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92D CONGRESS }  
2d Session }

HOUSE OF REPRESENTATIVES

{ REPORT  
No. 92-1221

AUTHORIZING 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 RESERVATIONS BETWEEN THE HOPI AND NAVAJO TRIBES, TO PROVIDE FOR ALLOTMENTS TO CERTAIN PAIUTE INDIANS AND FOR OTHER PURPOSES

JULY 18, 1972.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs, submitted the following

## REPORT

[To accompany H.R. 11128]

The Committee on Interior and Insular Affairs, to whom was referred the 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, to provide for allotments to certain Paiute Indians, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Page 3, line 7, strike out "northwest" and insert "north".

Page 3, line 13, strike out " $\frac{1}{4}$ " and insert " $4\frac{1}{4}$ ".

Page 5, strike all of lines 3 through 25 and insert in lieu thereof the following:

thence south 27 degrees 30 minutes east, 4.9 miles to the top of the rim at temporary BM at 6133 on USGS map White Cave Springs 2SW:

thence due east 4.7 miles to the north boundary of the Black Mesa Slurry Pipeline right-of-way;

thence northeasterly 26,900 feet following the north boundary of pipeline right-of-way;

thence north 54 degrees 30 minutes east 18,000 feet to the junction of two major drainages from the north:

thence north 82 degrees east 4,700 feet to a pickup road, passing through temporary survey station 6167 T;

thence northeasterly 15,600 feet following said road to a point where road bears abruptly southeast;  
 thence northeasterly 21,700 feet following the divide east of Black Mesa Wash to a point on a road 1,300 feet southwest of station VCAB 1-75;  
 thence southeasterly following the divide through station 7037 T, 6895 T, and 6804 T to station 6047 A;  
 thence easterly following the divide and southerly through station 4-236 A to the Second Mesa--Kayenta road right-of-way;  
 thence southerly 21 miles, following the east.

Page 6, lines 13 and 14, strike out "containing nine hundred and four thousand two hundred and sixty-five acres," and insert "the surface interests added to the Hopi Reservation containing nine hundred and five thousand one hundred acres."

Page 6, line 21, strike out "section 2" and insert "sections 2 and 9"  
 Page 6, lines 24 and 25, strike out "nine hundred seventeen thousand eight hundred and fifteen acres," and insert "nine hundred sixty thousand nine hundred and eighty acres."

Page 7, strike out all of line 5 and insert in lieu thereof: "All surface coal, oil, gas and all other minerals within or underlying said lands shall be"

Page 7, line 7, strike out "such";

Page 7, line 8, strike out "or";

Page 7, line 18 through Page 9, line 13, strike out the present text and insert:

Beginning at a point on west boundary of Executive Order Reservation of 1882 where said boundary is intersected by R/W of U. S. Route 164;

thence south southwest along the centerline of said Route 164, a distance of approximately 8 miles to a point where said centerline intersects the township line between Townships 32 and 33N, R. 12E;

thence west, a distance of approximately 9 miles, to the N $\frac{1}{4}$  corner of section 4, township 32N, R. 11E;

thence south, a distance of approximately 4 $\frac{3}{4}$  miles, following the centerlines of sections 4, 9, 16, 21 and 28 to a point where said centerlines intersect the R/W of U. S. Route 164.

thence southwesterly, following the centerline of U. S. Route 164, a distance of approximately 11 miles, to a point where said centerline intersects the R/W of U. S. Route 89.

thence southerly, following the centerline of U. S. Route 89, a distance of approximately 11 miles, to the south boundary of section 2, township 29N, R. 9E (unsurveyed);

thence east following the south boundaries of sections 2 and 1, township 29N, R. 9E, sections 6, 5, 4, etc., township 29N, R. 10E, and continuing along the same bearing to the northwest corner of section 12, township 29N, R. 11E (unsurveyed);

thence south, a distance of 1 mile to the southwest corner of section 12, township 29N, R. 11E (unsurveyed);

thence east, a distance of 1 mile to the northwest corner of section 18, township 29N, R. 12E (unsurveyed);

thence south, a distance of 1 mile, to the southwest corner of section 18, township 29N, R. 12E (unsurveyed);

thence east, a distance of approximately 9 miles, following the section lines, unsurveyed, on the north boundaries of sections 18, 17, 16, etc. in township 29N, R. 12E and continuing to a point where said section lines intersect the west boundary of Executive Order Reservation of 1882;

thence due north, along the west boundary of the Executive Order Reservation of 1882, a distance of approximately 27 $\frac{1}{2}$  miles to the point of beginning; containing 208,600 acres, more or less.

Page 9, lines 24 and 25, after "sections" strike out the remainder of the sentence and insert in lieu thereof: "1, 5 and 6 of that Act, as amended."

Page 10, line 13, strike out "ten" and insert "five" and strike out "9" and insert "20".

Page 10, lines 14 through 17, strike out "No movement of Navajo Indians onto any of the lands described in sections 2 and 5 of this Act or Land Management District 6 shall be lawful" and insert "No further settlement of Navajo Indians on the lands described in sections 2 and 5 of this Act or Land Management District 6, shall be permitted".

Page 11, lines 2, 3, and 4, strike out "No movement of Hopi Indians onto any of the lands described in sections 3 and 7 of this Act shall be lawful" and insert "No further settlement of Hopi Indians on the lands described in sections 3 and 7 of this Act shall be permitted".

Page 11, line 10 through page 12, line 20, strike out all of section 10 and renumber the succeeding sections accordingly.

Page 13, lines 3 through 18, strike out all of section 10 and insert a new section 11 as follows:

SEC. 11. There is authorized to be appropriated to remain available until expended the sum of \$16,000,000, which the Secretary of the Interior shall expend as follows:

(a) If a majority of the Navajo heads of household being moved pursuant to this Act, who vote in a referendum conducted by the Secretary of the Interior, vote to use a part of the money appropriated to acquire land upon which all of the Navajo families being moved may be relocated if they so desire, the Secretary shall use for that purpose as much of the money as may be necessary. Title to the land acquired shall be taken by the United States in trust for the Navajo Tribe. The remainder of the money appropriated shall be used, under regulations of the Secretary:

(1) to pay actual reasonable moving expenses of both Navajo and Hopi families who are being moved, and

(2) to pay the fair market value of any improvements left on the land from which a family is moved, and

(3) to pay the cost of a comparable replacement dwelling for each displaced family, reduced by the amount of any payment under paragraph (2).

(b) If the funds appropriated are not sufficient to pay all of the costs and expenses referred to in subsection (a), they shall be apportioned on an equitable basis pursuant to regula-

tions of the Secretary. Appropriated funds in excess of the amount needed for such purposes shall be returned to the general fund of the Treasury.

(c) If a majority of those voting in the referendum provided for in subsection (a) do not favor the acquisition of Navajo tribal land for the relocation of all Navajo families being moved, the entire amount appropriated may be used for the purposes specified in subsections (a) (1), (2), and (3).

(d) No payment to or for the benefit of any one household under subsections (a) (1), (2), and (3) shall exceed \$15,000. (e) Improvements left on the land from which a family is moved may be sold by the Secretary of the Interior to the tribe that owns the land on which the improvements are located, or to any member thereof, at not less than their fair market value.

Page 14, after line 2, insert a new section as follows:

SEC. 14. Nothing herein contained shall affect the title, possession, and enjoyment of the lands heretofore allotted to individual Hopi and Navajo Indians for which patents have been issued. Hopi Indians living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and Navajo Indians living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Indian Tribe.

Page 14, after line 2 and following the new section 14, insert the following new section:

SEC. 15. The Secretary of the Interior and his authorized representatives are hereby authorized and directed to immediately commence reduction of all the livestock now being grazed upon the lands within the joint-use-area of the 1882 Executive Order Reservation and complete such reductions to carrying capacity of said lands, as determined by the usual range capacity standards employed under title 25, Section 151.6 of the Code of Federal Regulations, within one year from the effective date of this Act.

Page 14, strike all of lines 3 through 8 and insert the following renumbering the succeeding sections accordingly:

SEC. 16. The Hopi Tribe may commence an action or actions against the Navajo Tribe in the United States District Court for the District of Arizona for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, as trader.

Page 14, Strike all of line 15 through page 15, line 9.

Page 15, line 18, strike out "other," and insert other, acting through the Chairman of the respective tribal councils, for and on behalf of said tribes, including all villages, clans, and individual members thereof.

Page 16, lines 6 and 7, strike out "accomplish the following: (1) Survey," and insert in lieu thereof: "Survey". Page 16, strike out lines 9 and 10.

Page 16, after line 10, add a new section as follows:

SEC. 21. The members of the Hopi Tribe shall have perpetual use of Cliff Spring as shown on USGS 7 1/2 minute Quad named Toh Ne Zhomnie Spring, Arizona, Navajo County dated 1908; and located 1,250 feet west and 200 feet south of the intersection of 36 degrees, 17 feet and 30 inches north latitude and 110 degrees, 9 feet west longitude, as a shrine for religious ceremonial purposes, together with the right to gather branches of fir trees growing within a 2 mile radius of said spring for use in such religious ceremonies, and the further right of ingress, egress and regress between the Hopi Reservation and said spring. The Hopi Tribe is hereby authorized to fence said spring upon the boundary line as follows:

Beginning at a point on the 36 degrees, 17 feet, 30 inches north latitude line 500 feet west of its intersection with 110 degrees, 9 feet west longitude line, the point of beginning; thence, north 46 degrees, west 500 feet to a point on the rim top at elevation 6,900 feet; thence southwesterly 1,200 feet (in a straight line) following the 6,900 foot contour; thence south 46 degrees east 600 feet; thence north 38 degrees east, 1,300 feet to the point of beginning, 23.8 acres more or less. *Provided*, That if and when said spring is fenced the Hopi Tribe shall pipe the water therefrom to the edge of the boundary as hereinabove described for the use of residents of the area. The natural stand of fir trees within said 2-miles radius shall be conserved for such religious purposes.

Page 16, line 12, strike out "such sums as are necessary" and insert "not to exceed \$16,000,000".

PURPOSE

The purpose of H.R. 11128, introduced by Mr. Steiger of Arizona, is to partition land in which the Navajo and Hopi Tribes have an undivided joint and equal interest.

BACKGROUND

I. THE 1882 HOPI RESERVATION

In 1882, an Executive Order was issued setting aside a Reservation of approximately 2,472,095 acres for the Hopi Indians and such other Indians as the Secretary of the Interior may see fit to settle thereon. The purpose of the 1882 Reservation was to protect the Hopis from encroachment by both the Navajos and the non-Indians.

In 1882, the Navajo Reservations was entirely east of the Hopi Reservation, and the two Reservations did not adjoin each other. During the years following 1882, however, the Navajo Reservation was expanded by a series of actions, and today the Navajo Reservation completely surrounds the 1882 Reservation for the Hopis. The Navajo

Reservation now contains 12,449,000 acres and the Tribe owns an additional 921,000 acres located outside the Reservation boundaries.

The Navajos were a semi-nomadic people who did not stay within their Reservation boundaries. They were constantly moving into new areas. In 1882, about 300 Navajos resided within the 1882 Reservation established for the Hopis. The number steadily increased, and by 1958 the number was 8,500.

The friction between the Navajos and the Hopis was great. The Hopis claimed that the Navajos had no right to be in the 1882 Reservation at all, and the Navajos claimed that they were there by permission of the Secretary of the Interior. In 1958, Congress enacted a statute authorizing a three-Judge United States District Court to adjudicate these conflicting claims and to determine the property rights of each Tribe.

The Court found as fact that no Secretary of the Interior had ever specifically "settled" any Navajos on the 1882 Reservation, that the Navajos had moved there without any official authorization, but that since 1931 the Secretary of the Interior had acquiesced in their presence and had impliedly exercised his authority to settle them there. The Court held that the Hopis had an exclusive right and interest in about 650,000 acres of the Reservation known for administrative purposes as Grazing District No. 6, and that the Hopi Tribe and the Navajo Tribe had joint, undivided, and equal rights and interests in the remainder of the Reservation, consisting of about 1,822,000 acres. Notwithstanding the fact that the court determined that the two Tribes have equal rights and interests in the 1,822,000 acres, the Navajos were then and are now in actual possession, and they have refused for the ten years since the court's decision to permit the Hopis to use any part of the joint-use area. Moreover, the Secretary of the Interior has failed to do anything to permit the Hopis to exercise their joint-use rights. He has in fact refused to permit them to do so.

The joint-use area is badly overgrazed by the Navajos, perhaps to the extent of 400%, and the Secretary has been unable to persuade the Navajos to reduce grazing to the carrying capacity of the land. The Secretary has also been unwilling to cancel any of the Navajo grazing permits and issue new permits to the Hopis.

Because of the severe overgrazing of the joint-use area, the Navajo livestock are constantly trespassing on the Hopi exclusive area, where the forage is better, and the Hopis are impounding those trespassing livestock. Violence and bloodshed have resulted. The Hopis are not only denied their joint-use rights, but their exclusive Hopi area is also threatened.

During the past ten years the two Tribes have attempted to negotiate a joint-use agreement, but the negotiations have failed. The Navajo position was, and still is, that they are in possession and will not relinquish any part of their possession unless the United States provides lieu land to which the Navajo can be moved. The Navajos would prefer that the United States purchase the Hopi interest in the joint-use area and give it to the Navajo Tribe. The Hopi position was, and still is, that they have been pushed back and encircled by the Navajos, that the Navajos have invaded and taken large parts of the 1882 Reservation which was intended to be for the benefit of the Hopis, that it

Hopis will give up no more land, and that the Navajos must vacate one-half of the joint-use area in order to give effect to the court decree.

## II. THE 1934 NAVAJO RESERVATION

When the boundaries of the Navajo Reservation were enlarged by the Act of June 14, 1934 (48 Stat. 960), the vacant lands within the Reservation boundaries were withdrawn for the benefit of the Navajos and such other Indians as were already located thereon. Hopi Indians were then living in the villages of Moencopi and Tuba City, which lie west of the 1882 Hopi Reservation, and Hopi Indians were living on the land between these villages and the 1882 Reservation. The Hopi Indians have by statute the same type of joint interest in this land that the court determined they have in the joint-use area of the 1882 Reservation.

The problems in the two areas are the same. The Navajo population pressures are compressing the Hopis into smaller and smaller areas, and the two Tribes are unable to use the land jointly in harmony. There is a need to delineate the lands each Tribe is entitled to use.

### COMMITTEE CONCLUSION

The Subcommittee on Indian Affairs held extensive hearings on H.R. 11128. Representatives of the Hopi Tribe and the Navajo Tribe presented their views in great detail. The Assistant Secretary for Public Land Management and the Commissioner of Indian Affairs also testified in detail.

The Navajo representatives opposed the bill on the ground that the two Tribes should be allowed to settle their dispute by negotiation. The Hopi representatives urged the enactment of the bill on the ground that negotiations had been attempted for ten years and had failed because the Navajos refused to consider any agreement that allowed the Hopis to exercise their judicially decreed right to an equal use of the land.

The Department of the Interior recommended the enactment of the bill if the alternatives were considered and found to be impractical. The Assistant Secretary testified that he saw no solution other than partition of the land as provided in the bill.

The Committee concluded that the Navajo Tribe had refused to allow the Hopi Tribe to exercise its joint and equal right to use the land, as decreed by the court, and that there was no reasonable basis for believing that the Navajo Tribe would change its position on this basic issue as the result of further negotiation. The Navajo Tribe is in possession, and it has adamantly refused to discuss any plan that called for a relinquishment of its possession. The Committee also concluded that the Hopi Tribe was unwilling to sell its undivided but equal interest in the land, either for money or for other land, and that there is no practical alternative to a partition of the joint-use area as provided in the bill.

The bill provides that the surface estate in approximately half of the joint-use area is added to the Hopi Reservation and the other half is added to the Navajo Reservation. About 775 Navajo families will need to move from the Hopi land, and two Hopi families will need to

move from the Navajo land. The bill authorizes the appropriation of \$16,000,000 to relocate these families. Joint ownership of the subsurface estate is not changed by the bill.

With respect to the 1934 Reservation, the bill adds to the Hopi Reservation both the surface and subsurface estates in 208,600 acres and extinguishes all Hopi and other Indian claims to the remainder of the area. The few Paiute families living there will receive allotments to the land they occupy.

A section-by-section analysis of the bill follows:

#### ANALYSIS OF BILL AS REPORTED BY COMMITTEE

*Section 1* directs that the surface rights in the portion of the 1882 Executive Order Reservation in which the Hopi and Navajo Tribes have a joint and equal interest be partitioned.

*Section 2* describes the portion of the area in which the surface rights are added to the Hopi Reservation. It contains about 905,100 acres.

*Section 3* provides that the surface rights in the remainder of the joint-use area are added to the Navajo Reservation. It contains about 916,980 acres.

*Section 4* continues the joint ownership and management of the minerals underlying the partitioned land. Both Tribes agree that the subsurface estate should not be partitioned and that it can be managed jointly.

*Section 5* partitions both the surface and subsurface estates in an area outside the 1882 Reservation which was withdrawn by the 1934 statute for the Navajos and other Indians already located thereon. *Section 5* declares that 208,600 acres adjacent to the Hopi Reservation and occupied by Hopi Indians are added to the Hopi Reservation. *Section 6* provides for individual allotments under the General Allotment Act to the few Paiute Indians living in the 1934 area, and *Section 7* provides that the remainder of the 1934 area is held exclusively for the Navajo Tribe.

*Section 8* directs the Secretary of the Interior to remove the Navajo Indians and their livestock from the lands partitioned to the Hopi Tribe. An estimated 775 families will need to be moved. The removal must be completed in five years.

*Section 9* directs the Secretary of the Interior to remove within two years the Hopis on the lands partitioned to the Navajo Tribe. Only two families are involved.

*Section 10* gives displaced Hopis priority to assignments on land vacated by the Navajos.

*Section 11* authorizes a lump sum appropriation of \$16,000,000 to be used (1) to buy land upon which to relocate the 775 Navajo families, if a majority so elect, (2) to pay for any improvements left on the land vacated by Navajos and Hopis, and (3) to pay the actual cost of a comparable replacement dwelling and reasonable moving expenses. A \$15,000 limit is placed on payments for the benefit of any one household. This limitation does not apply to the cost of relocation land if the displaced Navajos elect to acquire such land.

The \$15,000 maximum figure is the amount estimated as necessary to place an average family in a decent, safe, and sanitary dwelling on

tribal land. The maximum limitation, however, does not alter the provision that permits the Secretary to pay under this bill only the actual cost of a *comparable* replacement dwelling. If there is a need to provide better housing than the relocated families now have, the added cost of the better housing should be financed under one of the Indian housing programs, rather than under this bill.

The Committee does not regard the United States as obligated to pay for the relocation of the Navajo families who moved onto the 1882 Reservation without any official authorization or financial assistance from the Government. The Committee believes, however, that the actions of the Department of the Interior during the past forty years contributed to the problem, and that it is only equitable for the Government to minimize the social impact involved in the relocation. The Government will do so by paying for the cost of comparable replacement housing under this bill, and letting the cost of a housing betterment program be financed under regular housing programs. There is no question about the need for better Navajo housing, but the need is not created by this bill and is not restricted to the few Navajo families that will need to be relocated as a result of the enactment of this bill.

The full \$15,000 per family will not be needed to pay for comparable replacement dwellings and actual moving expenses in most cases. The Department estimated that the average value of the improvements on the land that will be left behind by the families that are relocated is \$2,000. If it is assumed that comparable facilities may cost twice that amount, the aggregate amount for this purpose and for moving expenses would be \$4,000,000. That would leave \$12,000,000 for the purchase of land for addition to the Navajo Reservation, if a majority of the displaced heads of family wish to buy land for this purpose. If the majority do not vote to purchase lieu land, the estimated \$12,000,000 will revert to the Treasury.

In the event the majority of the displaced families vote to acquire lieu land, as much of the \$16,000,000 as necessary may be used for that purpose, and only the balance will be available to pay for the cost of comparable dwellings and actual moving expenses.

*Section 12* requires the Navajo Tribe to pay to the Hopi Tribe the fair rental value of the land partitioned to the Hopis from the date of the Act to the date the land is vacated by the Navajos.

*Section 13* contains a similar provision with respect to the land partitioned to the Navajos.

*Section 14* protects existing allotments which may have been made within the partitioned areas.

*Section 15* requires the Secretary of the Interior to commence immediately and complete within one year a program to reduce the number of livestock grazed on the joint-use area to the carrying capacity of the land. This reduction program is essential both to protect the land and to minimize friction between the two Tribes. A partition of the land will not resolve the program unless overgrazing is also controlled. The Secretary of the Interior could, and should, have controlled grazing without this statutory direction.

*Section 16* permits the Hopi Tribe to sue the Navajo Tribe for an accounting of all revenues collected from the joint-use area after Sep-

tember 28, 1962, which is the date the joint and equal interests of the two Tribes were judicially decreed.

Section 17 permits either Tribe to seek any judicial relief that is necessary to assure peaceful enjoyment of the partitioned land.

Section 18 provides that the United States is not an indispensable party to any litigation under the Act, and that a judgment shall not be regarded as a claim against the United States.

Section 19 makes all normal remedies and processes available for the enforcement and collection of judgments under the Act.

Section 20 requires the Secretary of the Interior to survey and monument the new boundaries of the Hopi Reservation.

Section 21 protects a Hopi religious shrine known as Cliff Spring and located in the Navajo partitioned area.

Section 22 authorizes the appropriation of \$16,000,000 to carry out the provisions of the Act. The Committee expects the Department to pay its administrative expenses and the cost surveying and monumenting the boundary of the Hopi Reservation from its regular appropriations.

#### COMMITTEE AMENDMENTS

The amendments adopted by the Committee made the following substantive changes in the bill:

- (1) The boundary line between the Navajo and Hopi lands was modified to provide for better access and to make fencing easier. Only a minor change in acreage (835 acres) was involved.
- (2) With respect to the 1934 Reservation, the acreage granted to the Hopis was increased by 73,600 acres, making the total 208,665 acres. This is a compromise figure considerably lower than the Hopi request.
- (3) The time for removing the Navajo families from the lands partitioned to the Hopi Tribe was reduced from ten to five years.
- (4) All provisions of the bill relating to the Navajo Indian Irrigation Project were deleted. The cost of relocating the dispossessed Navajo families is covered by other provisions of the bill, and there is no need to provide for an additional subsidy to the Tribe if some of those families are moved to the Irrigation Project.
- (5) The cost of relocating the dispossessed families was modified as explained in the analysis of section 11, above.
- (6) The Secretary of the Interior is required to start immediately and complete within one year a program to reduce grazing on the present joint-use area to the carrying capacity of the land.
- (7) The provision authorizing the Hopi Tribe to sue the Navajo Tribe (a) for the use value of the Hopi one-half interest in the land after September 28, 1962, and (b) for damage to the land by overgrazing, was deleted.
- (8) The requirement that a fence and service road be constructed was deleted. This construction, if needed, should be handled as a part of the Bureau of Indian Affairs' regular program.
- (9) A Hopi religious shrine was protected.
- (10) The cost of the program was reduced from an estimated \$90,000,000 to \$16,000,000.

#### Cost

Enactment of the bill will require an appropriation of \$16,000,000, part of which may revert to the Treasury if a majority of the Navajo heads of family who are relocated elect not to buy additional relocation land for addition to the Navajo Reservation.

#### COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs recommended by a voice vote that the bill, as amended, be enacted.

#### DEPARTMENTAL REPORT

The report of the Department of the Interior is as follows:

U.S. 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.

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 negotiations 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 1955, 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, it is planned to permit Hopis to assume the rights as the Navajos are moved. This could be frustrated by an increase in the livestock owned by unrelocated Navajos.

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 28, 1970 (84 Stat. 867), the project contemplates the irrigation of 110,000 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 already sapping the resources of the Navajo Reservation, which can not 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 for the relocated Indians 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

signed 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 the 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 herefor: "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 of the Government, is not present here. However, we believe that the relocation of the Navajos and Hopis that the bill would effect is analogous

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 the 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 declared an 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 prior to January 1, 1974 to relocate be paid \$5,000 per family upon the date of such relocation as determined by the Secretary; 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; and that families which contract with 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 or 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 payment 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 (54 Stat. 1894).

(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 estab-

lished 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 approximately 10 per centum of the Navajo occupants to be removed each year," and substitute therefor, "as determined 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, "14" should be "4 & 14".

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 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.*

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