that the Navajos brought. This Ti-po-ni-is still in the possession by the Snake Clan, the same clan receive it.

Mr. KOOPEE. In closing, I desire to quote the words of the prayer given by Chief Joseph of Nez Perce. He prays to the Great Spirit with these words:

Treat all men alike, give them all the same chance to live and grow. The earth is the mother of all people, and all people should have equal right on it . . . Let me be a free man . . . Free to travel, Free to stop, and Free to think and act for myself.

Thank you, Mr. Chairman.

Mr. HALEY. Thank you very much for the statement.

Does the gentleman from Montana have any questions?

Mr. MELCHER. No questions.

Mr. HALEY. The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

Just one question. Mr. Koopee, based on your knowledge and your relationship to the problem, do you feel that negotiations with the Navajo tribal officials would be profitable; in light of the fact that this legislation is now pending, do you think that it would be more reasonable to hope for success of negotiations now than perhaps in the past?

Mr. KOOPEE. The attempt has been made. I am a member of the Hopi Negotiating Committee, and we have met with the Navajo Negotiating Committee nine different times.

Mr. STEIGER. How recently was that?

Mr. KOOPEE. That was right after this court decision was made. And we have had many meetings. And we even brought before the Navajo Tribal Committee their own symbol, their own authority.

And that is what that material that I handed to you, according to that what the Hopi shall do with the Navajo tribe. But with my experience, nothing has been accomplished.

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Both sides stood firmly on their decision from the beginning of the meetings. Unless some drastic thing changed, then we would probably look at it differently.

But as of now, I cannot see it can work.

Mr. STEIGER. I have no further questions.

Mr. HALEY. Mr. Sigler, do you have any questions?

Mr. SIGLER. Yes, Mr. Chairman.

Mr. Koopee, would you be willing to sell to the Navajo tribe the Hopi interest in the joint use area?

Mr. KOOPEE. I will tell them that we have an interest—what was the question?

Mr. SIGLER. My question is, would you sell for money the Hopi interest in the joint-use area?

Mr. KOOPEE. Absolutely not.

Mr. SIGLER. Absolutely not? That's all I have, Mr. Chairman.

Mr. HALEY. That's very frank—a right forward statement. Thank you very much for your testimony, and the next witness is Ferrell Secakuku. Is that right?

Do you have a prepared statement?

Mr. SECAKUKU. I have a prepared statement.

Mr. HALEY. Do you want to read it or do you want to file it for the record?

Mr. SECAKUKU. I don't think it would be necessary for me to read it. I will skim through it and bring out the important parts of it, but I will probably have to follow my statement here.

Mr. HALEY. All right. Without objection, the document will be received and made a part of the record at this point, and you may summarize.

(The statement follows:)

STATEMENT OF FERRELL SECAKUKU

My name is Ferrell Secakuku. I am a Hopi from Second Mesa, Arizona, Hopi Reservation—member of the Shipaulovi Village, Sand and Snake Clan. I am President of the Hopi Agricultural Improvement Association.

I am a rancher with land use rights in common with my father, two brothers and my uncle on the Hopi Indian Reservation. I am here today representing many of the Hopi Livestock Associations and Hopi Ranchers to testify on behalf of the Steiger Bill 11128.

The Hopis have been a peaceful people since the creation of the world. Our religion teaches us to help one another and to protect our mother earth for all livelihood of mankind for we depend on it for survival.

The coming of the white man has brought many changes that affect our unique pattern of life, but totally the Hopi people remained in its present traditional patterns which is the basis of Hopi survival.

The Hopi people, dating back to the late 19th century, have talked, dealt and negotiated with the United States Government on many problems that jeopardized the Hopi way of life.

But rather than take so much time on the past Hopi history in detail, I will cover in my testimony only that portion which caused and hinders our present situation.

It has been known that in the early 19th century the Hopis first came in contact with the Navajo when they began to migrate into the western portion of the now Southwestern United States. It is not until about 1850 when raids of the Navajo people began on the Hopi people, the area for the Hopi continually reduced in size. Although with letters after letters, talks after talks, the United States Government have never given the Hopis a chance to exercise the use of their land.

Hopis were not only farmers, but were engaged in livestock practices. Dating back as far as the 18th century, Padre Garces in his diary of 1776 reports that Hopi cattle were seen grazing between Oraibi and Moencopi.

From 1936 to the last 40's, Hopis were confined to the little area of District 6 and forced to reduce their livestock. Hopis who refused to submit to this injustice were jailed and their livestock were sold. Meanwhile the Navajos were allowed and even encouraged to expand their herd by the Bureau of Indian Affairs.

Between 1868 and 1934 the Navajo reservation was expanded from their original treaty reservation of about three million acres to over twelve million acres. In spite of more land the Navajo people began overstocking their land. Reduction was attempted on Navajo herds but was successfully prevented by the Navajo people. (See resolutions.)

At present, according to our estimated figure on the Joint-Use-Area, there are two hundred and fourteen acres to each Navajo, while Hopi District 6 has 128 acres per Hopi. Two hundred and fourteen looks like a good figure per person, but Navajos are way overgrazed and half of that land belongs to the Hopis.

According to the BIA Annual Reports on present stocking rate indicates that the range on Joint-Use-Area is stocked at 386% of the carrying capacity. The Hopi District 6 is overstocked too, but only about 25%—this can be reduced to 10% if Navajo trespassing would stop.

In essence, the Hopis have less land and less stock per person than the Navajo. Ten years have passed and we are still not using our share of Joint-Use-Area because the government won't let us. It is not the reason that Hopis didn't want it which would definitely be the most asinine thing to say. We weren't given the opportunity. The fact that Hopi ranchers want to move out into the Joint-Use-Area was justified by forty-four Hopis who have asked for permits on J.U.A. We waited years only to be told by BIA in Washington that we can't have it. Why? It's our land! BIA told us that the land was already overgrazed by the Navajo stock. All those years this has been in the awareness of the BIA but they did nothing about it—didn't even attempt to reduce livestock or make room for the Hopis to use their own land.

The Hopis, by tradition, are law-abiding United States citizens and full of patience and respected the BIA decision—being assured and even given hope that the problem would be resolved in a not too distant future.

The Hopis then recognized soon that perhaps negotiations with the Navajo people may be the solution. Meetings were called—unfortunately this didn't work. The Navajos don't know what it means to negotiate—they want all our land. After 10 years the Hopis are still being short-changed. The old problem prevails and more problems enter. The Navajo disregarded the court decree in Healing v. Jones, 1962, and continue to encroach upon the Hopi land by turning their livestock on now the exclusive Hopi District 6.

In our desperate move to protect our range lands, the Hopi stockmen unanimously supported the passage of Hopi ordinance 18 and its amendment to enforce the Navajo trespass and impoundment of their livestock.

Beginning in 1970, the Hopi tribe began to enforce this ordinance. Range surveys and reconnaissance were implemented—during one of those days over twelve-hundred trespass Navajo livestock were seen and reported to be eating up the Hopi grass—one day!

Since then over one thousand Navajo livestock were rounded up and impounded and four hundred and twenty-seven livestock were sold at auctions. As a result of this action by the Hopi tribe, certain Hopi properties were destroyed in reprisal. To name a few—ranch houses were broken into and some burned, corrals destroyed, stock water tanks drained, livestock stolen and/or butchered on range. Hopi stockmen today do not want any serious trouble, we want to use our portion of the land that is rightfully and legally ours so we too can say that the United States Government has done justice for the Hopi Indians.

We are not blaming the Navajo for their past actions only bringing these facts out so that our land can be equally divided for the best interests of both tribes.

The United States Government, in its inability to exercise its trust responsibilities to the Hopi people, is the cause of the present situation between both tribes.

It is time that the United States Government fulfills its obligation to rectify the situation they have created.

I, as an individual Hopi and, I know, many other Hopi ranchers have some real good Navajo friends, and we do not want this friendship to be broken, but friendship cannot grow under present conditions. Your help is needed now. Thank you for listening.

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STATEMENT OF FERRELL SECAKUKU, PRESIDENT OF THE HOPI AGRICULTURAL IMPROVEMENT ASSOCIATION

Mr. SECAKUKU. Mr. Chairman, my name is Ferrell Secakuku. I reside in Arizona. I am a member of the Shipaulovi Village. I am here representing the Hopi people. I am president of the Hopi Agricultural Improvement Association.

I am here today to testify on behalf of the Steiger bill, 11128. It's been a history of the Hopi that we have been a peaceful people. Well, it is hard to be peaceful when your rights are in question.

There has also been a history that tells us that the Navajo people were first contacted by the Hopi people somewhere during the period of the 19th century—to be exact, sometime in the middle of the 19th century, 1850, when the raids began on the Hopi land by the Navajo people.

And this is the beginning, so far as we are concerned, beginning that the Hopi lands—the beginning of the deterioration, reducement of land of the Hopi. After all the letters and the talks with the U.S. Government, nothing has been done about this.

We are also noted as a farming people, but in 1776 Kit Carson, who came to the Hopi land, said in his diary that he had seen the Hopi cattle grazing between Moenkopi and Oraibi. This indicates that we were at that time practicing the livestock program.

In 1936 to the late 1940's our land was divided up by the U.S. Government for grazing practices, and this did not indicate that this would be Hopi Reservation, but we were confined to that small area. On top of that, we were even forced to reduce our livestock; and those Hopis who refused to submit themselves to this injustice were jailed and their livestock were sold.

Meanwhile, the Navajo people were allowed to expand their herd. They were encouraged by the Bureau of Indian Affairs to do this from 1936. From 1868 to 1934 the Navajo reservations were expanding from their original treaty reservation of approximately 3 million acres to over 12 million acres.

There was much overgraze. They have overgrazed their lands with all the vast land that they have, and many times the U.S. Government has attempted a reduction on their part, but they have refused to do it.

They have successfully prevented this action, and I have here the resolutions that show these actions. And I would like the chairman, if these could be made part of my report.

Mr. HALEY. Without objection, they may be received and made a part of the record.

(The information referred to follows:)

Subject Matter: Grazing Licenses—Distribution of
Page: June 1940 Meeting: Res. No. CJ-9-40
Passed: June 6, 1940
Vote: 56 for–0 against

RESOLUTION No. CJ-9-40

WHEREAS, On May 19, 1939, the Navajo Tribal Council in regular session pledged its support and assistance to the District Supervisor in the distribution of grazing licenses to the end that the rights and privileges of every livestock owner would be protected, and

WHEREAS, There have been some misunderstandings of the action taken by the Council on this resolution;

THEREFORE, BE IT RESOLVED: That the *Tribal Council* renews this pledge and *accepts individually the responsibility for the distribution of grazing licenses in their respective districts;*

BE IT UNDERSTOOD: That the *General Superintendent* has made a *public pledge that there shall be no reduction of productive livestock until the fall of 1941 in any District which has cooperated;*

IT IS FURTHER UNDERSTOOD: That the *purpose of this pledge is to give time to* make transfers of productive livestock from large to small owners in order to keep on the district the maximum of productive livestock; and

BE IT FURTHER RESOLVED: That the General Superintendent and the Tribal Council exert every effort to help large livestock owners purchase, or lease lands off the reservation;

IT IS FURTHER RESOLVED: That there shall be no further reduction in *any* productive livestock by any owner who owns fewer than the maximum limit established in the district by the factors of land, grass and livestock.

CERTIFICATION

I hereby certify that the foregoing resolution was passed this 6th day of June, 1940, by a 56 to 0 vote of the Navajo Tribal Council in assembly at Window Rock, Arizona, at which a quorum was present.

(Sgd.) J. C. MORGAN,
Chairman, Navajo Tribal Council.

Witnessed:
(Sgd.) HOWARD GORMAN, *Vice-Chairman, Navajo Tribal Council.*

Subject Matter: Grazing Regulations—Modification of
Page: April 1941 Meeting: 20–21 (See also 167–169).
Discussed: 10–48, 76–80
Passed: April 8, 1941
Vote: Page 48 (66 for–0 against)

RESOLUTION

WHEREAS, in Washington, D.C., on February 25, 1941, the officers of the *Navajo Tribal Council* in company with the General Superintendent, acting in behalf of the Navajo Tribe, presented to the Commissioner of Indian Affairs and members of the Washington staff of the Office of Indian Affairs, *a request for modification of the Grazing Regulations for the Navajo-Hopi Reservations,* and

WHEREAS, it was the *purpose of their proposal to provide for a slowing down in the speed of the adjustment of* livestock to the carrying capacity of the range *when special or unusual circumstances dictate extraordinary measures in order to serve the best interests of the Navajo people and* the conservation of their resources, and

WHEREAS, the *Commissioner of Indian Affairs agreed that their proposal was wise and* presented the matter to the Secretary of the Interior for his consideration, and

WHEREAS, the *Secretary of the Interior approved the plan and modified the Grazing Regulations accordingly;* this modification of the Grazing Regulations is known as Section 72.8a and provides, among other things

> *That the Commissioner of Indian Affairs may order a temporary slowing down in the process of livestock adjustment, upon an appeal from the Navajo tribe, if in the opinion of the Commissioner such a slowing down process would best serve conservation and the interests of the Navajo people.*

NOW *THEREFORE, BE IT RESOLVED that we, the duly elected* members *of the Navajo Tribal Council, meeting at Window Rock, Arizona,* in regular session, *petition the Commissioner of Indian Affairs to issue an order establishing a temporary special limit for the year 1941 of not less than 350 sheep units and that this order further provide that* for the year 1942 a temporary special limit of *not less than 300 sheep units be established.*

It is understood that these special limits would not authorize an increase in livestock ownership of any permittees and that all those grazing in excess of this number would be required on the dates specified by the Superintendent to reduce to the special limit number.

BE IT FURTHER RESOLVED that this is our petition and so it is our plan. We believe strongly that this, our plan, will serve the best interests of the tribe

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as a whole and will, we believe, further vitally necessary efforts to conserve Navajo range resources.

BE IT FURTHER RESOLVED that we recognize that our plan will succeed only as we individually accept fully the responsibility for making it known to our people, and only if we accept fully the responsibility for closest cooperation and collaboration with the General Superintendent and the District Supervisors for carrying it out.

BE IT FURTHER RESOLVED that we individually pledge our support and cooperation to this plan to the end that all eligible Navajo livestock owners will receive the benefits of our plan. *We pledge in* accordance with the modification of the regulations approved by the Secretary of the Interior *that on or before the dates specified by the General Superintendent all horses will be branded and that those horses held in excess of the number authorized each family head on his grazing permit will have been removed from the tribal ranges.*

BE IT FURTHER RESOLVED *that we wish*, in the presence of the Commissioner of Indian Affairs, *to absolve the Tribal Council from any protective responsibility for those owners who refuse to cooperate with the Tribal Council in keeping this pledge.* If there be livestock owners using the tribal range who do not avail themselves of the opportunity offered by our plan, and who refuse to abide by the pledges of the Tribal Council, which is the authorized voice of the Navajo people, then let such owners be made subject to the regularly established maximum limit, and the rigid and strict enforcement of the Grazing Regulations. We respectfully request the Commissioner of Indian Affairs to sign the order giving effect to our plan.

I hereby certify that the foregoing resolution was considered and duly approved by the unanimous vote of the members of the Navajo Tribal Council at a regularly called meeting at Window Rock, Arizona, on this eighth day of April, 1941, at which a quorum was present.

(Sgd) J. C. MORGAN,
Chairman, Navajo Tribal Council.

Attest:
(Sgd) HOWARD GORMAN,
Vice-Chairman, Navajo Tribal Council.

Subject Matter—Livestock, Grazing Regulations—Special Privileges for small owners
Page—June 1942 Meeting: 86–7, also 89.
Discussed—89–94.
Passed—June 24, 1942.
Vote—Page 94 (62 for—against, not recorded).

RESOLUTION

WHEREAS, long before any tribal organization was established, when the range was free and open, the large owners of livestock had always and continuously dominated the control of the range; and

WHEREAS, *the small owners never had any chance to build up or increase their herds to enable them to adequately support their families;* and

WHEREAS, to the present time these people have been more or less neglected in one way or another, and yet is a known fact that the small owners are most cooperative with the Government programs, and they are the ones who have more children in school; and

WHEREAS, the present educational administration requires parents to furnish all clothing for children, which requirement is impractical under present conditions, and throws too much burden on the families, and prevents many children from attending school.

THEREFORE, BE IT RESOLVED, *it is now an opportune time, under the existing special grazing permit of 350 sheep units, to help this class of people.*

BE IT FURTHER RESOLVED, *that the Navajo Tribal Council recommends special privileges for the small owners to increase their herds to a certain extent to help them, and that this be so accomplished within the districts wherein they reside without exceeding the carrying capacity of the range.*

Subject Matter: Livestock—Extension of Temporary Permits
Page: July 1943 Meeting: 38
Discussed: 24–38
Passed: July 10, 1943
Vote: Page 39 (71 for—0 against—1 not voting)
Note: Resolution rejected by Commissioner Collier, see July 1943 Meeting: 63 for later resolution.

RESOLUTION

WHEREAS, our country is at war and finds it necessary and urgent, that the nation conserve each and every available resource to meet the emergency, and

WHEREAS, our government in the face of this crisis has established a nation-wide program, whereby each citizen is called upon to contribute his share, by rationing and saving, to the successful prosecution of our war measures, and

WHEREAS, we, the Navajos, recognize the necessity of a coordinated effort and express our willingness to cooperate in every possible way in this program that must stand first and before all other things;

WHEREAS, we are and always have been happy to concur in all the regulations of rationing and general conservation, but find little use for ration books for canned goods and meat products in general, since we rely upon our own herds and produce for support;

WHEREAS, the grazing regulations were modified under date of April 13, 1943, by the Assistant Secretary of the Interior;

WHEREAS, we, the Navajo, feel that after the war this country will be faced with a serious depression and economic crisis;

THEREFORE BE IT RESOLVED *that temporary permits heretofore issued be extended indefinitely throughout the reservation without any exception; that small owners be permitted to retain their sheep units even when the number should exceed the number granted by their permits;*

BE IT FURTHER RESOLVED that a readjustment of the distribution of livestock on the various districts be made every two to four years on the basis of range capacity and number of owners.

This resolution shall remain in full force and effect until the Council shall feel the period of emergency has passed and revokes said resolution.

Subject Matter: Livestock—Continuation of Regular and Special Grazing Permits
Page: July 1943 Meeting: 63
Discussed: 63–72
Passed: July 11, 1943
Vote: Page 72 (62 for—0 against)

RESOLUTION

WHEREAS, successful prosecution and winning of the Global War requires production of as much food and meat as possible for feeding the armed forces and civilian population of the United Nations.

WHEREAS, severe drought conditions exist throughout the Navajo Reservation, and as the result farm crops have failed on practically all dry farming lands.

WHEREAS, livestock reduction has greatly reduced consumption of meat on the reservation, and as the result insufficient meat diet has weakened the health of the Navajos and tuberculosis and other diseases have spread to an alarming degree among the people.

WHEREAS, *sufficient number of livestock should be allowed each permittee for food in addition to the number he is permitted now under his regular and special permits.*

WHEREAS, there are still grazing on the reservation a considerable number of surplus horses which were already branded or designated for removal from the reservation ranges.

WHEREAS, *there are many areas on the reservation where forage and other feed have not been touched or have been barely touched by livestock, and as the result there is no shortage of feed resources on the reservation.*

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THEREFORE, BE IT RESOLVED by the Navajo Tribal Council in council assembled on this 10th day of July, 1943, *that the use of regular grazing permits and special grazing permits shall be continued on the Navajo Reservation for a period of eighteen months.*

BE IT FURTHER RESOLVED that all surplus horses still grazing on the reservation shall be sold or removed from the reservation immediately if possible but in any event not later than the first day of September, 1943.

Subject Matter—Grazing Resources—Request for Survey of
Page—July 1945 Meeting: 38–39
Discussed—39–47; 57, 59
Passed—July 11, 1945
Vote—(55 for—0 against)

RESOLUTION

WHEREAS, livestock reduction on the Navajo Reservation has been carried out to such an extent that *the number of livestock left on thte Reservation is now far below the subsistence needs of the vast majority of the Navajo people, and*

WHEREAS, the patience and endurance of the Navajo people have now reached the breaking point, and as the result the Navajo people cannot take any further punishment from any more livestock reduction, and

WHEREAS, *range conditions on the Navajo Reservation have not been re-surveyed and restudied for a period of five years now, and this should be done before any more reduction is forced upon the Navajo people.*

THEREFORE BE IT RESOLVED, by the Navajo Tribal Council that the *Commissioner of Indian Affairs is hereby respectfully requested to lay aside the livestock reduction program and to direct the Superintendent of the Window Rock Agency to undertake a survey of the grazing resources on the Navajo Reservation.*

AND BE IT FURTHER RESOLVED, *that pending the completion of this survey, existing valid permits should not be reduced.*[1]

Subject Matter—Livestock Reduction Program—Discontinuance for Five Years of
Page—Feb. 1947 Meeting: 81–82 (Appendix, Item 4)
Discussed—82–86
Passed—Feb. 21, 1947
Vote—Page 86 (Passed Unanimously)

RESOLUTION

WHEREAS, livestock *reduction on the Navajo Reservation has been carried out to such an extent that the number of livestock left on the Reservation is now far below the subsistence needs of the vast majority of Navajo people,*

AND, WHEREAS, during the past few years Navajo Indians have not felt this reduction in the degree that it will be felt in the near future, because so many Navajo men have been able to go forth from the reservation and find work to support their families, but *employment is becoming less and less, and subsistence of the Navajo family on the reservation is becoming more and more difficult,*

AND, WHERAS, *range conditions on the reservation are now in fairly good condition and can support the livestock and with a few wet years can support more livestock, and that the patience and endurance of the Navajo Indians cannot be depended to remain calm in a time of adversity, it is*

THEREFORE RESOLVED, *by the Navajo Tribal Council,* at the request of the Navajo people, *that the stock reduction program be set at rest and inactive for a period of five years, so that the Navajo people might exist while time presents the facts to be studied at the end of a five year period.*

BE IT RESOLVED, that upon approval and adoption of this resolution that action be taken to immediately forward to the Commissioner of Indian Affairs, and to the Indian Committee of Indian Affairs of the U.S. Senate, a copy of this resolution with a request for its authority.

[1] Note: Added by Vote (P. 59) of 42 for—0 against.

Subject Matter—Livestock, Law and Order Code Suspended re Livestock
Page—March 1948 Meeting: 17
Discussed—4–17
Passed—March 18, 1948
Vote—Page 30 (Passed Unanimously)

RESOLUTION

WHEREAS, The Advisory Committee of the Navajo Tribal Council has discussed the report and recommendations made by Mr. Lee Muck, Assistant to the Secretary in Charge of Land Utilization, entitled "A Survey of the Range Resources and Livestock Economy of the Navajo Reservation" carried out pursuant to Departmental instructions of October 7, 1947, and

WHEREAS, The Advisory Committee has also had explained to it by Mr. Millin of the District Office the provisions of the General Grazing Regulations which apply to the other Indian lands, and

WHEREAS, *after full discussion the Advisory Committee realizes that a sudden departure from the existing permit system entailing over 7,000 permits varying in size as to numbers of livestock permitted will cause great confusion among the Navajo People.* It is therefore believed desirable to take the matter home to our people for more closer discussion with them. Further the Navajo Tribal Council agrees with the conclusions of the Advisory Committee, that it endorses in principle the recommendations and conclusions reached by Mr. Muck, and

WHEREAS, *we believe general reduction campaigns should be unnecessary in the future, and*

WHEREAS, *all livestock reduction activities have been suspended, the Navajo Tribal Council requests that all livestock reductions be continuously suspended pending the development of grazing regulations satisfactory to the Tribal Council and their approval by the Secretary of the Interior.*

THEREFORE BE IT RESOLVED *that any Sections of the Navajo Law and Order Code applying to the livestock reduction section of the Navajo Special Grazing Regulations be likewise suspended.*

BE IT FURTHER RESOLVED that the Advisory Committee of the Navajo Tribal Council be urged to meet with the General Superintendent and Mr. Millin of the District Office, at Window Rock, within 30 days from this date for *the purpose of working out new grazing regulations for submission to the General Tribal Council for consideration.*

Subject Matter: Grazing Licenses—Distribution of
Page: June 1940 Meeting: Res. No. CJ–9–40
Passed: June 6, 1940
Vote: 56 for—0 against

RESOLUTION No. CJ–9–40

WHEREAS, On May 19, 1939, the Navajo Tribal Council in regular session pledged its support and assistance to the District Supervisor in the distribution of grazing licenses to the end that the rights and privileges of every livestock owner would be protected, and

WHEREAS, There have been some misunderstandings of the action taken by the Council on this resolution;

THEREFORE, BE IT RESOLVED: That the Tribal Council renews this pledge and accepts individually the responsibility for the distribution of grazing licenses in their respective districts;

BE IT UNDERSTOOD: That the General Superintendent has made a public pledge that there shall be no reduction of productive livestock until the fall of 1941 in any District which has cooperated;

IT IS FURTHER UNDERSTOOD: That the purpose of this pledge is to give time to make transfers of productive livestock from large to small owners in order to keep on the district the maximum of productive livestock; and

BE IT FURTHER RESOLVED: That the General Superintendent and the Tribal Council exert every effort to help large livestock owners purchase, or lease lands off the reservation;

IT IS FURTHER RESOLVED: That there shall be no further reduction in *any* productive livestock by any owner who owns fewer than the maximum limit established in the district by the factors of land, grass and livestock.

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CERTIFICATION

I hereby certify that the foregoing resolution was passed this 6th day of June, 1940, by a 56 to 0 vote of the Navajo Tribal Council in assembly at Window Rock, Arizona, at which a quorum was present.

(Sgd) J. C. MORGAN,
Chairman, Navajo Tribal Council.

Witnessed:
(Sgd) HOWARD GORMAN,
Vice-Chairman, Navajo Tribal Council.

Subject Matter: Grazing Regulations—Modification of
Page: April 1941 Meeting: 20–21 (See also 167–169).
Discussed: 10–48, 76–80
Passed: April 8, 1941
Vote: Page 48 (66 for–0 against)

RESOLUTION

WHEREAS, in Washington, D. C., on February 25, 1941, the officers of the Navajo Tribal Council in company with the General Superintendent, acting in behalf of the Navajo Tribe, presented to the Commissioner of Indian Affairs and members of the Washington staff of the Office of Indian Affairs, a request for modification of the Grazing Regulations for the Navajo-Hopi Reservations, and

WHEREAS, it was the purpose of their proposal to provide for a slowing down in the speed of the adjustment of livestock to the carrying capacity of the range when special or unusual circumstances dictate extraordinary measures in order to serve the best interests of the Navajo people and the conservation of their resources, and

WHEREAS, the Commissioner of Indian Affairs agreed that their proposal was wise and presented the matter to the Secretary of the Interior for his consideration, and

WHEREAS, the Secretary of the Interior approved the plan and modified the Grazing Regulations accordingly; this modification of the Grazing Regulations is known as Section 72.8a and provides, among other things

> That the Commissioner of Indian Affairs may order a temporary slowing down in the process of livestock adjustment, upon an appeal from the Navajo tribe, if in the opinion of the Commissioner such a slowing down process would best serve conservation and the interests of the Navajo people.

NOW THEREFORE, BE IT RESOLVED that we, the duly elected members of the Navajo Tribal Council, meeting at Window Rock, Arizona, in regular session, petition the Commissioner of Indian Affairs to issue an order establishing a temporary special limit for the year 1941 of not less than 350 sheep units and that this order further provide that for the year 1942 a temporary special limit of not less than 300 sheep units be established.

It is understood that these special limits would not authorize an increase in livestock ownership of any permittees and that all those grazing in excess of this number would be required on the dates specified by the Superintendent to reduce to the special limit number.

BE IT FURTHER RESOLVED that this is our petition and so it is our plan. We believe strongly that this, our plan, will serve the best interests of the tribe as a whole and will, we believe, further vitally necessary efforts to conserve Navajo range resources.

BE IT FURTHER RESOLVED that we recognize that our plan will succeed only as we individually accept fully the responsibility for making it known to our people, and only if we accept fully the responsibility for closest cooperation and collaboration with the General Superintendent and the District Supervisors for carrying it out.

BE IT FURTHER RESOLVED that we individually pledge our support and cooperation to this plan to the end that all eligible Navajo livestock owners will receive the benefits of our plan. We pledge in accordance with the modification of the regulations approved by the Secretary of the Interior that on or before the dates specified by the General Superintendent all horses will be branded and that those horses held in excess of the number authorized each family head on his grazing permit will have been removed from the tribal ranges.

BE IT FURTHER RESOLVED that we wish, in the presence of the Commissioner of Indian Affairs, to absolve the Tribal Council from any protective responsibility for those owners who refuse to cooperate with the Tribal Council in keeping this pledge. If there be livestock owners using the tribal range who do not avail themselves of the opportunity offered by our plan, and who refuse to abide by the pledges of the Tribal Council, which is the authorized voice of the Navajo people, then let such owners be made subject to the regularly established maximum limit, and the rigid and strict enforcement of the Grazing Regulations. We respectfully request the Commissioner of Indian Affairs to sign the order giving effect to our plan.

I hereby certify that the foregoing resolution was considered and duly approved by the unanimous vote of the members of the Navajo Tribal Council at a regularly called meeting at Window Rock, Arizona, on this eighth day of April, 1941, at which a quorum was present.

(Sgd) J. C. MORGAN,
Chairman, Navajo Tribal Council.

Attest:
(Sgd) HOWARD GORMAN,
Vice-Chairman, Navajo Tribal Council.

Subject Matter—Livestock, Grazing Regulations—Special Privileges for Small Owners.
Page—June 1942 Meeting: 86–7, also 89.
Discussed—89–94.
Passed—June 24, 1942.
Vote—Page 94 (62 for—against, not recorded).

RESOLUTION

WHEREAS, long before any tribal organization was established, when the range was free and open, the large owners of livestock had always and continuously dominated the control of the range; and

WHEREAS, the small owners never had any chance to build up or increase their herds to enable them to adequately support their families; and

WHEREAS, to the present time these people have been more or less neglected in one way or another, and yet is a known fact that the small owners are most cooperative with the Government programs, and they are the ones who have more children in school; and

WHEREAS, the present educational administration requires parents to furnish all clothing for children, which requirement is impractical under present conditions, and throws too much burden on the families, and prevents many children from attending school.

THEREFORE, BE IT RESOLVED, it is now an opportune time, under the existing special grazing permit of 350 sheep units, to help this class of people.

BE IT FURTHER RESOLVED, that the Navajo Tribal Council recommends special privileges for the small owners to increase their herds to a certain extent to help them, and that this be so accomplished within the districts wherein they reside without exceeding the carrying capacity of the range.

Subject Matter: Livestock—Extension of Temporary Permits.
Page: July 1943 Meeting: 38.
Discussed: 24–38.
Passed: July 10, 1943.
Vote: Page 39 (71 for—0 against—1 not voting).
Note: Resolution rejected by Commissioner Collier, see July 1943 Meeting: 63 for later resolution.

RESOLUTION

WHEREAS, our country is at war and finds it necessary and urgent, that the nation conserve each and every available resource to meet the emergency, and

WHEREAS, our government in the face of this crisis has established a nationwide program, whereby each citizen is called upon to contribute his share, by rationing and saving, to the successful prosecution of our war measures, and

WHEREAS, we, the Navajos, recognize the necessity of a coordinated effort and express our willingness to cooperate in every possible way in this program that must stand first and before all other things;

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WHEREAS, we are and always have been happy to concur in all the regulations of rationing and general conservation, but find little use for ration books for canned goods and meat products in general, since we rely upon our own herds and produce for support;

WHEREAS, the grazing regulations were modified under date of April 13, 1943, by the Assistant Secretary of the Interior;

WHEREAS, we, the Navajo, feel that after the war this country will be faced with a serious depression and economic crisis;

THEREFORE BE IT RESOLVED that temporary permits heretofore issued be extended indefinitely throughout the reservation without any exception; that small owners be permitted to retain their sheep units even when the number should exceed the number granted by their permits;

BE IT FURTHER RESOLVED that a readjustment of the distribution of livestock on the various districts be made every two or four years on the basis of range capacity and number of owners.

This resolution shall remain in full force and effect until the Council shall feel the period of emergency has passed and revokes said resolution.

Subject Matter: Livestock—Continuation of Regular and Special Grazing
Page: July 1943 Meeting: 63
Discussed: 63–72
Passed: July 11, 1943
Vote: Page 72 (62 for—0 against)

RESOLUTION

WHEREAS, successful prosecution and winning of the Global War requires production of as much food and meat as possible for feeding the armed forces and civilian population of the United Nations.

WHEREAS, severe drought conditions exist throughout the Navajo Reservation, and as the result farm crops have failed on practically all dry farming lands.

WHEREAS, livestock reduction has greatly reduced consumption of meat on the reservation, and as the result insufficient meat diet has weakened the health of the Navajos and tuberculosis and other diseases have spread to an alarming degree among the people.

WHEREAS, sufficient number of livestock should be allowed each permittee for food in addition to the number he is permitted now under his regular and special permits.

WHEREAS, there are still grazing on the reservation a considerable number of surplus horses which were already branded or designated for removal from the reservation ranges.

WHEREAS, there are many areas on the reservation where forage and other feed have not been touched or have been barely touched by livestock, and as the result there is no shortage of feed resources on the reservation.

THEREFORE, BE IT RESOLVED by the Navajo Tribal Council in council assembled on this 10th day of July, 1943, that the use of regular grazing permits and special grazing permits shall be continued on the Navajo Reservation for a period of eighteen months.

BE IT FURTHER RESOLVED that all surplus horses still grazing on the reservation shall be sold or removed from the reservation immediately if possible but in any event not later than the first day of September, 1943.

Subject Matter—Grazing Resources—Request for Survey of
Page—July 1945 Meeting: 38–39
Discussed—39–47; 57, 59
Passed—July 11, 1945
Vote—(55 for—0 against)

RESOLUTION

WHEREAS, livestock reduction on the Navajo Reservation has been carried out to such an extent that the number of livestock left on the Reservation is now far below the subsistence needs of the vast majority of the Navajo people, and

WHEREAS, the patience and endurance of the Navajo people have now reached the breaking point, and as the result the Navajo people cannot take any further punishment from any more livestock reduction, and

WHEREAS, range conditions on the Navajo Reservation have not been resurveyed and restudied for a period of five years now, and this should be done before any more reduction is forced upon the Navajo people.

THEREFORE BE IT RESOLVED, by the Navajo Tribal Council that the Commissioner of Indian Affairs is hereby respectfully requested to lay aside the livestock reduction program and to direct the Superintendent of the Window Rock Agency to undertake a survey of the grazing resources on the Navajo Reservation.

AND BE IT FURTHER RESOLVED, that pending the completion of this survey, existing valid permits should not be reduced.[1]

Subject Matter—Livestock Reduction Program—Discontinuance for Five Years of
Page—Feb. 1947 Meeting: 81–82 (Appendix, Item 4)
Discussed—82–86
Passed—Feb. 21, 1947
Vote—Page 86 (Passed Unanimously)

RESOLUTION

Whereas, livestock reduction on the Navajo Reservation has been carried out to such an extent that the number of livestock left on the Reservation is now far below the subsistence needs of the vast majority of Navajo people,

And, whereas, during the past few years Navajo Indians have not felt this reduction in the degree that it will be felt in the near future, because so many Navajo men have been able to go forth from the reservation and find work to support their families, but employment is becoming less and less, and subsistence of the Navajo family on the reservation is becoming more and more difficult,

And, whereas, range conditions on the reservation are now in fairly good condition and can support the livestock and with a few wet years can support more livestock, and that the patience and endurance of the Navajo Indians cannot be depended to remain calm in a time of adversity, it is

Therefore resolved, by the Navajo Tribal Council, at the request of the Navajo people, that the stock reduction program be set at rest and inactive for a period of five years, so that the Navajo people might exist while time presents the facts to be studied at the end of a five year period.

Be it resolved, that upon approval and adoption of this resolution that action be taken to immediately forward to the Commissioner of Indian Affairs, and to the Indian Committee of Indian Affairs of the U.S. Senate, a copy of this resolution with a request for its authority.

Subject Matter—Livestock, Law and Order Code Suspended re Livestock
Page—March 1948 Meeting: 17
Discussed—4–17
Passed—March 18, 1948
Vote—Page 30 (Passed Unanimously)

RESOLUTION

Whereas, The Advisory Committee of the Navajo Tribal Council has discussed the report and recommendations made by Mr. Lee Muck, Assistant to the Secretary in Charge of Land Utilization, entitled "A Survey of the Range Resources and Livestock Economy of the Navajo Reservation" carried out pursuant to Departmental instructions of October 7, 1947, and

Whereas, The Advisory Committee has also had explained to it by Mr. Millin of the District Office the provisions of the General Grazing Regulations which apply to the other Indian lands, and

Whereas, after full discussion the Advisory Committee realizes that a sudden departure from the existing permit system entailing over 7,000 permits varying

[1] Note: Added by Vote (P. 59) of 42 for—0 against.

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in size as to numbers of livestock permitted will cause great confusion among the Navajo people. It is therefore believed desirable to take the matter home to our people for more closer discussion with them. Further the Navajo Tribal Council agrees with the conclusions of the Advisory Committee, that it endorses in principle the recommendations and conclusions reached by Mr. Muck, and

Whereas, we believe general reduction campaigns should be unnecessary in the future, and

Whereas, all livestock reduction activities have been suspended, the Navajo Tribal Council requests that all livestock reductions be continuously suspended pending the development of grazing regulations satisfactory to the Tribal Council and their approval by the Secretary of the Interior.

Therefore be it resolved that any Sections of the Navajo Law and Order Code applying to the livestock reduction section of the Navajo Special Grazing Regulations be likewise suspended.

Be it further resolved that the Advisory Committee of the Navajo Tribal Council be urged to meet with the General Superintendent and Mr. Millin of the District Office, at Window Rock, within 30 days from this date for the purpose of working out new grazing regulations for submission to the General Tribal Council for consideration.

Mr. SECAKUKU. At this time I would like to get your attention to this graph that we have prepared. This shows the acreage per person and in comparison the Hopi exclusive area and the Executive order Reservation of 1882, which is now in dispute.

According to this graph, here there is 128 acres per person now. This is the rate that was reported by the Bureau of Indian Affairs to the Department of Interior; 214 Navajo people per acre has been reported.

And over here we have animal units grazed per person. Hopi's on the Hopi Reservation District 6, 1.4 against 2.5, so actually they have more—pretty near double. This projection was made from 1965 up to 1971.

There's animal units grazing, Executive order 1882 Reservation. This line shows in 1937 the survey was conducted by the Bureau of Indian Affairs, which is a line that indicates the carrying capacity of the range.

Now, because it was so much overgrazed—the last survey was taken in 1964, and this is the carrying capacity at that time in 1964 up until today. But it was completely ignored by the Bureau of Indian Affairs.

Now, this indicates where we are today, now, on the Executive order Reservation. So they are way overgrazed. I would like to correct that. It's 386 percent of carrying capacity at the present. I would like to make this as part of my record also.

Mr. HALEY. Without objection, it will be received and made a part of the file.

Mr. SECAKUKU. Gentlemen, the Hopis have less land and less livestock, and we want to go out there and use our portion of the joint-use, because it is legally ours. It is rightfully ours.

That's the only thing we are here for today is to get this land so it will be equally divided so that we have our share. Right after the Court decision in 1962, we have demonstrated that we want to go out then.

This can be justified by 44 Hopi ranchers who have requested for permits, but it was denied by the Bureau of Indian Affairs in Washington; and we said, "Why? It's our land. We thought it was our land. Half of it is ours."

They told us it has already been overgrazed by the Navajo livestock. So because of our tradition—we are law-abiding U.S. citizens and full of patience, we respected this decision.

We respected this decision, because we were assured by the Bureau of Indian Affairs in giving us hope that this problem would be resolved soon; but nothing happened. So the only alternative that we had was to negotiate. We turned to negotiations, and that didn't work either.

So what can we do? Something must be done. We cannot just live in district 6 and let the Navajos seize our half land in the joint-use area. Then they began to move into exclusive Hopi Reservation, and started grazing our exclusive Hopi Reservation.

And that we can't tolerate. We have to do something. So the Hopi ranchers have unanimously supported the passage of Hopi Ordinance 18 and its amendments, to act against Navajo livestock in trespassing; and this started sometime during 1970.

Since then, we have rounded up a little over a thousand head of Navajo livestock and sold 437, I believe, at auctions. This is according to the law.

But this created another problem. Some of these Navajos were directly affected by these actions, deliberately came into the exclusive Hopi area and destroyed the Hopi properties in reprisal. Now, what can we do?

We have a right out there. It's our land. And who is to be blamed for it?

Are the Navajos to be blamed for this? Maybe partly, I don't know. Maybe the Hopis are to be partly blamed for it, too.

But I believe, on behalf of the Hopi ranchers, that the U.S. Government in its inability to exercise its trust responsibility to the Hopi people have caused this problem. So it is now that we ask the U.S. Government to act to rectify this situation.

Thank you.

Mr. HALEY. That completes your statement?

Mr. SECAKUKU. Yes, sir.

Mr. HALEY. Gentleman from Montana.

Mr. MELCHER. No questions, Mr. Chairman.

Mr. HALEY. The gentleman from Arizona.

Mr. STEIGER. Mr. Secakuku, I noticed in your statement you mentioned you know some Navajo ranchers. I assume you're talking about Navajo ranchers in the joint-use area. Do you know some of the Navajo ranchers personally in the joint-use area?

Mr. SECAKUKU. Oh, yes. Sure.

Mr. STEIGER. Do you know any of them that are——

Mr. SECAKUKU. I know two that are representing the Navajo here today.

Mr. STEIGER. All right, fine.

Mr. SECAKUKU. Do you want me to name them?

Mr. STEIGER. No, it's not necessary. I just wanted to know if you were acquainted with them.

From your knowledge of them, what would you say is apt to be their reaction to the passage of this bill and the requirement that they move?

Mr. SECAKUKU. Well, if they were in my shoes, I think they would probably say the same thing. If I were in their shoes, I probably wouldn't like it.

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Mr. STEIGER. Excepting the fact they wouldn't like it, I would agree with that. Do you think they will comply readily with a law, based on your knowledge, for example, that the Navajo ranchers resisting to reduce his livestock numbers—that's a matter of record here.

Do you think they will comply readily with the law to move if the law forces them to move?

Mr. SECAKUKU. If the law forces them to move, it's the law of the Nation. They will have to comply.

Mr. STEIGER. Have you felt that other, younger Hopis, ranchers, such as yourself, are becoming more aggressive? I refer to such things as tearing down the district 6 fence, for example. Is that a fair symptom of the feelings of anger and frustration now, or is that just an isolated situation?

How would you explain it?

Mr. SECAKUKU. Actually, I don't think they're really in anger. The only reason why they do it is because we still have to refer back to our tradition. There are no fences supposed to be put up.

What we want is more land. That's the only reason why they're tearing down the fences. I think the fence will serve a great purpose as far as the Navajo is concerned. But we believe that they are fencing us in.

Mr. STEIGER. I understand the thinking behind it, but what I'm asking is, as far as I'm concerned, the action of tearing down the fence by the Hopi ranchers was an action that was not characteristic of Hopi tradition; and I was surprised.

Would you say that was an isolated situation? A one-time effort on the part of the Hopi ranchers involved, or is it significant as far as the feelings of the Hopi people are concerned?

Mr. SECAKUKU. I think it is significant to part of the way the Hopi feels now. Like I said before, it is hard to be peaceful for a long time, but then if your rights are being questioned, there must be something that you have to do.

Does that answer your question?

Mr. STEIGER. Yes, thank you. I have no further questions.

Mr. HALEY. The gentleman from Kansas.

Mr. SEBELIUS. No questions.

Mr. HALEY. Mr. Sigler, you have any?

Mr. SIGLER. Yes, Mr. Chairman.

Mr. Secakuku, you are a rancher. Do you raise sheep or cattle?

Mr. SECAKUKU. I own cattle.

Mr. SIGLER. Do you graze your cattle within district No. 6?

Mr. SECAKUKU. Yes, sir.

Mr. SIGLER. Do you also graze your cattle on the joint use area?

Mr. SECAKUKU. Sometimes.

Mr. SIGLER. Have you had any problems about——

Mr. SECAKUKU. Not in this particular area.

Mr. SIGLER. Do you feel you need more land to graze your cattle, more land than you now have?

Mr. SECAKUKU. Yes; in order to build up an economic herd, I must have more land.

Mr. SIGLER. Do other Hopi ranchers need more land to run their cattle?

Mr. SECAKUKU. Yes, sir.

Mr. SIGLER. What I am leading to is, if the Hopis were given the right to use one-half of the joint-use area, would you use it all or would some of it go unused?

Mr. SECAKUKU. I am sure it would probably be used. We would use all of it, yes.

Mr. SIGLER. And you think that the Hopi people today need the additional area in order to run the sheep and cattle that they need?

Mr. SECAKUKU. Yes.

Mr. SIGLER. Thank you, Mr. Chairman.

Mr. HALEY. There are no other questions.

Thank you very much for your appearance here. I'm going to ask my good colleague from the State of Arizona to call the next witness.

Mr. STEIGER. Our next witness is Abbott Sekaquaptewa, and it took me 5 years to pronounce his name and I still don't do it very well. Abbott, I don't know what your title is. Is it executive?

Mr. SEKAQUAPTEWA. Chairman of the negotiating committee.

Mr. BOYDEN. Mr. Chairman, I wonder if it might be understood that Viets Lomshaftewa is a witness, and Abbott will interpret for him first before he gives his own testimony.

Mr. HALEY. The witness will proceed.

(The statement follows:)

STATEMENT OF VIETS LOMAHAFTEWA

My name is Viets Lomahaftewa. I am from the village of Shungopavi. I belong to the Water Clan (Deep Well, Rain). One of my clan's responsibilities is obtaining sacred water for the women's religious societies and it is my responsibility to make the sacred prayer feathers to be deposited at the sacred spring. I have held this position about 20 years. I have also served as the chief priest of the Two Horn Society for about 24 years, but I do not hold that office anymore.

We have certain functions within the traditional religious system and also, in addition to those, there are other rituals which we perform for the benefit and the happiness of our people. And these we do in order to bring happiness. I am talking now about the Kachina ritual and when we are involved in that, we believe that if you faithfully and to the best of your ability perform the necessary rituals, you may gain the blessings for your children and all of your people. And you make all of the sacrifices, personal sacrifices which are required of you. You spend the night long through without sleep in meditation and when the sun comes up you still can't permit yourself the privilege of resting at all. You still have to live the whole day through with the same meditation and making the same sacrifices until again night falls. Then you feel that you have gained these blessings for your children.

These are the things that we as elders still do in our traditional offices of responsibility, just so that we can be able to gain the blessings for our children, for our people are our children.

The land is like our mother and there are all kinds of blessings and good things that are prepared in Mother Earth, yet to be granted to us. These blessings are prepared for us, just like the Kachinas, when they come to make a visitation upon the people, they prepare themselves with these blessings as if they were clothed with them. They bring all of these blessings with them so that the people can have a good life. This is the same way with Mother Earth. All these blessings are prepared in Mother Earth so that when they are granted, all these good things will become available to us. We have not seen all those good things yet, but one day there will be no end to them.

My village of Shungopavi does not have a member on the tribal council. However, under the new amendment to our constitution, we are now all allowed to vote for both the Chairman and the Vice Chairman. Because I believe in the Hopi traditional religion which forbids it, I cannot bisect the land with a physical boundary. Therefore, I cannot testify as to what the boundary line ought to be. Hopi elders are still looking at the original reservation boundaries that were

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set up in 1882. We do not always understand the white man's ways, although we have talked a lot about the Supreme Court decision that the Hopis now are entitled to only a one-half interest in the Executive Order Reservation outside of District 6. We do understand that the situation is that this current problem has to do with the partitioning of the surface area—the grazing privileges. While I cannot say where a definite boundary line is to be, there is nothing in violation of my religion when I say strongly that there ought to be a division between the Navajos and Hopis so they are not required to live together. I can certainly say that.

While the Hopi will always believe that the land is ours as far as the eye can see, we know we can't live with the Navajo because of his raids. Because he takes what doesn't belong to him. Therefore, we feel that we should have our land and the Navajo should have his own land at another place. I can certainly testify to that.

We believe there is a person, a Bahana (white man), who will look at us and his heart will go out to us and he will have sympathy for us and maybe he will begin to ask us questions about what is the truth, what is really the truth about this situation. When we give him the answer, then that will be used by those people to return the land back to the Hopi People. This is what has been taught by our elders. That's why we cannot abandon this at the present time. Nevertheless, we believe that it is necessary for Congress to do something to stop the Navajo from taking more land from the Hopi people.

If you were our lawyer or anyone speaking for the Hopi people, then you would seek the assistance of others and together with sincerity you would work together because this is our land. You would be the one on whom we would depend to have our land returned to us. We feel that Congress should take some action to return land that has been taken away from us and for that reason I am willing to testify here to Congress about the beliefs of the Hopi people.

Although our primary purpose at this point is to come here to Washington and testify in our own behalf in order to regain our land, there is another thing that we must get from Congress and that is that henceforth the government of the United States must be faithful to its obligations and responsibilities to the Hopi tribe in protecting those interests and carrying out the obligations to the Hopi tribe as it has not done before. It is for this reason, because I realize that this is their legal respnsibility to do this, I have no hesitation about confronting them and telling them that they must do this, carry out their responsibilities.

There are things, such as for instance minerals of great value, coal, gas and oil in Mother Earth, and in good time these are the blessings we will receive and then we will all get our blessings and benefits individually, even our children. They will each have their own and this is what we believe will come to us through the Mother Earth. This is why I cannot in good conscience dissect it with a physical boundary. It would be contrary to my beliefs. We talk about the fact that this bill does not divide our minerals. We have talked about that many times but we do ask of Congress to pass legislation to tell what surface of the land can be used for the Hopis and what land can be used for the Navajos so that we may bring to a close so much of the strife that we now must suffer.

STATEMENT OF VIETS LOMAHAFTEWA, HOPI

Mr. LOMAHAFTEWA. Thank you, members of the commitee. My name is Lomahaftewa, and I am a Hopi.

We are here today to try to regain our land, and we have met with the Navajo people. As I listen, I think this: That the earth is our mother.

Therefore, as far as we are concerned as Hopi people, that land that was set aside for us a long time ago is wholly ours. He refers to the 1882 Executive order reservation.

As a matter of fact, our territorial domain traditionally goes beyond that, and this I have to keep in mind also. As I observe the flag behind you, I see the eagle that sits on top of the standard.

These are our people who represent our eagle shrines which demarcate in a traditional lands holding of the Hopi Indian people. I, therefore, show you this map of the 1882 reservation as it was set aside for the Hopi Indians.

This land that you see on there in color approximates what our territorial domain is under the 1882 Executive order, but it does not comprise all of what rightfully belongs to us. This mark here represents a sacred shrine where we deposit our sacred burial feathers; and although I cannot go into very great detail about all of the things that could be said about it, I am here merely to ask you to protect the land that is rightfully ours, to return it to us, and to enforce our rights to that land; and this is all that I ask you to do.

As far as the Navajo is concerned, we cannot live together peacefully. The solution, therefore, is for another place to be found for them that they can call their own, where they can have a sacred place in their community that will be their abiding place.

Thank you. That is all.

Mr. HALEY. The gentleman from Montana.

Mr. MELCHER. No questions, Mr. Chairman.

Mr. HALEY. The gentleman from Arizona.

Mr. STEIGER. Mr. Chairman, I think that it's important that we establish the fact that Mr. Lomahaftewa is a traditionalist and perhaps now you could ask him to explain what it means within the Hopi Tribe to be a traditionalist, and you might ask him how often the traditionalists have been in accord with the Hopi tribal council in the past?

Mr. SEKAQUAPTEWA. May I ask a question before I answer the question? I don't quite understand you. Because of the factionalism in the tribe, there are two groups of traditionalists.

Mr. STEIGER. I think it's important that you explain that and explain which faction he belongs to and so forth.

Mr. LOMAHAFTEWA. Yes. I must say this: That I did hold a chief priesthood position in the Hopi religious organization for 24 years. At the present time I still hold a high priesthood in Shun qupavi village of First Mesa, and according to the teachings of my grandfather, this is the manner in which we are instructed to work out these problems, and therefore, I'm following those instructions.

Mr. STEIGER. Again, by way of information only, of the 6,000 plus Hopis who live on the reservation, approximately how many are in the various factions? I suppose you can just answer that.

Mr. SEKAQUAPTEWA. Are you directing the question to me?

Mr. STEIGER. Yes, with the chairman's permission, I am.

Mr. SEKAQUAPTEWA. Mr. Steiger, I have no way of knowing the exact figures, but I think I can safely state that the majority of the members of the Hopi Tribe are in support of the tribal council organization.

Mr. STEIGER. How does that compare with the number of people who are of the traditionalist group who still refuse to vote in the elections, if there are still those people; in terms of numbers, approximately?

Mr. SEKAQUAPTEWA. Of the 6,000 members of the tribe, I would estimate around 4,000 to 5,000 probably participate in the activities of the tribal council.

Mr. STEIGER. I have no further questions, Mr. Chairman.

Mr. HALEY. The gentleman from Kansas.

Mr. SEBELIUS. No.

Mr. HALEY. Mr. Sigler, you have any questions?

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Mr. SIGLER. No questions, Mr. Chairman.

Mr. SEKAQUAPTEWA. Mr. Chairman, I would like to defer to the gentleman who was originally scheduled to precede me, if you will please?

Mr. HALEY. You may continue.

Mr. SEKAQUAPTEWA. We'd like to follow the schedule as we had it outlined. I would prefer that way with your permission.

Mr. HALEY. All right.

Would you give your name for the record?

Mr. TALAS. My name is Phillip Edward Talas. I represent the people of the Moenkopi village in the Tuba City area.

Mr. Chairman, with your permission, I would like to use the map here if I could possibly.

Mr. HALEY. Yes, sir. Go right ahead.

(The statement follows:)

STATEMENT OF PHILLIP TALAS

My name is Phillip Talas. I am one of the two duly elected representatives of the village of Moencopi to the Hopi Tribal Council.

At a special meeting of Moencopi villagers, I was selected to be the spokesman for the Hopi Indians living in the Moencopi-Tuba City area of the Western Navajo reservation of 1934. Moencopi is located approximately 13 miles, as the crow flies, west of the western border of the Hopi 1882 Executive Order Reservation.

We of Moencopi village are excellent farmers and ranchers and take pride in our crops and cattle. Nobody knows how to harvest crops out of the desert like the Hopi. We have farmed lands in my area before the coming of the Spaniards. In recent years the Navajos began squatting on our lands and overpowering us by their numbers. Just across the road where we once farmed, more than 5,000 Navajo people now live. Our lands now disappear like water poured on hot desert sands.

Our way of life is threatened. Now, when we go to our forest lands to collect wood for our fires, as we have done for generations, the Navajos say it is theirs and we cannot haul it home. They take it away from us. Where are we to get our wood for our fires in the winter?

We need to keep our farming and grazing lands. We need land for our children. Without this land, there is nothing for us to hold onto and call our own. If we could retain lands of our own, we could provide employment through industry and business.

I feel now like the Jew felt when he dreamed of a country of his own. This is the dream of the Hopi people now—a land of their own, a land of peace. Is it destined that the Hopi must suffer in the Moencopi area? Must we forever lose our land because of the dereliction of duty and irresponsibility of the Bureau of Indian Affairs? You people and the Navajo have taken our land for 150 years. When will it stop? We want our land protected now while we still have voice. We are tired. We have nothing else to do. We have nowhere else to go but appeal to your sense of fair play.

I left my home and lands to defend this democracy—your way of life. I spent 13 years in the armed services to defend the Constitution of the United States and the way of life of the American people. I learned your rules and regulations and tried my best to abide by them. I served five separate tours of duty in Vietnam to preserve our way of life. When I returned I found I no longer had any lands and that the Constitution I had fought to protect did not apply to Hopis. My rights were gone. Before we used to hunt and fish, play and raise our crops without anyone saying anything to us, but now even in my own area, we have to buy a fishing license from the Navajo to catch fish in our own reservoir.

I would like to bring back to you some of the facts that you as members of the Congress of the United States need to know about the Hopi and Navajo Indians. Let me begin from time that the Hopi knows of the Navajo. Years before the Merriweather Line was drawn up, which is said to be our aboriginal title line to the east, the Navajo came to the village of Walpi requesting a peace treaty with the Hopi. Near Ganado where the Merriweather line is they made a peace which, in my mind, is the only one that I know of that the Navajo and the Hopi actually ever negotiated together. A Hopi Indian gave his life to make this treaty a valid treaty, and the Navajos beheaded him there and they buried his head there. Where his head was buried to the west of that, the Navajo would not go further west from there, they would stay east of this line. But the Navajo has not done this, so subsequently in the year of 1862 the Navajo was rounded up by Colonel Kit Carson and sent to Fort Sumner. They stayed there up until the year 1868 when the U.S. Government and the Navajo made a treaty.

In 1868 the Navajo reservation was made and the Navajo agreed to stay on this reservation and no longer harm the Indian, the Mexican, the Spaniard and the Anglo and other Indians that they had been harming. This was the reason why they were put in Fort Sumner. Now as the Government knows and the Bureau of Indian Affairs knows, they could not contain the Navajo. He started his westward migration. In 1878 the Executive Order by President Hayes was established giving the Navajo an additional reservation. The entire problem due to U.S. neglect to contain the Navajo—dereliction of duty as you might say—for the simple reason the Navajo was given another piece of land at the expense of the Hopi. And then again in 1880 by President Hayes, another piece of land was granted as an Executive Order Reservation. The Hopi Indian lived in peace with the white man, never signing any treaties with the white man for one simple reason, we were law-abiding citizens. We are a village-type Indian, we could be contained, whereas a Navajo could not be contained, his lawlessness continued, the army could not catch him, therefore, he was never prosecuted or sent back to his own reservation where he belonged. But yet the government continued to give him reservations, more land to simplify their own jobs.

In 1882 President Arthur set aside a piece of ground called the Hopi reservation, now referred to as the Executive Order Reservation. It was for exclusive Hopi use and other Indians that the Secretary of Interior settles thereon. Nowhere in the Department of Interior will you find a document saying that the Navajo was settled thereon by the Secretary of Interior. They are simply there because they came and took. For one hundred and fifty years the Hopi has known this, that the white man and the Navajo took as they pleased. The Hopi is a peaceful type Indian.

Now let's talk about the Executive Order of 1884, two years after the 1882 Order. This order created what was called "Indian Purpose Land." In 1900 the Moencopi Tuba City area again was called Indian Purpose Land by another Executive Order. In 1901 to the south of the Executive Order was also called Indian Purpose Land. Now you have the Piute, the Hopi and the Navajo in this area. Then in 1934 the government saw fit to approve this and all the other Executive Orders given to the Navajos after 1868. They gave these lands to these Navajos and called it Western Navajo, but they made a stipulation in their 1934 Reservation. They made the stipulation that the reservation was for the Navajo and other Indians already living there. As you can see, and you can ask anyone who's informed about these things that the Hopi have been there since the beginning of time. Since the beginning of our time and your time. They were there when the Spaniards came. The 1934 Reservation was made for us too. These are the things that we hold onto as truth.

Now in this legislation you partition 917,000 acres which belonged exclusively to the Hopi in the Joint-Use-Area to the Navajo. You are to take 917,000 acres away from the land which belonged to the Hopi. I'm not here to argue the question, or am I here to debate with you since I recognize the decision of the Supreme Court. But this is it, this is what the Hopi and Moencopi people deserve and which they are asking. We are asking that if you will take 917,000 acres away from us in a Joint-Use-Area, we are asking that you partition an equal amount of acres for Hopi in the Tuba City area. We need wood, we need lands for our cattle, we need lands for our children. We have been contained since 1966 by the Bennett Freeze Order. We have not built another dwelling in our immediate village which has a population of 1,100. One thousand one hundred people live in that village and we are living now two and three families per home, because we are law-abiding citizens. The Navajo has continued to build without asking the Hopi in this area which in the Bennett letter states that they must have the permission of the Hopi tribe in order to build. But the Hopi has not built. We have tried to abide by your rules and your regulations. The Navajo says it is all his. You cannot argue with

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the Navajo, he tends to turn to violence. So the Hopi is a peaceful individual and cannot argue with this individual.

Only through your judgment, your sense of fair play will this question be resolved. You happen to have the duty at this present time to divide this land, this land which was Hopi land. You are not asked to partition for us only a portion of this land. This is your responsibility gentlemen. May the good Lord give you the sense and give you the knowledge and the wisdom to do justice to the Hopi people. Your sense of fair play we ask so that one day the Hopi can once again say truly, "the United States Government is a friend of the Hopi Indian."

I would like to borrow a phrase from the Mexican people who once governed us. "*Vaya Con Dios—May you walk with God my friend.*" Thank you.

STATEMENT OF PHILLIP TALAS, MOENCOPI REPRESENTATIVE TO THE HOPI TRIBAL COUNCIL

Mr. TALAS. As I stated before, I represent the people of Moenkopi village in the Tuba City area. In a recent election I was elected to represent these people, along with another gentleman from my community.

At a special meeting prior to coming to Washington, I was elected again to be the spokesman for the people of my community. So today I bring you the truths that we, the people of Moenkopi village and myself believe.

Let me give you a little brief history of what I know and as Moenkopi people of the the Tuba City area understand, the way the Navajo acquired this land. Here in this immediate area where the Navajo were first given the reservation, prior to this he wandered around here and was later moved back to this area of New Mexico.

He was given a reservation area in New Mexico, and he also made a treaty with the U.S. Government stating that he would stay upon his land. He never did no such thing.

He continued to migrate westwardly. In the early part of our history he came to the village of Walpi. He came—as the gentleman prior to myself talked about—he came to the Hopi people requesting a peace.

They were over here in the Ganado area. They made a treaty which I think was the only time that the Navajo people and the Hopi people agreed on anything. The Hopi gave his lifetime to make this a valid treaty. To the Navajo tribe he added this individual, burying his head in this area.

This was to be the marker. The Navajo was no longer to trespass in the western part of this country. He was to stay on this side, but he failed to stay again.

A few years later the Government gave him another piece of ground for one simple reason—dereliction of duty. I use this word because I know what that word means.

I served in your military service over half of my life. I pulled five terms in Vietnam. I came back to my own land in the Moenkopi area. I found I no longer had any right no longer to use the land which was mine once before.

We raised our cattle. We farmed in this area. We hunted and farmed in this area. This was our land.

I came back. I no longer had the right to hunt in this area which was once mine.

You talked this morning about an irrigation project in this area. Two or 3 years ago we spent $41,000 to work on this immediate area.

We worked there to rebuild that dam. The Navajo did not help us to rebuild that dam. This is our reservoir, and yet I myself have to go to the Navajo tribe and buy a permit to fish in my own reservoir.

These things we know. The President set aside here in Executive order in 1878 to give the Hopi Indians exclusive right. I don't know how they spelled it then. When I went to school, it said it was yours, but it's not now.

Gentlemen, you have the unfortunate duty now to divide this land between the Hopi and the Navajo. My people believe, in the Moenkopi area, you are taking away 917,000 approximate acres in this 1882 Executive order of land.

We feel that it should be given the rest to us here. This is our land rightfully; this was mine. You and the Navajo came for a 150 years.

Somebody made a statement this morning that 500 years; they haven't been around that long. Maybe that's why they don't know the Hopis own the Moenkopi area north of the Paiute.

But we also believe this earth is our mother, he says, we have the same religion. We don't have the same religion.

My father happens to be the sun. His might be the sky. That's his religion; that is not mine.

This is my land. I want this back, or my people want this back. This piece of ground is 913,000 square acres. This is the one you're going to take away—917,000.

I believe as a Hopi we have undertermined, undisputed right to the 1934 reservation according to the Congress' word, and in the Treaty Act of 1934. If I have underetermined, undisputed rights in this ground, then I believe half of it belongs to me. Am I not correct?

So, therefore, our request would come from this line to this line, from this creek to the Colorado River. That's the way our forefathers and grandfathers told us.

Here lies a stronghold. You must never back beyond and away from this position. You must stay and fight for this because it is rightfully yours.

Only you the young, you the people who do not know anything about the religions of the Hopi—you're the ones that are to fix this land for us—not the chiefs, as some people say.

This is my land gentlemen, and you have the unfortunate duty now to determine who is right and who is wrong. In 1966 in this particular area known as the Bennett Freeze; the Bennett Freeze letter stated in there there would be no more dwellings built in this immediate area until this land dispute is settled.

There are approximately 1,100 Hopis living in the village of Moenkopi. You may as well as say in a city of four square blocks. That is how big their city is.

We are now living two and three families per home, but yet the Navajo continue to build in the Tuba City area. Gentlemen, we abided by your rules and regulations; the Navajo failed to do this.

We met with the Navajo three times within our village and our community. We are looking for land leases, because the letter says that both tribes must agree on a land lease, so we have tried and we have failed.

We asked them to stop building, and they continue to build. In fact, they told me at one time, why must you recognize this letter by Ben-

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nett. This letter means absolutely nothing to us because we are a sovereign nation.

I thought this man was still a ward of the Government, as their chairman stated so yesterday. We are in trust land; therefore, he must abide by the rules and regulations of the Bureau of Indian Affairs.

Gentlemen, I think I've about run out of steam, so I would like to end this now and leave you with a phrase that I would like to borrow from two predecessors before you who ruled us, the Spanish and Mexican Governments. Vaya Con Dios, gentlemen, and may you walk with God my friend.

Thank you.

Mr. STEIGER. Phillip, excuse me. Before you leave up there, I wonder if you would show us the exact location of the Moenkopi. It would be helpful.

Mr. TALAS. The Moenkopi village is sitting right here at approximately this corner.

Mr. STEIGER. And there are over a thousand——

Mr. TALAS. We have approximately 1,100 people living within that village.

Mr. STEIGER. Are there any Navajos living within that village?

Mr. TALAS. There are ones who are intermarried. There's one woman living down below. She talks Hopi, makes peki and the whole thing like a Hopi.

She considers herself a Hopi, and I believe in the upper village there's one individual who lives there.

Mr. STEIGER. Are there any Hopis living in Tuba City?

Mr. TALAS. There are a few who live in the Government housing. Tuba City is approximately 1 mile east of the village of Moenkopi.

Mr. STEIGER. Where is it in relation to that line?

Mr. TALAS. To this line? It's on the other side of the line.

Mr. STEIGER. Thank you. I think it was important, Mr. Chairman.

Mr. HALEY. May I ask a question?

Mr. TALAS. Yes, sir.

Mr. HALEY. Tuba City, wasn't it at one time sold to the Mormon people or something?

Mr. TALAS. To my understanding, I heard it was originally named Duvi. A Hopi man lived there for years, and the town was called Duvi originally.

The Mormons did settle there, and they were later asked to leave. From my understanding, the Mormons came down here more or less as a protection of the Hopi people, because they were being invaded by the Navajos. They'd come and raid us, and they were there more or less as a protection.

Mr. HALEY. Did the gentleman from Montana have any questions?

Mr. MELCHER. No questions.

Mr. HALEY. The gentleman from Arizona have any more questions?

Mr. STEIGER. Yes.

I would like to get your feeling as to the possibilities of negotiations. Now that we see some action is going to be taken, do you feel that negotiations might prove fruitful in this new climate?

Mr. TALAS. Well, Mr. Steiger, I would like to answer this way. Negotiations would be fruitful, but why should I negotiate for something that was legally mine?

It was mine to begin with. Why should I sit down and talk to an individual? All right, I'll give you half of my land if you'll be nice. You see what I mean?

Mr. STEIGER. Yes. Are you aware of the incidents—the destruction of the corral and the tearing down of fences of District 6?

Do you run any livestock on District 6?

Mr. TALAS. No, we run our livestock over this area, or rather my father-in-law does; and I help him with what he has.

Mr. STEIGER. Well, on that point, then, are there any Navajo livestock in the same area?

Mr. TALAS. Yes, there is some Navajo livestock, I believe. There is one family that runs stock out there, and then there is—not right immediately—but there are a couple of people who run sheep there also.

Mr. STEIGER. All right. And apparently there's been some kind of accommodation worked out. Is there a problem for your livestock?

Mr. TALAS. Well, there's no problem for our livestock for one simple reason—we take care of our livestock. We stay with them most all the time.

There's generally somebody there in the immediate range area with them. We feed them in the wintertime; we break the ice for them that freezes over in the troughs in the wintertime.

We do not neglect our stock, whereas I can tell you that I can only safely say that I know of one Navajo that does actually maintain his stock. The rest of them just let them run loose.

Mr. STEIGER. I meant were there any problems concerning the other Navajo ranches? Is there any conflict between the Navajo ranchers and the Hopi ranchers in the Coal Mine Mesa area?

Is there any particular conflict in that area?

Mr. TALAS. Well, the conflict seems to be between the Navajos. They don't want each other around.

Mr. STEIGER. All right. We'll get back to the incidents we've talked about: the fence, and the burning and so forth. Were you surprised that the Hopi people would be as militant as they were?

I don't know how long you'd been home when this started, but I imagine you would be in a good position to see a change in attitude if there was one. Did you detect a change in attitude?

Mr. TALAS. Yes, I did, for one simple reason. It was getting to a point—there's a traditional way of saying one day soon your children will no longer listen to you. You can see it in the young, especially in the young.

There seems to be a very great strain on them to try to live the Hopi way of life and try to—I guess you might say—maintain your cool. You try to respect your parents' wishes, but how can you respect your parents' wishes when you can do something about it, or something has to be done, such as like taking these fences down that they're putting up to keep us from using the joint-use area.

Now, I can see their point, and I can see where I have difficulty. If my father was still alive, I would have difficulty restraining myself if he told me this is not the Hopi way of life.

I would find a different hope for myself to think about in that sense of the way, because I believe what is mine is mine. Because like I said, I went to Vietnam five time to protect your democracy and their way of life.

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Now I come home, and I don't have anything to say, call my own. Because I felt I was over there for the simple reasons that my people could have something.

My people go on the way they have lived for hundreds of years, but when I came back it was no longer this way. Even the women who go out here right in this little area, this valley here—women go out there to trim this bush to make baskets, and they hadn't even been stopped from doing that.

I've gone up here to get wood in this area and have been told by the Navajos that I couldn't haul this wood out to take home and burn in my fires for the winter. I know one man that went up there and got horsewhipped.

Mr. STEIGER. I won't ask you what you told the guy who told you you couldn't haul the wood out. I don't think this lady could stand that.

I have no further questions.

Mr. HALEY. Mr. Sigler, do you have any questions?

Mr. SIGLER. No questions, Mr. Haley.

Mr. HALEY. Thank you very much, Mr. Talas.

Mr. STEIGER. Mr. Chairman, now we have Mr. Abbott Sekaquaptewa, who among his other titles is the chairman of the Negotiating Committee between the Hopi and the Navajo.

Mr. HALEY. You may proceed.

STATEMENT OF ABBOTT SEKAQUAPTEWA, CHAIRMAN OF THE HOPI COMMITTEE TO NEGOTIATE

Mr. SEKAQUAPTEWA. Mr. Chairman and members of the committee, if it is all right with you I would like to make my presentation standing up.

Mr. HALEY. It would be all right. Any way you want.

Mr. SEKAQUAPTEWA. My name is Abbott Sekaquaptewa. I was and still am the chairman of the Hopi Negotiating Committee that was appointed by the Hopi Tribe to negotiate with the Navajo Negotiating Committee in 1963 to try to resolve the dispute between the Navajo and the Hopi Tribes.

I'm also a former chairman of the Hopi Tribal Council. I reside in Oraibi, Ariz., on the Hopi Reservation.

I would like to deviate from my prepared statement, if I may, for the reason that there have been several statements made today and also yesterday which I don't think are accurate, and I would like to correct at least a couple of them as I go along.

First of all, I wish to respond to the statement made yesterday by counsel for the Navajo Tribe, that the Hopi did not venture into the far reaches of the 1882 Executive order reservation outside of Land Management District 6. Now, the Hopi Indians have been on this land—now the basis of our dispute—since prehistoric times.

Going back into history, at least a millenium according to archeological research, I think the clan migration histories place the Hopi in all of northeastern Arizona and parts of Colorado and New Mexico since time immemorial.

These histories are supported in evidence by the ruins left by the people as they settled and then moved on to other dwelling places.

Spanish records amply testify to the Hopi domain in this area, without reference to the Navajo presence, who came as strangers into this land in very recent times.

Hopi ranchers were ranging into the Little Colorado River Valley as well as into other areas when the livestock reduction program began in the late thirties and forties. As late as 1848, the Navajo penetration did not reach the area referred to today as the 1882 Executive order reservation.

As the Navajo moved westward into Hopi territory, however, their depredations began to be felt by the Hopis, and they became a constant threat to Hopi lives and property, as well as to other peaceful tribes and settlers. The Hopis, on the other hand, befriended all who came in contact with them, including the U.S. Government.

In spite of this friendship shown by the Hopi, their pleas for relief from the onslaught of Navajo depredations went unheeded by the Government. Instead, the Government rewarded the Navajo aggression with concessions of Hopi lands to the Navajo time after time.

The record of Navajo depredations is undeniable. Only when it became unbearable to the white settlers did the Government act by assignment of Kit Carson on his campaign. The campaign resulted in only a temporary relief from Navajo encroachment on the Hopi rights.

Members of the committee, the Hopi has found through hard experience that no law or concept of respect for the rights of others has any meaning for these people. The treaty of 1868 that was signed by the Navajos, setting aside a reservation for them and setting forth the conditions for keeping the peace, and the sacred covenant of peace given the Hopis by the Navajos upon their return from captivity, were both immediately violated.

Depredations not only continued, but conditions were such that no one and nothing was safe. Hopi fields were raided, then laid waste by burning.

Hopi herdsman found alone were run down and slain, and their flocks driven away. Outlying ranchhouses were destroyed and burned, and are still being destroyed and burned today in spite of claims made by Navajo tribal officials that "we lived together in peace for centuries."

This claim is a gross misstatement of fact, because the Navajo has been in Hopi territory a mere 125 years—not the 500 years as has been stated here today—yet, has chalked up many more malicious acts and depredations than I have referred to here. Now, the Navajo has added to his repertoire of lawlessness the emptying of stock water tanks belonging to Hopi stockmen, and the erection of fences to prevent Hopis from their rightful use of joint-owned lands.

There is at least one Navajo man in this hearing room today who has driven Hopi cattle from the joint-use lands onto Hopi Land Management District 6. I have here in my hands official correspondence from the Coal Mine Mesa Chapter of the Navajo tribe, giving me an ultimatum to remove my cattle from district 3 of the joint-use area.

This chapter constructed a fence last fall to fence me and other Hopis off from grazing in an area that we have grazed for years in district 3, telling us the purpose of the fence was to keep their stock from straying into the exclusive Hopi area and to keep our cattle from

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going into district 3 of the joint-use area, making a mockery out of the testimony given yesterday that the Navajos are willing to have the Hopis exercise their use rights in a joint-use reservation.

Mr. Chairman, I would like to have these documents inserted into the record at this point.

Mr. HALEY. Without objection, so ordered.

(The documents referred to follow:)

COALMINE MESA CHAPTER,
Tuba City, Ariz., October 19, 1971.

Mr. ABBOTT SEKAQUAPTEWA,
Post Office Box 123,
Oraibi, Arizona

DEAR ABBOTT: Thank you for your letter dated October 15, 1971.

Please be informed that there will be a meeting at Coalmine Mesa Chapter on October 24, 1971 at 3:00 PM. The meeting that was scheduled for October 23, 1971 has been cancelled, due to another meeting that is scheduled at Cameron Chapter, where our chapter officials have been invited to attend their meeting.

Also be informed that the people living in the vicinity of where your cattle are at, in district 3, to remove all your cattle out from district 3 by October 26, 1971. If the cattle are not removed by the date given, the people will take action to remove the cattle.

We will be looking forward for you to attend our meetings to discuss some problems we are having at the present. Your cooperation will be appreciated.

Sincerely,

HUGH PADDOCK,
Coalmine Mesa Chapter Secretary.

COALMINE CHAPTER,
Tuba City, Ariz., January 3, 1972.

ABBOTT SEKAQUAPTEWA,
Post Office Box 123,
Oraibi, Ariz.

DEAR MR. SEKAQUAPTEWA: This letter is to inform you that your cattle are still in district #3. We wrote a letter before, dated October 19, 1971 to remove all your cattle out from ditsrict #3 by October 26, 1971, if the cattle are not removed by then, the community will take some action to remove the cattle. We are asking you again to remove all your cattle from district #3 by January 9th, 1972.

Please contact the Coalmine Mesa Chapter of what your decision is immediately. Your cooperation will be appreciated.

Sincerely,

HUGH PADDOCK,
Coalmine Mesa Chapter Secretary.

Mr. SEKAQUAPTEWA. In spite of this, Navajo officials seek to push aside these violations of the Hopi. The officials have and I quote again "have the erroneous idea that a livestock fence would somehow limit the ingress and egress of the Hopi people into the joint-use area."

It seems to me that actions speak louder than words, particularly with respect to this situation. This is especially true when Navajos drive Hopi cattle from the joint-use area back into district 3 without regard to the land use right of the Hopi.

This violation of human dignity and the stripping away of a people's birthright is unequaled anywhere. Yet, the Government continues to look the other way and allows the aggressor to move at will.

The Hopi people, with their long history of peace and belief in the brotherhood of man, have bitterly discovered that the U.S. Government does not share this belief, that appeasement of the Navajo

for reasons of expediency rules Federal policy and Hopi affairs. Only when Navajo depredations on white settlers and Hopis again became unbearable after the Navajo Treaty did the Government act by withdrawal of the Executive order reservation in 1882.

Now, this was expressly done—among other things—to protect Hopi rights and set aside this land for them. Navajo encroachment did not stop, however, and the Government reverted again to a policy of appeasement.

In all candor, I cannot help but ask this question. When will the U.S. Government learn that appeasement of the aggressor does not work, and only sells the humble and meek down the river?

We are reluctant to reiterate acts of the Navajo violence and total disregard of the law of the land, including decrees handed down by the courts, but there is no other way open to us to show what must be done if justice is to be served. Yesterday, the chairman of the Navajo Tribal Council stated that H.R. 11128 proposes to visit pain and grief on the Navajo people.

We remember the pain and grief that was visited on the Hopi people, and testimony is on record to show when Hopi women were swung around by the hair by Navajo intruders and deprived of their property. We remember also when Hopis had their wagons overturned while hauling wood and forcibly denied the customary use of wood-gathering areas.

Cattle rustling is common today, while the Federal Government stands by and finds any excuse for shirking its responsibility to enforce law and order. The Hopi Negotiating Committee established after the decree in *Healing* versus *Jones* was handed down, has found that the Navajo negotiators do not see anything to negotiate, and that members of the Navajo committee do not recognize the decree of the U.S. district court and its confirmation by the Supreme Court.

Claims made yesterday by counsel for the Navajo tribe that absent knowledge of any previous attempt to negotiate, the Navajo saw no reason to do so, is belied by the record of negotiating minutes which I have here and which should be on file with the Navajo tribe; and these represent only three out of the nine that we held since 1962 to 1968.

The Navajo negotiators saw fit to walk out on one negotiating meeting, even to make light of the negotiating sessions. When the sacred article that has been referred to, symbolizing a covenant of peace, given to the Hopi by the Navajo after their return from captivity, was produced by a Hopi chieftain as a reminder to the Navajo negotiators, a Navajo elder facetiously offered to buy it from us.

This happened in a Navajo Tribal Council chambers in Winter Rock, Ariz., and there are people in this room today who were there at that session of the negotiating committee. The sacred covenant was made that if the Navajos ever returned to their former ways, they would once again have to be removed.

All of our efforts and proposals that an orderly return of the Hopis' rightful share of the 1882 reservation to them have not availed us anything. The Navajo encroachments continue to the point that in another few years more lands will be lost if enforced partition is not effectuated now.

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Hopi cattle continue to be mutilated. I would like to show you what it looks like right here, or they are shot and killed. Others are driven away.

Drift fences continue to be cut by Navajo herders, and their stock driven through onto Hopi range, while Government and Navajo tribal officials naively propose such fences as a solution, while at the same time seek ways to delay the establishment of a court of competent jurisdiction and law enforcement agency for the area.

The decrees of the Federal courts and other Government regulations are defied by Navajos with impunity. We cannot negotiate with a people who do not want to negotiate, who only want to take away.

We cannot negotiate with the Navajo tribe who, on the one hand talk of negotiations, while on the other have dissolved their Negotiating Committee. The Navajo now seeks to recruit some self-styled traditional leaders from among the Hopi tribe to support them in preventing a just and equitable settlement through this legislation.

The opposition of this small faction in the tribe to everything beneficial that the tribal council has ever attempted is nothing new. They attempted the same tactics on me during my own administration and will continue to do so with each new tribal administration.

All former chairmen of the Hopi Tribal Council have experienced similar opposition. The Congress should recognize that these traditionalists, in their opposition to the legislation on religious grounds, are grossly misrepresenting and confusing the Hopi religious principle of the salvation of man with the Hopi people's struggle for economic survival.

Today, we are faced with the fact that only a congressional mandate to give back to the Hopis what is rightfully theirs, with positive enforcement provisions, will bring justice that is long overdue. The history of uncontained Navajo encroachment and recalcitrance in the Moenkopi-Tuba City area is simply a repetition of the familiar old story to the long-suffering Hopi.

Words cannot describe the indignity and injustice heaped upon the Hopi man who settled Moenave, then was forced out by Navajos under threat of death with the support of local Government agents. The payment for cattle for his homesite that this Hopi was forced to take was rustled within a fortnight by the Navajos, and appeals for help to the spineless Government agent were useless, as they always have been.

Livestock water development projects were constructed in this area with consent of Hopi cooperators at a time Navajo enroachers had nothing to do with such projects, yet the Government has seen fit to give these same improvements and surrounding range over to the Navajo. Even monuments marking a boundary survey conducted by the Hopis with Government surveyors have been systematically destroyed.

Tuba City, a Mormon settlement named after a Hopi chieftain, purchased from the Mormons for Hopi use, is now designated by the Indian Service as a Navajo agency. Every effort by the Moenkopi Hopis to have beneficial use to their prior right to this land is challenged and blocked by Navajos, with the tacit approval of the Federal Government.

Indeed, we now find that the highest levels of Government bureaucracy do not have the intestinal fortitude to even attempt to resist

Navajo political power. The buckpassing that we witnessed here 2 weeks ago while doing some followup work on this legislation, impressed that fact on me more than ever, and I have no qualms about stating my opinion on that, as far as that goes.

Recent events in this country have clearly demonstrated the compounding of intercultural problems caused by forced amalgamation. We have seen the inability of the Government to cope with the problems of forcing two distinctly different cultural groups to ride the same schoolbus.

Yet, Government and Navajo tribal officials continue to toy with the fantasy that a forced amalgamation will work in the Navajo-Hopi situation. The chances of success of this idea is almost as good as making bedfellows out of the Egyptians and the Israelis.

We cannot live in brotherhood, and as neighbors with a people who cannot and will not be peaceful neighbors. How long will the Government stand by and ignore this gross violation of human rights and dignity?

This state of affairs that diametrically contradicts the very principle on which this country was founded. In this day and age, when an enlightened country in search of its conscience finds itself desperately grasping for opportunities to correct injustices to the Nation's minorities, will the Congress be found wanting?

Will the Hopis be cast aside once again because it is politically expedient to satisfy the demands of a numerically superior and aggressive people? We are faced with systematic elimination as a people.

We come here seeking only justice. We ask nothing that is not ours by birthright. Whatever land that the Congress sees fit to return to the Hopi Nation will never be more than a fraction of our God-given domain.

More than that, we come here with serious doubts about the efficacious virtue of living in peace and harmony with other people. We wonder if it is not more commendable to more aggressively assert ourselves and ignore the rights of others and the law of the land.

My faith is shaken in the sincerity of the Government when it signed the Treaty of Guadalupe Hidalgo, promising to protect the rights of the Indian people over whom it assumed sovereign trust responsibility. Never has there been a better opportunity than now for the Congress to demonstrate its concern for the rights of the minority and serve the ends of justice.

Will political expediency be once again allowed to prevail over what is moral and just, or will those who hold the destiny of the Hopi people in their hands at last find courage to make a just decision? To us, the Hopi people, our land is the basis of our existence; without it, we cannot survive.

We firmly believe that the opportunity still exists to rectify the taking of 1 million acres of Hopi land in the 1882 Reservation by returning the same amount of acreage to the Hopis in the Boundary bill area, as Mr. Talas testified earlier. We urge that this committee so recommend to the Congress. If done, then some semblance of justice will indeed then have been saved.

Thank you.

Mr. HALEY. Thank you very much, and that was the call of the House on the final passage of the bill, which I'm sure every Member

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will want to vote on. We will return just as soon as we have performed our obligations on that.

We will stand in recess.

(A brief recess was taken.)

Mr. HALEY. The committee will be in order. I believe when the committee arose a short time ago you had finished your testimony, had you not?

Mr. SEKAQUAPTEWA. Yes; I had.

Mr. HALEY. The gentleman from Montana.

Mr. MELCHER. Thank you, Mr. Chairman.

Mr.—how do I say it? Sekaquaptewa?

Mr. SEKAQUAPTEWA. Sekaquaptewa.

Mr. MELCHER. It is all right if I call you Abbott?

Mr. SEKAQUAPTEWA. Everybody else does.

Mr. MELCHER. Thank you, Abbott.

In the two villages, Tuba City and Moenkopi, does the water come from the same source for the two villages?

Mr. SEKAQUAPTEWA. The domestic water supply?

Mr. MELCHER. Yes.

Mr. SEKAQUAPTEWA. I think the village of Moenkopi has its own water system, and recently there have been additional wells drilled for use by the town of Tuba City. But I'm not from there, so I'm not familiar with the system out there.

Mr. MELCHER. Well, the point of my question, I guess—maybe I should explain what I'm inquiring about. In the district 3, that portion of the orange line that projects up there is for the benefit of reserving for the Hopi a water source.

Is that not correct?

Mr. SEKAQUAPTEWA. That's right.

Mr. MELCHER. And is that the same water that's used in the village of Moenkopi?

Mr. SEKAQUAPTEWA. That's right.

Mr. MELCHER. But that water does not go to Tuba City.

Mr. SEKAQUAPTEWA. I don't believe for irrigation purposes.

Mr. MELCHER. You don't believe it does?

Mr. SEKAQUAPTEWA. No; I don't.

Mr. MELCHER. Now, you passed some pictures up to the committee of some dead cattle, and if I understood your testimony correctly, you said that these were Hopi cattle and that the Navajos had killed them. Is that correct?

Mr. SEKAQUAPTEWA. To the best of our knowledge, this is correct.

Mr. MELCHER. Was this ever proven or is this just your belief?

Mr. SEKAQUAPTEWA. This was never proven in a court of law, but this is our belief, and we have every reason to believe that this is fact.

Mr. MELCHER. In this instance, there was no prosecution of anybody for the killing of these cattle?

Mr. SEKAQUAPTEWA. No, there wasn't.

Mr. MELCHER. Are you in favor of H.R. 11128?

Mr. SEKAQUAPTEWA. In order to enforce the decree in the *Healing* versus *Jones*, yes I am.

Mr. MELCHER. You would accept it, even though it doesn't include any more of the 1882 boundary than what is outlined there in orange in your district 3?

Mr. SEKAQUAPTEWA. I believe that it does not return to the tribe all that we feel we are entitled to, but if a partition is not effectuated now to enforce the decree in *Healing* versus *Jones*, in another few years we will be able to gain less than what we can get now.

Mr. MELCHER. So for that reason, you are in favor of H.R. 11128?

Mr. SEKAQUAPTEWA. That's right.

Mr. MELCHER. Thank you.

Mr. HALEY. The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

I would like to go back a little bit to your role as chairman of the Negotiating Committee. You mentioned nine meetings. Were you chairman of the committee for all nine of those meetings?

Mr. SEKAQUAPTEWA. No, I wasn't. Another man chaired the committee for a short while in 1968.

Mr. STEIGER. Were you a member of the committee for all these years?

Mr. SEKAQUAPTEWA. Yes, I was.

Mr. STEIGER. When did the meetings start?

Mr. SEKAQUAPTEWA. In 1963, I believe. The first meeting was in August of 1963 down in Scottsdale.

Mr. STEIGER. Who instigated the meeting, do you know?

Mr. SEKAQUAPTEWA. It was done on the basis of a request and a suggestion by the former Commissioner of Indian Affairs, Fidea Nash, who had convened the first meeting at Scottsdale.

Mr. STEIGER. How about subsequent meetings? Who took the initiative for calling them?

Mr. SEKAQUAPTEWA. Usually we agreed to these meetings by mutual consent at first with Alan Yazee, who was the first chairman of the Navajo committee and myself, and many times we agreed at a meeting when the next meeting would be—rather, several times we did.

Mr. STEIGER. So really, my statement earlier in the record that many people on the Navajo Reservation were not aware of the significance of this ruling is not a very accurate statement. Is that right?

Mr. SEKAQUAPTEWA. With all due respect, Mr. Steiger, I disagree with you wholeheartedly on this statement that you made previously.

Mr. STEIGER. Well, I will tell you, I made this statement because that was what was told me, and I accepted it. And I have seen correspondence in which it was hailed as a victory, and I guess in retrospect I can see where it can be construed as a victory, because they had recovered at least half of what they had previously been denied.

So I suppose in semantics it could be. But you say the meetings started in 1963 and there were nine of them. Over what period of time—I don't know the dates.

Mr. SEKAQUAPTEWA. The last negotiating session was concluded in in 1968, the winter of 1968, 1967, as I recall.

Mr. STEIGER. Was there any results in these meetings? Any tangible results in these meetings at all?

Mr. SEKAQUAPTEWA. I don't know whether you would call this a tangible result, Mr. Steiger, but we did agree we could proceed with the mineral development. The court had already decreed that we had equal rights and interest to the mineral estates, so that that was merely a mechanical problem of dividing the dollar down the middle.

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Mr. STEIGER. So in order to make a deal with—Peabody was the only one involved at that time, is that correct?

Mr. SEKAQUAPTEWA. That's right.

Mr. STEIGER. Was it the coal?

Mr. SEKAQUAPTEWA. Peabody Coal is the only major development.

Mr. STEIGER. Have there been divisions of other mineral assets?

Mr. SEKAQUAPTEWA. Not any other significant mineral developments.

Mr. STEIGER. All right. Have you any reason to believe now that negotiations would prove any more successful in light of the statement of the chairman of the Navajo people?

Mr. SEKAQUAPTEWA. No, I do not. I think that the statements are made because of the pressure of the litigation that is now in process and no other reason.

Mr. STEIGER. All right. Then to amplify what the gentleman from Montana expanded, do you feel that this bill does not do all that the Hopi people would like it to do, as I understand, because it does not return a like amount of land that you have lost in the 1882 area—does not return that like amount from the so-called Western Navajo area? Is that correct?

Mr. SEKAQUAPTEWA. That's right. This is our firm belief. I agree wholeheartedly with the vice chairman in his statement that any sound-minded person knows, in fact, what the intent of the Executive order was, and we as Hopi people have an unquestioned right to all of our reservations, which in fact a good part has been lost, and that we should be compensated in kind in Western Navajo by similar acreage.

Mr. STEIGER. I have no further questions, Mr. Chairman.

Mr. HALEY. Mr. Sigler.

Mr. SIGLER. No questions.

Mr. HALEY. Thank you very much.

We have a statement here that the gentleman agrees to put in the record, is if read, in order to conserve the time of the committee. The statement by Samuel P. Shingoitewa. Without objection, this will be made a part of the record, and we will hand this to the young lady.

(The statement follows:)

STATEMENT OF SAMUEL P. SHINGOITEWA

You have heard the testimonies of those who are duly elected, qualified to represent the majority of the members of the Hopi Nation. These testimonies are true, sincere, and just.

At this time on behalf of the Hopi Pueblo people, we respectfully invite your honorable attention to the fact that our people and communities were in existence at the time prior to discovery of America and long before Gentile Nation came upon it.

Our villages are still in the same places and handled in the same manner that they were in 1540, when they were first discovered by the Spaniards and were considered by them as the Northern outpost of Spain and Mexico.

This is our land of inheritance, granted to our people under covenant by the one who is mightier than human race, therefore, our Hopi people must fulfill this obligation to preserve and hold onto this area of land known as Hopi land by all nations.

This area of land is very evident by markings of old sites, potsherds, and cliff dwellings, deliberately left by our ancestors to mark the Hopi Country in time of consideration. As we are told that these evidences will never deteriorate.

Since the treaty of 1848, we have been gradually deprived of our land by roving Indians, and since the U.S. Government treaty with the Navajos the conditions

become worse. Although a stipulations was made in the treaty to bind them within their reservation and to forbid them to trespass upon other occupied lands. This the U.S. Government had failed to do, and had failed to protect the interest of the Hopi Nation, but had taken easy way of creating Reservations for them.

It seems that the U.S. Government have a policy of protecting any small foreign nation from intrusion with the help of our boys. Yet he can not protect a small nation within our own country from invaders.

Gentlemen, We Hopi people are chosen to come upon this American continent, under covenant from God. The American continent is choice above all lands and, therefore, we consider ourselves as human beings with all rights given to any human race by God.

We have been self-sustaining people and we want our posterity to follow this pattern of life, so that our government may be proud of its citizens. But first, we must have sufficient land for our people. Welfare is not good for any people. This fact proves with the largest Indian tribe in Arizona, who controls the largest Reservation areas in four states, yet 90% of its people are on Government welfare because they do not want to utilize this land.

Honorable members of this committee, we plead with you to take serious consideration of the bill now pending before you, and we request your urgent action.

Picture in your minds the needs of our people. Our young Hopi boys and girls so that they can be proud to be part of this nation which was set apart with Freedom to all under God.

I am sure that we will be blessed for whatever right and justice we do.

Thank you for your time and patience.

Mr. HALEY. The last two witnesses——

Mr. BOYDEN. We have one more statement by one of our people here that won't have time to testify for us. I wonder if we could have an opportunity to also give that statement?

Somewhere it's been misplaced, but as soon as we find it, we would like to have it in the hands of the committee.

Mr. HALEY. Is that for the record?

Mr. BOYDEN. Yes; just for the record.

Mr. SIGLER. They're trying to find it, Mr. Chairman.

Mr. HALEY. When it is received, it will be made a part of the record. What is the gentleman's name?

Mr. BOYDEN. George Nasafotie.

Mr. HALEY. Without objection, it will be received and made a part of the record at this point.

(The statement follows:)

STATEMENT OF GEORGE NASAFOTIE, SR.

I just want to talk about our Hopi History. Why we are named Hopi and our traditional form of government so that you will know and be acquainted with our Hopi system.

Because most of our pleading will be based on this. From the beginning of the settlement of our Hopi villages, our homes and life is directed by religion rather than by the political system.

We are representing the people, still organized under the traditions, Hopi pattern and having retained the greatest percentage of our ancient way of life. The Hopi being the oldest continuous civilization known have a good prior history, richly embedded in our religious beliefs. Our happiness, our moral behavior, our unity as a people and joyfulness are all part of our religion. We know we had to retain our tradition while making an adjustment to a new way of life. Today, it is our responsibility to fit ourselves into the general pattern of American life as best as we can and yet maintain some of the best elements of our Hopi life. There is no reason whatever for us to give up our tradition and culture to become a good business people to continue living on the reservation to practice their old tradition and culture.

But we also believe that there are many of our younger people who desire to seek the broader economic opportunities out side who need help.

Because of this type of Hopi government and that we live in the name of the Hopi since the time immemorial.

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Mr. HALEY. The gentleman from Arizona.

Mr. STEIGER. I think we will probably have these two at the same time, Mrs. Mina Lansa and Guy Kalchaftewa, and their interpreter who is Thomas Banykacya.

Mr. HALEY. Would you give your name for the record so the young lady will know who is speaking?

Mr. BANYKACYA. My name is Thomas Banykacya, a Hopi.

Mr. HALEY. And you're the interpreter for these two?

Mr. BANYKACYA. And I'm helping to take testimony here today for them. And I just wanted to mention that I bring the first woman from the Oraibi village, whose name is Mina Lansa, and the religious leader from Kikmonquis, which is representing the people of the Mushongnovi.

Mr. HALEY. You may proceed, and without objection the two statements will be received for the record and made a part of the record. And if you care to, you can summarize it; or you can proceed as you wish.

Mr. BANYKACYA. I'm not sure, but I think it would be less than 15 minutes each. I will read it out as fast as I can.

STATEMENT OF MINA LANSA, HOPI INDIAN, AS PRESENTED BY THOMAS BANYKACYA, INTERPRETER

Mr. BANYKACYA. My name is Mina Lansa. I am from Oraibi Village and I represent many people. As a mother, I look to all living things on this earth as my children—plant life, birds, animals—all living things that have spirit. I take care of them as a mother would these children.

Now, when I heard about this Sam Steiger bill being introduced in Congress, my heart felt very sad as the Kikmongwi of Oraibi taking care of all living things on the earth and standing on my traditional and religious principles. Looking at the world, I saw great destruction taking place all over this land by you white people through your inventions of all kinds of machinery and your scientific knowledge that you have developed and used to destroy mankind and nature.

This Sam Steiger bill is going to destroy again our very land and life and will divide us and the Navajo people so that there will be more problems created for both of us. So I want to tell you that it makes me very unhappy to find out that this bill is being pushed in this great Hall of your Capitol by white people, by your intelligent men who are supposed to know and understand some things that concern the life of all our people, the nature around us, plant life, animals, and birds.

All these things will be affected. If you white men in this Capitol and in this White House ever push this bill through Congress it will bring not only severe problems upon our people but problems to your people also because we are going to be involved. This I want you to understand.

This bill is not being voted on or initiated by us as great Hopi leaders, Kikmongwis and religious men. We had no idea, no knowledge of this bill as to what it contains and no one explained it to us.

This council of people, Clarence Hamilton and others, say that all Hopis are supporting this bill through newspapers and publicizing

to the world that both Hopi and Navajo are going to fight one another. These things are not true and it makes us very ashamed to hear and to see that some of our young people who claim to represent us created much publicity in this way while in this Capitol lately.

They have printed many newsletters which we understand that some white man from Salt Lake is writing for Clarence Hamilton. These things are not in line with our traditional and religious understandings and they do not represent us, the Kikmongwis.

Now we are wondering why Clarence Hamilton and his council people and you people in Congress like Sam Steiger never came out and told us that this bill was being worked on and that you were going to introduce this bill in Congress. I want to know why none of you people take time to bring this to us and our people so that they will have a chance to express their views and their opinions before you bring it to the Members of Congress.

It was only about 2 weeks ago that we finally received this bill, not from the Hopi Council people, but from a councilman or representative from the Navajo people. So it was only a few days ago that we actually learned that this bill is being introduced on Congress.

I want to tell you that no village people had any knowledge of this bill, did not know what it contains, did not know what is going to happen if this bill passed and so we have made an effort to find out from other people. We went out to meet with the Navajo in different chapter houses.

A great many Navajo people and leaders met with us and told us that they, too, had never had a chance to hear or read or understand this Sam Steiger's bill. We also heard at Coalmine Canyon Chapter House that Paiutes who are living in the northern part of our land also demanded to know the contents of this bill.

They asked that this bill not be passed in Congress. It is a very painful thing to me as a Kikmongwi and as a leader, as a mother to all living things on this earth, to realize that you have failed to consult us at the very beginning of drafting this bill.

It makes me very unhappy to think of what will happen to our children, our grandchildren, our great grandchildren, and all people who are living on this land who will be affected, whose life would be completely changed and disturbed by this Sam Steiger's bill.

Our forefathers told us that you white people have come upon our land and formed your own government based upon written laws and that you promised and made it known to the natives of this land that you are going to respect them, that you are going to protect them and that you are going to see that no one disturbs our way of life, religion, and land.

Yet these things are taking place in such a way that it looks to us that you white people do not intend to keep those promises. I want to tell you that you have a great duty, a responsibility and obligation to protect our way of life, religion, and land.

It is your duty to correct anything that is in violation of your sacred laws and sacred honor. It is time for you leaders in Washington and anyone else that has the responsibility and duty to look into these problems to come out and meet with us in our villages so that our people will see you and talk with you.

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We can all work together to straighten out some of these problems right in our area. The council who is supposed to represent the Hopi people are not telling us anything that they work on in their council hall.

They do not take time to go to villages to hold meetings to explain things such as Sam Steiger's bill. We are not aware of these things.

The Hopi Tribal Council, the Bureau of Indian Affairs and John S. Boyden who are working together with Sam Steiger to pass this bill without our knowledge and consent. This must not happen.

We must stop this at this moment. We cannot continue to exist under this kind of condition because these people are only working for themselves, for some of the Members of Congress and for big industrial people.

They do not really care what happens to our people, to our land, and to our way of life. John S. Boyden has become a millionaire overnight because some of our Hopi Council people have given him all the money that belongs to the Hopi people.

The tribal council people are spending most of the money on themselves and on the white people in the area by bringing in some of the big industrial places around our land. Instead of us people getting rich, all other people are getting all the money and these are moneys that belong to the Hopi people, the humble people, people who have led their lives in the religious way, minding their own business and causing no one harm or trouble.

But now they are facing the total destruction of all that they hold dear, sacred, and valuable. Our land, religion, and way of life is at stake. Are you going to pass this most destructive bill at this hour when we are facing these problems all over our land?

Do you have any respect for our leaders? Do you have any honor for us? Let us not allow this to happen at this time.

It is only fulfilling the prohecy that white man may do this to us when they lost all their honor and respect and threw all the fairness and justice out of the window. They will do it in a way that everyone will know is wrong.

They will go after our mineral resources and will push us aside no matter how crooked or how bad it is. So I again stress upon all of you strongly, as Kikmongwi and leader on behalf of all my Hopi people, I ask you to stop this bill now, because I reject it. This Sam Steiger's bill—H.R. 11128 in entirety—I do not want this bill to ever become a law in this land.

Thank you very much.

Mr. HALEY. Thank you for your statement. Now, are there any questions? The gentleman from Alaska.

Mr. BEGICH. Just for our information, Can you ask the two witnesses from whom did they hear about this meeting in Washington?

Mrs. LANSA. The first time that I have seen this bill was when the Navajo representative brought this bill to us at our meeting at the Kikmongwi village.

Mr. BEGICH. Who was the Navajo representative?

Mrs. LANSA. It was Daniel Peaches, a member of the Navajo Tribe.

Mr. BEGICH. Did the witness pay her own way to this meeting?

Mrs. LANSA. Yes, we will pay our way over.

Mr. BEGICH. You paid your own way here?

Mrs. LANSA. We didn't have money to pay the travel on a long way like this, but through the help of some of our people who have not much money, but with the support of others that are willing to send us over, have agreed to help some, so that we as leaders who are concerned for our people are able to get to this hearing; because it was hard for us to travel as leaders.

Mr. BEGICH. Let me ask one specific question. Did the witness receive any financial help from the Navajos to come to Washington, D.C.?

Mrs. LANSA. We have mentioned we have a little of our own to travel on. Not much, but through the help of attorneys who are with us and how they help also with the Navajo people, were able to work out where we could get here in time for this meeting.

Mr. BEGICH. No further questions. Thank you, Mr. Chairman.

Mr. HALEY. The gentleman from Arizona.

Mr. STEIGER. Mrs. Lansa, as I understand your tradition, in order to be selected for the chief priesthood, you are chosen before you were born. Was Mrs. Lansa so chosen?

Mrs. LANSA. Actually, I was not born to become a future leader, but in our system their clans are considered to be the leaders or Kikmongwis until such time as there is no qualified Kikmongwis among the Bear Clan, then it falls into the clan which is the Parrot Clan, which is the clan I belong to; so this happened when our last Bear Clan leader, Molokoptoe (phonetic spelling), our father passed away. Then it passed on to my clan to take over.

Mr. STEIGER. And under those conditions, was Mrs. Lansa then installed into office in the traditional way as if she had been born into it, or is there a difference in the way she was installed into the office?

Mrs. LANSA. In our way of installing the next leader, in former times when things were in order, they usually initiate them into being a Kikmongwi or a chief to a religious society; but my father was installed. Monlolomus (phonetic spelling) was a Kikmongwi by himself.

Using authority and power and the knowledge that they have, passing onto the next leader by themselves. And he told them somewhere the people would know that you are the next leader. One not need to gather as many people here to witness this, because this is the way I have received my leadership from my former leader, so I'm passing it onto you in that fashion.

So the Monlolomus before he passed away installed a younger brother, Stanley Boninpeer (phonetic spelling), who now lives in Los Angeles in a white man's world and likes to live that way, and he could not take over the duty in the Oraibi village; so he returned his authority to me, and in the same manner as the Monlolomus has passed his power into his hands, so there was no gathering again of people.

But we were told that we will be found, that this is the customary way of passing this knowledge from one leadership to another. That was the way I was installed.

Mr. STEIGER. So really, the office that she holds is one that she inherited, in effect as the result of her family relationship, and it is unique in that sense that it was not in keeping with the way the former chiefs were installed.

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I just have one more, Mr. Chairman, and I think it's important. Would you ask Mrs. Lansa if she believes that the Navajo land and Hopi land should be separate?

Mrs. LANSA. As a Kikmongwi, a leader of my people, I look to all land as our land; all living things on it belongs to them; all people that are on it belong to them. Through our rituals and songs, it is referring to as a caretaker of this land for all people; and I cannot deny anyone from using this land.

We have been taught to take care of this land in this way so that all people will benefit from this land, all living things. As you white people also came upon us, I do not deny you from living on this land. But I am trying to hold up, according to our instructions as leaders, as we are the keepers and custodians and the caretakers of this land for all people; and this is the way I felt, that we must hold on to this for all living things on this earth in that way.

Mr. STEIGER. No more questions.

Mr. HALEY. You have any questions, Mr. Sigler?

Mr. SIGLER. Yes, Mr. Chairman.

I would like to address my questions first to the interpreter. Do you understand what we have been calling the joint-use area?

Mr. BANYKACYA. I read something about it, but as legal terms and other things, I don't quite really understand.

Mr. SIGLER. All right. Let me phrase it this way, then. Do you understand that there is an area around grazing district 6 which the courts have said is owned both by the Navajos and by the Hopis? Do you understand that?

Mr. BANYKACYA. Yes.

Mr. SIGLER. Do you understand also that that land is being used exclusively by the Navajos? That the Hopis are not using the land?

Do you understand that?

Mr. BANYKACYA. I understood that a little now with the explanation what Boyden has pointed out here today, and I see that the legal maneuvering through the Bureau of Indian Affairs and attorneys and perhaps Land Management that created this thing, where there are certain rules and regulations perhaps set down but perhaps not followed through, and now we are in this position.

Mr. SIGLER. I'm afraid I'm not quite making myself clear. The testimony here for the last 2 days has indicated that the land around district No. 6 is used by the Navajos and is not used by the Hopis? That's a question.

Do you agree that this is a true fact?

Mr. BANYKACYA. It's a true fact that there are districts set up under Land Management. The Navajos were permitted to use that area around this group 6.

Mr. SIGLER. The Navajos are using the area and the Hopis are not?

Mr. BANYKACYA. According to the land district setup.

Mr. SIGLER. You understand that that is the situation. According to the Land Management plan, the Navajos are using the land around district 6 and the Hopis are not using it.

Now, my question, which I wish you would relay to Mrs. Lansa, is, Are you willing to allow that situation to continue? Are you willing that the Navajos continue to use the land, and that the Hopis not use it?

Mrs. LANSA. I cannot, as I said, deny anyone from using any land anywhere; but not knowing the detail about these matters, which I have heard here today, I would have to go back to my people and to talk with them and tell them before I make any more statement on this matter.

Mr. SIGLER. One final question. Would you be willing to sell to the Navajos for money the land that is surrounding district 6?

Mrs. LANSA. I would not want to sell any land to any one of them, but as I have said, I would consider all these things when I go back to see what there is as far as my peopl are concerned.

Mr. SIGLER. That's all I have, Mr. Chairman. Thank you.

Mr. HALEY. Now, Mr. Interpreter, you have one more witness. Are you going to interpret for him? Are you going to read his statement?

Mr. BANYKACYA. I will read it quickly.

STATEMENT OF GUY KALCHAFTEWA, HOPI INDIAN, AS PRESENTED BY THOMAS BANYKACYA

Mr. BANYKACYA. I am from Hopi Village of Mushongnovi on Second Mesa. I am a member of a high religious society in that village, and today I am acting as a spokesman for our Kikmongwi, Starlie Lomayaktewa.

Today we face a very grave problem which has struck at the very heart of our Hopi people. Our land and life and everything that we have maintained through our religious way of life is being threatened by this bill which Sam Steiger has introduced in Congress with the idea that this bill would solve the problem which is faced by both Hopi and Navajo but which we know will again disturb our way of life.

Our land would be divided, our people would be divided, and we will be cut off from our spiritual centers from sacred mountains to which we offer our sacred prayers for good life, for rain, for abundance of food and so that all living things on this land will continue on its natural course.

This is at stake! We want to tell you that this Sam Steiger bill has never been brought to our people, no one has explained the contents of this bill, we do not know these things are being taken out by someone and now being presented to you people to pass it in Congress.

We have faced this problem before by some other people who came upon us first. They almost put a stop to our religious life.

There was a severe drought and there was great famine upon our land, all grass and everything was burned up and there were people looking for food as there was a great hunger upon our land. This we know has happened before and so it is a great concern to our elders today.

This may be brought upon us again if our young people continue to interfere with our land and life. The white people are going after only material things that are underneath our land and are passing these laws which we do not understand, do not want, and which we never have been able to receive any information about from anyone.

These young Hopi Council people have neglected their own people and have turned against their own people. If these people do not stop urging you people to pass this legislation, the drought and famine will happen again.

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But I am sure that if we are really going to do things in the right manner, a time has come for you to come out to the Hopi people and meet with our elders and with the Kikmongwis who are the caretakers of the land and life for our people. The Hopi villages would be the proper place where this problem must be taken up so that it will be done here in Washington in the right manner.

We need to explain these things to you because in the past we have received newspapers and found that Clarence Hamilton has been instrumental in pushing this Steiger bill without the knowledge of the people whom he claims to represent. It is time that we tell you people in Congress that Clarence Hamilton has carried on this kind of activity out there through the help of some other council members and creating the impressions to the world through newspapers that Navajo and Hopi are about to go to war against each other.

This is absolutely not true because there are a great number of our people that would like to meet with the Navajo people and to talk these things over in a peaceful way. Our people are always maintaining the spiritual foundation of our people and naturally they want to look into this in a peaceful way.

We are not about to go to war with the Navajo people or with any people. We have never signed a treaty with the Government of the United States, but we have learned and know that somewhere U.S. Government has made a treaty with the Mexican Government in 1848 and there are certain things that the U.S. Government promised to do but they have never followed through with those provisions.

We have found that they have never honored the treaties that they made with many other tribes. Through history we have known since the white men came and started making treaties with other nations, we have knowledge of other things that you white people that are leaders in Washington should be aware of.

There are certain written laws and documents which would, if taken out now, explain many things that concerns our land and life and I am sure that when we go into more of this problem we may be able to straighten things out in our own way without going to war. We want to tell you that these are the things that we are concerned with as elders, as people with traditional and religious convictions and spiritual understandings and who have knowledge of nature around us.

We should be together and start working toward a peaceful way of life instead of using mineral resources underneath us for making of more destructive weapons. We do not want to desecrate our land because this is the heart of our mother, the spiritual center which we must all protect for our leaders.

The Hopi Kikmongwis are the real authorities in the villages, they are still out there carrying on the duties which was passed on to them by their former leaders. I am one of the elders of the Mushongnovi Village knowing many things in our religious societies, duties that are involved and from that I know that somewhere you white people should stop and look and listen when trying to work out something with our Hopi leaders, the Kikmongwis, so that we can find a way to life in peace among ourselves and with nature.

Then we can all be called Hopis, because Hopi means peace and any people who learn to live among themselves peacefully and with nature would be called Hopis. So I am asking you people not to pass

this Steiger bill, but come to our villages and let us meet together. We want you to consider our words and act on it so that when you come we will solve some of these problems in the way it should be, in line with the Great Spirit's instructions and our religious knowledge.

Mr. HALEY. Are there any questions?

Mr. STEIGER. No.

Mr. SIGLER. Mr. Chairman, may I ask the same questions of this witness?

Mr. Interpreter, will you ask the witness whether he is willing to allow the Navajos to continue to use the area around District 6 and to exclude Hopis from that area.

Mr. KALCHAFTEWA. It's been a knowledge from our traditional teachings that some day we may come to face with this kind of problem, with which we know of when our white brother or white man comes upon the land some day, he will use all power with all the instruments that he has invented, like guns, and force our people to move around.

And he has done so with the Navajos. He used force and power with guns and took much of their land away from them and forcing them onto our land, our homeland, today, and this is what happened.

Mr. SIGLER. I don't want to argue the matter, but I don't think I got an answer to my question.

Mr. KALCHAFTEWA. I do not intend to argue over things like this with you, but I am just telling you the truth. The belief and the understanding and the knowledge that our old people have passed onto us—they talk about these things, that some day we are going to face this; and as we, the native people on this continent, already occupying this land, we are living our way of life the way we are in different areas.

Then you white people came and created this problem. This is true and this is the knowledge that causes all this, and we're facing it today which our old people prophesied it would be. And I'm telling you with the knowledge that old people, through religious societies to which we were initiated and learned from them these knowledge, so I'm just merely mentioning it to you in this way.

I don't want to argue with you.

Mr. SIGLER. One final question, Mr. Interpreter.

I would like to have your personal opinion about whether the Navajos should continue to have the exclusive use of the area and the Hopis should be excluded. I want your personal view.

Mr. BANYKACYA. Personally, I cannot answer that, because I am only working with the religious leaders who have this full knowledge, as I am not fully initiated into high society as yet. I've been initiated into continuous society, which is the first society that we go into, but after that you have the high society where all this knowledge like in high order in your fraternities, where only initiators receive this knowledge through religious leaders and things like that.

So I cannot make any kind of a statement without consulting them, but we are planning to go back, consult, and bring these back to our people, and then it would be up to them to decide what to do. I will mention to them today with this statement concerning this problem, the only way to look at the findings solution is to have these leaders get together with these elders from the Navajos Tribe or any other tribe.

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We would sit down together, which maybe some of you being there, so we could go into it and maybe find a solution by negotiating in this matter.

Mr. SIGLER. I have nothing more, Mr. Chairman.

Mr. HALEY. Thank you very much for your testimony here today and thank everyone for your patience. I hope that every person here that wanted to testify has been allowed to, or has submitted his statement for the record.

The record will stay open for 5 days under the rules of the committee. If you have additional statements or comment that you want to supply for the record, it will be received and made a part of the record as if given by yourself.

Is that the agenda, and I believe, Mr. Sigler, it is the agenda for the day.

Mr. SIGLER. Yes, that completes it.

Mr. HALEY. The committee stands adjourned.

(Whereupon, at 5:10 o'clock p.m., the hearing in the above-entitled matter was adjourned.)

APPENDIX

SUPPLEMENTARY STATEMENT OF GEORGE VLASSIS, GENERAL COUNSEL FOR THE NAVAJO TRIBE

I thank the Chairman for granting me the opportunity to present this supplementary statement to the Subcommittee. It is my hope that I may be able, in this statement, to provide some further answers to the questions raised by H.R. 11128 which are the most troublesome to the members of this Subcommittee, and which are the focal points of contention among the disputants. I propose to discuss the following subjects: (1) *Healing* v. *Jones*, (2) Partition of the "1934 Area", (3) Overgrazing, (4) Dislocation and Relocation under H.R. 11128, (5) Threat of Violence, and (6) Negotiated Settlement.

I. HEALING V. JONES

Some members of the Subcommittee, and some witnesses before the Subcommitte, appear still to entertain the belief that H.R. 11128, or a similar bill, is required by the judgment in *Healing* v. *Jones*, 210 F. Supp. 125 (D. Ariz. 1962). This belief is due predominantly to two factors, I feel. The first factor is that the court's opinion is extensive and complicated. The second factor is that the lawyers for the Navajo Tribe have argued before this Subcommittee that the *Healing* court went "too far" in its judgment. The first factor has made it difficult for both lawyers and laymen to grasp the meaning and import of the *Healing* decision. The second factor appears to have precipitated the conclusion that the court must have said that a bill like H.R. 11128 is required. Otherwise, it is thought, the lawyers would not feel compelled to criticize any aspect of the decision. I would like to do my part here to dispel the confusion surrounding *Healing*, and to substantiate the proposition that there is absolutely nothing inconsistent between the argument that the court decision does not require a bill like H.R. 11128 and the argument that the court went "too far."

There is no question but that the decision rendered by the District Court in *Healing* is the law of the case. As such it is binding on the parties thereto. It also binds the United States to the extent that the United States cannot take any property rights established thereby in the absence of payment of just compensation. The question is what is the law established by this case. The answer is that the Hopi Tribe has exclusive property rights in Land Management District No. 6 and that the Navajo and Hopi Tribes have joint, undivided and equal interests in the 1882 Reservation outside District No. 6. [A copy of the opinion in *Healing* v. *Jones* is attached as Exhibit A.]

Neither the law of the case, nor the Constitution of the United States, requires that the Navajo and Hopi Tribes each receive one-half of the surface and subsurface rights in the area outside of District No. 6. Furthermore, it is clear that the *Healing* court declined to provide a remedy dividing the surface and subsurface interests, not only because it lacked the power to do so, but because any remedy should take into account "the facts and law" as determined by the court. The court, in noting that the only controversy which it had finally decided pertained to the boundaries of District No. 6, said the following:

"As to the remainder of the reservation, *the facts and law, as herein determined and applied, and our lack of jurisdiction to partition jointly-held lands*, preclude a complete resolution of the Hopi-Navajo controversy." (Emphasis added.) *Healing* v. *Jones*, 210 F. Supp. 125, 192 (D. Ariz. 1962).

It is also clear that the judgment with respect to the area outside District No. 6 does have some effect. There is no better statement of that effect than the words of the court itself:

"[T]he judgment will have the effect of narrowing the controversy . . . No longer will it be tenable for the Hopis to take the position that no Navajos have been validly settled in the reservation. *No longer will it be tenable for the Navajos to take the position that they have gained exclusive rights and interests in any part of the reservation.* No longer will there be uncertainty as to the boundaries

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of the area of exclusive Hopi use and occupancy." (Emphasis added.) 210 F. Supp. at 192.

The Navajo Tribe, through its leaders, members and attorneys, does not come before this Subcommittee arguing that "they have gained exclusive rights and interests in any part of the reservation." The Tribe argues that the Congress, in determining the best means to apportion the benefits decreed to the respective tribes in *Healing*, should take into account "the facts and law" which the court determined and concluded, and which the court clearly contemplated would be taken into consideration by the Congress in fashioning a remedy, if Congress should decline to permit a negotiated settlement by the parties. Some of these facts and determinations of law are as follows:

1. "Despite the vast size of the Navajo reservation at that time [1878], this semi-arid land was considered incapable of providing support for all the Navajos. Moreover, except for one or two places, the boundaries of the Navajo reservation were not distinctly marked. It is therefore not surprising that great numbers of the Navajos wandered far beyond the paper boundaries of the Navajo reservation as it existed in 1880. By 1882, Navajos comprising hundreds of bands and amounting to about half of the Navajo population had camps and farms outside the Navajo reservation, some as far away from it as one hundred and fifty miles." 210 F. Supp. at 135.

2. "In the main, however, they [the Navajos] were semi-nomadic or migratory, moving into new areas at times, and then moving seasonally from mountain to valley and back again with their livestock." 210 F. Supp. at 135.

3. "The right of use and occupancy gained by the Hopi Indian Tribe on December 16, 1882, was not then a vested right. As stated in our earlier opinion, an unconfirmed executive order creating an Indian reservation conveys no rights of use and occupancy to the beneficiaries beyond the pleasure of Congress or the President. Such use and occupancy may be terminated by the unilateral action of the United States without legal liability for compensation. The Hopis were therefore no more than tenants at the will of the Government at that time. [Citations omitted.] No vesting of rights in the 1882 reservation occurred until enactment of the Act of July 22, 1958." 210 F. Supp. at 138.

4. "In our view, Indians other than Hopis acquired rights in the 1882 reservation under the executive order provision in question if: (1) such Indians used and occupied the reservation, in Indian fashion, as their continuing and permanent area of residence, and (2) the undertaking of such use and occupancy, or the continuance thereof, if undertaken without advance permission, was authorized by the Secretary, exercising the discretion vested in him by the executive order." 210 F. Supp. at 144.

5. "The evidence is overwhelming that Navajo Indians used and occupied parts of the 1882 reservation, in Indian fashion, as their continuing and permanent area of residence, from long prior of the creation of the reservation in 1882 to July 22, 1958, when any rights which any Indians had acquired in the reservation became vested." 210 F. Supp. at 144–145.

6. "The Navajo population in the reservation steadily increased during all of this period [1882–1958]. In 1882 there were only about three hundred Navajos living in the area. By 1900 this had increased to 1,826. In 1911 the Navajo population was estimated to be two thousand, and by 1920 this had grown to between twenty-five and twenty-seven hundred. The Navajo population climbed to 3,319 by 1930, and to about four thousand by 1936. About six thousand Navajos were living within the reservation in 1951. By 1958, the Navajo population probably exceeded eight-eight hundred." 210 F. Supp. at 145.

7. "For a period of nearly six years following issuance of the executive order, the known presence of a relatively small number of Navajos in the 1882 reservation was neither condemned nor sanctioned by administrative officials. These Navajos were not officially labelled as interlopers and no effort was made to eject them from the reservation." 210 F. Supp. at 145.

8. "[In] their letter of February 7, 1931, the Commissioner and Secretary did not limit their implicit recognition of Navajo rights, to Navajos who were residing in the area in 1882, and their descendants, or to Navajos settled by a previous Secretary and their descendants. They recognized all Navajos then living in the area, whether or not recent immigrants thereto, as having such rights." 210 F. Supp. at 156.

9. "In our view, this 1931 blanket and all inclusive recognition of Navajo rights of use and occupancy is explainable on no other basis than that the Secretary, impliedly exercising the authority reserved to him in the executive order, was then and there settling in the 1882 reservation all Navajos then residing in that reservation." 210 F. Supp. at 156–157.

10. "After October 27, 1941, as before, the [Secretarial] practice continued of denying grazing permits to Hopis for use of lands outside of district 6 except where they were able to show that they had historically and continuously grazed their sheep at least a portion of the year outside that district. The necessary effect of this restriction was to save non-district 6 grazing lands within the 1882 reservation for exclusive Navajo use." 210 F. Supp. at 164.

11. "These boundary recommendations [District No. 6] were submitted to the Commissioner on November 20, 1942. In doing so the Hopi and Navajo superintendents suggested that policies be put into practice which would, in effect, divide the reservation between Hopis and Navajos, limiting the Hopis to the district area and reserving the remainder for the exclusive use of the Navajos." 210 F. Supp. at 165.

12. "On April 24, 1943, the Office of Indian Affairs approved the boundaries, carrying capacity, and statements of administrative policy, as recommended by the two superintendents on November 20, 1942." 210 F. Supp. at 166.

13. "A considerable adjustment in place of residence and range use was thereafter made by both Hopis and Navajos in order to accommodate themselves to the new district 6 boundaries and the associated administrative policy of exclusive occupancy. Many Navajo families, probably more than one hundred, then living within the extended part of district 6, were required to move outside the new boundaries and severe personal hardships were undoubtedly experienced by some." 210 F. Supp. at 166.

14. "In February, 1945, fences were constructed by the Government along the revised district 6 line. The practice of excluding Hopi stockmen from areas outside of district 6 was continued, and with the aid of the fences, was more effectively enforced." 210 F. Supp. at 167.

15. "By July, 1951, the total population of the Navajo Indian Tribe was 69,-167, about six thousand of whom lived within the 1882 reservation. By the summer of 1958, the Navajo population in the 1882 reservation was probably about 8,800, not including a few Navajos living within district 6, as expanded in 1943. The places of residence of the Navajos within the 1882 reservation were scattered quite generally over the entire area outside of district 6." 210 F. Supp. at 168–169.

16. "By 1958, Government schools for Navajo children were being maintained within the 1882 reservation at Pinyon, Smoke Signal, White Cone, Sand Springs, Dinnebito Dam, and Red Lake." 210 F. Supp. at 169.

17. "In 1951, The Hopi population within the 1882 reservation was about 3,200. By the summer of 1958, the Hopi ppoulation was something in excess of that figure. Most of these Hopis resided within district 6, as expanded in 1943. A few had homes, farms or grazing lands in adjoining districts in the 1882 reservation." 210 F. Supp. at 169.

18. "Other Hopi activities then being carried on outside district 6, as expanded, included wood cutting and gathering, obtaining coal, gathering plants and plant products for medicinal, ceremonial, handicrafts and other purposes, visiting of ceremonial shrines, and a limited amount of hunting." 210 F. Supp. at 169.

These determinations of fact and law, as stated, should be taken into account by Congress if it is the body which fashions a remedy for the Navajo-Hopi controversy. The Congress should particularly take into account the determination that Navajos always occupied the area outside District No. 6, while few Hopis ever occupied that area; that the United States always acquiesced in this occupation; that the Navajos were legally settled in the area in 1931; that soon thereafter the United States administered the area exclusively for the benefit of the Navajos; and that during all of that time the Hopis enjoyed only a tenancy at the will of the Government. H.R. 11128 does not take these determinations into account and proceeds on the mistaken notion that the *Healing* court decreed that a line should be drawn to divide in two equal parts the surface rights of the two tribes in the area outside District No. 6. Congress has far broader options. It may, for example, divide the area on the basis of actual use and occupancy of the two tribes in the area in 1958 and confirm to each tribe those areas actually used by either tribe. To the extent actual use does not amount to use of one-half of the area, the Hopi Tribe could receive the full benefits of the *Healing* judgment by granting it in lieu lands in an additional amount up to one-half of the acreage of the whole area, or proportionately greater rights in the sub-

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surface estate than would be given to the Navajo Tribe, or compensation for the difference between the value of lands that would be confirmed on the basis of actual use and one-half the value of the whole area. In fact, the *Healing* court noted, for example, the suggestion contained in the legislative history that one way to apportion any interests found to be joint might be to award the surface rights to one tribe and the subsurface rights to the other tribe. 210 F. Supp. at 191.

Congress, therefore, can resolve this dispute without the hardship which H.R. 11128 would visit upon the Navajo people and without ignoring the meaning of the judgment in *Healing*, as that judgment presently stands. These options exist notwithstanding the criticism by the lawyers of the *Healing* court's finding that the joint and undivided interests of the two tribes are *equal*. The only point of the lawyers' criticism is that if the courts accept that criticism as valid the Hopi Tribe would not have even a *one-half compensable* interest in the 1882 area outside District No. 6. Congress, therefore, should weigh the merits of this criticism unless the judgment in *Healing*, and its affirmation by the Supreme Court, precludes the Navajo Tribe from disputing in the courts the finding of equal interests. As will be shown, it is still permissible for the Navajo Tribe to dispute this finding and it is taking the proper steps to do so.

When I speak of the criticism of the finding of equal interests, I am also speaking of what I referred to earlier as the *Healing* court going "too far". It is not clear whether the court even intended to go as far as it did. The court offered no evidence or legal analysis in support of this finding and no comment thereupon. The court appears to have concluded that a finding of joint and undivided interests in the whole area outside District No. 6 automatically resulted in the undivided interests being equal. This might be the rule dictated by the common law but, as has been recognized by the Indian Claims Commission, "to apply such a rule to Indian lands would lead to an unjust result in most cases." *Sioux Nation* v. *United States*, 24 Ind. Cl. Comm. 147, 157 (1970).

The Indians Claims Commission, on a number of occasions, has considered the effect of a finding of joint and undivided interests in two tribes to the same reservation area. Such a finding was made in *Sioux Nation, supra*, and it was argued that a tenancy in common formula by which the tribes would hold *equal* undivided interests should be applied. The Commission rejected such a formula in favor of a "population formula in which each tribe would hold an interest proportionate to its population." 24 Ind. Cl. Comm. at 157. In rejecting the tenancy in common formula the Commission in *Sioux Nation, supra*, relied on the language in *Blackfeet and Gros Ventre Tribes of Indians* v. *United States*, 18 Ind. Cl. Comm. 289 (1967):

"Indian rights in land are tribal in nature and not individual. If we tried to equate tribal rights with individual rights and thereby create an equal interest in an area among the tribes using and occupying it, we would be ignoring the basic fact of Indian use and occupancy. We would be creating a common law concept of title in an area where such concept had never grown by custom or usage. The smallest tribe would be entitled to as much as the largest one. To do this would be contrary to reason since a subsistence use of land necessarily as use in proportion to numbers." (Emphasis added) 18 Ind. Cl. Comm. at 321.

Congressman Lujan was correct in asking the Assistant Secretary before this Subcommittee whether a population formula might be a more appropriate basis upon which to divide these lands.

The *Healing* court, therefore, was clearly wrong in automatically applying common law property notions to the question to the extent of the joint and undivided interests of the two tribes, once those interests were found to exist. Whether Congress should take this error into account in formulating a remedy for the dispute depends, I feel, upon whether the Navajo Tribe is still at liberty to dispute this particular finding in the courts. If it is at liberty to do so, then Congress is as competent as any court to weigh the merits of the argument.

The present attorneys for the Navajo Tribe were not the attorneys in *Healing* v. *Jones*. If they had been, they would surely have attacked the finding of equal interests in the District Court and, if not vacated, in the Supreme Court. Instead the attorneys who did represent the Navajo Tribe sought a complete reversal of the lower court judgment, and the issue of the quantity of joint and undivided interests was never raised in any judicial forum.

Furthermore, when the suit of *Hamilton* v. *Nakai*, Civil No. 26,588 (9th Cir. 1971), was filed by the Hopi Tribe, seeking a writ of assistance to enforce the *Healing* judgment, the present attorneys were still not the attorneys for the Navajo Tribe. If they had been, they would have raised the issue of quantity of interests in the answer to the Hopi petition. The issue was not raised.

The District Court in *Hamilton* decided that it did not have jurisdiction to enforce the judgment in *Healing*. The Court of Appeals for the Ninth Circuit reversed and remanded, holding that the District Court could enforce the judgment short of partition, to the extent the *Healing* court had jurisdiction to enter its judgment. [A copy of the opinion of the Court of Appeals is attached hereto as Exhibit B.] The present attorneys were also not the attorneys for the Navajo Tribe in the Court of Appeals and again the issue of the quantity of interests of the respective tribes was not raised. However, the amendments to the answer in *Hamilton* v. *Nakai* have been prepared and will be presented to the District Court on remand. [Copies of the amended and new pleadings are attached hereto as Exhibit C.]

We are not precluded by either *res judicata* or the "law of the case" from raising the issue of the quantity of interests of the tribes on remand in *Hamilton*. The Court of Appeals in *Hamilton* ordered the District Court to enforce the *Healing* judgment to the extent that the *Healing* court had jurisdiction to enter the judgment, as stated. It is our position that the *Healing* court, just as it did not have jurisdiction to partition the area, did not have jurisdiction to decree the quantity of any joint and undivided interests which it found to exist. Accordingly, because the issue was not determined by the Court of Appeals in *Hamilton*, resolution of the issue is not precluded by the law of the case; and because the issue goes to the jurisdiction of the *Healing* court to make a particular finding, which issue has never been raised in any prior proceeding, the Navajo Tribe is also not barred by *res judicata* from raising the issue on remand in *Hamilton*, and at this time before this Subcommittee. As one federal court has stated:

"[T]he doctrine that where a court has once acquired jurisdiction it has the right to decide every question which arises in the cause, and its judgment or decree, however erroneous, cannot be collaterally assailed, is only correct when the court proceeds according to the established modes governing the class to which the case belongs and does not *transcend in the extent and character of its judgment or decree the law or statute which is applicable to it* . . . In other words, though the court may possess jurisdiction of the person and of the subject matter, it is still limited in its modes of procedure and in the extent and character of its decree." (Emphasis added.) *Rheinberger* v. *Security Life Ins. Co.*, 146 F. 2d 680, 683 (7th Cir. 1944).

This collateral attack on the judgment in *Healing* is not an attack on the entire judgment. There is no question but that the court had the jurisdiction to make the finding of joint and undivided interests. The collateral attack pertains only to the finding that these interests of the tribes are *equal*. The Act of 1958 which conferred jurisdiction on the *Healing* court to entertain the suit did not confer jurisdiction to determine the quantity of the interests of the tribes. Furthermore, nothing in the legislative history supports the proposition that the court had such jurisdiction.

The only jurisdiction conferred by the 1958 Act was jurisdiction to determine the "nature" of the interests of the tribes. Thus the court had jurisdiction to determine if interests were exclusive or joint and undivided. If interests were found to be joint and undivided, the Act reserved to Congress the power to partition and, in doing so, to determine the extent or quantity of the interests of each tribe. House Rep. No. 1942, 85th Cong., 2d Sess. (1958); Senate Rep. No. 265, 85th Cong., 1st Sess. (1957). [Copies of these reports are attached hereto as Exhibit D.]

Originally the 1958 Act, as proposed, would have given the court the power to determine the quantity of interests of each tribe and to partition the area. This provision was removed for the following reason:

"The purpose is to leave for future determination the question of tribal control over lands in which the Navajos and Hopis may have a joint and undivided interest. The two tribes feel that this question cannot be adequately resolved until the *nature* of their rights is adjudicated, and that *the question is properly one for determination by Congress* rather than by the courts. We agree with that position. Until the *nature* of the respective interests is adjudicated *it is difficult to determine whether any part of or interest in the lands should be put under the exclusive jurisdiction of either tribe.*" (Emphasis added.) House Rep. No. 1942, *supra*, at 6.

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In summary, therefore, we are urging this Subcommittee to accept the proposition that nothing in *Healing* v. *Jones* compels the Congress to adopt the drastic approach to resolving the Navajo-Hopi dispute suggested by H.R. 11128. Congress has many other options, not the least of which is to permit the two tribes to negotiate a settlement. However, if Congress feels compelled to take immediate action, we urge that in enforcing the *Healing* judgment, as that judgment now stands, it should take into account numerous determinations of fact and law entered by the *Healing* court. We also urge the Congress to consider the merits of our argument that the *Healing* court did not have the power to make the equal interest determination, and that this determination was clearly erroneous, if Congress is to attempt a resolution of the dispute before this issue has been raised on remand in *Hamilton* v. *Nakai*. We do not want to suggest that Congress should leave resolution of this issue to the courts since this would put the Navajo Tribe in the apparent posture of seeking delay. We do urge, if the issue cannot be raised in the courts before Congress takes action, that Congress is as competent as the courts to rule upon the merits of our argument.

II. PARTITION OF THE "1934 AREA"

Section 5 of H.R. 11128, as this Subcommittee knows, also purports to grant exclusive rights to the Hopi Tribe, and to unnamed Paiute individuals, in an area outside the 1882 Executive Order area. The basis recited in the bill for granting rights in this area to the Hopi Tribe is the Act of June 14, 1934, 48 Stat. 960, and the alleged fact that the Hopi Tribe was located in this area on the date of that Act. The same 1934 Act is the basis for the bill's proposal to allot a fixed number of acres to each Paiute Indian, or his descendant, who was located in the area described in the 1934 Act on the date of that Act.

The part of the land described in the Act of June 14, 1934, which H.R. 11128 proposes to add to the Hopi Reservation was first withdrawn temporarily by Executive Order of January 8, 1900. The Executive Order did not name the beneficiaries of this withdrawal. The Navajos have always assumed that the land was withdrawn for them, and the land has always been administered by the Federal Government solely as a part of the Navajo Reservation. L. Kelly, *The Navajo Indians and the Federal Indian Policy*, 1900–1935, 17–23 (1968).

In 1934, Congress redefined the boundaries of the Navajo Reservation in Arizona. 48 Stat. 960–62. The boundaries included lands not previously withdrawn from the public domain. The lands so included are not part of the lands which H.R. 11128 proposes to confirm in the Hopi Tribe. Rather, as I stated, they are part of the 1900 Executive Order lands previously withdrawn. The 1934 Act permanently withdrew these lands for the benefit of the Navajos and "such other Indians as may already be located thereon."

The 1900 Executive Order did not vest any compensable rights in any Indians, or Indian tribes, but created a tenancy at the sufferance of the United States for the benefit of unnamed persons. This is the legal effect of an Executive Order withdrawal. See, e.g., *Hynes* v. *Grimes Packing Co.*, 337 U.S. 86 (1949); *Healing* v. *Jones*, *supra*. The lands were administered solely for the benefit of the Navajo Tribe and a tenancy at the sufferance of the Government was thereby impliedly created for the benefit of the Navajo Tribe. The Hopi Tribe, or Hopi individuals, received no rights or interests under the terms of the 1900 Executive Order itself or by virtue of the Government's administration of the area withdrawn. Any rights of the Hopi Tribe in the 1900 Executive Order area must therefore depend solely upon the 1934 Act.

The 1934 Act contains the following relevant language [a copy of the Act is attached hereto as Exhibit E]:

"All vacant, unreserved, and unappropriated public lands, including all temporary withdrawals of public lands in Arizona heretofore made for Indian purposes by Executive Order or otherwise within the boundaries defined by this Act, are hereby permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as may already be located thereon."

By virtue of this Act the Navajos automatically received vested rights in the whole area encompassed in the 1900 Executive Order. See, e.g., *Healing* v. *Jones*, *supra*. The Act did not automatically establish any rights of the Hopi Tribe or Paiute individuals in the 1900 Executive area. Contrary to the opinion expressed by the attorney for the Hopi Tribe that the 1934 Act "was passed for the Hopis", any rights of any Indians, other than Navajo Indians, are conditional upon a finding that, on June 14, 1934, such Indians were "located" in the 1900 Executive Order area. If no Indians, other than Navajos, were "located" in the 1900 area

in 1934, then the transfer of any vested rights of the Navajos, which H.R. 11128 proposes to make in favor of other Indians or Indian tribes, clearly constitutes a taking of those Navajo vested rights without the payment of just compensation.

The question of rights of any Indian tribe or Indian individuals, other than Navajos, in the 1900 area have not been submitted to any court for determination. Furthermore, the Department of Interior has come before this Subcommittee admitting that it has no probative evidence of "location" of any Indian tribes, other than the Navajo Tribe, in the 1900 area in 1934 and, specificially, no probative evidence of "location" of any Indian tribes, other than the Navajo Tribe, in the 1900 area in 1934 which H.R. 11128 would give to the Hopi Tribe. Assistant Secretary Loesch stated before the Subcommittee that the amount and specific location of land which would be given to the Hopi Tribe in the 1934 area by H.R. 11128 involves simply a "judgment call". Mr. Loesch stated further that the size of the area is based on use by "Hopis" in 1934 "as best can be determined" and that he had added an area to this "use" area so as to make it contiguous to the Hopi reservation. Mr. Loesch urged Congress to include this additional area even though the Department of Interior had absolutely "no evidence of land use in 1934 by Hopis in this area."

Respectfully, these admissions of the Assistant Secretary reflect a cavalier approach to rights of the Navajo Tribe in the 1900 Executive Order area, which rights were vested by the Act of 1934 and are protected by the Constitution of the United States. As stated, no other Indians, or Indian tribes, received any rights under the 1934 Act in the absence of a showing that they were "located" in the 1900 area in 1934. The Assistant Secretary offered no evidence that the Hopi Tribe was so "located", offered a judgment call that some Hopi individuals were "located" in part of the 1900 area in 1934, and admitted that not even Hopi individuals were "located" in 1934 in part of the area which H.R. 11128 would give to the Hopi Tribe.

Assistant Secretary Loesch did not address himself to numerous legal questions which the court in *Healing* v. *Jones* considered in an analogous dispute concerning the 1882 reservation. For example, the fact that some Hopi Indians may have been "located" in the 1900 area in 1934 does not automatically mean that the Hopi Tribe was "located" therein, or that the Hopi Tribe succeeded to any rights of Hopi individuals "located" therein. Furthermore, it is not even clear what the Congress intended by the language "located". Did it mean "located" by the Secretary or "located" regardless of Secretarial approval? No evidence has been uncovered showing that the Secretary had "located" Hopi individuals, not to say the Hopi Tribe, in the 1900 area by 1934.

Finally, the bill evidences a cavalier treatment of Navajo vested rights with respect to Paiute individuals located in the 1900 area in 1934. The Assistant Secretary offered no evidence as to such location and H.R. 11128 proposes to give an arbitrary amount of acreage to any Paiute who now can be found in the 1900 area. In addition, despite the fact that the theory upon which H.R. 11128 proposes to give Navajo lands to these Paiutes is one of actual location thereon, the bill does not attempt to relate in any way the amount of acreage or location which it would give to the Paiutes to the place or extent of Paiute location in 1934.

In short, H.R. 11128's attempt to provide an instant determination of rights and interests in the area confirmed to the Navajo Tribe in 1934 by Congress involves an arbitrary approach based on a judgment call; ignores the many points of law discussed and determined in *Healing* v. *Jones*; it is not based on any judicial decree; is not based on any evidence of location, or actual use and occupancy, by the Hopi Tribe or Paiute individuals in 1934; and is clearly not immune from attack on the grounds that it proposes to take vested rights of the Navajo Tribe and transfer them to other Indians, without the payment of just compensation.

III. OVERGRAZING

Before I consider the effects of H.R. 11128 in terms of dislocation of 6,331 Navajos, I would like to discuss one of the factors which motivated the Department of Interior to draft and support this bill, a factor which has no direct relation to *Healing* v. *Jones*, or to the rights and interests of the Navajos and Hopis in the 1882 reservation. This factor became apparent in the testimony of Assistant Secretary Loesch before the Subcommittee.

Mr. Loesch reported to this Subcommittee that the present carrying capacity in the 1882 area outside District No. 6 is 22,000 sheep units and that there are presently 87,000 sheep units grazing in that area. He expressed the opinion that

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the area, in top grazing condition, should be capable of supporting 100,000 sheep units. According to leaders of the Navajo Tribe, however, overgrazing in the area is much less than that reported by Mr. Loesch. Vice-Chairman Skeet has furnished data to the Subcommittee supporting the view of the tribal leaders. In any event, there is some overgrazing and H.R. 11128 attempts to deal with this problem.

Upon being asked by Congressman Camp what factors had caused the overgrazing, Mr. Loesch answered as follows:

"The problem arose because of the increase in numbers of the Navajo Tribe. The fact that it is a nomadic people, the fact that this whole area is not the best land in the United States, it is barren and dry in good part. And simple population pressure really gave rise to this problem coupled with the failure of every Administration to act."

Pressed by Congressman Lujan on the question of why the limitation as to the number of animal units per grazing permit could not be enforced, Mr. Loesch responded:

"I didn't say it couldn't be enforced. There is a cost to everything. The cost of enforcing at the level that needs to be enforced—the Bureau and apparently the Department are unwilling to pay because of the very, very deep scars and wounds left by the enforcement or the attempted enforcement of the grazing regulations in the thirties and forties.

"I am advised that when Commissioner Collier went into the livestock reduction program on the Navajo Reservation in the 1930's, which was at the time these 19 grazing districts were set up, the bitterness became so great—I think it was 1937 that enforcement commenced. The bitterness and troubles became so deep that by 1941 the Administration was already slowing down the process. It continued to slow down before the proper results were achieved and was totally and officially abandoned as a policy in 1948.

"Apparently for the reason of the deep distrust and wounds [felt] by the Navajos and their feelings towards the BIA, nobody wanted to tackle it again since 1962. And believe me, I sympathize with the Bureau as well as with the Navajos on this. There comes a time when it depends whether it is worth it or not.

"When there was no way, since we had a joint-use area, to secure to the Hopis their share without in effect dispossessing Navajos, when we had no authority to dispossess Navajos, we found ourselves with an insoluble administrative problem."

Counsel for the Subcommittee, Mr. Sigler, asked Mr. Loesch "if there were no Hopi interest involved, if you just had Navajos living in the joint use area, and overgrazing the area 400% as you testified, would there be any solution?" To which Mr. Loesch replied:

"The solution is very hard, very difficult. It is the same solution, and I know of no other, that was tried in the 1930's and 40's. I do devoutly hope we do not have to get ourselves into the same situation that the Bureau got into then. But in some way, by education of the tribal people by the Navajo leadership, by furnishing supplementary means of livelihood besides livestock; in some manner, on some day, the grazing area must be reduced to the carrying capacity."

Whereupon Mr. Sigler stated that he would rephrase his question—as follows: ". . . there is no practical way to reduce the grazing within the joint use area that is now taking place by Navajo occupants because you have no place to put them?" Mr. Loesch replied "You are correct."

Mr. SIGLER. "And you would have to move these Navajo occupants regardless of the Hopis if you restored the carrying capacity of the land?"

Mr. LOESCH. "Yes!"

Mr. Loesch also offered the following Departmental, or personal views:

"Whatever happens grazing in this area ought to be reduced . . . I don't care how hard it is, how tough it is on the individual involved. I do not believe that a responsible public administrator can stand by continuously and see lands destroyed . . . I think it is a crime to overgraze causing erosion and all of the ills that comes from serious overgrazing."

Finally, Congressman Steiger, in referring to Congressman Camp's intermingling the overgrazing problem with the Navajo-Hopi dispute, had this to say:

"I hope the gentleman in pinpointing the problems as he has done also recognizes if we attempt to solve both of these very significant problems, we will be here I think longer than we can afford to be, and it is a logical situation to settle the disputed situation and then confront the grazing situation because the one

simply compounds the other. If we attempt to equate them in some way other than historically, if we attempt to do it legislatively, which I expect the gentleman is headed for, I am afraid we are going to burden this legislation which is already going to be tough unnecessarily."

The Assistant Secretary of the Interior who admits that overgrazing has been due to the semi-arid nature of the lands, to the increase in the Navajo population, and to bureaucratic inability to devise a solution, obviously feels that H.R. 11128, ostensibly offered as a solution of the Navajo-Hopi dispute, is a partial solution, at least, to the overgrazing problem. Over 6,000 Navajos and their livestock would be moved off one-half of the reservation and it can be anticipated that Hopis, who are not livestock people, will not move into the area in any great numbers to replace the Navajos. Thus, with an ostensible legal settlement of the Navajo-Hopi dispute, the Department will be relieved overnight of the problem of educating the Navajo people on grazing limitations, or providing a supplementary means of livelihood besides livestock, or providing alternative grazing lands in which grazing would be carefully regulated, or devising a solution in cooperation with tribal leaders. The Department will also be relieved of facing similar pains to those which resulted from the arbitrary livestock reduction program in the 1930's and 1940's and Congress and the District Court of Arizona can bear the brunt of the solution to the overgrazing problem, which problem in the first instance has been caused, in great part, by the Department's inability to cope, or even deal, with the problem in a reasonable and expeditious fashion. I am not suggesting that H.R. 11128 is a devious or underhanded approach to the overgrazing problem. I am merely suggesting that the convenience of the approach does not give it a presumption of reasonableness, and that convenience *per se* should not preclude other approaches which would be more reasonable, though less convenient.

If overgrazing is the real problem to which H.R. 11128 is addressed, then that problem cannot, and should not, be considered only after the bill has purportedly solved the Navajo-Hopi controversy. Rather, reasonable means must be, and can be, devised to eliminate the grazing problem so that H.R. 11128 can be objectively judged by the Department of Interior and the Congress as a fair resolution of the Navajo-Hopi controversy. Judged objectively, it is clear that H.R. 11128 would compound the Navajo-Hopi controversy, not resolve it. Judged objectively, it is clear that for effectuation of the rights and interests of the Hopi Tribe in the area outside District No. 6, it is not at all necessary for the Congress of the United States to visit the pain, hardship and suffering upon the Navajo people which is contemplated by H.R. 11128. If overgrazing is to be characterized as a "crime", this crime is not the sole responsibility of the 6,331 people who would be moved from their homeland as punishment therefor. The Department of Interior and the United States must share this responsibility. Recognizing this fact, surely the Congress in its wisdom can devise a more reasonable solution than H.R. 11128 precipitously offers.

Secretary Loesch incorrectly analogized the solution to this overgrazing problem to the solution devised by Congress for overgrazing in the public domain by means of the Taylor Grazing Act of June 28, 1934. 43 §§ 315 *et seq.* The Taylor Grazing Act did not apply to Indian reservation lands and it had none of the effects on non-Indian people which H.R. 11128 would visit upon the Navajo people. No one was deprived of his livelihood as a result of the Taylor Grazing Act: no one was dispossessed of his home; and no one was forcefully removed from the land of his birth. Moreover, the Taylor Grazing Act did not deal with any vested rights of any person in the public domain. H.R. 11128 deals at the very least with vested joint and undivided interests of the Navajo Tribe in land upon which thousands of people have considered, and have been permitted to consider by the United States, their home for many generations past.

IV. DISLOCATION AND RELOCATION UNDER H.R. 11128

Section 2 of H.R. 11128 proposes to confirm in the Hopi Tribe 917,815 acres of grazing land in the area of the 1882 Executive Order Reservation outside District No. 6. Section 8 directs the Secretary of the Interior to remove the 6,331 Navajos living on this land at the rate of 10% per year over ten years. The Department of Interior's report recommends that the 10-year provision be removed from the bill and that removal be accomplished as soon as possible. All grazing rights theretofore held by the Navajos residing in the area encompassed by Section 2 of H.R. 11128 would be extinguished by Section 8 of the bill. The bill does not provide for

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granting the displaced Navajos any grazing rights in any other area or any compensation for loss of their grazing rights in Section 2 lands.

The bill ostensibly provides for relocation of some displaced Navajos by granting them in Section 10, a priority for assignment of lands included within the Navajo Indian Irrigation Project. This relocation provision is totally illusory, and Assistant Secretary Loesch admitted as much before this Subcommittee. When asked by Congressman Lujan what the Department of Interior proposed to do with the dislocated Navajos, Mr. Loesch replied:

"I was afraid somebody would ask me that this morning. Of course, that is the hardest of all problems. We are talking about people. . . . If you ask me to specify where and how we are going to relocate these people, I can't answer you. We are investigating the possibilities, which seem to be good, of relocating some of them in the Navajo Irrigation Project which should come on the line in 1975 in its first phase."

The Navajo Indian Irrigation Project was authorized by Congress by means of the Act of June 13, 1962, 76 Stat. 96. The Act authorized the Secretary of Interior to construct, operate, and maintain the Project for the principal purpose of furnishing irrigation water to 110,630 acres of land. The Project is located in Rio Arriba and San Juan Counties in northwestern New Mexico, about 250 miles from the lands encompassed in Section 2, from which the 6,331 Navajos would be dislocated.

The Project is designed as a tribal enterprise with a goal of providing a livelihood for an estimated 8,000 Navajo people already located in the vicinity of the Project. Jobs will be created as farm operators, custom laborers, and employees in related service activities. The enterprise will be operated very much like a complete agribusiness. Numerous crops will be grown and a livestock feed lot, with all related processing plants, will be operated as part of the enterprise.

If this Project is to succeed in uplifting the economic level of any Navajos, as has been pointed out to the Subcommittee by the Vice-Chairman of the Navajo Tribe, it is crucial that people who participate in the enterprise be willing and prepared to dedicate their lives to farming. The Tribe expects that the people most likely to bring success to the operation are the younger tribal members who have not depended for so long a period as the older members, if at all, on livestock for their subsistence. It is anticipated that these younger members can be trained to acquire the abilities and skills needed for a successful farming operation and that they will be anxious and eager to qualify for jobs in the Project.

Vice-Chairman Skeet also pointed out before this Subcommittee that all of the people living in the area encompassed by Section 2 of H.R. 11128 are people who live the traditional Navajo life and depend upon the traditional Navajo livelihood of livestock raising. They have done this all their lives. It cannot be expected that these people can be transplanted to an area 250 miles from the lands on which they have lived all of their lives and turned into successful farmers overnight. If this is the expectation behind Section 8 of H.R. 11128, then the Navajo Irrigation Project is doomed to failure before it even gets underway. This would be a drastic blow to the progressive and far-sighted plans of the new Navajo leadership for substantially uplifting the economic lot of future generations of Navajo people.

Moreover, the Navajo relocation provision of H.R. 11128 is illusory for other reasons. Six thousand three hundred and thirty-one people will be dislocated from 917,815 acres of grazing land. At the very most, when the Irrigation Project is completed, there will be available in the Project area about 110,000 acres of irrigable land for the Tribe's farming enterprise. Furthermore, the first land will not be available until 1975 or 1976. At that time it is hoped that 10,000 acres will be available and, thereafter, an additional 10,000 acres each year. [A map depicting the portion of the Navajo Irrigation Project completed to date is attached hereto as Exhibit F.] Even if dislocated Navajos could be moved successfully to the Project area, there is no provision for relocating any Navajos prior to the availability of lands in the Project area and it is the Assistant Secretary's expressed hope to accomplish the removal of all Navajos from Section 2 as soon as possible after the passage of H.R. 11128.

This dislocation, even if there were a provision in H.R. 11128 for relocation, will cause many inequitable consequences for the Navajo Tribe and the people living in the Section 2 area. The bill draws a line through the 1882 area without taking into account numerous factors: (1) the Navajo Tribe has spent close to $1,000,000 on capital construction costs for the production of water in Section 2, and has invested vast sums annually in operating and maintaining this

construction; (2) many sacred, historical, archeological and scenic sites of the Navajos are located in Section 2; and (3) there will also be greater economic benefits to be derived from the more extensive natural resources contained in the Section 2 area, as compared with Section 3, by virtue of the increased value of surface rights-of-way and other surface easements, despite the fact that the sub-surface interests would remain in joint ownership.

This dislocation will cause more than inequity, however. It will cause a tremendous amount of pain and personal hardship for the Navajo affected thereby. The Navajo witnesses from the Section 2 area testified before this Subcommittee about their attachment to the lands in that area and the meaning of that attachment from the point of view of their extended family ties, religious beliefs, and the livelihood upon which they have depended since their birth. It is, therefore, unnecessary for me to recite here the litany of human sufferings which H.R. 11128 would visit upon these people. As further evidence of that suffering, I am attaching copies of the widespread and unanimous written expressions of dissatisfaction with H.R. 11128 which have emanated from every corner of the Navajo Reservation and which did not reach Washington until after the Hearings of April 17 and 18. I am also attaching the written statement of John Smith which was delivered orally to the Subcommittee on April 18. [These attachments are designated collectively as Exhibit G.] Finally, I am attaching a publication which deals with Navajo sacred places and religious beliefs. [Exhibit H.]

V. THE THREAT OF VIOLENCE

Members of the Subcommittee, and Assistant Secretary Loesch, have expressed the fear that violent incidents may continue to erupt along the border of District No. 6 and that this threat of violence requires some immediate response. I agree. Only too often we all take corrective action, be it in the halls of Congress or in our personal lives, when a catastrophe has already occurred.

While there is a continuing threat of violence, that threat is not as great as some of the Hopi witnesses would have this Subcommittee believe. There have been many unfounded allegations of Navajo violence voiced before this Subcommittee, some relating to events which occurred over 80 years ago. Indeed, there have been contradictions in the testimony of Hopi witnesses once those witnesses were subjected to even brief questioning. The President of the Hopi Agricultural Improvement Association in his prepared statement, for example, recited a litany of unfounded allegations of Navajo violence. Then upon being asked if he had ever grazed his cattle without incident in the area outside District No. 6, he admitted that he had grazed his cattle there and had never run into any problem. Indeed, the Attorney for the Hopi Tribe in resurrecting the alleged warlike character of the Navajo Tribe from the ashes of history, did not even get his history correct. In 1882, he reported, the United States Army was talked out of removing the Navajos from the 1882 Reservation by Chief Dodge, "father of Mrs. Wauneka". Mrs. Wauneka's father, in 1882, was a mere infant, and obviously did not negotiate with the United States Army. Even if he had done so, it is not clear how this reflects on Mrs. Wauneka or any other Navajo. Futhermore, discussions between Army officers and the Navajos took place in 1888, not 1882.

Nonetheless, there have been some incidents along the District No. 6 border. Each side has blamed the other side for these incidents but assignment of blame does not solve the problem. An early solution must be devised to deal with the root cause of the tension along the border. The solution offered by H.R. 11128 is not a solution at all and does not deal with the root cause of the tension. H.R. 11128 would merely compound the threat of violence which presently exists.

The cause of the tension along the District No. 6 border is due predominantly to the straying of Navajo livestock into the District No. 6 area. When this occurs Hopi officials have the livestock impounded and sold. The Navajo Tribe has attempted to devise a means to prevent the Navajo cattle from straying into District No. 6. Hopi officials, in turn, have rejected each means devised. However, there is one very simple and speedy means to ease the tension.

The Navajo people do not *drive* their livestock into District No. 6. The livestock wander into that area in quest of water. There is little water available in the 1882 area outside District No. 6 and, by order of the Secretary, the Navajos are not allowed to drill for water in that area without consent of the Hopis. The Hopis refuse to consent. If the Secretary will agree to provide more water in the 1882 area outside of District No. 6, no more Navajo cattle will stray into

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District No. 6; there will be no impounding of cattle; the tension will be relieved; and the Navajos and Hopis will be able to sit down together to negotiate a settlement of the broader dispute concerning their respective rights outside of District No. 6.

The threat of violence, just like the problem of overgrazing, does not require the kind of Congressional action reflected in H.R. 11128. Each of these problems is susceptible to a much less drastic solution. When these problems are separately dealt with, H.R. 11128 can be judged in a more objective light than seems to be possible at the present time.

VI. NEGOTIATED SETTLEMENT

Some witnesses testified before the Subcommittee that they did not feel it was possible for the two tribes to mutually resolve the controversy concerning their respective rights in the 1882 Reservation. Chairman MacDonald testified that the two tribes could, and should be allowed to do so. Traditionalist leaders of the Hopi Tribe all agreed with Chairman MacDonald. Numerous witnesses also testified that there is a kinship between the two peoples and that it is possible to solve this problem among themselves. Thousands of testimonials agreeing with this view are contained in Exhibit F, attached to this statement.

The Commissioner of Indian Affairs also agrees with the view that a negotiated settlement is possible. In answer to a question from Congressman Steiger, Commissioner Bruce said:

"Since I have followed this thing for a number of years, and have not been involved in it except for the last 2½ years, somehow in the back of my own mind I am optimistic enough to feel that if we really tackled this business of negotiating, if we didn't just call people together and say 'you agree to this and so forth', and didn't go away and forget it like we have done over the years in some of these negotiating sessions, if we really tackled it this way I feel it could be negotiated. I would say that is my position."

Even Assistant Secretary Loesch who stated that he would prefer a negotiated settlement of H.R. 11128, but didn't feel that a negotiated settlement was possible, admitted under questioning from Congressman Lujan that no alternate plans for resolving the dispute had been tried or offered prior to these hearings, exclusive of the legislation.

A negotiated settlement is possible. The failure of negotiations in the early 1960's is irrelevant today. The Navajo Tribe has new leadership and that leadership has committed itself to the negotiation route before this Subcommittee. If negotiations are to succeed, however, the Hopi leadership must also make that commitment and both sides must undertake the negotiations in good faith. Assuming that this will be the case, a framework can easily be devised which will encourage a speedy settlement. Chairman MacDonald has suggested one possible framework before this Subcommittee and is presently studying a number of alternatives.

CONCLUSION

H.R. 11128 attempts to deal with three problems. Two of these problems—overgrazing and the threat of violence—should be dealt with separately. If these problems are taken care of, then the two tribes can sit down peacefully to negotiate a settlement of the dispute concerning their respective rights and interests in the 1882 and 1934 areas. Such a settlement, we all must hope, would include a means, at the very least, to avoid the human hardship which H.R. 11128 would cause for so many people. The Congress and the two tribes have the power, ability and, hopefully, the inclination to avoid that hardship. That inclination must be given an opportunity to bear the fruit of reality. Otherwise, the judgment of history shall be harsh indeed.

SUPPLEMENTARY STATEMENT OF VICE CHAIRMAN WILSON C. SKEET BEFORE THE HOUSE SUBCOMMITTEE ON INDIAN AFFAIRS REGARDING TWO MAPS OF THE 1934 AREA AND SECTION 5 OF H.R. BILL NO. 11128

Map No. 1 delineates the following boundaries proposed for settlement of the Moencopi Hopis' rights which were left undetermined under the Act of June 14, 1934. These boundaries are as follows:

Supporting documents	Date	Boundary on map No. 1	Approximate acres
Map, p. 761, in Gordon B. Page, Hopi Land Management Unit, Hopi-Navajo Boundary Report of the Human Dependency Survey.[1] The Page boundary resulted from the most comprehensive economic survey ever accomplished on the Navajo and Hopi Indian Reservations. Conducted by the Soil Conservation Service during the 1930's—and commenced almost immediately after the Act of June 14, 1934—this Human Dependency Survey as it was called and the resulting boundary reflects the most accurate and comprehensive data available of land use by the Moencopi Hopis as of 1934.	Apr. 10, 1937	Orange Line	79,514
(1) Commissioner of Indian Affairs Robert L. Bennett to Navajo and Hopi area directors, Mar. 7, 1969; (2) Commissioner of Indian Affairs Robert L. Bennett to Raymond Nakai, Chairman, Navajo Tribal Council, May 13, 1969.	May 13, 1969	Blue Line	92,000
Assistant Secretary of the Interior Harrison Loesch to Chairman Raymond Nakai (Navajo) and Clarence Hamilton (Hopi), Feb. 20, 1970. After a series of meetings of the Hopi and Navajo Negotiating Committees with Commissioner Robert L. Bennett in Albuquerque, N. Mex., Flagstaff and Phoenix, Ariz. (at another meeting scheduled in Albuquerque the Commissioner was unable to attend and both Committees agreed not to meet with the representative sent in his stead; the Navajos did not "walk out" as alleged by Hopi witnesses before this Committee), various proposals for settlement of a boundary were made—2 by the Navajos and 3 by the Hopis. After the final meeting in Phoenix, Commissioner Bennett stated that on the basis of these proposals, he would delineate his own boundary which he did on May 13, 1969. (See map No. 2 delineating these proposals.) At a later hearing before Assistant Secretary of the Interior Harrison Loesch, the Secretary stated that after consideration, he would either sustain or modify Commissioner Bennett's recommendation, which he did on Feb. 20, 1970, affirming and ratifying the line with the exception of one modification: At the junction of Highways 164 and 264 just south of Tuba City, Secretary Loesch added some 60 acres south of the junction to the Hopi portion which Commissioner Bennett had allocated to the Navajos. (The map scale is too small to show this modification of the Blue Line.)	Feb. 20, 1970	Blue Line	92,060
H.R. bill 4754, Feb. 22, 1971, sponsored by Mr. Sam Steiger, of Arizona. This bill has been superseded by H.R. 11128 presently before this committee.	Feb. 22, 1971	Green Line	305,000
H.R. bill 11128, Oct. 6, 1971, sponsored by Mr. Sam Steiger, of Arizona. It is apparent from these proposals that the only thing consistent about them is their inconsistency. From the 79,514 acres of the 1937 Page line—which most accurately sets forth Hopi land use closest to the 1934 date—to the 305,000 acres of Mr. Steiger's previous bill, H.R. 4753, there is great disparity which can only lead one to conclude that, like the 1882 Executive Order boundary, lines are just being drawn on a map without recourse to the actual facts of Indian occupancy and use.	Oct. 6, 1971	Red Line	140,814

[1] Def. Ex. 230b, Healing V. Jones, U.S.D.C., Ariz., Civil 579 Prescott.

It is also somewhat mystifying why Assistant Secretary of the Interior Harrison Loesch who, on February 20, 1970, wrote:

"I affirm and ratify the boundary proposed by Commissioner Bennett's decision of May 13, 1969" (See copy of letter attached) of approximately 92,000 acres, now comes before this Committee to endorse the boundary of some 140,814 proposed for the Moencopi Hopis in Mr. Steiger's Bill H. R. 11128.

WILSON C. SKEET,
Vice Chairman, The Navajo Tribal Council.

The following correspondence was submitted by Wilson C. Skeet for inclusion in the record:

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., March 7, 1969.

Mr. W. DADE HEAD,
Area Director, Phoenix Area Office.
Mr. GRAHAM E. HOLMES,
Area Director, Navajo Area Office.

DEAR MR. HEAD and MR. HOLMES: My letter of June 8, 1966, delineating the portion of the Navajo Reservation to be administered as though it were a joint use area of the Hopi and Navajo Tribes shown in *red* on the enclosed map is hereby modified to cover the area outlined in *blue* on the map.

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This redefined area is an interim modification pending a proposal for final settlement of the disputed area which is to be submitted to the Navajo and Hopi Tribes by May 1, 1969, for their consideration.

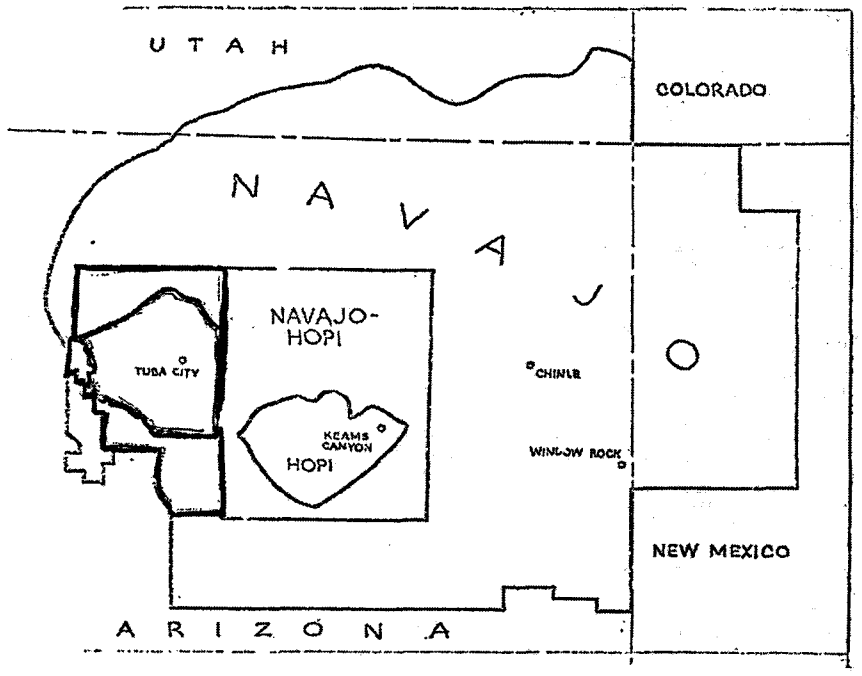
All other instructions in my July 8 letter and in my memorandum of October 31, 1967, to the Navajo and Phoenix Area Directors concerning public works type projects remain in effect in the administration of the redefined area outlined in blue. The record shows that in no instance was progress on public works type projects beneficial to both groups halted or curtailed because of the July 8 letter and the memorandum of October 21.

Extra copies are enclosed for the Navajo and Hopi Tribes.

Sincerely yours,

ROBERT L. BENNETT,
Commissioner of Indian Affairs.

Enclosures.



U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., May 13, 1969.

Mr. RAYMOND NAKAI,
Chairman, Navajo Tribal Council,
Window Rock, Ariz.

DEAR CHAIRMAN NAKAI: The Act of 1934 extending the boundary of the Navajo Reservation included an area west of the 1882 Executive Order reservation which had long been used by both Navajos and Hopis. In this area was the Hopi village of Moencopi, and adjoining land used by Hopis for crops and grazing.

The language of that Act: ". . . for the benefit of the Navajo and such other Indians as may already be located thereon . . ." gave clear recognition to Hopi rights within the area, without defining the extent or nature of those rights.

Over the years since 1934 conditions in the general vicinity of Moencopi have changed. More Navajos and Hopis are living there and using the land, new roads have been built, and agricultural and commercial activities have increased. With these changes and intensified pressures there have been heightened friction and increasing difficulties in administration and development.

On July 8, 1966, recognizing the Hopis' undefined interest in the lands in Arizona encompassed by the 1934 Act, I determined that the area could no longer be administered as though it were owned solely by the Navajo Tribe, which had been the case since passage of the Act.

I directed that in the portion of the Navajo Reservation west of the 1882 Executive Order reservation all actions take full cognizance of the undetermined Hopi rights. *Money from surface and subsurface resource management would be placed in a special fund, and a record would be made of all such collections and deposits since enactment of the 1934 Act.* I also directed that on rights of way, leases, and permits formal action by the Hopis as well as Navajos would be required, and that neither tribe should be permitted unilaterally to take actions that trespassed on the rights of the other. I urged the Hopis and the Navajos to negotiate to reach an early settlement of their respective interests as a basis for legislation to end the present confusion of ownership.

On October 31, 1967, the instructions in my letter of July 8, 1966, were modified to permit public works type projects to go forward on a determination by me without formal action by the Navajos and Hopis. On March 7, 1969, the area thus affected was reduced to eliminate a large part in the north and the south.

Following the issuance of my letter of July 8, 1966, the Navajos and Hopis started negotiations in an attempt to reach agreement on an area to be set aside for the Hopis to settle this age-long controversy.

Negotiating committees were appointed by both tribal councils and a series of meetings were held with Bureau officials, representatives of the two tribes, tribal officers, and tribal lawyers.

The tribal negotiating committees held three joint meetings, in Albuquerque on August 16, 1967; in Flagstaff on October 17, 1967; and in Phoenix on April 3 and 4, 1968. Prior to the first meeting the chairmen of the two committees exchanged a series of letters expressing the views of their respective tribes on the 1934 boundary Act and other aspects of the negotiations.

At the Albuquerque and Flagstaff meetings much of the discussion centered on Navajo concern over the effect of the Commissioner's July, 1966, "freeze" on developments. This and other problems which it was hoped would be solved by negotiations were reviewed. At the second meeting in Flagstaff, a suggestion was made that a temporary Moencopi-Hopi area be established and the "freeze" lifted on the balance of the land under the Commissioner's order. The chairman of the Hopi Negotiating Committee gave an indication of that tribe's position when he stated that the Hopis feel they are really entitled to the entire 1934 area, but suggested that the Moencopis recognized the necessity to start with less than they feel they are entitled to and work from there.

It was not until the Phoenix meeting that both the Navajo and Hopi negotiators made specific proposals for an exclusive Hopi area. The first such proposal by the Navajo was for an area of 77 acres. This was countered by a detailed statement by the attorney for the Hopis on Hopi claims to an interest in all lands west of the 1882 Executive Order reservation added to the Navajo Reservation under the 1934 boundary Act.

The last proposal made by the Navajos was for an area of 19,354 acres (estimated), chiefly south and east of the village of Moencopi. This area "was to be considered for the exclusive use of the Hopi Indian Tribe with the understanding that the area outside be considered for the exclusive use of the Navajo Tribe." The chairman of the Navajo Negotiating Committee stated that the offer was subject to the approval of the Navajo Tribal Council. The Hopi negotiators rejected this on the grounds that the area "still eliminates a substantial area of both farming and grazing land now used by the Hopis in the Western Navajo, and also the area the Hopis used in 1934 and prior thereto."

The Hopis then made a counter offer of an area of 807,398 acres (estimated). The eastern boundary of this area was along the western line of the 1882 Executive Order reservation, and to the west at one point extended to the western boundary of the Navajo Reservation. This was rejected by the Navajos. No further efforts at negotiations were attempted since the wide gap between the thinking of the two tribes held little hope for a mutual agreement through meetings between them. I had reason to believe, however, that both Navajos and Hopi would be receptive to having the government take the initiative in proposing an area. I have therefore decided to make a proposal on the basis of available facts for your consideration. After review of your comments and any changes as a result of these comments, I plan to propose legislation to establish a Hopi-Moencopi area for Congressional action.

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During the past 40 years, efforts have been made by various officials to set aside an area for Hopis living in the village of Moencopi and vicinity. These varied greatly in size and include the following:

	Acres
1930—Governor Hagerman	34,000
1930—Walker	90,000
1933—Walker-Dalton	246,000
1937—O'Neal-Hohnani	178,000
1937—Miller (Stockman)	200,000
1939—Page	102,000

The last of these was made from a 1937 field survey by Gordon B. Page of the Division of Economic Surveys of the Soil Conservation Services for a land management unit in the Moencopi area. The report covers stock ownership, agricultural plots, and outlines the boundaries of the area used by Hopi stockmen for grazing sheep, cattle, and horses. As of that date, according to the report, in addition to Hopis, some six Navajo groups lived in and operated stock yearlong in the designated area.

It is my conclusion that this report, reflecting use of the area in the Thirties, serves as a rational basis for a Hopi area in western Navajo to be set aside for exclusive Hopi use and administered by the Superintendent of the Hopi Agency at Keams Canyon. Certain boundary modifications from the area prepared by Page have been made in my proposal, and certain provisions included to meet present-day circumstances. Among these is the issuance of permits to Navajos now living and operating within the proposed area, and to Hopis living and operating outside.

The accompanying map identifies the area I have determined should be set aside for the Hopis. It totals approximately 105,000 acres and includes all dwellings in the village of Moencopi, and most of the irrigated land now used by the Hopis. With this map is a description of the area, and the conditions I propose to include with its establishment.

I wish to emphasize that I do not view this as a settlement of any aboriginal claims of the Hopi and Navajo Tribes in the area encompassed by the 1934 Act in the western Navajo. It is proposed as a solution to the pressing human and administrative problems now existing in that area which are hampering economic and social progress. Hopefully its establishment will enable both the Navajos and the Hopis to reach a better mutual understanding and eventually live and work together so that boundaries become unimportant.

I would appreciate comment at your earliest convenience.

Sincerely yours,

ROBERT L. BENNETT,
Commissioner of Indian Affairs.

Enclosures.

PROVISIONS FOR OPERATION OF PROPOSED HOPI-MOENCOPI AREA

PERMITS

Navajos now living and operating (grazing, agricultural and homesite) within the proposed exclusive Hopi Area will be given permits in the nature of life estates for the lifetime of the head of the household and the spouse to whom they are married as of the date of the Act. Hopis now living and operating in the Navajo Area will be given the same kind of permits.

WATER USE

The Pasture Canyon water supply system shall be administered in perpetuity by the Hopis. Such administration, as to use of present quantity of water shall be for the benefit of the present Hopi users and for the Navajo allotted lands. If and when additional water is developed in the future, it shall be administered by the Hopis for the maximum benefits to the Navajo and Hopi agricultural lands in the Moencopi-Tuba City agricultural area.

Any development and or use present and future of water from the upper division from Moencopi Wash shall be for the benefit of both Navajo and Hopi agricultural users.

UPPER PASTURE CANYON (OUTSIDE PROPOSED AREA BOUNDARY)

Farms in the canyon above Pasture Canyon Reservoir which are farmed by Navajo and Hopi will remain Navajo and Hopi in perpetuity.

Water use in the Upper Canyon will be by both Navajo and Hopi farmers who are using this land.

Irrigation water and supply system from Pasture Canyon will be controlled by the Hopis as described in section on permits and water.

The rights of ingress and egress will be assured both Navajo and Hopi to their farms and to construct and maintain dam and water supply systems.

Maintenance of the ditches from Pasture Canyon Dam to allotted land along the Moencopi will be the responsibility of the Hopis and Navajo farmers who receive water from this dam.

A right-of-way for present or any future supply ditch which will deliver water to the farms along the Moencopi will be assured in perpetuity.

COMMISSIONER ROBERT A. BENNETT'S BOUNDARY DESCRIPTION—MAY 13, 1969

DESCRIPTION OF PROPOSED HOPI-MOENCOPI AREA

Beginning at a point along the rim of Moencopi Plateau where the plateau meets the Navajo purchased land at approximately 5,000 feet elevation and on the north boundary of Sec. 9, T. 29 N., R. 11 E. (projected) thence,

Northerly and northwesterly along the rim of Moencopi Plateau to a point on the projected section line between Sec. 11 and Sec. 12, T. 31 N., R. 10 E., thence,

North along said section line to the center of Moencopi Wash thence,

Up the center of Moencopi Wash to a point where it meets the west boundary of Allotment No. 54, thence,

South and East to the SE corner of Allotment 52 thence,

North to the SW corner of Allotment No. 50 thence,

East and north around Allotment No. 50 to the NE corner thereof, thence,

West to the top of rim above highway thence,

Northerly and easterly along the rim to the NW corner of the C. E. Wood Sand & Gravel Permit, thence,

Northeasterly to a point on U.S. Highway 264 (between Tuba City and Oraibi) 800 feet south of right-of-way intersection of highways 264 and 164, thence,

Southeasterly along the highway center line approximately 1,000 feet to a point opposite the south corner of Blanche Taho Homesite thence,

Northeasterly along the SE boundary of said homesite to the east corner thereof, thence,

Northeasterly to the south corner of Andrew Kelly Homesite thence,

Along SE boundary of said homesite to the east corner thereof, thence,

Northeasterly following a projection of the SE boundary of said homesite to the center line of U.S. Highway 164, thence,

Along center line of highway easterly to the east boundary of Sec. 27, T. 32 N., R.11 E., thence,

South to the center of Moencopi Wash, thence,

Up the center of Moencopi Wash to the east boundary of T. 32 N., R. 12 E., thence,

South along the range line to a northeasterly extension of the Buck Pasture fence, thence,

Southwesterly to Windmill No. A-149, thence,

Southwesterly along Buck Pasture Fence to a point where said fence intersects the south boundary of Sec. 5, T. 29 N., R. 12 E., thence,

Westerly along the section line on the south boundary of Sec. 6, T. 29 N., R. 12 E., and continuing along the section line on the south boundary of Sections 1, 2, 3, and 4, T. 29 N., R. 11 E., to the point of beginning.

COMMISSIONER ROBERT A. BENNETT'S BOUNDARY DESCRIPTION—MAY 13, 1969

DESCRIPTION OF PROPOSED HOPI-MOENCOPI AREA

1. Beginning at a point along the rim of Moencopi Plateau where the plateau meets the Navajo purchased land at approximately 5,000 feet elevation and on the north boundary of Sec. 9, T. 29 N., R. 11 E. (projected) thence,

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2. Northerly and northwesterly along the rim of Moencopi Plateau to a point on the projected section line between Sec. 11 and Sec. 12, T. 31 N., R. 10 E., thence,
3. North along said section line to the center of Moencopi Wash thence,
4. Up the center of Moencopi Wash to a point where it meets the west boundary of Allotment No. 54, thence,
5. South and East to the SE corner of Allotment 52 thence,
6. North to the SW corner of Allotment No. 50 thence,
7. East and north around Allotment No. 50 to the NE corner thereof, thence,
(Nos. 8 through 16 of this description replaced by Nos. 8 and 9 of Secretary Loesch's description. Otherwise identical.)
8. West to the top of rim above highway thence,
9. Northerly and easterly along the rim to the NW corner of the C. E. Wood Sand & Gravel Permit, thence,
10. Northeasterly to a point on U.S. Highway 264 (between Tuba City and Oraibi) 800 feet south of right-of-way intersection of highways 264 and 164, thence.
11. Southeasterly along the highway center line approximately 1,000 feet to a point opposite the south corner of Blanche Taho Homesite thence,
12. Northeasterly along the SE boundary of said homesite to the east corner thereof, thence,
13. Northeasterly to the south corner of Andrew Kelly Homesite thence,
14. Along SE boundary of said homesite to the east corner thereof, thence,
15. Northeasterly following a projection of the SE boundary of said homesite to the center line of U.S. Highway 164, thence,
16. Along center line of highway easterly to the east boundary of Sec. 27, T. 32 N., R. 11 E., thence,
17. South to the center of Moencopi Wash, thence,
18. Up the center of Moencopi Wash to the east boundary of T. 32 N., R. 12 E., thence,
19. South along the range line to a northeasterly extension of the Buck Pasture Fence, thence,
20. Southwesterly to Windmill No. A-149, thence,
21. Southwesterly along Buck Pasture Fence to a point where said fence intersects the south boundary of Sec. 5, T. 29 N., R. 12 E., thence,
22. Westerly along the section line on the south boundary of Sec. 6, T. 29 N., R. 12 E., and continuing along the section line on the south boundary of Sections 1, 2, 3, and 4, T. 29 N., R. 11 E., to the point of beginning.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., February 20, 1970.

Mr. CLARENCE HAMILTON,
Chairman, Hopi Tribal Council,
General Delivery,
Polacca, Ariz.

DEAR CHAIRMAN HAMILTON: In accordance with my commitment to decide the Hopi-Navajo dispute in the 1934 area, so far as the same can be decided administratively, I have arrived at the conclusion delineated on the attachments. Except as noted herein and on the attachments, I affirm and ratify the boundary proposed by Commissioner Bennett's decision of May 13, 1969. I also hereby approve the contents of that letter, except that it is my conclusion that the boundary I have delineated is consistent with the land use patterns in existence in 1934.

Comparison with the maps will show that the only change I have made in Commissioner Bennett's proposed boundary as provided by his letter of May 13, 1969, is in the immediate vicinity of Moencopi itself, where I have determined that it is equitable to use the highway as the dividing line.

It is clear to me that the respective proposals of the tribes are unrealistic based on 1934 land use. It is also clear that Commissioner Bennett's proposed line represents a conscientious effort to arrive at a just solution taking into account certain modifications to avoid future controversy concerning use of the Navajo tribal lands purchased prior to 1934.

I append hereto a description of the proposed area, together with provisions for operation of the same and of adjacent areas.

You are aware that this proposed boundary is delineated for administrative purposes and to advise you of the future Departmental recommendation in the event either tribe or the Department requests implementing legislation.

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

Identical letter to Chairman Nakai.
cc Mr. Harold E. Mott.

PROVISIONS FOR OPERATION OF PROPOSED HOPI-MOENCOPI AREA

PERMITS

Navajos now living and operating (grazing, agricultural and homesite) within the proposed exclusive Hopi Area will be given permits in the nature of life estates for the lifetime of the head of the household and the spouse to whom they are married as of the date of the Act. Hopis now living and operating in the Navajo Area will be given the same kind of permits.

WATER USE

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Northerly and northwesterly along the rim of Moencopi Plateau to a point on the projected section line between Sec. 11 and Sec. 12, T. 31 N., R. 10 E., thence,

North along said section line to the center of Moencopi Wash, thence,

Up the center of Moencopi Wash to a point where it meets the west boundary of Allotment No. 54, thence,

South and East to the SE corner of Allotment 52, thence,

North to the SW corner of Allotment No. 50, thence,

East and north around Allotment No. 50 to the NE corner thereof, thence,

West to the center line of the highway, thence,

Northerly and easterly along the center line of the highway to the east boundary of Sec. 27, T. 32 N., R. 11 E., thence,

South to the center of Moencopi Wash, thence,

Up the center of Moencopi Wash to the east boundary of T. 32 N., R. 12 E., thence,

South along the range line to a northeasterly extension of the Buck Pasture Fence, thence,

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Southeasterly to Windmill No. A–149, thence,

Southwesterly along Buck Pasture Fence to a point where said fence intersects the south boundary of Sec. 5, T. 29 N., R. 12 E., thence,

Westerly along the section line on the south boundary of Sec. 6, T. 29 N., R. 12 E., and continuing along the section line on the south boundary of Sections 1, 2, 3, and 4, T. 29 N., R. 11 E., to the point of beginning.

ASSISTANT SECRETARY HARRISON LOESCH'S BOUNDARY—FEBRUARY 20, 1970

DESCRIPTION OF PROPOSED HOPI-MOENCOPI AREA

1. Beginning at a point along the rim of Moencopi Plateau where the plateau meets the Navajo purchased land at approximately 5,000 feet elevation and on the north boundary of sec. 9, T. 29 N., R. 11 E. (projected) thence,

2. Northerly and northwesterly along the rim of Moencopi Plateau to a point on the projected section line between Sec. 11 and Sec. 12, T. 31 N., R. 10 E., thence.

3. North along said section line to the center of Moencopi Wash, thence,

4. Up the center of Moencopi Wash to a point where it meets the west boundary of Allotment No. 54, thence,

5. South and East to the SE corner of Allotment 52, thence,

6. North to the SW corner of Allotment No. 50, thence,

7. East and north around Allotment No. 50 to the NE corner thereof, thence, (Nos. 8 and 9 of this description replaces nos. 8 through 16 of Commissioner Bennett's description. Otherwise identical.)

8. West to the center line of the highway, thence,

9. Northerly and easterly along the center line of the highway to the east boundary of Sec. 27, T. 32 N., R. 11 E., thence,

10. South to the center of Moencopi Wash, thence,

11. Up the center of Moencopi Wash to the east boundary of T. 32 N., R. 12 E., thence,

12. South along the range line to a northeasterly extension of the Buck Pasture Fence, thence,

13. Southwesterly to Windmill No. A–149, thence,

14. Southwesterly along Buck Pasture Fence to a point where said fence intersected the south boundary of Sec. 5, T. 29 N., R. 12 E., thence,

15. Westerly along the section line on the south boundary of Sec. 6, T. 29 N., R. 12 E., and continuing along the section line on the south boundary of Sections 1, 2, 3, and 4, T. 29 N., R. 11 E., to the point of beginning.

SUPPLEMENTARY STATEMENT OF VICE CHAIRMAN WILSON C. SKEET BEFORE THE HOUSE SUBCOMMITTEE ON INDIAN AFFAIRS REGARDING THE DISLOCATIONS OF NAVAJO INDIANS OCCURRING IN THE 1882 EXECUTIVE ORDER AREA BY ESTABLISHMENT OF LAND MANAGEMENT DISTRICT 6

In 1936 and again in 1943, the boundaries of the exclusive Hopi Land Management District Six were changed by the Department of the Interior and the Bureau of Indian Affairs to provide enlargements to the Hopi Reservation. Each time the boundary was changed, Navajo families living near the previous line were included within the enlarged Hopi area and were forcibly removed and resettled by the Department of the Interior and the Bureau of Indian Affairs.

The *Healing v. Jones* decision presents a complete chronological account of the events leading up to the present Navajo-Hopi land dispute over the Executive Order of 1882 reservation and also describes the inequities and hardship suffered by the Navajo people who were forcibly removed from the area.

Although slaughtered Hopi sheep and shots fired at individual Hopis by unknown assailants may be the creation of the Salt Lake City public relations firm

retained by the Hopi Tribal Council, these forced removals of Navajo people by administrative fiat of the Department of the Interior and Bureau of Indian Affairs to abide by a boundary unconceived by either Navajo or Hopi may be the source of some of our present friction in the joint-use area. A boundary line and a forced removal of several thousand Navajo people from the joint-use area runs a serious chance of enlarging rather than settling this land dispute. It is therefore, essential that the Navajo and Hopi Tribal Councils through negotiations jointly and peaceably arrive at an acceptable—acceptable to the Navajo people living near the final boundary line—resolution of this problem.

REGARDING POPULATION ESTIMATES, 1882 EXECUTIVE ORDER AREA, CALENDAR YEAR 1971

Age group	Both sexes	Males	Females	Household heads		
				Male	Female	Total
All ages	10,550	5,198	5,352	1,407	361	1,768
Not stated	80	40	40	33	7	40
Under 5	858	402	456	0	0	0
5 to 9	1,850	933	917	0	0	0
10 to 14	1,730	876	854	0	0	0
15 to 19	1,431	747	684	3	6	9
20 to 24	1,066	498	568	44	27	71
25 to 29	720	359	361	114	52	166
30 to 34	578	266	312	179	30	209
35 to 39	505	210	295	180	42	222
40 to 44	436	215	221	212	42	254
45 to 49	357	149	208	144	30	174
50 to 54	243	107	136	106	33	139
55 to 59	185	100	85	98	18	116
60 to 64	152	74	78	74	14	88
65 to 69	144	84	60	84	24	108
70 to 74	91	56	35	56	18	74
75 to 79	49	35	14	35	7	42
80 to 84	42	29	13	28	5	33
85 to 89	18	9	9	9	4	13
90 to 94	5	4	1	4	0	4
95 to 99	6	3	3	3	2	5
100 and over	4	2	2	1	0	1

SUMMARY OF DATA ON GRAZING USE OF THE 1882 EXECUTIVE ORDER AREA, EXCLUDING DISTRICT 6, CONTAINED IN THE APRIL 1971 ANNUAL RANGE REPORT OF THE BRANCH OF LAND OPERATIONS, NAVAJO AREA OFFICE, BUREAU OF INDIAN AFFAIRS

Executive Order Area current use is tabulated in the following tables taken from the Navajo Annual Range Report. The common denominator of this table is Animal Unit Month. This can readily be converted to Sheep Units Yearlong.

	Total acres	Cattle	Horses	Sheep and goats	AUM grazed	AUM (1943 CC) authorized
Total EOA	1,825,346	4,906	2,659	52,393	255,936	205,197
Chinle Agency: District 4, total	767,513	2,436	1,189	22,960	115,947	63,201
Fort Defiance: District 7, total	303,746	722	534	9,810	46,104	66,435
Tuba City:						
Total	754,087	1,748	936	19,623	93,885	75,543
District 1	216,632	332	390	9,356	37,902	31,713
District 2	129,960	188	145	4,127	16,812	11,633
District 3	202,170	367	126	1,508	10,818	11,613
District 5	159,450	652	220	1,942	16,950	14,927
District 8	45,875	209	55	2,690	11,403	5,657

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HOPI PERMITTEES IN 1934 AREA WITHIN STEIGER PROPOSED AREA (ISSUED UNDER NAVAJO PERMIT)

Name	Permit No.	Sheep units	Horses
Walter Albert	138	137	1
Earl Albert	189	101	2
Steve Dallas	436	5	1
Ruth Dann	3-530	40	4
George Edwin	226	75	3
Russell Gaseoma	3-1088	280	6
Bryan Gilbert	278	48	4
Verna George	3-1109	35	1
Tom Holmes	477	15	3
Roger Honahni	123	152	4
Rowland Honahnie	476	10	2
Stanley Honahni	291	41	2
Big Phillip Hongeva	121	155	
Ethel Hongeva	3-1110	80	
Esna Hongeva	3-455	43	4
Edwan Honyestewa	399	15	3
Teddy Honyumptewa	3-62	65	2
Judith Horace	3-1108	35	1
Elouise Humetewa	3-1107	35	
Henry Humetewa	235	72	
Eric Humetewa	350	20	
James Humetewa	158	124	4
Ralph Jackson	3 1105	81	4
Clay Johnson	349	20	4
Roger Kaye	290	43	3
Burton Kaye	347	20	4
John Kapelva	381	15	3
Horace Hongeva Kapelva	410	13	1
Logan Loma	202	94	1
Howard Lomatewama	457	10	2
Wilson Kaye	348	132	4
Ernest Moore	411	12	
Ray Nasetoynewa	267	53	1
Guy Naseyuma	461	90	2
Allen Navayestewa	3-589	73	5
Earl Numkena	225	85	3
Herbert Numkena	3-742	72	3
Louis Numkena, Jr	3-741	73	3
Willie Numkena	243	64	4
Virginia Ocute	3-1106	35	
Simon Palingyumptewa	3-28	26	1
Palmer	346	73	3
Jack Pavinyuma	3-579	20	4
Amos Phillips	454	10	2
Waldo Phillips	458	10	2
Eli Selestewa	3-36	37	1
Wesley Seweyenptewa	444	58	2
Glen Seweintyawma	3-578	20	1
Seweyestewa	327	26	2
Harold Pauyetewa	330	25	5
Milo Tewa	266	54	3
Sammy Tewa	380	43	3
Roy Tewa	242	65	1
Dan Tuionewa	459	15	3
Bert Willams	408	13	1
Mark Taho	3-1067	15	3
Mike Tamatewa	421	10	2

REPORT SHOWING TRADITIONAL NAVAJO USE AND OCCUPANCY OF LANDS IN THE 1882 EXECUTIVE ORDER RESERVATION

This report entitled REPORT SHOWING TRADITIONAL NAVAJO USE AND OCCUPANCY OF LANDS IN THE 1882 EXECUTIVE ORDER RESERVATION was prepared at my direction by The Navajo Tribe's Research Section.

Contrary to the Hopis' allegation that no Navajos penetrated the area of the 1882 Executive Order Reservation prior to about 1848, this report summarizes the documentary data, archaeological findings, Navajo birth records, and other data which support the Navajos' presence there from earliest historic times—beginning in the Southwest in 1540—as well as their presence, use and occupancy of areas to the north, west, and south of the 1882 rectangle.

Preceding the narrative is a nine-page chronological summary of the 82-page text followed by 13 pages of documents cited in support of the text.

WILSON C. SKEET,
Vice-Chairman, the Navajo Tribal Council.

REPORT SHOWING TRADITIONAL NAVAJO USE AND OCCUPANCY OF LANDS IN THE 1882 EXECUTIVE ORDER RESERVATION

INTRODUCTION

The facts of Indian occupancy and use of the 1882 Executive Order rectangle from traditional times down to the present are now well established. Navajo settlements during historic times completely surrounded the three mesas on which the Hopis dwelt in their villages, refusing to move down until the 1890's, when the first Hopi—for whom the present town of Polacca is named—ventured to establish his family at the base of First Mesa.

Regarding Hopi claims to land beyond the three mesas, one writer, long familiar with Hopi land use patterns, stated: There are various conflicting claims made by the Hopi relative to land which they use. The Hopis, first of all, claim the North America continent from ocean to ocean. . . . The second claim is more conservative and approximates the area formerly occupied by the ancestors of the clans which now make up the loosely organized "Hopi Tribe." . . . It is an area of shrines, sacred natural features, eagle trapping locations, and regions where salt is obtainable. It is necessary to realize, concerning this second claim, that actual use is not the important thing. What is important is that this area be recognized as a sacred area. . . . In major land disputes with Navajos, the Hopis usually begin all discussions with a presentation of the religious claims, and then present the practical claims based on livestock or farming use . . . . (1)

Spokesmen for the Hopi Tribe contend that only after 1848 did Navajos commence to settle upon lands previously used by the Hopi's Anasazi ancestors, but long since abandoned by them, and that only after 1848 did Navajos settle within the 1882 Executive Order rectangle. (2) The record contains a profusion of evidence to the contrary. Equally tenuous are the unrealistically ambitious claims of the Hopis based entirely upon sporadic use, such as visits to faraway Anasazi ruins or sacred places. Evidence of actual occupancy of the vast areas claimed by the Hopi Tribe is nowhere to be found in the extensive record of trial in both the *Healing* v. *Jones* Case and the Hopi Land Claims Case, Docket 196, before the Indian Claims Commission. Except for Moencopi, not a single Hopi settlement, archaeological or otherwise, dating after 1700 A.D.,—when Hopis from the mesas destroyed their own village of Awatovi on the Jeddito Mesa for allowing Spanish Priests to return there—has ever been located or reported beyond the region of the three mesas on and below which their present villages are located. (3)

Documentary data, archaeological evidence including an abundance of early tree-ring dates, records of Navajo births, depositions and testimony of aged Navajo witnesses, amply support a long and continuous Navajo occupancy and use of traditional Navajo lands within the 1882 Executive Order rectangle and extending beyond to the west, north, and south.

The Hopis rely heavily for their territorial claims upon intermittent visits to Anasazi ruins and other places considered by them as sacred. Within and around the 1882 Executive Order area are also a number of locations held equally as sacred by the Navajos. (4) These include:

Inside the 1882 Executive order reservation

Awatovi, Balukai Mesa, Black Mountain, Cow Springs, Dove Springs, Elephant Feet, White Mesa, Juniper Ridge, Tonalea Red Lake.

North, South, and West of the 1882 Executive order reservation

North: Baby Rocks, Comb Ridge, El Capitan, Kayenta, Kinteel, Navajo Mountain, Oljeto, Paiute Canyon, Shonto.

South: Bitahochee, Elden Spring, Moqui Buttes, Oak Creek Canyon, San Francisco Peaks, Sheep Hill, Star Mountain, Sunset Crater, Sunset Mountain, Taylor Spring, Woodruff Butte, Wupatki.

West: Bill Williams Mountain, Black Butte, Black Point, Coal Mine Mesa, Colorado River Junction, Desert View Point, Fierce Water Spring, The Gap, Grand Canyon, Gray Mountain, Juniper Ridge, Lava Rock, Little Colorado River, Pasture Canyon, Red Butte, Red Mesa, Salt Cave, Shadow Mountain, Tuba City Springs, Williams, Arizona, Willow Springs, Yei Figure.

PART I—DOCUMENTARY DATA

The consensus is that Navajos were in and beyond the area later defined as the 1882 Executive Order Reservation as early as 1540. (5) In 1583, a Spanish expedition to Hopi led by Antonio de Espejo encountered many "Corecho" or

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"Querecho" Indians near the Hopi village of Awatovi on the Jeddito Wash. Historians identify them as Navajos. (6)

In 1629, Hopis learned that a group of Franciscan Monks were approaching their villages for the purpose, they were told . . . to burn their pueblos, rob their belongings and behead their children; . . . This news so disturbed the Moquinos that they secretly summoned in their favor the neighboring Apaches [during this period and into later times Navajos were more frequently referred to as Apaches], with whom at that time they had truce. (7)

In his Memorial of 1630, Fray Benavides described the Navajo Province as extending westward from the Rio Grande for 300 leagues, which, granting the paucity of geographical knowledge at the time, would, nevertheless, place it well beyond the Hopi villages and the 1882 Executive Order Reservation. (8) Eleven years later—in 1641—Spaniards campaigned against Navajos in the Hopi-Zuni area. (9)

In 1686, Navajos, then at war with the Havasupai Indians west of the Hopis, were of sufficient force to subdue that tribe. (10) It is unlikely that unless Navajos occupied the territory, they would venture so far west and beyond the Little Colorado River merely to wage a war. This document also is significant in terms of the validity of tree-ring dates for Navajo sites recorded in the Coconino Basin west of the 1882 Executive Order area. The document clearly establishes Navajos west of the Hopis in numbers large enough to subdue the Havasupais, and sixty-three tree-ring dates ranging from 1709G to 1798G, from hogans and other Navajo structures west of the Little Colorado River, corroborate Navajo settlement there following subjugation of the Havasupais. (11)

According to Hopi tradition, Navajos were in their province in connection with flocks brought in for distribution by missionary priests some time during the seventeenth century. (12) In 1691 a vermilion mine was reported as being "located twelve leagues west of the province of Moqui, in the lands of the hostile Apaches and Navajos." (13) The following year—1692—Navajo-Appaches warned the Hopis concerning Don Diego de Vargas, telling the Hopis that they "would all be killed and their women and children would be carried off" by the Spaniards. (14)

De L'isle's map published in 1700 shows "Apaches de Navaio" located northwest of the Hopi villages. (15) Some six years later—in 1706—Governor Francisco Cuervo y Valdez, in a detailed account, described the Navajo country:

The extensive province of Navajo is the seat, establishment, and dwelling-place of numerous rancherias of heathen Indians of this name. It extends about one hundred leagues from south to north. . . .

The western frontier of the Navajo Province he described as . . .

the large river [indentified as the Colorado] which, according to report, flows to the sea. In all this distance there live innumerable Indians of the same [Navajo] nation. . . . (16)

Two years later, on April 6, 1708, the Governor of New Mexico, in a letter to the Duke of Albuquerque, wrote that the Navajo Nation was continuously at war with the Hopi Indians. (17) By the end of the first decade of the eighteenth century—some ten years after the destruction of Awatovi—the Hopis had almost entirely abandoned the Valley of the Jeddito. (18)

In 1750 Ute Indians raided Navajos located in the vicinity of the Hopi villages. (19) A map published in 1769 shows the "Provincia de Nabajo" completely surrounding the Hopi mesa villages, and the San Juan River is the "Rio de Nabajo". (20) Jeffery's map of 1775 also shows "Apache de Navajo" Northwest of the Hopi towns. (21)

In a letter to Fray Fernando Antonio Gomez, Fray Silvestre Velez de Escalante wrote from Zuni on August 18, 1775:

The first pueblo of Moqui is a little more than 46 leagues to the west of Zuni. Today the province of Moqui has seven pueblos in an area of somewhat less than 5 leagues. (22)

Two months later, on October 28, 1775, Fray Escalante, still at Zuni, again described the domain of the Hopis: Beginning with the consideration of the province of Moqui. . . . I entered at the end of the month of June, just past, the province of Moqui . . . I stopped in the province for eight days. Having inspected the location, defense, herds, waters, and supplies of its pueblos, I am in a position to speak on the present occasion with some knowledge, . . . To the west, then, with very little inclination to the northwest, forty-six leagues from this pueblo of Zuni are the first three [settlements] of the province of Moqui. Today, in the area of four and one half leagues, it has seven pueblos which, in a straight line from east to west, are distributed on three mesas, or peñoles. . . .

After detailing the number of villages on each the three mesas, and the number of families resident in each, the Fray added: Thus the province of these [Hopis] has 7494 according to the computation made (without exaggeration). (23)

In yet a third letter referring to the conversion of the Hopis, Escalante urged the establishment of a Presidio in the Hopi province, and that they . . . be reduced by force to the domination of their legitimate sovereigns, be brought down from the penoles [mesas] to a plain and fit site. (24)

In 1776, when the Missionary Priest Francisco Garcés visited the Havasupai Indians, he was told by them that the Navajos were friends of the Hopis but enemies of the Havasupai, and that the trade route between the Hopi villages and Havasupai territory . . . was for them [Havasupais] very hazardous, on account of the war that they wage with the Yabipais Tejua and Napoa [Navajos] . . . their traditional enemies. Father Garcés later wrote:

All those whom I designate by the name of Yabipais are in reality Apaches. Also have they a great refuge and dispatch for the horse-herds they steal, in Moqui; for, as I have said, those of the Pueblo de Oraibe have friendship with the Yabipais Nabajay [Navajos], who are those who infest these lands. (25)

Despite the reportedly peaceful conditions between the Navajos and Hopis in 1776, Fray Francisco Atanasio Dominguez, who with Father Silvestre Velez de Escalante followed Father Garcés, reported on November 25, 1776, that

The Navajos and Yutas have killed, captured, and robbed the Moquis, and they are now at war with them. . . . (26)

During the same month, the Escalante party camped along the Colorado River at a place yet known as the Crossing of the Fathers, where they noted a long stairway built and used by the Navajo Indians, which descended down into the Canyon. Such construction efforts, although northwest of the 1882 Executive Order area, are not normally expended by transients or raiders, and are indicative of a degree of stability and permanence. (27)

When the Escalante party reached the Hopi villages, the Hopis communicated with them in the Navajo language both at Oraibi and at Second Mesa, (28) an unquestionable indication of Navajo-Hopi contacts sufficiently long and frequent enough for the Hopis to have learned the Navajo language.

Governor Juan Bautista de Anza, only a few years after the visit of Escalante's party, reported that there were comparatively few Hopis left in their country. It is evident from his reports that his tribe at that time occupied an even more limited territory than the five leagues attributed to them by Escalante, since there were not enough of them to maintain any sizeable area of land.

On November 1, 1779, Governor de Anza, in his efforts to convert the Hopis to Catholicism, informed Comandante-General Teodoro de Croix: . . . that if those [Hopis] who come [to the Rio Grande] wished to be organized as a part or as an entirely separate pueblo of their nation alone, that of El Sabinal would be put at their disposal or another which may accommodate them, . . . I have well founded information that when many [Hopi] families leave their pueblos they do it for the honest purpose of coming to give themselves up to us. This fortunate overture the Navajo Apache nation obstructs, intimating to them that we would not receive them. (29)

The following year, 1780, pestilence in the form of Smallpox and famine due to crop failures caused many Hopis to seek refuge among the Navajos. The Spaniards believed this to be a propitious time for their conversion, and also feared that, unless relieved, all the Hopis might join the Navajos who were hostile to the Spaniards. De Anza's persuasion through the emissaries he had dispatched to the Hopis finally elicited a promise from them on August 25, 1780, that forty Hopi families would migrate to the Rio Grande . . . on condition that I personally should go to bring them out . . .

The De Anza expedition left Santa Fe on September 10, 1780. Arriving at Awatobi on September 22, De Anza decided to await the return of emissaries he had sent ahead to Hopi.

At two in the morning some of the emissaries . . . returned with news that they had been cordially received . . . and that most of the caciques . . . begged me not to force any of their people to abandon their pueblos, as most of them desired to end their lives there, notwithstanding the misfortunes of war and hunger which they were experiencing. They added that the forty families, which had first summoned me, left fifteen days before my departure to await my arrival in the country and possessions of the Navajo Apaches, persuaded that they would give them shelter as friends, as they had done at other times . . . In this belief they had put themselves in the power of the Navajo, but these barbarians

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had committed the crime of murdering all the men and making prisoners of the women and innocent children. This lamentable event was learned through two of the former who had succeeded in fleeing and returning to their country.

De Anza decided to go on the Hopi, . . . the number of troops and Indians accompanying me were only those indispensable to guard me from the common Apache enemies.

On September 23, de Anza arrived at Oraibi. In conversing with the old Chief there, he stated . . . that with regard to the opening trade . . . they would enjoy coming and carrying it on in our country, if some day they succeeded in reestablishing themselves well; that he held it impossible because of the extermination of his nation and so much of their goods which they suffered because of lack of rains and pastures in addition to continuous war which the Utes and Navajos make on them. Of these he complained so bitterly. For this reason I offered to mediate with both nations. However, the perversity of this nation is, and according to old accounts has been so great, that he requested I refrain from that because he was firmly resolved to die at the hands of his enemies.

Comparing the Hopis with Escalante's summary of 7494 Hopis occupying seven pueblos on the three mesas, de Anza continued: . . . Today, the seven pueblos are reduced to five. The first and second have 40 families; the third, 45; the fourth, 10; and the fifth, the capital, Oraibe, from 38 to 40, which by the usual rule of six persons to a family would make the preceding 135 families, equal 798 persons. This is the most that will be found. From this it follows that in the three years previously noted 6698 have died, if some are not concealed from us living among the heathen nations, their friends. They have some horses; they assured us they have no more than five head in all the pueblos, no cattle and about three hundred sheep. The greater number of these we observed in the pueblo of Gualpi [Walpi]. The crops they now have are numerous, but have done badly as much as being in sandy soil as because it has not rained. We calculate they will not harvest in all two hundred fanegas of all grains.

These causes which have contributed to the extermination of these pueblos or provinces, all its natives agree, have been hunger and pestilence, the first because it has not rained since the year [17] 77, and from that has resulted the second. To this may be added the war which the Utes and Navajos make upon them cruelly. . . . Continuing with what has been described, my limited consideration marvels that the province or pueblos spoken of had existed many years in the fortune that the old chronicles show us. Today we see it in the last stages of its extermination, because it lacks the most fundamental things for its preservation since, in the four leagues or a little more in which Moqui is situated, where they are sowing there is no spring with which to irrigate ten bushes of any plant whatever. . . . I offered to mediate with their enemies, the Utes and Navajos, that they might permit them to live in peace. (30)

On January 17 of the following year—1781—De Anza wrote: . . . the Navajo Apaches, who are their [Hopis] nearest neighbors, are being increased by additions from these Moqui. The former having been our declared enemies, it is to be presumed that they would aspire to be so again, . . . The Navajo Indian tribe, as much by warlike acts and by the other deeds of violence which I have described, have possessed themselves of many of the Moqui. In this matter, I am persuaded that a larger number is included among them than appear to us, because the Navajo are continuing their bad conduct. (31)

On April 30, 1781, it was reported that more than two hundred Hopis had come to the Rio Grande, and considered . . . themselves happy on account of the reception and good treatment which has been given them, without caring to return to their old country where of necessity they must be afraid that war, hunger, and pestilence will pursue and annihilate them. (32)

In November of the same year, de Anza proclaimed the . . . inevitable extermination [of the Hopis] by the ravages of the epidemic of smallpox and of the war which the Utes and Navajos make upon them. (33)

Many of the Hopi converts who had settled in the Rio Grande Pueblos of Sandia and Santa Clara succumbed to the ravages of Smallpox, for during the winter of 1780–81—from December 11, 1780 to March 10, 1781—seventy Hopi were buried by the Catholic Priests of these Parishes, fifty-five at Sandia, and fifteen at Santa Clara. (34)

In the spring of 1801, the Navajos, still at war with the Hopis, were again waging war against the Havasupai Indians to the west. In the winter of that year a Havasupai boy, presumably a captive from the war, had been purchased by Spaniard and was baptized at Jemez, then a trading center for the Navajos. (35)

On February 16, 1819, Interim Governor Antonio Cordero reported that . . . there presented themselves to said Justice [of Zuni] five gentile Indians of the Hopi Pueblo, making known the oppression that the Navajo Nation has finally put upon them, as a result of having settled with all their goods at a distance of two leagues [five miles] from the same Hopi Pueblo [First Mesa], and consequently asking that they be aided on our part to free them from the damages that they suffer. (36)

Four days later, Governor Facundo Melgares informed Custos Hozio, head of the Catholic Church in New Mexico, that the Cacique and others of the Hopis Tribe were hard pressed at Ojo de la Vaca [Black Mesa area] by the Navajos, and were seeking help from the Spaniards; hence, there was hope of founding a Hopi mission. The governor stated that he was sending a division against the Navajos and asked prayers for success. (37)

The following month—March, 1819—Governor Melgares reported to the Comandante-General that he had just returned from his second expedition against the Navajos. During the campaign, troops under his command . . . attacked the Navajos in two pueblos of this [Hopi] tribe, Guaype and Tegua [Walpi and Tewa], . . . killed several and drove them very far away, making the Hopis see the frankness and promptness with which their well-being and tranquility is attended to. . . .

The governor also referred to the "many humiliations they have suffered from the Navajos," and further reported that Captain Don Andres Sanudo still remains with a party annoying those gentiles in their country.

Results of the campaign included thirty-six Navajo killed, and twenty of both sexes taken captive. Seized from the Navajos were 470 sheep and goats and 24 horses and mules.(38) The presence of such a quantity of Navajo stock is indicative of Navajo occupation of the area rather than of raiding or trading activities.

On August 21, 1819, a treaty concluded between Governor Melgares and Joaquin, Principal Navajo Leader, Gordo, the Peace Chief, and Captains Vicente, Salvador, and Francisco for the Navajos contained the stipulation, among others that the Navajos would . . . respect the persons and property of the Mouqi Pueblos, because this government takes them under the protection of its amiable Sovereign, in whose shadow they have been placed.

The treaty was approved October 26, 1819 by the Viceroy of New Spain, Count of Venadito, in the name of the King of Spain. (39)

That Navajos controlled lands within the 1882 Executive Order region and to the west of the Hopis prior to the Mexican period (beginning in 1821) is evident from the fact that the Havasupais had earlier retreated into Havasu Canyon, the cause of their retreat, according to William H. Hodge, being war with Indians "to the east," (40) which only could have been the Navajos, since warfare between the Havasupais and the Hopis is not known ever to have occurred. Leslie Spier also suggests that the attenuated Pueblo elements present in Havasupai culture were derived from an intervening group who "in the light of known contacts, must have been the Navaho." (41)

Certainly the Hopis were aware of the Navajos' presence in the 1882 area, for when Governor José Antonio Vizcarra penterated that region in 1823, the Hopis themselves not only reported the presence of the Navajos with their families and stock, but also guided Vizcarra to where they were located.

Governor Vizcarra's Journal of the Mexican Expedition that he led against the Navajos in July and August of 1823 provides considerable information relative to them, with their families and livestock, in the 1882 Executive Order area and region to the north. Proceeding westward to Canyon de Chelly, the expedition approached Hopi First Mesa on July 17, . . . having had news that there might be some Navajos and also their stock there. On my arrival I scouted the pueblo and tried to learn if they had any Navajo stock hidden among their own herd; finding none, I had the party retire, . . . At four in the afternoon the War Captain of this pueblo [First Mesa] came at my call, and offered to take me to where the Navajos had their camp and their stock; . . . near a mesa that has only one ascent, which they use in time of trouble.

On July 19, . . . I marched with a party of fifty men, . . . to reconnoiter the terrain of the Pueblos of *Moqui* as far as the last one, which is Oraibi. They total six. Their inhabitants number 3,000, more or less. . . . On the return three Navajos were sighted. They were chased, but could not be overtaken. . . .

On July 21, a Navajo rancheria was attacked, . . . killing five women and capturing nine slaves of both sexes, and taking twelve horses and mules and

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seventy head of sheep and goats. Likewise, Captain Don Miguel Montoya reported having attacked the Navajos on his march, and succeeded in killing two women and capturing eight slaves of both sexes.

On July 24, two Navajos were met; one was killed, the other taken prisoner. The following day, . . . a party of two hundred men under the Captain, . . . Don Julian Armijo, leaving for the Pueblo of Moqui to collect the livestock of the Navajo Segundo, which our Navajo prisoner reported was there. They were found, mixed among the livestock of the Hopis; the report verified, this Navajo was sent with the Captain to separate the Navajo livestock. At three in the afternoon the captain returned with three hundred and seventeen head of sheep and goats, together with three Hopis, who wished to separate their livestock from the rest which they did, picking out thirty-nine. I reprimanded them for having deceived me, telling me there was no Navajo livestock. I detained two of them as guides. At nine at night a party of three hundred men under the command of Lieutenant Colonel Don Antonio Sandoval left for Oraibi having had news that there might be Navajos there.

July 26. A party of two hundred men under the command of . . . Captain Don José Francisco Ortiz, marched, with Moqui as its destination, to separate Navajo livestock remaining in herds that they did not present. At ten on the same day he returned with forty-eight head of sheep and goats. . . .

July 28. I readied a party of five hundred men to march to the place where the Navajos were said to have gathered. At four in the afternoon, in discussing the expedition, the [Navajo] interpreter, Miguel García, informed me that the Hopi who said he would guide us declared that on the proposed route, and also where the Navajos were, there was only rain water. Because of this news I postponed the expedition because the heat was extreme. . . .

July 30. . . . . I marched with fifty men to search some areas where it was suspected there might be enemy habitations unknown to us. I rested at the head of the arroyo that flows down to the pueblo of Oraibi. . . .

July 31. At one in the morning I sent a party of twenty men to go to the top of the ridge, toward which I had moved since yesterday. At five in the morning I reconnoitered the mountain [Big Mountain, called Dzi Ntsah in Navajo] . . . . the senior soldier reported that on their way they had found a fortified mesa, but no habitation. [Site W-LLC-MD-11 recorded during the Navajo Land Claim Survey fits this description. It is located about three miles south of Big Mountain] . . . . Then I descended toward the arroyo where I had spent the previous night, but halted much higher up, about halfway between the arroyo and the mountain. Many tracks of sheep and goats, over fifteen days old, were found.

At about noon, very tired of traveling, I halted on the bank of the arroyo, on some cliffs where there is a large red rock [This was probably on the East Fork of the Dinnebito Wash]. After being there an hour, two Navajos with three mules appeared ahead. I detached ten infantry soldiers, but as soon as the Indians saw them, they left the mules and fled. At the end of another hour three Navajos mounted on horses were sighted in the same direction as those with the mules. I detached another ten men to a point where they could shoot at them, to see if they could wound or kill them. I did not realize that the troop was poorly located, and that the Indians saw them. A shot at them was merely a wasted bullet, and they fled. . . . August 1. . . . the march was resumed . . . . the tracks of an individual on foot, and barefoot, were found on a path. I followed the tracks and path for a quarter of a league. Shortly, he was overtaken and proved to be Navajo; he was killed and his quiver and bow were taken. . . .

Proceeding on to the Elephant's Feet and Cow Springs via Moencopi Wash, Vizcarra wrote on August 8, after attacking a party of Paiutes believed to be Navajos: . . . There only remained in my company the man who was to guide me to where a woman of one of the prisoners told him the Navajos were (although they did not wish to reveal it, we felt that they ought to know, for goats were found among them, which only the Navajos have). . . . I rested a short while where I had joined the others, and continued my march, the Ute [Paiute] guiding me (from whom I learned that the arroyo or canyon called Los Pilares is the same as Chellecito [March Pass area] where the Navajo Juanico should be). On the trip I came across the tracks of Juanico's horse herd and cattle at one in the afternoon. I followed it until seven at night. As it became very rainy and dark. . . .

August 9. I continued the march on the trail of the horse herd and the sheep and goats, which now were traveling together. . . . At noon, when I overtook this party, the Navajos appeared on the ascent to a mesa [Skeleton Mesa] among

them Juanico, who shouted from above that he wanted to talk to me. I replied in a few words that I had come to fight. I directed, in order to gain the ascent, that a party of infantry go to the right, and with the rest I ascended in front of where they were. At the first shots they abandoned their position, but continued opposing us and firing at us, with the intention of delaying us to give time for the flight of their livestock. I followed the trail without capturing them. They continued shooting. . . . As soon as we reached the top, a drove of cattle and several little herds of sheep and goats were sighted in the middle of another short, canyon-like pass. I gathered up all of them, left twenty men as guards, and continued on the trail. After going a short distance, the dust of the rest of the livestock was sighted. . . . I left men there to guard them, and continued with ten mounted men to gather up the herds of sheep and goats that were seen. (The Navajos always fled on superior horses.) I ordered the Lieutenant . . . Don Manuel Sanchez . . . to round up a few cattle that were seen near there. Upon moving some two hundred paces from me, approximately ten Indians attack him. I followed behind to protect him. They attack before I arrived. He faced them and made them retreat. . . . On arriving where the cattle had been seen, he was attacked by the ten Indians first seen, together with others on horseback and four on foot that were among the little rocks where the cattle were. Sanchez and those accompanying him quickly dismounted to oppose them, and the Indians attacked, the combat becoming hand to hand. . . . I arrived with the five men that accompanied me . . . the Indians fled at our attack, being satisfied with driving off five horses of those with Lieutenant Sanchez and seizing the ensign's gun, which they took from his hands in the fighting and carried off. No enemy was seen to fall, but Lieutenant Sanchez killed one of their horses with the only shot he had time to fire, so violently did they attack. . . . The Indians withdrew a great distance, even onto the heights, but others continued to overtake their stock. I proceeded slowly. I continued marching back over my own tracks, rounding up little bunches of livestock until I reached the first cows that I had left, which I found at the place where I left them. Here I spent the night without water, having traveled to the last place where the Navajos were overtaken, 25 leagues, and on the return, five—30 leagues.

August 10. I continued from this point over my own trail. . . . I counted the sheep and goats and cattle taken from the Navajos. Eighty-seven cattle were taken from them, and the sheep and goats counted here, after having eaten some and killed some through disorder, were 405 head. (42)

Governor Vizcarra encountering Navajos with their families and stock indicates stability and permanence, for certainly, Navajos on a mere trading or raiding expedition would not bring their families nor drive their stock before them.

In 1828. Navajos were living northeast of and contiguous to the Hopis. (43) The following year—1829—Antonio Armijo lead a party of sixty men on a trading expedition from Abiquiu, New Mexico to Santa Barbara, California. He procured a Navajo guide for his westward journey in order to protect the party from possible Navajo depredations. Armijo's diary shows Navajos occupying the country east of the Colorado River. (44)

Djasjini, a Hopi, was a boy at the time of the meteorite show of 1833. (45) and recalled that at that time Navajos lived on the mesas all round the Hopi villages, were friends, and came every day to the Hopi villages. Djasjini learned to speak Navajo well from being among them so much. In 1858, when he guided Lt. Joseph C. Ives' party, Djasjini had long been a full grown man. (46)

Peace between the Hopis and Navajo apparently was short-lived, for a few years later—about the mid-1830's or perhaps a little later, Navajos attacked Oraibi, westernmost of the Hopi villages, in such force that the Hopi suffered a severe defeat and the pueblo was practically annihilated. (47) In 1853, the Whipple and Ives Survey and Exploration Party reported of one of their Mexican herders:

A few years since, while he was playing at Covero Spring, he was captured by Navajoes. For nine months he was a prisoner, and followed the Indians in their wanderings. He accompanied a party of one thousand warriors through the Moqui country. (48)

It is likely that this was the war party that attacked Oraibi.

AMERICAN PERIOD: 1846–1882

In 1846 Navajos inhabited . . . the mountains between the Rio Grande and the Colorado [River] of the West. . . . (49)

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and the Governor of New Mexico reported that The Moquis are neighbours of the Navajoes and live in permanent villages. . . . (50)

Between 1846 and the Fort Sumner period when about half the Navajo Tribe was in exile, the Hopis . . . were surrounded by deserts and the fierce Navajoes, and these were sufficient to stop visitors or adventurers: only armies could reach them. (51)

On his sketch map prepared in 1849 suggesting areas for the location of Indian Agencies, Superintendent of Indian Affairs James S. Calhoun shows Navajos immediately north of the Hopis as well as west of the Colorado River and north of the San Juan. (52) About the 1840's some Havasupai strangers from Cataract Canyon came to a Navajo's . . . place a little east of the present Tuba, where I had some horses. They killed all of my family, my wife and children and some other women. I was not home then. (53)

About 1850 Peshlakai Atsidi, well-known headman from west of the 1882 rectangle, was born on the west side of Coconino Point, southwest of present Cameron. In March, during one of the early years of his life, Navajos held an *Ajinta*, or Fire Dance, in the area of Coconino Point. Many Navajos from all the country around . . . attended the event, which was held for Asdzaa Yazhee, the occasion being her return from Ute captivity. . . . She had been taken from her family's camp on Black Mesa. (54)

In October of 1850, Governor Calhoun in Santa Fe reported: . . . The seven Moqui Pueblos sent to me a deputation who presented themselves on the 6th day of this month. . . . They complained, bitterly, of the depredations of the Navajos. (55)

In the fall of 1850 a Spanish-American expedition attacked Navajos on the Mesa de la Vaca (old name for Black Mesa). The Commander of the expedition, Ramon Luna, wrote: . . . there I divided my forces and scattered them on the various routes to the Navajo country. I succeeded in chastising the Indians and taking their stock amounting to 5,000 Sheep, 150 riding animals, 11 Oxen and 28 prisoners, also 20 four (sic) men, who were delivered to by a Navajo who surrendered himself to save his life. We used up nearly 700 fanegas of their corn. (56)

In April of 1851 the Governor, War-Captain, and three other men of Zuni arrived at Cebolleta to deliver four soldiers who had recently deserted, and reported that the ". . . Moquis who are friendly with the Navajoes, . . ." had made frequent inquiries of the Zunis regarding the movements of the military, and whether a campaign was being "meditated against them." (57) The following month Henry L. Dodge, later to become Agent to the Navajos, reported from Cebolleta: The Zunians say that they learn from the inhabitants of seven pueblos of Moque that the Navajos are planting extensively in the Canon of Chey, that many of them are living to the west of the Canon of Chey near a mountain called the Calabasa [Marsh Pass-Skeleton Mesa area west of Kayenta] and that the rich have retired with their flocks and herds to the Rio St. John. I had a conversation with the Moques themselves and they stated to me that the Navajos came daily to their pueblos, traded them mules, horses and sheep for corn bread, red flannel, indigo etc. The Moques have a large number of government mules purchased by them from the Navajos. I obtained two of those mules in Zuni. . . . and I can with ten Dragoons go to Moque and get some fifty or sixty more with the aid of the Zunians and some Mexicans whom I have in my employ by paying to Moques ten dollars a piece which was the price I paid for those I brought here. (58)

In August of 1851 Governor Calhoun wrote the Commissioner regarding the Hopis: Thirteen Indians, from these Pueblos, visited me on the 28th inst. Their object was to ascertain, whether their Great Father, and they supposed me to be him, would do anything for them. They complained that the Navajos had continued to rob them, until they had left them exceedingly poor, and wretched, indeed, did they look. . . . These Indians seem to be innocent, and very poor, and should be taken care of. The Navajos having exhausted, or nearly so, the supplies of the Moquies, are now at peace with them, and will remain so, until the Moquies increase their stores to an extent that shall awaken their cupidity. . . . (59)

In October of 1851, Major Electus Backus, Commander at Fort Defiance, wrote: About 20th of October, 1851, forty Moqui Indians, headed by their governor, presented themselves at Fort Defiance, and requested an interview on the part of the Navajos, who, they said, were desirous of living on terms of peace and friendship . . . on the 26th of the same month, a formidable body of

Navajoes, well mounted, and armed with guns, lances, bows, and arrows, presented themselves in front of the garrison, and solicited an interview. It was at once granted and resulted in an agreement, on their part, to cease hostilities and depredations against the troops of the United States, the citizens of New Mexico, and the pueblas of Tunice (sic) and Moqui. (60)

Dr. Ten Broek, Surgeon at Fort Defiance, visited the Hopis in 1852, and noted: . . . There is a mountain, in the plain south-west from Moqui, which is covered with perpetual snow, and called by the Navajoes, Cierra Natary—the chief mountain [San Francisco Peaks]. They say that by riding very fast, one can go from here to the river in a day, or in two, by easy marches. The Navajoes say that a large party of Americans have been living all winter on the river near this mountain [Little Colorado River], . . . (61)

To supply such intelligence, the Navajos must have been living or ranging in the same vicinity west of the 1882 area.

Describing the Navajo country in 1853, Major Electus Backus wrote: The Navajoes occupy a large of country directly west from Sante Fe, extending from near the Rio Grande on the east, to the Colorado on the west; and from the land of the Utahs on the north, to the Apaches on the south. . . . The country occupied by the Navajoes is not susceptible of a high state of cultivation, . . . An exception . . . will be found at Tunice (sic) and Moqui, Indian Pueblos within the Navajoe territory. (62)

A similar description was written by Captain Joseph H. Eaton: Within the present confines of the Territory of New Mexico, are found three or four tribes of wild Indians; and interspersed here and there, in various parts of their country, are found small towns or villages of semi-civilized Indians, denominated Pueblo Indians. . . . In the western portions, embraced between the Del Norte [Rio Grande] and the Colorado of the West, dwell the noted tribe of Navajoes (63)

On November 21, 1853 Elder P. O. Pratt in Salt Lake City wrote the Editor of Deseret News regarding some New Mexico traders recently arrived in that city: They have for sale some hundreds of woolen blankets, or "serapas," some of which are manufactured by the Navajo Indians. . . . They live at a small town . . . on a stream called the Chama, . . . They traveled northwesterly from their town, crossing the river St. John [San Juan], a tributary of the Colorado, . . . and pursued a southwesterly course, entering the Colorado below the mouth of Grand River [At this time the Grand was part of the Colorado River above the Green River]. . . . On the south of this stream is the country of the Navijos; and further down on the same side, are the villages of the Moquis, built of adobies. They are seven in number; the principal of which is called Oriba. The country of the Navijos and Moquis is a fine, good soil, well timbered, mild climate, not much winter, abundant in pasturage, and produces large quantities of cattle, horses, mules, sheep, wheat, maize, peaches, melons, etc. (64)

On February 6, 1854 it was reported from Fort Defiance: . . . The Navajos and Moquis recently have been on unfriendly terms, the Moquis killing one Navajoe for theft, and Navajoes retaliating by killing five Moquis. . . . The Moquis are anxious for me to open a road to their Pueblos, in order that trading relations may be established with their people, expecting in this way to be able to cope with the Navajos in their difficulties thereafter, and perhaps to derive protection from us. (65)

Governor David Meriwether's Map of 1854 showing boundaries generally conceded to Indian Tribes and bands in the Territory of New Mexico, ascribes "35,000 sqr. miles" to the Navajos, including lands both on the north and south of the "Moquis". In his letter accompanying the map to the Commissioner of Indian Affairs, Meriwether wrote: I . . . enclose you a map with such boundaries marked upon it, as are generally conceded to the tribes and bands respectively; together with a rough estimate of the number of square miles contained in each boundary. It should be borne in mind, however, that these Indians claim and roam over a much greater extent of country than that which I have assigned to them on the map. (66)

W. W. H. Davis, Secretary to the Governor of New Mexico, wrote: One of the most interesting excursions I made in New Mexico was a visit to the country of the Nabajo Indians in the summer of 1855, who inhabit a region that lies between the rivers Colorado and San Juan, about two hundred miles west of Santa Fe. (67)

During late summer of the same year, Ethan Pettit and a party of Mormons from the Elk Mountain Mission (present Moab, Utah), traveled south to the area

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around Kayenta to trade with the Navajos. Pettit noted Navajo cornfields and melon crops and . . . that the Navajos are rich in goats, sheep and horses of which they have large numbers. (68)

From his diary, it is apparent that Pettit and his group crossed the San Juan River at the "Navajo Ford" near the mouth of Grand Gulch, shown on McComb's Map of 1860. (69)

About 1855–1857 Haschinisusu ("Small Man"), was born on the Little Colorado River at a point twelve miles upstream from Leupp. Just before his birth his parents moved to this place from about thirty miles north of Oraibi . . . because of crowded conditions there and the fact that relatives were already living on Little Colorado. (70).

On February 3, 1856, Captain H. L. Kendrick, Commander at Fort Defiance, wrote Army Headquarters in Washington that . . . the Navajoe Nation, whose 2000 warriors have been the terror & scourge of N. M. for forty years, with the Pueblos of Zuni & Moqui looking to us for protection against the Coyoteros as well as the Navajos—I trust you will believe that my time & attention are very sufficiently occupied in helping to maintain a peace which has not been broken since this Post was established. (71)

On April 19 of 1856 Navajo Agent Henry L. Dodge at Fort Defiance reported: I have recently seen a few fine rifles silver mounted, tobacco & Blankets among the Navajos near Moqui, which upon enquiring I found they had got from the Mormons in exchange for horses. They say that the Mormons asked them about the Americans that had a fort in the Navajo country and why they did not drive them out of their Territory for if they permitted them to stay in their country they would take the entire land from them in a few years. That these people may be operating upon the Utahs and Navajoes prejudicial to the interest of the U.S. is a matter that deserves to be enquired into. (72)

Two days later—April 21—Captain Kendrick reported that . . . when the San Juan is high the Navajoes cross it much lower than our knowledge extends.

Many crossings on the Lower San Juan are known and used by Navajos occupying the region as well as those travelling north to trade with the Mormons. (73)

Governor Meriwether's map of 1856 delineating boundaries of land claimed by various groups shows the "Claim of Navajos" completely surrounding the "Moquis" and extending to the Colorado River on the west. In his transmittal letter, however, Meriwether stated: There are no well defined and acknowledged boundary lines dividing the white people from the Indians of this Territory, nor between the several tribes and bands of Indians themselves. Each tribe and band claims all the land which its people have usually hunted and roamed over, . . . I think it probable, too, that the Navajos and Utahs have no valid claim so far west as the Colorado river, but I can gain no information as to where the western boundary of their claim should be placed; and as no other people inhabit the country west of the established claim of the Navajos and Utahs, and east of the Colorado, I have assigned it to those Indians.

On the south the Navajos' claim extended . . . over the Colorado Chiquito [Little Colorado] to the country of the Gila Apaches. (74)

When first known to history, the Navahoes occupied the country on the San Juan River and south thereof, in the northern parts of New Mexico and Arizona, and extended into Colorado and Utah. They were then surrounced by Apaches on all sides, except in the north, where they met the Shoshonean tribes. . . . the Navahoes claimed in 1858 all the land extending from the Rio Grande to the Colorado of the west, including as to-day [Early 1870's] the villages of the Hopis. (75)

On January 4, 1858, . . . an Indian, whose mother is Navajo and father is said to be Utah, living in the direction of the Moqui villages, came into the post [of Fort Defiance] and reported that he was on his return from a visit to the head men of the Navajo people, whither he had gone at the instance of some Utah chiefs who desired to make peace with the Navajoes. . . . The Indian who came here has been to Salt Lake City . . .

General John Garland, commanding the Department of New Mexico, prophetically surmised: There is reason to believe that the Utahs have been tampered with by direction of Brigham Young, whose object, also, is to extend his relations into the country of the Navajoes. (76)

When Lt. Joseph C. Ives visited Second Mesa in May of 1858, he noted the defensive location of the Hopi villages and wrote that . . . the position unfortunately does not protect the animals upon the plains below, and our friends [the Hopis] informed us, with rueful faces, that the . . . Navajoes had driven off a great deal of their stock during the previous year.

Lt. Ives next visited Oraibi and noted of the Hopis there: . . . All are wrapped in Navajo blankets, with broad white and dark stripes, and a crowd at a distance looks like the face of a stratified rock.

On the way to Oraibi Ives' . . . guide pointed out a place where the Navajoes had recently made a descent upon the Moquis flocks. . . . The herders had been utterly routed, and retreated to their pueblo, while the conquerors made off with all their stock.

On May 18, at Peach Orchard Spring (present Keams Canyon) east of First Mesa, Lt. Ives noted: After reaching camp two Navajoes rode in upon horses that we had seen yesterday hobbled near the Moquis pueblo. I supposed at first that they had stolen them, but a soldier told me that he had seen one of the men at Moosehahneh [Mishongnovi on Second Mesa], and that the Moquis had told him that there were two or three Navajoes there on a visit. That the latter should have the face to go to Moquis so soon after the recent foray speaks well for their boldness, but does not indicate much spirit on the part of the others. . . . A third joined them after a while, also from the direction of Moquis. (77)

During the 1858 campaign against the Navajos beginning on September 9 and terminating on November 20, one E. T. Bucknam at Zuni wrote to Colonel D. S. Miles at Fort Defiance that a Hopi Chief had come to Zuni . . . to consult with this Pueblo as to the best course he should pursue. . . . He says another Chief and about one half of his people are preparing to join the Navajos, that he with his tribe are afraid of the others, and will be obliged to seek protection somewhere, they cannot go through the Navajos to you, so they wished to bring their stock and come and live here. (78)

Miles replied: I regret to hear the Moquis show a disposition to join the Navajoes, if they do I will attack & destroy them . . . woe to them if they join our enemies. (79)

In outlining his campaign plans, Colonel Miles noted: . . . I will march through Pass Washington . . . The commands will then strike west on the north side of Canon de Chelly to its western mouth, then so. w. to Calabasha Sierra [north of Marsh Pass] and mesa to the west of Moqui, where most of the Indians with their families are now. (80)

Indeed, Navajos in the Calabasa Mountain had been attacked in September by troops under Captain W. L. Elliott's command. (81) Major E. Backus, commanding a second column of the expedition also noted that his troop would . . . follow the Navajoes to a large mesa near Moqui, where they [the Navajos] are driving their stock. (82)

After the 1858 campaign was over Colonel Miles noted that the Black Mesa north of the Hopi villages and Calabasa Mountain north of Marsh Pass were among the principal grazing areas of the Navajos. (83) In summarizing data with reference to Glen Canyon, well to the northwest of the Hopi, Dr. Gregory Crampton writes: The Navajos were probably generally familiar with the canyon country of the Colorado long before these years [1858–1864]. They must have hunted the high mesas and the slopes of Navajo Mountain bordering the canyon lands to which some of their number may have fled for protection from the Utes, their ancient enemies, who pressed them from the north and east. (84)

In May of 1859, some twenty Hopis arrived at Fort Defiance where they complained to the Commanding Officer of the frequent Navajo depradations. (85) In July of 1859 during operations against the Navajos, Major O. L. Shepherd was ordered to . . . march to the south south-west from Fort Defiance. It is desirable that this column proceed, if possible, to a mountain beyond the Moquis villages, where it is reported several of the wealthy Navajos have taken their stock and flocks, and where it is supposed some of the depradators and disaffected make their hiding place. (86)

In his report on his expedition, Major Shepherd noted: . . . Regarding the Moqui Indians, they appeared to be an honest and very industrious and simple-minded people, living almost entirely by cultivating the soil. . . . It is a well settled fact, from the best information, that the Navajo Indians live a great deal upon them; and what they don't sponge they rob, as is evident from there being no horses among them. (87)

During the same month, Navajos with large herds were reported north and northwest of the Hopis. (88) On September 1, 1859, Captain Walker's command was ordered to . . . march to the Mesa de la Vaca [Black Mesa], thence to the Mesa Calabaza [Skeleton Mesa] and to a mountain beyond, supposed to be southwest, where it is reported there are numerous cañons well watered, and where many Navajos reside with their flocks and herds. (89)

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On Black Mesa Walker ". . . saw many abandoned Navajo huts . . ." (90) Describing the Hopi Indians, Agent Silas F. Kendrick wrote: The Moquis live . . . about 70 or 80 miles from Fort Defiance, . . . They are inoffensive Indians, non-combatant, and make little or no resistance, even when they are attacked and are called 'Quaker Indians' by some. (91)

This was during the time of year when Navajos would have been in other areas tending their farms. (92) In November, 1859, on a trip to the Hopi towns, the Mormon Thales Haskell recorded north of the Hopi villages: . . . Indians said that we had better keep a good lookout for our animals as we are in Navajoe country. (93)

In December, the Navajo Chief Huero Miles lived at a place about 80 miles west of Fort Defiance ". . . near the Pueblos of Moqui." (94)

In July of 1860 another Hopi delegation to Fort Defiance complained . . . of the depradations committed by the Navajoes upon them. (95).

During the same month, a party of about 125 Mexicans proceeded from Fort Defiance to Black Mesa, where . . . they found too many Indians opposed to them to admit of overtaking stock, and finally on the Mesa de la Vaca [Black Mesa], where were great numbers of sheep, and horses, they were opposed by a thousand indians, and their being, a great want of water for both men & animals, they were therefore, compelled to return, with only four ponies captured. They reported about four Navajoes shot helpless, and some few others wounded. (96)

In the fall of 1860, hostilities against the Navajos by the Army caused many to take their flocks to the Calabasa Mountain, the Moqui villages, and the Sierra Lemita (Marsh Pass area). (97) In October 1860, Jacob Hamblin's party of Mormon Missionaries journeyed from southern Utah to the Hopi villages. Some twenty-two miles north of the Hopi villages, they encountered a group of hostile Navajos who killed George A. Smith, Jr., a member of their party. Retreating to the friendly camp of Spaneshanks, Chief of the Navajos in that area, the friendly Chief would not allow the hostile Navajos, who were from Fort Defiance, to further harm the missionaries. Spaneshanks, of long residence in the area, was the father of Ira Hatch's Indian wife, who accompanied the missionaries. The Chief had given his daughter to the Mormons some years previously. Adopted and read by them, she later became one of Ira Hatch's wives. (98)

In December of 1860 Colonel Ed. R. S. Canby wrote: . . . that from information derived from the Navajos recently captured, and from the delegations that have visited this post and Fort Defiance to ask for peace, indicate that the great body of the wealthy Navajos with their flocks and herds are now in the vicinity of the San Francisco Mountains. This information derived from different sources is confirmed by our own observations. . . . Six weeks or two months will probably be required for a thorough examination of the country in the neighborhood of the San Francisco mountains and that north of the Moqui villages. (99)

The Navajos actually were retreating into territory which they claimed and controlled. (100)

Early in February of 1861, Canby reported from Fort Fauntleroy that prior to treaty negotiations: The Navajoes are assembling in large numbers. About 2000 are already encamped in the neighborhood of the post. . . . The Indians from the neighborhood of the Moqui villages are represented to be on their way in, but have been delayed by the depth of the snow. (101)

John Ward, Agent to the Pueblo Indians, visited the Hopis during 1861, and later wrote: A short time previous to my visit to them they had been attacked and robbed by the hostile Navajos; and to make their conditions worse the independent campaigns from this territory against the Navajos had also gone to their village and taken from them even the very corn they had in store for their subsistence. This was done, as afterward learned, under the plea that the Moquis were in league with the Navajos against us. (102)

In 1862 Navajo Country was defined as being bounded on the west by the Colorado and Virgin Rivers. (103) Travelling from the west to the Hopi Villages, in the same year, the Mormon John Steele reported on December 18th: . . . at last came in sight of the long looked for village standing upon a high prominent point of rocks; . . . found them prepared for war, they having seen us, . . . There were several hundred of them assembled . . . for they took us for Navajoes , . . Of late that wicked nation has robbed the people of this village of many of their flocks and sheep and goats. . . . they are industrious and wish to live in peace, the Navajoes love to steal from them. . . .

After leaving the Hopis, Steele noted some Twenty-two miles north of Oraibi: There is cottonwood timber here and the Navajoes have made corrals here for their sheep. There is a nice little meadow here upon which the Navajoes were

camped, when our brethren were here two years ago, when George A was killed. . . .

As the party traveled towards the Colorado River, other Navajos were encountered on December 25th and 27th. (104)

Havasupai traditions place Navajos at several locations west of the Little Colorado River in 1862 and prior to that time, (105) and Big Jim, a Havasupai born about 1855, testified in 1942 that as a boy his playmate was a Navajo boy. (106) George Hunt, a Yavapai born in 1856, placed the northern boundary of the Yavapai when he was a "young growing boy" at present Flagstaff, and described the Navajos as living "to the north and east" of the Yavapai boundary. (107)

Many Navajo family groups from the Western area did not go to Fort Sumner—(1863–1868)—but remained near the places of their birth and residence, or retiring into nearby canyons, on to mesa tops, or north of the San Juan River, to avoid attack or capture. While many of the Tribe were at Fort Sumner, others farmed, hunted, and herded their stock over the 1882 Executive Order region, and to the north, west, and south, to where many Navajos returned in 1868 after returning from the Fort Sumner exile. (108) From very early times, the Hopis kept close to their three mesas to avoid conflict with the Navajos, and the Navajos considered that the Hopis lived within the Navajo Country. (109)

In July of 1863 Colonel Christopher Carson on the Pueblo Colorado recorded:

From a Pah Ute woman captured, I ascertained that a strong party of Navajoes, with a large herd of sheep, cattle, and horses, were at a pond of water about 35 miles west of here. (110)

This location would be in the Keams—Jeddito Wash area. The following month, the troops attacked Navajos, with their herds, northwest of White Cone. (111) Keams Canyon was long a favorite resort of the Navajos, who planted corn and melons there. In 1863 Navajo attacked troops camped there in a well-planned attempt to capture their animals. (112) Also during August of 1863, Navajos at Howell Mesa west of Oraibi were attacked by the troops and their Ute allies, killing and capturing some of the Navajo livestock, and destroying their cornfields. In his report, Carson stated: From all I could learn from the Moqui Indians, and the captives taken, the majority of the Navajoes with their herds are at the Little Red River [Little Colorado River], and this is confirmed by my own observation. (113)

In September of 1863, Carson's troops at Grand Falls on the lower Little Colorado River . . . saw and pursued 7 Navajoes with about 15 horses; but, owing to the broken-down condition of our horses, the Indians escaped. They captured 1 child. (114)

In October of 1863, Colonel Carson wrote Army Headquarters in Santa Fe relative to . . . the condition of the Moqui and Oribi tribes of Indians inhabiting the villages ninety (90) miles west of this post [Fort Defiance]; and to their position as regards the Navajos. . . . They have little or no flocks or herds, and what little they have is kept on the insecure tenure of forbearance on the part of the Navajoes, by whom they are surrounded, and it is to this forbearance and services rendered by them, such as herders, spies, etc. that they are permitted to exist at all. Under these circumstances it is not surprising that the Navajoes are continually advised of the movements of any body of troops operating in the vicinity of the Moquies. And, apart from any consideration of humanity, I would respectfully suggest the necessity of removing them to some more hospitable section of the country, and where they would be out of the power and influence of the Navajoes. . . . Until they are removed I am satisfied that there will always be a barrier opposed to the removal of the Navajoes. (115)

On November 15, 1863, Carson left Fort Defiance . . . for the purpose of exploring the country west of the Oribi villages, and, if possible, to chastise the Navajoes inhabiting that region. . . . On the 21st, arrived at the Moqui village. I found . . . that the inhabitants of all the villages, except the Oribi, had a misunderstanding with the Navajoes, owing to some injustice perpetrated by the latter. I took advantage of this feeling, and succeeded in obtaining representatives from all the villages, Oribi excepted, to accompany me on the war-path. My object in insisting upon parties of these people accompanying me was simply to involve them so far that they could not retract—to bind them to us, and place them, in antagonism to the Navajoes. . . . Before my arrival at Oribi, I was credibly informed that the people of that village had formed an alliance with the Navajoes, and on reaching there I caused their governor and another of their principal men to be bound, and took them with me as prisoners . . .

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Carson marched his command 65 miles west of Oraibi to Moencopi Wash where . . . my command captured 1 boy and 7 horses and destroyed an encampment.

The following day a Navajo attempted but failed to have a parley with Carson's troops. On November 25, . . . we captured 1 woman and child, about 500 head of sheep and goats, and 70 head of horses, and destroyed another Indian encampment. There were 5 Indians with this herd, but on our approach they fled. . . . I encamped on the table-lands of the river, and that night sent out spies, who, on their return, informed me that the Navajoes were in the vicinity. . . I sent out two parties of 50 men each. . . . The parties returned to camp late at night without having found any Indians, although they found every indication of where they had recently been; in some places the fires were still burning. . . . Our camp of this day is about 25 miles northwest of the San Francisco Mountains. (116)

Late in December, troops were ordered to campaign against Navajos on Black Mesa where: The Colonel Commanding [Carson] is satisfied that there are a considerable number of Indians. . . . and he is equally well satisfied that you will use every exertion and precaution to enable you to overtake and chastise them.

The 'Scout' resulted in one Navajo killed, one wounded, and thirteen taken captive. (117) In 1863, Hopis attacked a large group of Navajos north of their villages. (118)

On January 11, 1864, . . . two squaws came into the Post [of Fort Defiance], who reported . . . that they had been traveling for ten days through the cold and snow. They stated there were a large number of Navajoes near the Moqui villages, who were willing to make their submission to the Government and remove to the Bosque Redondo, provided a company or two of troops would protect them and their stock in the removal. (119)

On February 16th, Superintendent of Indian Affairs Michael Steck wrote the Commissioner: With reference to the proper location of the Navajo Tribe, I would state that in my judgment there is no place so well calculated to make a permanent home for these Indians as in the valley of the Colorado Chiquito [Little Colorado River] in the southwestern part of the country now occupied by that tribe. . . . By selecting the location recommended in the valley of the Colorado Chiquito, the reservation will be further removed from mining interests than at Bosque Redondo. (119)

In March of 1864, Carson wrote: There is no doubt in my mind but that the strength of the Navajo Nation has been underrated, and that there is five or six thousand still at large; and these the most wealthy and powerful . . . living in the region of the San Francisco Peaks and southwest of the Little Colorado River. (120) On April 24, it was reported from Fort Defiance that . . . all the Navajoes, rich and poor, are now en route to this Post. . . . The greater portion of them above just started from the west of the Colorado Chiquito and it will be from fifteen to twenty days before they are in . . . (121)

Five days later—April 29—Captain A. B. Carey further reported that . . . on the morning of the 25th inst. a Navajo Indian arrived here and reported . . . that while en route to this Post with families and herds he was attacked in the vicinity of the Moqui Village by a party of Mexicans and that all of his family were either killed or captured and his herds taken by the Mexicans. About noon of the same day another Indian arrived . . . and stated that all the Indians who were en route to this post had on being attacked turned back, separated and fled to the mountains. This second Indian stated that all his herds of horses and sheep were captured. (122)

On May 19, 1864, Jose Antonio Mansanarez, Agent to the Utes, reported from Abiquiu, New Mexico: Some two weeks since a party of citizens from the Conejos and Rito Colorado passed by this place on their return from the Navajo country, and stated that they had been two days' travel beyond the Moqui Pueblos (villages) accompanied by twenty five Indians from those Pueblos. They also stated that they had taken considerable amount of stock from the Navajos, sheep and horses and several captives, but few hours afterwards they regretted having done so from the fact that they found themselves surrounded by a party of over two hundred Navajoes, all mounted, but at last they succeeded in killing eighteen of the Indians (I saw some of the scalps which the party brought in), and made good their retreat with a portion of the stock, besides over two hundred dollars worth of silver plate for belts, saddles, buckskin, &c. (123)

During the summer of 1864, some two thousand Navajos were brought in from the vicinity of Navajo Mountain north of the 1882 area, (124) and on July 6,

1864, Captain P. W. L. Plympton reported from Fort Defiance: . . . I understand that there are supposed to be some 3,000 beyond the 'Colorado of the West. (125)

Six days later, Captain Plympton reported that many Navajos ". . . are living beyond the Moquis, cultivating the lands. (126)

In August of 1864, Major Julius C. Shaw reported from Fort Defiance that . . . many more Navajos would immediately come in but are afraid to do so, owing to the pernicious influence exercised over them by the Moqui & Zuni Indians, who persuade the Navajos that the Govm't is taking all the stock and killing the male Inds. upon their arrival at the Bosque Redondo. (127)

In the fall of 1864, Pawny-shank and a few other Navajo Indians (who live to the E.S.E. of here [St. George, Utah], about 175 miles on the opposite side of the Colorado, near Pawny-shank Mountain [Navajo Mountain], came to some of our eastern settlements on a visit, pretending to be friendly. They were well received and fed by our people; however on their return home they stole a number of horses from a settlement called Kanab, about 80 miles from here, doing this entirely without the least provocation. (128)

In October, a party of Navajos who had escaped Carson's roundup were ". . . living near the Moqui Villages," (129) and during the same month Superintendent Steck referred to the Little Colorado River as being "in their own Territory." (130) The Hopis also continued their depredations against Navajos in 1964. (131)

Early in 1865 Jacob Hamblin was told by Hopis that the old Navajo Chief from north of the Hopi Villages, the friendly Spaneshanks, had been discarded by his band, and that his son had succeeded him as Chief and was disposed to raid at any favorable opportunity. (132) On February 8, Major Eaton reported from Fort Wingate: . . . There has lately come from the Conino Mts. [San Francisco Peaks] three ranchitos, say thirty souls. One of these Indians was about the largest stock owners in the Navajo country, but Utes cleaned him out leaving him only six horses. This party are on their way to this Post and will probably be here in about ten days. (133)

On March 21, General James H. Carleton questioned Herrera, a Navajo Chief, on how many Navajos were still back in the old Navajo country. Herrera replied that . . . there are now six small parties. The first one is beyond the Colorado Chiquito and consists of fifty souls all told, men, women, and children. . . . There is a sixth party at the Mesa de Calabasa [Marsh Pass area west of Kayenta], which has some stock, say 2,000 head of sheep and 100 horses. (134)

In the spring of 1865 a Navajo woman . . . and six others were captured near the Moqui Villages by a party of citizens and taken to the Rio Grando & sold. (135)

On July 24, Colonel Shaw reported from Fort Wingate: . . . a citizen named Juan Vigil reported to me this inst. that he in company with fifty one other citizens left Abique N. M. on the 19th day of last month on a scout against the Navajoe Indians, that after having passed over a great portion of the Navajo country finally upon the 8th inst. they encountered at or near the San Francisco Mts. about two hundred warriors, Navajoes & Apaches combined, with whom they had two fights. . . . They killed nine Indians, and recaptured a Mexican boy of some ten years of age, and captured eighty five Ind. horses and about one thousand head of sheep. . . . On the third day after the 2d fight . . . the Indians surprised the herders (twenty two in number) and retook all their stock excepting some fifty or sixty sheep which had been killed for the subsistence of the party. (136)

In September of 1865 Superintendent of Indian Affairs Felipe Delgado wrote the Commissioner with regard to the Navajos: . . . The Colorado Chiquito is urged by those opposed to the Bosque [Fort Sumner] as a more suitable location for the Navajoes. . . . It is adjacent to the endless mountain fastnesses heretofore occupied by the Navajoes, with every part of which they are well acquainted from a long residence there. (137)

From Fort Wingate, Captain Butler reported: . . . a Navajoe Indian with his family (wife and child) arrived at this post and surrendered himself for the purpose of being sent to Fort Sumner. He calls himself (Cabellado Chino) says he came from the other side of the Moqui Villages and formerly belonged to Manuelito's band. This body, he says, has been dispersed by the Utes . . . The party was attacked by the Utes, he states, about 2 months since [November, 1865] near Mesa de la Baca [Black Mountain]; several Navajoes were killed—no Utes. He was absent hunting when the fight took place and the Utes took all his stock 27 horses and Mules and a large Number of Sheep. The greater

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portion of the Men, who could not effect their escape by flight, were killed by the Utes. Cabello Blanco the Ute Chief took the survivors and a large number of women and children with him to his own country. (138)

During the same month, on November 26, Captain Montoyo reported from Fort Wingate: . . . From the Zuni Indians, and some Moquis (whom I met at Laguna Salada [Zuni Salt Lake] I heard that . . . a few Navajoes, who still remain hostile, are located on the Colorado Chiquito beyond Oraibe. . . . Citizen scouts are now en route to Oraibe and will, I think, discover there the Navajoes to whom I have alluded. (139)

Also during November a citizen expedition from Cubero, New Mexico led by Antonio Mexicano campaigned against the Navajos northwest of the Hopi villages, In his report, Mexicano referred to the Moencopi Wash as ". . . a resort of the Navajos . . ." (140) and to get there ". . . they travelled over a great portion of the old Navajo country. . . ." (141) A third member of the expedition reported: I took 32 Moqui Indians for species. When I arrived at the place where Col. Carson passed in his expedition . . . I found that the Moquis were not acquainted with the country . . . These Ariabe [Oraibi] Indians are well supplied with provisions as are also the Mosquis, and they are at war with the Navajo. (142)

In January of 1866 Chief Manueltio was on the Little Colorado . . . having with him only his brother, 'El Ciego' the family of the latter and his own family. They have barely animals enough to transport their families. Manuelito has some corn buried, which he digs up from time to time, and trades for provision etc, with the Moquis. (143)

Other Navajos lived west of Hopi. (144) In April 1866, Captain Montoya recommended that the only chance to capture Navajos still at large "is to send a scout for sixty days beyond Oraibe and Moqui villages." (145) In the Spring of 1866, . . . Navajos were wont to cross the Colorado, scatter into small bands, make swift raids on the Mormon settlements, gather up horses, cattle and sheep and flee back across the river. . . . Navajos were concentrated east of the Colorado . . . (146)

In July of 1866 Navajos from the Marsh Pass and Black Mountain areas surrendered to the military. (147) The following month Navajos from the Little Colorado River surrendered, (148) and in December, more Navajos from west of the Hopi villages. (149)

During treaty negotiations at Fort Sumner just prior to the Navajos' return to their homes, Chief Barboncito stated: There is another mountain called Mesa Calabasa [north of the 1882 area] where these beads which we wear on our necks have been handed down from generation to generation and where we were told by our forefathers never to leave our own country. (150)

Upon their return from the Fort Sumner exile, many Navajos were wandering from the Continental Divide to the San Francisco Mountains in search of food, locating their old hogans and grazing grounds, and re-establishing themselves among their Navajo clansmen who had remained behind. The 1861 Treaty Reservation was . . . too small for a pastoral people, and in view of the fact that the country for many miles around had previously been occupied by the tribe, the Navajo soon spilled over the Reservation boundary and reoccupied the areas where they had lived before going to Fort Sumner. (151)

On the western side, they reoccupied the good grazing ground of the Mesa Calabasa, some seventy miles beyond the true reservation. (152)

Soon after the Navajos returned from Fort Sumner exile and were again settled in their country, Captain A. D. Palmer was assigned to the Hopis as their Special Agent. On November 30, 1869, in a preliminary report, regarding them, he wrote the Commissioner of Indian Affairs: . . . They are extremely poor, as compared with the Majority of the Pueblo Indians in New Mexico & Arizona. . . . They were at one time contented & happy but bad seasons, sickness and the thieving propensities of their immediate neighbors & hereditary enemies the Navajos and Apaches, have made & kept them poor. They appear to be contented with their country and desire to remain there, if they can be assured of protection or of the means of protection against their above named enemies. I shall endeavor to make a treaty between them and the Navajo, who are nearest to them, as soon as practicable. They have no arms but their bows & arrows; the Navajos are well armed with various kinds of fire arms, and the Moquis say, that until they can acquire or receive fire arms, they have no hope of improving their present condition, as their crops, their animals & themselves, are continually at the mercy of their enemies. (153)

The following month—on December 20, 1869—Special Agent Palmer wrote again regarding the Hopis: . . . The Moqui Villages are seven in number and are located about (100) one hundred miles nearly due west from Fort Defiance . . . They are built on high abrupt "mesas" or table lands (which jut out into a broad plain) . . . accessible by foot paths cut in solid rock. . . . The Moquis are very poor . . . They state they were at one time well off, but the thefts of roving bands of Apaches & Navajoes have greatly reduced them. . . . Their number by actual count is, all told (1595) one thousand five hundred & ninety five. . . . Taking into consideration the general character of the Moquis and their present destitute condition, I regard them as eminently fit subject for governmental assistance. They desire in any event to remain where they are. (154)

In 1870, Special Agent W. F. M. Arny recommended a sub-agency for the Navajos at Mesa de los Calabases, adding: At this last place . . . a Navajo chief with nearly a thousand Indians are now located, have prospects of good crops, and desire to remain there. This location is over a hundred miles from the agency at Canon Bonito [Fort Defiance] and is off the reservation 72 miles from the west line . . .

Agent Arny wrote several times of this band, stating on November 4, 1873 that the chief . . . lives at the foot of 'Mesa Calabasa' . . . He has between 1500 and 2000 Indians with him, and under his control. (155)

By Executive Order of October 29, 1878, and January 6, 1880, the Navajo Treaty Reservation of June 1, 1868, was extended westward to 100° longitude, which line was later to become the east boundary of the Executive Order Reservation on December 16, 1882. (156) In 1881, Galen Eastman, Navajo Agent, reported to the Commissioner with reference to Navajos . . . who have always resided west and north of this [Treaty] Reservation, and who did not go to Fort Sumner, or sign treaty in 1868. (157)

Some months before the 1882 Executive Order Reservation was established, U.S. Indian Inspector C. H. Howard made on-the-spot examinations of both the Navajo and Hopi Agencies, submitting his lengthy reports to the Secretary of the Interior. In his report on the Navajo Agency dated October 25, 1882, he wrote: . . . After much careful study upon the ground and riding horseback several hundred miles and conferring with the more intelligent of the Navajos and with all the respectable white citizens interested, I came to the conclusion that it was not best to try to maintain the Western boundary [of the Navajo Reservation which then was synchronous to the east boundary of the yet-to-be-created 1882 Executive Order Reservation] as now defined. . . . a still more important fact is, that even at the present time at least one half [of the Navajos], and some put it a higher proportion, are located beyond the western boundary. They have had their homes there for many years; some said ever since their return from Fort Sumner in 1868; others never went to Fort Sumner and had lived all their lives at a distance of one hundred miles or thereabouts west of the west of the western boundary. It should be noted that the seven villages of the of the Moquis are in this region. One of them about twenty miles from the western boundary, and one as far as fifty miles. . . . The Navajos are all about them and somewhat intermarried with them. They have more or less of relations in common and frequently have difficulties between the two tribes which must be settled by some common umpire. There are only 2000 of the Moquis. . . .

In recommending that an Industrial School be built at Keams Canyon, the Inspector added: This would be seventy miles [west] from the present Navajo School. But the Navajos extend for one hundred miles or more west of that point [Keams Canyon], and it would be available, also for the 2,000 Moquis. . . . I therefore recommend that a new Reservation be designated for the accommodation and management of the Arizona Navajos, i.e., all living west of the present boundary line of their Reservation and that this new Reservation be extended at least one hundred miles to west [this would be to the Colorado River], and far enough to the south to embrace the villages and lands now cultivated by the Moquis; . . .

Howard wrote that some 8,000 Navajos lived west of the 110° longitude, the west boundary of the Navajo Reservation at that time, and the east boundary of the 1882 Executive Order Reservation created a few months later. (158)

In his Report on the Moqui Agency submitted about a month later—November 29, 1882—and some 17 days before the Executive Order of December 16, 1882, Inspector Howard wrote: . . . I took care to see in person some of the chiefs and leading Navajos living far beyond the western limits of their Reservation. I soon ascertained that these Western or Arizona Navajos . . . were in many ways related to the Moquis, that their interests were reciprocal, . . . the Moqui Agency [at Keams Canyon] . . . is inadequate to deal with the great body of the Navajos, who live in that region and whose flocks and herds are constantly

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overruning the cultivated land of the Moqui, . . . the Navajos situated in that distant and inaccessible region. . . . number some 8,000 or more and extend more than one hundred miles to the west and north. It must be borne in mind that this extensive tract of country is occupied for pasture by the Navajos on the north and west, and for tillage and pasture by the Moquis on the south. . . . I have already demonstrated . . . the impractibility of crowding back these 8,000 Arizona Navajos upon their present Reservation. It is barely sufficient for the flocks and herds of those already located upon it, and these will naturally increase as they have for ten years past. . . . It would be fatal to self-support to force the Western or Arizona Indians in upon this already scanty pasture land. Another fact, the greater part of these people have lived where they now do, or in this general region, for many years. . . .

The Inspector recommended a reservation for the Navajos, to extend far enough south to include . . . the southernmost Moqui village and its contiguous farms, cultivated by the Moquis . . . as follows: Eastern boundary identical with the Western boundary of the present Navajo Reservation; its Northern boundary identical with the line between Arizona and Utah; its Western boundary a line paralled with the Eastern, one hundred miles to the West, . . . [This would be about to the Colorado River, or the present western boundary of the Navajo Reservation] (159)

Inspector Howard's recommendations, however, were bypassed in favor of that submitted by Hopi Agent J. H. Fleming on December 4, 1882, which read: . . . Make the N.E. corner of the intersection of 36°30′ with the 110° meridian—running thence west to 111°—thence east to 110°—thence north to place of beginning. (160)

Supported by the Commissioner of Indian Affairs, (161) Agent Fleming's rectangle became a reality on December 16, 1882, when President Chester A. Arthur issued his Executive Order setting it apart . . . for the use and occupancy of the Moqui, and such other Indians as the Secretary of the Interior may see fit to settle thereon. (162)

In his report to the Commissioner for 1890, U.S. Indian Agent C. E. Vandever wrote lengthily with regard to the Navajos and Hopis. Of the Navajos he wrote in part: . . . During the past year I have spent much of my time in visiting every portion of the reservation. It has been my endeavor to study the tribe thoroughly by learning all I could of their past history, traditions, and habits and customs. . . . The Navajos, although they early encroached upon the ancient Moquis, seem to have met but little resistance from that people, . . . The area of the reservation is about 11,500 square miles, but as they have always ranged over the greater part of the adjoining Moqui Reservation, 3,000 square miles may be added, giving a total of 14,500 square miles of Navajo country within reservation lines. . . . The surging conflict lies here: that many of the inherited lands of the Navajos lie some distance beyond the established Navajo Reservation. They have roamed and lived in these surroundings from time immemorial, and it is almost a matter of impossibility to explain to them our scheme of restricted landholding. No explanation can be made to them of the difference between an acre and a square mile, so far as possessory title lies. Wherever grass grows, there they think their sheep and horses ought to graze. (163)

Of the Hopis he wrote: . . . I have studied them as carefully as circumstances would permit, and now give the result of my investigations. The Moqui differ in many ways from their neighbors, the Navajo, these two tribes presenting many contrasts in habits and character. The saucy, arrogant Navajo leads a kind of Bedouin life, while the timid, unresisting Moqui cling closely to their old villages perched on the cliffs. . . . The Moqui goes afoot defenseless, and will trot a long distance out of his way to greet the American with a conciliatory hand-shake . . . Their country was later named by the Spaniard the province of Tusayan, from an appropriate Navajo term, 'ta-sa-ûn,' meaning the place of isolated buttes. . . . We know that in 1541 the Spaniards found the Moqui occupying villages which were old then, . . . Not long after this the Navajo began to encroach from the eastward, and roamed between Tusayan and the Rio Grande. . . . About 1780 an epidemic of small-pox devastated all the Moqui villages, and again in 1840 the same disease raged among them for several months. . . . Three of the villages are built upon the bare,flat summit of the east mesa, 600 feet above the level of the valley; upon the middle mesa three other villages are built upon points of equal height; but the western point, upon which Oraibi is situated, is considerably lower. These mesas all point to the southward, projecting from main tableland, with intervals of about 7 miles between each of them. I have visited them frequently, and estimate their population as follows—sexes about equal:

East mesa:	
Teh-wa	200
Si-tchom-ovi	100
Walpi	300
Middle mesa:	
Mi-shong-in-ovi	350
Shi-powl-ovi	175
Shung-op-ovi	250
Oraibi	825
Total population	2,200

The villages have all the same general appearance—rows of houses more or less dilapidated, of irregular heights, but all flat-roofed and built together, with here and there a dingy court. Viewed from the valleys it is difficult to distinguish between cliff-wall and house-wall, . . . A constant source of bickering between them and the Navajo are the encroachments of the latter. I have given this matter a great deal of careful attention, and have time and again restrained the Navajo from these intrusions, warning them not to approach with their herds within certain specified limits, which would give the Moqui ample room grazing, if they were not too timid to use it. Since I made this last adjustment complaints have not been so numerous, but it is a slow task to set up back-bone in these Moqui who are too spiritless to assert their own rights. But friction between them gradually decreases, and more cordial relations are slowly growing among them . . . a few families have been induced to leave the noisome villages and build down in the valley, lumber, doors, and windows having been furnished them for this purpose. But, as a whole, the Moqui seem not to possess sufficient energy to conceive or carry out any proposition for their own betterment. . . . Security from intrusion is gradually tempting more families to build in the valleys, and the more civilized ideas acquired by the younger people at the school may develop springhtlier faculties in the coming generation. (164)

From Vandever's report it is evident that, with few exceptions, the Hopis continued to cling to their mesa tops and their population had increased but little since Escalante's and De Anza's visits there in the 1770's and 1780's.

On February 25, 1909, Special Alloting Agent Mathew M. Murphy was directed by Acting Commissioner R. G. Valentine, and approved by Assistant Secretary of the Interior Jesse E. Wilson February 26, 1909, that: An allotment of forty acres of valley or agricultural land and 320 acres of mesa or grazing land, should be made to each Indian on the [1882 Executive Order] reservation entitled, irrespective of the fact of whether such Indian is a Moqui or a Navajo. (165)

Between 1909 and 1911, when the allotment program was abandoned, (166) 746 allotments were made to 437 Navajo Indians in the surveyed southern half of the 1882 reservation. (167)

Part II.—Other Data—Archaeological, Tree-Ring, and Navajo Birth Records

A. Archaeology and Tree-Ring Data

Archaeological data from field investigations carried on during the 1950's corroborate Navajo occupancy of the 1882 Executive Order area and regions beyond to the north, west, and south from early historic times down to the present. Nearly 3,000 Navajo structures were recorded during field work; these comprise approximately 1,000 Navajo archaeological sites for the 1882 area. Map No. 1 which follows shows the locations of these sites.[1] Many other Navajo archaeological sites recorded beyond the 1882 rectangle to the Colorado River also substantiate early Navajo occupancy and use of this broad region.

Tree-ring dates from timbers cut from these Navajo structures range from 1622 to well into the 20th century and the present. Navajo pottery dating before 1800 and that dating after 1800 was collected from a number of the above sites.

Data from Navajo archaeological sites for the 1882 area are summarized in Table 1. Tree-ring dates from these sites and those from Navajo sites beyond the 1882 area, originally published in the *Tree-Ring Bulletin* of the University of Arizona, are tabulated in Table 2. (168)

It is significant that no Hopi archaeological sites dating later than 1700 have ever been reported for the 1882 Executive Order Reservation beyond the vicinity of the three mesas which the Hopis still occupy today.

[1] Map No. 1 has been placed in the Committee files.

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TABLE 1

SUMMARY OF DATA FROM NAVAJO ARCHAEOLOGICAL SITES

1882 EXECUTIVE ORDER RESERVATION

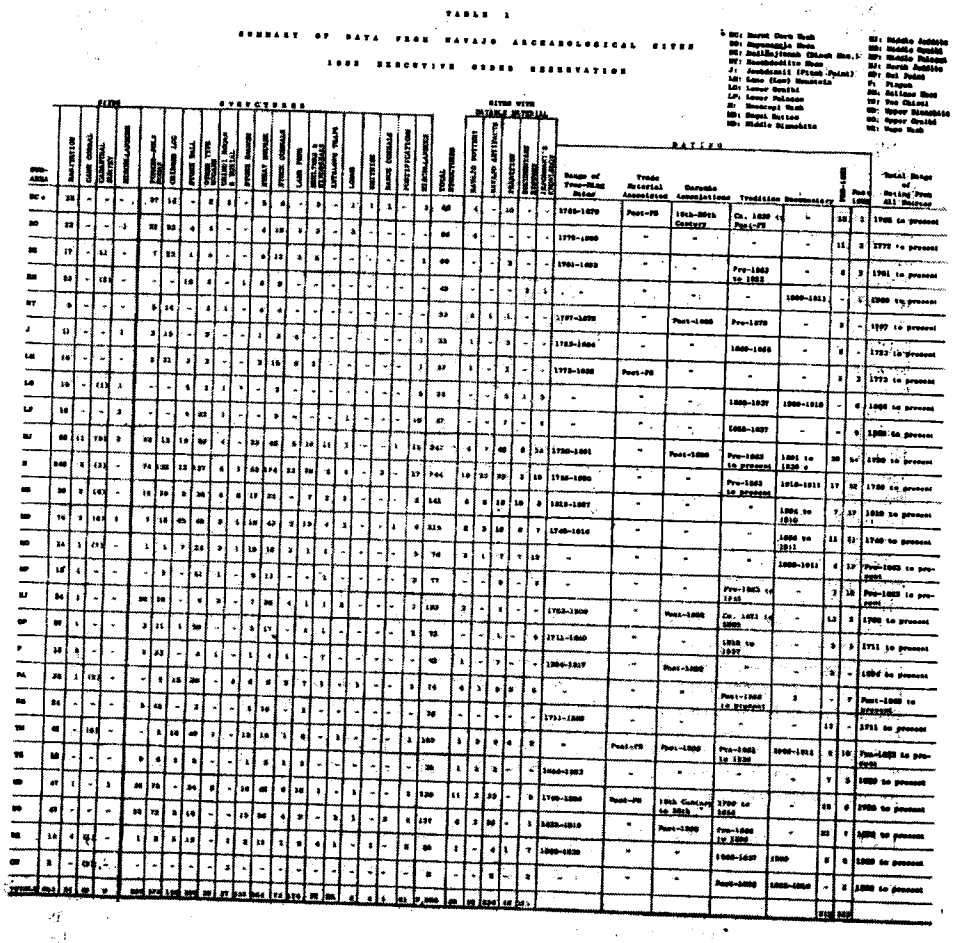

TABLE 2*

TREE-RING DATES FROM NAVAJO ARCHAEOLOGICAL STRUCTURES
(From: TREE-RING BULLETIN, Vol. 26, Nos. 1-4, June, 1964)

Index Code for Western Sector

1882 EXECUTIVE ORDER AREA

LLC: Lower Little Colorado area
- BC: Burnt Corn Wash
- DO: Doyanescla Mesa
- DZ: Dzildajinnah (Black Mountain)
- HT: Hooshdodiito Mesa
- J: Jeehdazaii (Pitch Point)
- LM: Lone (Low) Mountain
- LO: Lower Oraibi
- LP: Lower Polacca
- M: Moencopi Wash
- MB: Moqui Buttes
- MD: Middle Dinnebito
- MJ: Middle Jeddito
- MO: Middle Oraibi
- MP: Middle Polacca
- NJ: North Jeddito
- OP: Owl Point
- P: Pinyon
- SM: Salinas Mesa
- TS: Tse Chizzi
- UD: Upper Dinnebito
- UO: Upper Oraibi
- WE: Wepo Wash

NORTH, WEST AND SOUTH OF 1882 EXECUTIVE ORDER AREA

HC: Havasu Canyon area
- LH: Lower Havasu

NM: Navajo Mountain area
- NC: Navajo Creek
- OC: Oljeto Creek
- PC: Paiute Creek

LLC: Lower Little Colorado area
- B: Bodoway
- C: Coconino Plateau
- D: Deadman's Wash
- SF: San Francisco Wash

PART I - 1882 EXECUTIVE ORDER AREA

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
		Lower Little Colorado Area	
576	W-LLC-BC-B	Hogan 3	1868inc
578	" B	Hogan 4	1868G
577	" B	Sheep Corral 5	1869inc
580	" C	Hogan 1	1868G
581	" C	Hogan 2	1868G
582	" C	Sheep Corral	1848+
894	" I	Hogan 1	1803+
895	" J	Hogan 1	1869B
896	" J	Shelter 2	1869G
897	" K	Ch'indi Hogan 1	1870incG
898	" K	Ch'indi Hogan 1	1842+
899	" L	Hogan 1	1853inc
900	" L	Hogan 1	1787+
2212	" P	House 3	1798+inc
2213	" P	House 3	1765+G
2214	" Q	Hogan 1	1850+inc
2216	" S	Hogan 1	1824+incG

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TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
2225	W-LLC-BC-T	Hogan 1	1844incG
2226	" T	Hogan 1	1918+incG
2227	" T	Hogan 1	1838+incG
2228	" T	Hogan 1	1841+incG
2230	" X	Hogan 2	1808+inc
2231	" X	Hogan 2	1846+inc
2229	" X	Smithy 1	1830+G
675	W-LLC-DO-B	Hogan 1	1898G
677	" B	Hogan 6	1901incG
679	" D	Hogan 1	1874+G
681	" E	Hogan 1	1854+c
682	" F	Hogan 1	1858+G
699	" F	Sheep Corral	1798+
683	" G	Hogan 1	1788inc
684	" G	Hogan 2	1772inc
686	" H	Sweat Hogan 1	1844+
667	" L	Sweat Hogan 5	1808+
671	" P	Hogan 4	1874inc
672	" P	Sheep Corral 2	1869inc
904A	" Q	Hogan 2	1858inc
909	" V	Hogan 1	1869incG
912	" V	Hogan 2	1875incG
661	" V	Hogan 3	1878G
907A	" Y	Hogan 1	1897incG
908A	" Y	Lamb Pen	1899+incG
915	" Z	Hogan 1	1874+incG
913	" Z	Hogan 3	1873+incG
914	" Z	Hogan 3	1871+G
916	" Z	Hogan 7	1803+
573	W-LLC-DZ-B	Sheep Corral 3	1843+
598	" D	Hogan 1	1805+
599	" D	Hogan 2	1875G
600	" D	Hogan 3	1874G
596	" G	Sweat Hogan 1	1805+
935	" K	Hogan 4	1808inc
939	" L	Corral 2	1872+G
940	" L	Corral 4	1893+G
941	" M	Hogan 1	1856inc
942	" M	Hogan 2	1852inc
943	" M	Hogan 2	1807+
944	" M	Sweathouse 6	1858G
945	" N	Hogan 1	1701+
688	W-LLC-HT-C	Hogan 1	1870inc
924	" C	Hogan 1	1872incG
691	" C	Hogan 2	1841inc
925	" C	Hogan 2	1869incG
926	" C	Hogan 3	1870incG
689	" C	Hogan 4	1865+G
936	" C	Hogan 5	1869incG
690	" C	Hogan 6	1870G

TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
927	W-LLC-HT-C	Hogan 6	1866inc
698	" D	Hogan 3	1797+
693	" D	Hogan 4	1817inc
1725	W-LLC-J-B	Hogan 1	1795+
1726	" B	Hogan 2	1828+inc
1731	" C	Hogan 2	1724+
1733	" C	Hogan 3	1854+
1738	" E	Sheep Corral 3	1808+
876	" H	Hogan 1	1840+
877	" H	Hogan 3	1798+
880	" J	Hogan 1	1723incG
882	" K	Hogan 1	1778+G
1723	W-LLC-LM-G	Hogan 2	1773+
1724	" H	Hogan 1	1891inc
886	" M	Hogan 1	1858c
887	" M	Hogan 1	1807G
888	" N	Hogan 1	1926CG
889	" N	Hogan 1	1926cG
890	" N	Sheep Corral	1926cG
891	" P	Hogan 1	1932cG
892	" P	Hogan 1	1932B
893	" P	Hogan 2	1932G
2610	W-LLC-M-D10	Hogan 1	1811+
2611	" D10	Hogan 1	1817+G
2612	" D10	Hogan 1	1804+G
2427	" B24	Hogan 1	1878incG
2662	" B24	Hogan 1	1878cG
2663	" B24	Hogan 1	1878cG
2592	" D7	Hogan 1	1860cG
2600	" D8	Windbreak 1	1895cG
2602	" D8	Corral 3	1898incG
2615	" D12	Hogan 3	1900+G
2623	" D13	Hogan 1	1823+
2624	" D13	Hogan 1	1838+G
2632	" D13	Hogan 1	1871incG
2626	" D13	Hogan 2	1871inc
2627	" D13	Hogan 2	1853incG
2628	" D13	Hogan 2	1846incG
2629	" D13	Hogan 3	1809+
2630	" D13	Hogan 3	1804+G
2199	" E	Hogan 1	1875incG
2200	" E	Hogan 1	1805inc
2904	" E8	Hogan 1	1860incG
2905	" E8	Hogan 1	1859incG
2906	" E8	Hogan 1	1857+G
2907	" E8	Hogan 1	1857+G
2908	" E8	Hogan 1	1860incG
2909	" E8	Hogan 1	1852+G
2910	" E8	Hogan 1	1859incG
2911	" E8	Hogan 1	1859incG

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TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
2913	W-LLC-M-E9	Hogan 1	1759+
2915	" E9	Hogan 1	1782+G
2919	" E9	Hogan 4	1789+
2922	" E9	Hogan 6	1860cG
2922A	" E11	Hogan 1	1897cG
2923A	" E11	Hogan 1	1898+cG
2924A	" E11	Hogan 1	1898+cG
2975	" E21	Hogan 1	1898cG
2977	" E21	Hogan 1	1888+G
2979	" E21	Hogan 2	1897cG
2980	" E21	Hogan 2	1897cG
2981	" E21	Hogan 2	1898incG
2982	" E21	Hogan 2	1898incG
2983	" E21	Hogan 2	1898G
2984	" E21	Hogan 2	1898G
2756	W-LLC-MB-BB	Hogan 1	1887incGB
2236	" G	Antelope Corral	1849incG
2237	" G	Antelope Corral	1819incG
2238	" G	Antelope Corral	1840+incG
2852	" JJ	Hogan 2	1900+G
2853	" KK	Hogan 1	1898inc
2822	" NN	Hogan 1	1817incG
2825	" NN	Sweathouse 4	1887cB
2827	" OO	Hogan 1	1902+incG
2829	" PP	Hogan 1	1875incG
2836	" PP	Hogan 3	1875incG
2842	" QQ	Shelter 2 Yei'i Baghan	1886+inc
2843	" QQ	Hogan 4	1887inc
2844	" QQ	Hogan 4	1777+inc
2342	W-LLC-MD-GGG	Hogan 4	1916incG
2343	" GGG	Hogan 4	1916incG
2643	" JJJ	Windbreak 4	1760+
2645	" KKK	Hogan 1	1782+
2650	" KKK	Hogan 4	1790+
2652	" KKK	Hogan 4	1770+
2653	" KKK	Hogan 5	1795inc
2647	" KKK	Corral 2	1811inc
2656	" KKK	Corral 6	1740+
2742	W-LLC-MJ-A3	Sweathouse 1	1884incB
2744	" A3	Hogan 2	1892incG
2745	" A3	Hogan 2	1893incG
2747	" A3	Hogan 2	1892inc
2749	" A3	Hogan 3	1856incG
2751	" A3	Hogan 3	1856incG
2770A	" A7	Hogan 1	1878incG
2771A	" A7	Hogan 1	1873incG
2250	" DD	Antelope Corral	1772incG
2252	" DD	Antelope Corral	1798+incG
2253	" DD	Antelope Corral	1795+incG
2254	" DD	Antelope Corral	1806+incG
970	" G	Hogan 1	1878+G

TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
972	W-LLC-MJ-G	Hogan 1	1864+G
973A	" H	Sweat Hogan	1876+G
2279	" HH	Game Corral 1	1809incG
2286	" HH	Game Corral 1	1811incG
2292	" HH	Game Corral 1	1804+inc
2268	" II	Game Corral 1	1822+incG
2272	" II	Game Corral 1	1810+inc
2273	" II	Game Corral 1	1817incG
2274	" II	Game Corral 1	1826G
2418	" III	Yei Hogan 7	1797incG
2667	" QQQ	Hogan 1	1811+inc
2675	" QQQ	Hogan 1	1804+inc
2681	" QQQ	Hogan 3	1807incG
2693	" SSS	Hogan 3	1720inc
2694	" SSS	Hogan 3	1854+incG
2696	" SSS	Hogan 3	1879incG
2697	" SSS	Hogan 3	1867+
2698	" SSS	Hogan 3	1868+G
2699	" SSS	Hogan 3	1882+G
2700	" SSS	Hogan 4	1797+
2706	" SSS	Hogan 4	1793c
2707	" SSS	Hogan 4	1806+G
2718	" WWW	Windbreak 2	1858incG
2728	" XXX	Hogan 1	1880+G
2730	" XXX	Hogan 2	1878G
2731	" ZZZ	Hogan 1	1861+incG
2735	" ZZZ	Hogan 3	1883+incG
2736	" ZZZ	Hogan 3	1887+B
2871	W-LLC-MO-L	Hogan 4	1835incG
655	W-LLC-NJ-AA	Hogan 1	1855inc
1710	" B	Sheep Corral 2	1703inc
657	" BB	Hogan 1	1816inc
1713	" D	Hogan 2	1730+
1714	" D	Hogan 2	1776+
872	" DD	Hogan 3	1868G
871	" EE	Corral	1800+
863	" F	Hogan 1	1795+
864	" F	Hogan 1	1858inc
865	" F	Sheep Corral	1860+G
874	" FF	Hogan 1	1867G
875	" FF	Hogan 3	1857G
866	" H	Hogan 1	1888incG
867	" H	Hogan 1	1893+G
868	" H	Hogan 3	1860+G
869	" J	Hogan 1	1890G
870	" J	Hogan 1	1898cG
1783	" K	Hogan 1	1757+
1784	" L	Hogan 1	1900incG
1785	" N	Hogan 1	1858inc
1788	" N	Hogan 4	1843+G

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TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
638	W-LLC-NJ-P	Hogan 2	1814G
641	" P	Hogan 7	1748+
642	" P	Sheep Corral	1802+
651	" W	Sweathouse 1	1784+
1706	W-LLC-OP-P	Hogan 1	1804inc
1728	" T	Hogan 2	1711inc
1729	" U	Hogan 1	1860incG
1718	W-LLC-P-F	Game Corral	1710inc
1717	" I	Game Corral	1754+
1744	" N	Hogan 1	1804+
1747	" N	Hogan 4	1807+
904	" R	Hogan 3	1817+G
705	W-LLC-SM-A	Sheep Corral 4	1760+
603	" B	Hogan 1	1738+
606	" D	Hogan 1	1773+
607	" D	Hogan 3	1732+
614	" E	Hogan 1	1711+
615	" E	Hogan 2	1756+
619	" G	Hogan 2	1879G
623	" I	Sheep Corral 2	1817+
633	" N	Hogan 1	1756+
632	" N	Sweat Hogan 3	1722+
1759	" P	Hogan 2	1821+
1762	" Q	Sweathouse 1	1784+
1764	" T	Hogan 1	1813+inc
1765	" T	Sheep Corral 2	1752+
1770	" U	Hogan 4	1826+
1772	" V	Hogan 1	1761+
1773	" V	Hogan 3	1782+
1774	" V	Hogan 4	1871+G
1775	" W	Hogan 1	1800+
1780	" X	Hogan 3	1860+G
1781	" X	Hogan 4	1766inc
974	W-LLC-TS-I	Unit 1	1893incG
1715	" B	Hogan 1	1817inc
1740	" D	Hogan 1	1853inc
1741	" D	Hogan 3	1858G
1734	" E	Hogan 1	1666inc
1735	" F	Hogan 1	1759+
883	" H	Hogan 1	1856incG
884	" H	Hogan 1	1856G
885	" H	Hogan 2	1743+
2188	W-LLC-UD-A	Hogan 1	1843+incG
2191	" B	Hogan 1	1849+incG
2198	" D	Hogan 1	1834+incG
2208	" G	Hogan 2	1877+incG
2209	" G	Hogan 3	1866+incG
2217	" H	Hogan 1	1856+incG
2218	" H	Hogan 1	1850+incG
2221	" I	Hogan 4	1856+incG

TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
2409	W-LLC-UD-II	Hogan 2	1888incG
2317	" W	Hogan 1	1842+inc
2316	" X	Hogan 2	1839+inc
2315	" X	Sweathouse 1	1895cB
2318	" Y	Hogan 1	1780+inc
2320	" Z	Hogan 1	1887+inc
2322	" Z	Hogan 6	1869+incG
2417	" PP	Smithy 5	1846incG
861A	W-LLC-UO-A	Hogan 1	1879+
862A	" B	Hogan 1	1919+c
2327	" BB	Hogan 1	1815+incG
863A	" C	Hogan 1	1835+G
863[illegible]	" C	Hogan 1	1833+G
864[illegible]	" C	Hogan 1	1854+G
2331	" DD	Hogan 3	1873+inc
2328	" DD	Fortified Crag 1	1790+incG
411	" E	Hogan 2	1744+
416	" F	Hogan 2	1779+
2387	" FF	Hogan 1	1857inc
2388	" FF	Hogan 1	1857+incG
423	" H	Hogan 2	1809inc
2393	" KK	Hogan 6	1850incGB
2394	" LL	Hogan 6	1882incG
2396	" LL	Hogan 7	1743+inc
2398	" NN	Hogan 3	1894incG
946	" O	Hogan 1	1728inc
947	" O	Hogan 1	1817+Gc
951	" P	Hogan 2	1792+inc
2400	" PP	Lean-to	1866inc
952	" Q	Hogan 3	1795inc
953	" R	Hogan 1	1622+incG
954	" R	Hogan 1	1804+inc
955	" R	Sweathouse	1672+
2407	" TT	Hogan 3	1877inc
404	" V	Hogan 1	1809+
408	" V	Hogan 5	1808+
2224	" X	Hogan 3	1743+inc
2265	W-LLC-WE-H	Sweathouse 5	1867+G
2296	" K	Hogan 2	1900+inc
2297	" K	Windbreak 3	1935cGB
2298	" K	Windbreak 4	1939incG
2299	" K	Windbreak 4	1935incG
2301	" K	Windbreak 5	1935incG
2302	" K	Windbreak 6	1935incG
2304	" M	Hogan 6	1921+incG
2293	" O	House 1	1850+inc

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TABLE 2

PART II - NORTH, WEST AND SOUTH OF THE 1882 EXECUTIVE ORDER AREA

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
		Havasu Canyon Area	
244	W-HC-LH-P	Hogan 1	1918inc
243	" P	Corral 1	1909inc
1024	" U	Structure 2	1894incG
1754	" DD	Hogan 3	1793incG
1753	" DD	Sheep Corral	1881+
222	" II	Hogan 1	1862+
224	" II	Sweat Hogan	1858+B
1838	" II	Corral	1844+inc
1750	" JJ	Hogan 3	1866c
1751	" JJ	Hogan 9	1731+
1752	" JJ	Sheep Corral	1867inc
1032	" Supai 4	Corral	1904+G
		Navajo Mountain Area	
497	W-NM-NC-C	Hogan 1	1877+G
498	" C	Hogan 1	1874inc
499	" C	Hogan 1	1885+G
502	" C	Sheep Corral 2	1881+
503	" D	Hogan 2	1892G
505	" D	Hogan 2	1884+
506	" D	Hogan 2	1894G
508	" D	Hogan 2	1895G
509	" D	Sweat Hogan	1887incG
511	" D	Sweat Hogan	1895G
514	" D	Sweat Hogan	1894G
526	" F	Hogan 1	1878+
3530	" N	Hogan 5	1804+inc
3532	" N	Hogan 5	1788+incG
3535	" N	Hogan 5	1776+incG
3536	" N	Hogan 5	1788+incG
3574	" N	Hogan 5	1815incG
3575	" N	Hogan 5	1807+incG
3541	" O	Hogan 1	1818incG
3537	" P	Hogan 1	1862+inc
3556	" V	Hogan 1	1819incG
3557	" V	Hogan 1	1884incG
3559	" V	Hogan 1	1879+incG
3560	" V	Hogan 1	1883incG
193	W-NM-OC-B	Sweat Hogan	1857+
190	W-NM-PC-A	Hogan 1	1883+c
191	" A	Hogan 1	1835+
3527	" K	Hogan 1	1882+incG
3522	" N	Hogan 1	1782+incG
3523	" N	Hogan 1	1848+incG
3521	" O	Hogan 4	1799+incG

TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
3517	W-NM-PC-P	Hogan 1	1864incG
3519	" P	Hogan 1	1863incG
3551	" S	Sweathouse 1	1820inc
3553	" S	Sweathouse 1	1806incG
3567	" U	Hogan 1	1845inc cG
3568	" U	Hogan 1	1829+incG
3569	" U	Hogan 1	1860incGB
3570	" U	Hogan 1	1830+incG
3571	" U	Hogan 1	1859incG
3572	" U	Hogan 1	1851+incG
3573	" U	Hogan 1	1860incG
		Lower Little Colorado Area	
706	W-LLC-B-E	Hogan 1	1907inc
257	" M	Rockshel	1898G
1817	W-LLC-C-A	Hogan 2	1833+
349	" B	Hogan 1	1786+G
350	" B	Hogan 1	1793G
351	" B	Hogan 1	1797G
352	" B	Hogan 1	1793G
3385	" B	Hogan 1	1709+incG
3378	" B	Hogan 2	1787+incG
3379	" B	Hogan 2	1772+incG
3381	" B	Hogan 2	1794+G
3383	" B	Hogan 2	1790+incG
353-4	" B	Hogan 2	1803+G
355	" C	Hogan 1	1825+
356	" C	Hogan 1	1833inc
1821	" C	Hogan 1	1788+
3422	" D	Hogan 1	1798+
3423	" D	Hogan 1	1794+
3424	" D	Hogan 1	1758+inc
3428	" D	Hogan 1	1745+inc
3429	" D	Hogan 1	1790+c
3432	" D	Hogan 1	1812+inc
361	" D	Hogan 2	1763+
362	" D	Hogan 2	1782+G
364	" D	Hogan 4	1789+inc
3410	" D	Hogan 5	1766+inc
3412	" D	Hogan 5	1751+incG
3413	" D	Hogan 5	1773+inc
3414	" D	Hogan 5	1828+incG
3418	" D	Windbreak 6	1789+inc
365	" E	Hogan 1	1796+G
366	" E	Hogan 1	1839inc
3401	" E	Hogan 1	1820incG
3402	" E	Hogan 1	1798incG
3403	" E	Hogan 1	1800+incG
3404	" E	Hogan 1	1837+incG

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TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
3405	W-LLC-C-E	Hogan 1	1792+incG
3406	" E	Hogan 1	1826+incG
370	" F	Hogan 2	1759+
371	" F	Hogan 2	1765inc
374-5	" F	Sheep Corral 1	1809+
376	" F	Corral 2	1779+G
713	" G	Hogan 1	1788+G
2364	" H	Hogan 7	1735+incG
214	" I	Corral 8	1832+
391	" R	Hogan 1	1865G
392	" R	Hogan 2	1869G
382	" T	Hogan 2	1823+G
395	" Z	Hogan 1	1858+
806	" CC	Hogan 1	1795inc
804	" CC	Hogan 10	1828+G
3433	" MM	Hogan 1	1746+incG
3435	" MM	Hogan 1	1771+incG
3436	" MM	Hogan 1	1824+incG
3450	" MM	Hogan 4	1744+inc
3453	" MM	Hogan 5	1792+inc
3454	" MM	Hogan 5	1788+incG
3455	" MM	Hogan 5	1788+incG
3456	" OO	Hogan 1	1751+incG
3457	" OO	Hogan 1	1786+incG
3459	" OO	Hogan 1	1757+incG
3461	" OO	Hogan 1	1729+incG
3462	" OO	Hogan 1	1814+inc
3463	" OO	Hogan 1	1757+inc
3464	" OO	Hogan 1	1726+inc
3465	" OO	Hogan 1	1711+incG
3466	" OO	Hogan 1	1713+inc
3467	" OO	Hogan 1	1822+incG
3468	" OO	Hogan 1	1711+incG
3469	" OO	Hogan 1	1809+incG
3470	" OO	Hogan 1	1742+incG
3471	" OO	Hogan 1	1825CG
3499	" OO	Hogan 2	1795incG
3472	" OO	Hogan 3	1829+incG
3476	" OO	Hogan 3	1830+inc
3477	" OO	Hogan 3	1796+incG
3478	" OO	Hogan 3	1805incG
3485	" OO	Hogan 3	1776+incG
3486	" OO	Hogan 3	1778+incG
3487	" OO	Hogan 4	1782incG
3488	" OO	Hogan 4	1764incG
3489	" OO	Hogan 4	1756incG
3490	" OO	Hogan 4	1770incG
3492	" OO	Hogan 4	1786incG
3493	" OO	Hogan 4	1781inc
3494	" OO	Hogan 4	1728+incG

TABLE 2

NLC	Group	Specimen	Tree-Ring Laboratory Date, A. D.
3495	W-LLC-C-OO	Hogan 4	1776+incG
2383	" PP	Windbreak 1	1746+inc
207-8	W-LLC-D-A	Hogan 1	1911inc
347	W-LLC-SF-I	Game Corral	1884+
348	" I	Game Corral	1885+
334	" K	Hogan 1	1826+inc
335	" K	Hogan 2	1875+G
341	" L	Hogan 1	1870G
342	" L	Hogan 2	1813+G
343	" M	Hogan 1	1893+G
204	" O	Hogan 2	1854+

* EXPLANATION OF TABLE 2

Column 1: "NLC" = Navajo Land Claim. Number assigned to wood specimen.

Column 2: "Group" = Site designation. The fourth letter designation is the site. The first site in BC (Burnt Corn, etc.) is A, the next B, the next C, and so on to AA, BB, etc.

Column 3: "Specimen" = Navajo structure from which wood specimen was cut.

Column 4: "Tree-Ring Laboratory Date A. D." The terminal date - when the tree stopped growing, or was cut for use in building a hogan or other structure.

Explanation of symbols used with dates:

+ = indicates that either the outermost rings are very small and a ring count only could be made to the outside, or that the outermost dated ring is one just preceding what is usually a small, micro or absent ring which may be missing from the specimen.

inc = indicates that the outside ring of a specimen is incomplete in growth.

c = outermost ring is complete in growth

C = outermost ring is continuous around the circumference of the specimen, implying that the date is close to the cutting date.

G = beetle galleries present.

B = bark present on the specimen.

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B. Records of Navajo Births

Table 3 following contains a tatulation of some 834 Navajo births, 1882 or earlier.[169/] Of these, 328 persons were born within the 1882 Executive Order Reservation; 506 were born to the north, west, or south of that area.

Of 496 Hopi births, 1805-1868, also located during research, it is of interest to note that only four were recorded for areas beyond the present mesa villages, the records indicate as follows:

220 Hopis - Born at the First Mesa Villages
105 Hopis - Born at the Second Mesa Villages
167 Hopis - Born at the Third Mesa Villages
3 Hopis - Born at Moencopi
1 Hopi - Born at Keams Canyon

Such records clearly indicate the presence of family groups occupying and using their respective areas of residence. These Navajo birth records (Table 3) corroborate and complement documentary and archaeological data of Navajo occupancy and use of the 1882 Executive Order area and beyond; the Hopi birth records also substantiate early and continued occupancy of the Three Mesas on and at the base of which they yet live today.

SUMMARY OF TABLE 3

INSIDE THE 1882 EXECUTIVE ORDER

Place	No.
Artesian Wells	1
Beshbito Wash	2
Big Mountain	12
Black Mountain (Mesa)	105
Blue Canyon	6
Burnt Corn Wash	1
Burro Spring	1
Cow Springs	11
Dinnebito Wash	7
Doyanescla Mesa	2
Finger Point	1
Forest Lake	2
Hard Rock	3
Hooshdoodito Mesa	1
Hopi Reservation (1882 Executive Order)	13
Howell Mesa	1
Jeddito Wash	7
Keams Canyon	28
Kiits'iili	2
Low Mountain	18
Navajo County	13
Oraibi Wash	5
Pinyon	41
Polacca	1
Rainbow Spring	1
Sand Spring	1
Skunk & Snowbird Springs	4
Tachee Wash	1
Talahogan	4
Tonalea (Red Lake)	22
White Cone	10
White Mesa	1
Total	328

SOUTH OF THE 1882 EXECUTIVE ORDER

Place	No.
Bidahoochii	1
Bird Spring	2
Castle Butte	6
Cedar Springs	5
Canyon Diablo	1
Deep Lake	1
Dilkon	8
Indian Wells	16
Leupp and Leupp Reserve.	16
Moqui Buttes	1
Red Lake (Leupp area)	1
Seba Dalkai	1
Star Butte	1
Teesto	5
Tolani Lakes	2
Total	67

NORTH OF THE 1882 EXECUTIVE ORDER

Place	No.
Allen Canyon, Utah	1
Baby Rocks, Ariz.	2
Bear's Ears, Utah	14
Betatakin, Ariz.	1
Blue Mountains, Utah	1
Bluff, Utah	10
Chilchinbito, Ariz.	11
Comb Ridge, Utah-Ariz.	3
Dinnehotso, Ariz.	21
Douglas Mesa, Ariz.	2
El Capitan, Ariz.	1
Inscription House, Ariz.	6
Kayenta, Ariz.	29
Marsh Pass, Ariz.	2
Mexican Hat, Utah	2
Monument Valley	4
Navajo Mountain	23
Navajo Canyon, Ariz.	20
Oljayto, Utah	6
Paiute Canyon (Mesa)	3
Shonto, Ariz.	21
Tall Mountain, Ariz.	4
Tsegi Canyon, Ariz.	2
Total	189

WEST OF THE 1882 EXECUTIVE ORDER

Place	No.
Black Point	3
Bodoway	10
Cameron	1
Coconino Basin	1
Coconino County	3
Flagstaff	2
Gap	8
Grand Canyon	1
Grand Falls	7
Gray Mountain	54
Kaibito	17
Kendrick Peak	1
Moenave	1
Pasture Canyon	1
San Francisco Mountains	5
Shadow Mountain	2
Tanner's Wash (Well)	4
Tuba City	28
Upper Coconino Rim	1
Western Navajo Reservation (Tuba City Agency)	91
Wildcat Butte	2
Willow Springs	7
Total	250

GRAND TOTAL 834

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TABLE 3

NAVAJOS BORN WITHIN, NORTH, WEST, AND SOUTH OF THE 1882 EXECUTIVE ORDER RESERVATION, DERIVED FROM VITAL STATISTICS RECORDS, CLINICAL RECORDS, INDIAN SCOUT RECORDS, THE TRANSCRIPT IN DOCKET 229, BEFORE THE INDIAN CLAIMS COMMISSION, DEPOSITIONS AND STATEMENTS OF AGED NAVAJO INDIANS

Part I - Inside 1882 Executive Order Reservation

Birth-date	Place	Name	Source: Transcript page ref.; Navajo Exhibit No. Docket 229; or Navajo Deposition and No.
1864	Artesian Wells (Vic. Keams Canyon)	Adzon Tohalena	Nav. Ex. 1611
By 1853*	Beshbito Wash	Fa (unnamed)**	Nav. Ex. 1704
1876	"	Clarrie Gee	#247 Subject
By 1834	Big Mountain	MoMo (unnamed)	#103 Hn. Bitsii' Łigai
By 1839	"	Ashiihi Neez Bitsi	#14 Mrs. Billy Sawyer
By 1845	"	Asdzuun Bitsii' Łitsoi	#51 George Stevens
By 1847	"	Ta'neeszahnii Tsoh	#169 Jim Pierce
1847	"	At'eed Yazhi	#169 Jim Pierce
1858	"	Todich'iinii Yashi	Tr. 5396
1858	"	Fa (unnamed)	Nav. Ex. 1612
1859	"	Atsidii "Smithy"	#14 Mrs. Billy Sawyer
By 1867	"	Hosteen Siah	Nav. Ex. 1613
1871	"	Bilii Łigai	#50 Subject
1878	"	John Sampson	#52 Subject
1879	"	Voice's Old Wife	#163 Subject

* Unless otherwise determinable, birthdates based upon genealogical reckoning within direct lines of descent are calculated on the basis of a 20-year generation, that is, the average difference in years between parent and child. This figure is substantially lower than the average of 29.65 years calculated for Navajos (Navajo Ex. 890, Docket 229) and of 31.4 years calculated for Havasupais (Havasupai Ex. 7, Spier, Havasupai Ethnography, p. 99, Docket 91), and is very nearly a minimum for Navajos, only about .078% of recorded Navajo births being to parents under 20 years of age (Navajo Ex. 890). Webster's Unabridged Dictionary defines a generation as "the ordinary period of time at which one rank follows another, or father is succeeded by child, an age. A generation is usually taken to be about 33 years.

** Subject's parent not named in document.

TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1815	Black Mtn. (Mesa)	Asdzaa Yazhi	#144 Binaa' Tsoh
By 1819	"	MoMo (unnamed)	#119 Elva Lee
By 1820	"	Hashkeneinii	Tr. 2778-80, 2790, 2805-07, 2812, 2839, 2483, 1290
1824	"	Bilii Łani	#124 Aggie Ndischii
1825	"	Keh yah haat'soono	#203 George Nells
By 1828	"	Hashke Naazhnii'in	Tr. 5364
By 1830	"	Hastiin Bilii Naadlande	Tr. 2482-83
1833	"	Atsidii Neez	#121 Baa Yazhi
1834	"	Asdzaa Ashiihi	#329 Maggie Holgate
By 1835	"	Taahi 'Agodi	#118 Asdzaa Neez
By 1835	"	Asdzaa Siitini	Tr. 5214
By 1838	"	Asdzaa Ayoi Niteel	#27 Charley Begay
1840	"	Hastiin Ba'aŁchiini Łani	#419 Everett Mann
1841	"	Daghaa (Sikaad)	#219 Yidloohe Biye'
Ca.1843	"	Nak'ai Asdzaa	Tr. 2505-06
By 1843	"	Bila'agodii	Tr. 2491-92
1843	"	Asdzaa To'ahani	#116 Mary Daghaa Ts'osi
By 1843	"	Bah	Nav. Ex. 1632
By 1845	"	Ason Deel	Nav. Ex. 1633
1845	"	Todich'ii'nii	#423 Frank Todicheenie
1845	"	Daghaa Tsoh	#183 Mariano Toledo
1845	"	Asdzaa Ha'diŁchaaŁi	#340 Hastiin Tsoh
Ca.1847	"	Asdzaa Dibe Łani	#205 Joe Oltkoe
1847	"	Dine Yazzie	#206 Adesbah Spencer
By 1848	"	Fa (unnamed)	Nav. Ex. 1634
By 1848	"	Mo (unnamed)	Nav. Ex. 1634
By 1848	"	Hosteen Ahjahi (A Je Hi)	Nav. Exs. 1635, 1635A
By 1848	"	Keyahaatsohnii	Tr. 5256-57
Ca.1848	"	Asdzaa Hoonaghahnii	Tr. 5269
Ca.1848	"	Hastiin Łichii	Tr. 5349, 5367-68
By 1848	"	Asdzaa Nez's Fa Mo	Tr 5427-28
1848	"	Ha Nas Bahi	#423 Frank Todicheenie
1848	"	Asdzaan Ashiihi	#124 Aggie Endischee
By 1848	"	Kezahaatsohnii	#203 George Nells
1849	"	Hastiin Bitsiin	#126 Mabel Navajo
By 1850	"	Bilaagoody	Nav. Ex. 1636
By 1850	"	Debelchee	Nav. Ex. 1636
By 1850	"	Dine Yazhi	#206 Adesbah Spencer
By 1851	"	Neshchilli "Shut Eyes"	#2 Mrs. Pete
By 1851	"	Fa (unnamed)	Nav. Ex. 1637
By 1851	"	Abraham Manygoat's Mo	Nav. Ex. 22
By 1852	"	Dineh Chilii	Tr. 5285
By 1852	"	Asdzaa Ask'ehe Biche'e	#120 Inez Ndischee
By 1852	"	Asdzaa Łigaii	#67 Fay Lane Martin
1853	"	Atsidii Neez Biye'	"121 Baa' Yazhi
By 1854	"	Fa (unnamed)	Nav. Ex. 1638
By 1854	"	Mo (unnamed)	Nav. Ex. 1638
By 1854	"	Ason Ashihi Sonny	Nav. Ex. 1639
By 1857	"	Asdzaa Alts'iisi	#22 Slim Salt
By 1857	"	Hosteen Bileen Tulih	Nav. Ex. 1640
By 1858	"	Hosteen Tohagleni	Nav. Ex. 1642

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TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1858	Black Mtn. (Mesa)	Tsi Chilly	Nav. Ex. 1641
By 1858	"	Beth La Kai	Nav. Ex. 1643
By 1858	"	Mo (unnamed)	Nav. Ex. 1643
By 1858	"	Jose Nataan	#213 Abran Nataan
1859	"	Nell Manymules	Nav. Ex. 1644
1859	"	Asonal Bahe	Nav. Ex. 1644A
1859	"	Asdzaan Ashiihi	#121 Baa' Yazhi
1860	"	Ashiihi Binaa Ntasi	#335 John Redshirt
By 1860	"	Fa (unnamed)	Nav. Ex. 1646
1860	"	Captain Burbank	Nav. Ex. 1645
1861	"	Mr. Riggs	Nav. Ex. 1647
By 1861	"	Mo (unnamed)	Nav. Ex. 1648
By 1861	"	Fa (unnamed)	Nav. Ex. 1648
By 1861	"	Mo (unnamed)	Nav. Ex. 1649
By 1862	"	Dohatahi	Nav. Ex. 1650
1863	"	To'ahani T/'aai	#116 Mary Slim Mustache
By 1863	"	White Hair Yazzy	Nav. Ex. 1651
By 1863	"	Hasteen Ahu Nezzie	Nav. Ex. 1652
By 1863	"	Etcitty	Nav. Ex. 1653
By 1863	"	Mo (unnamed)	Nav. Ex. 1653
By 1863	"	Fa (unnamed)	Nav. Ex. 1654
By 1863	"	Mo (unnamed)	Nav. Ex. 1654
By 1864	"	Fa (unnamed)	Nav. Ex. 1655
By 1864	"	Mo (unnamed)	Nav. Ex. 1655
1864	"	Opal Dougi	Nav. Ex. 1656
By 1864	"	Fa (unnamed)	Nav. Ex. 1657
1864	"	Hosteen Medicine Man	Nav. Ex. 1658
By 1864	"	Hosteen Todacheene	Nav. Ex. 1659
By 1864	"	Tohannie Ni-A-Gha	Nav. Ex. 1660
By 1864	"	Mo (unnamed)	Nav. Ex. 1660
By 1865	"	Fa (unnamed)	Nav. Ex. 1661
By 1865	"	Mo (unnamed)	Nav. Ex. 1661
1866	"	Tsinijinnie Natoni	Nav. Ex. 1662
1866	"	Mary Blackhat	Nav. Ex. 1663
By 1867	"	Fa (unnamed)	Nav. Ex. 1664
By 1867	"	Mo (unnamed)	Nav. Ex. 1664
By 1867	"	Schedo Bia	Nav. Ex. 1665
By 1867	"	Red Mustache (Bi-Dag-Ah Le-Chie)	Nav. Ex. 1666, 1666A
By 1867	"	Mo (unnamed)	Nav. Ex. 1666A
By 1867	"	Ason Stren	Nav. Ex. 1667
1868	"	Staley Norcross	Nav. Ex. 1668, 1634
1868	"	Nakai Nez	Nav. Ex. 1669
By 1868	"	Fa (unnamed)	Nav. Ex. 1670
By 1868	"	Ason Todechine	Nav. Ex. 1670
1870	"	Asdzaa Honaghaahnii	#29 Subject
1870	"	TaNiBah	#352 Tom Nakai
By 1871	"	Hashk'aan Tsoh	#49 Hn. Clau
By 1871	"	Asdzaa /igai	#43 Maggie Lefthand
1872	"	Hastiin Gishi Bida	#59 Curley Tsoh
Ca.1873	"	Naalnishi	#107 Subject

TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1873	Black Mtn. (Mesa)	Hastiin Mark	#108 Subject
1873	"	Asdzaa Tanh	#130 John Lowe
1874	"	Baa Yazhi	#121 Subject
1876	"	Jack Slowtalker	#105 Subject
By 1844	Blue Canyon	Hosteen Bah-ho-zine	Nav. Ex. 2008
By 1844	"	Ba-zdebah	Nav. Ex. 2008
1854	"	Tom Holiday	Nav. Exs. 1589A, 2009
By 1857	"	Hosteen Beth Hea	Nav. Ex. 2010
1864	"	Hoskie-na-yo-dith or Fred Watchman	Nav. Ex. 2008
By 1836	Burnt Corn Wash	Asdzaa Nak'eshtoh	Tr. 5418, 5420
1874	Burro Spring	Asdzaan /ichii Bitsui	#198 Subject
Ca.1825	Cow Springs	Bi/iini	#412 Billy A
1828	"	MoMo (unnamed)	#114 John Walker; Tr. 3071-73
1833	"	Asdzaa Bijiini	#128 Paul Tallman
1835	"	Asdzaa Naa'kii Halchii	#419 Everett Mann; #129 Tom Lefty
1855	"	Asdzaa Nez	#123 Tse'yitni Yazhi Biye
By 1858	"	Bileen Litsue	Nav. Ex. 1589
By 1860	"	Baa' Ts'osi	#37 John Ketsole
1861	"	Joe Noeyes	Nav. Ex. 1588A
By 1872	"	Asdzaan Ts'aan	#67 Fay Lane Martin
Ca.1873	"	Gasper Joe	#412 Billy A
1881	"	Mabel Big Thumb	#332 Subject
Ca.1850	Dinnebito Wash	Yaanabaa'	Tr. 5252, 5256-58
1850	"	Hosteen Nakai Tso	Nav. Ex. 1602
BFS *	"	Dine Yazhi	#118 Lillian Jones
1864	"	Adikai Tsosie	Nav. Ex. 1603
1879	"	Hastiin Nat'aani	#10 Subject
1879	"	Horse's Daughter	#263 Subject
By 1882	"	Biyoo'o /ani "ManyBeads"	#320 Subject
By 1828	Doyanescla Mesa	Asdzaa Zhiin	Tr. 5363
1874	"	Hastiin Bilii Daaztsa	#248 Subject
By 1867	Finger Point	Azson Tso	Nav. Ex. 1605
By 1828	Forest Lake	Asdzaa Daats'aa'i	Tr. 5270, 5274-75
1874	"	Hastiin Bitsi /igai	#103 Subject
By 1838	Hard Rock	Asdzaa Nani/whode	Tr. 5397
By 1838	"	FaMo (unnamed)	Tr. 5397
1866	"	Natani Sani	Nav. Exs. 1610, 1610A
1850	Hooshdoodito Mesa	Tsi Ni Jinni Hadi/Cha/i	Nav. Exs. 1690, 1690A

* BFS = Before Fort Sumner (1863-1868)

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TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
By 1853	Hopi Reservation (1882 Executive Order)	Fa (unnamed)	Nav. Ex. 1694
By 1853	"	Mo (unnamed)	Nav. Ex. 1694
By 1855	"	Fa (unnamed)	Nav. Ex. 1695
By 1855	"	Mo (unnamed)	Nav. Ex. 1695
1855	"	Bitoni Sonnie	Nav. Ex. 1696
By 1857	"	Hosteen Ba Chin Thalo	Nav. Ex. 1697
1862	"	Juan Salas	Nav. Ex. 1698
1862	"	Hosteen Hiloznez	Nav. Ex. 1699
By 1864	"	Jim	Nav. Ex. 1700
By 1864	"	Mo (unnamed)	Nav. Ex. 1700
1866	"	Denet Goh	Nav. Ex. 1701
By 1868	"	Fa (unnamed)	Nav. Ex. 1703
By 1868	"	Mo (unnamed)	Nav. Ex. 1703
1876	Howell Mesa	Sam Smith	#300 Subject
Ca.1823	Jeddito Wash	Baa' Yi/kahe	#11 Ruth W. Talker
By 1851	"	Asdzaan Niteel	#2 Beesh Bito Be'Asdzaan
1859	"	Edd Clah	Nav. Ex. 1682
1867	"	Hosteen Begazh	Nav. Ex. 1683
By 1868	"	Hosteen Rope	Nav. Ex. 1604
1868	"	Hoseen Cepi	Nav. Ex. 1684
1868	"	Billy Sonnie	Nav. Ex. 1685
Ca.1829	Keams Canyon	Hastiin Ashiihi	#137 George Martin, Sr.
1843	"	Joe or Hn. Tso Nos Chas	Nav. Ex. 1672
1843	"	MoMo (unnamed)	#111 Dine Tii/
By 1845	"	Hastiin Zhiintsoh	#24 Harvey Black
1848	"	Hastiin Ashiihi	#136 Black (Whisker) Mustache
1849	"	Asdzaa Tsenjikinii	Tr. 5233
1850	"	Joe Redhorse	Nav. Ex. 1673
By 1850	"	Fa (unnamed)	Nav. Ex. 1692
By 1850	"	Mo (unnamed)	Nav. Ex. 1692
By 1852	"	Fa (unnamed)	Nav. Ex. 1693
By 1852	"	Mo (unnamed)	Nav. Ex. 1693
By 1854	"	Hasteen Tsihi	Nav. Ex. 1673A
By 1855	"	Fa (unnamed)	Nav. Ex. 1674
By 1855	"	Mo (unnamed)	Nav. Ex. 1674
By 1856	"	Ahcalthbah	Nav. Ex. 1675
By 1859	"	Ason Tsowey	Nav. Ex. 1676
1860	"	Hashka Eltea	Nav. Ex. 1676A
1861	"	Hosteine Bigman	Nav. Ex. 1677
Ca.1862	"	Tsets'os Neez	#137 George Martin, Sri.
BFS	"	Hastui Ahdeliini	#17 Dine /igai Bitsii
BFS	"	Naalnishi, "Worker"	#17 Dine /igai Bitsii
1865	"	John Wagon	Nav. Ex. 1678
By 1867	"	Mo (unnamed)	Nav. Ex. 1702
By 1867	"	Fa (unnamed)	Nav. Ex. 1702
1868	"	Hosteen Garnezi	Nav. Ex. 1679
1875	"	Don Grayhair	#246 Subject
1877	"	Small Man	#305 Subject
1879	"	Mrs. Bill Sawyer	#14 Subject

TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
By 1843	Kiits'iili	Asdzaa Ts'oosi	Tr. 5219-23
By 1843	"	MoMo (unnamed)	Tr. 5219-23
1813	Low Mountain	Asdzaa Hashke	#121 Baa' Yazhi
By 1830	"	Asdzaa Yazhi	#104 Hn. Binaa /ibahi
By 1832	"	Ba'a/chini /ani	Tr. 5361
Ca.1845	"	Jaachooni "Bad Leg"	#108 Hastiin Mark
By 1845	"	Tachii'nii Dooya/til'l	#17 Dine /igai Bitsili
By 1848	"	Mo (unnamed)	Nav. Ex. 1686
By 1849	"	Fa (unnamed)	Nav. Ex. 1686A
By 1849	"	Mo (unnamed)	Nav. Ex. 1686A
1852	"	Dineh Chilii	#412 Billy A
1860	"	Etsitty	Nav. Ex. 1687
By 1862	"	Fa (unnamed	#91 Scotty Jones
By 1866	"	Ezonnielth Chee	Nav. Ex. 1688
By 1866	"	Mo (unnamed)	Nav. Ex. 1688
By 1868	"	Hosteen Lizhini	Nav. Ex. 1689
By 1868	"	Ason Todacheenie	Nav. Ex. 1689
1868	"	Big Pete	Nav. Ex. 1686
1870	"	Hastiin Binaa /ibahi	#104 Subject
1872	"	Tsinnajinnie Tsosie	#312 Subject
By 1838	Navajo County	Fa (unnamed)	Nav. Ex. 1607A
By 1838	"	Mo (unnamed)	Nav. Ex. 16C7A
By 1841	"	Kay-ya-ha-tso-ni	Nav. Ex. 1751
By 1856	"	Keshcoli	Nav. Ex. 1752
By 1856	"	Keshcoli's Wife	Nav. Ex. 1752
By 1860	"	Fa (unnamed)	Nav. Ex. 1753
By 1860	"	Mo (unnamed)	Nav. Ex. 1753
1860	"	Ono Joe Hosteen	Nav. Ex. 1754
1861	"	Ad-deith Doney	Nav. Ex. 1751
By 1864	"	Hosteen Redhorse	Nav. Ex. 1755
By 1864	"	Mo (unnamed)	Nav. Ex. 1755
By 1865	"	Hosteen Nez	Nav. Ex. 1756
By 1865	"	Mo (unnamed)	Nav. Ex. 1756
1833	Oraibi Wash	FaMo (unnamed)	#309 Jim Ashley
By 1844	"	Ashkii /igaii Bima	#356 Frank Gishi
1855	"	Dehdi	#198 Asdzaa /itchii Bitsui
BFS	"	Asdzaa Abe	#186 John Rockbridge; Nav.Ex. 520W
1871	"	Abraham Manygoats	#202 Subject
1879	Padilla Mesa	Dine /itsoi	#197 Subject
By 1808	Pinyon	Hn. Biliin da Lakai	#293 Beesh /igaii Atsidi
By 1816	"	Asdzaa Daatsahe	Tr. 5424-25
By 1836	"	Hosteen Yazzie	Nav. Ex. 1614
By 1843	"	Fa (unnamed)	Nav. Ex. 1615
By 1843	"	Mo (unnamed)	Nav. Ex. 1615

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TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
Ca.1843	Pinyon	Hastiin Ts'iijid	#108 Hastiin Mark
1843	"	'Aazh Ki/gai bima	#356 Frank Gishe
By 1848	"	Hosteen Nez	Nav. Ex. 1616
By 1848	"	Zonnie Nez	Nav. Ex. 1616
1850	"	Ni Biz Nil Bah Belone	Nav. Ex. 1617
Ca.1851	"	Tachii'nii	#35 Hn. Whooshni
By 1854	"	Bidzanezholoni	Nav. Ex. 1618
By 1854	"	Mo (unnamed)	Nav. Ex. 1618
Ca.1856	"	Asdzaa Tsii /ibahi	Tr. 5417
1856	"	Adze Tisso	Nav. Ex. 1614
By 1856	"	Mo (unnamed)	Nav. Ex. 1619
By 1856	"	Nal-Ah-O Ahi	Nav. Ex. 1620
By 1856	"	Nal-Ah-O Ahi's Widow	Nav. Ex. 1620
By 1858	"	Tes-si-Tani	Nav. Ex. 1621
By 1858	"	Sonnie	Nav. Ex. 1621
By 1858	"	Etsitty	Nav. Ex. 1622
By 1858	"	Mo (unnamed)	Nav. Ex. 1622
1858	"	Wide Foot	Nav. Ex. 1623
By 1859	"	Chischilly	Nav. Ex. 1624
By 1861	"	Fa (unnamed)	Nav. Ex. 1625
By 1861	"	Ason Yazzie	Nav. Ex. 1625
By 1861	"	Fa (unnamed)	Nav. Exs. 1626, 1626A
By 1861	"	Mo (unnamed)	Nav. Exs. 1626, 1626A
By 1862	"	Bilashizahi	Nav. Exs. 1627, 1627A, 1627B
By 1862	"	Ason Yazzie	Nav. Ex. 1627
BFS	"	Asdzaa Bitsii /itsoii	#6 Ben Curley
By 1863	"	Mo (unnamed)	Nav. Ex. 1628
By 1863	"	Tachaiyijolahe	Nav. Ex. 1629
1863	"	Hosteen Hascon	Nav. Ex. 1615
By 1863	"	Ason Tohannie	Nav. Ex. 1629
1863	"	Hosteen Yazzie Tsoi	Nav. Ex. 1630
By 1866	"	Ason Seeh	Nav. Ex. 1631
1868	"	Zonnie Nez	Nav. Ex. 1616
1869	"	Billy Sawyer	#26 Subject
1872	"	Dineh La Gai	#242 Subject
Ca.1879	"	Tsi'naajiini Yazhi	#112 Subject
By 1865	Polacca	Adson Yazzie	Nav. Ex. 1671
Ca.1852	Rainbow Spring	Asdzaa Ditaani	#412 Billy A
By 1868	Sand Springs	Mo (unnamed)	Nav. Ex. 1604
1856	Skunk Springs	Chai-he Bama	Nav. Ex. 1680
By 1866	"	Hosteen Gonnie Yazzie	Nav. Exs. 1681, 1681A
By 1857	Snowbird Spring	Asdzaa Diil	#3 Mary Bahe
1877	"	Dine Goh Be'Asdzaa	#3 Subject
1863	Tachee Wash	Straight Rock	Nav. Ex. 1691

TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
By 1853	Talahogan	Fa (unnamed)	Nav. Ex. 1582
BFS	"	Adik'ai	Nav. Ex. 520T; #289 John Ts'osi Nez; #3 Dine Goh Be'Asdzaa
BFS	"	Asdzaa Neez	#109 Roger George
1875	"	Daagi Nez	#239 Subject
By 1840	Tonalea (Red Lake)	Asdzaa Yazhi	#99 Sally Draper Bailey
1840	"	Hastiin Bikee'	#57 Frank Lefty
Ca.1840	"	'Aszti' Tsoi Tsosie	#356 Frank Gishe
By 1843	"	Hastiin Ts'iiyid	Tr. 5324
By 1843	"	Asdzaa Ts'oosi	Tr. 5501-03
1844	"	Hastiin Tee/	#57 Frank Lefty
By 1851	"	Fa (unnamed)	Nav. Ex. 1868
By 1854	"	Fa (unnamed)	Nav. Ex. 2005
By 1854	"	Mo (unnamed)	Nav. Ex. 2005
Ca.1860	"	Aachin Nebaa'	#99 Sally Draper Bailey
1861	"	Mildred Billyman	Nav. Ex. 1586
By 1862	"	Doohaahaas T'aaha	#40 Charlie Begay
BFS	"	Atsidii T/'aai	#19 Silas Talker
BFS	"	Bilii /itsoi	#19 Silas Talker
BFS	"	Nilzhiineh	#40 Charlie Begay
BFS	"	Asdzaan Yazhi	#99 Sally Draper Bailey
BFS	"	Asdzaan Kin/ichiini	#99 Sally Draper Bailey
By 1864	"	Hosteen Grey Hair	Nav. Ex. 1576
1865	"	Francis Slender Denet-sosie	Nav. Ex. 1597
1866	"	Hn. Toh-neh-hel-lin	Nav. Ex. 1588
1870	"	Tom Adakai	#251 Subject
1873	"	Paul Tallman	#128 Subject
1845	White Cone	Hosteen Asgeezee	Nav. Ex. 1606
1858	"	Billy Pete	Nav. Exs. 1607, 1607A
1863	"	Mary Sangster	Nav. Ex. 1608
By 1865	"	Fa (unnamed)	Nav. Ex. 1609
By 1865	"	Mo (unnamed)	Nav. Ex. 1609
By 1867	"	Asdzen Chischilli	Nav. Ex. 1608
1868	"	Mrs. Hasteen Halalie	Nav. Ex. 1609A
1868	"	Hasteen Lewis	Nav. Exs. 1609B, 1609C
1877	"	Jack Oltkoe	#205 Subject
Ca.1878	"	K'ehaanabaa'	#412 Billy A
By 1830	White Mesa	Atsidi Nez Biye'	Tr. 5317-19, 5339

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TABLE 3

Part II - North of the 1882 Executive Order Reservation

Birth-date	Place	Name	Source Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1872	Allen Canyon, Utah	Nak'aidine'e	#288 Subject
By 1827	Baby Rocks, Ariz.	Maiji'ha'łał'ii	#169 Jim Pierce
By 1827	"	Asdzaa Tsoh	#31 Martha Fisher
Ca.1825	Bear's Ears, Utah	MoMo (unnamed)	#53 Mrs. Jim Hatathley
1831	"	Tłizzitso	#424 Shorthair
Ca.1832	"	Hosteen Beyal	Note 170/ Judd
By 1833	"	'Adiłdiłi	#321 Hashk'aan Diił
1848	"	Atsidii Neez	#283 Tom Mustache
By 1856	"	Asdzaa Bidesnasbaa Binii łichii	#70 Paul Jones
By 1859	"	Zhoni	#71 Tsinaabaas Yazhi
BFS	"	Hn. Manuelito	#81 Eddie Naakaii
BFS	"	Akeghosii	#86 Charlie Boy
By 1860	"	Bizhdii Baa	#86 Charlie Boy
1860	"	Carolyn Rentz	#185 Subject
1871	"	Kits'iili	#54 Subject
By 1876	"	Naakindezbaa	#70 Paul Jones
1877	"	Little Wagon's Wife	#73 Subject
1856	Betatakin, Ariz.	Klizzie Clonnie	Nav. Exs. 1559, 1559A
1831	Blue Mtns., Utah	łihi Yazzie	#424 Shorthair
Ca.1845	Bluff, Utah	Asdzaa Doohahi Bilah	#94 Big Mustache's Boy
By 1855	"	Hosteen Etcitty	Nav. Ex. 1946
By 1855	"	Adzan Tso	Nav. Ex. 1946
1861	"	Ason Nez	Nav. Exs. 1947, 1947A
By 1862	"	Daghai Yazzie	Nav. Ex. 1948
By 1862	"	Ason Clah Chee	Nav. Ex. 1948
1865	"	Wolz Boy	Nav. Ex. 1949
By 1868	"	Tł'izilani Clansman	#283 Tom Mustache
By 1870	"	Asdzaa Neez	#94 Daghaa Tsoh Biye'
By 1872	"	Asdzaa Baa'	#74 Ben Nakaiidine'e
1833	Chilchinbito, Ariz.	'Ashkii Kenłani	#121 Baa' Yazhi
Ca.1848	"	Asdzaa Hoonaghahnii	#147 Seton Clark
Ca.1850	"	'Ahaisbaa'	#183 Mariano Toledo
By 1856	"	Hn. Nizhoni Biye'	#48 Hetty Napah
1857	"	Ahasbah	#176 Julian Toledo
BFS	"	Chischilli	#49 Hn. Clau
BFS	"	T'iis Sataani	#49 Hn. Clau
By 1865	"	Ol Man Curleyhair Begay	Nav. Ex. 1731
1865	"	Ason Descheeni	Nav. Ex. 1732
By 1866	"	Hosteen Gai	Nav. Ex. 1733
By 1866	"	Mo (unnamed)	Nav. Ex. 1733

TABLE 3

Birth-date	Place	Name	Source Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1869	Comb Ridge, Utah-Ariz.	Hashk'aan Diil	#321 Subject
By 1870	"	Baa' Yazhi	#76 Slim Todich'ii'nii
1873	"	Hn. Toh łizhini Bitsi	#96 Subject
By 1831	Dinehotso, Ariz.	Asdzaan Adiłdiłi	#49 Hn. Clau; #93 Bitiis Biye'
1841	"	Hashkeneinii Bilah	#129 Yidloohe Biye'
1845	"	Asdzaan Ashiihi	#327 Robert Longsalt
1854	"	Tseyiini łibahi Biye'	#133 Mandy Clark
1858	"	Adzan Biteeshi	Nav. Exs. 1740, 1740A
By 1858	"	Fa (unnamed)	Nav. Ex. 1741
By 1858	"	Mo (unnamed)	Nav. Ex. 1741
By 1861	"	Red Mustache	Nav. Ex. 1742
BFS	"	Asdzaan Ałts'iisi	#49 Hn. Clau
By 1866	"	Betoni	Nav. Ex. 1743
By 1866	"	Mo (unnamed)	Nav. Ex. 1743
By 1866	"	Fa (unnamed)	Nav. Ex. 1744
By 1866	"	Billily Bilah	Nav. Ex. 1744
By 1867	"	Fa (unnamed)	Nav. Ex. 1745
By 1867	"	Kinlacheeny Tso	Nav. Ex. 1745
By 1868	"	Yellowman	Nav. Ex. 1746
By 1868	"	Mo (unnamed)	Nav. Ex. 1601
1869	"	Hastiin Deeschii'nii	#125 Si Hicks
1870	"	Dibe łigai	#21 Subject
By 1871	"	Mo (unnamed)	#49 Hn. Clau
1882	"	Haakeh Nezin	#95 Subject
Ca.1845	Douglas Mesa, Ariz.	Hastiin 'Atł'izhi	#12 Navajo Dan or Ashkii Tsoh
1882	"	Berg Sullivan	#46 Subject
Ca.1833	El Capitan, Ariz.	Atsidi Na ci'i	#412 Billy A
1829	Inscription House, Ariz.	Old Man Jones	Nav. Ex. 1557
1834	"	Asdzaa Bizhiin	Tr. 3977-79
Ca.1846	"	Ch'ah Teel	#328 Robert Sombrero
1850	"	Kesh'koi'li	#419 Everett Mann
1867	"	Begay Hosteen Nez	Nav. Ex. 1558
1873	"	Ashkii Tsoh or Navajo Dan	#12 Subject
Ca.1801	Kayenta, Ariz.	MoMoMo (unnamed)	#136 Sam Lee Littleman
1813	"	Old Bit'ahnii Clanswoman	#121 Baa' Yazhi
1821	"	Bit'ahnii Clansman	#136 Sam Lee Littleman
By 1822	"	Elagae	Nav. Ex. 1591A
By 1822	"	Dagai Bikis	Nav. Ex. 1591A
1841	"	Hastiin Tseyitni	#136 Sam Lee Littleman
By 1841	"	Ni dee Iskeesi	Nav. Ex. 1592
1842	"	Chischille Ba Tson	Nav. Ex. 1951A
By 1843	"	FaMo (unnamed)	Tr. 3420-21, 3427
By 1845	"	Bilatsoh, "Thumb"	#31 Martha Fisher
1845	"	Jack Hudgins	Nav. Ex. 1593

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TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1848	Kayenta, Ariz.	John Austin	Nav. Ex. 1594
By 1849	"	Wife of Hastiin Hawoo'i	Tr. 3469
1854	"	Tso Tsosie	Nav. Ex. 1595
1855	"	Old Man or Uncle Crank	Nav. Ex. 1595A
1856	"	Herbert Atene	Nav. Ex. 1596
1856	"	Tohalena Dele	Nav. Ex. 1597
1860	"	Hn. Binii' Dit/'oii	#37 Nii Yazhi or John Ketsole
1861	"	Mr. Wee Wee	Nav. Exs. 1598, 1592
BFS	"	Bikee Yoo'ayi/ne	#89 Naakaii Asdzaa
By 1865	"	Fa (unnamed)	Nav. Ex. 1591
1866	"	Hite Yazzie	Nav. Ex. 1599
1867	"	Hocki Dinne	Nav. Ex. 1600
By 1868	"	Fa (unnamed)	Nav. Ex. 1601
1869	"	Yidloohi	#29 Tom Lefty
1869	"	Blind Weaver	#159 Subject
1870	"	Martha Fisher	#31 Subject
1872	"	Daghaa /izhini or Sam Lee Littleman	#136 Subject
1880	"	Dine Ts'osi Bitsi	#133 Mandy Clark
By 1829	Marsh Pass, Ariz.	Dibe /ani Nt/'aa'i	Tr. 5298-5301
By 1849	"	Hastiin Hawoo'i	Tr. 5470
1840	Mexican Hat, Utah	Asdzaa Bit'aahni	#330 Charley Drake
1855	"	Asdzaa Tohalish	#330 Charley Drake
1842	Monument Valley	MoMo (unnamed)	#46 Berg Sullivan
By 1865	"	Mo (unnamed)	Nav. Ex. 1591
1870	"	Whirlwind Crossing's Dau.	#330 Charley Drake
1871	"	Jimmy Holiday	#257 Subject
By 1823	Navajo Mountain	Hastiin T/izi/ani	Tr. 2499-2500, 2504
By 1823	"	Asdzaa Sisii	Tr. 5271-73
By 1823	"	Hn. Bich'aahe Be'asdzaa	Tr. 2367-68, 2459-60, 2469
By 1833	"	Bik'aa Sani	#328 Robert Sombrero
1838	"	Asdzaa Tsisi	#147 Seton Clark
1847	"	Keshgoli Daagahi	#328 Robert Sombrero
Ca.1848	"	Hastiin Ataka'i	Tr. 5271-73
By 1852	"	Asdzaa Bitsii /igai	Tr. 3412-13
1855	"	Ashkii /ichii	#198 Asdzaa /ichii Bitsui
1857	"	Old Man Pine (Old Man Indischee)	Nav. Ex. 1550B
1857	"	Asdzaa Tachii'nii	#331 Isabel Onesalt
1857	"	T/'izi/ani /itsoi	#331 Isabel Onesalt
Ca.1859	"	Asdzaa /igai	#125 Si Hicks
By 1859	"	Etcitty	Nav. Ex. 1551
By 1859	"	Hashkah Tso Bitsie	Nav. Ex. 1551
By 1861	"	Old Fat (Naskai)	Nav. Exs. 1552, 1552A
1861	"	Ashiihi Binaa Adne	#328 Robert Sombrero
1864	"	Asdzaa Nimazii	#124 Aggie Ndischii

TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1864	Navajo Mountain	Ma Longsalt	Nav. Ex. 1553
1866	"	Gray Mountain	Nav. Ex. 1554
1866	"	Asonalthsui	Nav. Ex. 1554
1867	"	Dick Drake	Nav. Ex. 1555
1873	"	Gaa'shi	#329 Maggie Holgate
1837	Navajo Canyon, Ariz.	Asdzaan /igai	#331 Isabel Onesalt
1845	"	Taach'iini Tso	#333 Leo Dougi
1845	"	Asdzaan "Lanky Woman"	#333 Leo Dougi
1846	"	Yiik'oozbaa	#332 Big Thumb
Ca.1848	"	Asdzaa Bit/izi /igai	#127 Asdzaa Chii'i or May Tallman; #328 Robert Sombrero; #335 John Redshirt
1848	"	Asdzaan /igai Sani	#326 Tony Onesalt
1848	"	Step Fa's Fa	#326 Tony Onesalt
1848	"	Asdzaan Yazhi	#332 Mabel Big Thumb
By 1849	"	Ashiihi Binaa Adinii	#328 Robert Sombrero
1852	"	Atsidi Alkehe	#329 Maggie Holgate
1855	"	T/izi/ani	#330 Charley Drake
1863	"	Daanzi/thlikai	#326 Tony Onesalt
By 1867	"	Dine T/'ool	#356 Frank Gishi
1870	"	Dick Navajo or Azooli	#330 Charley Drake
1872	"	Yidloohe Biye'	#129 Subject
By 1873	"	Asdzaa Choo	#59 Curley Tsoh
Ca.1878	"	Julius Sombrero	#328 Robert Sombrero
1879	"	Leo Dougi	#333 Subject
1880	"	Elva Fat	#132 Subject
1880	"	Baa'	#127 Asdzaa Chii'i or May Tallman
1855	Oljayto, Utah	/istsozi, "G-String"	#330 Charley Drake
By 1864	"	Ason Grey Hat	Nav. Ex. 1589A
1865	"	Fat Holiday	Nav. Ex. 1590
1869	"	Asdzaa Hadi/cha/i	#126 Mabel Navajo
1880	"	Nii' Yazhi or John Ketsole	#37 Subject
1881	"	Hn. Whooshni	#35 Subject
By 1842	Paiute Canyon(Mesa)	Asdzaa 'Ashiihi	#40 Charlie Begay
1855	"	Baangodeh	#330 Charley Drake
1882	"	Slim Eltsosie	#134 Subject
1831	Shonto, Ariz.	Asdzaan Yashi	#131 Hn. Neez Biye'
By 1833	"	Ason Tsinih	Nav. Ex. 1560
1840	"	FaMo (unnamed)	#122 Ashiihi Nez
1841	"	Mo (unnamed)	#136 Sam Lee Littleman
1844	"	T/izi/ani Clanswoman	#124 Aggie Ndischii
By 1849	"	'Atsidii	#328 Robert Sombrero
Ca.1849	"	Keshgoli	Tr. 5297-98
Ca.1850	"	Asdzaa Ashiihi	Tr. 5316, 5338

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TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
Ca.1850	Shonto, Ariz.	Hn. Bitsii' Łigaii	#127 Asdzaa Chii'i
1852	"	Asdzaan Shonto	#329 Maggie Holgate
1853	"	Asdzaa Ashiihi	#121 Faa' Yazhi
Ca.1853	"	Hastiin Adikaai	#147 Seton Clark
1861	"	Atsidi	#328 Robert Sombrero
BFS	"	Asdzaa Łichii'i	#10 Hn. Naat'aanii
BFS	"	'Adiits'a'ii	#40 Charlie Begay; #328 Robert Sombrero
BFS	"	Hastiin Doonaaghanii	#10 Hn. Naat'aanii
1870	"	Ashiihi Nez	#122 Subject
1871	"	Neez Biye'	#131 Subject
1871	"	Hn. Nez Biye'	#131 Subject
1872	"	Hn. Holtzo	#255 Subject
1880	"	Neshk'ahii Yazhi	#127 May Tallman
By 1829	Tall Mountain, Ariz.	Bit'ahnii	Tr. 5298-5301
1850	"	Asdzaa Łichii	#133 Mandy Clark
By 1854	"	Taagii'agodi	Tr. 2783-84
1862	"	Asdzaa Hadiłch'ałi	#40 Charlie Begay
By 1843	Tsegi Canyon, Ariz.	Baa'	Tr. 2786-87, 1789
Ca.1849	"	Binii ditł'ci	#159 Blind Weaver

Part III - West of the 1882 Executive Order Reservation

1829	Black Point	Asdzaan Łigai	#117 Ethel Robbins
Ca.1845	"	Baa'	#101 Clyde Beeshłigai
1882	"	Clyde Beeshłigai	#101 Subject
By 1810	Bodoway	Atsidi Nez	Tr. 5329-30
By 1810	"	Asdzaa Naahaznii	Tr. 5329-30
By 1832	"	Naadlibaa'	Tr. 5349-51, 5362, 5367
1848	"	Alsi "Tall Syphillis"	#326 Tony Onesalt
By 1858	"	Asdzaa Łibahi	#35 Hn. Whooshni
BFS	"	Soomaasi	#19 Silas Talker
1871	"	Hn. Neinii	#44 Joe Attakai
1874	"	Emily Scott	#328 Maggie Holgate
1878	"	Hastiin Doyaałtii	#340 Hastiin Tsoh
1871	"	Joe Attakai	#44 Subject
1868	Cameron	Susie Huskon	Nav. Ex. 1519
Ca.1855	Coconino Basin	Asdzaa Bitsii Łigahi	Tr.5213
1850	Coconino County	Hn. Etsety or Blind Man	Nav. Ex. 1749
By 1850	"	Fa (unnamed)	Nav. Ex. 1750
By 1850	"	Mo (unnamed)	Nav. Ex. 1750

TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
By 1858	Flagstaff	Mo (unnamed)	Nav. Ex. 1500
By 1858	"	Fa (unnamed)	Nav. Ex. 1500
By 1828	Gap, Ariz.	Asdzaa Bininali	Tr. 5282
Ca.1848	"	Dineh Diil Be'asdzaa	Tr. 5387, 5389-90, 3068-69, 3071, 3079, 3107, 3931-32, 3934-35, 3943-44
Ca.1848	"	Dinet Hastiin Diil	Tr. 5394, 3067-68
By 1848	"	Asdzaa Ba'ałchini Łani	Tr. 5303
By 1848	"	Hastiin Ba'ałchini Łani	Tr. 5303
By 1865	"	Fa (unnamed)	Nav. Exs. 1556, 1556A
By 1865	"	Mo (unnamed)	Nav. Exs. 1556, 1556A
1876	"	Mrs. Dan Tauchin	#20 Subject
Ca.1820	Grand Canyon	MoMo (unnamed)	Tr. 3267-68, 3281-83, 3291-93, 3318, 3325
By 1850	"	Asdzaa Ts'oosi	Tr. 3271-72
Ca.1850	Grand Falls	Asdzaa Ts'oosi	Tr. 5102-03, 5122-23
1853	"	Asdzaan Ajoon Ałizizłi	#118 Lillian Jones
By 1857	"	Asdzaa Aataahiliin	#105 Jack Slowtalker
1858	"	Hastiin Ałtsihi	Tr. 5132-33
BFS	"	Hastiin Biwoo Adini	#9 Talabah Cody
1870	"	Millie Luther	#56 Subject
1879	"	Asdzaa Yazhi or Talabah Cody	#9 Subject
1803	Gray Mountain	Asdzaa Yazhi	#133 Mandy Clark
By 1819	"	Asdzaa Kehi	Tr. 4976
By 1821	"	Asdzaa Ts'oosi	Tr. 4967
1825	"	Naałiin (Tłiin) Yazhi	#108 Hastiin Mark
1829	"	'Aaz jaa kai	#353 May Nakai
By 1830	"	Yahnahbah	Nav. Ex. 666
By 1830	"	FaMo (unnamed)	Tr. 3323-24
By 1830	"	FaFa (unnamed)	Tr. 3323-24
1836	"	Bass'ishii Bah	#101 Clyde Beeshłigai
By 1836	"	Asdzaa Nizoon	#35 Hn. Whooshni
Ca.1837	"	Asdzaa Gaani	Julia McClellan (May 8, 1971)
Ca.1839	"	Baa'	#119 Elva Lee
By 1839	"	Asdzaa Tsehi	Tr.4975
Ca.1850	"	MoMo Sister	Tr. 3299
1840	"	Woh La Chii ji hatath'li Be8asdzaa	#203 George Nells
By 1841	"	FaFa (unnamed)	Tr. 4965-66
By 1844	"	Fa (unnamed)	Nav. Ex. 1501
By 1844	"	Mo (unnamed)	Nav. Ex. 1501
Ca.1845	"	Jaad Cho'i	Tr. 5231-32
Ca.1845	"	Naadlii Yazhi	Tr. 5231-32
1845	"	Hosh Łis Niitso	#422 Glin Ha Ni Bah
1845	"	Aachiihaas Baa'	#108 Hastiin Mark

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TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
By 1845	Gray Mountain	Baa'	#17 Dine Łigai Bitsili
1845	"	Asdzaa Tsizi	#353 May Nakai
1847	"	Asdzaan Zhinnie	#352 Tom Nakai
1848	"	Haashke Ndiicho	#309 Jim Ashley
By 1848	"	Asdzaa Yashi	#10 Hastiin Naat'aani
Ca.1850	"	Asdzaa Ashiihi	#146 Slim Salt
Ca.1850	"	Tsii'adeni	Tr. 5103-05
Ca.1851	"	Peshlakai Atsidi	#101 Clyde Peshlakai
Ca.1851	"	Asdzaan Bitłizilani	#243 Wm. P. Goodluck
Ca.1854	"	Asdzaa Neez	#107 Naalnishi
1854	"	Bah	Nav. Ex. 1502
By 1858	"	Ason Tso	Nav. Ex. 1503
By 1859	"	Goma'a Yashi Bitsi	#14 Mrs. Billy Sawyer
Ca.1859	"	Mo (unnamed)	Tr. 38, 44-45
1859	"	Binaa'astaani	Tr. 4974-75
1861	"	Nakaidine'e	Tr. 4964-65; #352 Tom Nakai
1862	"	Hosteen Todacheene	Nav. Ex. 1504
BFS	"	Hastiin Ashiihi	#19 Silas Talker
BFS	"	'Achoo'ii, "Testicles"	#266 Hn.Keshkoli Biye' Adika'i
BFS	"	Asdzaan Ashiihi	#146 Slim Salt
BFS	"	Naa T'aahe bicho'	#19 Silas Talker
BFS	"	Hastiin Yazhi	#108 Hastiin Mark
BFS	"	Asdzaan Tsosie	#352 Tom Nakai
BFS	"	Hastiin Tsi Yit	#108 Hastiin Mark
BFS	"	Hastiin Bagodi	#117 Ethel Robbins
1863	"	Zilahnie Sonnie	Nav. Exs. 1505, 1505A
1864	"	Bkinde Chisi	Nav. Ex. 1501
By 1868	"	Hastiin Tsoh Biye'	Tr. 3011
1870	"	Asdzaan Łikai	#117 Ethel Robbins
1874	"	Silas Talker	#19 Subject
1879	"	Elva Lee	#119 Subject
1881	"	Charley Begay	#27 Subject
1821	Kaibito, Ariz.	Asdzaa Bitsii Łigaii	#129 Tom Lefty
By 1829	"	Asdzaa Bitł'izi	Tr. 5298-5301
Ca.1830	"	Tł'ee Soozii	Tr. 5472
Ca.1830	"	Daaghaa' Sikaad	Tr. 5327-28; 5340-41
1845	"	Atcitty Nez Begi	#327 Robert Longsalt
By 1848	"	Hajiibaa'	Tr. 5374, 5376, 5383
Ca.1849	"	Asdzaa Bagaane	Tr. 5296
1853	"	Asdzaa Łitsoi	#129 Paul Tallman
By 1853	"	Bah	Nav. Ex. 1582
1858	"	Cha'an Teel Be'asdzaan	#328 Robert Sombrero
1861	"	Old Man Small Canyon	Nav. Ex. 1583
By 1865	"	Traisonnie Bitsi	Nav. Exs. 1584, 1584A
1867	"	Laura Delaney	Nav. Ex. 1585
1869	"	Asdzaan Yiitłoi	#419 Everett Mann
1873	"	Paul Tallman	#128 Subject
1875	"	Tse'yitni Yazhi Biye'	#123 Subject
1877	"	Bakad Sani Begay	#331 Isabel Onesalt

TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
By 1843	Kendrick Peak	Asdzaa Yazhi	Tr. 3371, 3377-78, 3384
1855	Moenave	Denneth Tsinnijinnie	Nav. Ex. 1561
Ca.1848	Pasture Canyon	Chishi Neez	Tr. 24-26 (1954)
1875	Preston Mesa	Asdzaan Ayo Łanesnezi	#335 John Redshirt
By 1823	San Francisco Mtns.	Daaghaa'i Yazhi	Tr. 2507, 2509, 2511
By 1823	"	Daaghaa'i Yazhi Be' Asdzaa	Tr. 2508-09
By 1839	"	Gomaa'a or Gomaa' Yazhi	#14 Mrs. Billy Sawyer
Ca.1848	"	Ba'ałchini Łani	Tr. 4939
Ca.1848	"	Nadze Tsoh	Tr. 3021
By 1830	Shadow Mountain	"Red Ant Singer's Wife"	Tr. 5258
1885	"	Tall Whiskers	#60 Subject
Ca.1840	Tanner's Wash (Well)	Asdzaa Bitsii' Łibahi	#345 Sally Naakaiidine'e
1840	"	Thin Silversmith	#345 Sally Naakaiidine'e
Ca.1864	"	Asdzaa Yazhi	#345 Sally Naakaiidine'e
1879	"	Sally Naakaiidine'e	#345 Subject
By 1828	Tuba City	MoFa (unnamed)	Tr. 5381
1832	"	Ustzon Nez	Nav. Ex. 1562
By 1843	"	Hn. Bii'aghaani	Tr. 3371, 3377-78, 3384
By 1845	"	Hosteen Sheen	Nav. Ex. 1563
By 1845	"	Mo (unnamed)	Nav. Ex. 1563
By 1849	"	Atsitty	Nav. Ex. 1564
By 1849	"	Mo (unnamed)	Nav. Ex. 1564
By 1852	"	Tonezani Nez	Nav. Ex. 1565
1852	"	Mary Owens	Nav. Ex. 1566
1852	"	Paul Shepherd	Nav. Ex. 1567
By 1854	"	Fa (unnamed)	Nav. Ex. 1568
By 1854	"	Mo (unnamed)	Nav. Ex. 1568
1854	"	MoMo (unnamed)	#329 Maggie Holgate
By 1855	"	Hastiin Chaala	#27 Charley Begay
By 1855	"	Hosteen Yazzie	Nav. Ex. 1569
1857	"	Chi Dez Bah	Nav. Ex. 1570
1858	"	Chelly Coffee	Nav. Ex. 1571
1862	"	Carding Woman Begody	Nav. Ex. 1572
By 1862	"	Silversmith	Nav. Ex. 1573
By 1862	"	Mo (unnamed)	Nav. Ex. 1573
By 1864	"	Tall Ute	Nav. Exs. 1574, 1574A
1864	"	Butler's Brother's Mo.	Nav. Ex. 1575
By 1864	"	Ason Ta'neszahnie	Nav. Ex. 1576
1865	"	Aszais Badani	Nav. Ex. 1577
1865	"	Charlie Grayhead	Nav. Exs. 1578, 1563
1865	"	Bernard Tohannie	Nav. Ex. 1579
1868	"	Richard Dix	Nav. Ex. 1580
1868	"	Denetdeal	Nav. Ex. 1581

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TABLE 3

Birth-date	Place	Name	Source Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
By 1847	Upper Coconino Rim	Bowoo'odeni	Tr. 5220, 5222-24
By 1809	Western Navajo Reservation (Tuba City Agency)	Mo (unnamed)	Nav. Ex. 1557
1812	"	Carrie Dickson	Nav. Ex. 1757
By 1825	"	Fa (unnamed)	Nav. Ex. 1758
By 1825	"	Mo (unnamed)	Nav. Ex. 1758
By 1838	"	Fa (unnamed)	Nav. Ex. 1759
By 1838	"	Mo (unnamed)	Nav. Ex. 1759
By 1842	"	Fa (unnamed)	Nav. Ex. 1760
By 1842	"	Mo (unnamed)	Nav. Ex. 1760
By 1843	"	Fa (unnamed)	Nav. Ex. 1761
By 1843	"	Mo (unnamed)	Nav. Ex. 1761
1845	"	John Boone	Nav. Exs. 1758, 1762, 1762A
By 1846	"	Fa (unnamed)	Nav. Ex. 1763
By 1846	"	Mo (unnamed)	Nav. Ex. 1763
By 1848	"	Fa (unnamed)	Nav. Ex. 1764
By 1848	"	Mo (unnamed)	Nav. Ex. 1764
1848	"	Dick Dickens	Nav. Ex. 1765
By 1850	"	Fa (unnamed)	Nav. Ex. 1766
By 1850	"	Gus Bighorse	Nav. Ex. 1767
By 1850	"	Mo (unnamed)	Nav. Ex. 1767
By 1850	"	Fa (unnamed)	Nav. Ex. 1768
By 1850	"	Mo (unnamed)	Nav. Ex. 1768
By 1853	"	Fa (unnamed)	Nav. Ex. 1769
By 1853	"	Mo (unnamed)	Nav. Ex. 1769
By 1854	"	Fa (unnamed)	Nav. Ex. 1770
By 1854	"	Mo (unnamed)	Nav. Ex. 1770
By 1855	"	Fa (unnamed)	Nav. Ex. 1771
By 1855	"	Mo (unnamed)	Nav. Ex. 1771
By 1855	"	Fa (unnamed)	Nav. Ex. 1772
By 1855	"	Mo (unnamed)	Nav. Ex. 1772
By 1855	"	Fa (unnamed)	Nav. Ex. 1773
By 1855	"	Mo (unnamed)	Nav. Ex. 1773
By 1856	"	Fa (unnamed)	Nav. Ex. 1774
By 1856	"	Mo (unnamed)	Nav. Ex. 1774
1856	"	Gladys Boone	Nav. Ex. 1775
By 1856	"	Hosteen	Nav. Ex. 1776
By 1856	"	Bah	Nav. Ex. 1776
By 1857	"	Fa (unnamed)	Nav. Ex. 1777
By 1857	"	Mo (unnamed)	Nav. Ex. 1777
By 1857	"	Denet Gloni Begay	Nav. Ex. 1778
By 1857	"	White Mexican	Nav. Ex. 1778
1857	"	Joseph Johnson	Nav. Ex. 1779
By 1857	"	Fa (unnamed)	Nav. Ex. 1779A
By 1857	"	Mo (unnamed)	Nav. Ex. 1779A
1858	"	Nonnie Teel	Nav. Ex. 1780
By 1858	"	Fa (unnamed)	Nav. Ex. 1781
By 1858	"	Mo (unnamed)	Nav. Ex. 1781
By 1858	"	Fa (unnamed)	Nav. Ex. 1782
1858	"	Bama Tapanyazzie	Nav. Ex. 1783

TABLE 3

Birth-date	Place	Name	Source Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1859	Western Navajo Reservation (Tuba City Agency)	Kate Nez	Nav. Ex. 1784
By 1859	"	Fa (unnamed)	Nav. Ex. 1785
By 1859	"	Mo (unnamed)	Nav. Ex. 1785
By 1860	"	Hosteen	Nav. Ex. 1786
By 1860	"	Bahe	Nav. Ex. 1786
1860	"	Lee Scmalle	Nav. Ex. 1787
By 1860	"	Fa (unnamed)	Nav. Ex. 1788
By 1860	"	Mo (unnamed)	Nav. Ex. 1788
By 1861	"	Fa (unnamed)	Nav. Ex. 1789
By 1861	"	Mo (unnamed)	Nav. Ex. 1789
By 1862	"	Fa (unnamed)	Nav. Ex. 1790
By 1862	"	Mo (unnamed)	Nav. Ex. 1790
By 1864	"	Fa (unnamed)	Nav. Ex. 1791
By 1864	"	Mo (unnamed)	Nav. Ex. 1791
By 1864	"	Black	Nav. Ex. 1792
By 1864	"	Mo (unnamed)	Nav. Ex. 1792
1865	"	Harry Blackgoats	Nav. Ex. 1793
By 1865	"	Fa (unnamed)	Nav. Ex. 1794
By 1865	"	Mo (unnamed)	Nav. Ex. 1794
By 1866	"	Fa (unnamed)	Nav. Ex. 1795
By 1866	"	Mo (unnamed)	Nav. Ex. 1795
1866	"	Lilly Scmalle	Nav. Ex. 1796
By 1866	"	Fa (unnamed)	Nav. Ex. 1797
By 1866	"	Fa (unnamed)	Nav. Ex. 1798
By 1866	"	Mo (unnamed)	Nav. Ex. 1798
By 1867	"	Fa (unnamed)	Nav. Ex. 1799
By 1867	"	Mo (unnamed)	Nav. Ex. 1799
By 1867	"	Fa (unnamed)	Nav. Ex. 1800
By 1867	"	Mo (unnamed)	Nav. Ex. 1800
By 1867	"	Fa (unnamed)	Nav. Ex. 1801
By 1867	"	Mo (unnamed)	Nav. Ex. 1801
By 1867	"	Mo (unnamed)	Nav. Ex. 1758
1868	"	Louise Bitahny	Nav. Ex. 1802
1868	"	Bertha Edsity	Nav. Ex. 1803
By 1868	"	Grayhair	Nav. Ex. 1804
By 1868	"	Bah Salt	Nav. Ex. 1804
1868	"	Madge Black	Nav. Ex. 1805
1868	"	Ann Horserider	Nav. Ex. 1806
By 1868	"	Fa (unnamed)	Nav. Ex. 1807
By 1868	"	Mo (unnamed)	Nav. Ex. 1807
1868	"	Lena Talker	Nav. Ex. 1808
By 1868	"	Fa (unnamed)	Nav. Ex. 1809
By 1868	"	Mo (unnamed)	Nav. Ex. 1809
1848	Wildcat Butte	Dine Diil	#58 John Sampson
By 1867	"	Asdzaa Nts'ozi	#356 Frank Gishe

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TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
1828	Willow Springs	Tsi'naajinii Ayo'łnezi Be'asdzaa	#58 John Sampson
1838	"	Asdzaan Ba'ałchiini łani	#419 Everett Mann
Ca.1848	"	Dineh Diil Be'asdzaa	#58 John Sampson
Ca.1848	"	Dineh Hastiin Diil	#58 John Sampson
Ca.1848	"	Naad łiindez Bah	#114 John Walker
1853	"	Dagaa łani	#419 Everett Mann
1872	"	John Walker	#114 Subject

Part IV - South of the 1882 Executive Order Reservation

Ca.1847	Bidahoochii'	Bunanootoo łł Baadaanee	Tr. 5068
1865	Bird Springs	Ason Gonnie	Nav. Ex. 1520
By 1868	"	Grandma Curley	Nav. Ex. 1521
1849	Castle Butte	Asdzaan Dichale	#412 Billy A
By 1862	"	To-Lab-Halene	Nav. Ex. 1522
1864	"	Adzon Tailly	Nav. Ex. 1523
By 1865	"	Nan Gash Toy	Nav. Ex. 1524
By 1865	"	Ason Joe Cli-ee	Nav. Ex. 1524
1869	"	Ke'na'nini Bah Bima	#412 Billy A
By 1841	Cedar Springs	Asdzaa Yazhi	#16 Joe Kabinto
By 1861	"	Yisnchbah	#16 Joe Kabinto
1863	"	Billy Dixon No. 1	Nav. Ex. 1532
By 1868	"	Kayanee Nez	Nav. Ex. 1533
1874	"	Pete Tatsohnii	#8 Subject
1862	Canyon Diablo	Judge Curtis	Nav. Ex. 3012
By 1836	Deep Lake	MoMo (unnamed)	Tr. 4921-22
1853	Dilkon	Astahn Nez	Nav. Ex. 1525
1860	"	Tapaha Chischilly Yazzie	Nav. Exs. 1526, 1526A
1862	"	Adzon Tso	Nav. Ex. 1527
1864	"	Tah Bah Bitsie Chilly Yazzie	Nav. Ex. 1528
1864	"	Adzon Begay	Nav. Ex. 1529
By 1865	"	Tsenajinni Tso Tsi	Nav. Ex. 1530
By 1865	"	Tsenajinni Tso Tsi's Wife	Nav. Ex. 1530
1868	"	Bah Spencer	Nav. Ex. 1531
By 1826	Indian Wells	FaFaMo (unnamed)	#328 Robert Sombrero
By 1826	"	Dibe łani Niclai	#323 Robert Sombrero
1838	"	Asdzaan Bi Lin łani	Nav. Ex. 1534

TABLE 3

Birth-date	Place	Name	Source: Tr. p. ref.; Nav. Ex. No., Doc. 229; or Nav. Dep. and No.
By 1849	Indian Wells	Hosteen Na A'di Ni	Nav. Ex. 1535
By 1854	"	Hosteen Bi łahi	Nav. Ex. 1536
1858	"	Biłł Niz ni Bah	Nav. Ex. 1537
1858	"	John Bigodi	Nav. Ex. 1538
By 1860	"	Clahjinnie	Nav. Ex. 1539
By 1860	"	Mo (unnamed)	Nav. Ex. 1539
1861	"	Chee Mother	Nav. Ex. 1540
1862	"	Hn. (Asdzan Lichee Begay) Riggs	Nav. Ex. 1541
1863	"	Na-ka-Bah	Nav. Ex. 1542
1867	"	Tson Bia Jona	Nav. Ex. 1543
1868	"	Mrs. Hasteen Bi Tsichilly	Nav. Ex. 1544
By 1868	"	Fa (unnamed)	Nav. Ex. 1545
By 1868	"	Asdzan Toh Tso Ni	Nav. Ex. 1546
1844	Leupp, Ariz.	Hos Kan	Nav. Ex. 1506
1844	"	Hosteen Nashashi	Nav. Ex. 1507
1850	"	Hosteen Dijoli	Nav. Ex. 1508
By 1853	"	Fa (unnamed)	Nav. Ex. 1509
By 1853	"	Mo (unnamed)	Nav. Ex. 1509
1854	"	Oh-ha-ni-Bah	Nav. Exs. 1510, 1510A
Ca.1855	"	Haschinisusu (Small Man)	171/ Gifford
By 1860	"	Na Glee	Nav. Ex. 1511
1863	"	Charlie Begay	Nav. Ex. 1512
1863	"	Asdzaan Aataahiliin "Old Lady"	#105 Jack Slowtalker
1864	"	Dene Elth Tshie	Nav. Ex. 1513
1864	"	Multin	Nav. Ex. 1514
1867	"	Alice Cody	Nav. Ex. 1515
1868	"	Ke Yazzie Bumah	Nav. Ex. 1516
1830	Leupp Reservation	Atta Kai Soni	Nav. Ex. 1747
1854	"	Asdzan Tso	Nav. Ex. 1748
1848	Moqui Buttes	MoMo (unnamed)	#136 Black Whiskers
1868	Red Lake (Leupp area)	Ason Ashihi	Nav. Ex. 1517
1853	Seba Dalkai	Joe Charley	Nav. Ex. 1547
By 1842	Star Butte	Asdzaa Ded'iin	#95 Haakeh Nezin
By 1848	Teesto, Ariz.	Hosteen To-de-Gonshe	Nav. Ex. 1548
By 1848	"	Ason Teel	Nav. Ex. 1548
1865	"	Dine Yellowbird	Nav. Ex. 1549
1866	"	Ason Yellowhair	Nav. Exs. 1550, 1550A
1868	"	Robert Nez	Nav. Ex. 1548
1864	Tolani Lakes	Adszon Belone	Nav. Ex. 1518
1868	"	Bikaijoołł Baa	#113 Asdzaa Kinłichii'nii

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RECAPITULATION

The foregoing evidentiary references to Navajo occupation of the 1882 Executive Order, as well as of areas to the north, west, and south of it, fully substantiate continuous Navajo residence and use from earliest historic times. Navajo archaeological sites and the great number of Navajo births recorded both in and beyond the 1882 rectangle are far too numerous to have been incidental to raiding or trading expeditions, and would not have occurred in territory alien to the Navajos. Evidence that the Navajos had stock in their possession further discounts this contention. Tree-ring dates produced from numerous Navajo hogan remains unquestionably corroborate early permanent and continuous occupancy by Navajos rather than a capricious use of the region by them.

Documentary evidence that the Navajos were warring with the Havasupai as early as 1686, again in 1776, and in 1801—and intermittently during this period with the Hopis—is a compelling indication of their occupation of the area west of the Hopi villages. It is inconceivable that any Indian nation would traverse an unknown or unfamiliar land merely to wage war. They could have been fighting only in defense of the land. It goes without saying that they were defending the land against the Havasupais for themselves, not for the Hopis. Navajos had been in the region as far west as the Colorado River for more than a century prior to the establishment of the 1882 Executive Order Reservation; hence, those who found refuge in the west as a result of the actions of United States military forces subsequent to American sovereignty in 1848, could hardly be said to have moved to foreign, unfamiliar or unfriendly territory. By 1848, the aboriginal lands of the Hopi Indians had long been reduced to the region of the three mesas on and below which their present villages are located (Moencopi Village excepted). Their population had long been drastically reduced by war, famine and pestilence, the Hopis having been threatened at one time with extinction.

Boundaries of the 1882 Executive Order Reservation were drawn without recourse to actual Indian occupancy and use. The evidence is compelling that the true boundary around the Hopi domain as of December 16, 1882, consisted of the Navajos themselves. From the seventeenth century on, they held dominion and control over all territory surrounding the Hopi villages, the Hopis being allowed to come and go only at the sufferance of the ubiquitous and more warlike and aggressive Navajos.

NOTES

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(2) Brief in Support of Petitioner's Motion for Further Hearing on the Matter of Dates of Taking by the Defendant, and Pursuant to Rule 25 C.F.R. Para. 503.33 for a Rehearing and for Amendment of Findings, before the Indian Claims Commission, Dockets 196 (Hopi) and 229 (Navajo), September 4, 1970.

(3) Ross G. Montgomery, Watson Smith & J. O. Brew, FRANCISCAN AWATOVI, Papers of the Peabody Museum of American Archaeology and Ethnology, Vol. XXXVI, Harvard University, Cambridge, Mass., 1949; Alfred Barnaby Thomas, FORGOTTEN FRONTIERS, University of Oklahoma Press, Norman, 1932, pp. 19–20.

(4) Richard F. Van Valkenburgh (Edited by Clyde Kluckhorn), NAVAJO SACRED PLACES, Manuscript (Navajo Pl. Ex. 687, Docket 229, Indian Claims Commission); NAVAJO SACRED PLACES MAP (Navajo Pl. Ex. 687, Docket 229); Findings 13 and 18, and Appendix H, PROPOSED FINDINGS OF FACT IN BEHALF OF THE NAVAJO TRIBE OF INDIANS IN THE AREA OF THE OVERALL NAVAJO CLAIM (Docket 229); Stanley A. Fishler, IN THE BEGINNING, Anthropological Papers, University of Utah, Vol. XLII, Salt Lake City, 1953; Mary C. Wheelwright, Recorder, NAVAJO CREATION MYTH. THE STORY OF THE EMERGENCE BY HASTEEN KLAH, Museum of Navajo Ceremonial Art, Santa Fe, New Mexico 1942; Robert W. Young, THE NAVAJO YEARBOOK, Report No. VIII, Navajo Agency, Window Rock, Arizona, 1961, p. 517; Aileen O'Bryan, THE DINE: ORIGIN MYTHS OF THE NAVAJO INDIANS, Bulletin 163, Bureau of American Ethnology, Smithsonian Institution, Wash., D.C., 1956; Dana & Mary Roberts Collidge, THE NAVAJO INDIANS, Houghton Mifflin, Boston, Mass., 1930; Washington Matthews, NAVAHO LEGENDS, G. E. Stechert & Co., N.Y., 1897; Berard Haile, LEGEND OF THE GHOSTWAY RITUAL AND SUCKING WAY, St. Michaels Press, St. Michaels, Arizona, 1950; Personal Communications from Harold Drake & Maxwell Yazzie, Navajo Councilmen.

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(6) George P. Hammond & Agapito Rey, Editors, EXPEDITION INTO NEW MEXICO MADE BY ANTONIO DE ESPEJO, 1582–1583, AS REVEALED IN THE JOURNAL OF DIEGO PEREZ DE LUXAN, A MEMBER OF THE PARTY, The Quivira Society, Los Angeles, California, 1929, pp. 96–97.

(7) Lansing B. Bloom, FRAY ESTÉVAN DE PEREA'S RELACION, New Mexico Historical Review, Vol. 8, No. 3, Santa Fe, New Mexico, 1933, p. 231.

(8) Peter B. Forrestal & Cyprian J. Lynch, Editors, BENAVIDES' MEMORIAL OF 1630, Washington, 1954, p. 2.

(9) France V. Scholes, CHURCH AND STATE IN NEW MEXICO, 1610–1650, New Mexico Historical Review, Vol. XI, 1936, p. 339.

(10) Donald E. Worcester, THE NAVAJO DURING THE SPANISH REGIME IN NEW MEXICO, New Mexico Historical Review, Vol. XXVI, No. 2, 1951, p. 107; Adolf A. Bandelier, FINAL REPORT OF INVESTIGATIONS AMONG THE INDIANS OF THE SOUTHWESTERN UNITED STATES, CARRIED ON MAINLY IN THE YEARS FROM 1880 TO 1885, Papers of the Archaeological Institute of America, American Series, IV, Part II, University Press, Cambridge, Mass., 1892, p. 382.

(11) Tree-Ring Report Sheets from the Laboratory of Tree-Ring Research, University of Arizona, Tucson (Navajo Pl. Ex. 556–B, Docket 229). Also published in the TREE-RING BULLETIN, Laboratory of Tree-Ring Research, Univ. of Arizona, Vol. 26, Nos. 1–4, June, 1964. The "G" following in the dates cited indicates the presence of beetle galleries, and thus a good indication of an outside-ring date, as opposed to an eroded wood specimen.

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(21) Admas, *supra*, note 15, at p. 1.

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(23) Escalante to Governor Don Pedro Fermin De Mendinueta, October 28, 1775, in Thomas, *supra* note 3, at pp. 150–58.
(24) Escalante to Fray Ysidro Murillo, May 16, 1776, in *Ibid.*, pp. 158–66.
(25) Elliott Coues, ON THE TRAIL OF A SPANISH PIONEER. THE DIARY AND ITINERARY OF FRANCISCO GARCES, Francis P. Harper, N.Y., 1900, pp. 351–53, 403–04, 457; Leslie Spier, HAVASUPAI ETHNOGRAPHY, Anthropological Papers of The American Museum of Natural History, Vol. XXIX, Part III, N.Y., pp. 356ff.
(26) Fray Francisco Atanasio Dominguez to Fray Isidro Murillo, Zuni, November 25, 1776, Adams and Chavez, *supra* n. 22. Also in Frank D. Reeve, NAVAHO-SPANISH DIPLOMACY, 1770–1790, New Mexico Historical Review, Vol. XXXV, No. 3, 1960, p. 210, n. 28, who cites letter as being to Governor Mendinueta.
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(28) *Ibid.*, pp. 123, 232–35.
(29) Juan Bautista de Anza to Teodoro de Croix, November 1, 1779, in Thomas, *supra* note 23, at pp. 145–48.
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(31) De Anza to Croix, January 17, 1781, in Thomas, *supra* note 23, at pp. 241–42.
(32) Galindo Navarro to Croix, April 30, 1781, in Thomas, *supra* note 23, at pp. 243–44.
(33) De Anza to Croix, November 15, 1781, in Thomas, *supra* note 23, at pp. 244–45.
(34) Bancroft, *supra* note 14, at p. 266; BUR–46, Sandia Burials, 1771–1830, and BUR–30, Santa Clara Burials, 1781–1842, Archdiocese of Santa Fe Archives, Santa Fe, New Mexico (Extracts on file in the Research Office of the Navajo Tribe at Window Rock).
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(36) Series of letters, dating from March 18, 1819 to April 13, 1819. Estado 33 (Mexico 14), Archivo General de las Indias, Sevilla, Spain, Chapman 6183, pp. 5–7, Bancroft Library, Berkeley, California (Navajo Pl. Ex. 769A, Docket 229).
(37) Chavez, *supra* note 35, at p. 82. Mesa de la Vaca is also the old name for Black Mesa. See also David M. Brugge, VIZCARRA'S NAVAJO CAMPAIGN OF 1823, Arizona and the West, Vol. 6, No. 3, 1964, p. 231 and n. 41.
(38) Series of letters, *supra* note 36.
(39) Gaceta Extraordinaria del Govierno de Mexico del Miercoles 27 de Octubre de 1819, Tom. X, Num. 144.
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(42) Brugge, *supra* note 37, at pp. 231ff.
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(44) Leroy R. & Ann W. Hafen, OLD SPANISH TRAIL, SANTA FE TO LOS ANGELES, The Arthur H. Clark Co., Glendale, Calif., 1954; Leroy R. Hafen, ARMIJO'S JOURNAL, The Huntington Library Quarterly, Vol. XI, No. 1, November 1947.
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(47) *Ibid.*, p. 1002; W. W. Hill, NAVAJO WARFARE, Yale Univ. Pubs. in Anthropology, No. 5, 1936, pp. 4–6; Richard F. Van Valkenburgh, A SHORT HISTORY OF THE NAVAJO PEOPLE, Navajo Service, Window Rock, Arizona, 1938, pp. 7–8.
(48) REPORTS OF EXPLORATIONS AND SURVEYS, TO ASCERTAIN THE MOST PRACTICABLE AND ECONOMICAL ROUTE FOR A RAILROAD FROM THE MISSISSIPPI RIVER TO THE PACIFIC OCEAN, 1853–4, Senate Ex. Doc. No. 78, 33d Cong., 2d Sess. (Serial #670), 1856, p. 76.
(49) A. W. Doniphan to W. L. March, October 20, 1846, National Archives, Record Group 94, Records of the Adjutant General's Office, Letters Received, File D–295/1846 (Hereinafter: NA, RG 94, AGO, LR).
(50) Charles Bent to Commissioner of Indian Affairs, November 10, 1846, in Annie Heloise Abel, THE OFFICIAL CORRESPONDENCE OF JAMES S. CALHOUN, Office of Indian Affairs, Gov. Print. Off., Wash., D.C., 1915, pp. 6–9.
(51) Thomas Donaldson, MOQUI PUEBLO INDIANS OF ARIZONA AND PUEBLO INDIANS OF NEW MEXICO, Extra Census Bulletin, Eleventh Census of the United States, Wash., D.C., 1893, p. 24.
(52) SKETCH MAP PREPARED BY [JAMES S.] CALHOUN IN 1849, SUGGESTING LOCALITIES FOR INDIAN AGENCIES, National Archives, Record Group 75, Records of the Office of Indian Affairs, New Mexico Superintendency, Map #255(1) Portf. XY; Calhoun to Commissioner of Indian Affairs, October 15, 1848, in Abel, *supra* note 50 at pp. 48–58.
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(56) Ramon Luna & Fra° Sarracino to Donaciano Vijil, January 20, 1851, in Abel, *supra* note 50, at pp. 284–86.
(57) D. Chandler to Lt. McLaws, April 24, 1851, National Archives, Record Group 98, Records of the War Department, Department of New Mexico, Letters Received (Hereinafter: NA, RG 98 WD, LR), File C–38/1851.
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(67) W. W. H. Davis, EL GRINGO: OR, NEW MEXICO AND HER PEOPLE, Harper & Brothers, pubs., N. Y., 1857, p. 389.
(68) DIARY OF ETHAN PETTIT, 1855-1881, Manuscript, Bancroft Library, University of California, Berkeley, California.
(69) McCOMB'S MAP OF EXPLORATIONS AND SURVEYS IN NEW MEXICO AND UTAH, 1860, National Archives, Record Group 77, Records of the Office of the Chief of Engineers, File W-81.
(70) E. W. Gifford, CULTURE ELEMENT DISTRIBUTIONS: XII APACHE-PUEBLO, Anthropological Records, Vol. 4, No. 1, Univ. of Calif., Berkeley, Calif., 1940, p. 2. Thirty miles north of Oraibi would be approximately on the Moencopi Wash.
(71) H. L. Kendrick to S. Cooper, February 3, 1856, NA, RG 94, AGO, LR, File K-29/1856. Fort Defiance was established September 10, 1851, Transcript of Orders Published at Fort Defiance, Navajo Country, New Mexico, during the Month of September 1851, NA, RG 98, WD, Misc. Docs., File: None/1851.
(72) Henry L. Dodge to W. W. Davis, April 19, 1856, NA, RG 75, OIA, LR, File N-86/1856 encl.
(73) H. L. Kendrick to W. A. Nichols, April 21, 1856, NA, RG 98, WD, LR, File K-5/1856. Such crossings of the San Juan established by long usuage, plainly establish Navajo occupancy and use of adjacent lands. The "Lower Crossing" was located about 18 miles up the San Juan from its junction with the Colorado River. Another major crossing was called "Nahondsoo" by Navajos, and was located near the mouth of Grand Gulch, and was a place long favored by Navajos also as a farming area. This crossing is shown on McComb's Map of 1860 as "Navajo Ford", McComb, *supra* note 69.
(74) D. Meriwether to G. W. Manypenny, December 30, 1856, and accompanying Map Showing the Indian Country in the New Mexico Superintendency, NA, RG 75, OIA, LR., File N-220/1857.
(75) Samuel Woodworth Cozzens, THE MARVELLOUS COUNTRY: OR, THREE YEARS IN ARIZONA AND NEW MEXICO, Sampson, Low, Marston, Low & Searle, London, 1974, p. 129; Father A. G. Morice, THE GREAT DÉNÉ RACE Administration of "Anthropos," St. Gabriel-Modling, near Vienna. Not dated but about 1910, p. 52.
(76) W. T. H. Brooks to Asst. Adjutant General, January 12, 1858, NA, RG 98, WD, LR, File B-5/1858; John Garland to L. Thomas, January 31, 1858, NA, RG 94 AGO, LR, File N-27/1858.
(77) Joseph C. Ives, REPORT UPON THE COLORADO RIVER OF THE WEST, Senate Ex. Doc., 36th Cong., 1st Session (Serial #1058), 1861, pp. 122, 124-25, 127-28.
(78) E. T. Bucknam to D. S. Miles, September 9, 1858, NA, RG 98, WD, LR, File M-73/1858 encl.
(79) D. S. Miles to E. T. Bucknam, October 15, 1858, NA, RG 98, WD, LR, File M-73/1858 encl.
(80) D. S. Miles to John D. Wilkins, November 3, 1858, NA, RG 98, WD, LR, File M-82/1858.
(81) D. S. Miles to John D. Wilkins, November 21, 1858, NA, RG 94, AGO, LR, File M-520/1858.
(82) E. Backus to Wilkins, November 3, 1858, NA, RG 98, WD, LR, File B-74/1858.
(83) Miles to S. M. Yost, December 20, 1858, NA, RG 75, OIA, LR, File Y-42/1858 encl.
(84) C. Gregory Crampton, HISTORICAL SITES IN GLEN CANYON, MOUTH OF SAN JUAN RIVER TO LEE'S FERRY, Anthropological Papers, Dept. of Anthropology, Glen Canyon Series No. 12, Univ. of Utah, Salt Lake City, 1960.
(85) T. W. Walker to J. D. Wilkins, May 12, 1859, NA, RG 98, WD, Misc. LR, Box 37.
(86) Orders No. 8, Fort Defiance, July 14, 1859, NA, RG 98, WD, Misc. LR, Box 37; J. S. Simonson to Wilkins, July 18, 1859, NA, RG 98, WD, LR, File S-39/1859.

(87) O. L. Shepherd to J. H. Edson, August 7, 1859, NA, RG 98, WD, LR, File S-44/1859 encl.; also, NA, RG 94, AGO, LR, File N-74/1859 encl.
(88) Wilkins to Simonson, August 14, 1859, Senate Ex. Doc. 2, 36th Cong., 1st Sess. (Serial #1024), pp. 335-36.
(89) Orders No. 14, Fort Defiance, September 1, 1859, NA, RG 98, WD, Misc. LR, Box 37.
(90) J. G. Walker to J. H. Edson, September 20, 1859, Senate Ex. Doc. 2, 36th Cong., 1st Sess., Vol. II (Serial #1024), pp. 345-50.
(91) Silas F. Kendrick to A. B. Greenwood, October 4, 1859, NA, RG 75, OIA, LR, File C-242/1859 encl.
(92) Walker Dyk, Recorder, SON OF OLD MAN HAT, A NAVAHO AUTOBIOGRAPHY, Harcourt, Brace and Co., N.Y., 1938, pp. 5-6.
(93) Juanita Brooks, JOURNAL OF THALES H. HASKELL, Utah Historical Quarterly, Utah State Hist. Soc., Salt Lake City, January-April, 1944, p. 80.
(94) O. L. Shepherd to J. D. Wilkins, December 9, 1859, NA, RG 98, WD, LR, File S-94/1859.
(95) O. L. Shepherd to D. H. Maury, July 5, 1860, NA, RG 98, WD, LR, File S-81/1860.
(96) O. L. Shepherd to D. H. Maury, August 3, 1860, NA, RG 98, WD, LR, File S-97/1860.
(97) H. H. Sibley to D. H. Maury, September 29, 1860, NA, RG 98, WD, LR, File Unentered/1860; Ed. R. S. Canby to Asst. Adjutant General, October 4, 1860, NA, RG 98, WD, LR, File C-39/1860.
(98) James A. Little, JACOB HAMBLIN, A NARRATIVE OF HIS PERSONAL EXPERIENCE, AS A FRONTIERSMAN, MISSIONARY TO THE INDIANS AND EXPLORER, Juvenile Instructors Office, Salt Lake City, Utah, 1881, pp. 66-71; John Steels to George A. Smith, January 8, 1863, Latter-day Saints Church Historian's Office, Salt Lake City, Utah, Manuscript Collection (Entry for December 23, 1862, locates the incident about 22 miles north of the Hopi villages; Bureau of Indian Affairs File on Claude Hatch Trepass Case, Copy on file in Research Office of the Navajo Tribe at Window Rock, Arizona.
(99) Ed. R. S. Canby to Asst. Adjutant General, December 24, 1860, NA, RG 98, WD, LR, File C-2/1861.
(100) *Supra* notes 66 & 74.
(101) Ed. R. S. Canby to Asst. Adjutant General, February 4, 1861, NA, RG 98, WD, LR, File C-23/1861 & February 6, 1861, NA, RG 98, WD, LR, File C-30/1861.
(102) Donaldson, *supra* note 51, at p. 34.
(103) George M. Willing, Jr. to Caleb B. Smith, October 27, 1862, NA, RG 75 OIA, LR, File W-663/1862.
(104) Steele to Smith, *supra* note 98.
(105) Spier, *supra* note 25, at pp. 83, 225-26, 338, 378 and Genealogy Chart following p. 392.
(106) Felix S. Cohen & Abe Barber, EXAMINERS' REPORT ON TRIBAL CLAIMS TO RELEASED RAILROAD LANDS IN NORTHWESTERN ARIZONA TOGETHER WITH TRANSCRIPT OF FINAL HEARING AND EXHIBITS, 1924, Exhibit "DD" (Copy in file Research Office, The Navajo Tribe, Window Rock, Arizona).
(107) *Ibid.*, Exhibit "W".
(108) PROPOSED FINDINGS OF FACT . . ., *supra* note 4, Finding 13, pp. 409-29.
(109) *Ibid.*, p. 429 and notes 2494 and 2497.
(110) C. Carson to Asst. Adjutant General, July 24, 1863, WAR OF THE REBELLION, Series I, Vol. 26, Part 1, pp. 233-34, Pub. during years: 1880-1902.
(111) Raymond E. Lindgren, A DAIRY OF KIT CARSON'S NAVAJO CAMPAIGN, 1863-1864, New Mexico Historical Review, Vol. XXI, July, 1946, pp. 226-47 (Diary attributed to Captain Eben Everett).
(112) *Ibid.*, Stephen, *supra* note 46, at pp. 1017-19.
(113) C. Carson to B. C. Cutler, August 19, 1863, NA, RG 98, WD, Letters Sent, Old Book 124 (Bound as 76) pp. 8-12; George W. Campbell to James H. Carleton, August 21, 1863, NA, RG 98, WD, LR, File Unentered, No. 11/1863.
(114) Carson to Cutler, October 5, 1863, WAR OF THE REBELLION, Series I. Vol. 26, Part 1, pp. 252-54.

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(115) Carson to Asst. Adjutant General, October 6, 1863, NA, RG 98, WD, Letters sent, Old Book 124 (Bound as 76) pp. 25–26.
(116) Carson to Cutler, December 6, 1863, WAR OF THE REBELLION, Series I. Vol. 26, Part 1, pp. 255–57; also in House Ex. Doc. 1, 38th Cong., 2d Sess., (Serial #1220), pp. 302–03 & NA, RG 98, WD, Letters Sent, Old Book 124, (Bound as 76) pp. 34–38.
(117) Lawrence G. Murphy to John Thompson, December 21, 1863, NA, RG 98, WD, Letters Sent, Old Book 124 (Bound as 76), p. 50; General Orders No. 3, WAR OF THE REBELLION, Series I. Vol. 26, Part I. pp. 23–33, also in Senate Report No. 156, 39th Cong., 2d Sess. (Serial 1279), pp. 252–55.
(118) Stephen, *supra* not 46, p. 1002.
(119) Memoranda of Events at Fort Canby, New Mexico, from the 11th to the morning of the 18th of January, 1864, NA, RG 98 WD, LR, File N–8/1864 encl. Bosque Redondo is another name for Fort Sumner, New Mexico.
(120) Carson to Asst. Adjutant General, March 20, 1864, NA, RG 98, WD, LT, File 528–C–64/1864.
(121) A. B. Carey to J. H. Carleton, April 24, 1864, NA, RG 98, WD, LR, File 74–C–108/1864.
(122) Carey to Asst. Adjutant General, April 29, 1864, NA, RG 98, WD, Letters Sent, Old Book 171 (Bound as 89), pp. 22–24.
(123) José Antonio Mansanarez to Michael Steck, May 19, 1864, NA, RG 75, OIA, LR, File W–382/1864 encl. (I–161/1864).
(124) Van Valkenburgh, *supra* note 47, at p. 26.
(125) P. W. L. Plympton to Acting Asst. Adjutant General, July 6, 1864, NA, RG 98, WD, LR, File 409–P–64/1864.
(126) Plympton to Acting Asst. Adjutant General, July 12, 1864, NA, RG 98, WD, LR, File 410–P–66/1864.
(127) Julius C. Shaw to Ben C. Cutler, August 17, 1864, NA, RG 98, WD, Letters Sent, Old Book 171 (Bound as 89), p. 68.
(128) Erastus Snow to R. N. Fenton, November 17, 1869, NA, RG 75, OIA, LR, File F–205/1869 encl.
(129) E. W. Eaton to Cutler, January 11, 1865, NA, RG 95, WD, LR, File E–4/1865.
(130) Michael Steck to Wm. P. Dole, October 10, 1864, House Exec. Doc. 1, 38th Cong., 2d Sess. (Serial 1220), pp. 324–31.
(131) Little, *supra* note 98; Walter C. Powell, Journal of Walter Clement Powell, Utah Historical Quarterly, Salt Lake City, 1948–49.
(132) Little, *supra* note 98.
(133) E. W. Eaton to Ben C. Cutler, February 8, 1865, NA, RG 98, WD, LR. File 115–E–14/1865.
(134) James H. Carleton to (No addressee), March 21, 1865, War of the Rebellion, Series I, Vol. 48, Part 1, pp. 1232–33. Herrera reported other Navajo groups at Black Creek south of Fort Defiance, along the Pueblo Colorado south of present Ganado, at Canyon de Chelly, and another 60 miles west of Zuni—all east of the 1882 Executive Order Reservation.
(135) Julius C. Shaw to Ben C. Cutler, August 28, 1865, NA, RG 98, WD, LR, File S–241/1865.
(136) Shaw to Cutler, July 24, 1865, NA, RG 98, WD, LR, File S–191/1865.
(137) Felipe Delgado to the Commissioner, September 10, 1865, House Exec. Doc. 1, 39th Cong., 1st Sess. (Serial 1248), pp. 328–48.
(138) E. Butler to Asst. Adjutant General, January 18, 1866, NA, RG 98, WD, Letters Sent, File Unetered/1866.
(139) D. Montoya to Cutler, November 26, 1865, NA, RG 98, WD, LR, File M–131/1865.
(140) Antonio Mexicano to Cutler, December 9, 1865, NA, RG 98, WD, LR, File M–151/1865.
(141) D. Montoya to Cutler, December 14, 1865, NA, RG 98, WD, LR, File M–146/1865.
(142) M. Lucero y Rais to James H. Carleton, December 14, 1865, NA, RG 98, WD, LR, File L–61/1865.
(143) E. Butler to Asst. Adjutant General, January 18, 1866, NA, RG 98, WD, Letters Sent, File Unentered/1866.
(144) Albert H. Pfeiffer to Cyrus H. DeForrest, January 22, 1866, NA, RG 98, WD, LR, File P–2/1866.
(145) D. Montoya to J. W. Feary, April 7, 1866, NA, RG 98, WD, LR, File B–77/1866 encl.

(146) Angus Munn Woodbury, A HISTORY OF SOUTHERN UTAH AND ITS NATIONAL PARKS, Utah State Historical Society, Vol. XII, Nos. 3–4, 1944, pp. 167, 169.
(147) E. Butler to DeForrest, July 28, 1866, NA, RG 98, WD, LR, File B–164–1866.
(148) Theodore H. Dodd to "Col.", August 11, 1866, NA, RG 75 OIA, New Mexico. Field Papers.
(149) E. Butler to DeForrest, December 9, 1866, NA, RG 98, WD, LR, File B–265/1866.
(150) Proceedings of a Council, May 28, 1868, NA, RG 48, Office of the Secretary of the Interior, Indian Division, Treaties File, Treaty #372, File: None.
(151) Van Valkenburgh, *supra* note 47; Young, *supra* note 4, at p. 279.
(152) Frank D. Reeve, THE FEDERAL INDIAN POLICY IN NEW MEXICO, 1858–1880, New Mexico Historical Review, Vol. XII, Part II, 1938, pp. 46–47.
(153) Palmer to E. S. Parker, November 30, 1869, NA, RG 75, OIA, LR, File P–264/1869.
(154) Palmer to Parker, December 20, 1869, NA, RG 75, OIA, LR, File P–275/1869 encl.
(155) W. F. M. Arny to Eli S. Parker, July 19, 1870, NA, RG 75, IOA, LR, File A–1235/1870; Journal of W. F. M. Arny, November 28, 1870, NA, RG 75, OIA, LR, File A–1579/1870 encl.; Arny to Edward P. Smith September 4, 1873, House Exec. Doc. 1, Part 5, 43rd Cong., 1st Sess. (Serial 1601), pp. 638–41; Arny to Smith, November 4, 1873, NA, RG 75, OIA, New Mexico Field Papers.
(156) NAVAJO TRIBAL CODE, Equity Publishing Corporation, Orford, New Hampshire, 1962, Vol. 2, pp. 337–38. By Executive Order of May 17, 1884, the area contiguous to the north boundary of the 1882 Reservation was made a part of the Navajo Reservation; that to the west of the 1882 area was added to the Navajo Reservation by Executive Order date January 8, 1900.
(157) Galen Eastman to Commissioner of Indian Affairs, September 27, 1881, NA, RG 75, OIA, LR, File 17647/1881.
(158) C. H. Howard to H. M. Teller (Report on the Navajo Agency), October 25, 1882, NA, RG 48, Records of the Office of the Secretary of the Interior, Indian Division, File M–2423/1882 encl. Also OIA 22416/1882. Howard had earlier expressed similar recommendations to the Secretary in Howard to Teller, July 31, 1882, NA, RG 75, OIA, LR, File 15060/1882.
(159) C.H. Howard to H. M. Teller (Report on the Moqui Agency), November 29, 1882, NA, RG 48, Records of the Office of the Secretary of the Interior, Indian Division, File 1403/1883. Also OIA 6311/1883.
(160) J. H. Fleming to Commissioner of Indian Affairs, December 4, 1882, NA, RG 75, OIA, LR, File 22383/1882.
(161) H. Price to Secretary of the Interior, December 13, 1882, NA, RG 48, Records of the Office of the Secretary of the Interior, Indian Division, File 230/1882.
(162) NAVAJO TRIBAL CODE, *supra* note 155, at pp. 338–39. Also photostat copy Defendant's Exhibit 438 and in OPINION OF THE COURT Filed September 28, 1962, *Healing* v. *Jones*, USDC, Ariz, Civil 579 Prescott.
(163) C. E. Vandever to Commissioner of Indian Affairs, REPORT OF NAVAJO AGENCY, August 22, 1890, in 59th Annual Report of the Commissioner of Indian Affairs, 1890, pp. 158–167. Vandever was a contemporary of the noted Scholar-Surgeon Washington Matthews at Fort Defiance, whose many publications on the Navajos during this period are still basic references to the Anthropologist, and there is little doubt that Vandever's knowledge of the Navajos and the Hopis was enhanced by this association.
(164) C. E. Vandever to Commissioner of Indian Affairs, REPORT OF MOQUI PUEBLO INDIANS, NAVAJO AGENCY, August 22, 1890, in 50th Annual Report of the Commissioner of Indian Affairs, 1890, pp. 168–172.
(165) R. G. Valentine to Mathew W. Murphy, February 25, 1909, NA RG 48, Records of the Office of the Secretary of the Interior, Indian Division, Moqui Allotments 51, Part I.
(166) Valentine to Murphy, March 31, 1911, NA, RG 75, OIA, Classified Files. 1907—, File 101882–11–313 Moqui.

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(167) Allotment Schedules Nos. 1771–2245 for Allotment Nos. 3731–4565, NA, RG 75, OIA, File 73898, pp. 270–307. Copy on file in the Research Office of The Navajo Tribe, Window Rock, Arizona. Of the 746 allotments made to Navajo Indians, there were 302 allotments of 320 acres, 308 allotments of 40 acres, 79 allotments of 640 acres, 55 allotments of 160 acres, and 2 allotments of 20 acres, an aggregate total of 168,360 acres.

(168) Navajo archaeological data submitted to the *Healing* v. *Jones* Court consisted of Defendant's Exhibits 241, 242, 242A (3 volumes of Navajo Site Reports); 245, 245A (2 volumes of Laboratory of Tree-Ring Research Report Sheets); 248, 248A, 248B (3 volumes of Navajo Site Photographs).

(169) Data compiled from Navajo Plaintiff's Exhibits 1500–1956 (Navajo Birth Records), Exhibits 900–1175, 1176, 1176A (Hopi Indian Birth Records), Indian Testimony—all in Docket 229 before the Indian Claims Commission. All sources of data, including hospital Personal History Sheets from Clinical Records, Birth and Death Certificates, and Indian Scout Pension Records, researched only through the year 1868, the "Date of Taking" in the Navajo Land Claim Case, Docket 229. Photo copies of all records on file in the Research Office of The Navajo Tribe, Window Rock, Arizona.

(170) Neil M. Judd, THE MATERIAL CULTURE OF PUEBLO BONITO. Smithsonian Misc. Collections, Vol. 124 (Whole Volume), Wash., D. C., 1954.

(171) E. W. Gifford, CULTURE ELEMENT DISTRIBUTIONS: XII APACHE-PUEBLO. Anthropological Records 4:1, Univ. of Calif. Press, Berkeley, Calif., 1940.

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