

TARIFF SCHEDULES OF THE UNITED STATES
APPENDIX TO THE TARIFF SCHEDULES

Item	Articles	Rates of Duty		Effective Period	
		1	2		
	PART 1.—TEMPORARY LEGISLATION	*	*	* *	
	Subpart B.—Temporary Provisions Amending the Tariff Schedules	•	*	* •	
		Rates of Duty		Effective Period	
		1-a	1-b		2
911.6	Other unwrought copper (provided for in item 612.06, part 2C, schedule 6) . . .	Free	No change	No change	On or before 6/30/74.
		Rates of Duty		Effective Period	
		1	2		
911.40	Catalysts of platinum and carbon (provided for in item 656.05, part 3G, schedule 6) when imported for use in producing caprolactam	Free	Free		On or before June 30, 1975

RESOLUTION OF NAVAJO-HOPI LAND DISPUTES

SEPTEMBER 25, 1974—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 10337]

The Committee on Interior and Insular Affairs, to which was referred the Act (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, reports favorably thereon with amendments and recommends that the Act as amended do pass.

The amendments are as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

That, (a) within thirty days after enactment of this Act, the Director of the Federal Mediation and Conciliation Service shall appoint a Mediator (hereinafter referred to as the "Mediator") who shall assist in the negotiations for the settlement and partition of the relative rights and interests, as determined by the decision in the case of *Healing v. Jones* (210 F. Supp. 125, D. Ariz., 1962, aff'd 363 U.S. 758, 1963) (hereinafter referred to as the "*Healing* case"), of the Hopi and Navajo Tribes (hereinafter referred to as the "tribes") to and in lands within the reservation established by the Executive order of December 16, 1882, except land management district no. 6 (such lands hereinafter referred to as the "joint use area"). The Mediator shall not have any interest, direct or indirect, in the settlement of the interests and rights set out in this subsection. The duties of the Mediator shall cease upon the entering of a full agreement into the records of the supplemental proceedings pursuant to section 3 or the submission of a report to the District Court after a default in negotiations or a partial agreement pursuant to section 4.

(b) The proceedings in which the Mediator shall be acting under the provisions of this Act shall be the supplemental proceedings in the *Healing* case now pending in the United States District Court for the District of Arizona (hereinafter referred to as "the District Court").

(c) (1) The Mediator is authorized to request from any department, agency, or independent instrumentality of the Federal Government any information, personnel, service, or materials he deems necessary to carry out his responsibilities under the provisions of this Act. Each such department, agency, or instrumentality is authorized to cooperate with the Mediator and to comply with such requests to the extent permitted by law, on a reimbursable or nonreimbursable basis.

(2) To facilitate the expeditious and orderly compilation and development of factual information relevant to the negotiating process, the President shall, within fifteen days of enactment of this Act, establish an interagency committee chaired by the Secretary of the Interior (hereinafter referred to as the "Secretary") to develop relevant information and to respond to the requests of the Mediator.

(d) The Secretary shall appoint a full-time representative as his liaison with the Mediator to facilitate the provision of information and assistance requested by the Mediator from the Department of the Interior.

(e) The Mediator may retain the services of such staff assistants and consultants as he shall deem necessary, subject to the approval of the Director of the Federal Mediation and Conciliation Service.

SEC. 2. (a) Within thirty days after enactment of this Act, the Secretary shall communicate in writing with the tribal councils of the tribes directing the appointment of a negotiating team representing each tribe. Each negotiating team shall be composed of not more than five members to be certified by appropriate resolution of the respective tribal council. Each tribal council shall promptly fill any vacancies which may occur on its negotiating team. Notwithstanding any other provision of law, each negotiating team, when appointed and certified, shall have full authority to bind its tribe with respect to any other matter concerning the joint use area within the scope of this Act.

(b) In the event either or both of the tribal councils fail to select and certify a negotiating team within thirty days after the Secretary communicates with the tribal council under subsection (a) of this section or to select and certify a replacement member within thirty days of the occurrence of a vacancy, the provisions of subsection (a) of section 4 shall become effective.

(c) Within fifteen days after formal certification of both negotiating teams to the Mediator, the Mediator shall schedule the first negotiating session at such time and place as he deems appropriate. The negotiating sessions, which shall be chaired by the Mediator, shall be held at such times and places as the Mediator deems appropriate. At such sessions, the Mediator may, if he deems it appropriate, put forward his own suggestions for procedure, the agenda, and the resolution of the issues in controversy.

(d) In the event either negotiating team fails to attend two consecutive sessions or, in the opinion of the Mediator, either negotiating team fails to bargain in good faith or an impasse is reached, the provisions of subsection (a) of section 4 shall become effective.

(e) In the event of a disagreement within a negotiating team the majority of the members 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.

SEC. 3. (a) If, within one hundred and eighty days after the first session scheduled by the Mediator under subsection (c) of section 2, full agreement is reached, such agreement shall be put in such form as the Mediator determines best expresses the intent of the tribes and shall then be submitted to the Secretary and the Attorney General of the United States for their comments as they relate to the interest of the United States in the proceedings. These comments are to be submitted to the Mediator and the negotiating teams within thirty days. The negotiating teams and the Mediator shall then consider the comments and, if agreement can still be reached on terms acceptable to the negotiating teams and the Mediator within sixty days of receipt by him of the comments, the agreement shall be put in final written form and shall be signed by the members of the negotiating teams and the Mediator. The Mediator shall then cause the agreement to be entered into the records of the supplemental proceedings in the *Healing* case.

The provisions of the agreement shall be reviewed by the District Court, modified where necessary, and put into effect immediately thereafter.

(b) If, within the one hundred and eighty day period referred to in subsection (a) of this section, a partial agreement has been reached between the tribes and they wish such partial agreement to go into effect, they shall follow the procedure set forth in said subsection (a). The partial agreement shall then be considered by the Mediator in preparing his report, and the District Court in making a final adjudication, pursuant to section 4.

(c) For the purpose of this section, the negotiating teams may make any provision in the agreement or partial agreement not inconsistent with existing law. No such agreement or any provision in it shall result in a taking by the United States of private property compensable under the Fifth Amendment of the Constitution of the United States.

SEC. 4. (a) If the negotiating teams fail to reach full agreement within the time period allowed in subsection (a) of section 3 or if one or both of the tribes are in default under the provisions of subsections (b) or (d) of section 2, the Mediator, within ninety days thereafter, shall prepare and submit to the District Court a report containing his recommendations for the settlement of the interests and rights set out in subsection (a) of section 1 which shall be most reasonable and equitable in light of the law and circumstances and consistent with the provisions of this Act. Following the District Court's review of the report and recommendations (which are not binding thereon) and any further proceedings which the District Court may schedule, the District Court is authorized to make a final adjudication, including partition of the joint use area, and enter the judgments in the supplemental proceedings in the *Healing* case.

(b) Any proceedings as authorized in subsection (a) 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 the Court.

SEC. 5. (a) For the purpose of facilitating an agreement pursuant to section 3 or preparing a report pursuant to section 4, the Mediator is authorized—

(1) notwithstanding the provisions of section 2 of the Act of May 25, 1918 (40 Stat. 570), to recommend that, subject to the consent of the Secretary, there be purchased or otherwise acquired additional lands for the benefit of either tribe from the funds of either tribe or funds under any other authority of law;

(2) to recommend that, subject to the consent of the Secretary, there be undertaken a program of restoration of lands lying within the joint use area, employing for such purpose funds authorized by this Act, funds of either tribe, or funds under any other authority of law;

(3) to recommend that, subject to the consent of the Secretary, there be undertaken a program for relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area;

(4) to recommend, in exceptional cases where necessary to prevent personal hardship, a limited tenure for residential use, not exceeding a life estate, and a phased relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area; and

(5) to make any other recommendations as are in conformity with this Act and the *Healing* case to facilitate a settlement.

(b) The authorizations contained in subsection (a) of this section shall be discretionary and shall not be construed to represent any directive of the Congress.

SEC. 6. The Mediator in preparing his report, and the District Court in making the final adjudication, pursuant to section 4, shall consider and be guided by the decision of the *Healing* case, under which the tribes have joint, undivided, and equal interests in and to all of the joint use area; by any partial agreement reached by the parties under subsection (b) of section 3; by the last best offer for a complete settlement as a part of the negotiating process by each of the tribes; and by the following:

(a) The rights and interests, as defined in the *Healing* case, of the Hopi Tribe in and to that portion of the reservation established by the Executive order of December 16, 1882, which is known as land management district no. 6 (hereinafter referred to as the "Hopi Reservation") shall not be reduced or limited in any manner.

(b) The boundary lines resulting from any partitioning of lands in the joint use area shall be established so as to include the higher density population areas

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of each tribe within the portion of the lands partitioned to such tribe to minimize and avoid undue social, economic, and cultural disruption insofar as practicable. (c) In any division of the surface rights to the joint use area, reasonable provisions shall be made for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

(d) In any partition of the surface rights to the joint use area, the lands shall, insofar as is practicable, be equal in acreage and quality: *Provided*, That if such partition results in a lesser amount of acreage, or value, or both to one tribe such differential shall be fully and finally compensable to such tribe by the other tribe. The value of the land for the purposes of this subsection shall be based on not less than its value with improvements and its grazing capacity fully restored: *Provided further*, That, in the determination of compensation for any such differential, the Federal Government shall pay any difference between the value of the particular land involved in its existing state and the value of such land in a fully restored state which results from damage to the land which the District Court finds attributable to a failure of the Federal Government to provide protection where such protection is or was required by law or by the demands of the trust relationship.

(e) Any lands partitioned to each tribe in the joint use area shall, where feasible and consistent with the other provisions of this section, be contiguous to the reservation of each such tribe.

(f) Any boundary line between lands partitioned to the two tribes in the joint use area shall, insofar as is practicable, follow terrain which will facilitate fencing or avoid the need for fencing.

(g) Any claim the Hopi Tribe may have against the Navajo Tribe for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, and charges for doing business or for damages in the use of lands within the joint use area, shall be for a one-half share in such sums.

(h) Any claim the Navajo Tribe may have against the Navajo Tribe for the determination and recovery of the fair value of the grazing and agricultural use of the lands within the joint use area by the Navajo Tribe and its individual members, since September 28, 1962, shall be for one-half of such value.

Sec. 7. Partition of the surface of the lands of the joint use area shall not affect the joint ownership status of the coal, oil, gas, and all other minerals within or underlying such lands. All such coal, oil, gas, and other minerals within or underlying such lands shall be managed jointly by the two tribes, subject to supervision and approval by the Secretary as otherwise required by law, and the proceeds therefrom shall be divided between the tribes, share and share alike.

Sec. 8. Hereafter the United States shall hold in trust exclusively for the Hopi Tribe and as a part of the Hopi 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 the west boundary of the reservation established by the Executive order of December 16, 1882, where said boundary is intersected by the right-of-way of United States 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 11 east;

thence south, a distance of approximately 4 7/8 miles following the centerlines of sections 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 centerline of United States Route 160, a distance of approximately 11 miles, to a point where said centerline intersects the right-of-way of United States Route 89;

thence east following the south boundaries of sections 2 and 1, township 29 north, range 9 east, sections 6, 5, 4, and 30 north, 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 east, a distance of 1 mile, to the southwest corner of section 18, township 29 north, range 12 east (unsurveyed);

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

thence south, a distance of 1 mile to the southwest corner of section 12, township 29 north, range 11 east (unsurveyed);

thence east, a distance of 1 mile to the northwest 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 30 north in township 29 north, range 12 east and continuing to a point where said section lines intersect the west boundary of the reservation established by the Executive order of December 16, 1882;

thence due north, along said west boundary, a distance of approximately 27 1/2 miles to the point of beginning.

Sec. 9. Notwithstanding any other provision of this Act, the Secretary is authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Tribe, who are located within the area described in the Act of June 14, 1934 (48 Stat. 960), and who were located within such area, or are direct descendants of Paiute Indians who were located within such area, on the date of such Act, land in quantities as specified in section 1 of the Act of February 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 331), and patents shall be issued to them for such lands having the legal effect and declaring that the United States holds such land in trust for the sole use and benefit of each allottee and, following his death, of his heirs according to the laws of the State of Arizona.

Sec. 10. (a) Subject to the provisions of section 9 and subsection (a) of section 17, any lands partitioned to the Navajo Tribe pursuant to section 3 or 4 and the lands as described in section 8, shall be held in trust by the United States exclusively for the Navajo Tribe and as a part of the Navajo Reservation.

(b) Subject to the provisions of section 9 and subsection (a) of section 17, for the Navajo Tribe and as a part of the Navajo Reservation.

any lands partitioned to the Hopi Tribe pursuant to section 3 or 4 and the lands as described in section 8 shall be held in trust by the United States exclusively in trust for the benefit of the Navajo Tribe: *Provided*, That the land acquired pursuant to subsection (a) and this subsection shall not exceed a total of 250,000 acres.

Sec. 12. (a) There is hereby established as an independent entity in the execution referred to as the "Commission".

(b) The Commission shall be composed of three members appointed by the Secretary within sixty days of enactment of this Act.

(c) The Commission shall elect a Chairman and Vice Chairman from among its members.

(d) Two members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Each member of the Commission who is not otherwise employed by the United States Government shall receive an amount equal to the daily rate paid under the General Schedule contained in the actual performance of his duties as a member of the Commission. A member of the Commission who is an officer or employee of the United States shall serve without additional compensation. All members incurred by them in the performance of their duties.

(f) The first meeting of the Commission shall be called by the Secretary forthwith following the date on which a majority of the members of such Commission

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are appointed and qualified under this Act, but in no event later than sixty days following such date.

(g) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to—

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed \$150 a day for individuals.

(h) The Department of the Interior shall furnish, on a nonreimbursable basis, necessary administrative and housekeeping services for the Commission.

(i) The Commission shall cease to exist when the President determines that its functions have been fully discharged.

Sec. 13. (a) Within the twenty-four month period following the date of issuance of an order of the District Court pursuant to section 3 or 4, the Commission shall prepare and submit to the Congress a report concerning the relocation of households and members thereof of each tribe, and their personal property, including livestock, from lands partitioned to the other tribe pursuant to sections 8 and 3 or 4.

(b) Such report shall contain, among other matters, the following:

(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe; and

(2) the fair market value of the habitations and improvements owned by the heads of households identified by the Commission as being among the persons named in clause (1) of this subsection.

(c) Such report shall include a detailed plan providing for the relocation of the households and their members identified pursuant to clause (1) of subsection (b) of this section. Such plan (hereinafter referred to as the "relocation plan") shall—

(1) be developed to the maximum extent feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal councils;

(2) take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts;

(3) identify the sites to which such households shall be relocated, including the distance involved;

(4) assure that housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities for such households shall be available at their relocation sites; and

(5) take effect thirty days after the date of submission to the Congress pursuant to subsection (a) of this section: *Provided, however*, That the Commission is authorized and directed to proceed with voluntary relocations as promptly as practicable following its first meeting.

Sec. 14. (a) Consistent with section 8 and the order of the District Court issued pursuant to section 3 or 4, the Commission is authorized and directed to relocate pursuant to section 8 and such order all households and members thereof and their personal property, including livestock, from any lands partitioned to the tribe of which they are not members. The relocation shall take place in accordance with the relocation plan and shall be completed by the end of five years from the date on which the relocation plan takes effect. No further settlement of Navajo individuals on the lands partitioned to the Hopi Tribe pursuant to this Act or on the Hopi Reservation shall be permitted unless advance written approval of the Hopi Tribe is obtained. No further settlement of Hopi individuals on the lands partitioned to the Navajo Tribe pursuant to this Act or on the Navajo Reservation shall be permitted unless advance written approval of the Navajo Tribe is obtained. No individual shall hereafter be allowed to increase the number of livestock he grazes on any area partitioned pursuant to this Act to the tribe of which he is not a member, nor shall he retain any grazing rights in any such area subsequent to his relocation therefrom.

(b) In addition to the payments made pursuant to section 15, the Commission shall make payments to heads of households identified in the report prepared pursuant to section 13 upon the date of relocation of such households, as determined by the Commission, in accordance with the following schedule:

(1) the sum of \$5,000 to each head of a household who, prior to the expiration of one year after the effective date of the relocation plan, contracts with the Commission to relocate;

(2) the sum of \$4,000 to each head of a household who is not eligible for the payment provided for in clause (1) of this subsection but who, prior to the expiration of two years after the effective date of the relocation plan, contracts with the Commission to relocate;

(3) the sum of \$3,000 to each head of a household who is not eligible for the payments provided for in clause (1) or (2) of this subsection but who, prior to the expiration of three years after the effective date of the relocation plan, contracts with the Commission to relocate; and

(4) the sum of \$2,000 to each head of a household who is not eligible for the payments provided for in clause (1), (2), or (3) of this subsection but who, prior to the expiration of four years after the effective date of the relocation plan, contracts with the Commission to relocate.

(c) No payment shall be made pursuant to this section to or for any person who, later than one year prior to the date of enactment of this Act, moved into an area partitioned pursuant to section 8 or section 3 or 4 to a tribe of which he is not a member.

Sec. 15. (a) The Commission shall purchase from the head of each household whose household is required to relocate under the terms of this Act the habitation 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 habitation and improvements as determined under clause (2) of subsection (b) of section 13.

(b) In addition to the payments made pursuant to subsection (a) of this section, the Commission shall:

(1) reimburse each head of a household whose household is required to relocate pursuant to this Act for the actual reasonable moving expenses of the household as if the household members 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 whose household is required to relocate pursuant to this Act an amount which, when added to the fair market value of the habitation and improvements purchased under subsection (a) of this section, equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such household: *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed \$17,000 for a household of three or less and not more than \$25,000 for a household of four or more, except that the Commission may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease such limitations to reflect changes in housing development and construction costs, other than costs of land, during the preceding year: *Provided further*, That the additional payment authorized by this subsection shall be made only to a head of a household required to relocate pursuant to this Act who purchases and occupies such replacement dwelling not later than the end of the two-year period beginning on the date on which he receives from the Commission final payment for the habitation and improvements purchased under subsection (a) of this section, or on the date on which such household moves from such habitation, whichever is the later date. The payments made pursuant to this paragraph (2) shall be used only for the purpose of obtaining decent, safe, and sanitary replacement dwellings adequate to accommodate the households relocated pursuant to this Act.

(c) In implementing subsection (b) of this section, the Commission shall establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894). No payment shall be made pursuant to this section to or for any person who, later than one year prior to the date of enactment of this Act, moved into an area partitioned pursuant to section 8 or section 3 or 4 to a tribe of which he is not a member.

(d) The Commission shall be responsible for the provision of housing for each household eligible for payments under this section in one of the following manners:

(1) Should any head of household apply for and become a participant or homebuyer in a mutual help housing or other homeownership opportunity project undertaken under the United States Housing Act of 1937 (50 Stat. 888), as amended (42 U.S.C. 1401), or in any other federally assisted housing program now or hereafter established, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to the local housing agency or sponsor involved as a voluntary equity payment and shall be credited against the outstanding indebtedness or purchase price of the household's home in the project in a manner which will accelerate to the maximum extent possible the achievement by that household of debt free homeownership.

(2) Should any head of household wish to purchase or have constructed a dwelling which the Commission determines is decent, safe, sanitary, and adequate to accommodate the household, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to such head of household in connection with such purchase or construction in a manner which the Commission determines will assure the use of the funds for such purpose.

(3) Should any head of household not make timely arrangements for relocation housing, or should any head of household elect and enter into an agreement to have the Commission construct or acquire a home for the household, the Commission may use the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section for the construction or acquisition (including enlargement or rehabilitation if necessary) of a home and related facilities for such household: *Provided*, That the Commission may combine the funds for any number of such households into one or more accounts from which the costs of such construction or acquisition may be paid on a project basis and the funds in such account or accounts shall remain available until expended: *Provided further*, That the title to each home constructed or acquired by the Commission pursuant to this paragraph shall be vested in the head of the household for which it was constructed or acquired upon occupancy by such household, but this shall not preclude such home being located on land held in trust by the United States.

(e) The Commission is authorized to dispose of dwellings and other improvements acquired or constructed pursuant to this Act in such manner, including resale of such dwellings and improvements to members of the tribe exercising jurisdiction over the area at prices no higher than the acquisition or construction costs, as best effects section 8 and the order of the District Court pursuant to section 3 or 4.

SEC. 16. (a) The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary for all use by Navajo individuals of any lands partitioned to the Hopi Tribe pursuant to sections 8 and 3 or 4 subsequent to the date of the partition thereof.

(b) The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all use by Hopi individuals of any lands partitioned to the Navajo Tribe pursuant to sections 8 and 3 or 4 subsequent to the date of the partition thereof.

SEC. 17. (a) Nothing in this Act shall affect the title, possession, and enjoyment of lands heretofore allotted to Hopi and Navajo individuals for which patents have been issued. Such Hopi individuals living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and such Navajo individuals living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Tribe.

(b) Nothing in this Act shall require the relocation from any area partitioned pursuant to this Act of the household of any Navajo or Hopi individual who is employed by the Federal Government within such area or to prevent such employees or their households from residing in such areas in the future: *Provided*, That any such Federal employee who would, except for the provisions of this section, be relocated under the terms of this Act may elect to be so relocated.

SEC. 18. (a) Either tribe, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual mem-

bers thereof, is hereby authorized to commence or defend in the District Court an action or actions against the other tribe for the following purposes if such action or actions are not settled pursuant to section 3 or 4:

(1) for an accounting of all sums collected by either 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 joint use area, and judgment for one-half of all sums so collected, and not paid to the other tribe, together with interest at the rate of 6 per centum per annum compounded annually; and

(2) for the determination and recovery of the fair value of the grazing and agricultural use by either tribe and its individual members since the 28th day of September 1962 of the undivided one-half interest of the other tribe in the lands within the joint use area, together with interest at the rate of 6 per centum per annum compounded annually, notwithstanding the fact that the tribes are tenants in common of such lands.

(b) 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 or one hundred and eighty days from the date of issuance of an order of the District Court pursuant to Section 3 or 4, whichever is later.

(c) Either 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 the tribes by the tribes and the members thereof, and to fully accomplish all objects and purposes of this Act. Such actions may be commenced in the District Court by either tribe against the other, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof.

(d) The United States shall not be an indispensable party to any action or actions commenced pursuant to this section. Any judgment or judgments by the District Court in such action or actions shall not be regarded as a claim or claims against the United States.

(e) 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. 19. (a) Notwithstanding any provision of this Act, or any order of the District Court pursuant to Section 3 or 4, the Secretary is authorized and directed to immediately commence reduction of the numbers of all the livestock now being grazed upon the lands within the joint use area and complete such reductions to carrying capacity of such lands, as determined by the usual range capacity standards as established by the Secretary after the date of enactment of this Act. The Secretary is directed to institute such conservation practices and methods within such area as are necessary to restore the grazing potential of such area to the maximum extent feasible.

(b) The Secretary shall provide for the survey, location of monuments, and fencing of boundaries of (1) the lands as described in section 8, and (2), upon the date of issuance of an order of the District Court pursuant to section 3 or 4, any lands partitioned pursuant to section 3 or 4.

SEC. 20. The members of the Hopi 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 degrees, 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 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 such 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 such 2-mile radius shall be conserved for such religious purposes.

Sec. 21. Notwithstanding anything contained in this Act to the contrary, the Secretary shall make reasonable provision for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

Sec. 22. The availability of financial assistance or funds paid pursuant to this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying a household or member thereof participation in any federally assisted housing program or (2) for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program. None of the funds provided under this Act shall be subject to Federal or State income taxes.

Sec. 23. The Navajo and Hopi Tribes are hereby authorized to exchange lands which are part of their respective reservations.

Sec. 24. 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. 25. (a) (1) For the purpose of carrying out the provisions of section 15, there is hereby authorized to be appropriated not to exceed \$31,500,000.

(2) For the purpose of carrying out the provisions of subsection (a) of section 19, there is hereby authorized to be appropriated not to exceed \$10,000,000.

(3) For the purpose of carrying out the provisions of subsection (b) of section 19, there is hereby authorized to be appropriated not to exceed \$500,000.

(4) For the purpose of carrying out the provisions of subsection (b) of section 14, there is hereby authorized to be appropriated not to exceed \$5,500,000.

(5) There is hereby authorized to be appropriated annually not to exceed \$500,000 for the expenses of the Commission.

(6) There is hereby authorized to be appropriated not to exceed \$500,000 for the services and expenses of the Mediator and the assistants and consultants retained by him: *Provided*, That, any contrary provision of law notwithstanding, until such time as funds are appropriated and made available pursuant to this authorization, the Director of the Federal Mediation and Conciliation Service is authorized to provide for the services and expenses of the Mediator from any other appropriated funds available to him and to reimburse such appropriations when funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt thereof.

(b) The funds appropriated pursuant to the authorizations provided in this Act shall remain available until expended.

2. Amend the title so as to read:

An Act to provide for final settlement of the conflicting rights and interests of the Hopi and Navajo Tribes to and in lands lying within the joint use area of the reservation established by the Executive order of December 16, 1882, and lands lying within the reservation created by the Act of June 14, 1934, and for other purposes.

I. INTRODUCTION

The purpose of H.R. 10337, as amended, is to provide for the settlement of the conflicting rights and interests of the Hopi and Navajo Tribes in two areas of northeastern Arizona: the joint use area of the reservation established by the Executive Order of September 16, 1934,

and lands lying within the reservation established by the Act of June 14, 1934.

These lands have been the subject of disputes between the two tribes even prior to the 1882 Executive Order and the 1934 Act. In recent years these disputes were brought before the Federal courts and the Indian Claims Commission and an impressive array of legal arguments and historical, archaeological, and anthropological data has been presented by both tribes in support of their respective positions. The court has stated and, now, the tribes themselves are agreed that no final resolution can occur absent the enactment of legislation. The tribes, however, are not in agreement as to the substance of that legislation.

Against this background the Committee held extensive hearings over two Congresses. In the mark-up sessions which began on August 6, 1974, the Committee did not hew to the position of either of the tribes, but rather agreed to certain guiding principles which would have to be met in any equitable legislative resolution of the disputes. The Committee then proceeded to mark-up a clean proposal to reflect those principles. This proposal was ordered reported as an amendment in the nature of a substitute to H.R. 10337 on September 11, 1974.

This report begins with a cursory discussion of the background of the disputes. (Much fuller descriptions may be found in the printed Committee hearings and in the 118-page opinion of the District Court for the District of Arizona in *Healing v. Jones* (210 F. Supp. 125, 1962; aff'd 363 U.S. 758, 1963).) Following this discussion are a description of the alternative bills pending before the Committee, statements of the need for a legislative resolution, and a listing of the principles which the Committee employed in drafting H.R. 10337, as ordered reported. Among the other sections of this report are a brief summary of the provisions of the bill and a more detailed section-by-section analysis.

II. BACKGROUND

Both the Hopi and Navajo have occupied the American southwest for centuries. As the District Court noted in *Healing v. Jones* (see below): "No Indians in this county have a longer authenticated history than the Hopi" (210 F. Supp. 125, 134, D. Ariz., 1963, aff'd 363 U.S. 758, 1963). Archaeological evidence shows that groups ancestral to the Hopi were settled in Arizona and New Mexico before 1300 A.D. and perhaps as early as 600 A.D. In 1541 a detachment of the Spanish explorer, Coronado, visiting northeastern Arizona, encountered the Hopi living in mesa-top villages.

The Hopi still live in several villages in the same general area and pursue a life style not entirely dissimilar to that viewed by the Spanish explorers. The Hopi are a sedentary, village-based people, with an economy based on dry farming and grazing. Their crop fields are located near the villages in which they live. Besides raising crops, they engage in livestock herding in areas near the mesas and travel 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.

The time of the entry of the Navajo people into the Southwest is in question, but clearly the "recorded history of the Navajos does not extend as far back as that of the Hopi" (210 F. Supp. 125, 134). Available evidence suggests the Navajo were settled in northwestern New Mexico as early as 1500. They are mentioned in preserved journals for the first time in 1629; and it appears that they first entered what is now Arizona in the last half of the eighteenth century. Eventually, the Navajo spread into parts of what are now Arizona, New Mexico, and Utah. As a result of this process of migration and settlement, the Navajo came to surround the Hopi who had continued to reside in the same general area in northeastern Arizona.

Although some Navajos established farms which held them to fixed locations, in the main they were a semi-nomadic, grazing and hunting people who seldom gathered in cohesive communities. Families and kinship groups roamed rather extensive areas in search of forage and game. This required them to live in rude shelters known as "hogans" to which they returned whenever it was practicable. It is this migrating lifestyle which led to their occupation of large parts of northern New Mexico and Arizona and the particular lands presently under dispute.

The Navajo tribe is federally-recognized with a tribal government organized under governing documents adopted by the tribal council and approved by the Secretary of the Interior. The current membership is approximately 130,000.

THE JOINT USE AREA

On December 16, 1882, President Chester A. Arthur signed an Executive order establishing a reservation of approximately 2,472,095 acres in the Territory of Arizona for the use and occupation of the Hopi (then called the "Moqui") and "such other Indians as the Secretary of the Interior may see fit to settle thereon". Principal among the reasons for establishing the reservation cited by the local Hopi Indian Agent, the Indian Inspector, the Commissioner of Indian Affairs, and the Secretary was the necessity to create a reservation for the Hopi in order to provide the Federal Government with jurisdiction to protect the Hopi from the pressures of Navajo migration, Mormon settlers, and white "intermeddlers". As early as this date, approximately 300 Navajo lived on the 1882 reservation.

In 1868, the United States entered into a treaty with the Navajo which granted to them a reservation to the east of what became the 1882 reservation. The western boundary of the Navajo reservation was defined with greater particularity in an Executive order issued on October 29, 1878. This line became the eastern boundary of the 1882 reservation. Additional land was added to the southwest of the Navajo reservation by another Executive order issued on January 6, 1886. With this addition the Navajo reservation contained about 11,875 square miles or 8,000,000 acres. However, as noted by the Court in the *Healing* case:

Despite the vast size of the Navajo reservation at that time, this semi-arid land was considered incapable of providing support for all of the Navajos. Moreover, except for one or two places, the boundaries of the Navajo reservation were not

distinctly marked. It is therefore not surprising that great numbers of the Navajos wandered far beyond the paper boundaries of the Navajo reservation as it existed in 1880. By 1882, Navajos comprising hundreds of bands and amounting to about half of the Navajo population had camps and farms outside the Navajo reservation, some as far away from it as one hundred and fifty miles. (210 F. Supp. 125, 134).

Part of this expansion occurred in the 1882 reservation and became a part of continued complaints by the Hopi to the Federal government. As relations between the Navajo and Hopi became increasingly hostile, several Administrations contemplated removal of all Navajo from the 1882 reservation and, in some instances, even initiated efforts to do so, including the sending of troops into the area. However, no removal ever occurred, and today, approximately 10,000 Navajo occupy and use the lands within the area.

By the Act of July 22, 1958 (72 Stat. 403), Congress authorized each tribe to institute or defend an action against the other in a three-judge court of the District Court of the District of Arizona "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 the September 28, 1962, decision in *Healing v. Jones* (210 F. Supp. 125, D. Ariz., 1962, aff'd 373 U.S. 758, 1963) in which the court held *inter alia* that:

(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 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 joint, undivided, and equal interests in the entire 1882 Executive order reservation except the Land Management District No. 6. This area is known as the "joint use area".

(5) The 1958 Act did not confer authority on the Court to partition joint interests between the two tribes.

Despite the determination of equal and undivided interests in the joint use area in the *Healing* case, for all practical purposes, the Navajo Tribe has exercised exclusive control of the joint use area, including surface leasing and granting of rights-of-way, since the 1962 decision. During the past ten years, the two tribes have attempted to negotiate a joint-use agreement, but negotiations have failed.

On March 13, 1970, the Hopi Tribe petitioned the District Court to issue a writ of assistance enforcing the Hopi rights to the joint use

area in accordance with the *Healing* decision. The Court dismissed this petition in August 1970 on the ground that it lacked jurisdiction to issue process to enforce the judgment. 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 (*Hamilton v. Nakai*, 453 F. 2d 152). On May 22, 1972, the U.S. Supreme Court denied the Navajos' petition for a writ of certiorari.

On October 14, 1972, the District Court issued an order of compliance directing the Navajo Tribe, *inter alia*, to: afford the Hopi Tribe its proper possession and use of a joint, undivided, and equal share in 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 the 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. Among other things, the plan adopted provides for removal of all livestock from the joint use area save that essential for daily livelihood, for restricting further Navajo building in the area, 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.

Finally, on September 12, 1974, the U.S. Court of Appeals for the Ninth Circuit firmly rejected appeals by the Navajo from the October 14, 1972, order of compliance and the plan incorporated in the April 23, 1972, order (*Hamilton v. MacDonald*. — F. 2d —, 1974).

The Navajo are in complete possession of the disputed area. Partition of the joint use area could result in the necessity of moving as many as 6,000 Navajo (estimates vary widely). The Navajo oppose this alternative on the grounds of the disruption which relocation would cause, particularly in light of the unfortunate, early history of official Indian relocation efforts, and the lack of any lieu lands for Navajo required to relocate. Among other things, they propose that the Navajo purchase the Hopi interest in the joint use area.

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 and to avoid the inequity and hardship which would be imposed on Hopi tribal members were they denied lands to which they are legally entitled is to have the surface partitioned equally to the two tribes.

THE 1934 RESERVATION LANDS

In order to confirm Navajo interests in the Navajo Reservation which was continually enlarged by the 1878, 1880, and other Executive orders and Congressional enactments since the original

reservation was established by treaty in 1868, Congress enacted a statute defining the boundaries of the Navajo Reservation in Arizona (Act of June 14, 1934, 48 Stat. 960). After describing the lands to be included in the Navajo Reservation, the Act states that:

All vacant, unreserved, and unappropriated public lands, including all temporary withdrawals of public lands in Arizona heretofore made for Indian purposes by Executive order or otherwise within the boundaries defined by this Act, are hereby permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as may already be located thereon; however, nothing herein contained shall affect the existing status of the Moqui (Hopi) Indian Reservation created by Executive Order of December 16, 1882. (48 Stat. 960, 961.)

It is this language which has created the controversy and engendered a dispute between the Navajo and Hopi Tribes over the nature and extent of the latter's interest in the lands described in this 1934 Navajo Reservation Boundary Act.

In several respects, the dispute over the 1934 reservation lands differs from the dispute over the joint use area. The disputes arise from different actions of the Federal Government: the former being related to the 1934 Navajo Reservation Boundary Act and the latter to the 1882 Executive order. Furthermore, the 1934 reservation lands dispute was not addressed in the *Healing* decision.

The problems involved in the 1934 reservation lands and in the joint use area disputes are, however, substantially similar. The tribes are unable to agree on their relative rights and interests and have been unable to use the lands jointly in harmony. Both sides have marshalled an impressive array of arguments, legal, anthropological, and equitable, in defense of their positions. In brief (too brief to adequately describe the position of either side), both sides recognize that at the time of the enactment of the 1934 Navajo Reservation Boundary Act, the Hopi were residing in the village of Moencopi which is located immediately west of the 1882 reservation and wholly within the lands set aside in the 1934 Act. The Hopi argue that this fact and the "such other Indians as are already settled thereon" language of the 1934 Act, together with other historical data and governmental statements and papers, give them an undivided interest in the entire Navajo Reservation as established in the 1934 Act. They hold that the transfer of 243,000 acres, as proposed by H.R. 10337, as passed by the House of Representatives, is quid pro quo for a quit claim to any other interest they may have in the approximately 8.2 million acres of the 1934 reservation outside of the 1882 reservation. The Navajo position, based on differing interpretations and data, is that the Hopi are only entitled to that acreage they were occupying on the date of the Act (June 14, 1934), which the Navajo estimate to be 35,000 acres. Counsel for the Navajo have proposed language providing for the immediate partition of the 35,000 acres, but have communicated Navajo support for a judicial settlement of the 1934 reservation lands dispute proposed in a bill introduced by Senator Montoya (see section III below).

III. RECENT LEGISLATIVE HISTORY

As it became apparent that the *Healing* decision, standing alone, could not resolve the Navajo-Hopi land disputes, Congress realized that its responsibilities to assist in the resolution of the conflicting claims to land were not terminated by the enactment of the 1958 Act authorizing the *Healing* suit. Furthermore, the District Court in the *Healing* case clearly stated that it was at a loss to separate the rights and interests in the disputed lands without additional legislation by Congress authorizing partition of those lands.

In the 92d Congress the House of Representatives approved H.R. 11128 which is similar in several major respects to H.R. 10337. H.R. 11128, in part, authorized the following:

1. Partition of the joint use land area by the Secretary of the Interior, with each tribe receiving approximately one-half of the land;
2. Relocation of the affected Navajo tribal members over a five-year period;
3. Compensation to the Navajo to the extent that they would be able to purchase a safe, sanitary replacement dwelling and;
4. Partition of the surface and subsurface of the 1934 reservation lands with a grant of 208,000 acres to the Hopi Tribe.

Following hearings on H.R. 11128 by the Senate Committee on Interior and Insular Affairs, the full Committee, in executive markup session, deferred action on the measure and, as an alternative, authorized the establishment of a three-member ad hoc committee drawn from the Committee's membership. The ad hoc committee's charge was to undertake a thorough and exhaustive review of the historical and legal background leading up to the land disputes and, further, to present proposed recommendations to the Committee for resolution of the disputes within 90 days of the convening of the 93rd Congress.

However, due to several unforeseen developments at the outset of the 93rd Congress, the Committee abandoned the ad hoc committee approach to the land disputes and referred the issue back to the Subcommittee on Indian Affairs to be handled within the Subcommittee's normal jurisdiction.

The Committee held two hearings on the Navajo-Hopi land disputes; first, at Winslow, Arizona, March 7 and 8, 1973, at which time the Subcommittee considered H.R. 1193 (introduced by Representative Steiger and identical to H.R. 11128); and second, at Washington, D.C., July 24, 1974, at which time the full Committee considered H.R. 10337, S. 2424, S. 3230 and S. 3724. A summary of these measures follows:

H.R. 10337—House Passed Bill

H.R. 10337, as passed by the House of Representatives on May 29, 1974, would grant to the District Court, in supplemental proceedings to *Healing v. Jones*, the jurisdiction to partition the surface of the joint use area between the Hopi and Navajo Tribes. To aid the Court in its determination, the bill establishes certain criteria for partition which include equal acreage and quality of land, insofar as practicable and, contiguity of lands partitioned and inclusion of the high Navajo population density areas in the portion partitioned to the Navajo so as to avoid as much disruption as possible.

H.R. 10337 would transfer to the Hopi, to be held in trust by the United States, approximately 243,000 acres of the 1934 reservation lands.

The House-passed bill provides that those Indians who reside on land that will be partitioned shall be relocated from such lands over a five-year period and authorizes \$28,800,000 for this purpose.

H.R. 10337 directs the Secretary of the Interior to immediately commence reduction of the number of livestock in the joint use area to the usual range capacity as determined by standards established by the Secretary. To accomplish this the bill authorizes \$10 million.

S. 2424 (Senator Fannin)

S. 2424 is similar in scope to H.R. 10337 except that, rather than the Federal District Court for the District of Arizona supervising the partition of the joint use area, the Secretary of the Interior is directed to perform that task. In addition there is no provision for compensation of those Hopi and Navajo who will be forced to relocate as a result of the partition, which means that no money is authorized for purchase, relocation and repurchase of homesites. (As the first action of the Committee's mark-up sessions on Navajo-Hopi legislation, Senator Fannin withdrew his bill in favor of H.R. 10337.)

S. 3230 (Senator Montoya)

S. 3230 would utilize a commission approach to resolve the issues in disputes. Briefly stated, this commission, composed equally of Navajo and Hopi, would undertake a study of the lands involved in the joint use area and determine which lands were used exclusively by the respective tribes and which lands were used by the Navajo for residential purposes and were also used by the Hopi for wood and coal gathering, religious ceremonies and hunting. The commission would report to the Secretary of the Interior the appraised value of the respective interests as determined by the study. Thereupon the Secretary, by order, would partition the interests to the disputed lands granting the Hopi easements for timber and coal gathering, ceremonial shrines and hunting, and compensating the Hopi Tribe for any interest it finally receives which is less than one-half of the total value of the joint use area. The bill provides for resolution of the 1934 lands dispute by mandating the District Court for the District of Arizona to partition the lands involved according to general principles of equity.

S. 3724 (Senator Abourezk)

S. 3724 would authorize the establishment of the Navajo-Hopi Development Commission. The Commission, in cooperation with federal departments and agencies, would plan, organize and implement social and economic development efforts designed to improve the life style of tribal members residing on the Navajo and Hopi Reservations.

The proposed measure would authorize a judicial partition of the joint use area through provisions similar to those included in H.R. 10337, as it passed the House of Representatives. S. 3724 also provides for the transfer of approximately 35,000 acres from the 1934 reservation lands to the Hopi Tribe.

Following the judicial partition of the joint use area, the Secretary of the Interior would be required to conduct a mandated census to determine the number of adult Navajo residing on the land partitioned to the Hopi Tribe, and the number of adult Hopi residing on the land partitioned to the Navajo Tribe.

Any person (Navajo or Hopi), enumerated through the census, who has resided since his birth in the joint use area and any surviving spouse of such person would be afforded a life estate on the residential site used by him on the date of enactment of S. 3724.

Those adult individuals who moved into the joint use area following their birth and prior to enactment of S. 3724 would be authorized to reside in the area for an equal period of time following the date of enactment S. 3724.

Any head of a household displaced as a result of S. 3724 would be guaranteed:

1. That his property would be purchased at fair market value;
2. That he would be provided reasonable moving expenses in accordance with section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894); and
3. That his total reimbursement would equal the cost of a suitable replacement dwelling.

Each tribe would be guaranteed fair rental payments for use by the other tribe's members of land partitioned to it.

The proposed bill authorizes the appropriation of such funds necessary to carry out its provisions.

The Department of the Interior expressed its support for H.R. 10337, if amended as indicated in their report to the Committee. In final testimony before the Committee, the Hopi Tribe recommended enactment of H.R. 10337 and the Navajo Tribe recommended enactment of S. 3230.

IV. NEED FOR LEGISLATIVE ACTION

The prolonged dispute between the Navajo and Hopi Tribes over the joint use area has resulted in a heavy drain on the energies and financial resources of both tribes. Because of the tribal leadership's preoccupation with this complex issue, social and economic development efforts which are so vital to the well-being of the Navajo and Hopi people have been unnecessarily delayed and frustrated.

Moreover, any attempt to launch an intensive range rehabilitation program to restore the badly overgrazed (estimated to be 400 percent overgrazed) joint use area appears to be stymied until such time as the broader issue is resolved.

Although the dispute over the 1934 reservation lands derives from a legal basis different from that concerning the joint use area, the fundamental issues and problems are similar and warrant resolution at this time.

The Federal Government has an opportunity to address solutions to these major issues which are products of its own actions and subsequent inaction. An unfortunate outgrowth of Federal inaction in resolving the joint use area and 1934 reservation lands disputes is that the Navajo and Hopi Tribes have been placed in adversary roles. This

is grossly unfair to both tribes who by necessity must maintain a harmonious relationship for their mutual well-being.

There are overriding moral, ethical and legal considerations which justify prompt Congressional approval of legislation designed to bring about a lasting resolution of the joint use area and 1934 reservation lands disputes.

V. COMMITTEE CONSIDERATION OF LEGISLATIVE ALTERNATIVES

During its deliberations on the several proposals pending before the Committee, the members followed certain guiding principles. These principles were:

1. That justice and equity for the Hopi and Navajo people dictate an early resolution of the joint use area and the 1934 reservation lands disputes and swift Congressional approval of the necessary enabling legislation;

2. That the decision of the three-judge Court in the *Healing* case that the Navajo and Hopi Tribes have joint, undivided and equal rights and interests in the joint use area should in no way be disturbed or overridden by the provisions of any bill ordered reported by the Committee;

3. That no matter how successful a court might be in devising a fair and equitable judicial resolution of the joint use area dispute it would still be a dictated, rather than a voluntary, solution; and, therefore, that a voluntary settlement between the two tribes is distinctly preferable and that a final negotiation process should be provided and so structured to afford the tribes the opportunity to willingly negotiate such a settlement;

4. That, in the event the two tribes fail to reach a voluntary settlement of the joint use area dispute through the negotiating process, the dispute should be referred to the U.S. District Court for the District of Arizona for a compulsory judicial resolution;

5. That, despite the failure of past negotiation attempts, the two tribes, when faced with enacted legislation calling for a compulsory judicial resolution if a final, voluntary negotiation effort fails, may enter the negotiation discussions with a renewed desire to arrive at their own solution to the controversy;

6. That the environment most conducive to successful negotiations would be one that provides the two tribes with the maximum freedom to concur in any settlement or settlement provision which is not contrary to law or to the *Healing* decision;

7. That, if the negotiating process fails, the District Court should have the flexibility to tailor a final adjudication, including partition of the joint use area, consistent with its decision in the *Healing* case;

8. That any compulsory judicial settlement will, in all likelihood, include a division of the lands of the joint use area, rather than any arrangement which would call for continued joint use of, or the purchase by one tribe of the other tribe's interests and rights in, the entire joint use area;

9. That any such division of the lands of the joint use area must be undertaken in conjunction with a thorough and generous relocation program to minimize the adverse social, economic, and cultural im-

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facts of relocation on affected tribal members and to avoid any repetition of the unfortunate results of a number of early, official Indian relocation efforts;

10. That an immediate legislative resolution of the 1934 reservation lands dispute is preferable to beginning now for that dispute a duplication of the lengthy process initiated by the 1958 Act authorizing suit over the joint use area dispute; but that any immediate legislative resolution relating to the 1934 reservation lands must be accompanied by a relocation program identical to and for the same reasons as that suggested above for the joint use area; and

11. That because of the Federal Government's repeated failure to resolve the land disputes, the major costs of resolution should be properly borne by the United States.

The Committee, therefore, rejected the four pending measures, and ordered reported an amendment in the nature of a substitute to H.R. 10337 which contains provisions reflecting the foregoing principles.

VI. MAJOR PROVISIONS OF H.R. 10337 AS ORDERED REPORTED

The Navajo and Hopi Tribes, pursuant to sections 1, 2, and 3 of H.R. 10337, as ordered reported, are authorized to enter into a final negotiating process for resolution of the dispute concerning the joint use area. A Mediator, to be appointed by the Director of the Federal Mediation and Conciliation Service, would assist negotiating teams, appointed by the tribal councils of the Hopi and Navajo Tribes, in their negotiating endeavors.

These first three sections set forth procedures and schedules to govern the negotiating process and direct the Secretary of the Interior and departments and agencies of the Federal Government to render appropriate cooperation and assistance.

In the event the tribes should reach full agreement on the issues, the Mediator would cause such agreement to be entered into the records of the U.S. District Court as supplemental proceedings in the *Healing* case. A similar procedure is to be followed by the Mediator concerning any partial agreement reached between the tribes.

Although sections 1, 2 and 3 contemplate a net six-month negotiating period by the tribes, the period of time may exceed ten months due to various time elements established in these sections.

If the tribes fail to reach full agreement within the negotiating period or if either tribe is in default, the Mediator under section 4 is directed to prepare a report containing his recommendations for a plan of settlement of the joint use area dispute for submission to the U.S. District Court. The District Court is required to review the report and recommendations for conformity to the *Healing* case and H.R. 10337. Following the review of the report and the recommendations (which are not binding on the Court), the District Court is authorized to make a final adjudication, including partition of the joint use area, and enter the judgment in the supplemental proceedings of the *Healing* case.

Section 5 establishes guidelines to facilitate a negotiated agreement by the tribes pursuant to section 3 or to assist the Mediator in preparing his report pursuant to section 4.

Section 6 establishes guidelines to be followed by the Court in the event it is required to assume responsibility for resolution of the joint use area dispute.

These two sets of guidelines reflect the guiding principles discussed above in section V of this report, including the preferability of a negotiated settlement, the freedom of the tribes in the negotiations to concur in any settlement provisions they wish; the likelihood of a division of the land in the event judicial resolution is required, and the need to minimize adverse social, economic, and cultural impacts should such division occur;

Section 7 preserves the joint ownership by both tribes of coal, oil, gas and other minerals within and underlying the joint use area.

Section 8 partitions approximately 243,000 acres surrounding Moencopi from the reservation established by the 1934 Navajo Reservation Boundary Act and directs that the tract be held in trust for the Hopi Tribe. This provides an immediate legislative resolution to the 1934 reservation lands dispute.

Section 9 authorizes the Secretary to make allotments to Paiute Indians who are not members of the Navajo Tribe, who are located on the 1934 reservation lands, and who were either located there, or are descendants of Paiutes who were located there, on the date of enactment of the 1934 Act.

Section 10 states that lands partitioned to the two tribes pursuant to H.R. 10337 will be held in trust for the respective tribes.

Section 11 authorizes the Secretary of the Interior to transfer, upon the payment of fair market value, up to 250,000 acres of Bureau of Land Management lands in Arizona or New Mexico to the Navajo Tribe so as to restore a portion of the Navajo land base lost during partition.

Section 12 establishes a three-member independent Navajo and Hopi Indian Relocation Commission to administer any relocation of tribal members required by the resolution of the land disputes. It is hoped that the independent nature and focussed responsibilities of the Commission will insure that the settlement implementing authority will be sufficiently expert and possess all the requisite authority to develop a relocation program which will minimize the inevitable adverse social, economic, and cultural impacts.

Section 13 establishes the first task of the Commission as that of reporting to Congress within two years of a final order by the District Court resolving the joint use area dispute a relocation plan for lands partitioned in the joint use area and the area partitioned to the Hopi from the 1934 reservation lands. The plan is to take effect 30 days after its submission.

Section 14 directs the Commission to assume responsibility for effecting the relocation plan and to complete the relocation process within five years of its initiation. It also directs the Commission to make

relocation incentive payments of decreasing values each year after the plan is in effect to households which voluntarily enter into relocation contracts with the Commission. These payments are incentive payments only, payments and programs to make restitution of dwelling, improvements, etc. to the households subject to relocation are set forth in section 15.

Section 15 provides that the Commission will purchase for fair market value the habitation and improvements of each household required to relocate. Furthermore, the Commission is to make relocation payments to the households to cover their moving costs. Finally, the Commission is required to make up the difference to each household to insure that it will have the financial wherewithal to obtain "a decent, safe, and sanitary replacement dwelling adequate to accommodate such households." Alternative means for the Commission to carry out its responsibility to insure the availability of such replacement dwellings include construction or purchase of housing by the Commission.

Section 16 provides for the payment of fair rental value to the tribe to which lands are partitioned by the other tribe prior to completion of the relocation program.

Section 17 provides protection from relocation to members of either tribes who own allotments or who are Federal employees.

Section 18 authorizes suit for license fees and other revenues collected in, and the value of agricultural and grazing use of, the joint use area after the date of determination of joint interests in the area if such issues are not resolved in the settlement of the joint use area dispute. It also authorizes any further original, ancillary, or supplementary actions to insure full settlement of the land use disputes.

In section 19 the Secretary is directed to undertake two programs: a program of stock reduction and range restoration in the joint use area (as noted earlier it may be as much as 400 percent overgrazed) to be commenced immediately and a program, to be conducted upon resolution of the land disputes, of surveying and fencing the partitioned lands.

Section 20 provides for Hopi use of a certain 23.8 acre tract in the joint use area for religious ceremonial purposes even if the tract is partitioned to the Navajo.

Section 21 directs the Secretary to make provision for the use of and right of access to identified religious shrines of either tribe in lands partitioned to the other tribe.

Section 22 insures that no financial assistance or funds paid under H.R. 10337 can be used as the basis for denying the recipient's participation in federally assisted housing programs or for denying or reducing social security benefits or benefits from other Federal or federally assisted programs. It also directs that the funds will not be subject to Federal or State income taxes.

Section 23 would allow exchange of reservation lands by the two tribes.

Section 24 provides that the remainder of H.R. 10337 shall remain in effect even if any part of it is declared invalid.

Section 25 provides the funding authorization (see section VII below for a discussion of authorization levels).

VII. COST OF H.R. 10337, AS ORDERED REPORTED

During the July 24, 1974, hearing before the Interior Committee on H.R. 10337, the Interior Department was asked to furnish to the Committee current information as to the estimated costs of implementing this legislation. The Department estimated the costs for authorization purposes over the life of the bill to be \$47,300,000, and the Committee included that amount in the sum to be authorized. The text of the response from the Department to the Chairman of the Committee concerning the costs is set forth in full in section XI of this report entitled "Executive Communications".

Subsequent to the final mark-up of H.R. 10337 on September 11, 1974, a representative of the Department suggested that the surveying and fencing program would cost an additional \$200,000 because of the Committee decision to provide a legislative resolution for the 1934 reservation lands dispute. This conforming change, authorized at the final mark-up, was made in the reported bill.

Furthermore, when the Committee decided upon a six-month negotiation period and the appointment of a Mediator to assist the negotiations, it added a \$500,000 authorization for the Mediator.

Finally, the Committee authorized an annual sum of \$500,000 to support the activities of the Navajo and Hopi Indian Relocation Commission. Although the life span of the Commission cannot be determined with absolute certainty, the Commission is expected to have an eight year existence. Thus, the total authorization for the Commission would be \$4,000,000.

The dollar total of funds which H.R. 10337, as ordered reported, would authorize to be appropriated is approximately \$52,000,000. The subtotals are as follows:

Relocation incentive payments (sec. 14(b))	-----	\$5, 500, 000
Purchase of dwellings and improvements, relocation expenses, and replacement dwellings (sec. 15)	-----	31, 500, 000
Stock reduction and range restoration program (sec. 19(a))	-----	10, 000, 000
Survey and fencing program (sec. 19(b))	-----	500, 000
Mediator expenses	-----	500, 000
Commission expenses (at \$500,000 per year)	-----	4, 000, 000
Total authorization	-----	\$52, 000, 000

All funds appropriated under these authorizations are to remain available until expended.

VIII. TABULATION OF VOTES CAST IN COMMITTEE

The votes on amendments to H.R. 10337 were taken by the full Committee in open mark-up sessions. As those votes were previously announced by the Committee, in accordance with the provisions of section 133(b) of the Legislative Reorganization Act of 1946, as amended, tabulation of the votes in this Committee Report is unnecessary. The unanimous vote to report H.R. 10337, as amended, was by voice vote.

IX. COMMITTEE RECOMMENDATION

The Committee on Interior and Insular Affairs in open mark-up session on August 21, 1974, by voice vote unanimously recommended that H.R. 10337, as amended, be enacted.

X. SECTION-BY SECTION ANALYSIS OF H.R. 10337, AS ORDERED
REPORTED

SECTIONS 1-3. NEGOTIATED SETTLEMENT

Sections 1 through 3 of the bill establish a six-month negotiating process to provide the tribes with a final opportunity to voluntarily resolve their differences on the joint use area. As noted elsewhere in this report, the District Court for the District of Arizona found (and the Supreme Court affirmed) in *Healing v. Jones* (210 F. Supp. 125, 1962; aff'd 363 U.S. 758, 1963) that (1) the interests of the two tribes in the joint use area are joint, undivided and equal; and (2) without further legislation the Court did not have the power to divide those interests by partitioning the joint use area. H.R. 10337, if enacted, would, among other things, provide the court with that authority. The Committee hopes, however, that the use of that authority will be unnecessary and that, instead the tribes will assume a greater willingness to negotiate their differences when, upon enactment of H.R. 10337, they are faced with the prospect of a final settlement dictated to them by the Court rather than a voluntary settlement reached by and among themselves. This is in keeping with the fourth guiding principle employed by the Committee in marking-up the amendment in the nature of a substitute to H.R. 10337—that, no matter how fair and equitable a legislative and judicial resolution may be, a voluntary settlement between the two tribes is preferable, and that the tribes should be given one final opportunity to negotiate a settlement of the joint use area dispute. The Committee set forth in sections 1 through 3 procedures which it believes will increase the chances of success of these final negotiating efforts. These sections limit the participants to negotiating teams appointed by the tribal councils, place a tight time schedule on them, and provide them with a professional mediator to assist their efforts.

Section 1.—Subsection (a) provides for the appointment of a Mediator by the Director of the Federal Mediation and Conciliation Service to assist the tribes in the negotiations for the settlement and partition of the relative rights and interests of the two tribes to and in the joint use area as determined in the *Healing* case. The Mediator may not have any interest, direct or indirect, in the settlement of those rights and interests. To insure that the Mediator is to serve the role only of an assistant to the tribal negotiators and an advisor to the Court concerning the results of the negotiations, not of a master to or a substitute for the Court either in the sense of making definitive determinations as to fact or law or of binding the Court to his views, subsection (a) contains a provision which states that the duties of a Mediator must cease upon a final negotiated agreement or the submission of his report to the Court if such an agreement is not reached.

Subsection (b) insures that the negotiations and the Mediator's activities do not constitute or require a new case but, instead, are supplemental proceedings in the *Healing* case.

Subsections (c), (d), and (e) set forth the informational and personnel support which the Mediator will receive. Subsection (c) directs all Federal agencies to respond on a reimbursable or non-reimbursable basis to any requests the Mediator may make of them concerning in-

formation, personnel, service, or materials. In addition, the President, within 15 days of enactment, is directed to establish an interagency committee chaired by the Secretary of the Interior to develop relevant information and to respond to the requests of the Mediator. Subsection (d) requires the Interior Secretary (hereafter referred to as the "Secretary") to appoint a full time representative as his liaison with the Mediator. Finally, subsection (e) provides that the Mediator may retain the services of staff and consultants, subject to the approval of the Director of the Federal Mediation and Conciliation Service.

Section 2.—Subsection (a) provides for the appointment of the negotiating teams. Within 30 days of H.R. 10337's enactment, the Secretary is to notify in writing the tribal councils of the two tribes and direct each council to appoint a negotiating team of not more than five members to represent its tribe. Vacancies on the teams are to be filled promptly. To insure that the negotiating teams may bind their respective tribes no matter what limitations there may be on such authority in law or tribal constitutions, bylaws, or governing documents, the final sentence in this subsection provides that notwithstanding any other provision of law, the negotiating teams will have full authority to bind their respective tribes concerning any other matter relating the joint use area within the scope of H.R. 10337.

Subsection (b) defines the failure of either tribal council to appoint a negotiating team or a replacement for any vacancy on the team within thirty days of the vacancy's occurrence as a default which would automatically invoke the compulsory judicial settlement provided for in subsection 4(a).

Subsection (c) sets forth the Mediator's responsibility to schedule and chair the first and subsequent negotiating sessions and permits him to make suggestions concerning procedures, agenda, and the resolution of the issues in controversy.

Subsection (d) defines three other bases for default and subsequent judicial settlement besides the failure to appoint a negotiating team or to fill any vacancies thereon. These additional bases are the failure of any negotiating team to attend two consecutive negotiating sessions, or, in the Mediator's opinion, the failure of either negotiating team to bargain in good faith, or the reaching of an impasse.

Subsection (e) provides that on any issue a majority vote of the negotiating team prevails unless the tribal council had provided otherwise in the resolution certifying the team.

Section 3 addresses the situation in which the negotiations result in either a full agreement (subsection (a)) or a partial agreement (subsection (b)).

Subsection (a) first defines the length of time which the negotiating teams have to reach full agreement to be 6 months (180 days) from the first negotiating session. It then sets forth the procedures necessary to put the agreement into effect. The agreement, if reached, is to be put in such form as the Mediator believes best expresses the intent of the tribes. It is then to be transmitted to the Secretary and the Attorney General who are to submit to the Mediator and the negotiating teams within 30 days their comments concerning the interest of the United States in the agreement. The Mediator and the teams would then consider the comments and if all are still in agree-

ment within 60 days of receipt of the comments, the agreement, written and signed by the teams and the Mediator, must be entered into the records of the supplemental proceedings in the *Healing* case by the Mediator (whose responsibilities then cease as prescribed in section 1). The final step is the review and modification if necessary, of the agreement by the District Court after which the agreement immediately goes into effect.

Subsection (b) provides the same deadlines and procedures for a full agreement to any partial agreement reached by the negotiating teams. The partial agreement is then to be considered by the District Court in arriving at a compulsory judicial settlement pursuant to section 4.

Subsection (c) permits the negotiating teams to concur in any agreement provision not inconsistent with law. It also provides that no agreement or provision thereof will result in a taking by the United States of private property compensable under the Fifth Amendment of the U.S. Constitution.

SECTION 4. JUDICIAL SETTLEMENTS

Section 4 establishes the procedure for a compulsory judicial settlement of the joint use area dispute if an agreement is not reached within the 6 months period or if the negotiations are terminated on any of the bases for default described in subsections 2(b) and (d). If full agreement is not reached or default occurs, the Mediator within 90 days is to prepare and submit to the District Court a report containing his recommendations for a plan of settlement which is most reasonable and equitable in light of the law and circumstances and consistent with the provisions of H.R. 10337. (Pursuant to section 1, the Mediator's duties cease directly after submission of the report.) The District Court is to review the Mediator's report and recommendations, but the subsection clearly states that they are not binding on the Court. After its review any subsequent proceedings deemed necessary by the District Court, the Court is to make a final adjudication, including partition of the joint use area, and enter the judgments in the supplemental proceedings in the *Healing* case.

To expedite the judicial settlement, subsection (b) provides that any proceedings relating to the settlement are to be assigned for hearing at the earliest possible date, take precedence over all other matters pending on the Court's docket, and be expedited in every way by the Court.

SECTIONS 5 AND 6. SETTLEMENT GUIDELINES

Sections 5 and 6 set out guidelines which are to be followed in the negotiation of a full agreement or in a final adjudication concerning the joint use area. These guidelines reflect the guiding principles listed in section V of this report which the Committee followed in drafting the bill. In short, both the guiding principles and the guidelines written into these two sections have as their underlying purpose to insure an equitable and lasting settlement and a settlement which will minimize adverse social, economic, and cultural impacts.

Section 5. Subsection (a) sets out the guidelines to be followed by the Mediator in attempting to negotiate a full settlement or making

a report to the District Court if no such settlement is reached. First the Mediator may recommend, subject to the consent of the Secretary, additional lands outside the exterior boundaries of the 1934 reservation be purchased or acquired for the benefit of either tribe from tribal funds or funds under any other authority of law. Secondly, he may recommend that, subject to Secretarial consent, a land restoration program be undertaken in the joint use area from funds authorized under H.R. 10337, tribal funds, or funds under any other authority of law. Third, the Mediator is authorized to recommend that, subject to Secretarial consent, a program of relocation be undertaken for members of either tribe living on lands partitioned to the other tribe. However, in order to minimize the adverse social, economic, and cultural impacts of relocation, the fourth guideline authorizes the Mediator to recommend in exceptional cases, in order to prevent personal hardship, a limited tenure for residential use, including the possibility of granting (but not exceeding) life estates, and a phased relocation schedule. The fifth and final guideline authorizes the Mediator to recommend "any other recommendations as are in conformity with this Act and the *Healing* case to facilitate a settlement." The language of this guideline makes it clear that the Mediator's recommendations under the other guidelines should also conform to the *Healing* decision.

Subsection (b) states that the guidelines are discretionary and are not to be construed to represent any directive of Congress. The tribes are free to reach any full settlement they can subject, of course, to modification by the District Court before it is put into effect.

Section 6.—This section provides guidelines which the Mediator is to follow in making a report to the District Court upon failure to arrive at a negotiated full agreement, upon negotiation of a partial agreement, or upon default in the negotiations, and which the Court is to follow in making a final adjudication of the joint use area dispute.

First, the section clearly provides that the Mediator and the District Court must consider and be guided by the *Healing* decision in which the tribes were determined to have joint, undivided, and equal interests in and to all of the joint use area. It also provides that the Mediator and the District Court are to consider any partial agreement reached pursuant to subsection 3(b) and the last best offers of each tribe in the negotiations. Finally, the section lists seven guidelines to which the Mediator and the District Court are to adhere.

The first guideline (subsection (a)) is that the rights and interests of the Hopi Tribe in and to its so-called exclusive Hopi Reservation, as set forth in the *Healing* decision, are not to be reduced or limited in any way.

Second, the boundary lines of any lands partitioned in the final adjudication are to be drawn so as to include the higher density population areas of each tribe within the portion of the lands partitioned to such tribe (subsection (b)). The purpose of this guideline, as clearly stated in the provision's language, is to "minimize and avoid undue social, economic, and cultural disruption insofar as practicable."

Third, no matter how the lands are partitioned, reasonable provision must be made for the use of and right of access to religious shrines for religious purposes (subsection (c)). The obvious purpose of this guideline is the same as that of the last guideline. Denial of

ability to perform ceremonial rites at sacred shrines would certainly create rather than "minimize social . . . and cultural disruptions."

A fourth guideline (subsection (e)) requires that, where feasible and consistent with the other guidelines relating to partition of land and the drawing of boundaries of partitioned land, any land partitioned to either tribe in the joint use area must be contiguous to the reservation of that tribe. This guideline arises from the Committee's belief that unless the ultimate reservation of each tribe is a coherent and manageable unit in which access can be gained to all parts of the reservation without crossing lands in the other tribe's reservation, the settlement will be difficult to keep and rights and interests to land could again become a subject of dispute between the two tribes. The Committee, however, also wishes it understood that one of the reasons for the "feasible and inconsistent" wording which conditions this guideline is to authorize the District Court to award tracts of land to either tribe which are not contiguous to its reservation in order (1) to minimize undue social, economic, and cultural disruption resulting from the relocation of large numbers of individuals from residential sites which they have continuously occupied, and (2) to insure that both tribes receive a fair portion of the lands which are of higher quality and greater carrying capacity.

Another guideline (subsection (f)), like the guideline concerning the minimizing of disruptions, concerns the drawing of boundaries of partitioned land. This guideline states that, insofar as is practicable, the boundary lines are to be drawn so as to follow terrain which will facilitate fencing or avoid the need for fencing.

The sixth guideline (for the purpose of discussion, actually subsection (d) in the bill) is clearly the most important and the most controversial one. This guideline states that, with one important proviso, in any partition of the surface rights to the joint use area, "the lands shall, insofar as practicable, be equal in acreage and quality." The proviso states that, if the partition results in one tribe having a lesser amount of acreage, or value, or both, then the other tribe, the latter tribe must fully compensate the former for the difference. The land value is to be calculated on its value with existing improvements and the grazing capacity fully restored. The reason for this land valuation formula is that subsection 19(a) requires that, after the settlement is completed, the Secretary embark on a land restoration program. Clearly the long-term benefit to the tribe which receives the land and the long-term loss to the tribe which gives up the land include the agricultural and other values obtainable not from the land in its present conditions, but from the land as restored by the Secretary. A second proviso, allows the Court to determine what portion of the difference in value between the land in its state at the time of partition and its future value after restoration is attributable to damage to the land which is the basic responsibility of that tribe which must pay the differential in overall land value or acreage or both and what portion, if any, is attributable to land damage which is the responsibility of the Federal Government because of its former actions in administering grazing within the joint use area or in its role as trustee over the respective tribes' resources. The Federal Government must pay for the damage attributable to it, and the payment of the tribe which possesses

the greater acreage, or value, or both is reduced by a concomitant amount.

As mentioned in the discussion in section I of this report, partition of the land is the crux of the joint use area dispute. Even after the District Court in the *Healing* case determined the interests each tribe had in the area to be joint, undivided and equal, the two tribes could not negotiate a settlement which would divide the lands in a manner agreeable to both of them. Furthermore, the Court in the *Healing* decision stated that it did not have authority to partition lands. Clearly, the principal thrust behind all the legislation addressed to the Navajo-Hopi dispute has been to provide that missing authority to partition lands.

As Congress is clearly compelled to meet the basic responsibility, identified for it by the District Court in the *Healing* decision, to provide authority to that Court to divide the lands of the joint use area between the tribes, H.R. 10337, as ordered reported, would accomplish this.

As noted in the discussion in section V, the Court is not likely to fail to exercise this authority should no negotiated agreement be reached. In shaping a compulsory judicial settlement which is not only fair and equitable, but also *lasting*, the Court would almost certainly take notice of the long history of controversy and conflict in the joint use area—a history which antedates by at least a century the *Healing* decision in which the tribal interests in the area were officially defined as "joint". This history is marked with the continuing failure of the tribes to accomplish a true joint use of the area or enter into an agreement concerning either use of the land or the revenues generated from it (license fees, commissions, rents, etc.).

This Committee firmly believes, and surely the District Court will concur, that the tribes can and must live harmoniously together. However, should the tribes fail to reach an agreement in the final negotiations pursuant to section 3, the Court would likely find that such harmony can be achieved only with those tribes living as neighbors settled on their own lands, not with one tribe compelled to sell and the other to buy, or with both tribes required to reside as cotenants on the entire area.

First, the Court might view any decision to compel resident cotenancy for the entire area to be in all likelihood a decision to perpetuate the dispute. It might draw from the failure of final negotiations the lesson that no two people or organizations which have suffered through such an acrimonious controversy with such a lengthy history as have the Navajo and Hopi Tribes can be expected to suddenly and permanently render amicable and cooperative decisions concerning the very subject of the dispute.

Second, the Court might also conclude that any final adjudication dictating a simple purchase by one tribe of the other tribe's entire bundle of rights and interests would likely culminate in the inevitable reopening of the dispute at some future date. The economy and culture of both tribes are tied to the land itself, not to its present value for sale purposes. Both tribes have forcefully declared that they desire the land, not the revenues from its sale. Future generations of tribal members of whichever tribe was forced to sell the land as part of the final

adjudication may even more adamantly prefer the land over the sale revenues which might have long since been expended.

Thus, the Committee recognizes both the responsibility to provide partitioning authority and, if judicial adjudication should become necessary, the likelihood that such authority would be exercised. The Committee, however, fully understands that this particularly potent authority, once exercised, will structure substantially the remainder of the provisions of any judicial settlement. Therefore, the Committee has interpreted its responsibility as not simply providing the authority, but also, in the guideline of subsection (d), giving direction to that authority's use so as to insure that the "guiding principles", embodied in the other section 6 guidelines, are reflected in the settlement.

The Committee does believe that, if the judicial settlement is to be equitable and fair, any division of the lands of the joint use area must be equal. The very definition in the *Healing* decision of the interest in the land as "joint, undivided, and equal" also strongly suggests that, if the interest is to be divided, it is to be done on an equal basis. Therefore, subsection (d) provides any partition of the joint use area lands must "insofar as is practicable, be equal in acreage and value."

These words, however, were carefully chosen not only to clearly establish the Committee's intent that any lands to be partitioned will be divided equally to the two tribes, but also to insure that this guideline is not so inflexible as to force the Mediator to suggest, and the Court to design, a settlement which must ignore all the other guidelines should honoring those guidelines require the slightest departure from an absolutely equal division. The flexibility is provided in three ways: (1) By use of the words "acreage" and "value", the Court is given the opportunity to weigh both factors and make small adjustments in one to compensate for minor differences in the other; (2) The proviso calling for compensation for differences in acreage, value, or both demonstrates that the Committee contemplates that some divergence may be necessary; and (3) The equality standard is also conditioned by the "insofar as is practicable" language.

The Committee wishes it clearly understood that the flexibility provided in this subsection is not to be interpreted as an invitation to develop a final adjudication of the joint use area dispute which contains a substantially unequal division of lands. Instead, the flexibility is provided to allow a limited divergence from the equality standard, if necessary, in order to honor the other guidelines in section 6. For example, the Committee expects that, if, in designing a partition plan, it is discovered that a minor divergence from an equal division of acres, or value, or both would clearly result in a drawing of boundary lines which would preserve to one or the other tribe a particularly densely populated area, thus significantly reducing the necessity for relocating households and minimizing "social, economic, and cultural disruption" as called for in the third guideline (subsection (c)), then the flexibility provided in the "insofar as is practicable" language would permit that division and the proviso calling for compensation would be invoked.

The last two guidelines concern recovery by the Hopi of their equal interest in the joint use area between the time such interest was first made manifest and the date of the final adjudication. The seventh

guideline directs that any claim the Hopi Tribe may have against the Navajo Tribe for an accounting of all sums collected by the latter since September 17, 1957, as trader license fees or commissions, lease rentals or proceeds, or other charges for doing business or for damages in the use of lands within the joint use area is to be for a 50 percent share in the sums. September 17, 1957, is the date on which the Navajo Area Director, W. Wade Head, advised the General Superintendent of the Navajo Agency that any rentals collected by the Navajo in the joint use area should be held in escrow pending final determination of the Navajo and Hopi rights in the area. The seventh guideline states that any claim the Hopi Tribe may have against the Navajo Tribe for the determination and recovery of the fair value of the grazing and agricultural use of the lands within the joint use area by the Navajo tribe and its members since September 28, 1962 (the date of the *Healing* decision) is to be for 50 percent of the value.

SECTION 7. JOINT OWNERSHIP OF MINERALS

Section 7 states that despite any partition of the surface of the joint use area, the joint ownership of the coal, oil, gas and all other minerals within or underlying the area is not to be altered. All such minerals are to be managed jointly by the two tribes, subject, of course, to supervision and approval by the Secretary as otherwise required by law. The proceeds of the minerals are to be divided "share and share alike" between the tribes.

SECTION 8. PARTITION OF 1934 RESERVATION LANDS

Section 8 provides for the partition to the Hopi Tribe to be held in trust as part of the Hopi Reservation approximately 243,000 acres from the reservation created by the Act of June 14, 1934. The background to the dispute over these lands was discussed above in section I of this report and will be summarized in briefer form here.

On June 14, 1934, Congress enacted a law to confirm the boundaries of the Navajo Reservation in Arizona as first established by treaty in 1868 and subsequently added to by Executive orders and Congressional enactments. The Act stated the lands were "for the benefit of the Navajo and such other Indians as may already be located thereon." The dispute centers on the meaning of the quoted words.

In several respects the dispute over the 1934 reservation lands differs from that concerning the joint use area. The two disputes arise from different actions of the Federal Government: the former being related to the 1934 Navajo Reservation Boundary Act and the latter to the 1886 Executive order. Furthermore, the 1934 reservation lands dispute was not addressed in the *Healing* decision.

The problems concerning the 1934 reservation lands and the joint use area are, however, substantially similar. The two tribes are unable to agree on their relative rights and interests and have been unable to use the lands jointly in harmony. Both sides have marshalled an impressive array of arguments, legal, anthropological, and equitable, in defense of their positions. Both sides recognize that at the time of the enactment of the 1934 Navajo Reservation Boundary Act, the Hopi were residing in the village of Moencopi which is located

immediately west of the 1882 reservation and wholly within the lands set aside in the 1934 Act. The Hopi argue that this fact and the "such other Indians as are already settled thereon" language of the 1934 Act, together with other historical data and governmental statements and papers, give them an undivided interest in the entire Navajo Reservation as established in the 1934 Act. They hold that the transfer of 243,000 acres, as proposed by H.R. 10337, as passed by the House of Representatives, is quid pro quo for a quit claim to any other interest they may have in the approximately 8.2 million acres of the 1934 reservation outside of the 1882 reservation. The Navajo position, based on differing interpretations and data, is that the Hopi are only entitled to that acreage they were occupying on the date of the Act (June 14, 1934), estimated at 35,000 acres. Counsel for the Navajo have proposed language providing for the immediate partition of the 35,000 acres, but have communicated Navajo support for a judicial settlement of the 1934 reservation lands dispute as proposed in S. 3230, introduced by Senator Montoya (see section III above).

The Committee gave careful consideration, including two roll-call votes, to the question of whether to provide for a legislative settlement, or to mandate a judicial settlement, concerning the 1934 reservation lands. The Committee chose to favor a legislative settlement similar to that proposed by the House: the 243,000 acre partition. The Committee believed that there were cogent arguments for either approach and neither approach was fully satisfactory. The Committee felt, however, that, above all else, in choosing the mode of settlement it should honor its first guiding principle—that justice and equity for the people of both tribes dictate an early resolution of the 1934 reservation lands dispute. The Committee was mindful of the slow and tortured course followed in obtaining judicial resolution of the joint use area dispute. Resolution of that dispute has still not occurred over sixteen years after passage of the Act of July 22, 1958 (72 Stat. 403) authorizing the first steps toward judicial settlement. The Committee believes that, learning from the deficiencies in the 1958 Act, it could structure legislation superior to that Act; however, even were the Committee successful in drafting "model" legislation to initiate a judicial settlement, there would be no guarantee of an early completion of that settlement. On the contrary, it could be expected that the two tribes would be fighting each other in court—arguing, motioning, and appealing—for several years to come before any settlement could be reached.

On the other hand, a legislative settlement could be reached immediately and implemented swiftly. Furthermore, if the settlement is challenged in court, the suit would most likely not be between the tribes but between a tribe and the Federal Government. (As the Department of the Interior points out in the second letter printed in section XI of this report, the Navajo Tribe would likely challenge a legislative settlement as a taking of property without compensation.) Of course, the Federal Government is not anxious to become a defendant in such a suit. However, a majority of the Committee believed that, even were such a suit by a tribe successful and the Government forced to pay compensation, this possibility is preferable to the almost certain perpetuation of tribal animosities which would result

from any provision extending an invitation to the tribes to sue each other in order to arrive at a full resolution of all aspects of the dispute.

As a further consideration, the Committee was acutely conscious of the criticism of Congress' "procrastination" (*Hamilton v. MacDonald*, _____ F. 2d _____, 9th Cir., September 12, 1974) in resolving the joint use area dispute. A legislative settlement would insure that a settlement concerning the 1934 reservation lands would be reached this year at a time when Congress is no longer reluctant to consider and act upon all facets of the Navajo-Hopi problem.

Finally, the Committee realized that the chances of devising a relocation program which minimizes social, economic, and cultural disruptions increase rapidly as the area of land in which the relocation efforts can be conducted is widened. Certainly, more relocation sites may be offered when the joint use area, the 1934 reservation lands, and up to 250,000 acres of BLM land transferred to the Navajo (see analysis of section 11) can all be included in a single relocation plan. A legislative resolution of the 1934 reservation lands dispute insures that a single relocation program, rather than two or three separate ones, can be developed.

SECTION 9. PAIUTE ALLOTMENTS

Section 9 authorizes the Secretary to make allotments to any Paiute Indians who are not members of the Navajo Tribe, who are located on the 1934 reservation lands, and who were either there, or are descendants of Paiutes who were located there, on the date of enactment of the 1934 Act.

SECTION 10. STATUS OF PARTITIONED LANDS

Section 10.—Subsection (a) provides that subject to any Paiute allotments granted pursuant to section 9 or any existing allotments of members of either tribe (section 17(a)), any lands partitioned to the Navajo from the joint use area (section 3 or 4) and the lands described in the 1934 Navajo Reservation Boundary Act, except the 243,000 acres partitioned to the Hopi pursuant to section 8, are to be held in trust exclusively for the Navajo Tribe as part of the Navajo Reservation.

Subsection (b) provides that, also subject to the Paiute and other allotments (sections 9 and 17(a)), lands partitioned to the Hopi Tribe from the joint use area (section 3 or 4) and from the 1934 reservation lands (section 8) are to be held in trust exclusively for the Hopi Tribe as part of the Hopi Reservation.

SECTION 11. BLM LANDS FOR THE NAVAJO TRIBE

The Committee is acutely aware that, irrespective of the validity of the Navajo claims to the entire land base on which they are presently settled, the Navajo will watch that land base upon which they are economically and culturally dependent shrink by the implementation of H.R. 10337. As the 9th Circuit Court of Appeals noted in its decision in *Hamilton v. MacDonald*, the land disputes are, in reality, "poor men against poor men, fighting against a long

historical backdrop for an over-grazed, harsh, and inhospitable area which yields little above a subsistence living." Given the quality, or more properly lack thereof, of the land and the economic and cultural dependence of the Navajo on it, the Committee felt that opportunity should be provided to the Navajo Tribe to widen its land base by the purchase of Federal land.

Section 11, in subsection (a), authorizes and directs the Secretary to transfer to the Navajo Tribe, upon payment of fair market value by the tribe, not more than 250,000 acres of BLM land in Arizona or New Mexico. Lands contiguous or adjacent to the Navajo Reservation are to be held in trust by the United States for the benefit of the Navajo Tribe.

Subsection (b) adds that any private lands acquired by the tribe which are also contiguous or adjacent to the reservation may be held in trust. The total land acquired pursuant to the two subsections is not to exceed 250,000 acres.

SECTIONS 12-15. THE NAVAJO AND HOPI INDIAN RELOCATION COMMISSION,
THE RELOCATION PROGRAM, RELOCATION INCENTIVE AND ASSISTANCE
PAYMENTS, AND REPLACEMENT HOUSING

Sections 12 through 15 set out a program for relocating households of either tribe living on land partitioned to the other tribe. The Committee believes that the entity charged with implementing the program is structured and the program is funded in a manner which gives strong assurances of honoring the guiding principle of minimizing the social, economic and cultural disruptions which are normally associated with relocation efforts and which are particularly likely among the tribal members in the dispute areas who are so closely tied to the land in a cultural and economic sense.

Section 12 provides for the establishment of an independent entity known as the Navajo and Hopi Indian Relocation Commission. This three-member Commission is to be appointed by the Secretary within 60 days of enactment of H.R. 10337.

The section also includes provisions concerning salaries and expenses of the members, the hiring and salary levels of staff, the filling of vacancies, the hiring of consultants, and the scheduling of the first meeting. The Department of the Interior will furnish for the Commission, on a non-reimbursable basis, the necessary administrative and housekeeping services. Finally, the Commission is to disband when the President determines that it has completed all of its functions.

Section 13.—Subsection (a) directs the Commission to prepare and submit to Congress a report concerning the relocation of households and members of each tribe, and their personal property, including livestock, from lands partitioned to the other tribe in the joint use area (section 3 or 4) and the 1934 reservation lands (section 8). The deadline for submission is 24 months after the date of issuance of an order of the Court concerning final settlement of the joint use area dispute pursuant to section 3 or 4.

Subsections (b) and (c) address the substance of the report in greater detail. Subsection (b) states that, among other matters, the report is to contain the names of all members of either tribe residing

in areas partitioned to the other tribe and the fair market value of the habitations and improvements owned by the heads of households identified as being among those individuals to be relocated. Subsection (c) requires that the report include a detailed plan for the relocation of the households and their members identified in subsection (a) as requiring relocation. The relocation plan is to be developed to the maximum extent feasible in consultation with the persons involved in the relocation and representatives of the tribal councils. This subsection requires, and the Committee believes it vitally important, that the plan take into account all the social, economic, cultural, and other adverse impacts of relocation on persons involved in the relocation and be developed to avoid or minimize, to the extent possible, such impacts. The plan must also identify the sites to which such households are to be relocated and assure that housing and related community facilities and services such as water, sewers, roads, schools, and health facilities are available at the relocation sites. The Committee believes this requirement is particularly important in effecting the purpose of minimizing the adverse impacts of relocation. If those to be relocated know well in advance the sites to which they will be moved and that they will receive housing and public facilities and services superior to or at least concomitant with those existing at their present sites, the chances of their experiencing such impacts are substantially reduced.

The relocation plan is to take effect 30 days after its submission to Congress. However, the Commission is directed to make any relocations which are voluntary as promptly as possible after its first meeting (no later than 60 days after H.R. 10337's enactment).

Section 14.—Subsection (a) includes the mandate to the Commission to implement the relocation plan and relocate all households, their members, and their personal property, including livestock, pursuant to the order of the Court providing for the resolution of the joint use area dispute and pursuant to section 8 providing for the partition of the 1934 reservation lands. Further, the subsection bars any additional settlement of the members of one tribe on the reservation of the other tribe unless permitted by advance written approval of the latter tribe. Finally, no individual is allowed to increase the number of livestock he grazes on any area partitioned pursuant to this Act to the tribe of which he is not a member and he cannot retain any grazing rights in any such area after he is relocated from it.

Subsection (b) provides for a program of incentive payments to those heads of households who voluntarily contract with the Commission to relocate according to the relocation plan. The payments begin at \$5,000 to a household which contracts to move before the end of the first year after the effective date of the relocation plan and are reduced \$1,000 a year to a payment of \$2,000 to any household which contracts to relocate after three full years but before the end of the fourth year after the plan's effective date.

Section 15 sets out the procedure to be followed by the Commission in acquiring and paying for the property of each head of household to be relocated, and to pay him relocation expenses and the equivalent of the cost for the acquisition of a replacement dwelling. The Commission is made responsible for the provision of housing to each household

eligible for payments pursuant to the Act and sets out the methods for providing that housing. The section also authorizes the disposal of dwellings and other improvements acquired pursuant to H.R. 10337.

Subsection (a) states that the relocated household's property which is to be purchased includes the habitation and other improvements and that the purchase price is to be the fair market value as determined by the Commission pursuant to subsection 13(b).

Subsection (b) requires, first, that relocation assistance be provided as if the members of the relocated household were displaced persons under section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894). This subsection also requires the Commission to pay to each head of a relocated household an amount which, 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 that household. Ceilings are placed on these payments of \$17,000 for a household of three or less and \$25,000 for a household of four or more, except that the Commission may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease those ceilings to reflect changes in housing development and construction costs, other than costs of land, during the preceding year. The payments are to be made only to a head of a household relocated pursuant to H.R. 10337 who purchases and occupies the replacement dwelling not later than 2 years after the date on which he receives from the Commission final payment for the habitation and improvements purchased under subsection (a), or on the date on which the household moves from that habitation, whichever is the later date. These payments are to be used only for the purpose of obtaining decent, safe, and sanitary replacement dwellings adequate to accommodate the relocated households.

Subsection (c) prohibits any payments under section 15 to any person who, later than one year prior to the date of H.R. 10337's enactment, moved into an area partitioned to a tribe of which he is not a member.

Subsection (d) establishes the Commission's responsibility for the provision of housing for each household eligible for payments under section 15. This responsibility can be met in three ways:

(1) Should any head of household apply for and become a participant or homebuyer in a mutual help housing or other homeownership opportunity project undertaken under the United States Housing Act of 1937 (50 Stat. 888), as amended, or in any other federally assisted housing program, the amounts payable with respect to that household under this section 15 will be paid instead to the local housing agency or sponsor involved as a voluntary equity payment and be credited against the outstanding indebtedness or purchase price of the household's home in the project "in a manner which will accelerate to the maximum extent possible the achievement by that household of debt free homeownership."

(2) Should any head of household wish to purchase or have constructed a dwelling which the Commission determines is decent, safe, sanitary, and adequate to accommodate the household, the amounts payable with respect to that household under this

section 15 will be paid to the head of a household in connection with that purchase or construction in a manner which the Commission determines will assure that the funds will be used for that purpose.

(3) Should any head of household not make timely arrangements for relocation housing, or should any head of household elect and enter into an agreement to have the Commission construct or acquire a home for the household, the Commission may use the amounts payable to that household under this section 15 for the construction or acquisition of a home and related facilities for that household. The Commission may combine the funds for any number of such households into one or more accounts from which the costs of construction or acquisition may be paid on a project basis. The funds in that account or accounts must remain available until expended. Furthermore, the title to each home constructed or acquired by the Commission is to be vested in the head of the household for whom it was constructed or acquired only upon occupancy by that household.

Subsection (e) authorizes the Commission to dispose of dwellings and other improvements it acquires or constructs in any manner, including resale of those dwellings or improvements to members of the tribe exercising jurisdiction over the area at prices no higher than the acquisition or construction costs, as best effects section 8 and the order of the District Court pursuant to section 3 or 4.

SECTION 16. RENTAL VALUE PAYMENTS

Section 16 requires each tribe to pay to the other the fair rental value as determined by the Secretary for all use by individuals of the former tribe of any lands partitioned to the latter tribe after the date of the partition.

SECTION 17. ALLOTTED LAND AND FEDERAL EMPLOYEES

Section 17.—Subsection (a) secures to the members of either tribe who have been allotted lands, the title and enjoyment of their allotments. Subsection (b) prohibits construing any provision of H.R. 10337 as requiring the relocation from any partitioned area of any household of any Navajo or Hopi individual who is employed by the Federal Government within that area or to prevent Federal employees or their households from residing in those areas in the future. However, any Federal employee who could be relocated under the terms of H.R. 10337 may choose to be relocated.

SECTION 18. FURTHER JUDICIAL PROCEEDINGS

Section 18 authorizes suit by either tribe to determine the rights and interests of the tribes in the joint use area if they are not settled in either a negotiated agreement pursuant to section 3 or a final adjudication pursuant to section 4. In particular, either tribe may sue for an accounting of all sums collected by either tribe since September 17, 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 joint use area, and judgment for one-half of all sums so collected by

that other tribe, and not paid to the first tribe, together with interest at the rate of 6 percent per year compounded annually. September 17, 1957 is the date on which the Navajo Area Director, W. Wade Head, advised the General Superintendent of the Navajo Agency that any rentals collected by the Navajo in the joint use area should be held in escrow pending final determination of the Navajo and Hopi rights in the area. Secondly, either tribe may sue the other tribe for the determination and recovery of the fair value of the undivided half interest of the grazing and agricultural use of the lands within the joint use area by that other tribe and its members since September 28, 1962 (the date of the *Healing* decision), together with interest at the rate of 6 percent per year compounded annually.

Subsection (b) states that neither laches nor the statute of limitations will constitute a defense to any action authorized by H.R. 10337 for existing claims if commenced within two years from the effective date of the bill.

Subsection (c) authorizes either tribe to institute any 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 and to fully accomplish all objects and purposes of H.R. 10337. These actions may be commenced in the District Court by either tribe, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof.

Subsection (d) provides that the United States will not be an indispensable party to any action or actions commenced pursuant to this section 18. Any judgment or judgments by the District Court in that action or actions are not to be regarded as a claim or claims against the United States.

Finally, subsection (e) states that 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 H.R. 10337.

SECTION 19. RANGE REHABILITATION AND FENCING PROGRAMS

Section 19.—Subsection (a) directs the Secretary to immediately commence action to reduce the numbers of livestock within the joint use area to the carrying capacity of the land and to institute such conservation practices as will restore the grazing potential of the land. The Secretary is also directed to provide in subsection (b) for the surveying, locating monuments, and fencing of the land partitioned under H.R. 10337. In the eleventh guiding principle employed in marking-up H.R. 10337, as amended, the Committee recognizes the responsibility of the Federal Government, because of its repeated failure to promptly resolve the land disputes, to bear the major portion of the costs which would be incurred in implementing H.R. 10337. The Committee feels strongly that among those costs which must be assumed by the Federal Government are the cost of restoring the land damaged by over-grazing and the cost of surveying and fencing-off the lands partitioned under H.R. 10337.

SECTIONS 20 AND 21. ACCESS TO RELIGIOUS SHRINES

Section 20.—This section insures access for religious purposes for the Hopi to the 23.8 acre Cliff Springs area—a Hopi religious shrine—in the joint use area, no matter to which tribe the Cliff Springs is partitioned. In addition, the section guarantees Hopi access to, and the protection of, the natural stands of fir trees within a 2-mile radius of the spring so that the trees' branches may be gathered and used in religious ceremonies. Although the Hopi Tribe would be allowed to fence the spring, it would also be responsible for piping water from the spring to the fence line for the use of the residents of the area.

Section 21 directs the Secretary to assure access to and use of all religious shrines of each tribe on the reservation of the other tribe. As noted elsewhere in this report, continued access to land for religious purposes is a critical necessity if the Committee's guiding principle, and the section 6 guideline, concerning the importance of minimizing adverse social, economic, and cultural impacts are to be met.

SECTION 22. BENEFITS OF FEDERAL PROGRAMS AND FEDERAL AND STATE TAXES

Section 22 makes it clear that the payments made pursuant to H.R. 10337 are not to be considered as income or resources for the purpose of disqualifying those receiving them from participating in a federally assisted housing program or denying or reducing financial assistance or other benefits they would be entitled to under Social Security Act or other federally assisted programs. It also excludes the payments from taxation by the Federal or State Governments. This is consistent with longstanding Committee policy, most recently restated in section 7 of the so-called Omnibus Indian Claims Judgments Bill, the Act of October 19, 1973 (87 Stat. 466, 468).

SECTION 23. TRIBAL LAND EXCHANGES

Section 23 authorizes the two tribes to exchange lands which are part of their respective reservations.

SECTION 24. SAVINGS CLAUSE

Section 24 provides that the remainder of H.R. 10337 will remain in effect even if any part of it is declared invalid.

SECTION 25. AUTHORIZATIONS

Section 25.—Subsection (a) authorizes the following funds for the following purposes.

Purchase of habitation and dwellings of relocatees, relocation assistance, cost of replacement dwellings, replacement dwellings construction and acquisition (sec. 15)-----	\$31, 500, 000
Livestock reduction and range rehabilitation program (sec. 19 (a))--	10, 000, 000
Surveying, monument location, and fencing program (sec. 19 (b))--	500, 000
Relocation incentive payments (sec. 14 (b))-----	5, 500, 000
Commission expenses (per year)-----	500, 000
Mediator expenses-----	500, 000

As the Mediator is to begin his tasks immediately and may conclude them within 1 fiscal year, subsection (a) (6) provides that until the Mediator's funds are appropriated and made available to him, the Director of the Federal Mediation and Conciliation Service is authorized to provide for the services and expenses of the Mediator from any other appropriated funds available to him and to reimburse such appropriations when funds are appropriated for the Mediator.

Subsection (b) provides that funds appropriated pursuant to these authorizations are to remain available until expended.

XI. EXECUTIVE COMMUNICATIONS

The report of the Department of the Interior on H.R. 10337 and other companion measures and the supplemental report of the Department relating to costs are set forth in full as follows:

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 23, 1974.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 10337 in the Senate of the United States, an Act, "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"; S. 3230 a bill, "To provide for the efficient development of the natural resources of the Navajo and Hopi Reservations for the benefit of its residents, to assist the members of the Navajo and Hopi Tribes in becoming economically fully self-supporting, to resolve a land dispute between the Navajo and Hopi Tribes, and for other purposes"; S. 3724 a bill, "To provide for efficient development of the natural resources of the Navajo and Hopi Reservations for the benefit of its residents, to assist the members of the Navajo and Hopi Tribes in becoming economically fully self-supporting, to resolve a land dispute between the Navajo and Hopi Tribes, and for other purposes"; and S. 2424 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."

We recommend enactment of H.R. 10337 in the Senate, if amended as suggested herein. We recommend against enactment of S. 3230, S. 3724, or S. 2424.

All four of these bills are designed to resolve a longstanding dispute over certain lands held jointly by the Hopi and Navajo Tribes. The background and earlier recommendations which the Department supplied concerning this controversy are set out in our letter of May 14, 1973, to the House Committee on Interior and Insular Affairs, which is reproduced in House Report No. 93-909. After reexamining our position set out in that letter that no legislation should be enacted,

we have reluctantly concluded that it is no longer viable. In light of the lack of progress in alleviating the Hopi-Navajo problems since May of 1973, we no longer believe our preference for resolution via existing judicial authority and proceedings is realistic. Moreover, we see no sign of the voluntary settlement of the dispute between the two tribes which we would much prefer. Subject to the amendments which we shall discuss, we believe that H.R. 10337 constitutes the surest and fairest means of settling the bitter disputes in which the tribes have engaged and we recommend that it be enacted. We would emphasize, however, that we approach the task of implementing any large-scale relocation of Indian people with great reluctance and would not wish to undertake it without a strong mandate in law.

I. H.R. 10337 IN THE SENATE

H.R. 10337 in the Senate would authorize the United States District Court for the District of Arizona to partition the surface of the joint-use area of the 1882 Executive Order Hopi Reservation between the Hopi and Navajo Tribes. The partition would be carried out pursuant to several criteria set out in the bill, such as that undue social, economic, and cultural disruption should be avoided as far as possible; and that the lands partitioned between the two tribes should, insofar as possible, be equal in acreage, value, and animal carrying capacity. The United States would hold the partitioned sections of the joint-use area in trust for the respective tribes. Partition of the area's surface, however, would not affect the joint ownership of its subsurface minerals, which would be managed jointly by the tribes under the supervision of the Secretary of the Interior. This bill would remedy by partition a dispute over ownership and enjoyment of certain lands in the area of the Navajo Reservation known by the village names of Moencopi and Tuba City; this dispute dates from the establishment of boundaries for that reservation in 1934. The bill would also provide allotments to certain Paiute Indians living in the Navajo Reservation.

H.R. 10337 would further direct the Secretary of the Interior to remove all Navajo Indians and their belongings, including livestock, from the Hopi area which results from the partition. This removal would take place over a period of 5 years, with 20 percent of the Navajos being removed each year. The Secretary would be authorized and directed to sell to the Navajo Tribe not more than 250,000 acres of public land within his jurisdiction and to hold this land in trust for the tribe. Hopi Indians would be removed from the Navajo area resulting from the partition over a period of two years, with 50 percent of the Hopi being removed each year. The Secretary would buy from the head of each removed household his habitation and other improvements; would reimburse him for actual moving expenses; and would grant him an additional payment (not to exceed \$20,000 for a household of four or more) sufficient to enable him to buy a decent, safe, and sanitary replacement dwelling. For carrying out the relocation program, a sum not to exceed \$28.8 million would be authorized to be appropriated. The bill would direct the Secretary immediately to reduce the number of livestock grazing within the joint-use area to its carrying capacity; to institute conservation practices so as to restore the grazing potential of the area; and to provide for the survey, loca-

tion of monuments, and fencing of boundaries of any lands partitioned by settlement between the two tribes. A sum not to exceed \$10 million would be authorized to be appropriated for these purposes. The bill would guarantee use of a certain named spring as a Hopi religious shrine and would enable the Secretary to provide access to other shrines for both tribes.

II. S. 2424

This bill is similar to H.R. 10337 but without the amendments made by the House Committee and on the House floor. One significant difference between the two bills is that under S. 2424 the Secretary of the Interior, rather than the court, would partition the joint-use area. In addition, S. 2424 contains no relocation benefits and does not provide for Navajo purchase of public lands, as does H. R. 10337.

III. S. 3230

S. 3230, which would be cited as the Navajo-Hopi Development Act, links solution of the tribes' land dispute with their economic development. Title I of the bill would set up a Commission composed of members chosen by the President and the two tribes. The Commission would review the potential of the tribes' reservations for development, encourage private investment in developmental projects, make legislative and fiscal recommendations to the Congress and Federal agencies, and formulate the programs discussed in Title II, *infra*. The bill contains safeguards against conflicts of interest involving members or employees of the Commission.

Title II of the bill directs the Commission to develop the following programs on the reservations in cooperation with the two tribes: construction of development highways and access roads; proper utilization of agricultural and water resources; agreements between the tribes and the Commission concerning land stabilization, erosion control, and reclamation; mining and extraction of mineral resources; economic development; manpower and extraction of health and hospital care; construction and operation of schools and provision of educational services; construction or rehabilitation of housing to meet needs of low- or moderate-income families and individuals; and effective law enforcement and administration of justice. Generally speaking, the Commission would apportion funds made available for these programs between the two tribes in proportion to their respective resident populations.

Title III of S. 3230 would resolve the Hopi-Navajo land controversy on the basis of various Congressional findings, among them that Hopi occupancy of the joint-use area has been *de minimis*; that expulsion of Navajos from the area would create serious hardship for them and result in substantial cost to the United States; and that separate treatment of the area's surface and subsurface estates is feasible. Accordingly, the bill would direct the Commission to determine the proportionate use of the joint-use area as of July 22, 1958 (the date of enactment of the Federal law which committed the dispute to judicial determination and vested joint, equal but undivided ownership of the

disputed area in the two tribes). Upon receiving the Commission's determination, the Secretary of the Interior would issue an order declaring that the surface areas used respectively by each tribe as of that date be held in trust for it, except that certain Hopi easements would be maintained on Navajo land; and fixing the monetary amount due the Hopi Tribe should its surface area turn out to be less than one-half the total acreage. The Secretary would also be directed to loan up to \$18 million, without interest, to the Navajo Tribe upon certain specified conditions. The subsurface estate of the joint-use area would be held in trust for—and managed jointly by—the two tribes, subject to the supervision of the Secretary of the Interior. Finally, S. 3230 would settle the controversy over the Moencopi area by conferring jurisdiction over the controversy, including the power to partition the area, on the U.S. District Court for the District of Arizona.

IV. S. 3724

Titles I and II of S. 3724 and S. 3230 are virtually identical. The two bills differ substantially, however, in settling the Hopi-Navajo land dispute. S. 3724 would authorize the Arizona District Court to partition the joint-use area between the two tribes. As in H.R. 10337, among the criteria to be applied by the court to this partition would be the inclusion in the Navajo area, insofar as possible, of all areas having high Navajo population density. The subsurface estate of the joint-use area would remain undivided, to be managed jointly by the tribes. The bill would resolve the controversy over the Moencopi area by declaring that a specified tract of land within the area described in the bill would be held in trust for the Hopi Tribe.

Any adult member of either tribe identified by the Secretary of the Interior as having resided since birth on that portion of the joint-use area held in trust for the other tribe would be authorized to continue to reside there for life. Any adult member of either tribe identified as having resided for a lesser amount of time on that portion of the joint-use area held in trust for the other tribe would be authorized to continue to reside there for that same period of time. Certain relatives of both classes of person could live on these persons' residential sites for comparable periods of time.

S. 3724 would provide that the United States would purchase the habitation and improvements of relocated Hopi or Navajo households and would make other payments in a manner similar to that set out in H.R. 10337 in the Senate. Finally, the bill would direct the Secretary of the Interior to calculate rental values attaching to each tribe's use of lands held in trust for the other under the life or equivalent-term-of-years residence programs described *supra*. The United States would reimburse the tribes for any inequities in such rental calculation.

V. DISCUSSION

Since our May 14, 1973, report to the House, relatively little progress in settling the Hopi-Navajo dispute over the joint-use area has been made. The Arizona District Court has held the Chairman of the Navajo Tribe in contempt for failure to abide by its order to reduce

the amount of livestock grazed by that tribe in the area. The Hopi Tribe has recently promulgated a new, stringent trespassing ordinance which if enforced would result in the Hopi Tribe's impounding Navajo livestock in the joint-use area. We consider it only a matter of time before existing conditions erupt in hostile confrontations between the two tribes. Finally, we have seen that the court's order to reduce livestock will inevitably lead to some relocation of people. At present there is no statutory authority to compensate people who must move because of the loss of or to follow their livestock; this is a gap which we believe must be filled. For all these reasons, we endorse the basic concept of H.R. 10337: the court should be given jurisdiction to partition the joint-use area.

Judicial partition of the disputed area would be meaningless without providing for relocation of such Indians as may be living on tribal land within the portion of the joint-use area that is partitioned to the other tribe. We recognize that a major relocation of people in this way is a grave human problem. We earnestly hope that if H.R. 10337 is enacted, the affected people will move willingly to join their tribespeople, and we are recommending a system of cash incentives to encourage early and voluntary relocation. However, we believe it is likely that some affected persons will resist relocation and that the authority of the United States Government will have to be invoked to compel their relocation. The forcible movement of people is an action that we are most reluctant to recommend. However, in light of the history and present state of the tribes' dispute, we see no alternative if the Hopis' adjudicated rights are to be realized.

In the remainder of this section, we shall provide the outlines of our position. In the last section of this letter, we shall offer the amendments to H.R. 10337 in the Senate which are necessary to implement that position.

We have no objection to the guidelines for judicial partition set out in section 2 of H.R. 10337. With regard to relocation, we believe that intensive study is required before any persons are moved. Relocation of large numbers of people pursuant to judicial decision would present the United States with an exceedingly complicated situation involving problems of promulgation, census, appraisal, logistics, and location and construction of housing. Accordingly, we believe that a period of two years after the decision of the court should be allowed for planning and preparation of the necessary relocation. At the end of the two-year period, we would submit this plan to the Congress; if after sixty days the Congress had not enacted overriding legislation, we would begin to implement the plan. Although we believe that the 5-year relocation schedule set by H.R. 10337 is appropriate, we recommend against a 20 percent per year quota of relocated persons. We believe that such determinations as this should be left to the plan which we would develop.

In addition, we generally support the relocation payment provisions of section 12 of H.R. 10337. As stated above, however, we believe that there should be cash incentive payments to encourage voluntary and early relocation by affected persons. We propose to pay \$5,000 on the date of relocation to heads of households who contract to move before the end of the first year after the plan referred to above goes

into effect. We also propose that heads of households who so contract within two, three, and four years be paid \$4,000, \$3,000, and \$2,000, respectively. Heads of households who contracted to move in the fifth year after the plan went into effect would receive no incentive payment.

Section 10(b) of H.R. 10337 would authorize and direct the Secretary to sell up to 250,000 acres of land to the Navajo Tribe. We strongly recommend that the Secretary be authorized, in his discretion, and not also directed to make such a sale. We also recommend that only the surface estate of such lands be transferred to and held in trust for the tribe.

We recommend that the dispute over the Moencopi area be settled by the court, with the jurisdiction to effectuate its determination by partition, and not by direct partition as in section 7 of H.R. 10337. The disadvantage of direct partition is that neither the Hopi nor the Navajo interest in this area pursuant to the 1934 Act which consolidated the Navajo Reservation has ever been judicially determined. Congressional determination of the tribes' relative interests would inevitably lead to litigation, with the likely result being a judicial determination that the United States had taken property rights from one of the tribes and was obliged to compensate the aggrieved tribe. We therefore believe that judicial determination of the tribes' interests and corresponding judicial partition of the Moencopi area are the proper procedures for settling this dispute.

Because of our uncertainty as to the funds necessary to settle the Hopi-Navajo dispute—an uncertainty which must await the court's decision and the development of the plan discussed above—we recommend that all authorizations in the bill be open-ended rather than fixed at definite dollar amounts.

VI. PROPOSED AMENDMENTS TO H.R. 10337

Section 1: no comment.

Section 2: The words "share and share alike" should be stricken from page 2, line 9, to avoid the implication of a continued joint interest of the tribes in the surface area after partition.

Section 2(g): For purposes of clarification, we suggest adding at the end of this subsection (page 3, line 13) the words "including but not limited to the area described in section 21 hereof." We also recommend that a new criterion for partition be added, as subsection 2(h): "Insofar as possible, the joint-use area shall be partitioned so as to provide equal likelihood of mineral development in each tribe's partitioned area."

Section 3: no comment.

Section 4 and 5: no comment.

Section 6: We agree that continued joint ownership of the beneficial interest in the mineral rights within the joint-use area is necessary: since the area's mineral values are unknown, it would be impossible to divide them equitably. However, as this section now stands, there is the possibility that a disagreement between the tribes could block one tribe's desire to develop mineral resources. The Secretary would work with the tribes to reconcile the differences, but we recommend that the

following provision be added at the end of section 6 to give the Secretary authority to approve development if he believes it to be in the tribes' overall best interests despite the objections of one tribe:

In the event of a dispute between the tribes regarding the exploration or development of such minerals, the Secretary is authorized to resolve such dispute by arbitration; if such arbitration is not successful, the Secretary is authorized to take such actions, consistent with his trust responsibility as he determines are in the best interest of the tribes.

Section 7: In line with our recommendation that the dispute over the Moencopi area to be settled by judicial partition, we suggest that, with minor modifications, the language in section 303 of S. 3230 be substituted for the present language in section 7 of H.R. 10337. The modifications we propose are for purposes of conformity with the framework of H.R. 10337 and recognition of the existence of individual Hopi and Navajo allotments within the area described by section 7 of H.R. 10337 (*i.e.*, our language as supplemented by our amendment to section 15, *infra*, would avoid any taking of these allotments). In line 2, page 25, of S. 3230, after the date "1934," we would add the following phrase: "except the 1882 Executive Order Hopi Reservation." At the end of the first and second sentences of the section 303(b) of S. 3230, we would insert the words "except as provided in section 15 of this Act".

Section 8: no comment.

Section 9: To carry out the intent of section 15—avoiding a taking of allotted lands while assuring that the allottees are subject to the jurisdiction of the tribe within whose reservation their allotments are located, we suggest that the phrase "(subject to the provisions of section 15 of this Act)" be inserted after the word "excepting" on page 7, line 8, and that the phrase "and those lands allotted prior to enactment of this Act" be inserted before the period in line 9, page 7.

Section 10: We recommend the insertions of a new section 10 and the renumbering of the present sections 10, 11, and 12 accordingly. The new section 10 would provide for the census and relocation plan mentioned above, as follows:

"Sec. 10(a) The Secretary of the Interior shall complete a report within one year after the date of final partition by the court pursuant to section 2 of this Act and a separate report within one year after the date of final partition pursuant to section 7 of this Act. Each such report shall contain the following information concerning the partition to which it applies:

(1) the names of all members of the Navajo Tribe who reside within the area partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the area partitioned to the Navajo Tribe; and

(2) the fair market value of the habitations and improvements owned by the heads of households identified by the Secretary as being among the persons named in clause (1) of this subsection.

(b) The Secretary of the Interior shall prepare plans corresponding to the reports required by subsection (a) of this section to carry out the removal and relocation of the households and their members identi-

fied pursuant to clause (1) of subsection (a) of this section. Each such plan shall:

(1) be developed to the maximum extent feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal governments;

(2) take into account the social and cultural impact of relocation on persons involved in such relocation;

(3) identify the place or places to which such households shall be relocated;

(4) specify the manner in which housing for such households and such related community facilities and services as water, sewers, roads, and schools shall be made available in timely fashion;

(5) be submitted to the Congress within two years from the date of the appropriate final partition by the court; and

(6) unless Congress provides otherwise by law, take effect sixty days after the date of submission to the Congress."

The relocation provision, section 10 of H.R. 10337, which would be renumbered section 11, should be amended to read as follows:

Sec. 11 (a) The Secretary of the Interior is authorized and directed to remove all Navajo households and members thereof; as determined by the Secretary, and their personal property, including livestock, from the lands partitioned to the Hopi Tribe pursuant to sections 2 and 7 of this Act. The removal from lands partitioned pursuant to section 2 of this Act shall take place in accordance with the plan required for such removal by section 10 of this Act and shall be completed by the end of five years from the date on which such plan goes into effect. The removal from lands partitioned pursuant to section 7 of this Act shall take place in accordance with the plan required for such removal by section 10 of this Act and shall be completed by the end of five years from the date on which such plan goes into effect. No further settlement of Navajo Indians on the lands partitioned to the Hopi Tribe pursuant to sections 2 and 7 of this Act or on Land Management District 6 shall be permitted unless advance written approval of the Hopi Tribe is obtained. No Navajo Indian shall hereafter be allowed to increase the number of livestock he grazes on the area partitioned to the Hopi Tribe pursuant to sections 2 and 7 of this Act, nor shall he retain any grazing rights in those areas subsequent to his removal therefrom.

To implement the incentive payment recommendation made in section V of this letter, we suggest that a new section 11(b) (replacing the old section 10(b), which would be renumbered 11(c) as discussed above) be added to H.R. 10337.

"(b) In addition to the payments made pursuant to section 13 of this Act, the Secretary shall make payments to heads of households identified in the report prepared pursuant to section 10(a) of this Act according to the following schedule:

(1) the sum of \$5,000 to each head of a household who, prior to the expiration of one year after the effective date of the appropriate removal plan provided for in section 10(b) of this Act, contracts with the Secretary to relocate. Such payment shall be made on the date of such relocation as determined by the Secretary.

(2) the sum of \$4,000 to each head of a household who is not eligible for the payment provided for in clause (1) of this subsection but who, prior to the expiration of two years after the effective date of the appropriate removal plan provided for in section 10(b) of this Act, contracts with the Secretary to relocate. Such payment shall be made on the date of such relocation as determined by the Secretary.

(3) the sum of \$3,000 to each head of a household who is not eligible for the payments provided for in clauses (1) or (2) of this subsection but who, prior to the expiration of three years after the effective date of the appropriate removal plan provided for in section 10(b) of this Act, contracts with the Secretary to relocate. Such payment shall be made on the date of relocation as determined by the Secretary.

(4) the sum of \$2,000 to each head of a household who is not eligible for the payments provided for in clauses (1), (2), or (3) of this subsection but who, prior to the expiration of four years after the effective date of the appropriate removal plan provided for in section 10(b) of this Act, contracts with the Secretary to relocate. Such payment shall be made on the date of such relocation as determined by the Secretary."

We also recommend that the following new section 11(c), which is designed to discourage persons from moving into the joint-use area in the hope of obtaining relocation incentive payments, be added to the bill:

"(c) No head of a household which moved into the joint-use area later than one year prior to the date of enactment of this Act shall be eligible for payments made pursuant to this section."

Section 10(b) of H.R. 10337 should be renumbered as 11(d) and, in order to provide necessary discretion in the relocation of Navajos, we recommend that it be amended to read as follows:

"(d) Consistent with the plan required by section 10(b) of this Act to be developed within one year after the date of final partition by the court pursuant to section 2 of this Act, the Secretary is authorized to transfer to the Navajo Tribe the surface estates in lands under his jurisdiction in the States of Arizona and New Mexico which he deems to be suitable and necessary to carry out the removal and relocation of Navajo households and their members pursuant to this Act. The total lands so transferred pursuant to this subsection shall not exceed 250,000 acres. Title to lands so transferred shall be held by the United States in trust for the benefit of the Navajo Tribe, which shall pay to the United States the fair market value for lands so transferred. Such lands shall, if possible, be contiguous, or adjacent to the Navajo Reservation. As to all land transferred pursuant to this subsection, the United States shall reserve and retain all minerals in such land, together with the right to mine, develop, and remove them."

The relocation of Hopi Indians would be governed by a new section 12, which would read as follows:

"Sec. 12. The Secretary of the Interior is authorized and directed to remove all Hopi households and members thereof, as determined by the Secretary, and their personal property, including livestock, from the lands partitioned to the Navajo Tribe pursuant to sections 2 and 7 of this Act. The removal from lands partitioned pursuant to

section 2 of this Act shall take place in accordance with the plan required for such removal by section 10(b) of this Act and shall be completed by the end of two years from the date on which such plan goes into effect. The removal from lands partitioned pursuant to section 7 of this Act shall take place in accordance with the plan required for such removal by section 10(b) of this Act and shall be completed by the end of two years from the date on which such plan goes into effect. No further settlement of Hopi Indians on the lands partitioned to the Navajo Tribe pursuant to sections 2 and 7 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 partitioned to the Navajo Tribe pursuant to sections 2 and 7 of this Act, nor shall he retain any grazing rights in those areas subsequent to his removal therefrom."

Section 12(a) (renumbered 13(a)): On page 9, line 6, we suggest that "Secretary of the Interior" be substituted for "United States". On page 9, line 7, the words "Navajo and Hopi" are unnecessary. To take into account our proposed new section 10(a) we suggest, before the period in line 11 on page 9, the insertion of the phrase "as determined under clause (2) of section 10(a) of this Act".

Section 12(b) (renumbered 13(b)): We suggest that provision be made in the first proviso for housing cost increases over the life of the Act. This could be accomplished by inserting before the colon in line 5, page 10, the following:

except that the Secretary may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease such limitations to reflect changes in housing development and construction costs, except for costs of land, during the preceding year.

In the second proviso to the same subsection, the one-year period is unduly restrictive; we recommend that on page 10, line 9 the word "one" be changed to "two".

We also recommend that an additional proviso be inserted into clause (2) to insure that the payments are used for their purpose. We would add to the end of the clause (line 16, page 10 of H.R. 10337) the following:

Provided, further, That payments made pursuant to this clause shall be used only for the purpose of obtaining decent, safe, and sanitary replacement dwellings adequate to accommodate displaced households.

Consistent with our amendment to section 10 (renumbered 11), section 12(c) (renumbered 13(c)) should be amended by adding a new sentence at the end thereof:

No payments shall be made pursuant to this section to any person who was not a resident of the area from which he is being relocated for at least one year prior to the date of enactment of this Act.

Sections 13 and 14 should be combined into one section as follows: "Sec. 14. The Secretary of the Interior is authorized and directed to determine annually the aggregate fair rental values of the use made

(a) by members of the Navajo Tribe of lands partitioned to the Hopi Tribe pursuant to this Act and (b) by members of the Hopi Tribe of lands partitioned to the Navajo Tribe pursuant to this Act. To the extent that in any year the value in clause (a) exceeds the value in clause (b), the Navajo Tribe shall pay an amount equal to such excess to the Hopi Tribe. To the extent that in any year the value in clause (b) exceeds the value in clause (a), the Hopi Tribe shall pay an amount equal to such excess to the Navajo Tribe.

Section 15: To take into account the presence of Paiute Indians and avoid a jurisdictional vacuum with respect to them, we suggest that "and Paiute" be inserted after "Hopi" on page 11, line 16, and after "Navajo" on page 11, line 18.

Section 16: no comment.

Section 17: no comment.

Section 18: no comment.

Section 19: no comment.

Section 20: We recommend that the sentence beginning on line 19, page 14, be amended to read as follows: "The Secretary of the Interior is directed to institute such use practices and methods within such area as are necessary to improve the grazing potential of the area." In addition, for purposes of clarification, we suggest that the sentence beginning on page 14, line 22, be rewritten as follows:

He shall, in addition, provide for the survey, location of monuments, and fencing of boundaries of any lands partitioned pursuant to this Act.

To recognize the fact that this Department has sufficient general appropriations authorization authority to meet the expenses to be incurred pursuant to section 20, we suggest that the last sentence of the section be stricken.

Section 21: no comment.

Section 22: no comment.

Section 23: no comment.

Section 24(a). We suggest that the sum authorized to be appropriated for the relocation expenses under section 12 (renumbered 13) be changed to "such sums as may be necessary" due to the uncertainties of actual costs over the approximately seven years that the expenses will be incurred. We also recommend that sums appropriated remain available until expended. Since section 24(b) is duplicative of existing authority, as well as of authority provided in section 20, as discussed *supra*, we recommend that section 24 be rewritten as follows:

"Sec. 24. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, such sums to remain available for the purposes of this Act until expended."

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,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., July 29, 1974.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: During the July 24, 1974 hearing before your Committee on H.R. 10337, and other bills relating to the Navajo-Hopi land dispute, we were asked to furnish current information as to the costs of implementing H.R. 10337 for purposes of establishing an appropriation authorization figure in the event the Committee does not accept our request for an open-ended authorization.

The authorization figures in H.R. 10337 as passed by the House were based on the information contained in the enclosed January 25, 1974 letter which we provided to the House Indian Affairs Subcommittee. In summary, that information was as follows:

	<i>Million</i>
Purchase of improvements-----	\$6.4
Moving expenses-----	2.0
Replacement dwellings-----	20.4
Boundary survey-----	.3
Total -----	29.1

Section 20 of H.R. 10337 was revised by a floor amendment and now contains a \$10 million appropriation authorization for livestock reduction and restoration of the grazing potential of the joint use area "to the maximum extent feasible". We have no firm plans or figures on the cost of such restoration. However, we believe that a \$10 million authorization utilized over a 20 year period of restricted grazing might achieve restoration. A 10 to 12 year program with restricted grazing would probably require \$50 to \$60 million to achieve restoration. As indicated in our report to your Committee, we have sufficient authority to request appropriations for range restoration activities and the section 20 authorization is unnecessary.

The cost of the incentive payments which we proposed in our July 23 report to your Committee would depend upon how many households voluntarily agree to relocate and when they do so. If all 1,100 of the households, which we estimated in our January 25 letter to the House Subcommittee might be displaced by the bill, elected to leave between the date of final partition and one year after the effective date of our relocation plan, the cost would be \$5.5 million (1,100 × \$5,000) in addition to the above figures. If none of the families agreed to leave voluntarily the provision would cost nothing although we would anticipate considerable Federal costs under other authorities for court eviction actions, marshalls, Bureau staff, etc., that would be associated with forcible removals.

The housing cost figures which we provided the House Subcommittee in our January 25 letter, for use in connection with section 12 (b) (2) of H.R. 10337, were based on total costs of \$21,000 and \$26,000 per housing unit for the small and large families respectively each

reduced by the approximately \$6,000 per family value of habitations and improvements to be purchased by the Secretary pursuant to section 12(a). Based on a current Farmers Home Administration approved project in the Window Rock, Arizona area, we now estimate those total cost figures to be \$23,000 and \$31,000 respectively. Therefore, based on these averages, the section 12(b) (2) limits should be \$17,000 and \$25,000 respectively and the total cost of section 12(b) (2) would be about \$23.1 million, assuming no further cost inflation.

With the above changes, the costs of H.R. 10337 for authorization purposes over the life of the bill, would be as follows:

	<i>Million</i>
Purchase of improvements.....	\$6.4
Moving expenses.....	2.0
Replacement dwellings.....	23.1
Boundary survey.....	.3
Incentive payments.....	5.5
Range restoration.....	10.0
Total	47.3

As indicated in our report, we recommend that the appropriation authorizations in H.R. 10337 be "such sums as may be necessary" and that the funds appropriated remain available until expended. If a dollar limitation is to be imposed on the appropriations to be authorized, we suggest that a single such amount be provided rather than separate amounts for various sections of the bill to minimize the possibility of amendatory legislation by our being able to offset higher than anticipated costs under one section with lower than anticipated costs under another section.

It should be noted that the above cost figures do not include the cost of damages for which the United States might be found liable in connection with implementing section 7 of H.R. 10337 which partitions an area outside the 1882 Executive Order Reservation to the Hopi tribe. As we indicated in our July 23 report to your Committee, the extent of the rights of the Hopis under the 1934 Navajo boundary act (48 Stat. 960) has not been judicially determined and the extent to which the Congress grants the Hopis more than they 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.

Sincerely yours,

(Signed) MORRIS THOMPSON,
Commissioner of Indian Affairs.

XII. CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by H.R. 10337, as ordered reported.

XIII. ADDITIONAL VIEWS

STATEMENT OF SEPARATE VIEWS OF JAMES ABOUREZK

PART A

As Chairman of the Subcommittee on Indian Affairs I have presided over all the hearings which have been held on this legislation and have participated actively in the mark-up. Having been present at the mark-up, having contributed some of the changes in the bill which were adopted and having listened to the Committee discussion, I find that some of the observations in the Committee Report do not accurately reflect the decisions taken in writing the bill.

Specifically, the Report suggests in a number of places that the Committee concluded that the 1882 Executive Order area should be partitioned and that the surface must be divided equally. The fact is that the Committee agreed that any further litigation in the *Healing v. Jones* suit should be preceded by a negotiation period, which would hopefully result in a negotiated rather than an imposed settlement. The Committee also discussed and agreed that if legislation were to preordain the judicial result, it would make the negotiation process futile. Only if the judicial result could not be predicted, if the court were granted flexibility, would the negotiations have a chance of succeeding. With that result in mind, the Committee made important changes during the mark-up in the draft bill prepared by the staff. For example, at the suggestion of the Chairman, the last sentence in section 4(a) was changed from:

Following the District Court review and any modification in the report the Court finds necessary, and any further proceedings the Court schedules, the District Court shall partition the surface of the joint use area and enter the judgment in the supplemental proceedings in the Healing case.

to:

Following the District Court review and any further proceedings the District Court shall schedule, the District Court is authorized to make a final adjudication, including partition of the joint use area, and enter the judgment in the supplemental proceedings in the Healing case.

Also, at my suggestion, all references in the staff-prepared draft to "the partition" were changed to "any partition."

Thus, the basic thrust of the Committee-approved bill, as spelled out in section 4 and section 6 was to grant flexibility to the District Court in rendering its decision, as long as that decision is in keeping with the *Healing* decision.

In this context it is worthy of note that since the Committee acted, in its September 13, 1974 opinion in the supplemental proceedings in *Healing v. Jones*, the Court of Appeals for the Ninth Circuit observed in a footnote that it would be completely in keeping with the *Healing* decision for ". . . Congress, out of consideration for the respective economic needs of each tribe . . . to allow use of a greater proportion to either tribe", as long as arrangements are made to "compensate the dispossessed tribe". With regard to the subject of partitioning the Court pointed out that a partition "could be equal or assign a greater proportion of the joint use area to the more populous Navajo Tribe, if compensation were paid to the Hopi Tribe for the interest thus taken".

The Committee did not endorse the concept of an unequal partition, nor did it preclude it. It left the matter to the Court to decide. Any implication in the Report to the contrary does not reflect the text of the bill as agreed to by the Committee.

PART B

The Committee's pre-occupation with the issue presented by the dispute over the 1882 Executive Order area has caused it to pay only slight attention to the question of the Moencopi area. In going along with the Hopi demand for 245,000 acres of Navajo Reservation land, the Committee, by a vote of 9 to 6, has not only created a situation in which an impoverished group of Indians would be expelled from their homes and thus suffer hardship but may very well have violated the Constitution of the United States by effecting a taking without compensation. In addition to the millions of dollars which are authorized by this bill to be expended on the removal of the Navajos from land on which they have lived for generations, there will probably be the additional cost of over \$10,000,000 in damages for an unconstitutional taking.

There is persuasive evidence in the record that the rights of the Navajos and Hopis in the Moencopi area, which is within the Navajo Reservation, became fixed and definable in 1934. The Navajos assert that the evidence also shows that the Hopis acquired rights to not more than about 35,000 acres, which could properly be partitioned from the Navajo Reservation, but that the additional 210,000 acres which would under Section 8 be transferred to the Hopis have been and are Navajo-owned and that the Hopis have no right to that land.

The Hopis do not claim that they have a vested legal right to the 245,000 acres, but argue that Congress has discretion to allocate it to them. They ask that Congress should exercise that discretion in their favor because they failed in the case of *Healing v. Jones* to get the court to award to them all the interests they claimed in the 1882 Executive Order area.

As I have already observed, the Committee labored hard to develop an approach with regard to the 1882 Executive Order area, which would carry out the decision of *Healing v. Jones* by delivering to the Hopis possession of and/or compensation for a one-half interest in the joint use area. But the other side of the coin was that *Healing v. Jones* decided that the other owner of a half interest was the Navajo Tribe. It is that portion of the decision of *Healing v. Jones* which is

now to be negated by section 8 by taking land from the Navajos and giving it to the Hopis. For the Congress to enact the law designed to carry out one-half of the court's decision and to negate the other half is most assuredly not equal justice.

The argument that the Navajo and Hopi Tribes hold vested interests in the lands here in issue and that any partition by the Congress is likely to result in an unconstitutional taking, is advanced not only by advocates but is also the position of the Administration, as reflected in the Departmental report submitted on behalf of the Interior Department by the Commissioner of Indian Affairs on July 23, 1974.

That report recommends that the Congress provide for a judicial partition by adopting Sec. 303 of S. 3230, a bill supported by Senators Montoya, Domenici and Moss. In explanation of this recommendation, the Commissioner stated:

We recommend that the dispute over the Moencopi area be settled by the court, with the jurisdiction to effectuate its determination by partition, and not by direct partition as in section 7 [section 8 of the Senate substitute] of H.R. 10337. The disadvantage of direct partition is that neither the Hopi nor the Navajo interest in this area pursuant to the 1934 Act which consolidated the Navajo Reservation has ever been judicially determined. Congressional determination of the tribes' relative interests would inevitably lead to litigation, with the likely result being a judicial determination that the United States had taken property rights from one of the tribes and was obliged to compensate the aggrieved tribe. We therefore believe that judicial determination of the tribes' interests and corresponding judicial partition of the Moencopi area are the proper procedures for settling this dispute.

I must add that I know of no instance in recent times in which the Congress has enacted legislation which awards land claimed to be owned by one private citizen to another private citizen. A dispute of this kind should, under our system of constitutional government and due process of law, be settled in the courts and not by legislation. This fundamental rule of law should apply where Indians are involved just as it applies to non-Indians. Any other approach smacks of discrimination on the basis of race.

Therefore, both for reasons of law and for reasons of policy this controversy should be referred to the courts, as recommended by the Department of the Interior, rather than being decided by the Congress on an inadequate and incomplete record, particularly where that decision could result in a substantial money judgment against the United States and could cause substantial hardship to hundreds of displaced families.

ADDITIONAL VIEWS OF SENATORS FANNIN, HANSEN, McCLURE AND
BARTLETT

If the Tribes cannot agree between themselves on a full settlement of this old and bitter dispute a judicial settlement is necessary. Any judicial settlement requires partition of the land in approximately equal shares, in accordance with the Healing case.

The report and the bill have already been subjected to highly partisan interpretations, but it is crystal clear that the Committee decided that such a judicial partition is inevitable, failing tribal agreement. If there is not to be partition, why the establishment of a commission to relocate persons who must move on account of partition? Why the guidelines to the Court on partitioning? Why a Secretarial program of surveying and fencing partitioned lands? Why the provision for access to religious shrines? In short, what is the purpose of the bill, if not to provide judicial authority and direction for partition?

To whatever extent, if any, that the report contains or invites an interpretation that a judicial solution would not include partition, it reflects neither the bill nor the Committee decisions.

In its opinion of September 12, 1974, in the supplementary proceedings in the Healing case, the U.S. Court of Appeals for the 9th Circuit clearly stated that the U.S. Government is delinquent in not providing further authority for solving the problem, including either authority to the Court to partition, or direct Congressional partition. In reality, the fundamental reason for this legislation is to supply necessary partition authority.

We support the entire bill, and will defend it enthusiastically, but we cannot allow to pass unchallenged any view of the legislative history which does not acknowledge the Committee contemplated and expected partition to be the end product of a judicial resolution of this long-enduring conflict.

