

going along. No doubt the Court was more cohesive because he was Chief Justice, but that had little to do with charm in any cheap sense of the word. It had to do with the man's tireless devotion to his work, with his unusual ability, legal as well as administrative, and most of all with the unmistakable purity of his motives. Sure, he knew how to shake your hand, and even ten years after his appointment to the Court he instinctively waved back at people who waved at his car. But those were just the leftover reflexes of a prior life in politics: anyone who thought they were the way the Chief Justice did business would soon learn his mistake. He was a leader because he was a man with a mission, and because the mission was good.

If a law clerk's tribute is supposed to be full of anecdotes that demonstrate what a fascinating private character his boss was, then this tribute will be a disappointment. Oh, the Chief was a great sports fan—that's not made up—and a close and present student of the political process. But that's not so terribly interesting, and it was all secondary. There was simply too much important work to leave room for the cultivation of engaging eccentricities. I suppose it may be a little dull after all, but Earl Warren did not add up to a great deal more than the public record makes him—one of the greatest single forces for right the nation has ever known. The public man was the man, and that was a good deal more than the rest of us can even hope to be.

The public man was, always was, a democrat. The image often conveyed by the academic press of Chief Justice Warren and the Court he led was that of an unprecedented willingness—rightly or wrongly, depending on the commentator's biases—to super-impose the judiciary's value judgments on those arrived at by the political processes. There was some of this, to be sure, when liberty genuinely hung in the balance. But like any good lawyer, the Chief was preoccupied with questions of process—not simply of the criminal process which he so thoroughly understood, but more importantly of the democratic process as well. His concern lest those in power freeze others out of that process was most obvious in his voting rights opinions. But privately at any rate, he saw first amendment cases in much the same terms. He could expound on the values of self-expression, and the marketplace of ideas, as eloquently as the next man, but what the cases really involved for him were efforts on the part of the in's to make sure the out's stayed out. The racial discrimination and other equal protection cases were this too, if less obviously: the institution of representation, the Chief realized, will work only if the representative is made to understand that he cannot hurt the relatively powerless without at the same time hurting himself, or at least broad segments of the constituency on whose support he depends.

The Chief used to say that if *Reynolds v. Sims* had been decided before 1954, *Brown v. Board of Education* would have been unnecessary. The claim seems somewhat oversimplified, but it bespeaks a view of the judicial role that tells us much about the man and gives unity to much of his work. The Court's proper work, he was telling us, consisted not so much in second-guessing legislative value judgments as in tending the machinery of the democratic process to keep it from being captured, from becoming the self-serving organ of some privileged segment of society. A concern with process, seriously pursued, can lead in some quite "activist" directions.

The items that kept the Chief's death from being headline news remind us (as if we needed reminding) that those who love the Constitution have had much to mourn of late. But while we should weep for the absence in public life of men like Earl Warren,

we need not weep for him. He lived the American Dream. Quite a number of men have done that, however. The Chief did something that few will ever do; he did what he set out to do. And that was to make the American Dream more broadly accessible than it had ever been before.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, morning business is closed.

AMENDMENT OF THE EXPORT-IMPORT BANK ACT—CONFERENCE REPORT

The PRESIDING OFFICER (Mr. BAYH). Under the previous order, the Senate will now proceed to the consideration of the conference report on H.R. 15977, which the clerk will state.

The legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15977) to amend the Export-Import Bank Act of 1945, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the report.

(The conference report is printed in the House proceedings of the CONGRESSIONAL RECORD of October 3, 1974, at p. 34424.)

ORDER FOR ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 10 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

SURFACE RIGHTS IN THE 1934 NAVAJO RESERVATION

Mr. METCALF. Mr. President, I believe the time has arrived to call up H.R. 10337 and ask for its immediate consideration.

The PRESIDING OFFICER. Under the previous order the Chair lays before the Senate H.R. 10337, which the clerk will state.

The legislative clerk read as follows:

A bill (H.R. 10337) to authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purposes.

The Senate proceeded to consider the bill, which had been reported from the Committee on Interior and Insular Af-

fairs with an amendment to 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 recommen-

dations (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 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 provision 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, inso-

far 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, as trader license fees or commissions, lease rental or proceeds, or other similar 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 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 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;

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

thence west, a distance of approximately 9 miles, to the north quarter corner of section 4, township 32 north, range 11 east;

thence south, a distance of approximately 4 $\frac{3}{4}$ miles following the centerlines of sections 4, 9, 16, 21, and 28 to a point where said 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 southerly, following the centerline of United States Route 89, a distance of ap-

proximately 11 miles, to the south boundary of section 2, township 29 north, range 9 east (unsurveyed);

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

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

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

thence due north, along said west boundary, a distance of approximately 27½ 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 described in the Act of June 14, 1934 (48 Stat. 960), except 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, 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 for the Hopi Tribe and as a part of the Hopi Reservation.

Sec. 11. (a) The Secretary is authorized and directed to transfer not to exceed 250,000 acres of lands under the jurisdiction of the Bureau of Land Management within the States of Arizona or New Mexico to the Navajo Tribe: *Provided*, That the Navajo Tribe shall pay to the United States the fair market value for such lands as may be determined by the Secretary. Such lands shall, if possible, be contiguous or adjacent to the existing Navajo Reservation. Title to such lands which are contiguous or adjacent to the Navajo Reservation shall be taken by the United States in trust for the benefit of the Navajo Tribe.

(b) Any private lands the Navajo Tribe acquires which are contiguous or adjacent to the Navajo Reservation may be taken by the United States 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 executive branch the Navajo and Hopi Indian Reloca-

tion Commission (hereinafter 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 a GS-18 under the General Schedule contained in section 5332 of title 5, United States Code, for each day (including time in travel) or portion thereof during which such member is engaged 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 of the Commission shall be reimbursed for travel, subsistence, and other expenses 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 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 3 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 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 subsection, 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 members 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 38 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.

Mr. METCALF. Mr. President, I yield myself such time as I may need for an opening statement and, thereafter, I shall yield to the two Senators from Arizona.

Mr. ABOUREZK. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. METCALF. Certainly, I am glad to yield to the Senator from South Dakota.

Mr. ABOUREZK. Mr. President, what is the regular order? Under the calendar, what is the regular order of business?

Mr. METCALF. This does not come out of my time, this parliamentary inquiry.

The PRESIDING OFFICER. I have been advised by the Parliamentarian that the Indian matter before us is the regular order.

If the Senator from South Dakota would like to know what would happen in response to a call for the regular order, the Parliamentarian advises that the answer is—

Mr. ABOUREZK. Yes, I would like to know what would be different.

The PRESIDING OFFICER. I understand the answer would be different.

Mr. ABOUREZK. I call for the regular order, because I understand the Export-Import Bank conference report was to come up before this bill.

The PRESIDING OFFICER. The call for the regular order would require the Senate to proceed to the consideration of the Export-Import Bank conference report.

Mr. ABOUREZK. I call for the regular order.

The PRESIDING OFFICER. The clerk will report.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield? I ask unanimous consent that this time not be charged against the Senator's time. Will the Senator withhold his calling for the regular order, which he can do until this afternoon, until the Senator makes his opening statement, and someone on the other side makes an opening statement on this bill? The Senator from Montana was about to start his opening statement and he has been unable to complete it.

Mr. ABOUREZK. Mr. President, before I withdraw—and if I do withdraw I shall say so in a minute—I have another parliamentary inquiry. Who controls the time on the particular Navajo-Hopi thing? Who controls the time on each side?

The PRESIDING OFFICER. The Chair is advised that presently the time is controlled between the distinguished Senator from Montana (Mr. METCALF) and

the distinguished Senator from South Dakota (Mr. ABOUREZK).

Mr. ABOUREZK. Then I will withdraw my call for the regular order under a unanimous-consent agreement that the regular order will be called for after the opening statement of the Senator from Montana.

Mr. METCALF. And the Senator from Arizona.

Mr. ABOUREZK. If he wants to use it, I will ask unanimous consent that that be the order.

Mr. MANSFIELD. Mr. President, a parliamentary inquiry. What is the situation at this time?

The PRESIDING OFFICER. The situation is up in the air at this time.

Mr. MANSFIELD. That is why I made the inquiry.

The PRESIDING OFFICER. The regular order has been called for, and that has been suspended temporarily, and the Senator from South Dakota is now trying to determine whether to pursue his right to call for the regular order, and has proposed a unanimous-consent request, the Chair thinks.

Mr. MANSFIELD. Mr. President, the Senator from South Dakota does have the right to call for the regular order, because it was my understanding—and I thought I had an agreement with the Senator from South Dakota, which I find I did not have, and it is the fault of both of us, insofar as misunderstanding each other yesterday is concerned—but it had been my intention to lay before the Senate the Export-Import Bank conference report as the first order of business today. It is a privileged matter.

Then I had indicated to the Senate that around the hour of 12:30 or 1 o'clock it would be my intention to lay aside the Export-Import Bank conference report and take up the Navajo-Hopi Indian bill. However, I was informed while in my office that the Navajo-Hopi Indian bill had been laid before the Senate and made the pending business.

Therefore, I was waiting until my distinguished colleague, the Senator from Montana, had completed his statement so that I could engage in this colloquy and this explanation.

I would hope it would be possible to take up the Export-Import Bank conference report at least for a couple of hours to see what progress, if any, can be made, and then to lay it aside and take up the Navajo-Hopi Indian bill at that time to see what progress can be made there.

I would inform the Senate that prior to recess I had intended to call up the Navajo-Hopi bill, but after consultation with the distinguished Senator from South Dakota, and at his request, I must say, it was put over until we returned from the election recess.

I had also intended to bring it up yesterday afternoon, but after consulting with several Senators who were interested on the side against the committee's recommendation, I agreed that it would be taken up today.

So I hope that, even though the distinguished Senator from South Dakota is perfectly within his rights in calling

for the regular order, it will be possible for the manager of the bill, the distinguished Senator from Montana (Mr. METCALF), and one of the two distinguished Senators from Arizona (Mr. GOLDWATER), (Mr. FANNIN), to complete their remarks, to then go to the Export-Import Bank conference report, and after a couple of hours return to the Navajo-Hopi Indian bill. In that way I would be keeping—

Mr. METCALF. If I may respond to my colleague from Montana, I have consulted with my colleagues from Arizona. I believe that we would prefer to make our opening statements and have continuous action on the Navajo-Hopi bill.

So if the Senator from South Dakota insists on regular order, we would prefer to set this aside at this time and take it up in accordance with the agreement the majority leader had with the Senator from South Dakota.

I would rather have a continuous debate and discussion than to interrupt after our opening statements.

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GOLDWATER. Is there a unanimous-consent request pending?

The PRESIDING OFFICER. I think the Senator from South Dakota made a unanimous-consent request, that may have been changed as far as he is concerned as the result of these matters.

Mr. ABOUREZK. I withdraw that request.

The PRESIDING OFFICER. It is noted, the unanimous request has been withdrawn. What is the wish of the Senate?

Mr. MANSFIELD. If the Senator will yield to me, would the Senator from South Dakota—we have discussed this matter earlier—agree at this time to my suggestion?

That is all it is; the Senator is perfectly within his rights. I want to make that very plain. But we are in a dilemma due to misunderstandings and a backward turning of priorities for the consideration of legislation, and I would like to find some way to get out of it with some good grace.

Mr. ABOUREZK. I intend to call for regular order, and I want to state that when the majority leader and I talked the other day, the agreement—at least according to how I understand it—was that he would not call up the Navajo-Hopi bill until after the Export-Import Bank was disposed of.

Mr. MANSFIELD. If the Senator will yield.

Mr. ABOUREZK. His understanding was that he would call up the Export-Import Bank, deal with it for a time, and then bring up the Navajo-Hopi bill.

Mr. MANSFIELD. That is correct.

Mr. ABOUREZK. It was a distinct misunderstanding on the part of both of us.

In view of that, however, I did relinquish some rights on yesterday, contingent upon the understanding I had, and because I gave up those rights I want to state to the majority leader and to the Senate that I intend to ask for regular order and hope that the Export-Import

Bank bill will be completed before we bring up the Navajo-Hopi bill and I ask for the regular order.

Mr. METCALF. Mr. President, will the Senator withhold that for a moment?

Mr. ABOUREZK. Yes.

Mr. METCALF. And with the agreement that none of this comes out of our time.

The PRESIDING OFFICER. It is not coming out of the time.

Mr. METCALF. I yield to the distinguished Senator from Arizona (Mr. GOLDWATER), who formerly had control of the time?

Mr. GOLDWATER. We have been held up passing on this legislation now for several months. I do not know what the distinguished Senator from South Dakota has in mind. I knew he was prepared to come on the floor and defend his amendments.

I dislike very much what has taken place, because it was my understanding with the leader that the Export-Import Bank bill would be laid aside at 12:30 and we would proceed on the Navajo-Hopi bill.

Now, if it is the intention of the Senator from South Dakota to delay this until the final passage of Export-Import, I will remind him that could be after the Thanksgiving recess and I think we put this off too long.

I do not know what the motives are of the Senator from South Dakota, but I think it is time we acted on this and not be dillydallying, putting it off on parliamentary rules.

Mr. MANSFIELD. Mr. President, all I can say is that my hands are tied.

Mr. METCALF. Well, I would like to have an agreement with the Senator from South Dakota that we will take up and complete this bill today.

Is the proposal of the Senator from South Dakota to try to delay this bill and prevent its passing today or until after the Thanksgiving recess?

Mr. ABOUREZK. My intention is to allow the Export-Import bill to be completed before the Navajo-Hopi bill is brought up.

Mr. MANSFIELD. Mr. President, will the Senator yield?

Mr. METCALF. I am delighted to yield, if I have the floor.

Mr. MANSFIELD. The Senator does have the floor.

May I say that the Export-Import Bank conference report is in very serious trouble; that there will be strenuous effort to defeat the conference report or to send it back to conference with the stipulation that the amendments agreed to in the Senate be, once again, incorporated.

May I point out also that there is an expiration date to the Export-Import Bank, the 30th of this month, I believe. After that, its legislative functions will be in limbo, if not lost.

But again I want to say that I did talk to the distinguished Senator from South Dakota and at his request did put over the pending legislation from sometime prior to the election day recess with the understanding that it would be taken up after we returned from the election day recess, and with the further under-

standing with the Senator's concurrence—and he can correct me if I am wrong—that there would be a time limitation attached to the bill.

Furthermore, I have stated on several occasions since the Senate has returned, first, that the pending bill would be taken up on Monday of the 2d week of our return. In response to some requests, I deferred that until Tuesday and the result is that we now have reached an impasse, and the distinguished Senator from South Dakota in calling for the regular order is entirely within his rights. But I think that the record should be laid out on all the facts insofar as the Senator from Montana in his capacity as majority leader understands them and comprehends them.

It is unfortunate that on yesterday when I had talked with the distinguished Senator from South Dakota that we mutually misunderstood each other, but we did it in good faith.

I would hope that some means could be found, so that this matter could be taken up before we recess tomorrow and I do so not only because of an interest in the legislation itself, but also because of the fact that I have misled the Senate and I do not like to mislead the Senate or any Senator on any occasion.

But because of factors enumerated, all I can say is that the majority leader has no power at this time to change the desire of the Senator from South Dakota.

Mr. ABOUREZK. The facts as stated by the majority leader are correct. We did agree that this bill would be brought up after the election recess, which I am very hopeful that it will be; and that there was a time agreement arrived at, and we did agree upon a time limitation. The facts are absolutely correct.

I ask for the regular order.

Mr. METCALF. Is it the ruling of the Chair, Mr. President, that there has been a unanimous-consent agreement that we will complete the conference report on the Export-Import Bank before we can take up the Navajo-Hopi bill?

The PRESIDING OFFICER. There has been no agreement such as that posed or questioned by the Senator from Montana.

Mr. METCALF. I am not required—

The PRESIDING OFFICER. The Chair is advised by the Parliamentarian that a call for the regular does, indeed, place the Export-Import Bank bill before the Senate as the order of business.

The disposition of that measure, of course, is then up to the Senate.

Mr. MANSFIELD. Mr. President, if the Senator will yield further, I will at an appropriate time endeavor to get the unanimous consent of the Senate—it takes unanimous consent to lay aside the Export-Import Bank conference report—so that it might be possible to return to what is still the pending business, and I think I should serve notice to that effect.

Mr. GOLDWATER. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. METCALF. Well, what is the rule?

Mr. GOLDWATER. Would I be in order to move that the Export-Import Bank legislation be laid aside?

The PRESIDING OFFICER. The motion to proceed to the Hopi Indian bill is in order. The Chair is advised it does not require unanimous consent.

Mr. MANSFIELD. Mr. President, I would hope that the Senator from Arizona would not make that request, only because it is usually considered a leadership function and I do not intend to make that request.

Mr. GOLDWATER. I appreciate that very much. But, Mr. President, speaking for myself, I feel that the efforts are going to be continued to defeat this bill in any way it can be defeated. If that is the intention of the Senator from South Dakota, I think he ought to state it in the Chamber. He has repeatedly offered his objections to the consideration of this bill. Either we are going to consider it, or we are not.

This Export-Import conference report is not going to be settled by tomorrow night, in my opinion. I believe the Senator from South Dakota is fully aware of that. It looks like a lot of us are going to be deprived of Thanksgiving with our families at home.

I think this is a very important piece of legislation. I do not like any Senator holding it up.

Mr. FANNIN. Will the Senator yield?

Mr. METCALF. I yield to the Senator from Arizona.

Mr. FANNIN. Mr. President, in deference to fair play, I would hope that the distinguished Senator from South Dakota would let us proceed with this legislation. I just remind him that it was held up in committee, at his request, for many days. I happened to have been one of the sponsors of this bill, and I reported the bill on September 25, with the understanding that we were going to go forward with it. I happened to have been absent at the time of a unanimous-consent request. I am very pleased that my colleague from Arizona was here and handled the matter. At that time I talked to the distinguished majority leader. He said immediately after the recess this legislation would be considered. That was a commitment I felt was made. I went ahead and agreed that this was fine, and that we should go forward on that basis.

But here we are, without any connection whatsoever between the Export-Import Bank and this legislation. There is no reason whatsoever for holding this back. I would just implore the distinguished Senator from South Dakota to consider just exactly what is involved. If he wants to go along with delaying tactics, I think it is very detrimental to his cause. At the same time, if that is his desire, I see that he can cause some delay.

I just feel, Mr. President, that this is an effort in futility, to talk about the Export-Import Bank without having any connection whatsoever with the legislation we are considering. Holding it back seems just ludicrous. I hope the distinguished Senator from South Dakota will give further consideration to his point of issue.

The PRESIDING OFFICER. What is the will of the Senate?

Mr. ABOUREZK. Mr. President, I have asked for regular order a number of times—

Mr. MANSFIELD. Will the Senator withhold that request?

Mr. ABOUREZK. Yes, I will.

Mr. MANSFIELD. Mr. President, concerning the suggestion of a motion made by the distinguished Senator from Arizona, which I have indicated is normally a leadership function and which I said I would not offer, I am of the opinion that I will offer it at this time. I recognize that the motion is debatable, and that the debate might go on all afternoon and into tomorrow. I am quite sure it would.

Rather than make the motion, I think I will ask unanimous consent that the Export-Import Bank be laid aside temporarily, and that the Senate resume consideration of Calendar No. 1121, H.R. 10337.

The PRESIDING OFFICER. The clerk will report.

Mr. ABOUREZK. Reserving the right to object, what is that legislation, Mr. President?

Mr. MANSFIELD. This is the Navajo-Hopi legislation.

Mr. ABOUREZK. I object.

Mr. MANSFIELD. Mr. President, I ask that order be maintained in the gallery at all times.

The PRESIDING OFFICER. The point is well taken. We will have no commentary from the gallery.

Mr. METCALF. Mr. President, what is the ruling on the proposal of the Senator from South Dakota for regular order?

The PRESIDING OFFICER. The Senator has made it and then out of courtesy to some of his colleagues has withheld it.

Mr. METCALF. Yes, he withheld it.

Mr. ABOUREZK. Will the Senator yield?

Mr. METCALF. Surely.

Mr. ABOUREZK. Speaking for myself, I would be willing to agree to a unanimous-consent agreement that the Navajo-Hopi bill be brought up on Monday next, if anybody is willing to go along with that.

Mr. GOLDWATER. Mr. President, reserving the right to object, we now have an ultimatum laid down before us by the Senator from South Dakota who has not explained why he wants to delay this. We have a number of Hopi Indians who traveled 2,500 miles to be here today. Senator FANNIN and I have changed our plans to be here today. If the Senator from South Dakota has some logical explanation as to why he has continued to object to the passage of this bill, why he has put every obstacle in its path that he could, maybe he has reason enough that we can understand it. But it is most difficult to understand.

If the ultimatum is that regardless of the leadership's desires, regardless of either party's desire, one Senator is going to run this body, then I guess we have nothing to do but give in to him. I do not like it.

Mr. METCALF. Mr. President, I have no objection to the unanimous-consent request of the Senator from South Da-

kota. As I understand it, the first part of business after the morning hour Monday next will be the calling up of the Navajo-Hopi bill under the unanimous consent agreement previously entered into, with a limitation of time, as modified by transferring the time of the Senator from Arizona (Mr. GOLDWATER) to me for the handling of the bill, as far as the majority is concerned.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I am sure that the distinguished Senator from Montana intended to say that the Navajo-Hopi bill would be brought up immediately upon the conclusion of morning business rather than the morning hour.

Mr. METCALF. Yes; morning business.

Mr. ABOUREZK. Mr. President, I would make the request as follows: I ask unanimous consent that the Navajo-Hopi bill be the pending business on Monday next following the close—Mr. President, I would like to defer to the majority leader since that is his function.

Mr. GOLDWATER. On Monday, following morning business—reluctantly, I might say.

Mr. MANSFIELD. Mr. President, on behalf of the joint leadership in this respect, I ask unanimous consent that at the conclusion of morning business on Monday next, December 2, Calendar No. 1121, H.R. 10337, which is still the pending business, be made the pending business at that time; that in the meantime, H.R. 10337 be laid aside temporarily, until Monday next, and that the Senate proceed to the consideration of the conference report on the Export-Import Bank legislation.

Mr. GOLDWATER. Mr. President, reserving the right to object, will the Senator yield?

Mr. MANSFIELD. I should like to finish, first.

That on Monday next, H.R. 10337, the so-called Navajo-Hopi bill, remain the pending business until completed; and that, in accordance with the usual procedure, no votes occur before 4 p.m. on Monday, though they may be piled up in the meantime, as was the case on yesterday.

Mr. METCALF. But subject to the same time limitation.

Mr. GRIFFIN. The time agreement is still in effect.

Mr. MANSFIELD. Yes, the time agreement is still in effect.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METCALF subsequently said: Mr. President, earlier today I started to make an opening statement in support of the Interior and Insular Affairs Committee on the Navajo-Hopi settlement bill H.R. 10337. The Senator from South Dakota (Mr. ABOUREZK) insisted that the bill be set aside and a unanimous consent agreement was reached to take H.R. 10337 up Monday, December 2, 1974, immediately after the conclusion of the morning business. Inasmuch as I was interrupted in the presentation of my opening statement, I now ask unanimous consent that it be inserted in the RECORD

at this point in its entirety in order that the Members of the Senate may be informed as to the issues to be debated on Monday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

OPENING STATEMENT BY SENATOR METCALF
ON H.R. 10337

Mr. METCALF. Mr. President, by voting to approve the pending measure, this body has a priceless opportunity to correct an injustice inflicted on the Navajo and Hopi people which is a direct outgrowth of the Federal Government's failure to fulfill its solemn moral and legal responsibilities to these two tribes.

At issue are the conflicting claims of the two tribes to two areas. The first area, known as the joint use area, is approximately 1.8 million acres of land in northern Arizona which comprise a major portion of the original 2.5 million acre reservation established by an 1882 Executive order for, as the order states, "the use and occupancy of the Moqui (now the Hopi) Tribe and such other Indians as the Secretary of the Interior may see fit to settle thereon."

The second subject of dispute is approximately 8.2 million acres in the area established pursuant to the 1934 act as a reservation for the Navajo "and such other Indians as are already settled thereon." This second dispute is focused on several hundred thousand acres in the area known as Moencopi.

The origins of these disputes are rooted deep in this Nation's history predating by many years the 1882 Executive order and 1934 act. The Hopi Tribe has enjoyed continuous aboriginal use and occupancy of all the lands in question since approximately A.D. 600. Although the time of entry of the Navajo people into the Southwest is in question, available evidence indicates that they were settled in northern New Mexico as early as 1500. Eventually, the Navajo, a nomadic people, spread out from this area into other parts of what is now Arizona, New Mexico, and Utah. As a result of this constant process of migration and settlement, the Navajo came to surround the Hopi and occupy and, by strength of numbers, gain control of the disputed areas.

In an attempt to resolve the long-standing dispute on the first of these areas—the joint use area—the Congress enacted the act of July 22, 1958, authorizing each tribe to institute or defend an action against the other before a special three-judge panel of the U.S. District Court of Arizona for a determination of the rights and interests of the two tribes in the area. In 1962, the District Court for the District of Arizona reached a decision on the resulting suit. This decision reported as *Healing v. Jones* (210 F. Supp. 125), found, among other things, that "the virtual exclusion of Hopi Indians" from the joint use area was the result of, first Hopi "fear of the encircling Navajos and inability to cope with Navajo pressure," and, second, "illegal" administrative actions extending from 1937 to 1958. Principal among the court's conclusions was that the two tribes possess "joint, undivided, and equal rights" to the area. The *Healing v.*

Jones (373 U.S. 758) decision was affirmed by the U.S. Supreme Court in 1963.

Despite this decision, however, the dispute has not been satisfactorily settled. The principal reason for this was the district court's finding in the *Healing* decision that it did not possess the authority to partition the joint use area so to insure protection of the respective interests of the two tribes.

With the lands of the joint use area remaining undivided, these last 12 years have been filled with numerous administrative and judicial efforts to arrive at a formula for a true sharing of the area and a method of enforcing that formula. Most recently in a September 12, 1974, decision of the ninth circuit court—Hamilton against McDonald, appeals of the Navajo from orders of compliance issued by the district court were firmly denied. The court found possible grounds for "ouster" of the Hopi from the area in the "long history of dispossession—resulting from the combined effects of Navajo intrusions and depredations, often in violation of Navajo treaty obligations, expediently sanctioned by bureaucratic indifference, and furthered by illegal governmental restraints on Hopi use of the reservation." The circuit court ordered the Navajo to follow a Federal Government plan for the joint use of the area which requires them, among other things, to remove livestock from the area and restrict their building activities.

H.R. 10337, as reported, is a difficult and complex legislative proposal arising from numerous, lengthy mark-up sessions. Although I imagine none of us on the Interior Committee fully subscribe to each and every one of the provisions of H.R. 10337, as amended, I believe we do feel that the measure properly reflects the committee's views as to the best method to resolve the long-standing Navajo-Hopi land disputes concerning the joint use area and the Moencopi area. Although throughout the consideration of the measure, rollcall votes were taken in which members of the committee cast disagreeing votes, there clearly exists a committee consensus that the amendment in the nature of a substitute facilitates a resolution of the two disputes in a manner which is equitable and truly fair to both tribes.

The committee recognizes that no settlement of the joint use area can avoid hardships. However, we have done our best to limit those hardships while simultaneously honoring the *Healing* against *Jones* decision. To resolve the joint use area dispute, the committee first provided the opportunity for a final attempt to reach a voluntary settlement. It called for a 6-month arbitration effort. Only if that effort fails would final adjudication by the court be required.

In providing for this final adjudication, the committee constructed provisions which not only are compatible with the *Healing* decision but also represent a distinct compromise between the Hopi and Navajo positions. The language attempts to address both the Navajo fears of a mindless division of land on an absolute equality basis which they believe could result in massive social disruption

and the Hopi fear that the final adjudication could result in a "buy-out" of their land rights by the wealthier Navajo. The heart of the compromise is that if the court determines a division of the surface to be necessary, the division should "insofar as practicable" be nearly equal in quality or quantity. However, the guidelines in the bill also stated that the boundaries of any division should be drawn so as to minimize "social, economic, and cultural disruption" and that, should such an effort result in an unequal division of surface, there must be compensation by one tribe to the other.

I do not pretend that such final adjudication could avoid all hardships resulting from social dislocation. None of us have ignored this possibility. The courts, too, have recognized this. Most recently the ninth circuit court in its September 12 decision discussed the hardships problem. It stated that the rights of the two tribes in the area have been determined and that there could be no "rebalancing" of the hardships imposed on individual Navajos resulting from enforcement of those rights. The court further stated:

Moreover, were we now initially reviewing the original determination that each tribe was entitled to share and share alike, we could not say that the relative hardship hereby imposed on the members of the Navajo Tribe so outweighed the alternative inequity and hardship which would be imposed on the members of the Hopi Tribe were they deprived of their interest that the decree constituted a reversible abuse of discretion.

The committee, however, added sections to the proposal which would reduce, if not eliminate, any social disruption or other adverse impacts resulting from a final settlement of the joint use area dispute. These sections provide for a unique generous relocation program to be administered by an independent commission. The program includes relocation expenses payments, relocation incentive payments, purchases of relocatee's housing at fair market value, and insuring that all affected Navajo and Hopi are provided "decent safe and sanitary replacement dwellings." The bill also establishes a range rehabilitation program and a program for protection of religious shrines and sites. These generous provisions will, in most cases, result in a true bettering of the lives of affected members of both tribes.

The issues concerning the resolution of the Moencopi area dispute are quite similar to those relating to the joint use area in that both tribes have joint and undivided interests which must be separated in light of a long history of strife. Various alternatives were presented to the committee as to the mode of resolving this dispute, but we finally concurred in the congressionally mandated partition approach adopted by the House in the 92d and 93d Congresses.

As a result of the confusion on the use of my proxy pertaining to the Moencopi issue at the committee mark up a judicial resolution of the Moencopi dispute was passed by an 8 to 7 vote. I requested that this matter be reconsidered by the full committee. After discussion at the

following markup I personally voted in favor of the House provision which authorized a direct partition of the Moencopi area resulting in a grant of 243,000 acres of land to the Hopi Tribe. The House provision was finally approved by a 9 to 6 vote in the Senate Interior Committee.

Mr. President, I call upon the members of this body to reject any effort to alter the committee's decision on the Moencopi land dispute. Surely the record is clear on the unproductive and seemingly endless negotiations to which the Navajo-Hopi Tribes have been subjected in the joint use area controversy. We have not only an obligation, but the responsibility to act now in a decisive manner on the Moencopi land dispute in order to avoid a similar prolonged and agonizing controversy between the two tribes. We must not repeat the mistake of abdicating responsibility to the courts which we first made in enacting the 1958 act calling for judicial resolution of the joint use area dispute.

I wish to note, that in drafting the committee amendment to H.R. 10337, staff inadvertently omitted a provision which was neither debated nor subjected to a vote by the committee members during the markup sessions. To correct this omission, the distinguished ranking minority member of the committee, Mr. FANNIN, will offer a committee amendment to reinstate this provision in the committee amendment. I concur with his amendment and urge my fellow Senators to join with me in correcting this oversight.

Mr. President, I urge my colleagues to support this measure against all other amendments. It is a carefully constructed equitable bill. Any amendment, no matter how meritorious it may seem at first glance, will likely destroy the bill's neutrality and reopen it to amendments and the disputes to additional years of controversy.

Congress has the responsibility to act now to end these disputes and it can do so by enacting intact H.R. 10337, as reported by unanimous vote of the Interior Committee.

AMENDMENT OF THE EXPORT-IMPORT BANK ACT—CONFERENCE REPORT

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the conference report on H.R. 15977, which the clerk will state.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15977) to amend the Export-Import Bank Act of 1945, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

Mr. PACKWOOD. Mr. President, I ask unanimous consent that during the consideration of the conference report on the Export-Import Bank Act, the following staff members of the Committee on

Banking, Housing and Urban Affairs be permitted the privilege of the floor: Edward Kemp, Anthony Wood, Anthony Cluff, John P. Abshire, and Howard Beasley.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCHWEIKER. Mr. President, I ask unanimous consent that David Marston be permitted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARRY F. BYRD, JR. Mr. President, I ask unanimous consent that a member of my staff, Mr. Howard Segarmark, be permitted the privilege of the floor during the consideration of this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. NUNN). Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, I ask unanimous consent that the following staff members be granted the privilege of the floor during the consideration of this conference report and any votes thereon: William Weber, Charles Levy, Dudley O'Neal, Jr., Kenneth McLean, Stephen Paradise, Carolyn Jordan, and Stanley Marcuss.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. STEVENSON. Mr. President, despite earnest efforts, a number of important Senate-passed provisions were not retained by the conference. The report reflects the best bargain we were able to strike under the circumstances.

Among the reforms which the conference report accomplishes are the following:

One, authority for new commitments to the Soviet Union will be limited, initially at least, to \$300 million. Under the Senate-passed bill, the Bank would have had to return to Congress for additional authority once the \$300 million ceiling had been reached. The conferees substituted a provision permitting the ceiling to be exceeded if the President determines that it is in the national interest to do so.

Two, on each proposed Communist country loan of \$50 million or more, the President must determine that the loan is in the national interest before it can receive final approval. Under the Senate-passed bill, guarantees and loan-guarantee combinations would also have been subject to this requirement and the threshold would have been \$40 million instead of \$50 million.

Third, Congress will hereafter be notified of all proposed Exim loans of \$50 million or more at least 30 days prior to final Bank approval. This applies to all countries. Notification will include a complete description of the loan as well as an explanation of its necessity.

In the Senate bill, the threshold would have been higher—\$60 million instead of \$50 million, but guarantees and loan-guarantee combinations would have been included. The effect, on the one hand, is to increase the number of loans subject to prenotification; on the other hand, the exclusion of guarantees and loan-guarantees will reduce the number of major transactions subject to prenotification.

Fourth, Exim will hereinafter be required to take into account possible adverse effects on the competitive position of U.S. industries, the availability of materials in short supply, and employment before approving any credit, guarantee, or insurance.

Fifth, Exim will be required to give a complete description of all assistance for parent-subsidiary transactions in its annual report. The conferees agreed that the description should include: a. the identity of all parties to the transaction and their legal relationship; b. the goods or services exported; c. the amount of Bank participation and the terms and conditions thereof; and d. the reasons why Exim participation was needed.

Sixth, Exim will be required to describe in its annual report the progress it is making in reducing international credit competition.

Seventh, Exim will be required to include in its annual report a description of each loan involving energy-related products or services. The Senate-passed bill applied this requirement to all such transactions, not just loans. The Senate bill also required congressional approval of all Exim fossil fuel energy-related financing in Communist countries. That provision was not retained in conference.

Eighth, Eximbank will be required to describe in its annual report the progress it is making in assisting small business participation in Exim's programs.

In addition to these reforms, the conference report extends the life of Exim for 4 years, increases its authority to \$25 billion, and holds authority for credits to the Soviet Union in abeyance until passage of a trade reform act.

While the conference did not retain some of the key provisions of the Senate version, the bill, if approved, will, nonetheless, provide substantially enhanced oversight of Exim's activities. It will insure greater Exim sensitivity to national interests and to the impact of Exim's activities on the American economy.

Mr. President, I move the adoption of the conference report.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. SCHWEIKER. Mr. President, I object.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

Mr. PACKWOOD. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

Mr. HARRY F. BYRD, JR. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.