

SEC. 202. No contract to make debt service payments shall be entered into unless the Secretary determines that the credit terms otherwise available would not permit the accomplishment of the objectives of the program.

SEC. 203. There are authorized to be appropriated to the Secretary, without fiscal year limitation, such sums as may be necessary for debt service payments under this section.

### TITLE III—INDIAN BUSINESS GRANTS

SEC. 301. In order to stimulate and increase Indian entrepreneurship and employment, and to establish or expand profitmaking Indian-owned economic enterprises on or near Indian reservations, by providing equity capital through nonreimbursable grants made by the Secretary to Indians and Indian tribes, there is hereby established in the Department of the Interior the Indian Business Development Program.

SEC. 302. The Secretary of the Interior is authorized to make grants from such fund under the following terms and conditions:

(a) No grant in excess of \$50,000 or such lower amount as the Secretary may determine to be appropriate, may be made to an Indian or Indian tribe.

(b) A grant may be made only to an applicant who has proven to the satisfaction of the Secretary that he is unable to obtain adequate financing for his economic enterprise from other sources, including the credit assistance provided in this Act and his own financial resources, except that no grant may be made to an applicant who is unable to obtain at least 60 per centum of the necessary funds for the economic enterprise from other sources.

(c) A grant may be made only for the portion of the total cost of the economic enterprise that is, in the judgment of the Secretary, beyond the ability of the applicant to repay.

SEC. 303. There is authorized to be appropriated such sums as may be necessary to the purposes of this Title.

SEC. 304. The Secretary is authorized to prescribe such rules and regulations as may be necessary to carry out the purposes of this Title.

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 RESERVATION BETWEEN THE HOPI AND NAVAJO TRIBES, PROVIDING FOR ALLOTMENTS TO CERTAIN PAIUTE INDIANS, AND FOR OTHER PURPOSES

MARCH 13, 1974.—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. 10337]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 10337) 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 an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Page 1, beginning on line 3, strike out all after the enacting clause and insert in lieu thereof the following:

That all of the surface rights in and to that portion of the Hopi Indian Reservation created by the Executive Order of December 16, 1882, in which the United States District Court for the District of Arizona found the Hopi and Navajo Indian Tribes to have joint, undivided, and equal interests in the case entitled "Healing against Jones" (210 Fed. Supp. 125 (1962), affirmed 373 U.S. 758), hereinafter referred to as the joint-use area, shall be partitioned in kind as provided in this Act.

SEC. 2. The United States District Court for the District of Arizona in the supplemental proceedings in Healing against Jones is hereby authorized to partition in kind the surface of the joint-use area between the Hopi and Navajo Indian Tribes share and share alike using the following criteria in establishing the boundary line between said tribes:

(a) The Navajo portion shall be contiguous to that portion of the 1934 Navajo Indian Reservation as defined in section 9 of this Act.

(b) The Hopi portion shall be contiguous to the exclusive Hopi Indian Reservation as established by the court in Healing against Jones, hereinafter referred to as Land Management District 6, and shall adjoin that portion of the Navajo Indian Reservation as partitioned to the Hopi Tribe in section 7 of this Act.

(c) The partition shall be established so as to include the high Navajo population density within the portion partitioned to the Navajo Tribe to avoid undue social, economic, and cultural disruption insofar as reasonably practicable. (d) The lands partitioned to the Hopi and Navajo Tribes shall be equal in acreage insofar as reasonably practicable. (e) The lands partitioned to the Hopi and Navajo Tribes shall be equal in quality and carrying capacity insofar as reasonably practicable. (f) The boundary line between the Hopi and Navajo Tribes as delineated pursuant to this Act shall follow terrain so as to avoid or facilitate fencing insofar as reasonably practicable. (g) In any division of the surface rights to the 1882 joint-use area, reasonable provision shall be made for the use and right of access to identified religious shrines of either party on the portion allocated to the other party. Sec. 3. The partition proceedings as authorized in section 2 hereof shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the district court at that time and shall be expedited in every way by such court. Sec. 4. The lands partitioned to the Navajo Tribe pursuant to section 2 hereof shall be held in trust by the United States exclusively for the Navajo Tribe and as a part of the Navajo Indian Reservation. Sec. 5. The lands partitioned to the Hopi Tribe pursuant to section 2 hereof shall be held in trust by the United States exclusively for the Hopi Tribe and as a part of the Hopi Indian Reservation. Sec. 6. Partition of the surface of the lands of the joint-use area shall not affect or underlying said lands shall be managed jointly by the Hopi and Navajo Tribes, subject to supervision and approval by the Secretary of the Interior as otherwise required by law, and the proceeds therefrom shall be divided between the said Indian Tribe and as a part of the Hopi Indian Reservation all right, title, and interest in and to the following described land which is a portion of the land described in the Act of June 14, 1934 (48 Stat. 960):

Beginning at a point on west boundary of Executive Order Reservation of 1882 where said boundary is intersected by right-of-way of United States Route 160;

thence south southwest along the centerline of said Route 160, a distance of approximately 8 miles to a point where said centerline intersects the township line between townships 32 and 33 north, range 12 east;

thence west, a distance of approximately 9 miles to the north quarter corner of section 4, township 32 north, range 12 east;

thence south, a distance of approximately 4 1/4 miles following the centerline of section 4, 9, 16, 21, and 28 to a point where said boundary intersects the right-of-way of United States Route 160;

thence southwesterly, following the center line of United States Route 160, a distance of approximately 11 miles, to the south boundary of section 2, township 29 north, range 9 east (unsurveyed);

thence east following the south boundaries of sections 2 and 1, township 29 north, range 9 east, sections 6, 5, 4, and so forth, to township 29 north, range 10 east, and continuing along the same bearing to the northwest corner of section 12, township 29 north, range 11 east (unsurveyed);

thence south, a distance of 1 mile to the southwest corner of section 12, township 29 north, range 12 east (unsurveyed);

thence south, a distance of 1 mile, to the southwest corner of section 18, township 29 north, range 12 east (unsurveyed);

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

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

(2) pay to each head of a household whose family is moved pursuant to this Act an amount which, when added to the fair market value of the rehabilitation and improvements purchased under subsection (a), equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such displaced household; *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed \$15,000 for a household of three or less and not more than \$20,000 for a household of four or more; *Provided further*, That the additional payment authorized by this subsection shall be made only to a displaced person who purchases and occupies such house.

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

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

(2) pay to each head of a household whose family is moved pursuant to this Act an amount which, when added to the fair market value of the rehabilitation and improvements purchased under subsection (a), equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such displaced household; *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed \$15,000 for a household of three or less and not more than \$20,000 for a household of four or more; *Provided further*, That the additional payment authorized by this subsection shall be made only to a displaced person who purchases and occupies such house.

Sec. 11. The Secretary of the Interior is authorized and directed to remove all Hopi Indians and their personal property, including livestock, from the lands so partitioned to the Navajo Tribe pursuant to section 2 hereof and as described in section 9 of this Act. Such removal shall take place over a period of two years from the date of final partition by the court referred to in section 2 with approximately 50 per centum of the Hopi Indians on the lands so partitioned to the Navajo Tribe pursuant to section 2 hereof and as described in section 9 of this Act shall be permitted unless advance written approval of the Navajo Tribe is obtained. No Hopi Indian shall hereafter be allowed to increase the number of livestock he grazes on the areas so partitioned to the Navajo Tribe pursuant to section 2 hereof and as described in section 9 of this Act nor shall rights in those areas subsequent to his removal therefrom.

(a) The United States shall purchase from the head of each Navajo and Hopi household who is required to relocate under the terms of this Act the rehabilitation and other improvements owned by him on the area from which he is required to move. The purchase price shall be the fair market value of such rehabilitation and improvements.

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

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

(2) pay to each head of a household whose family is moved pursuant to this Act an amount which, when added to the fair market value of the rehabilitation and improvements purchased under subsection (a), equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such displaced household; *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed \$15,000 for a household of three or less and not more than \$20,000 for a household of four or more; *Provided further*, That the additional payment authorized by this subsection shall be made only to a displaced person who purchases and occupies such house.

copies such replacement dwelling not later than the end of the one-year period beginning on the date on which he receives from the Secretary final payment for the habitation and improvements purchased under subsection (a), or on the date on which he moves from such habitation whichever is the later date. Nothing in this subsection shall require a displaced person to occupy a dwelling with a higher degree of safety and sanitation than he desires.

(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 Acquisition Policies 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 the sale of such improvements to members of the tribe exercising jurisdiction over the area at prices no higher than their acquisition costs.

Sec. 13. The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary of the Interior for all Navajo Indian use of the lands referred to in section 5 and described in section 7 of this Act subsequent to the date of the partition thereof.

Sec. 14. The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary of the Interior for all Hopi Indian use of the lands referred to in section 4 and described in section 9 of this Act subsequent to the date of the partition thereof.

Sec. 15. Nothing herein contained shall affect the title, possession, and enjoyment of 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.

Sec. 16. The Navajo Indian Tribe and the Hopi Indian Tribe, acting through the chairman of their respective tribal councils, for and on behalf of said tribes, including all villages, clans, and individual members thereof, are hereby authorized to commence or defend in the United States District Court for the District of Arizona an action or actions against each other for the following purposes:

(a) For an accounting of all sums collected by said Navajo Indian Tribe since the 17th day of September 1957 as trader license fees or commissions, lease proceeds or other similar charges for the doing of business or the use of lands within the Executive Order Reservation of December 16, 1882, and judgment for one half of all sums so collected, and not paid to the Hopi Tribe, together with interest at the rate of 6 per centum per annum compounded annually.

(b) For the determination and recovery of the fair value of the grazing and agricultural use by said Navajo Tribe and its individual members since the 28th day of September 1962 of the undivided one-half interest of the Hopi Tribe in the lands on said day decreed to said Hopi and Navajo Tribes equally and undivided as a joint-use area, together with interest at the rate of 6 per centum per annum compounded annually, notwithstanding the fact that said tribes are tenants in common of said lands.

(c) For the adjudication of any claims that either said Hopi or Navajo Tribe may have against the other for damages to the lands to which title was quieted as aforesaid by the United States District Court for the District of Arizona in said tribes, share and share alike, subject to the trust title of the United States, without interest, notwithstanding the fact that said tribes are tenants in common of said lands. Said claims shall, however, be limited to occurrences since the establishment of grazing districts on said lands in the year 1936, pursuant to section 6 of the Act of June 18, 1934 (48 Stat. 984).

Neither laches nor the statute of limitations shall constitute a defense to any action authorized by this Act for existing claims if commenced within two years from the effective date of this Act.

Sec. 17. The Navajo Tribe or the Hopi Tribe may institute such further original ancillary, or supplementary actions against the other tribe as may be necessary or desirable to insure the quiet and peaceful enjoyment of the reservation lands of said Hopi and Navajo Indians by said tribes and the members thereof, and to fully accomplish all objects and purposes of this Act. Such actions may be commenced in the United States District Court for the District of Arizona by either of said tribes against the 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.

Sec. 18. The United States shall not be an indispensable party to any action or actions commenced pursuant to this Act. Any judgment or judgments by the court shall not be regarded as a claim or claims against the United States.

Sec. 19. All applicable provisional and final remedies and special proceedings provided for by the Federal Rules of Civil Procedure and all other remedies and processes available for the enforcement and collection of judgments in the district courts of the United States may be used in the enforcement and collection of judgments obtained pursuant to the provisions of this Act.

Sec. 20. The Secretary of the Interior is hereby authorized and directed to survey and monument the boundaries of the Hopi Indian Reservation as defined in sections 5 and 7 of this Act.

Sec. 21. The members of the Hopi Indian Tribe shall have perpetual use of Cliff Spring as shown on USGS 7½ minute Quad named Toh Ne Zhonnie Spring, Arizona, Navajo County, dated 1968; and located 1,250 feet west and 200 feet south of the intersection of 36 degrees, 17 minutes, 30 seconds north latitude and 110 degrees, 9 minutes 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 degree, 17 minutes, 30 seconds north latitude 500 feet west of its intersection with 110 degrees, 9 minutes west longitude, the point of beginning;

thence, north 46 degrees west, 500 feet to a point on the rim top at an elevation 6,900 feet;

thence southwesterly 1,200 feet (in a straight line) following the 6,900 feet 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-mile radius shall be conserved for such religious purposes.

Sec. 22. Notwithstanding anything contained in this Act to the contrary, the Secretary of the Interior shall make reasonable provision for the use and right of access to identified religious shrines of the Navajo and Hopi Indians for the members of each tribe on the reservation of the other tribe.

Sec. 23. If any provision of this Act, or the application of any provision to any person, entity or circumstance, is held invalid, the remainder of this Act shall not be affected thereby.

Sec. 24. (a) For the purpose of carrying out the provisions of section 12 of this Act, there is hereby authorized to be appropriated not to exceed \$28,800,000.

(b) For the purpose of carrying out the provisions of section 20 of this Act, there is hereby authorized to be appropriated not to exceed \$300,000.

## PURPOSE

The purpose of H.R. 10337, introduced by Mr. Owens, is to partition lands in which the Navajo and Hopi Indian Tribes have joint, undivided, and equal interests and to provide for the resolution of related issues.

## BACKGROUND

### I. Historical

H.R. 10337 provides a legislative solution to a dispute between the Navajo and Hopi Indian Tribes to certain lands situated in northeastern Arizona. In addition, it addresses several ancillary problems growing out of this central dispute.

Both the Hopi and Navajo have occupied the American Southwest for centuries. Archaeological evidence shows that groups ancestral to the Hopi were settled in Arizona and New Mexico before 1300 A.D. and as early as 600 A.D. Early Spanish explorers encountered the Hopi in 1540 living in seven mesa-top villages in northeastern Arizona. The Hopi still live in several villages in the same general area, many of the villages being the same in which the Spanish found them.

The Hopi are a sedentary, village-based people, with an economy based on dry farming and grazing. Their fields are located at the foot of the mesas upon which they live. Besides raising crops, they also engage in some livestock herding in areas near the mesas and travel occasional to more distant points for ceremonial purposes, wood gathering, and hunting.

The Hopi tribe is a federally-recognized tribe, with a tribal government organized pursuant to the Indian Reorganization Act of 1934. The membership of the tribe is approximately 6,000 persons, most of whom currently reside on the reservation.

The time of entry of the Navajo people into the Southwest is in some dispute. Evidence indicates that they were settled in northwestern New Mexico as early as 1500. Eventually, they spread out from this area into other parts of what is now Arizona, New Mexico, and Utah. During this process, they almost surrounded the Hopi who continued to live in their mesa villages in northeastern Arizona.

The Navajo are a semi-nomadic grazing and hunting people who seldom gather in cohesive communities. Families and kinship groups roamed rather extensive areas in search of forage and game. It is this process and lifestyle which resulted in their occupation of large parts of northern New Mexico and Arizona.

The Navajo tribe is federally-recognized with a tribal government organized under a constitution adopted by the tribe and approved by the Secretary of the Interior. The current membership is approximately 130,000 with approximately 90,000 residing on the reservation lands of the tribe.

2. The 1882 Executive Order 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 order described a rectangular tract of land approximately 70 miles north to south and 57 miles east to west. The tract completely surrounded the traditional Hopi villages with the exception of Moencopi to the west.

The reservation was created at the urging of the local Hopi Indian Agent. Navajo and non-Indian encroachment and pressure on the Hopi Indians were given as the basis for the request. In addition, the Agent felt it was necessary to create a reservation for the Hopi in order to give him jurisdiction to discipline or remove undesirable whites who were creating dissension among the Hopi. At the time of the creation of the reservation, there were approximately 300 Navajo Indians occupying lands within the described tract.

The Navajo reservation, created by the Treaty of 1868, was entirely east of the 1882 Hopi reservation and the two did not adjoin each

other. Because of their semi-nomadic lifestyle and because of expanding population, the Navajo did not stay within the borders of the 1868 Treaty reservation, but began to expand outward, particularly to the west. In order to accommodate such expansion, additional lands were added to the Navajo reservation by Executive Order in the years following 1882 and, today, the lands of the Navajo completely surround the 1882 Hopi Reservation.

Subsequent to 1882, Navajos continued to expand into the area described by the 1882 Executive Order. Their encroachment upon the activities of the Hopi was the source of continual complaint by the Hopi to the Federal government. Several official proposals were offered and approved, including military action, to prevent such encroachment, but were never implemented. Navajo expansion into the area continued and, today, approximately 10,000 Navajo occupy and use lands within the tract.

The friction between the tribes continued and increased over the years. In 1958, at the urging of the Hopi, Congress enacted a jurisdictional statute authorizing a three-judge United States District Court to adjudicate the conflicting claims of the tribes to the lands and to determine the relative rights and interests of the tribes to land.

In 1962, the Court handed down a decision in the case of *Healing v. Jones* (210 Fed. Supp. 125; Aff. 373 U.S. 758). The Court decided:

- (1) Neither tribe obtained any vested rights in the land under the 1882 Executive Order. The rights were vested in the tribes by the 1958 jurisdictional act and, thereupon, became protected by the 5th Amendment to the Constitution.
- (2) By a 1943 administrative action establishing a grazing district for the exclusive use of the Hopi surrounding the Hopi villages, the Hopi obtained the exclusive right, subject to the trust title of the United States to that area, known as Land Management District No. 6.
- (3) Because of administrative action taken between 1937 and 1943, the Secretary impliedly settled the Navajo tribe within the 1882 reservation under the authority of the Executive Order.
- (4) The Hopi Tribe and the Navajo Tribe, subject to the trust title of the United States, have a joint, undivided, and equal interest in the entire 1882 Executive Order Reservation outside of Land Management District No. 6.
- (5) The Jurisdiction Act of 1958 did not confer authority on the Court to partition joint interests between the two tribes.

Notwithstanding the fact that the Court determined that the two tribes have equal and undivided interests in the "joint use" area, the Navajo were then and are now in actual, complete possession and use of the lands. Since the decision, there has been a complete inability of the Secretary and the Hopi to secure the equal use by the Hopi of the joint use area.

The Navajo use of the joint use area has resulted in 400% overgrazing. As a result, Navajo livestock have, in some instances, been trespassing on the Hopi exclusive area. In addition, the Hopi have been

pressuring for equal use of the joint use area. Physical conflict between members of the tribes has occurred and the potential for greater conflict is ever present.

The Hopi have returned to the District Court for assistance and have secured a writ of assistance and order of compliance under the terms of the *Healing v. Jones* decision to obtain an equal use of the joint use area. The time for compliance has passed and the order of the court has still not been implemented.

During the past ten years, the two tribes have attempted to negotiate a joint-use agreement, but negotiations have failed.

The Navajo are in complete possession of the disputed area. Partition of the joint use area would result in the necessity of moving approximately 6,000 Navajo. The Navajo oppose this alternative on the grounds of the disruption of removal and the lack of any lieu lands for Navajo required to relocate. They propose that the Hopi interest be bought out for the benefit of the Navajo.

The Hopi position is that they are entitled to the one-half use of the land under the law. They feel that the only way to secure their legal right is to have the surface partitioned and be quieted in their peaceful use and enjoyment of their interests.

### 3. Hopi Interest in the 1934 Navajo Reservation

In order to confirm the Navajo interests in lands added to the 1868 Navajo treaty reservation and define the boundaries of such reservation in Arizona, Congress enacted a statute defining the boundaries of the Navajo Reservation in Arizona (Act of June 14, 1934, 48 Stat. 960). The lands within the described boundaries were set aside for the benefit of the Navajo and "such other Indians as are already settled thereon".

At the time, Hopi Indians were living in the village of Moencopi which lay immediately west of the 1882 Hopi Reservation and wholly within the lands set aside by the 1934 Act. As a consequence, the Hopi obtained an undetermined interest in the lands set aside by the 1934 Act. The Moencopi question was not included in the *Healing v. Jones* decision.

The interest obtained by the Hopi in the 1934 Navajo reservation is, to some extent, different from that obtained by the Navajo in the 1882 Hopi reservation. The Navajo obtained their interest in the 1882 Hopi reservation through language in the Executive Order which was prospective in nature; i.e. the reservation was created for the Hopi "and such other Indians as the Secretary of the Interior may see fit to settle thereon." The Hopi obtained their interest in the 1934 Navajo reservation by the language of the Act which provided that the described lands would be for the Navajo "and such other Indians as may already be located thereon" creating a contemporaneous interest.

The bill transfers to the Hopi, to be held in trust by the United States, 243,400 acres in the Moencopi area. The Hopi claim that the language of the 1934 Act gives them an undivided interest in the entire Navajo reservation and hold that the transfer of 243,400 acres is quid pro quo for a quit claim to any other interest they may have in the 1934 reservation. The Navajo position is that the Hopi are only entitled to that acreage they were occupying on the date of the Act, estimated at 35,000 acres.

While the 1882 dispute and the Moencopi dispute derived from two different documents, the resultant problems are much the same. The tribes are unable to agree on the relative rights and interests of the two tribes and have been unable to use the lands jointly in harmony. In order to eliminate the source of conflict in this area, it is necessary to partition the relative interests.

### COMMITTEE CONCLUSIONS

The Subcommittee on Indian Affairs held hearings on several bills offering solutions to the Hopi-Navajo land dispute, including H.R. 10337. Testimony was taken from representatives of the two tribes and the Administration. In addition, the Committee had the benefit of the extensive hearing record of the 92nd Congress.

The bills considered by the Committee offered three basic solutions to the dispute: (1) Physical partition of the lands in dispute, either congressionally, administratively, or judicially; (2) "buy-out" of the interest of one tribe (Hopi) for the benefit of the other (Navajo); and (3) establishment of a mediation-binding arbitration mechanism. The Department of the Interior, in its report, recommended that no legislation be enacted inasmuch as the court had taken action to implement the decision of *Healing v. Jones*.

An underlying conclusion drawn by the Committee was that the Federal government, because of repeated failure to take decisive, positive action, bears the major responsibility for the development of this most complex dispute to the point of crisis. The Department's recommendation was therefore rejected. In addition, the Committee concluded that the major costs of the solution should properly be borne by the United States.

The development of this dispute has drawn into it every facet of human experience. Any ultimate solution will involve severe economic, social, and cultural disruption. The lands involved and specific sites thereon have intense religious and ceremonial significance for both tribes. Non-solution of the problem could well result in violent physical conflict.

The Committee concluded that physical partition of the surface of the lands in dispute was the best solution. This solution may require removal and relocation of large numbers of Navajo families and this factor was given the most serious consideration. It was reluctantly concluded that there was no alternative to this result.

The bill provides that the United States District Court for the District of Arizona shall, in a supplementary proceeding to *Healing v. Jones*, partition the surface of the estate of the 1882 joint use area between the Hopi and Navajo tribes. The bill establishes criteria for the partition which include equal acreage and quality of land, insofar as practical; contiguity of lands partitioned; and inclusion of the high Navajo population density in the portion partitioned to the Navajo to avoid as much disruption as possible.

The bill partitions the Hopi interest in the 1934 Navajo reservation by describing an area of exclusive Hopi interest around the Hopi village of Moencopi including approximately 234,400 acres.

The bill provides that Navajos residing on lands which are or will be partitioned to the Hopi shall remove from such lands over a five-

year period. A total of \$28,800,000 is authorized for appropriation to pay the costs of such removal, including purchase of improvements, moving expenses, and the cost of a replacement dwelling.

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

Section 1 authorizes the partition of the surface rights of the 1889 Joint Use area, as established in *Healing v. Jones*, (210 F. Supp. 125), between the Navajo and Hopi Tribes.

Section 2 authorizes the U.S. District Court for the District of Arizona to partition the joint-use area on a share and share-alike basis between the Navajo and Hopi Tribes in such a way that—

(a) the Navajo portion is contiguous to the 1934 Navajo reservation;

(b) the Hopi portion is contiguous to the existing Hopi reservation and adjoins that portion of the 1934 Navajo reservation which is partitioned to the Hopi Tribe pursuant to section 7;

(c) the high Navajo population density areas are included in the Navajo portion to minimize social, economic, and cultural disruption;

(d) the partition results in nearly equal acreage being partitioned to each tribe;

(e) the partition results in lands of nearly equal quality and carrying capacity being partitioned to each tribe; and

(f) the boundary line between the partitioned areas be drawn so as to avoid or facilitate fencing.

Section 3 requires that the partition proceedings shall take precedence over all other matters pending on the District Court's docket.

Section 4 directs the United States to hold in trust those lands partitioned to the Navajo Tribe, which lands become part of the Navajo Reservation.

Section 5 authorizes the United States to hold in trust those lands partitioned to the Hopi Tribe, which lands become part of the Hopi Reservation.

Section 6 leaves the subsurface estate of the Joint Use area in a joint, equal, undivided status to be managed by both tribes, subject to Secretarial supervision and approval, with proceeds divided, share and share alike.

Section 7 adds, surface and subsurface, 243,400 acres of the Moencopi area of the 1934 Navajo reservation to the Hopi reservation.

Sections 8 and 9 make allotments to a few Paiute Indians who were settled in the 1934 Navajo reservation on the date of that Act and their descendants and confirms the remainder of the 1934 area in the Navajo.

Sections 10 and 11 direct the Secretary to remove Navajos from the lands partitioned to the Hopi within 5 years and the Hopi from the lands partitioned to the Navajo within 2 years. Members of both tribes are prohibited from increasing the number of livestock grazed on lands partitioned to the other tribe prior to removal therefrom.

Section 12(a) requires the United States to purchase, at fair market value, the habitation and improvements of Navajo and Hopi required to move under the terms of the Act.

Subsection (b) directs the Secretary to (1) reimburse relocatees for actual reasonable moving expenses pursuant to the provisions of the

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and (2) pay to each head of household required to relocate an additional amount of money which, when added to payments under section 12(a) and section 12(b) (2) would be necessary to acquire a replacement dwelling subject to certain limitations and requirements. The additional payment is limited to up to \$15,000 for a family of 3 or less and \$20,000 for a family of 4 or more. The head of household has one year in which to purchase and occupy the replacement dwelling to qualify for the payment.

(c) In implementing b(1) and (2), the Secretary will establish standards consistent with the Uniform Relocation Act of 1970.

(d) Authorizes the Secretary to dispose of dwellings and other improvements purchased pursuant to section 12(a) as he sees fit.

Section 13 requires the Navajo to pay the Hopi fair rental value of all Navajo use of lands partitioned to Hopi after date of partition.

Section 14 requires the Hopi to pay the Navajo fair rental value of all Hopi use of lands partitioned to Navajo after the date of partition.

Section 15 protects existing allotments made to Hopi or Navajo in partitioned area.

Section 16 authorizes each tribe to sue the other in the United States District Court for—

(a) an accounting by the Navajo tribe for one-half of the income realized by the Navajo from trader license fees or commissions, lease proceeds or other charges within the Joint Use Area since September 17, 1957 together with interest thereon;

(b) for a determination and recovery of the one-half of the fair value of the grazing and agriculture use of the Joint Use Area by the Navajo tribe and its members since September 28, 1962 together with interest;

(c) for claims either of the tribes may have against the other for damages to the Joint Use Area lands notwithstanding the fact that they were tenants in common, such damage claims to be limited to those that occurred since the establishment of grazing districts in 1936.

Neither laches nor the statute of limitations shall constitute a defense to any claim filed within two years of the effective date of the Act.

Section 17 authorizes each tribe to institute any other legal action necessary to insure quiet and peaceful enjoyment of the lands of such tribe and to accomplish the purpose of the Act. Actions are to be filed in the U.S. District Court for the District of Arizona.

Section 18 provides that the U.S. shall not be an indispensable party to any action commenced pursuant to the Act and that any judgment thereunder shall not be regarded as a claim against the U.S.

Section 19 provides that the Federal Rules of Civil Procedure respecting remedies and proceedings and enforcement and collection of judgments shall be applicable to suits filed hereunder.

Section 20 directs the Secretary to survey and monument the boundaries of the Hopi Reservation.

Section 21 makes provision for the protection of a certain Hopi religious shrine which would be included in the Navajo partitioned area.

Section 22 directs the Secretary to assure access to religious shrines for the members of each tribe on the reservation of the other tribe.

Section 23 is a savings clause against any part of the act being found to be invalid.

Section 24 authorizes appropriation of not to exceed \$28,800,000 for the purpose of section 12 and of not to exceed \$300,000 for section 20.

#### COMMITTEE AMENDMENTS

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

(1) The bill was amended to provide that the United States District Court for the District of Arizona, rather than the Secretary of the Interior, would partition the 1882 joint use area between the two tribes under the criteria established by the bill. Other amendments were made conforming the language of the bill to this basic change. In addition, the Court is directed to give the partition proceedings priority over other items on the Court agenda.

(2) A new section was added which directs the Secretary of the Interior to (1) purchase from the head of a household required to relocate by the terms of the bill his habitation and other improvements at a fair market value; (2) to pay to such head of household his reasonable moving expenses pursuant to the provisions of section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; and (3) to make an additional payment to such head of household for purchase of a replacement dwelling, such payment not to exceed \$15,000 for a family of three or less and not to exceed \$20,000 for a family of four or more. The Secretary is authorized to sell improvements purchased at not more than their acquisition price.

(3) An amendment was adopted which assured that members of one tribe would continue to have access to tribal religious shrines located on lands which may be partitioned to the other tribe.

(4) A section was added authorizing the appropriation of \$28,800,000 for the purpose of compensating persons required to be relocated by the terms of the bill. It is estimated that from 6,000 to 8,000 persons may be required to be moved by the bill. In addition, an appropriation authorization of \$300,000 is included to carry out the provisions of section 20 relating to surveying and monumenting of boundaries of the partitioned lands.

#### COST

The bill authorizes appropriations of \$28,800,000 to provide for the relocation and rehabilitation of members of one tribe required to be moved from lands partitioned to the other and \$300,000 for the costs of surveying and monumenting boundaries as partitioned.

#### COMMITTEE RECOMMENDATIONS

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, dated May 14, 1973, together with a supplemental letter relating to the cost of the bill, are as follows:

U.S. DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington, D.C., May 14, 1973.

Hon. JAMES A. HALEY,  
Chairman, Committee on Interior and Insular Affairs, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 5647, 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," and H.R. 7679, a bill "To provide for the mediation and arbitration of the conflicting interests of the Navajo and Hopi Indian tribes in and to lands lying within the Joint Use Area of the Hopi reservation established by the Executive Order of December 16, 1882, and to lands lying within the Navajo reservation created by the Act of June 14, 1934, and for other purposes."

Last year we supported H.R. 11128 as one possible solution to this dispute, while at the same time noting that there might be other equally viable solutions, because we felt that we had an emergency situation. At that time we did not foresee a court decision implementing the Hopis' rights for some time. Since then, as you know, the Arizona District Court has ruled that the United States plan for giving the Hopis true joint use of the disputed area should be put into effect, and actions to that end are under way. Under these circumstances, we believe that no bill should be enacted. As the court's order unfolds, the Navajos will be required to reduce their livestock in the joint-use area to one-half of its carrying capacity. We believe that this action will go a long way toward solving the tribes' dispute and that the rest should be left to the tribes themselves. It would certainly be appropriate for Congress to monitor the progress obtained pursuant to this order. We plan to do the same.

We recognize, however, that there is a good deal of sentiment in favor of settling the dispute by means of a partition into two or more parcels. If that is the route which the Congress adopts, we recommend that it be done by giving jurisdiction to partition to the District Court in Arizona. This court has years of experience and expertise to draw upon in this matter, and we believe it is the logical entity to decide upon and carry out a partition.

In addition to the outright partition of the joint-use area which we recommended last year, we suggested that the possibility of arbitration be considered. H.R. 7679 does establish an arbitration procedure. As we stated above, however, contrary to our expectations of last year the court has rather speedily taken this matter in hand, and we would prefer to let the court's present order prevail or in the alternative to give the court jurisdiction to partition. However, should the Congress

prefer the arbitration procedure, we offer several amendments which we believe would improve H.R. 7679.

We believe that H.R. 5647 is the least preferable alternative. However, in the event that it becomes the choice of Congress we recommend several amendments.

#### I. HISTORICAL BACKGROUND

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 either 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 373 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. On May 22, 1972, the

Supreme Court denied the Navajos' petition for a writ of assistance.

On October 14, 1972, the District Court issued an order directing the Navajo Tribe, *inter alia*, to: afford the Hopi Tribe its proper use of the disputed area; reduce its livestock in the joint-use area to the point where the Navajo Tribe is using no more than one-half the carrying capacity of the area; and administer the area jointly with the Hopi Tribe. The United States was ordered, *inter alia*, to submit plans for effectuating this order. On the same day the court issued a writ of assistance commanding its United States Marshal to serve a copy of the foregoing order upon the Navajo Tribe. The Navajo Tribe appealed from the court's order and then, at the court's request, submitted an alternative plan to implement that order. On April 23, 1973, the court rejected the Navajo plan and adopted the United States' plan for achieving true joint-use of the disputed area. *Inter alia*, the plan adopted provides for removal of all livestock from the joint-use area save that essential for daily livelihood and for platting of new management units for use in future land recovery programs. It is important to note, however, that this plan does not effect a partition of the joint-use area, and the District Court's holding that it lacks the power to partition still controls its disposition of the case.

These bills involve two other matters. First, 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 between these villages and the reservation. The coexistence of the two tribes in this area has also been a source of controversy and quarrels.

Second, also within the 1934 reservation are located certain Paiute Indians whose use dates back to antiquity. Virtually identical sections in the two bills—10 in H.R. 7679 and 6 in H.R. 5647—would provide for allotments to these Paiute Indians in accordance with the General Allotment Act of February 8, 1887.

#### II. SOLUTION BY JUDICIAL PARTITION

As stated above, we would prefer that as to all three controversies—1882 Reservation, 1934 Reservation, and Paiute residence—no bill be enacted. We recognize that the court's order covers only the first of these disputes, but we do not believe that either of the other problems is grave enough to warrant a legislative remedy at this time.

If the Committee should decide, however, not to accept our recommendation that the present court order be allowed to operate without legislative interference, we would recommend that the Court be given authority to partition the 1882 Joint-Use Area. This could be accomplished by amending the Act of July 22, 1958, (72 Stat. 403) by adding the following section thereto:

"SEC. 4. Any area in which it is determined that the Navajo Indian Tribe and the Hopi Indian Tribe have a joint or undivided interest

may be partitioned between such Tribes by the United States District Court for Arizona according to the Court's determination of fairness and equity and the interest apportioned to each tribe shall become part of its reservation: *Provided, however*, That the last sentence of section 1, *supra*, shall not apply to the partition authorized under this section."

### III. SOLUTION BY ARBITRATION

Should the Congress decide that arbitration is the most desirable means of settling the Hopi-Navajo dispute, we offer the following recommendations concerning H.R. 7679.

H.R. 7679 would solve the dispute by directing the Chief Judge of the United States District Court for the District of Columbia to appoint a Navajo-Hopi Board of Arbitration. The Board would be composed of three members, none of whom could have any interest in the outcome of the dispute. Up to \$500,000 could be appropriated for the Board's expenses. The Board would contact the Hopi and Navajo tribal councils, requesting them each to appoint within 30 days a negotiating team of up to six members. If within 180 days after the first negotiating session held by the Board the parties reached an agreement on the settlement of the dispute, such agreement would be reduced to writing, referred to the Attorney General for legal scrutiny, modified by the Board if necessary to conform to the Attorney General's advice, forwarded to the Secretary of the Interior, and in turn submitted to the Congress. If within 60 days neither House of Congress passed a resolution disapproving such an agreement, it would attain the force of law and become a binding and conclusive settlement of the dispute.

Should the parties fail to reach agreement within 180 days, the Board would compel each to submit its last best offer. The Board would select the most equitable of the two offers and handle it as it would an agreement made within 180 days (see *supra*). Should either or both of the parties fail to comply with the Board's mandated procedures, the Board would devise its own settlement, one which it viewed as the most equitable that could be obtained. Thereupon the Board would handle this settlement as outlined *supra*. The bill provides that no agreement or provision therein agreed to by both tribes shall be deemed to be a taking of property by the United States and thus compensable under the due process clause of the Fifth Amendment.

H.R. 7679 sets several guidelines for the use of the Board and the Attorney General in arriving at and reviewing a settlement. *Inter alia*, any division of the joint-use area which results in an unequal share to one party shall be compensable out of the subsurface income of the other party, appropriations under the Act, or both.

Any settlement which resulted in relocation of members of either party to lands apportioned to the other party would provide funds for resettlement of such members, including reimbursement of resettlement costs and purchase of non-movable improvements left by resettled persons. For purposes of resettlement and related compensation, the bill would authorize \$16,000,000 to be appropriated.

Regardless of any settlement, the Secretary would be authorized and directed to reduce livestock grazing in the joint-use area to the

carrying capacity of the lands within one year of enactment and to institute such conservation methods as will rehabilitate the land. He would also be authorized to engage in the survey, location of monuments, and fencing of boundaries of any lands partitioned pursuant to the settlement. The bill would authorize \$10,000,000 to carry out the purposes mentioned in this paragraph.

We recommend the following amendments to H.R. 7679.

In section 1(a), we see no reason for having the Board members appointed by the Chief Judge of the United States District Court for the District of Columbia rather than by the Chief Judge of the District Court of Arizona which has jurisdiction over the area.

The Arizona Court has had considerable experience with the dispute and should be in a better position to choose appropriate Board members. Therefore, we suggest that in the first sentence of section 1(a), "Arizona" be substituted for "Columbia."

To provide for the filling of any vacancies which may occur in the Board's membership due to death, illness, or otherwise, we suggest that a sentence such as the following be added at the end of section 1(a):

"The Chief Judge shall promptly appoint Board members to fill any vacancies which may occur in the Board's membership."

Section 1(d) requires that at least one Board member shall be present during the negotiating sessions. Since the Board members are responsible for determinations as to the progress of the negotiation as provided in section 2(d) and for the selection or development of a settlement plan under section 4, we believe that all the Board members should be present at the negotiating sessions scheduled by the Board. Therefore, we recommend that section 1(d) be rewritten in a manner such as follows:

"(d) All Board members shall attend the negotiation sessions provided for in section 2(c) except in the case of illness or other extenuating circumstance. Any formal action or determination of the Board shall require the agreement of a majority of the Board members."

In order to assure the existence of the negotiating teams until such time as the Board completes its tasks, we recommend that in section 1(e) the words "and the negotiating teams" be inserted after "Board".

To remove unnecessary language and in line with our comment below concerning section 3(a) and the Board's submitting its report to the Congress, we suggest deleting from section 1(e) the words "with the Secretary of the Interior (hereinafter referred to as the 'Secretary')".

We suggest that the appropriation authorization in section 1(f) be rewritten as set out below to take into account the fact that although the Board will have a life of a year or less, its life may start in one fiscal year and end in the next. In addition, the amount authorized should be changed to "such amounts as may be necessary" to assure adequate funds for reimbursable services from Federal agencies. It should be noted that the Interior Department may be called upon to provide administrative and technical assistance to the Board and much of this would have to be on a reimbursable basis. The rewritten section would be as follows:

"There is authorized to be appropriated such sums as may be necessary for the expenses of the Board, such amount to be available in the fiscal year in which it is appropriated and in the following fiscal year."

To provide a liaison between the Board and the Secretary of the Interior which would facilitate the provisions of assistance and advice to the Board, the bill should provide for the designation of a representative of the Secretary of the Interior to the Board. This could be accomplished by adding a new section 1(g) such as the following:

"(g) The Secretary of the Interior (hereinafter referred to as the 'Secretary') shall appoint a liaison representative to the Board who shall attend negotiating sessions and facilitate the provision of information, advice and assistance requested by the Board from the Interior Department."

To set out more clearly the role of the negotiating teams as representing their tribes and to provide for the possible selection by a tribe of a nontribal member (such as its legal counsel) as a member of their negotiating team, we recommend that in section 2(a) the phrase "team from each tribe" be changed to "team representing each tribe".

To provide for the filling of vacancies on the negotiating teams, a sentence such as the following should be added at the end of section 2(a):

"Each tribal council shall promptly fill any vacancies occurring on its negotiating team."

In line with the preceding change, section 2(b) should be revised by inserting after "select and certify such team" the words, "or to select and certify a replacement member in the case of a vacancy."

We suggest that section 2(c) be changed to indicate that Flagstaff, Arizona, will be the site of the negotiation sessions unless otherwise agreed to by the Board and the teams. This is consistent with the fact that the principal source of records and information regarding the disputed area will be the Flagstaff Office of the Bureau of Indian Affairs which has been established to administer the disputed area. In addition, such a provision solves any problem resulting from the teams' disagreeing as to what is a "convenient" place for the sessions. To accomplish this, section 2(c) could be rewritten as follows:

"(c) Within fifteen (15) days after formal certification of both teams to the Board, the Board shall schedule the first session of the negotiations at Flagstaff, Arizona. Thereafter, negotiation sessions, conducted under the guidelines established by this Act, shall be scheduled at Flagstaff or at any other place by agreement of the Board and the teams as long as at least one such session is held biweekly."

To preclude the Board's having to wait the full 180 days in the event that the parties reach an impasse without clearly failing "to bargain in good faith" we suggest that section 2(d) be rewritten as follows:

"(d) In the event that either or both negotiation teams fail to attend two consecutive sessions or, in the opinion of the Board, either fails to bargain in good faith, or an impasse is reached, the provisions of section 4(c) shall become operative."

To provide for the possibility of a disagreement within a negotiation team, we suggest the addition of a section 2(e) such as follows:

"(e) In the event of a disagreement within a negotiation team, the majority of the team shall prevail and act on behalf of the team unless the resolution of the tribal council certifying the team specifically provides otherwise."

For purposes of clarification, in the first sentence of section 3(a), the phrase "signed by the parties" should be changed to "signed by

the members of the negotiation teams" because section 1(a) states that "parties" refers to the Navajo and Hopi Tribes.

We believe that the Board should receive the views of the Secretary of the Interior on the proposed agreement under section 3(a) since he may be involved in carrying out the agreement. In addition, the expertise of his staff may enable him to provide the Board with significantly helpful information or views. Therefore, we suggest that in the second sentence of section 3(a) there be inserted "(1)" following "agreement to" and before the period there be inserted "and (2) the Secretary who shall advise the Board on the aspects of the agreement involving him and such other aspects as he deems appropriate."

In the third sentence of section 3(a), the word "offer" should be changed to "agreement" and following "Attorney General" there should be inserted the words "and the Secretary".

We believe that the negotiation teams should have an opportunity to review and approve their agreement as modified by the Board to conform to the advice of the Attorney General and the Secretary. Such a review is only fair as the modifications could conceivably alter the basis of agreement. In addition we believe that the report of the Board should be submitted directly to the Congress with copies provided to the Attorney General and the Secretary. Further the Attorney General and the Secretary should provide the Congress with their views on the Board's report. In line with the foregoing, we recommend that the last two sentences of section 3(a) be deleted and that the following be added in place thereof:

"The Board shall provide the negotiation teams with copies of such modified agreement for their approval and signatures as above. If the teams approve and sign the modified agreement, the Board shall transmit it, together with a report thereon, to the Speaker of the House of Representatives and to the President of the Senate. The Board shall provide copies to the Attorney General and the Secretary, each of whom shall provide a report thereon to the Interior and Interior Affairs Committees of the Senate and House of Representatives."

Rather than an action by just one House of Congress, we believe that an enactment should be required to overturn the Board's action. Therefore, in section 3(b) the words "neither the Senate nor House of Representatives passes a resolution" should be deleted and replaced with the words "a resolution is not enacted".

In section 4(a) the words "the parties" should be changed to "the negotiation teams", and in the first sentence of section 4(b) the word "parties" should be changed to "negotiation teams" in line with our comments on section 3(a) above.

In line with our recommended change in section 1(e), we suggest deletion of the last sentence of section 4(a).

For purposes of simplification and to eliminate unnecessary language we recommend deletion of all of section 4(b) after the first sentence and substitution of the following sentence:

"Thereafter, the Board shall follow the procedure set out for agreements in section 3(a) except that the modified offer need only be submitted for approval and signature to the negotiation team which made the offer. The provisions of section 3(b) shall also apply to the decision and report of the Board under this section."

In line with the above changes to section 4(b), the last sentence of section 4(c) should be changed by adding the following at the end

thereof: "except that the modified plan need not be submitted to either party for approval if they were both in default under section 2(a) or 2(d)".

We believe that the provision in section 5 which declares an agreement reached by the parties not to constitute a taking under the Fifth Amendment is acceptable and constitutional. If such an agreement resulted in one party's receiving less than an equal share of the disputed area, nonetheless that party would have acquiesced in the agreement and could not be heard to claim that its property was taken. On the other hand, in the case of the imposition of a plan on a party by the Board under section 4, it is our understanding that an aggrieved party could sue the United States.

The date "September 17, 1967" in section 6(e) apparently should be "September 28, 1962" which is the date of the District Court decision in *Healing v. Jones*. In addition, we believe that the word "and" following "1882" should be the word "is".

In section 6(f)(2) the word "Hopi" should be "Hopis" and "such Act" should be "this Act".

The word "considered" should be deleted from the last sentence of section 6(f).

In section 7 the word "the" should be inserted following "(a)" and the word "a" should be inserted following "(b)".

Section 11, which directs the Secretary to reduce livestock in the joint use area to its carrying capacity and to restore the grazing potential of the area to the maximum extent feasible, is a new provision which did not appear in H.R. 11128 as introduced. The Secretary has already been ordered by the Arizona District Court to carry out the goals of section 11. By order of the court we have submitted a plan for livestock reduction which has been adopted by the court and incorporated into its mandate. Essentially, this plan involves the management of livestock in a dry-lot operation by a joint Hopi-Navajo corporation. We believe that the funds needed for rehabilitation of the joint-use area can be obtained by the normal annual appropriation procedure. Section 11 also includes among its purposes—for which part of the \$10 million to be appropriated under that section would be used—the survey, location of monuments, and fencing of boundaries of any lands partitioned under the settlement provided by the arbitration procedure of this bill. We believe that these are matters which can be deferred until such a partition may be effected and that there is no need to appropriate funds for such purposes at this time. Therefore, we believe that the funds authorized to be appropriated under this section should not be set at a fixed amount. We recommend that the last sentence of section 11 be rewritten to read as follows: "There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section."

We recommend that section 16 be amended to include more specific provisions designed to ease the hardship of any relocation of Hopis and Navajos which may be required under a plan adopted pursuant to section 3 or 4. Such a relocation of Hopis and Navajos would be analogous to a Federal taking of real property, and, as we have indicated in the history of the dispute set out above, the United States bears some of the responsibility for the current status of the 1882 Reservation. Therefore, we recommend that the kind of benefits provided by the

Uniform Relocation Assistance and Land Acquisition Policies Act be applied to this case, if modified to provide for incentive to encourage settled persons to move, as set out in a new section 16, which would read as follows:

Sec. 16. (a) If the plan adopted pursuant to Section 3 or Section 4 requires the relocation of any Navajos or Hopis, 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 required to move. 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).

(2) pay to each head of a household and his family 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, 1975, 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, 1975, 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.

(3) the sum of \$3,000 to each head of a household who between July 1, 1975, and July 1, 1976, contracts with the Secretary to relocate. Such payment shall be made upon the date of such relocation as determined by the Secretary."

While adhering to the view that arbitration is the best method of resolving the controversy over the joint-use area, we offer the follow-

ing recommendations concerning H.R. 5647, should that be the solution adopted by the Congress.

Section 5 of H.R. 5647 deals with the amount of land from the Navajo Reservation to be granted to the Hopi Tribe and included within their reservation. The amount of land granted the Hopi Tribe under the section is significantly greater (by 73,600 acres) than that provided in section 5 of H.R. 11128 as introduced in the 92nd Congress. We believe that the latter original provision is an equitable division and we would recommend its use instead of the current provisions of section 5 of H.R. 5647.

Section 8 of H.R. 5647 also differs from section 8 of H.R. 11128 as introduced in the 92nd Congress in reducing from ten to five years the time allowed for removing the families to be dislocated by the legislation. We would recommend the ten year period as being more feasible. However, we do not recommend that the Act require removal of approximately ten percent of the Navajo families per year as provided in H.R. 11128 as introduced. Rather, we recommend that no rate of removal be specified.

Finally, we reiterate the recommendation made *supra* in connection with H.R. 7679 that the kind of benefits provided by the Uniform Relocation Act be applied to movement of resettled Indians. See the new section which we provided *supra*, which would replace section 11 in H.R. 5647.

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,

JOHN KYL,  
Assistant Secretary of the Interior.

U.S. DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
Washington, D.C., January 25, 1974.

Hon. LLOYD MEEDS,  
Chairman, Subcommittee on Indian Affairs, House of Representatives,  
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your December 13, 1973 letter requesting our estimate of the cost of implementing H.R. 10337 (relating to partition of the Navajo-Hopi disputed area) as marked up on December 11, 1973 and reported by your Subcommittee to the Full Committee.

Sections 10 and 11 of H.R. 10337 require the removal of Navajo and Hopi Indians, respectively, from lands partitioned to the Hopi and Navajo tribes, respectively. As you know, precise unchallengeable population figures are not available for the area involved. In addition, section 2 of the bill provides for a judicial partition in the future so that it is not possible at this time to precisely identify the lands to be partitioned to each tribe. However, for purposes of estimating the cost of implementing H.R. 10337 as reported by the Subcommittee, we believe that the following reflects the best available information.

The partition of land described in section 7 of the bill will require the relocation of approximately 200 families. The judicial partition authorized in section 2 will require the relocation of approximately 400 families. Therefore, we estimate that a total of 1,100 families (630 persons) would be relocated under the terms of the bill.

Section 12(a) of the bill requires the United States to purchase at "fair market value" the "habitations and improvements" of the families relocated pursuant to the bill. We estimate that the value of habitations and improvements (including improvements shared by a number of families) will average about \$5,800 per family relocated. Therefore, the aggregate cost of section 12(a) for the 1,100 families would be approximately \$6.4 million.

Section 12(b) (1) directs the Secretary to reimburse each relocated family for their "actual reasonable moving expenses." A precise figure is difficult to arrive at because not only are the families to be relocated not precisely identified but it is not known where they will relocate. We understand that the cost of moving 17 Navajo families from the Hopi Reservation to locations on the Navajo Reservation averaged about \$1,800 per family. Based on that figure, the aggregate of the moving costs for the 1,100 families could be approximately \$2.0 million.

Section 12(b) (2) directs the Secretary to pay to each relocated family an amount when added to the fair market value of the habitation and improvements purchased under subsection (a), equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such displaced household: *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed \$15,000 for a household of three or less and not more than \$20,000 for a household of four or more. \* \* \* Nothing in this subsection shall require a displaced person to occupy a dwelling with a higher degree of safety and sanitation than he desires."

We estimate that 330 of the relocated families will have 3 or less members and that 770 families will have 4 or more members. We also estimate that the cost of the prescribed replacement dwelling would average \$18,000 for the families of 3 or less members and \$26,000 for the families of 4 or more members. We believe that these costs will require average payments near the \$15,000 and \$20,000 maximum amounts. Therefore, the cost of section 12(b) (2) would be approximately \$20.4 million.

Section 20 of the bill requires the Secretary "to survey and monument the boundaries of the Hopi Reservation as defined in sections 5 and 7 of this Act." We estimate that there will be some 300 miles of boundary with a cost averaging \$1,000 per mile. Therefore, the cost of section 20 would be approximately \$300,000.

In summary the estimated amount of appropriations required to implement H.R. 10337 as marked up by your Subcommittee on December 11, 1973 would be as follows in 1974 dollars:

Sec. 12(a)	Million	\$6.4
Sec. 12(b) (1)	-----	2.0
Sec. 12(b) (2)	-----	20.4
Sec. 20	-----	.3
Total	-----	29.1

It should be noted that these costs do not include amounts for fencing, restoration, land purchases or future litigation damage which have been discussed from time to time. We have included only those costs which the bill specifically requires be borne by the Interior Department.

Our Solicitor suggests that we point out the possibility of the United States being found liable for damages in connection with implementing section 7 of the Act which partitions an area outside the 1882 Executive Order Area to the Hopis. The area encompasses some 243,000 acres and includes the Moencopi area plus a corridor connecting it with the Hopi area within the 1882 Executive Order Area. The Hopi interests in the section 7 area were recognized in the 1934 Navajo boundary act (48 Stat. 960) by inclusion of language that the lands were withdrawn for the benefit of the Navajos and "such other Indians as may already be located thereon." However, the extent of the Hopi interest has never been determined judicially or otherwise. While there may be no question as to the validity of the Hopi interest in the Moencopi area, the extent to which section 7 describes more than the Hopis may be determined legally to be entitled to could result in a taking of Navajo property rights without a provision for compensation. Obviously, if there is such a taking, the United States would be liable for damages to the Navajo Tribe.

We should also like to offer the following technical comments and suggestions on the bill.

At the end of section 7, the reference to the base line and meridian was omitted. We suggest that the period following the last word ("beginning") be changed to a comma and the following added to the sentence "all within the Gila and Salt River Base and Meridian."

In section 12(b) the one year limit on the time a family has to complete construction of or purchase and occupy a replacement dwelling may be unduly restrictive considering the problems of developing new housing on the Navajo Reservation. We suggest that a two year period be allowed.

Section 12(d) is silent on the disposal of the proceeds of the resales by the Secretary of the habitations and improvements purchased from relocated families and, therefore, we assume that the intent is that the proceeds be deposited in the Treasury as miscellaneous receipts.

The revised description of Cliff Spring in section 21 of the bill is larger than necessary and more precise references should be made to angles, distances, and corners. We suggest that the last five lines before the proviso be rewritten as follows: "thence south 45 degrees west, 1,000 feet to a point on the 6,900 foot contour; thence south 46 degrees east, 500 feet to a point due south of the spring; thence north east, 1,000 feet to the point of beginning, containing 11.5 acres more or less."

Sincerely yours,

MORRIS THOMPSON,  
Commissioner of Indian Affairs.

## FAIR LABOR STANDARDS AMENDMENTS OF 1974

MARCH 15, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PERKINS, from the Committee on Education and Labor,  
submitted the following

### REPORT

together with

### SEPARATE AND DISSENTING VIEWS

[To accompany H.R. 12435]

The Committee on Education and Labor, to whom was referred the bill (H.R. 12435) to amend the Fair Labor Standards Act of 1938 to increase the minimum wage rates under that Act, to expand the coverage of that Act, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment strikes out all after the enacting clause of the bill and inserts a new text which appears in italic type in the reported bill.

### INTRODUCTORY STATEMENT

The Fair Labor Standards Act of 1938 was enacted on June 25, 1938. The basic policy of the Act is contained in its second section:

SEC. 2. (a) The Congress hereby finds that the existence, in industries engaged in commerce or in the production of goods for commerce, of labor conditions detrimental to the maintenance of the minimum standards of living necessary for health, efficiency, and general well-being of workers (1) causes commerce and the channels and instrumentalities of commerce to be used to spread and perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in commerce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.