AUTHORIZE PARTITION OF SURFACE RI
NAVAHO-HOPI INDIAN LAND

HEARINGS

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

NINETY-SECOND CONGRESS

SECOND SESSION

ON

H.R. 11128

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 SUB-SURFACE RIGHTS IN THE 1934 NAVAHO RESERVATION BETWEEN THE HOPI AND NAVAHO TRIBES, TO PROVIDE FOR ALLOTMENTS TO CERTAIN PAIUTE INDIANS, AND FOR OTHER PURPOSES

SEPTEMBER 14 AND 15, 1972

Printed for the use of the
Committee on Interior and Insular Affairs

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AUTHORIZE PARTITION OF SURFACE RIGHTS OF NAVAHO-HOPI INDIAN LANDS

THURSDAY, SEPTEMBER 14, 1972

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met at 11 a.m. in room 3110, New Senate Office Building, pursuant to notice, Hon. Paul J. Fannin presiding.

Present: Senators Fannin, Moss, Bellmon, Hansen, and Hatfield.

Also present: Forrest Gerard, professional staff member; Thomas Nelson, assistant minority counsel.

Senator FANNIN. The hearing will come to order.

The chairman, Senator Jackson, is unavoidably detained, so I will read his statement to open the hearing.

This is an open public hearing before the full Committee on Interior and Insular Affairs to take testimony from congressional, administration, and Hopi and Navaho witnesses on H.R. 11128, a bill to partition land in which both the Hopi and Navaho Indian Tribes have an interest.

The dispute between these tribes over the land in question did not occur overnight. It is rooted deeply in history and the law and is not without a human element, considering that several thousand Navahos would have to be relocated under the terms of the legislation.

The proposed legislation is of paramount importance to both tribal groups, and despite repeated efforts to negotiate, there has been no solution to date.

In 1962 the U.S. district court decision held that the Navaho and Hopi Tribes had joint, undivided and equal rights and interest in an area of approximately 1.8 million acres. The Navahos occupy the land and have benefited through its use from livestock production.

In announcing the hearings through a recent press release, Senator Jackson underscored the fact that since the 1962 decision the two tribes appeared to have arrived at an impasse through negotiations and that legislation must be considered as an alternative solution to the problem.

In addition, we do have a House-passed bill before the committee with the support of the administration. Equally important is the need for the Senate committee to develop a thorough hearing record based upon the views of all interested parties concerned in order to reach a responsible decision concerning this complex issue.

At this point in my remarks I will direct that the text of H.R. 11128 and report be included in the hearing record.

(The text of H.R. 11128 and report follow:)

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92D CONGRESS
2D SESSION

H. R. 11128

IN THE SENATE OF THE UNITED STATES

JULY 27, 1972

Read twice and referred to the Committee on Interior and Insular Affairs

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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the surface rights in and to that portion of the Hopi Indian Reservation created by the Executive Order of December 16, 1882 in which the United States district court found the Hopi and Navajo Indian Tribes to have joint, undivided, and equal interests in the case entitled Healing against Jones (210 Fed. Supp. 125 (1962), affirmed 373

U.S. 758) shall be partitioned in kind as provided in this Act.

SEC. 2. Hereafter the United States shall hold in trust exclusively for the Hopi Indian Tribe and as a part of the Hopi Indian Reservation, the surface interests in and to the following described lands:

Commencing at the northeast corner of the Executive Order Reservation of December 16, 1882, 110 degrees 00 minutes west longitude by 36 degrees 30 minutes north latitude;

thence due south, 40.6 miles to mile 209 on the east boundary of the Executive Order Reservation of 1882, as surveyed by United States Bureau of Land Management in 1963 and 1964, to the true point of beginning;

thence due south, 9.9 miles, following the east boundary of the Executive Order Reservation of 1882 to the centerline of State Route 264;

thence southwesterly, 33,900 feet, following the centerline of State Route 264, to the center of its junction with State Route 77;

thence southerly, 7.73 miles, following the centerline of State Route 77;

thence west, 31 degrees 30 minutes south, 29,300 feet, to the southwest corner of section 6, township 25 north, range 21 east;

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thence west, 11.5 miles, following the section lines to the north quarter corner of section 7, township 25 north, range 19 east;

thence southwesterly 16,500 feet, to the intersection of the section line between sections 14 and 23, township 25 north, range 18 east, and the Old Polacca-Winslow Road;

thence southerly 4¼ miles, following the centerline of the Old Polacca-Winslow Road, to the south boundary of the Executive Order Reservation of 1882;

thence due west, 26 miles, following the south boundary of the Executive Order Reservation of 1882, to a point due south of Monument Point, also known as Finger Point and Katchina Point;

thence due north, 18,250 feet, to Monument Point;

thence northwesterly, following the rim of Garces Mesa, to the western extremity thereof, located in the southwest quarter of section 1, township 25 north, range 13 east;

thence northwesterly, 2.4 miles, following a fence line, to the end of the fence line and the southern extremity of Garces Mesa, located in the southeast quarter of section 27, township 26 north, range 13 east;

thence northerly, following the rim of Garces Mesa to a point where said rim intersects the line common to

the northeast quarter and the northwest quarter of section 22, township 26 north, range 13 east;

thence north, 1,500 feet, to the north quarter corner of section 22, township 26 north, range 13 east;

thence north northeasterly, 6,000 feet, to the northeast corner of section 15, township 26 north, range 13 east;

thence north, 3,500 feet, along the section line;

thence west 16 degrees 30 minutes north, 4,800 feet, to the end of a fence adjoining Dimmebito Wash;

thence west 16 degrees 30 minutes north, 4,000 feet, following the fence, to the top of a rim;

thence north 53 degrees west, 5,900 feet, following a fence, to the top of Moencopi Plateau;

thence northwesterly, 9,300 feet, following the rim of the plateau to its junction with the west boundary of the Executive Order Reservation of 1882, 4,650 feet south of mile 110;

thence due north, 41 miles to the centerline of United States Route 164;

thence northeasterly, 5 miles, following the centerline of Route 164 to the junction of a road to the east: thence south 27 degrees 30 minutes east, 4.9 miles to the top of the rim at temporary BM at 6133 on USGS map White Cave Springs 2SW;

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

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

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

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

thence northeasterly 15,600 feet following said road to a point where road bears abruptly southeast;

thence northeasterly 21,700 feet following the divide east of Black Mesa Wash to a point on a road 1,300 feet southwest of station VCAB 1–75;

thence southeasterly following the divide through station 7037 T, 6895 T, and 6804 T to station 6047 A;

thence easterly following the divide and southerly through station 4–236 A to the Second Mesa-Kayenta road right-of-way;

thence southerly 21 miles, following the east boundary of the proposed road right-of-way to a point south of Big Mountain Dam where a line from Gum Point bearing north 54 degrees 02 minutes west will intersect the east boundary of the right-of-way;

thence south 54 degrees 02 minutes east, 21.8 miles to Gum Point;

thence southeasterly, 8½ miles, following the northern rim of the mesa to mile 209 on the east boundary of the Executive Order Reservation of 1882, to the point of beginning; excepting the Hopi Reservation as established by the decree of the United States District Court on September 28, 1962, in said case of Healing against Jones; the surface interests added to the Hopi Reservation containing nine hundred and five thousand one hundred acres, more or less.

SEC. 3. Hereafter, the United States shall hold in trust exclusively for the Navajo Indian Tribe and as a part of the Navajo Indian Reservation the surface interests in and to the following described lands:

All of the lands within the Hopi Executive Order Reservation of December 16, 1882, except the lands described in sections 2 and 21 of this Act and the exclusive Hopi Reservation as established by the decree of the United States District Court on September 28, 1962, in said case of Healing against Jones; containing nine hundred sixteen thousand nine hundred and eighty acres, more or less.

SEC. 4. Partition of the surface of the lands described in sections 2 and 3 hereof shall not affect the existing status of the coal, oil, gas and all other minerals within or underlying said lands.

All such coal, oil, gas and all other minerals within or underlying said land shall be managed jointly by the Hopi

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and Navajo Tribes, subject to supervision and approval by the Secretary of the Interior as otherwise required by law, and the proceeds therefrom shall be divided between the said tribes, share and share alike.

SEC. 5. Hereafter the United States shall hold in trust exclusively for the Hopi Indian Tribe and as a part of the Hopi Indian Reservation all right, title, and interest in and to the following described land which is a portion of the land described in the Act of June 14, 1934 (48 Stat. 960), on which the Hopi Tribe was located on the date of said Act and outside of the Hopi Executive Order Reservation:

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

thence south southwest along the centerline of said Route 164, a distance of approximately 8 miles to a point where said centerline intersects the township line between townships 32 and 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 centerlines intersect the right-of-way of United States Route 164;

thence southwesterly, following the centerline of United States Route 164, 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 approximately 11 miles, to the south boundary of section 2, township 29 north, range 9 east (unsurveyed);

thence east following the south boundaries of sections 2, and 1, township 29 north, range 9 east, sections 6, 5, 4, and so forth, 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 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 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 north

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boundaries of sections 18, 17, 16, and so forth in township 29 north, range 12 east and continuing to a point where said section lines intersect the west boundary of Executive Order Reservation of 1882;

thence due north, along the west boundary of the Executive Order Reservation of 1882, a distance of approximately 27½ miles to the point of beginning; containing 208,600 acres, more or less.

SEC. 6. The Secretary of the Interior, hereinafter called the "Secretary", is hereby authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Indian Tribe, who are located within the area described in the said Act of June 14, 1934, and who were located within said area or are direct descendants of Paiute Indians who were located within said area on the date of said Act, land in quantities as specified in the Act of February 8, 1887 (24 Stat. 388), as amended, and patents shall be issued to them for such lands in the manner and with the restrictions as provided in sections 1, 5, and 6 of that Act, as amended.

SEC. 7. Hereafter the United States shall hold in trust exclusively for the Navajo Indian Tribe and as a part of the Navajo Indian Reservation the lands described in the said Act of June 14, 1934, except the lands described in sections 2 and 5 hereof and the lands in the exclusive Hopi Indian Reservation commonly known as Land Management District 6, and further excepting those lands allotted pursuant to section 6 hereof.

SEC. 8. The Secretary is authorized and directed to remove all Navajo Indians and their personal property, including livestock, from the lands described in sections 2 and 5 of this Act. Such removal shall take place over a period of five years with approximately 20 per centum of the Navajo occupants to be removed each year. No further settlement of Navajo Indians on the lands described in sections 2 and 5 of this Act or Land Management District 6, shall be permitted 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 areas described in sections 2 and 5 of this Act, nor shall he retain any grazing rights subsequent to his removal therefrom.

SEC. 9. The Secretary is authorized and directed to remove all Hopi Indians and their personal property, including livestock, from the lands described in sections 3 and 7 of this Act. Such removal shall take place over a period of two years with approximately 50 per centum of the Hopi occupants to be removed each year. No further settlement of Hopi Indians on the lands described in sections 3 and 7 of this Act shall be permitted unless advance written approval of the Navajo Tribe is obtained. No Hopi Indian shall here-

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after be allowed to increase the number of livestock he grazes on the areas described in sections 3 and 7 of this Act, nor shall he retain any grazing rights subsequent to his removal therefrom.

SEC. 10. Hopi Indians moved pursuant to section 9 of this Act shall be given priority to assignments of land within the areas vacated by Navajo Indians. The Secretary in cooperation with the Hopi Tribe Council shall determine the size of parcels necessary to provide resettled Hopi Indians with an economic base.

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

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

(1) to pay actual reasonable moving expenses of

both Navajo and Hopi families who are being moved, and

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

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

(b) If the funds appropriated are not sufficient to pay all of the costs and expenses referred to in subsection (a), they shall be apportioned on an equitable basis pursuant to regulations of the Secretary. Appropriated funds in excess of the amount needed for such purposes shall be returned to the general fund of the Treasury.

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

(d) No payment to or for the benefit of any one household under subsections (a) (1), (2), and (3) shall exceed $15,000.

(e) Improvements left on the land from which a family is moved may be sold by the Secretary of the Interior to the

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tribe that owns the land on which the improvements are located, or to any member thereof, at not less than their fair market value.

SEC. 12. The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary for all Navajo Indian use of the lands described in sections 2 and 5 of this Act subsequent to the date of this Act.

SEC. 13. The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all Hopi Indian use of the lands described in sections 3 and 7 of this Act subsequent to the date of this Act.

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

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

151.6 of the Code of Federal Regulations, within one year from the effective date of this Act.

SEC. 16. The Hopi Tribe may commence an action or actions against the Navajo Tribe in the United States District Court for the District of Arizona for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, as trader license fees or commissions, lease rentals or proceeds or other similar charges for the doing of business or the use of lands within the Executive Order Reservation of December 16, 1882. The Hopi Indian Tribe shall be entitled to judgment for one-half of all sums so collected, together with interest at the rate of 6 per centum per annum.

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

SEC. 18. The United States shall not be an indispensable

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

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

SEC. 20. The Secretary is hereby authorized and directed to survey and monument the boundaries of the Hopi Reservation as defined in sections 2 and 5 of this Act.

SEC. 21. 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 feet and 30 inches north latitude and 110 degrees, 9 feet west longitude, as a shrine for religious ceremonial purposes, together with the right to gather branches of fir trees growing within a 2-mile radius of said spring for use in such religious ceremonies, and the further right of ingress, egress, and regress between the Hopi Reservation and said spring. The Hopi Tribe is hereby authorized to fence said spring upon the boundary line as follows:

Beginning at a point on the 36 degrees, 17 feet 30 inches north latitude line 500 feet west of its intersection with 110 degrees, 9 feet west longitude line, the point of beginning;

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

thence southwesterly 1,200 feet (in a straight line) following the 6,900 feet contour;

thence south 46 degrees east 600 feet;

thence north 38 degrees east, 1,300 feet to the point of beginning, 23.8 acres more or less: *Provided*, That if and when said spring is fenced the Hopi Tribe shall pipe the water therefrom to the edge of the boundary as hereinabove described for the use of residents of the area. The natural stand of fir trees within said 2-mile radius shall be conserved for such religious purposes.

SEC. 22. There is hereby authorized to be appropriated not to exceed $16,000,000 to carry out the provisions of this Act.

Passed the House of Representatives July 26, 1972.

Attest: W. PAT JENNINGS,
Clerk.

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92D CONGRESS 2d Session } HOUSE OF REPRESENTATIVES { REPORT No. 92-1221

AUTHORIZING THE PARTITION OF THE SURFACE RIGHTS IN THE JOINT USE AREA OF THE 1882 EXECUTIVE ORDER HOPI RESERVATION AND THE SURFACE AND SUBSURFACE RIGHTS IN THE 1934 NAVAJO RESERVATIONS BETWEEN THE HOPI AND NAVAJO TRIBES TO PROVIDE FOR ALLOTMENTS TO CERTAIN PAIUTE INDIANS AND FOR OTHER PURPOSES

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

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

REPORT

[To accompany H.R. 11128]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 11128) to authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

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

Page 3, line 13, strike out "¼" and insert "4¼".

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

> thence south 27 degrees 30 minutes east, 4.9 miles to the top of the rim at temporary BM at 6133 on USGS map White Cave Springs 2SW;
>
> thence due east 4.7 miles to the north boundary of the Black Mesa Slurry Pipeline right-of-way;
>
> thence northeasterly 26,900 feet following the north boundary of pipeline right-of-way;
>
> thence north 54 degrees 30 minutes east 18,000 feet to the junction of two major drainages from the north;
>
> thence north 82 degrees east 4,700 feet to a pickup road, passing through temporary survey station 6167 T;

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

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

Page 6, line 21, strike out "section 2" and insert "sections 2 and 21".

Page 6, lines 24 and 25, strike out "nine hundred seventeen thousand eight hundred and fifteen acres," and insert "nine hundred sixteen thousand nine hundred and eighty acres,".

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

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

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

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

> Beginning at a point on west boundary of Executive Order Reservation of 1882 where said boundary is intersected by R/W of U. S. Route 164;
>
> thence south southwest along the centerline of said Route 164, a distance of approximately 8 miles to a point where said centerline intersects the township line between Townships 32 and 33N, R 12E;
>
> thence west, a distance of approximately 9 miles, to the N¼ corner of section 4, township 32N, R. 11E;
>
> thence south, a distance of approximately 4¾ miles, following the centerlines of sections 4, 9, 16, 21 and 28 to a point where said centerlines intersect the R/W of U. S. Route 164;
>
> thence southwesterly, following the centerline of U. S. Route 164, a distance of approximately 11 miles, to a point where said centerline intersects the R/W of U. S. Route 89;
>
> thence southerly, following the centerline of U. S. Route 89, a distance of approximately 11 miles, to the south boundary of section 2, township 29N, R. 9E (unsurveyed);
>
> thence east following the south boundaries of sections 2, and 1, township 29N, R. 9E, sections 6, 5, 4, etc., township 29N, R. 10E, and continuing along the same bearing to the northwest corner of section 12, township 29N, R. 11E (unsurveyed);
>
> thence south, a distance of 1 mile to the southwest corner of section 12, township 29N, R. 11E (unsurveyed);
>
> thence east, a distance of 1 mile to the northwest corner of section 18, township 29N, R. 12E (unsurveyed);

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

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

thence due north, along the west boundary of the Executive Order Reservation of 1882, a distance of approximately 27½ miles to the point of beginning; containing 208,600 acres, more or less.

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

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

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

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

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

Page 13, lines 3 through 18, strike out all of section 12 and insert a new section 11 as follows:

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

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

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

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

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

(b) If the funds appropriated are not sufficient to pay all of the costs and expenses referred to in subsection (a), they shall be apportioned on an equitable basis pursuant to regulations of the Secretary. Appropriated funds in excess of the amount needed for such purposes shall be returned to the general fund of the Treasury.

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

(d) No payment to or for the benefit of any one household under subsections (a) (1), (2), and (3) shall exceed $15,000.

(e) Improvements left on the land from which a family is moved may be sold by the Secretary of the Interior to the tribe that owns the land on which the improvements are located, or to any member thereof, at not less than their fair market value.

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

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

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

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

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

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

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

Page 15, line 18, strike out "other." and insert

other, acting through the Chairman of the respective tribal councils, for and on behalf of said tribes, including all villages, clans, and individual members thereof.

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

Page 16, strike out lines 9 and 10.

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

SEC. 21. The members of the Hopi Tribe shall have perpetual use of Cliff Spring as shown on USGS 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 feet and 30 inches north latitude and 110 degrees, 9 feet west longitude, as a shrine for religious ceremonial purposes, together with the right to gather branches of fir trees growing within a 2 mile radius of said spring for use in such religious ceremonies, and the further right of ingress, egress and regress between the Hopi Reservation and said spring. The Hopi Tribe is hereby authorized to fence said spring upon the boundary line as follows:

Beginning at a point on the 36 degrees, 17 feet, 30 inches north latitude line 500 feet west of its intersection with 110 degrees, 9 feet west longitude line, the point of beginning;

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

thence southwesterly 1,200 feet (in a straight line) following the 6,900 feet contour;

thence south 46 degrees east 600 feet;

thence north 38 degrees east, 1,300 feet to the point of beginning, 23.8 acres more or less. *Provided*, That if and when said spring is fenced the Hopi Tribe shall pipe the water therefrom to the edge of the boundary as hereinabove described for the use of residents of the area. The natural stand of fir trees within said 2-miles radius shall be conserved for such religious purposes.

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

PURPOSE

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

BACKGROUND

I. THE 1882 HOPI RESERVATION

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

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

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

The Navajos were a semi-nomadic people who did not stay within their Reservation boundaries. They were constantly moving into new areas. In 1882, about 300 Navajos resided within the 1882 Reservation established for the Hopis. The number steadily increased, and by 1958 the number was 8,800.

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

The Court found as fact that no Secretary of the Interior had ever specifically "settled" any Navajos on the 1882 Reservation, that the Navajos had moved there without any official authorization, but that since 1931 the Secretary of the Interior had acquiesced in their presence and had impliedly exercised his authority to settle them there. The Court held that the Hopis had an exclusive right and interest in about 650,000 acres of the Reservation known for administrative purposes as Grazing District No. 6, and that the Hopi Tribe and the Navajo Tribe had joint, undivided, and equal rights and interests in the remainder of the Reservation, consisting of about 1,822,000 acres.

Notwithstanding the fact that the court determined that the two Tribes have equal rights and interests in the 1,822,000 acres, the Navajos were then and are now in actual possession, and they have refused for the ten years since the court's decision to permit the Hopis to use any part of the joint-use area. Moreover, the Secretary of the Interior has failed to do anything to permit the Hopis to exercise their joint-use rights. He has in fact refused to permit them to do so.

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

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

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

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

II. THE 1934 NAVAJO RESERVATION

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

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

COMMITTEE CONCLUSION

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

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

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

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

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

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

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

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

ANALYSIS OF BILL AS REPORTED BY COMMITTEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 16 permits the Hopi Tribe to sue to Navajo Tribe for an accounting of all revenues collected from the joint-use area after September 28, 1962, which is the date the joint and equal interests of the two Tribes were judicially decreed.

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

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

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

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

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

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

Committee Amendments

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

(1) The boundary line between the Navajo and Hopi lands was modified to provide for better access and to make fencing easier. Only a minor change in acreage (835 acres) was involved.

(2) With respect to the 1934 Reservation, the acreage granted to the Hopis was increased by 73,600 acres, making the total 208,600 acres. This is a compromise figure considerably lower than the Hopi request.

(3) The time for removing the Navajo families from the lands partitioned to the Hopi Tribe was reduced from ten to five years.

(4) All provisions of the bill relating to the Navajo Indian Irrigation Project were deleted. The cost of relocating the dispossessed Navajo families is covered by other provisions of the bill, and there is no need to provide for an additional subsidy to the Tribe if some of those families are moved to the Irrigation Project.

(5) The cost of relocating the dispossessed families was modified as explained in the analysis of section 11, above.

(6) The Secretary of the Interior is required to start immediately and complete within one year a program to reduce grazing on the present joint-use area to the carrying capacity of the land.

(7) The provision authorizing the Hopi Tribe to sue the Navajo Tribe (a) for the use value of the Hopi one-half interest in the land after September 28, 1962, and (b) for damage to the land by overgrazing, was deleted.

(8) The requirement that a fence and service road be constructed was deleted. This construction, if needed, should be handled as a part of the Bureau of Indian Affairs' regular program.

(9) A Hopi religious shrine was protected.

(10) The cost of the program was reduced from an estimated $20,000,000 to $16,000,000.

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Cost

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

Committee Recommendation

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

Departmental Report

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

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., April 14, 1972.

Hon. Wayne N. Aspinall,
Chairman, Committee on Interior and Insular Affairs, House of Representatives.

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

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

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

I. THE 1882 HOPI RESERVATION

On December 16, 1882, President Chester A. Arthur signed an Executive Order establishing a reservation in the Territory of Arizona for the use and occupancy of the Hopi and such other Indians as the Secretary of the Interior saw fit to settle thereon. Even as early as this date, approximately 300 Navajos were living on this land. The number grew steadily over the years; by 1930 there were 3,300 Navajos and by 1958, 8,800. Relations between the two tribes were often hostile.

In 1891, officials of the Department of the Interior drew a boundary line, reflecting the location of most of the Hopis, which the Navajos were forbidden to cross. The Navajos have conceded that the Hopis have exclusive rights to the land within this boundary, and it is not involved in this bill.

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

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

The Navajo Tribe has exercised exclusive control of the joint-use area for all practical purposes, however—including surface leasing and granting rights-of-way without consulting the Hopi Tribe—since the 1962 decision. In March 1970, the Hopi Tribe petitioned the District Court to issue a writ of assistance enforcing the Hopi rights to the joint-use area. The Court dismissed this petition in August 1970, on the ground that it had no jurisdiction over the question of tribal control of the disputed area. On December 3, 1971, the Court of Appeals for the Ninth Circuit reversed this decision, holding that the District Court has authority to issue a writ of assistance and remanded the matter for further proceedings. (This decision, however, has not altered the District Court's holding that it was without power to partition the area.) The Navajo Tribe asked for a rehearing of this decision, and their request has recently been denied. The route of certiorari to the United States Supreme Court is still open. Whether or not this route is taken, the proceedings on remand before the District Court (which would again be subject to review) could be very time-consuming. It appears that under any course of action by the two tribes, there will be a substantial lapse of time before a writ of assistance issues (if one issues at all), to effectuate the rights of the Hopis.

H.R. 11128 is an equitable solution of that controversy. In the years since the decision in *Healing v. Jones*, this Department has carried on

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exhaustive consultations and hearings, with both tribes participating, on the 1882 reservation problem. Efforts to assist the tribes in reaching a solution agreeable to both have not been successful. However, this bill has been designed to meet, as far as possible, the objections voiced by the tribes over the years. Although the tribes have not approved the bill, they are aware of its provisions by virtue of the protracted negotiations. Nonetheless, the Committee will doubtless wish to hear the views of representatives from the two tribes.

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

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

II. THE 1934 NAVAJO RESERVATION

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

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

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

III. OTHER PROVISIONS

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

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

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

Section 3(a) of the Act authorizing the project, as amended, directs the Secretary to declare that any legal subdivisions or unsurveyed tracts of federally-owned irrigable land outside of the Navajo Reservation in New Mexico and located in certain townships shall be held in trust for the Navajo Tribe upon payment by the Tribe of the full appraised value thereof. The minerals in such land are to be reserved to the United States. Section 10(a) of H.R. 11128 provides that Navajo Indians relocated under the provisions of the bill shall be given priority in receiving assignments within the Navajo Indian Irrigation Project. The Secretary and the Navajo Tribal Council are to cooperate in determining how large the assignments should be to enable the relocated Indians to earn a living. Section 10(b) of H.R. 11128, in effect, waives the requirement that the Navajo Tribe pay for the lands described in Section 3(a) of the 1962 Act if they are as-

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signed to Indians moved pursuant to the proposal. We believe that the United States bears a major responsibility for the conditions that necessitate the enactment of this legislation and should provide land at its own expense on which to relocate displaced Navajo Indians.

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

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

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

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

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

Section 12 of the bill is designed to ease the hardship which moving will cause to Hopis and Navajos by bringing them under the provisions of the Uniform Relocation Assistance and Land Acquisition Policies Act. It should be noted that this Act cannot be applied to H.R. 11128 in its terms—a necessary precondition for application of the Act, the purchase of real property for a Federal program by the Government, is not present here. However, we believe that the relocation of the Navajos and Hopis that the bill would effect is analoguous

to such a taking of real property. Moreover, as indicated in the history of the tribes' dispute, set out *supra* in this report the Federal Government bears some of the responsibility for the tense situation that exists today. Therefore, we support the application to this situation of the kind of benefits which the Uniform Relocation Act provides. However, we do not believe a lump payment of $3,000 to every family moved pursuant to the Act is justified. Rather, in light of the long period of time in which the Hopi rights to the joint-use area have been declared but not realized, we recommend that such a payment be utilized as an inducement for Indians to move to the appropriate section of the joint use area as soon as possible. Specifically, we suggest that families which contract with the Secretary prior to January 1, 1974 to relocate be paid $5,000 per family upon the date of such relocation as determined by the Secretary; that families which contract with the Secretary between January 1, 1974 and June 30, 1974 to relocate be paid $4,000 per family upon the date of such relocation as determined by the Secretary; and that families which contract with the Secretary between July 1, 1974, and July 1, 1975 to relocate be paid $3,000 per family upon the date of such relocation as determined by the Secretary. Families which fail to agree prior to July 1, 1975 to relocate receive no such bonus payment. We also recommend that section 12 of H.R. 11128 be technically rewritten to enable the Secretary to dispose of acquired property.

The new section 12 would read as follows:

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

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

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

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

(c) In implementing subsections (b)(1) and (b)(2) of this section, the Secretary shall establish standards consistent with those estab-

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lished in the implementation of the Uniform Relocation Assistance and Real Property Act of 1970.

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

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

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

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

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

In order to bring sections 8 and 9 into conformity with the proposed new section 12(e), *supra*, we recommend that they be amended as follows. First, in section 8, page 10, lines 13 and 14, strike "with approximately 10 per centum of the Navajo occupants to be removed each year." and substitute therefor, "as determined by the Secretary in his discretion.". Second, in section 9, page 11, lines 1 and 2, strike "with approximately 50 per centum of the Hopi occupants to be removed each year." and substitute therefor, "as determined by the Secretary in his discretion.".

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

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

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

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

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

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

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

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

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Senator FANNIN. The first witness this morning will be the Honorable Harrison Loesch, Assistant Secretary of the Interior for Public Land Management. Secretary Loesch. I am sorry, Mr. Secretary, I did not realize that Congressman Steiger arrived.

The first witness will be the Honorable Sam Steiger of Arizona. I am sorry, Congressman.

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

Mr. STEIGER. Mr. Chairman, if I may take the liberty of submitting a prepared statement for the record and speak not from my prepared statement at this time, I would appreciate that.

Senator FANNIN. The prepared statement will be made a part of the record, and you may proceed.

Mr. STEIGER. Thank you, Mr. Chairman. I will tell the chairman for the purposes of the record that the essence or the problem as described by Senator Jackson's statement is a very valid explanation.

To cut through as much of the verbiage as possible, we do have a conflict which involves two tribes, both under the trusteeship of the Federal Government. It is my personal view that this problem has been compounded by the inaction not only of the executive branch of Government but the inaction of the Congress.

The House bill that is before you is a bill that divides the so-called joint use land approximately in half and gives the surface rights of half to each of the two tribes. The bill also provides the sum of $16 million for the benefit of those Navaho families that will be required to move under the terms of this legislation and the use of that money is to be left up to the option of the families to be moved.

Mr. Chairman, I think it is very important that this record reflect a judgment in the U.S. District Court in the District of Arizona, dated September 7, this year, James A. Walsh presiding.

Mr. Chairman, the finding, if I may, is relatively brief, and I think would be worthy of calling to the committee's attention. This was a matter involving Clarence Hamilton, chairman of the Hopi Tribal Council, for and on behalf of the Hopi Indian Tribe, as the plaintiff, versus Peter MacDonald, chairman of the Tribal Council, Navaho Indian Tribe, for and on behalf of the Navaho Indian Tribe. Mr. Walsh found as follows: The plaintiff, which would be the Hopi Tribe, is entitled to an order of this court directing the defendants to grant and permit the joint use of the surface, including all resources in and to all of the Executive order reservation of December 16, 1882, that is the area which is commonly known as the joint use area, laying outside of the boundaries of land management district 6 of the Hopi Indian Tribe and Navaho Indian Tribe, share and share alike.

The plaintiff is entitled to a further order directing the clerk of this court to issue a writ of assistance to compel performance of the judgment of this court entered on December 28, 1962, and to allow the plaintiff, the Hopi Indian Tribe, to enter upon said joint use area and with the Navaho Tribe to jointly and equally use and benefit from the grazing forage and all other surface and subsurface resource area.

And after hearing argument on plaintiff's proposed relief filed here in this court should make such further orders herein as may be necessary to achieve the use and an enjoyment by the Hopi Tribe.

Mr. Chairman, this is the second reiteration at least or the second finding of the Federal court that the Hopi Tribe is entitled to an equal portion of the joint use land. The historic facts are that the Hopi Tribe has never enjoyed anything like an equal share of the joint use land. The inaction of the Government, both the Bureau of Indian Affairs and the Congress, has resulted in a continuing influx of Navahos into the joint use area, to the total exclusion, virtual total exclusion, of the Hopis.

This has been compounded in recent years to a shortage of moisture in which the feed conditions forced the Navaho people to seek forage for their livestock in other than the joint use areas and in closest proximity to land district 6, allowed their cattle to graze on the Hopi district 6.

As a result, the friction and feelings and anger that had been building up over the years surfaced and there was a series of violent and semiviolent actions, including allegedly the firing of some weapons.

Some people ended up in the hospital as a result of beatings, there was burning of property, mutilation of livestock, and it reached an intolerable point.

Mr. Chairman, throughout this entire process the Navahos have resisted a bill of this sort or indeed an imposed solution on the part of either the BIA or the Congress. Were I a Navaho, I am sure I would assume the same position they have assumed, because any kind of settlement would require me to abandon that which I, in effect, hold.

The chairman of the Navaho Tribe and his vice chairman have assured me on many occasions that they felt they could work out an equitable agreement with the Hopi people themselves, and it would indeed be an Indian solution to an Indian problem.

We would welcome that kind of solution. The facts are that kind of solution has not been forthcoming, and there is nothing now or in the past that gives any evidence that it will be forthcoming.

I have assured the chairmen of both tribes that an agreement would certainly be in the forefront to recommend the abandonment of any legislation in the face of any agreement between the tribes.

I think it is worthy to note that rather than reach a solution, the problem continues to heighten, even as the legislation assumes the problem.

On June 9, the Acting Superintendent of the Hopi Agency, Mr. Roger, caused a flight over an area surrounding the boundary of district 6 within the joint use lands, and photographs were taken of new houses that were being built in this area.

I have the photographs here, Mr. Chairman, and I have a map which indicates the location of these new homes, and with the chairman's permission I would approach the rostrum here. The green boundary here is the boundary of district 6, the black boundary is the boundary of that portion of the joint use area that is in dispute, and the red dots indicate the construction of the new houses, and I have those pictures and I will be happy to leave that map for the committee's use.

Senator FANNIN. They will be made a part of the record by reference.

Mr. STEIGER. Mr. Chairman, the significance of this as stated by the Acting Superintendent of the Hopi Agency is a rather pragmatic

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one in that the bill that is before you at that time had already been accepted by the House committee called for the purpose of the habitations of those people to be moved at a fair market value plus $3,000 moving costs; and assuming that they would move to new lands purchased under the language of the bill, it led to a potential $20,000 expense per family, per new family moving in.

I take a rather broader view of it, in that the Navaho has maintained that these people who are to be moved under the terms of this bill are people who have lived there for many years, when apparently many of them have apparently not lived there very long at all, and apparently these 27 homes represent people who moved in since the hearings on this matter started.

So the image of the longtime residence in this area is an image that will have to be mitigated by the facts. I have been unable to get any hard figures, because I don't think they are available, as to the exact number of families that will be affected by this matter.

Senator FANNIN. In relationship to the $16 million, I think it would be in order for the Congressman to clarify that the $16 million is not a firm figure that will be spent, but to elaborate this was an amount that is considered adequate for the purposes of moving plus land acquisition, is that correct?

Mr. STEIGER. The gentleman is right. That was an upper limit set by the House rather arbitrarily, I might add, to take into consideration all of the contingencies for the people who have moved. It is not a flat or outright gift or compensation.

These 27 homes, Mr. Chairman, according to the Navajo Office of Economic Opportunity, 27 homes have been built in the joint use area during the past 6 months.

Interestingly enough, you will note from that map that the locations of those homes, none of them are in excess of 2 miles from the Hopi boundary and most of them considerably less than a mile from the Hopi boundary.

And 27 homes have been built in the joint use area during the past 6 months. The Navajo Office of Economic Opportunity financed the labor through the Navajo Office of Economic Opportunity, in the Navajo prevocational training program.

The terms were applied by the BIA home improvement program, and the Public Health Service furnished the water and sewer, and the Navajo Tribal Welfare Division contribured to the construction of the homes.

Here again, Mr. Chairman, we see the Federal Government really at odds with itself. We are using Federal moneys to compound the problem that the Federal Government has failed to confront.

I am convinced, Mr. Chairman, that that apparently arbitrary move that this legislation requires is at this point the only solution, the only permanent equitable solution to this problem. Under the law there is no question that the Hopis are entitled to one-half of this land.

Historically there is no way apparently the Hopis and Navajos can use it on any kind of commingled basis. Therefore, reason would dictate that the only solution is to divide the land in such a manner so there would be no questions as to which half the Navajos are entitled to and which half the Hopis are entitled to.

I would tell the chairman editorially, and obviously this is a personal opinion, but I think one reason why this solution has failed in spite of the previous judgment of the court in 1962 in which the finding of fact here in Judge Walsh's opinion was affirmed by the Supreme Court at that time, the reason that has not been implemented is a very practical one.

There are approximately 130 Navahos and some 6,000 Hopis and the political process being what it is, and we politicians being very able to count, we recognize the injustice of doing anything that might offend the 137 Navahos and the lack of necessity of doing anything that might serve the law by applying the law for the benefit of the 6,000 Hopis.

I am afraid that any kind of examination of the history of this matter will bear me out that the BIA has failed to proceed because they have not had the direction, they have not had the instruction and they have been outnumbered, in effect.

The Congress, of course, with great courage and vision we faced up to this matter squarely in 1964, we formed a Hopi-Navaho boundary disputes division, and in the last 6 years that Commission has never met, and that is kind of typical of the congressional season.

I will tell the gentlemen if we wait until somebody is badly hurt or killed, then everybody will say why didn't we do something. I will submit this is a solution, it may not be a perfect solution, but it is a solution, and it is a final solution.

My rationale for the inclusion of the $16 million is because the Federal Government has been so directly involved in the procrastination of this solution.

Senator FANNIN. Thank you, Congressman Steiger. We understand you want to submit all of the documents you have referred to.

Mr. STEIGER. The only ones pertinent here would be the judgment of the district court in Tucson and the letter from the Acting Superintendent of the Hopi Agency and I would be happy to leave these photographs for your report.

Senator FANNIN. We appreciate that and the materials furnished will be utilized by the committee and the documents referred to will be made a part of the record. Is there anything further you would like to say?

Mr. STEIGER. No.

Senator FANNIN. Thank you, Congressman Steiger.

(The material referred to follows:)

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

(No. Civil 579 Prescott)

CLARENCE HAMILTON, CHAIRMAN OF THE HOPI TRIBAL COUNCIL OF THE HOPI INDIAN TRIBE, FOR AND ON BEHALF OF THE HOPI INDIAN TRIBE, INCLUDING ALL VILLAGES AND CLANS THEREOF, AND ON BEHALF OF ANY AND ALL HOPI INDIANS CLAIMING ANY INTEREST IN THE LANDS DESCRIBED IN THE EXECUTIVE ORDER DATED DECEMBER 16, 1882,

PLAINTIFF

v.

PETER MACDONALD, CHAIRMAN OF THE NAVAJO TRIBAL COUNCIL OF THE NAVAJO INDIAN TRIBE FOR AND ON BEHALF OF THE NAVAJO INDIAN TRIBE, INCLUDING ALL VILLAGES AND CLANS THEREOF, AND ON BEHALF OF ANY AND ALL NAVAJO INDIANS CLAIMING ANY INTEREST IN THE LANDS DESCRIBED IN THE EXECUTIVE ORDER DATED DECEMBER 16, 1882; RICHARD G. KLEINDIENST, ATTORNEY GENERAL OF THE UNITED STATES, ON BEHALF OF THE UNITED STATES,

DEFENDANTS

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The above-entitled Court, comprised of three judges and convened in the manner authorized by Section 1 of the Act of July 22, 1958, 72 Stat. 402, and 22 U.S.C., Section 2284, rendered its final decision herein on September 28, 1962, 210 F. Supp. 125, affirmed, 373 U.S. 758, 83 S. Ct. 1559, 10 L. Ed. 2d 703. This supplemental proceeding petitions this court for its assistance in granting immediate relief to enforce the judgment of the above-entitled Court against the parties who are bound by the judgment herein.

2. By order of this Court, Peter MacDonald was substituted in the place of Raymond Nakai as a party defendant herein, Clarence Hamilton was substituted in the place of Abbott Sekaquaptewa as a party plaintiff herein, and Richard Kleindienst was substituted in the place of John Mitchell as a party defendant herein.

3. Clarence Hamilton is a successor to Dewey Healing and to Abbott Sekaquaptewa as the duly elected and authorized chairman of the Hopi Tribal Council of the Hopi Indian Tribe and appears herein for and on behalf of said Tribe, including all villages and clans thereof and on behalf of any and all Hopi Indians claiming any interest in the lands involved in this action. (Tr. Vol. I, p. 58)

4. Peter MacDonald is the duly authorized successor to Raymond Nakai and Paul Jones as chairman of the Navajo Tribal Council of the Navajo Indian Tribe, defendant in said action for and on behalf of said Tribe and every member thereof, and for each and every Navajo Indian using and occupying, or who has or who has had any claim of any right, title or interest in the use and occupancy of, any part, parcel or portion of the lands involved in this action.

5. Richard Kleindienst is the duly authorized successor to John N. Mitchell and Robert F. Kennedy, Attorney General of the United States, and a defendant herein.

6. This Court by its decree of September 28, 1962, held, among other things, as follows: The Hopi Indian Tribe and the Navajo Indian Tribe, for the common use and benefit of their respective members, but subject to the trust title of the United States, have joint, undivided and equal rights and interests both as to the surface and subsurface, including all resources, in and to all of the executive order reservation of December 16, 1882, lying outside of the boundaries of Land Management District 6, as defined on April 24, 1943, such boundaries being described in paragraph 1 of this judgment, and title in and to all of that reservation except the described District 6, is accordingly quieted in the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike, subject to the trust title of the United States, as a reservation.

7. On or about August 6, 1963, during a Hopi-Navajo Conference at the Valley Ho Hotel, 350 West Main Street, in Scottsdale, Arizona, the Hopi Tribe made demand upon Phileo Nash, the Commissioner of Indian Affairs, and other officials of the Department of the Interior of the United States Government and upon Raymond Nakai, the then chairman of the Navajo Tribe and other officials of the Navajo Tribe for possession and use of one-half of the surface rights, including all resources in and to all of the Executive Order Reservation of December 16, 1882, lying outside of the boundaries of Land Management District 6 as defined on April 24, 1943, the title to which was quieted in the Hopi Indian Tribe subject to the trust title of the United States, as a reservation. (Tr. Vol. I, pp. 146, 147, 148)

8. Beginning September 28, 1964, and through November 17, 1965, thirty-two applications for grazing permits on the Joint-Use Area were filed by Hopi Indians with the Bureau of Indian Affairs applying for 2,425 cow units, 54 horse units, making a total of 2,497 animal units, year long. (Tr. Vol. I, p. 113; Exs. 8, 9, 10, 11, 12, 13)

9. The Washington, D.C. office of the Bureau of Indian Affairs notified its Phoenix Area Office not to issue the grazing permits that had been applied for by the Hopi Indians. (Tr. Vol. I, p. 113)

10. On March 3, 1965, the acting Assistant Commissioner of Indian Affairs informed the Phoenix Area Director of the Bureau of Indian Affairs as follows: Reference is also made to your inquiry regarding grazing permits for Hopi livestock owners on the joint-use portion of the 1882 Executive Order Reservation. Until appropriate adjustments are worked out and the overgrazed conditions there corrected, the Bureau is not in a position to approve such permits. (Ex. 10)

The adjustments referred to by the acting Assistant Commissioner were never worked out and no permits have ever been issued to the Hopi Indians for use on the Joint-Use Area. (Tr. Vol. I, p. 118)

11. Five Hopi Indians, Abbott Sekaquaptewa, his mother, a brother and two uncles now run cattle in the lower Dinnebito southwest of Graibi, inside District 6 and outside District 6 in the Howell Mesa area within the Joint-Use Area. (Tr. Vol. I, p. 140) The family has run their cattle in this area at least thirty-five years. (Tr. Vol. I, p. 140—testimony of Emory Sekaquaptewa. (Tr. Vol. II, pp. 170–171)

12. On or about October 19, 1971, the secretary of the Coal Mine-Mesa Chapter of the Navajo Tribe wrote demanding that the Sekaquaptewa cattle be removed from the Joint-Use Area by October 26, 1971, and threatened that if the cattle were not removed, the Navajo people would take action to remove the cattle. (Ex. 28) The demand to remove was repeated between the same parties on or about January 3, 1972. (Ex. 29) The demand was resisted by Mr. Sekaquaptewa. (Ex. 30)

13. The Navajo Indians built a fence to keep Sekaquaptewa cattle out of the Joint-Use Area which fence was removed by the Hopi Indians. (Tr. Vol. I, p. 144)

14. On June 13, 1972, the Commissioner of Indian Affairs telegraphed the Hopi Tribe Chairman requesting and urging that the Hopi withdraw from District 3 in the Joint-Use Area to avoid violence. (Ex. 34)

15. Since 1962, some use of the Joint-Use Area has been made by various Hopis but such use has not been substantial. Hopi cattle have been found in several localities; Hopis have gathered wood in several areas; some water facilities have been developed by Hopis; and one farm is located within the Joint-Use Area.

16. Over a number of years, Navajos have mutilated Hopi livestock by cutting off tails or ears; cattle have been shot; and a Navajo took a saddle from a boy being raised by the Sekaquaptewa family. (Tr. Vol. I, p. 144) Navajos have driven Hopi-owned cattle from the Joint-Use Area. (Tr. Vol. I, pp. 141, 144, 99; Exs. 38, 39, 40)

17. The Navajo Tribe has denied the right of the Hopi Tribe to use or possess any of the surface of the Joint-Use Area. (Tr. Vol. I, p. 93; Ex. 35) Hopi stock in the Joint-Use Area has been termed "trespassing" by Bureau of Indian Affairs officials and ordered removed. (Tr. Vol. I, p. 100; Exs. 31, 32, 33, and 35)

18. Hopi use of the Joint-Use Area for grazing since September 28, 1962, has been less than 1% (Tr. Vol. I, p. 97) because of the harassment, mistreatment, verbal abuse and threats of the Navajos. (Tr. Vol. I, p. 99)

19. The Hopi Tribe has requested payment by the Navajo Tribe for Navajo use of the Hopi share of grazing in the Joint-Use Area but such requests have been denied (Exs. 1, 2, 3, 6, and 7) and the defendant Navajo chairman, on October 24, 1967, denied the Hopi Tribe had any right of Joint use in the Joint-Use Area. (Ex. 7)

20. Demand was made upon the Assistant Secretary of the Interior by the Hopi Tribe on August 13, 1969, for Hopi use of its one-half interest in the Joint-Use Area but no benefits have been received since. (Tr. Vol. I, p. 83)

21. The Navajo Tribe, by resolution, on the 28th day of July 1969, directed its chairman to exercise every effort to insure that a road in the Joint-Use Area be kept all Navajo, excluding rights of ownership by the Hopi Tribe. (Exs. 4 and 5)

22. Income from leases, licenses, taxes, and similar charges in the Joint-Use Area have been withheld from the Hopi Tribe by the Navajo Tribe. (Exs. 20, 21, 22, 23, 24, 25, 26; Tr. Vol. I, p. 133)

23. The Joint-Use Area still remains under superintendents who are under the jurisdiction of the Navajo Area Office, Bureau of Indian Affairs. (Tr. Vol. I, p. 138)

24. The defendant United States is the trustee and guardian of the property of the Navajo and Hopi Tribes, including the lands decreed by this Court to be held in trust by the United States for the joint use and benefit of the Hopi Tribe and the Navajo Indian Tribe, share and share alike. (Tr. Vol. I, p. 147)

25. As of 1968, the range in the Joint-Use Area was overstocked to the extent of 400% of its carrying capacity and it is in a poorer condition now. (Tr. Vol. I pp. 39–40)

26. Since September 28, 1962, the Navajo Tribe has damaged and misused the Joint-Use Area by over grazing and the defendant United States of America has failed and neglected to take any action to control such misuse. (Tr. Vol. I, pp 39–40)

27. Eighty percent (80%) of the range in the Joint-Use Area is in poor condition producing only 0% to 25% of its maximum forage. Only 20% of the range in the Joint-Use Area is producing from 25% to 50% of its maximum. None of the range in the Joint-use Area is in good or excellent condition. (Tr. Vol. I, pp. 34–34)

28. Since September 28, 1962, the defendant Navajo Tribe, and individual members thereof, have and do now continue to resist the efforts on the part of the Hopi Tribe and its members to gain possession or use of any portion of the surface

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of said lands outside of District 6 and continue to overgraze, misuse, and damage the lawful interest of the Hopi Tribe awarded by this Court. (Exs. 35, 1, 4, 7; Tr. Vol. I, pp. 93, 99, 108, 141, 144–45)

29. The efendant United States, by and through its officers, the Department of the Interior, the Bureau of Indian Affairs, employees and agents, since September 28, 1962, to the present time has vacillated, equivocated, delayed and denied the Hopi Tribe and its members any substantial possession or use of the surface of said Joint-Use Area. (Exs. 10, 31–35, Tr. Vol. I, pp. 83, 94, 100, 118, 133)

30. The defendant United States of America still continues to procrastinate, vacillate, and refuse to deliver to the Hopi Indians or to assist the Hopi Trite in obtaining their one-half undivided interest in the surface of said Joint-Usb Area outside of District 6, or the resources thereof, notwithstanding requests, supplications, and demands of the Hopi Tribe for such use and possession. (Tr. Vol. I, pp. 83, 94, 127, 133; Exs. 35, 18, 19, 34)

31. The acts and conduct of the defendants set forth in Findings 28 through 30, above, have amounted to an ouster of plaintiff from any use, possession, or enjoyment of the Joint-Use Area outside of District 6, or the resources thereof.

From the foregoing facts, the Court concludes:

CONCLUSIONS OF LAW

1. The plaintiff is entitled to an order of this Court directing the defendants to grant and permit the joint use and possession of the surface, including all resources, in and to all of the Executive Order Reservation of December 16, 1882, lying outside of the boundaries of Land Management District 6 as defined on April 24, 1943, to the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike.

2. The plaintiff is entitled to a further order directing the clerk of this Court to issue a Writ of Assistance to compel performance of the judgment of this Court, entered herein on September 28, 1962, and to allow the plaintiff, the Hopi Indian Tribe, to enter upon said Joint-Use Area and with the Navajo Tribe, to jointly and equally use and benefit from the grazing forage and all other surface and subsurface resources of said area for the benefit of the respective members of said Tribes.

3. After hearing argument on Plaintiff's Proposed Relief, filed herein, this Court should make such further orders herein as may be necessary to achieve the use and enjoyment by the Hopi Tribe of their joint interest in and to the surface, including all resources, of the Joint-Use Area.

4. This Court makes no findings or conclusions herein as to the matters of accounting or restitution or as to the liability of the United States, if any, and to the extent this Court has jurisdiction, it expressly reserves such issues for later consideration and hearing.

Dated: September 7, 1972.

JAMES A. WALSH,
U.S. District Judge.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Keams Canyon, Ariz., June 21, 1972.

MEMORANDUM

To: Area Director, Phoenix Area.
From: Acting Superintendent, Hopi Agency.
Subject: New Navajo Home Construction in Joint Use Area.

Following reports of numerous Hopis that Navajos were continuing to build new houses close to the boundary of the Hopi Reservation (District 6) an aerial survey was made on June 9, 1972. A total of twenty-four houses under construction were observed and photos taken of twenty. Some of these are within a few hundred feet of the line and some are two miles away but most are less than one mile. The attached map shows the locations and the numbers refer to the enclosed photographs.

There are two things of significance relating to this situation. The first is that Commissioner Bruce told the Hopis in their Council meeting on April 20th that there would be no more home building in the Executive Order Area. So far as is known here no such order has been issued but if it has been, then the Navajos are not respecting it.

The second point is that all these new homes are going up in the area designated as Hopi in H.R. 11128. Under Section 12 of that Act the United States shall purchase the habitations and other improvements at fair market value and pay $3,000 to each family moved. This is in addition to payments due each family moved under the Uniform Relocation Assistance Act of 1970. Considering all this the cost of relocating each family could well be over $20,000 and the importance of stopping this surge of home building becomes apparent. If these 24 new families are permitted to move in it could cost the Government a half million dollars extra to move them if and when H.R. 11128 becomes law. The possibility exists that this influx of new settlers is a result of the benefits in H.R. 11128.

The Navajo Tribe has many home building programs. At least two of these involving bureau funds are in operation on the Joint Use Area. HITP and NPVTP signs can be found along many roads throughout the area. Very likely, other programs using federal funds are in operation. It is suggested that control of these funds can be used to stop the building boom.

FRANCIS J. BOGER.

Senator FANNIN. The next witness will be the Honorable Harrison Loesch. Mr. Secretary, I understand you wanted to have the Commissioner of Indian Affairs with you.

Mr. LOESCH. Yes, Mr. Senator.

Senator FANNIN. Will you both come forward and we appreciate very much your being here this morning.

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

Mr. LOESCH. Thank you, Mr. Chairman, I think, if the Chair will permit, I will ask that my statement which is virtually identical to the statement I made before the other body be made a part of the record and I will also comment on it and upon the general situation.

Senator FANNIN. The complete statement will be made a part of the record. And you may comment as you desire.

Mr. LOESCH. Thank you, Mr. Chairman. I might affirm from the standpoint of the Department of Interior and, I believe, from the Bureau of Indian Affairs, that the solution presented by this bill may not be the only possible solution, but it seems to be the only one that we have had any progress on.

Hearings in this bill were held in the House last April and, to my knowledge, there has not been any real back and forth of alternative solutions since that time.

The Navaho Tribe made a great effort to prevent the passage of the bill in the House, but, of course, as you know, was unsuccessful in that effort. I looked on this as one of the thorniest possible problems, one of the thorniest problems that I have had anything to do with since I have been an Assistant Secretary, which is now a matter going on for 3½ years.

I judged it was also looked on in that way by all of my predecessors.

For the record, we ought to go back a little bit into the legislative history of the bill. The *Healing* v. *Jones* lawsuit, the decision by the Supreme Court in which was handed down in 1962, commenced with a submission of a bill in 1957, late 1957, I think, which originally provided for a partition of these lands. For reasons that I have never been

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able to discover, that is never been able to discover any logical reason, the Department afterward requested that the provision of the bill allowing the Court which was set up by the bill to partition the lands if it found that advisable, was deleted.

The Department recommended the deletion and the Congress concurred and the result was that the *Healing* v. *Jones* court, which was a special court set up for purposes of giving jurisdiction to determine the legalities of the 1882 reservation, that court therefore had no authority to partition the lands. It did not do so, but it came up with a decision affirmed by the Supreme Court that the Hopis have a one-half interest and one-half right to use the 1882 area outside of district 6.

Now, the Department, and I will admit or agree with Congressman Steiger, that we think all administrations have been delinquent in doing what they could administratively to carry out the spirit and effect of the *Healing* v. *Jones* decision. This was partly by reason of lack of authority.

We have no authority, legislatively or otherwise, to move Navahos off any lands. While the Hopis had a one-half interest in the land, it was an undivided one-half interest, the Navahos were virtually in possession of the entire area and having no legislative authority to move them we just kind of let it go.

One of the things we could have done and in my view certainly should have done, was set up a mechanism and a program and carry out the program to reduce the grazing on the joint use area to its carrying capacity or below its carrying capacity.

For many years the area, all of it, has been overgrazed. Today, by reason of drought, the overgrazing is more apparent than it has been in the past. But according to the figures that we had last spring, for example, the joint use area was overgrazed approximately 400 percent, and by that I mean there are four times as many livestock units grazing that land as the land can carry.

The Hopi District 6, on the other hand, it is not perfect, it is overgrazed too, but the Hopis have been much more careful and actually they are probably overgrazing now, possibly as much as 25 percent, part of which may be attributed to drought and their failure to reduce accordingly.

The reason why the Department or Bureau, as an administrative matter, didn't take subsequent action to reduce the grazing capacity, goes even further back into history.

The Navaho Nation, as a pastoral herding nation, has for very many years overgrazed most if not all of its entire reservation, and in the 1930's, early 1940's, there was a Federal program to reduce grazing to carrying capacity. This resulted in terrible bitterness by the Navaho Tribe against the Bureau of Indian Affairs, and resulted in such hardship and general loss that the relationship of the Bureau to the Navaho tribe was virtually destroyed.

The administration, after having tried for 4 years or thereabouts to reduce grazing on the entire Navaho reservation under this program just simply gave up and didn't pursue it to its end. As a result there has been, and following the 1962 decision in *Healing* v. *Jones*, continued to be a great reluctance on the part of the Department and the Bureau to attempt a similar exercise. It has failed, in my opinion, to set up a mechanism which would be practical to even attempt

such a thing. By that I am referring to the fact that the Navaho Reservation is divided into grazing areas. I forget the numbers, I think there are 19 of them, some such a number, the boundaries or which are not coincident at all with the boundaries of the 1882 joint use area. There are some seven or eight grazing districts on the Navaho Reservation which impinge on the 1882 area. The only one that is wholly inside the 1882 area is the Hopi District 6, which is a Hopi grazing district.

Now, in my personal opinion, the first effort or the first thing that should have been done by the Bureau was to redistrict for grazing purposes the Navaho Reservation so that any districts which impinged on the 1882 area would have outer boundaries coinciding with that 1882 area.

It seems to me, for example, referring to the map, you could perhaps, besides district 6 which there is no need to change, have two other districts, perhaps, with the outer boundaries coinciding with the 1882 area. It wouldn't matter whether you had two or four or six as long as the boundaries are the same. Then, at least it would be possible to control the grazing, administratively, within those areas.

As it is, under the regulations which up until 1969 were in force for Navaho grazing, a man who grazed in district 1, for instance, up here, whose boundary is down here in the 1886 areas, under the regulations could graze anywhere in his district. So everyone, though he lived outside of this area, might graze his livestock within it.

It seems to me the first thing to do administratively, would be to fix up that situation up.

Second, of course, I believe that the Navaho grazing regulations which were special to Navaho Nation and did not apply to the other reservations of the country were in error, because rather than our being capable under those regulations of defining our allotment for a person to graze on, as we do all of the time in the BLM lands, and so on, we just let them graze anywhere in the district. I just don't see how you can administer very well that way.

There are a lot of other minor matters involved in this grazing problem. But it is in the area of grazing and the over grazing conditions that I feel the administration has been delinquent. All administrations.

At this point let me digress for a moment, because while we have the map in front of you it has not been explained at all. The entire map shows the Navaho country generally. The colored portion is the 1882 Executive order addition to the Hopi Reservation, and the question that we engage with today, result from the terms of the 1882 Executive order set aside and so on.

Now district 6 is an administrative grazing district only, it does not delineate the boundaries of the Hopi's rights, and this was determined finally by the Supreme Court in *Healing* v. *Jones*. But it is 100 percent Hopi. There are no Navahos legally on district 6.

The blue color here is the boundary set up by the bill, to become all together Hopi and the red is the remainder of the 1882 area, which by the terms of the bill would be 100-percent owned by the Navahos. The green area to the west is not concerned with the 1882 set-aside, but rather with the 1934 order which covered a great deal more area than the colored portion there, but which left in limbo the question of exactly what rights each tribe and, as a matter of fact, certain other

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Indians may have had in the 1934 area. So the green area is the judgment to delineate the area which should be exclusively Hopi in the 1934 area and, as I said, it is sort of a judgment call. It was determined by trying to figure out the use patterns of the lands as near as may be in 1934.

Now, when the bill was drafted, and when that area was determined, and I had a hand in reviewing previous work in trying to determine those use patterns and what the boundaries should be, we could not support a use pattern by the Hopis which brought their use clear over to the boundaries of the 1882 area. But the bill provides for granting to the Hopis the area immediately west of the 1882 area along the green line there, for the reason that if the bill is passed this would make one cohesive Hopi Reservation with all land 100-percent owned by the Hopis in contiguity, and, of course, I think that is a worthy thing to do.

In other words, if you had a small area between, with no contact, it would be bound to be troublesome and bound to cause difficulties down the road.

By the same token, the junction here does give access to the highway system, and so on, to the entire proposed Hopi area.

Now, I have been kind of discursive in what I have been saying, Mr. Chairman. I think if you have any questions about the history of this thing now would perhaps be the time to ask them.

Senator FANNIN. Mr. Secretary, you have dwelled on the grazing problem there. Is there any difference between the way grazing permits are handled on the Navaho Reservation and the way they are handled on most other reservations under the jurisdiction of the Bureau of Indian Affairs?

Mr. LOESCH. Yes; to tell you the honest truth, Mr. Chairman, I don't believe you can characterize the Navaho grazing permits as being handled at all by the Bureau. The former regulations for the Navaho, which were withdrawn in 1969, provided that the permits would be issued to a permittee for grazing in his district, but he could graze the number specified anywhere in his district. Also those permits were issued technically on an annual basis but were good until revoked and they have never been revoked. Further, there has been no oversight at all or attempt to keep the numbers of livestock run by the permittee to the number provided in its permit, so you are likely to have a fellow with a 60-sheep permit running 200 or 300 head of sheep, and it is for this reason that the overgrazing amounts to the 400 percent I mentioned.

One other thing you should know about the permit system, Mr. Chairman, and that is that the revision of those permit regulations in 1969 did not, unfortunately, result in any substantive action by the Bureau afterward. The revoking of the previous special Navaho regulation simply then put into effect the general BIA regulations which applied to other reservations. Now, those regulations do provide for permits on a specified area, but we have never taken the step to determine what specified area the permittee shall have and, of course, they do provide for payment and so on more or less along the lines of the familiar BLM permit.

Senator FANNIN. Mr. Secretary, on the other reservations you have exercised control, but do I understand you to say you have not exercised any control on that one?

Mr. LOESCH. I think that is virtually true, Mr. Chairman, yes.

Senator FANNIN. Could you explain why? I know why, but I think the committee is entitled to have an explanation just why control has not been exercised.

Mr. LOESCH. I think the real reason, Mr. Chairman, to put it in the vernacular, is that the Bureau got its shirt burned in the 1930's and 1940's exercise and just wasn't willing to bite the bullet to do it. More than anything else, I think the form of the regulations for the Navaho greatly contributed to this delinquency.

Senator FANNIN. Assuming the fact that the 1972 reservation is offered, the question is which tribe derives the benefit of the overuse area?

Mr. LOESCH. The Navaho derive 100 percent of the use of it.

Senator FANNIN. We have heard a great deal of their trying to solve this problem through negotiation. Can you give us a rundown on the negotiations and what knowledge you have of these?

Mr. LOESCH. I can give you some insight into this, Mr. Chairman. This Navaho-Hopi problem was one of the first Indian problems brought to my immediate attention after I sat down, and I attempted early to see what could be done. In September of 1969 I was involved in a sort of an informal hearing or meeting, I don't know how to characterize it exactly, in Albuquerque. It took a long day for presentation by the tribe, and it was zeroed in on the 1934 area. It was an attempt to resolve by both tribes the boundaries that should be delineated for Hopis in that area.

Now, that meeting just didn't result in any agreement whatsoever and the meetings that have been held since, to my knowledge, have resulted in really nothing. The Navahos have been adamant and, as late as this summer, have, or last summer, ordered Hopi people who were grazing their sheep on the joint area to get off the joint area and get back inside district 6, they simply do not want Hopis in the joint area. If you talk to the tribal leadership, they will tell you that they recognize the legal validity of the *Healing* against *Jones* decision, they recognize the Hopis have a 50-percent right, but they want to fulfill that right in some manner other than allowing Hopi use of the ground. This is totally unsatisfactory to the Hopis, and when you have got two positions as far apart as those, it is my view that you just aren't going to do any good by negotiation.

And there have been, I think—I didn't review this before this hearing, unfortunately, but if memory serves me correct on the testimony before, over 10 attempts in the last 10 years to get something good going on a negotiation bases.

Senator FANNIN. Perhaps you have already answered this question. But is there, in your judgment, any chance for resolving this problem by negotiation?

Mr. LOESCH. No, sir.

Senator FANNIN. You do not feel it is possible to do so?

Mr. LOESCH. Now the Commissioner has a slightly different opinion from me on this. He thinks it is possible. I don't think it is possible, and the results, since the House passed this bill and since the committee hearings on this bill in the last appearance, bear out what I said.

There has been absolutely no progress or attempt to do anything by either tribe, no initiative by the Navaho Tribe to do anything which would result in giving the Hopis any use of this land.

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As I say, they have alternative solutions, but those are such solutions like buying the Hopi part of it and paying the Hopis off.

The two tribes cannot meet on common ground to give the Hopis use of this land.

Senator FANNIN. Thank you.

Senator MOSS.

Senator MOSS. I apologize for coming late. We are holding hearings on various affairs, on different matters, but I am concerned with this problem, and I hope I am not repetitous in asking two or three questions, but I am trying to get it clarified in my mind.

Do you know how many Navahos are living in the joint use area, Mr. Secretary?

Mr. LOESCH. No, sir, I don't. There are various estimates. I don't have sound figures. We are estimating somewhere around 5,000 people. I think 5,500. I think the Navahos say over 6,000. We are advised on not very solid, provable figures that 1,079 families would be affected, that is in the entire joint use area, 1,079 families.

Senator MOSS. 1,079 Navahos and what about Hopis there?

Mr. LOESCH. There aren't any Hopis living in the joint use area. Maybe a couple.

Senator MOSS. But very, very few.

Mr. LOESCH. Yes, very few.

Senator MOSS. Of these Navahos that live there, do they live primarily in certain clustered areas, and if so, where are they?

Mr. LOESCH. No; they are fairly scattered around the joint use area, Senator Moss, but as Congressman Steiger testified, there has been a lot of new building in the immediate vicinity of the Hopi area, district No. 6.

I cannot believe the reason for the concentration of the new building in the immediate area of the Hopi district No. 6 is accidental. I think it is an attempt to really solidify the claim to the portion of the joint use area outside of the Hopi district.

Senator MOSS. Is there a high incidence of people on relief that live in the joint use area?

Mr. LOESCH. Yes. There is; 31 percent of the people in the joint use area are on some form of BIA welfare.

Senator MOSS. I see. And they would be primarily Navaho, from your——

Mr. LOESCH. Yes; 100 percent.

Senator MOSS. Are there new homes being constructed in the joint use area close to the boundary of the land now exclusively used by Hopis?

Mr. LOESCH. Yes, Senator; before you came, Congressman Steiger went over that and furnished a map for the file which shows, I forget the numbers, but the number of houses, and these are houses just completed or presently under construction in the immediate vicinity of district 6.

This is district 6. The other boundary is the boundary proposed bill to become 100-percent Hopi, the blue area on the map as represented by this line here and this district 6 is represented by this line and the red dots are the brandnew homes in the vicinity.

Senator MOSS. Are these Government financed homes?

Mr. LOESCH. Yes; I am sorry to say they are.

In large part they are financed somewhat indirectly through the Government. In some cases—through the housing authority. The materials of some of them are furnished by the BIA itself under the home improvement program and, of course, I think this does represent, if it is our policy to divide their land or if it is our policy not to help Navahos who are already making more use than they should have of this land, a very inconsitent policy to me, to be helping them out with new houses in the very areas where you don't want them.

It results in more concentration of Navahos in the disputed area.

Senator MOSS. How many Navaho families would have to move if the Steiger bill was enacted?

Mr. LOESCH. All of them on the map in the blue area.

Senator MOSS. By number, how many do you estimate that to be, number of families?

Mr. LOESCH. Well, I think, Senator Moss, that some 5,000 to 5,500 people would be as good an estimate as we can make at this point.

Senator MOSS. By people number it would be 5,000 to 5,500?

Mr. LOESCH. Yes.

Senator MOSS. Under the division of area by the Steiger bill, what is the division of coal and oil and minerals of that sort?

Mr. LOESCH. The Navahos have appeared to say there is an effect on the minerals by the bill, but there is none.

Under present conditions, the minerals are jointly owned by both tribes, and this bill we are concerned with today, 11128, does not partition the minerals in any way. So that the subsurface rights, which are comparatively easy, Mr. Chairman, to administer—what happens is somebody wants a lease. If it is a good deal, the tribes will concur and the lease will issue. We think that should remain the same, and we don't think—who knows, we don't want to give the Hopis more than the 50 percent they should have.

We can't be certain about all of the mineral values in all of the land. So why not leave the subsurface rights in joint ownership which is exactly what this bill does.

Senator MOSS. Leaves all of the subsurface still jointly owned?

Mr. LOESCH. Yes.

Senator MOSS. With the long history of deadlock and conflict here, isn't there any problem in the subsurface rights?

Mr. LOESCH. We haven't had any.

Senator MOSS. You haven't had any?

Mr. LOESCH. We haven't had any real problem. It is remarkable in some areas that we haven't had this, because, as you know, the Black Mesa area is in this vicinity, and there is no controversy over the coal there. In the leadership of the tribes, both the Navaho and Hopi Tribes there are factions which do not approve of these coal leases and the stripping and so on. But the tribal leaderships have been in favor of the contracts that have been executed and we have had no problems with the administration of them.

Senator MOSS. This matter, of course, has been in litigation and there has been a longer period of attempted negotiation. Are you convinced the only solution is the legislative solution?

Mr. LOESCH. Yes, sir; I am. I am like Mr. Steiger and anybody else who has looked at this problem. Nothing would please me more if these tribes could come to an agreement of their own, and I would

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encourage in every way, including financially, if the Congress allows, such a solution.

But I personally, being realistic, just don't think it can possibly happen.

The Hopis feel, in the first place, and with a certain amount of justification now laid to rest by *Healing* against *Jones*, that the entire joint use area was set aside for them and that they should own the whole thing, 100 percent. The court came to the conclusion that the Secretary of the Interior had settled Navahos in the area in the 1930's, and that the Navahos were entitled to one-half of the area, which—to a one-half interest in the area. The Hopis considered this a huge defeat.

Now, then, the history after the establishment of district 6, the Hopis were sort of pressed back and back, although they had been assured that the establishment of district 6 was simply for the administration of a grazing district and was no attempt to delineate their boundary of interest.

That isn't the way it worked. You had the population pressure and incursion by the Navaho people.

Now, the Navahos feel they have had the use and occupancy of this land for a long time, dating to back before, in some cases, the 1880's.

But the use by the Navahos of the area has continuously intensified since that time and is intensifying now, and, of course, the more of them that get in there, the less they want to leave. And the more of them that get in there, the worse the Hopis feel fenced in.

So, I think there is no chance of a negotiated solution between the tribes.

Senator Moss. Thank you, Mr. Secretary, and thank you, Mr. Chairman.

Senator FANNIN. Thank you.

Senator Bellmon.

Senator BELLMON. Mr. Secretary, you mentioned in your prepared statement, which you haven't read, that this is a problem that could not be solved administratively. It is going to take a joint effort by Congress, the administration, and courts. But the question comes in my mind that even though we may act here in Washington, is there any assurance that our actions will be respected by the people involved?

Mr. LOESCH. Well, Senator Bellmon, I don't know. I can say that the Navaho leadership has been very, very intransigent about the matter and has said on occasion they were not going to move off.

At the same time, the Navaho Nation is a responsible group of citizens and skilled people. They have respect for law and I don't think that they would defy the U.S. Government. I don't look at this as being an easy thing.

We are talking, and the committee should be aware, we are talking about moving off lands they are used to using and that they have considered to be tribal lands, moving away and out of there some 5,000 people.

This is very serious, and undoubtedly will cause great hardship and pain. It is a serious thing.

Senator BELLMON. You have mentioned that the Navaho lands in this affected area are already overgrazed by 400 percent. If this is

true generally in the Navaho reservation, where are these 5,000 people going to go?

Mr. LOESCH. That, of course, is the gut question, Senator Bellmon, of this whole bill. Where are they going to go?

We have thought that in the area, not on the farms, but in the area of the new Navaho irrigation project, we would possibly make some more public lands that are within that area available, but this wouldn't take care of more than a fraction, if any, of these people.

We have considered the possibility, and the Navaho Nation itself has explored, I think, a little of the possibility of the purchase of other lands.

The bill provides that any lands purchased for relocation through moneys provided by the bill, can be taken in trust, which, of course, any tribe would desire, whether they are contiguous to the present Navaho Reservation or not, I believe that one way or another we can find some places for some of the people.

I want to point out in this connection that while the Navahos contend with great force that they are dependent upon their flocks and herds, this is not altogether true and that most of—nearly all, as a matter of fact, the people that live in this particular area are only partially dependent on their flocks and herds. Some are dependent on welfare and almost every extended family has an actual wage earner.

One of the things I am concerned about here, is the amount of money provided by the bill. This is sticky. We thought that for the possible purchase of land, the amounts that would be required for moving expenses, and some kind of fair compensation for improvements under the terms of the bill, would be $20 million.

The House came out with a $16 million tab that will be quite restrictive and under present conditions would not provide enough money. I am not positive $20 million would provide enough money, but the administration determined $20 million was all we could afford. That is the best answer I can give you, Senator Bellmon.

We have no plan at this point as to where we would put the people and that is one of the reasons that we want a fairly substantial amount of time on this, and at the convenience of the Secretary to do the moves so that the Secretary could move people or request movement as he found places.

We anticipate there might be a few who would move voluntarily. This is not a money thing. The Navahos wouldn't move at any price if they had their choice, you understand, and I don't think a few dollars one way or another is going to influence them in any way to speak of, but there might be a few families who would like to make a little extra money if they thought they were going to have to move anyway, and that is why there was sort of a graduated bonus, as you might say, built into the original bill for ones who contract with the Secretary to move.

Mr. STEIGER. Senator, excuse me. I wonder if I can add one thing to that. This bill as passed by the House provides that if a majority of those families to be moved upon being polled opt for the purchase of commensurate lands, the moneys will be used to purchase those lands and those people who so desire may move to those lands.

Mr. LOESCH. Yes; I should have brought that out.

Senator BELLMON. I have done a little quick arithmetic and unless my figures fail me, 5,000 people divided into $16 million provides a

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little under less than $3,000 per person. I don't know where you can buy land for that amount. I think the important thing is that for $3,000 in our State you get enough land to carry about three cows.

Mr. LOESCH. You want to recognize, Senator, that is per person. We figure it could be as much as $20,000 per family. We are not talking, you understand, either, about purchases of individual ranches or the like. I don't think that could possibly be done with quadruple that money.

Senator BELLMON. I was leading up to the other question, we are taking in this legislation as I understand it, and I am not as familiar with the problem as I should be, but we are taking kind of a police approach in saying to these people we are going to move you by the power of the Government.

Isn't there a possibility of taking an approach to find some sort of incentive to get them to move more or less voluntarily?

Mr. LOESCH. Yes, we have been working on that. While I said a moment ago and I totally believe this is not a matter of money, the Navajo aren't going to voluntarily move for triple the money. They just don't want to move, period.

Senator BELLMON. If a third of them are on welfare, as you said, what is it that keeps them from wanting to better their condition?

Mr. LOESCH. Well, it is not so much that they don't want to better their condition, Senator. This is to them, at least from all of the expressions I have heard from the Navajos, traditional land, they like it and they don't want to go.

It is my view if we kept the grazing use to the grazing capacity, we would have a whole lot less trouble, because there wouldn't be anywhere near that many people there. It is also my view if we had done our job administering, I don't think we could have done the whole job administratively, there shouldn't be at this date, any more than 22,000 sheep units on that land at the outside.

Senator BELLMON. Mr. Secretary, I have to go vote but I have another question I would like to ask when I get back.

Senator FANNIN. Mr. Secretary, what steps does the administration plan to take to bring about a more realistic approach to the settlement of this dispute?

Mr. LOESCH. We are setting up, Mr. Chairman, a separate administration for the entire joint use area. We have attempted in setting this up to have participation by both tribes, and to show you how much difficulty we have with that, we have not really obtained what I would call substantive cooperation from either tribe.

What we need to do is set up a separate administration so we cannot be accused of favoring either the Navajos or Hopis. At the present time the joint use area is under the administration of the Window Rock area directly, that is, it is part of the Navajo area.

We plan to set up a separate agency with a superintendent or whatever we call it, responsible directly to the Commission. We plan to rejigger the grazing districts so as I explained a while ago their boundaries coincide with the outside boundaries of the joint use area.

We then plan to set aside an allotment for an individual grazing permittee, which I expect we will have a lot of difficulty doing, and as soon as we have that done, we expect to go into some kind of

program which has not yet jelled, to get the grazing use down to the grazing capacity.

Now, it would be helpful for us if the legislation passes.

Senator FANNIN. Thank you, Mr. Secretary.

In order to conserve time, perhaps if there isn't anything further you have to say at this moment, we can go ahead with Commissioner Bruce and we will return to you when the other Senators have voted and returned to the hearing.

Mr. Bruce, I understand you have a prepared statement, if you would present it.

STATEMENT OF LOUIS R. BRUCE, COMMISSIONER OF INDIAN AFFAIRS

Mr. BRUCE. Mr. Chairman, I have a prepared statement. I would like to read it. On the other hand, I would welcome the opportunity to express my views as far as this total problem is concerned.

Senator FANNIN. Your statement in total will be made a part of the record and you may proceed to explain your position.

Mr. BRUCE. I would like to make my comments and then submit the statement for the record, because I do feel that the Secretary has covered the historical background of this problem in detail.

Some of the changes in the amendments have also been submitted. I would like to talk at this point from my own personal standpoint, my own feelings about this total problem as just one of a number of Indian problems between tribes, some individual problems within tribal councils themselves.

I want to go back to the 1930's, if I can, to recall the experiences we had in the late 1930's when history was written with our intent to reduce the grazing in the Navajo area. It so happened that in the 1940's, I was on Secretary Krug's Advisory Committee on Indian Affairs, and we did discuss one of these problems.

We had gone through the experience of trying to reduce the herds. The results of this program are very sad and I still remember that. And we know by articles and by photographs, and I do have some, what it meant for a Government agency to force families to reduce their herds.

As a result of this experience and others, I am sure there was a reluctance in the past by Commissioners, by the Bureau, to do anything about the Navaho-Hopi problem as far as reducing the grazing is concerned. History is being recorded in a number of books. Brown's book—such as "Bury My Heart On Wounded Knee."

We can hardly tolerate to read that book continuously, because it is a sad history on Indians. I for one as an Indian person, and this is where I differ with the Secretary, have faith and hope—a sincere hope, let me say, that this problem can be solved without some of the things we are talking about.

Now, we have been patient for a long time, I am talking about Indians, have been patient, maybe some of the problems have been solved. I took this job as Commissioner, because I hoped I could solve some of these problems.

I have been doing some thinking, discussing, meeting, and so forth, and it is true, as the Secretary said, we have made little progress, but

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I still see some areas which offer some hope for solving this problem without——

Senator FANNIN. Mr. Commissioner, you say you see some areas; just what do you mean?

Mr. BRUCE. I think this whole program of reducing livestock ought to be approached from a marketing standpoint. Sure, the experiences of the past and the thirties are still remembered by some of the Navajo people.

This is a period of high market for livestock and I have Mr. Schwartz on our staff working on a total marketing program for reducing the grazing and so forth.

I think he is here somewhere. There has been some progress in this area, looking at this from the standpoint of a marketing program. bringing buyers in and bringing the Hopi and Navajo together, maybe forming a livestock cooperative or something of this sort, and the fact that we have made a move in this direction offers hope there.

Now, let me also say that I suppose if we decide, and I say "we," that legislation is the only answer, I will have to agree with that.

I have spent some sleepless nights thinking about how this situation can be handled and how it must be handled and also recalling some statements from Navajo people saying they will not move, that they will protect their home and property even if it takes arms. I don't want to be a party, and neither do you as a Member of Congress, to this kind of difficulty.

So I think we ought to weigh very carefully, and I am not saying to stop as far as legislation is concerned, but I think we ought to weigh these things before we move.

I think this separate agency for administration of the joint-use area which the Secretary has talked about can be very helpful. With all due respect to the men who have served in the area and agency offices of Hopi, Window Rock, and so forth, they have become attached to one tribe or the other.

And any attempt I have made to try to solve this problem with our own staff blocks them off against each other immediately. I think the fact that we have a separate agency that will report directly to me in developing these plans that we are talking about can be very helpful.

Senator FANNIN. Mr. Commissioner, you talk about what can be done to bring about a negotiated settlement in the area. What steps have been taken in assisting the Hopi tribe in obtaining the court-decreed rights in this area, in the joint use area?

To further elaborate on that, on June 13, 1972, you telegraphed the Hopi tribal chairman, urging the Hopi to withdraw the few cattle they had been grazing in the joint area, because of threats of violence.

Did you urge the Navajo tribe to desist with interference of the Hopi grazing of livestock?

Mr. BRUCE. We sent a letter to the Hopi stating that we had no authority to do this. The letter was not signed by myself, but I do want to say for the record that we do have some responsibility for this kind of action.

I set up a control which might ease the tension along that joint use area. The control has been operating since April fairly successfully, although not as successfully as I thought it might be.

It is not a police force, it is a courtesy patrol, as I named it, to get the Navajo and Hope to agree to discuss things with each other and also to furnish water along that area so that maybe Navajo sheep would not have to cross that line and be in trespass.

We have 16 1,000-gallon tanks located in the Navajo area along the joint use area, and we are still hauling water to those tanks at the present time. This is one move we have made to ease the tension there.

I say it has not worked successfully, but we are still looking at it to see how we can—I am just concerned about the scraps and so forth that go on.

Senator FANNIN. Commissioner, I realize you are very concerned, and I knew about this problem for many, many years, and it is not something of recent origin, but perhaps if you want to go ahead with your statement, we can get to the questions later.

Mr. BRUCE. I think this concludes my own statements in addition to the statement I am submitting for the record.

Senator FANNIN. Thank you, Commissioner. When Senator Bellmon left, he expressed a desire to ask other questions of the Secretary.

Mr. LOESCH. Mr. Chairman, there is one thing that has occurred to me that I perhaps should bring to the committee's attention.

Congressman Steiger read into the record the conclusions of law reached by the District Court in Arizona on September 7. The findings of fact which accompany those conclusions of law have judicially delineated the delinquency of the administration, the executive branch, and some comments adverse to the Congress in this connection.

I do point out to you that if these conclusions of law become final and are, as I assume they will be, incorporated into the judgment, it appears to me, and this is my judgment, from the course of litigation up to now, since 1958, that there is not much likelihood of the district court decision being overturned.

If that should be the case, the Secretary will have the necessity of furnishing the Hopis a 50-percent use of the joint use area and the Secretary without legislation will not have the tools with which to do it. It will be a very embarassing situation to the entire Government, legislative, judicial, and executive, alike, if the court rules something for us to do that we don't have the tools to do.

Senator FANNIN. Senator Bellmon.

Senator BELLMON. Mr. Secretary, your last comment is part of the question I have been trying to raise here. I agree you are going to need tools to solve this problem and I want to give you enough tools and the right ones. I have seen what happens to money put in the hands of the Indians in Oklahoma, it didn't last very long. Are you going to hand out $20,000 to each family and say buy yourself a farm or ranch?

Mr. LOESCH. No, sir; basically we will be handing out to the individuals entitled to it, the money, unless a majority of heads of families entitled to vote decide to have the money or substantial portions apply to the purchase of other lands. I may say that there are some lands which could be, at a reasonable price, made available. I think it is possible there are some public lands that could be made available. I think it is possible that there are some very large ranches per se in Arizona, that could be made available. Those ranches are composed of deeds and and leased public lands, but the acreage would be there. I am of the opinion, as I said before, that $16 million which is what

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H.R. 11128 provides now, is not enought money; $20 million was our estimate of necessity and I think that is still a closer figure than $16 million.

Senator BELLMON. Mr. Secretary, let's assume that the Congress acted in giving you these tools and you succeeded in moving these 5,000 or 6,000 people out of this area, then you will have the situation with the Hopi Reservation in the middle of the Navaho land, then you will have boundaries—what are they rivers, mountain ranges?

Mr. LOESCH. The boundary, as shown on the map, has been modified a little during the course of this consideration to use natural boundaries in the topography as much as possible, Senator Bellmon. I think, looking down the long haul, I believe at some point it may well be necessary to fence the boundary or a good portion of the boundary. The boundary, as provided by the bill, would minimize and I don't say it would be the best that could be done, I don't know about that, but would minimize the necessity of some fencing on account of step mesa and so on.

Senator BELLMON. Do you have any estimates on how much it would cost to fence the Hopi Reservation?

Mr. LOESCH. Yes, I do. Originally, we thought in terms of $1 million for fencing. That was knocked out because we were under financial pressure and we felt over a period of time we probably could provide the fencing funds out of regular appropriation for the Indian Bureau, so that figure is no longer in the bill. I think the $1 million, it was $978,000, or some figure very close to $1 million, was the estimate of what it could cost at that time.

Senator BELLMON. You are apparently satisfied with the geographical features of these boundaries. Are you satisfied with the fairness of the boundaries?

Mr. LOESCH. Well, yes, I think the Hopi may be getting a little break in the 1934 area on this boundary, if you are going to judge the boundary solely on the basis of land use pattern in 1934. But I outlined the considerations for extending that land to join the 1882 boundary here, and I think that is appropriate. I don't think you should have a strip of Navajo land between the two Hopi areas. Aside from that, I think it is fair, Senator, but I could be educated on this, I suppose, but so far as I know there is no signfiicant difference in the surface value of the respective acreage. I think this is as close as you could come in getting a 50–50 partition.

Senator BELLMON. Isn't it true the Department could administratively move the Navajos out of this area right now?

Mr. LOESCH. No, sir, we have absolutely no authority to move the Navajos out of this joint area now. We are under stricture to provide the Hopis with half of the use and that is exactly the problem we find ourselves in.

Senator BELLMON. So you need new legislation in order to come to this kind of settlement of the problem?

Mr. LOESCH. Yes, sir; we do. We need the Congress to partition the land so we can say, all right Hopis, this is your land, all right, Navahos this is your land, and arrange to have them occupy that.

Senator BELLMON. If we pass the bill, set up these boundaries, go ahead and provide the incentive and go ahead and fence the land, in your judgment, would this solve the problem?

Mr. LOESCH. Yes, it will as far as humanly possible. There will be a lot of trouble, any solution of moving people, the process is going to be painful and troublesome and tragic. But it will solve the problem.

Senator BELLMON. You have told us that the Navajo area is overgrazed 400 percent, the Hopi area 25 percent——

Mr. LOESCH. Yes, 25 percent, that is sort of a guess. Based on experience the Hopis have always been much more careful with their land than the Navajo have. The Hopis did reduce their livestock in the 1930's and 1940's to the carrying capacity, and since then have been attempting to keep their grazing to carrying capacity.

Senator BELLMAN. Did they do this under BIA or BLM guidance?

Mr. LOESCH. Under BIA guidance——

Senator BELLMON. It seems to me where you have a situation where the grass is greener on the other side of the fence, you are going to have herdsmen who want to get their flocks over there. Can't you get, or do you need authority to provide the same kind of situation on the Navajo side as you do on the Hopi piece?

Mr. LOESCH. No, we don't. The Hopis, as I say, have been cooperative. I said a moment ago under BIA supervision, but it is not so. It is the Hopis taking care of themselves on this. They have used the expertise of the Bureau, and they have handled the ground as people should. They have overgrazed some for two reasons. First, drought, and second, incursion by Navajos into district 6.

In periods of drought a lot of times, even with the best intentions in the world, the livestockman does not get his herd down to the climatic conditions as fast as he needs to.

With the current dry cycle, which began in 1971 there has been some stock reduction. I can't say the Hopis are now overgrazed. Those figures are as of last spring. I don't know what happened this summer.

Senator BELLMON. If the Navajos had followed the same kind of management practices as the Hopi, would there have been the pressure on the Navajos to move into these areas to the extent they have?

Mr. LOESCH. Yes, Senator Bellmon. I don't think that has much to do with it. I denigrate the way the Navahos have used their land. They are a destructive tribe on their land. You see, the livestock ownership is sort of a machismo——

Senator BELLMON. What is this word you used?

Mr. LOESCH. It is a Latin American status, meaning sort of a virility status. But it seems to me that the Navahos have wanted to use numbers of horses and numbers of cattle and numbers of sheep as a kind of status thing, and this has contributed to a degree, I believe, to the fact that they consistently, not just in the joint area, but consistent in the process of their reservation have misused their land by overgrazing.

Senator BELLMON. Mr. Secretary, the point I am trying to get to you, if you go ahead and pass the bill, you still have a situation where one portion is seriously overgrazed and one portion that is not.

It would be like a magnet pulling these animals across into the less grazed area.

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Mr. LOESCH. Of course, I think that any responsible land administrator ought to see to it that the land is not overgrazed. You are aware of the heavy effort we have been making in the BLM in the last few years to get grazing balanced on other public lands. Indian lands are not public lands. I still agree and believe that the administration of the Navajo grazing has been very, very bad and I blame this both on the tribe and the Bureau of Indian Affairs.

I am convinced that the Navahos have overgrazed their entire reservation almost.

Senator FANNIN. Thank you, Senator Bellmon. And to follow up on what Senator Bellmon is asking, it is my understanding that the BIA in 1965, advised that livestock areas would not be approved until appropriate adjustments are worked out and the overgrazed conditions corrected.

My question is what adjustments have been made, and how many permits have been issued since that time?

Mr. LOESCH. The answer to that double-barreled question, Senator Fannin, is none and none.

I agree with the Bureau in not issuing permits to Hopis in the joint use area. There isn't room for a single additional permittee. On the other hand, we have taken no action to lower the Navajo grazing pressure on those acres.

Senator FANNIN. Perhaps I should have asked that question of the Commission, because I would like to follow up with a couple of questions.

Mr. Commissioner, what efforts have been taken to help the Hopis get their share of income in the joint use area and compensation for Navaho use of the Hopi one-half interest?

Mr. BRUCE. What is that again?

Senator FANNIN. What efforts have been taken to help the Hopis get their share of income from the joint use area and compensation for the Navaho use of the Hopi one-half interest?

Mr. BRUCE. I have a representative of our area office in Phoenix here, but let me answer it by saying certainly not enough, and then ask him to give us——

Senator FANNIN. If there is someone who can answer the question that is on our staff——

Mr. BRUCE. The answer is "None."

Senator FANNIN. What has been done to rehabilitate the range? I think that has been answered, nothing has been done.

Mr. LOESCH. Wait a minute, Mr. Chairman, I don't quite follow. The rehabilitation, we have done nothing to rehabilitate the joint use area, and it would be worthless and useless to do anything to rehabilitate the area until you get the grazing use down at least to, and in any view, below the grazing capacity.

You see what has happended here. We have got 87,000 sheep, according to our figures, grazing where we only have 22,000 sheep units of forage available. If you continue that for any substantial length of time, you may never get that land back, you may destroy it.

Senator FANNIN. Yes. How long do you estimate at, the present rate, it will be before the joint-use area is incapable of feeding livestock?

Mr. LOESCH. We are getting to that point now. It is my opinion, based on what I have heard from our range people and my own view of the land, that it will take some substantial efforts—first of all, it will take cutting the livestock down to below the 22,000 estimate, a good deal below. I would say half of that, and then it will take 10 years in that dry country, if this were a wet country it would come back faster, but I think it would take 10 years.

The estimates have been that that joint use area could provide, if properly handled up to 100,000 sheep units, at least, 100,000 sheep units of grazing.

Now, the estimate of its present capacity is 22,000 sheep units. If you kept it at 22,000 sheep units, it would require more time and expenditure to bring it back up than if for a period you put it below the 22,000.

If you had an estimate such as we used in our AMP in the Bureau of Land Management, that would be the best way to bring it back.

Senator FANNIN. I understand.

Senator Bellmon.

Senator BELLMON. Mr. Secretary, if you continue to have 87,000 animal units there, how long is it going to be before you people have to leave there because of starvation?

Mr. LOESCH. I don't know. That is one conclusion.

Senator FANNIN. I have a letter from the chairman of the Navaho Tribe, where he informed that the Hopi Tribe has no use of the joint use area. Do you remember that?

Mr. LOESCH. Yes.

Senator FANNIN. Do you agree with that?

Mr. LOESCH. I certainly do. My views on this bill are available to the Navaho Tribe. I have spent hours in the Navaho tribal council-room, talking to them about it, receiving questions, and looking for an alternative proposal.

Senator FANNIN. Mr. Secretary, is there anything further you would like to say?

Mr. LOESCH. No, sir.

Senator FANNIN. Mr. Commissioner, you have your full statement in the record.

We do want to complete these hearings. So, if there are no further questions, we thank you for being here this morning. We will recess until 10 a.m. tomorrow, at which time we will then hear from the two tribal witnesses. Thank you.

(The statement of Secretary Loesch before the House Interior Committee and Commissioner Bruce's statement follow:)

STATEMENT OF HARRISON LOESCH, ASSISTANT SECRETARY OF THE INTERIOR FOR PUBLIC LAND MANAGEMENT TO THE HOUSE INTERIOR COMMITTEE

Mr. Chairman and members of the Committee:

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

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

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

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

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

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

1. That the Hopi tribe had exclusive right and interest in that part of the Reservation known as Land Management District 6.
2. That the Secretary of the Interior had impliedly settled Navajo Indians on the remainder of the reservation commencing on February 7, 1931.
3. That the Navajo and Hopi Tribes had joint, undivided and equal rights and interests in and to all of the reservation outside of District 6.
4. That no other Indians had any right or interest in the reservation.
5. That the Court was without jurisdiction to physically partition the Reservation.

The opinion of the court contained this comment: "It will now be for the two tribes and Government officials to determine whether, with these basic issues resolved, the area lying outside District 6 can and should be fairly administered as a joint reservation. If this proves impractical or undesirable, any future effort to partition the jointly held area, by agreement, subsequently authorized suit, or otherwise, will be aided by the determination in this action of the present legal rights and interests of the respective tribes."

In the period between 1930 and 1969, ten separate efforts were made to negotiate the dispute. All types of arrangements were tried—direct discussions between tribal chairmen, negotiating committees from each tribe, with and without Government officials, and with and without attorneys, etc. Only one thing could be agreed upon—the joint leasing of minerals.

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

I will not spend this Committee's time summarizing the provisions of the bill itself, but attached to my statement is a brief analysis of the changes made by the House to H.R. 11128. We feel that H.R. 11128 is a solution and, therefore, support it as such, if amended. We recognize, however, that other solutions may also be equitable, particularly if they are arrived at in voluntary negotiation between the two tribes. The Congress may wish to consider arbitration as another solution.

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

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

Brief Analysis of House Amendments to H.R. 11128

The first two amendments to the bill concern changes in the land description within the 1882 Reservation and that lying in the 1934 Reservation that is given to the Hopi Tribe. The change in the land description involving the 1882 Reservation results in an increase of some 835 acres in the Hopi share, a change we consider of little importance. The House Interior and Insular Affairs Committee modified the description to provide for better access and easier fencing. We have no objection to this minor change.

The second amendment deals with the amount of land from the 1934 Reservation that is granted to the Hopis for inclusion in their reservation. The increase is substantial, raising the amount of land given the Hopis by 73,600 acres. It is our understanding that this increased figure is a compromise between what was in the original bill and the amount of land requested by the Hopis in the 1934 Reservation. We supported the boundary set out in H.R. 11128 as introduced because we found it to be an equitable division, and we therefore recommend that the original description be retained.

The third major amendment made to the bill was a reduction from ten to five years in the time allowed for removing the families dislocated by the legisation. We supported the ten year period and believe we can relocate all the families in that period and therefore continue our support of the ten year period for relocation of the families affected by this legislation. However, we also continue our recommendation for deletion of the directive to remove approximately 10 percent of the Navajo families per year.

The fourth amendment made by the other body was the deletion of all provisions in the bill dealing with the Navajo Irrigation Project lands, primarily section 10. This step was taken by the other body because they used a totally different approach for providing land for the relocation of the affected families than that set out in the original bill and adopted by the Department. As we pointed out in our report of April 14, 1972, we believe that the irrigation project area is one place that can absorb some of the relocated families. We further point out that the United States bears a major responsibility for the conditions that necessitate this legislation and should provide, at its own expense, land on which to relocate the displaced Navajos. This is still our belief, and we recommend that the language of section 10 be put back in the bill.

One of the principal amendments authorizes a maximum of $16 million for the relocation of the families affected by the legislation. The original bill left the amount authorized for the carrying out of the purposes of the bill as an indefinite amount. We testified before the other body that the estimated cost would be about $20 million. We recommend retention of the original language so that adequate funding will be available for carrying out the purposes of this legislation. In connection with this amendment, the other body set out in section 11 of the bill in its final form their plan for relocating the families displaced by the bill.

The new section 11 authorizes the use of $16 million for relocation of the Navajo families under a set of options with a majority of the participants determining which option to follow. The language of section 11 does set very strict limitations on the amount of money that can be spent for housing for those relocated under the provisions of the bill, limiting it to the cost of a comparable replacement dwelling. We recommend that the language set out in our report be substituted for the existing section 12 of the bill.

A new section 15 in the bill as passed by the House requires the Secretary of the Interior to start immediately and complete within one year a program for the reduction of grazing on the joint use area so as to bring the livestock numbers into line with the carrying capacity of the land. We agree that there is an urgent need to reduce livestock on the joint use area and end the overgrazing and it is our intention to do exactly this. We will do it in two ways, one there will be a reduction in livestock numbers through the relocation of Navajo families to other parts of the area, and second we do plan to make a survey to determine the carrying capacity of the land and then move to bring the livestock numbers into line with that capacity. We do, however, oppose the strict imposition of a one year time limitation on that reduction. We believe that the one year period is too short and will cause undue hardship on those people living in the joint use area. If section 15 is retained in the bill, we recommend that the one year time limitation be deleted.

The House amended section 15 of H.R. 11128, which was renumbered section 16, by deleting all the authority granted for suit except that portion calling for an accounting of the moneys collected in connection with traders licenses. We

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recommend that all of section 15 be retained in the bill because we know of no way that an equitable accounting can be made of the one-half value of the joint use area that Healing v. Jones found the Hopis entitled to nor of the damages they suffered due to overgrazing without the courts making that determination.

The House amended section 19 of H.R. 11128, renumbered section 20 in the bill as it passed the House, to delete the Secretary of the Interior's authority to build a fence and service road along the boundary between the newly delineated Navajo-Hopi Reservations. We feel that this boundary fence and the access road needed to maintain the fence is absolutely necessary if we are not to again find the same kind of trespass problems that this bill is designed to end. As we stated in our report of Arpil 14, 1972, the expense of building the fence and access road can be taken from the budget of Bureau of Indian Affairs. We, therefore, have no objection to this amendment.

The House passed bill contains a new section 21 which was added to protect the Cliff Springs to which the Hopis attach religious significance. The amendment gives the Hopis the right to fence the spring and land around it and to have access to the area and use it for religious purposes. It also requires them to furnish water from the spring to the people living in the area. We have no objection to this amendment.

STATEMENT OF LOUIS R. BRUCE, COMMISSIONER OF INDIAN AFFAIRS

Assistant Secretary Loesch has sketched out the early history of the disputed area. The 1882 reservation was set aside "for the Hopi Indians and such other Indians as the Secretary sees fit to settle thereon." This reservation was necessitated by the fact that the Hopi people were being pressed from the east by the growing Navajo tribe and its flocks and from the south and west by non-Indian settlers. It was clear that the Hopis' rights needed to be protected from the pressures. Almost from the creation of the 1882 reservation, there have been disputes over the meaning of the Executive Order wording that created the reservation. The Hopis claim that the 1882 reservation was created for them and they have from the beginning claimed it in its entirety, while the Navajos, some of which were living within the boundaries of the reservation at the time of its creation, have claimed an unspecified interest in the reservation.

The rapid expansion of livestock numbers in the reservation area, the 1882 Reservation as well as the Navajo Reservation, made overgrazing a problem even before the creation of the 1882 Reservation. However, not much was done about the overgrazing problem until the 1930's. Beginning with the 1930's, the first serious efforts were made to control the grazing of livestock, particularly sheep and horses on the Navajo Reservation. This effort was begun under the special Navajo Grazing Regulation promulgated in 1935. This was started by laying out the whole reservation area, including the 1882 Reservation, in 19 grazing districts. At this time, the whole area was administered by the same agency. At this point in time District No. 6 was created and was occupied and used exclusively by the Hopis. After the 19 grazing districts were established, a range study was made and an overall carrying capacity for each of the districts was set. A list of all the persons grazing livestock in each grazing district and the number of livestock that each person grazed was compiled. Then, by a mathematical formula, each person grazing livestock in each of the districts had the number of livestock he was allowed to graze reduced to a number that would total the carrying capacity of each of the grazing districts. When this listing of persons grazing livestock and the number they would be allowed to graze was completed, a serious effort was made to bring the actual grazing down to the carrying capacity of each district. Sheep were forceably taken away from Navajo families and a long terribly bitter feud started between the Bureau of Indian Affairs and the Navajo people.

This program had been completely abandoned by 1948 and its results were at best, spotty. Today, there is overgrazing over a large part of the area, while in some areas the grazing is pretty well controlled and within the district's carrying capacity. The entire area of the 1882 Reservation, except for the area within District 6, is severely overgrazed.

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

The permits issued pursuant to the Navajo Grazing Regulations are annual permits that are automatically renewed on an annual basis until cancelled, none of which have ever been cancelled. The permits may be transferred or be inherited with the approval of the district grazing committee, which committees are headed by Navajos in every district except District 6, and the Superintendent of the agency. Grazing violations within the area covered by the Navajo Grazing Regulations, this does not include any of the 1882 Reservation, are controlled by the Navajo Tribal Council and the Navajo Tribal Court in accordance with the provisions of the Code of Federal Regulations. Navajo Grazing Regulations differ from the general grazing regulations of the Bureau of Indian Affairs, in that the general grazing regulations define the area covered by a grazing permit.

On September 19, 1969, the Navajo Special Grazing Regulations were amended and all of the land within the Executive Order of December 16, 1882, was removed from the control of the Special Navajo Grazing Regulations and this action automatically placed the area of the 1882 Reservation under the control of the provisions of the general grazing regulations. Actually, although there was a change in the regulations that covered the 1882 Reservation there was no change in the grazing practices in the joint-use area of the 1882 Reservation. The reason that there has been no change is because no one has been able to determine how to move the approximately 1,000 Navajo families and their livestock from one half of the joint-use area. So, as a practical matter, the grazing practices in the joint-use area of the 1882 Reservation are the same as they have been for the past 90 years.

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

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

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

Until 1934, the Navajo Reservation in Arizona had been created by a collection of treaties, Acts of Congress, and Executive Orders. In 1934, Congress enacted legislation which established the Arizona part of the Navajo Reservation by a description that started at the Four Corners between Colorado, Utah, Arizona, and New Mexico, then due west along the north boundary of Arizona to the Colorado River, down the Colorado River to the mouth of the Little Colorado River, up the Little Colorado River to a certain point, then along an established line running east to the New Mexico-Arizona line, then north to the point of beginning, excluding the area of the 1882 reservation. The Act of June 14, 1934 (48 Stat. 960) stated that the reservation was "for the Navajo Indians and such other Indians that have already settled thereon." At the time of the 1934 Act, a band of Hopi Indians was located in two small villages at a place called Moon-copi. This village adjoins the Navajo town of Tuba City. Several efforts have been made over the years since 1934 to delineate the exact area of the Hopi village. These efforts have not been successful.

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

(Whereupon, at 12:40 p.m., the hearing was recessed, to be reconvened at 10 a.m., Friday, September 15, 1972.)

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AUTHORIZE PARTITION OF SURFACE RIGHTS OF NAVAHO-HOPI INDIAN LANDS

FRIDAY, SEPTEMBER 15, 1972

U.S. SENATE,
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m. in room 3110, New Senate Office Building, Hon. Paul J. Fannin presiding.

Present: Senators Fannin, Moss, and Hansen.

Also present: Forrest Gerard, professional staff member.

Senator FANNIN. The hearing will come to order. This is a continuation of an open, public hearing before the full Interior and Insular Affairs Committee to take testimony on H.R. 11128, a bill to partition land in which both the Hopi and Navajo Indian Tribes have an interest.

Yesterday the committee heard administration witnesses: Assistant Secretary of the Interior Harrison Loesch and the Commissioner of Indian Affairs, Louis R. Bruce. Today we will take testimony from the officials and members of the Navajo and Hopi Tribes themselves, and we will begin with representatives of the Hopi Tribe.

The representative of the Hopi Tribe will come forward, please.

For the record, will you please state your name?

STATEMENT OF CLARENCE HAMILTON, CHAIRMAN OF THE HOPI INDIAN TRIBE, ACCOMPANIED BY JOHN S. BOYDEN, GENERAL COUNSEL

Mr. HAMILTON. My name is Clarence Hamilton, the chairman of the Hopi Tribe.

Senator FANNIN. Would you introduce Mr. Boyden?

Mr. HAMILTON. On my left-hand side is John S. Boyden, general counsel for the Hopi Tribe.

Senator FANNIN. I understand you have several witnesses with you; will they be called on?

Mr. HAMILTON. That's right, Mr. Chairman, we have 16 of them to testify this morning on the H.R. 11128 bill.

Senator FANNIN. Thank you.

Mr. HAMILTON. In 1969, I was duly elected in the first popular election held in the Hopi Reservation.

You may have heard through news media, either through television, radio, and maybe newspapers, that the Hopi and Navajo Tribes should solve their old land dispute with no outside interference.

As the chairman of the Hopi Tribe, I have made attempts to just do that. My first meeting with the Navajo tribal chairman, Peter MacDonald, was on May 20, 1971, at the Hopi tribal office; and on

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August 24, 1971, we held another meeting at Window Rock, Ariz., the Navajo tribal headquarters.

Another two meetings were held with Vice Chairman Wilson Skeet of the Navajo Tribe. From these four recent meetings with top Navajo tribal officials in which I was directly involved, absolutely no solutions were reached.

In spite of Navajo assertions that this is purely a matter for the two tribes, the Navajo leadership carefully avoids face-to-face Indian meetings for negotiating. They seem to favor pronouncements in the news media. Each day that passes when the Navajo officials do nothing is just another day that the Navajos retain use of Hopi interest.

Mr. MacDonald has falsely claimed that no attempt was made to resolve this dispute by the tribes themselves before seeking congressional help. The Navajo tribal leaders' publicity stated that no representative of the Navajo Tribe was ever consulted. This is simply not true. In fact, we have been trying to consult with the Navajo Tribe for over 10 years on this subject with no results whatsoever.

It is no wonder that Navajo leaders, including Mr. Peter MacDonald, would like to see a settlement delayed and things continued as they are. For the past 100 years, the mighty Navajos have had it all their way at the expense of the Hopi Tribe.

There would be no need for H.R. 11128 if the Navajos had not been permitted to disregard the rights of the Hopi Tribe for so many years. And so, the Hopis are now exercising self-determination by choosing to seek legislative partition.

On behalf of the Hopi Tribe, I am asking the Committee on Interior and Insular Affairs to assist by recommending passage of H.R. 11128 in this session. This bill does not give either the Hopi Tribe or the Navajo Tribe all that they feel they should have in the solution of this land problem. Nevertheless, in our opinion, it is by far the best solution yet proposed for both tribes.

I thank God that we live in a country in which the rights of the little man and the little tribe are every bit as important as those of the most powerful tribe.

We urgently plead with the Congress to assist us to obtain these rights. Thank you.

Senator FANNIN. Thank you, Mr. Hamilton.

Mr. Boyden.

STATEMENT OF JOHN S. BOYDEN, ATTORNEY AT LAW, STATE OF UTAH

Mr. BOYDEN. Mr. Chairman, my name is John S. Boyden. I have a prepared statement for the record, and on page 12, I would like to make a correction, if I might.

Three lines from the bottom, we have said, "notwithstanding HUD financing." I would like to change that to "notwithstanding Government financing."

Senator FANNIN. Page 12.

Mr. BOYDEN. Yes, page 12 of my statement, third line from the bottom, just change the word "HUD" to "Government."

Senator FANNIN. All right.

Mr. BOYDEN. Mr. Chairman, I believe I could be helpful in making some additional comments and answering some questions that were asked yesterday.

Senator FANNIN. Thank you, Mr. Boyden, the statement in total will be made a part of the record.

Mr. BOYDEN. Yesterday Mr. Loesch indicated he did not know why the partition was not provided for in the 1958 bill. I have been representing the Hopi Tribe for a long period of time, and I was instrumental in the formation of that bill in 1958, as was the counsel for the Navajo, and at that time when we had the Senate hearings—I believe it was Senate hearings—and Mr. Perry Morton of the Department of Justice came over, and we had in that bill a provision that if the court found any joint use area that that area could then, according to the court, be determined to which reservation it would be attached for jurisdictional purposes.

Now, when this was done, Mr. Morton raised the question that this would be a delegation of authority that belongs to the Congress and did not belong to the courts. Now, it is true that when the title to land is determined, there is no question about Congress rights to partition it and no question about the authority of the court to partition it, if the Congress so authorizes.

Mr. Morton at that time raised the question with us, when the rights had not been determined to allow the Department of Justice, through the courts, to make a determination as to the ownership, and then as to the administration was an unwarranted delegation of authority and, therefore, unconstitutional. So Mr. Littell and I both agreed to leave this section out of the bill.

It has taken a long, long time to bring this to the attention of all of the various departments, and I think it is very important, in connection with that, that you do not have an adverse report from the Department of Justice on this bill at this time.

In 1958 when the Department of Justice appeared in the Phoenix hearings and argued it was still an unconstitutional act, the court said it was constitutional, and that is now a matter of legal history.

I think it is significant in this connection that we do not have an adverse Department of Justice report.

Now, several of the Senators have inquired what attempts have been made at negotiation. I think it would be very helpful simply to exhibit to the court the transcripts of the negotiation proceedings. I don't think it is necessary to make them a part of the record, because they are so voluminous, as you can see, they are 6 or 8 inches high.

Senator FANNIN. Over what period of time was that?

Mr. BOYDEN. This is over the period of time commencing first at Scottsdale—in 1963, then in 1966, 1967, and 1968. Those are the official meetings in which the committees have met. These are here for inspection of anybody who cares to look at them. There is not one single place in any of those transcripts where the Navajo Tribe said they were willing to let the Hopi Tribe have its one-half interest that the court had already awarded it, which had already been affirmed by the Supreme Court of the United States.

Futher, Mr. Wade Head, then Navaho, Area Director as the evidence shows, told the Navajo Tribe that because the case of *Healing* v.

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Jones was commenced, they should put all of the tribal land income from the disputed area in a fund and hold it in trust. The Navajos announced they had taken that income and used it all for themselves for tribal purposes, the trust funds, and to this day the Hopi Tribe has not received one dime of these funds.

To give you an idea of what kind of situation we are faced with, Mr. Hamilton and I and others went over to Window Rock last year and met with the Navajo tribal council. The transcript of that meeting is available. At page 287 Mr. Todacheene, Navajo tribal council member, made this statement to us:

> So, this is the place that we can fight together, because just like I say, we're already occupying 1882 country we already have been resettled there, we already have our livestock there, our hogans are on there. The Hopis have no place to move and I don't think our people have to be—the only way the Navajo people are going to move, we know is, they have to have another Bataan March. The United States Government will have to do that, and I don't think they're about to do it.
>
> And we, as leaders of the Navajo people, cannot say move back, because that land is theirs by occupancy. The same as the United States acquired all of the lands here in the United States, we're following their examples. If they can do it—we have done it already, we're settled there and we're not going to advise our people to move out regardless who says. They probably have to chop off our heads, that's the only way we're going to move out of there. . . .
>
> I just want to make that statement for the benefit of Mr. Hamilton, and I hope he can pass the word to the Tribal Council of the Hopis.

This is the point from which we tried to negotiate. This poses a pertinent question asked by the Senator yesterday: Would the Navajo people respect the rules of this Congress? As long as they continue to bluff and as long as they have the power, they will exercise it and not let the Hopi have what belongs to them. When they encountered the opposition of the Utes they did not fight them, they went to the Hopi.

Another question asked by a Senator yesterday was whether this is a police approach and couldn't we do something about it. It is in the nature of a police approach, that is true. When the citizens of New Mexico in the 1840's had the same problem exactly, they were pillaging down there, they were robbing their homes, the U.S. Army was sent there and they drove the Navajo into Hopi territory. Are not our citizens entitled to the same type of protection if it is necessary?

I don't think we are going to have a war, all we have to do is make a stern decision and say this pillaging and aggression and this preempting of Hopi land must stop. The courts are nearly to that point now.

One other matter we might mention is, the Navahos say there is no question about district 6, and there is no problem there, and they are not contending anything about that. Let me say this, every single Navajo living in district 6 at the time the legislation was passed and at the time the court determined that it was exclusively Hopi is still living there.

They have lost every court decision. We went the long way although we had authority tribally to pass an ordinance. Still we went the long way, and went through the Department of Justice. It took a long time to get Justice convinced to bring another action to get those people out. We won it in the district court, in the circuit court, and it is now in the Supreme Court, and we don't have an OK yet.

So, we see they are not contending, but they have had the use for these families, some 25 families still in district 6.

I believe another question was asked Mr. Loesch as to whether there was any concentration of peoples in this particular territory. Mr. Loesch said he didn't think so. I believe there are some concentrations. I think there is a concentration of people at Piñon, which is just outside of district 6, I will point this out on the map, if I might.

Piñon is up in this territory here, and then White Cone down in this area. This line was not drawn for the Hopi Tribe. It was drawn for the Government and we have looked at it.

White Cone and Piñon, at the time they were settled, although they have been nearly destroyed by overgrazing, were townsites or places to cluster, which they did. We have two others. We have particularly the Cow Springs and the Hard Rock area. This line of Government has drawn, and as we investigated after their drawing of it, we found that the heavy concentration of the Navajo population was on the Navajo side. You won't have to move more than half of those people.

This is one of the questions that was asked us yesterday and I think that it is significant to note that in drawing the line it was not drawn for the benefit of the Hopi, it was drawn so we won't have to move some of the Navajo people. As near as we can tell from our independent investigation, they have done a fairly good job of dividing this. We have more wasteland on our side than the Navajos, but I think they tried to do it equitably.

The line itself follows the contour of the land insofar as possible to avoid fencing and to make fencing possible, and to fence out the large portions of the Navajo people. How many people are there? We have estimates all the way from 4,000 tp 12,000, we heard, from one time to another. These have a tendency to fluctuate to meet the occasion. We know that not half of them are going to have to be removed.

Now, as to how many people are on welfare, another question asked yesterday, it was said that 31 percent of the people in the joint-use area are on welfare. This I don't know. I think the whole welfare situation could stand an investigation on the Navajo Reservation.

Wayne Pratt, who was sent out there by BIA, made a report after he did investigation, and he determined at that time that 53 or one-third of the total family units were on some type of welfare in the Cow Springs area. We have both Federal and State welfare. And, so, if you use that as a criteria for the rest of the reservation it would be about one-third. If we use that we also ought to use his findings in other regards. He there found that 51 family units or one-third of the total number of family units have no sheep or cattle. One-third of those people have no sheep or cattle.

There isn't any problem about space. All of these people can have plenty of room. The whole question involved here is the grazing of cattle and sheep and livestock of other kinds that use the range. The space, there is nothing to it. They are living miles apart.

The third, if we take the same criteria as we did on the other, could easily find plenty of room to be on the other side. They find plenty of room to move, as the map the Congressman produced yesterday would show. They move toward the Hopis; they are moving now.

After the other hearing in the House, some 27 families are building new houses close around district No. 6. It is very difficult. It becomes a sorry process when you start to have to move them back. I think the answer to that is obvious to us all after we have done some investigation.

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Mr. Loesch also indicated that the Hopi had at one time indicated that they owned all of the joint-use area. Better than that, we have already proved before the Indian Claims Commission that in 1882 this orange line, and the Commission has so found, including all of this and a great deal north, every bit of the land described in the House bill and clear down to Winslow, was all exclusively Hopi in 1882. They, the Indian Claims Commission, still have to make some decision as to how much we occupied before that, because all of those witnesses testified that the Merriweather line, which came back into this area, was a demarcation of the two. They testified that was not Navaho territory west of the line. Those decisions as to what happened before 1882 are yet to be made.

When it comes to this area that we have marked here, the square which is the 1882 reservation was the subject of *Healing* v. *Jones*, and in that case the court determined that district 6, the pink line in here, was exclusively Hopi because the Government hadn't let the Navajos into that portion to any extent. So the 1882 reservation, as to whether that was set aside for both the Navajo and Hopi, that can be set at rest by simply looking at the true facts in the case.

Senator FANNIN. Mr. Boyden, are you saying that if this bill became law, this still wouldn't settle the dispute?

Mr. BOYDEN. No, I am not. We have two questions involved. There isn't any question that there are certain things that have been done, where land was taken away by the United States—by the United States from the Hopi, for which the United States becomes liable for the payment of that land, where they absolutely made it a part of the Navajo Reservation. Congress has acted and there is nothing we can do about it. All of the money question will be settled before the Indian Claims Commission.

The question is now how much further do we let the Navajo keep going, how much more Hopi land do we allow them to take. This bill would settle that.

Senator FANNIN. That is the question I wanted answered.

Mr. BOYDEN. As to why this reservation was set aside in 1882, I want to leave with the Commission two exhibits, and there the Secretary of the Interior wrote to the Secretary of War and at that time he said it comprises no lands set apart for the Navajos and no Navajos have been settled thereon by the Department, nor have they any right to drive or graze their stock or herds over the Moquis lands. I want those two exhibits to be made a part of the record.

Senator FANNIN. They will be made a part of the record.

(The letters referred to follow:)

LETTER TO SECRETARY OF WAR, OCTOBER 10, 1888

WASHINGTON, D.C., *September 26, 1888.*

Herbert Welsh, Keams Canyon, Ariz., calls attention to action of Navajos in over-running Moqui lands with their herds & destroying their crops & grass and suggesting orders be issued to military to visit Navajo reservation, near the Moquis, & give them to understand the depredations must cease.

KEAMS CANYON, ARIZ.,
September 26, 1888.

Hon. WILLIAM F. VILAS,
Secretary of the Interior.

DEAR SIR: I have just returned from a visit to the Moqui villages Tawa, Wolpi. Mishonjnavi, Shipulavi, and Oreibi; and I write immediately to acquaint you

with the conclusion to which my conference with the leading men of these communities has led me. I believe that these conclusion may be of service to you in framing the policy of the Government toward these Indians and toward their neighbors the Navajos, & I therefore respectfully submit the following for your consideration. At each one of the communities mentioned the complaint of the people was the same—the injuries which are inflicted upon them by the continued intrusions and depredation of the Navajos who steal their corn, their melons, their horses, and who in many instances have settled upon their reservations.

And treat the Moqui lands as though making use of the Moqui water, springs and driving the lawful owners from them. They belonged to them. The Moquis are too gentle and timid a people and too few in number to resent these wrongs. For years they have received assurances from the Government that the Navajos shall be restrained but without result. From my observations upon the ground I am convinced that there is urgent need for a prompt and effective fulfillment of these promises and that joint good in many ways will result from such action. It will prove a great incentive to the Moquis to aid the school work which the Government has established at this point and which has been conducted during the past year by Superintendent Gallaher with zeal and success. At Oreibi (a village hitherto inaccessible and hostile to civilized ideas) Mr. Keam and Mr. Gallaher, who accompanied me upon my recent visit, succeeded in securing promise from Leelulami, the leading chief, of several children for the school, upon the understanding that the Government would, at length, fufill its promise to restrain the Navajos from further depredations.

It is of the utmost importance that the Government should make its influence felt in this the largest of all the Moqui villages, if its policy of educating the Indian children is to be successfully carried out.

In conclusion may I suggest a practical and feasible method by which the desired end may be secured, if the same shall meet with your approval! Orders might be issued to some suitable military officers—a discreet, firm man—the Commanding officer at Fort Wingate, or some one suggested by Gen. Miles, to visit that part of the Navajo reservation (with sufficient force of soldiers) which is contiguous to the Moqui reservation hold a council with the Navajos and give them distinctly to understand that their depredations must cease or that in future the wrong doers may expect punishment for every offense.

I believe that the greatest good will result from such a course should it be carried out immediately, not only to the Moquis but to the Navajos themselves. A feeling is gaining ground among the younger members of the latter tribe that the command of the Government may be disregarded with impunity. This would be a convenient moment to show them that in this understanding they are mistaken.

I will state in closing that this suggestion which I have taken the liberty to submit to you is heartily concurred in by Mr. Gallaher, Mr. Keam, and all well informed and trustworthy observers at this place. I write under the strong impression of its importance, and therefore by that you will pardon bluntness or crudeness in the tone of my letter.

Respectfully yours,

HERBERT WELSH.

DEPARTMENT OF INTERIOR,
September 10, 1888.

The Honorable the SECRETARY OF WAR.

SIR: I have the honor to transmit herewith a copy of a communication of 26th ultimo, from Herbert Welsh Esq., Corresponding Secretary of the Indian Rights Association relative to the action of the Navajo Indians in overrunning the Moqui reservation and the cultivated tracts with their herds and flocks, and destroying their crops and grass which he thinks should be promptly corrected, and for this purpose he suggests that the military authorities cause a force of troops under a discreet and firm officer to visit that portion of the Navajo reservation contiguous to the Moqui lands and give them to understand that the depredations must cease.

The reservation of Moquis Indians was set apart by Executive Order of October 16, 1882, for them, and such other indians as the Secretary of the Interior may see fit to settle thereon. It comprises no land set apart for the Navajos, and no Navajos have been settled thereon by the Department, nor have they any right to drive or graze their flocks and herds over the Moqui lands.

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A recent investigation of the Affairs of the Navajo Agency, under whose jurisdiction the Moquis reservation and Indians are, has brought to the attention of the Department similar information of depredations by Navajos upon the lands, crops and other property of the Moqui Indians, and further, that the Navajo Agent, whose Agency is at considerable distance from the Moqui reservation, is not able, with his police, to correct the abuses.

The inspector further reports that the Navajo's have become so defiant that the Agent with the assistance of a small detail of troops has been unable to arrest parties violating the intercourse laws in selling whiskey members of that tribe on their reservation.

In view of this condition of affairs I believe the suggestion made by Mr. Welsh is a wise one, and I therefore have the honor to request that you give the necessary orders for the movement of a company of troops or such other force as may be deemed necessary for the purpose, under the command of a judicious, discreet, and firm officer with instructions to visit the Moqui reservation and especially those portions of each lying adjacent the one to the other, and to remove all Navajo Indians found trespassing with their herds and flocks on the Moqui reservation and to notify them that their depredations must cease and that they must keep within their own reservation. (Emphasis added.)

I will thank you at the same time to cause the officer who may be intrusted with this duty, to report his action in the matter, and to his observations as to the conduct, habits and the extent of the industrial pursuits of the Indians visited by him, and to make such suggestions, as, in his judgment will lead to the abatement of the causes of the complaints and to the permanent advancement of the Indians.

When his report is made, this Department will thank you to furnish, for its information a copy thereof.

WM. F. VILAS, *Secretary.*

Mr. BOYDEN. The court determined in *Healing* v. *Jones* the exclusion of this land from the Hopis was illegal. They said although the Navahos came in there they were trespassing, and I have in my statement set out the findings of the court to show that it was because of the lack of desire of the Government to hold the Navahos in check that we lost that one-half of the interest in the 1882 reservation.

Now, there is another part here that the Senators ought to understand fully. *Healing* v. *Jones* only pertains to the Executive order reservation. What happens to the rest of this reservation? It had nothing to do with the Moencopi. Every time there was an Executive order set aside for the Navaho Indians, they said it was for the Navaho Indians and every time an area was set aside over here in the West they said it was simply set aside for Indian purposes. Now, Congress protected the right of the Hopi Indians in this area over here, in 1934 when they passed the Western Navaho Reservation bill, and at that time they said that reservation was set aside for the Navaho and such other Indians as were residing within the description. That description included all of this and clear up into this territory here. But no one has ever determined what the interest of the Hopi is in that area. This bill would do it, and we don't have enough time left in our lives to go through this kind of legal process again.

I have been to the Supreme Court on this three times, and we don't have that kind of time in our lives to conclude this problem. Congress can conclude it by separating this.

Mr. Loesch says he thinks the Hopis get a break in this area because they didn't have that much land in 1934. I don't think that is correct.

I remember, in 1938, when I first made a trip to that reservation, the old road came up around the Babrit Trading Post. It was quite famous at that time, and the land then was divided with a line that came straight east, then north, and the land to the south and to the east was considered as Hopi land at that time. There were only one or two hogans in that area.

I recently talked to Mr. Fryer, whose testimony is in this record in many places, and he agreed with my statement. Now what is in there? A 40-room or 40-apartment building financed by HUD. They called me at that time and I said, why, that is right in our disputed territory. They went ahead and built it anyway. They said if it is to be the Navaho's they would give it to them. This line of demarcation gives it to the Navaho. All that Mr. Loesch did was to move and give us one business corner. The location of the service stations, the trading post, their community center and all of the rest in 1934 belonged to the Moqui Indians at that time. They continued to intrude in this area just the same as around District 6.

We have got to have a line of demarcation. This is not all we want. In the House the Hopis asked for this area in black. That is what the Hopis asked, but the House gave them the part you see here in orange. That is all they gave them. We won't get that much next year. We know what squatters rights mean, we know what it means to have things taken away from you, so the Hopi people with their backs to the wall say we will take it the way it is.

The basis of the Hopi argument here is that you by neglect didn't protect this and you took away this portion, our half that we lost in the *Healing* v. *Jones* case. This city was founded by the Hopi people, Tuba City. It was founded by a Hopi Indian chief, but the Navahos get Tuba City under the bill. This is not a Hopi solution.

The original bill provided that we could sue the Navaho for the damage to the land of ours that they have destroyed by the overgrazing. It also provided that we could sue them for the rental because they had withheld it from us after the Supreme Court said it is ours. These remedies were stricken out by the House only as compromises in order to get the bill through.

This is not a Hopi bill by a long ways, but the Hopis are supporting it because they know we can't get that much another time. We need it now, not in the next session of Congress, it must be in the present session if we are gong to protect this minority that has had one of the rawest deals in the United States of any minority group in existence.

Now, consider the separate administrations we talked about. If we have a joint-use area and this bill doesn't pass, you have to set up a separate administration, and that is what the Commissioner is talking about now. You don't need a separate administration. Divide it this way, and then the Hopi administration can take care of the Hopi half and the Navaho administration can take care of their half. If we don't get this the court has ordered the Hopi must get their joint use. It seems to me we should get on to doing the job that should have been done 10 years ago.

Now the Commission spoke of the patrol, the courtesy patrol it was called, who were instructed not to do anything but ride up and down that line. I think the Hopis more appropriately named it the powder puff patrol. They rode up and down that line and when they saw something going on they just looked at it. I have four statements of the courtesy patrol people, I would like them made a part of the record. They stood by and watched this fight, and when you say there is no violence in that area, let me show you the picture of

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the Hopi policeman in surgery who had his head split open. He had it split open twice, the first time with a shovel and this time was a 4-by-4, and I would like the Senators to be able to look at this picture.

This seems to me to be serious, when this courtesy patrol stands by and sits in their cars and watch a Navajo Indian who is resisting the enforcement of the law pick up a 4-by-4 fence post and split this man's head open. They just sit there in the patrol car under instructions to do nothing. That is in their report.

When I hear the Commissioner's statement of some kind of marketing association with two parties involved that are going to bring these tribes together, that statement is so naive it is pitiful.

I would like to introduce some other evidence here because I believe it has a very pertinent place before us. We had at the time this reservation was established and trying to enforce it, we have a series of documents in which the Navajos were imposing upon the Hopi, taking away from them their property. The Hopis are frugal people. Inquire as to how many of them are on relief. You will find only the old people and cripples are the ones who are on relief. The Hopi, they are able to make it their way. I will say all of these documents which I have numbered 3 down through 19 illustrate the futility of this whole situation where the Government has been informed constantly and they have done nothing about protecting these Hopi rights. I ask these be made a part of the record.

Senator FANNIN. Without objection, they will be made a part of the record at this point.

(The material referred to above follows:)

FORT WINGATE, N. MEX.,
November 15, 1888.

ADJUTANT GENERAL,
Department of Arizona,
Los Angeles, Calif:

Referring to instructions just received to carry out the request of the Secretary of the Interior, dated October tenth, ult., which is to remove all Navajo Indians found trespassing with their herds and flocks on the Moqui reservation and to notify them that their depredations must cease and that they must keep within their own reservation, I propose to send Captain Wm. M. Wallace, Sixth Cavalry, with fifty men, Infantry, Cavalry and Scouts. My interpreter, Henry Dodge, commonly called Chee who is a man of prominence among the Navajos, tells me that he thinks there are five or six hundred Navajos comprising a hundred families, probably more, now living on the Moqui reservation; that most of these families have resided there for many years; that they had their homes there before the Moqui reservation was set apart; that they have continued there by sufferance and have never so far as he knows received positive orders to vacate. He says that to remove them now that the severity of the winter is almost upon us, would be a great hardship, and that he believes the Moquis do not wish the Navajos to be removed summarily nor that they would benefit, at least not during the present winter, by such removal, as they would not move from their villages to the detached ranches of the Navajos; that the Navajos have built their winter homes as the General observed when on his trip to Defiance, and it is now late in the season to move to other places and build new houses; also that the hundred or more families ejected would be unable to find new locations except by crowding other Navajos and not only causing suffering to the people and their flocks and herds now settled for the winter, but creating great dissatisfaction among the whole tribe.

It will be observed that Mr. Herbert Welsh in his letter, a copy of which was furnished me, does not recommend the removal of the Navajos, but to hold a council and give them distinctly to understand that their depredations must cease or that in future the wrong-doers must expect punishment for every offence. As there is no time to spare and I must proceed at once to the execution of my orders, I deem it my duty to telegraph this in order that if approved by my military superiors, my views may be submitted to the Honorable Secretary of the Interior, they are with great respect, that it may be more just and humane as well as more politic to hasten slowly and at least hear the Navajos before subjecting them to eviction amid the rigors of winter which we have unquestionably before us, the task of rounding up the whole Navajo tribe and bringing it within bounds. The Zunis complain as much as the Moquis, but the citizens of the region complain much more loudly and they will soon make themselves heard by the Government. Navajos live and roam far to the south-east and west of here and are accused not only of consuming the grass and injuring the timber, but of living on the cattle and stealing the horses of the settlers. Should the recommendation of General Grierson in his annual report be observed, there will be little trouble in corralling them, but if they are to be all brought within the bounds of their present reservation, I would give them this winter to deliberate and to decide where the families outside should be located within its limits, which will I assure be a difficult problem; meantime would assemble a considerable force in sight of the Navajos so that bloodshed might be averted. If practicable Captain Wallace will move November seventeenth, will be at Defiance about the eighteenth, communicate with the Agent there and will council with the Navajo Chief Ganando-Mucho and Sam McConley and perhaps some of the Moqui Chiefs about the twenty-first, so there will be time to modify the instructions if desired.

(Signed) CARR, *Commanding.*

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Calif., November 16, 1888.

COMMANDING OFFICER,
Fort Wingate, N.M.:

You will interpret your instructions of November 10th from these Headquarters, in accordance with the letter of Mr. Welsh upon which they were based. The actual removal of any Navajos who have had homes for a long time upon the Moqui reservation, will be deferred until Spring at least. Should any Navajos be found trespassing, depredating, or in any way doing injury to the persons or property of the Moquis, they should be removed to the Navajo Reservation and required to remain there. Acknowledge receipt and report action.

By command of Brig. Genl. Miles:

(Signed) VOLKMAR,
Assistant Adjutant General.

HEADQUARTERS DEPARTMENT OF ARIZONA,
November 17, 1888.

Official copies respectfully furnished Headquarters Division of the Pacific for information, in accordance with instructions contained in endorsement of October 23rd ultimo, from Division Headquarters.

NELSON A. MILES,
Brigadier General, Commanding.

[1st endorsement]

HEADQUARTERS DIVISION OF THE PACIFIC,
San Francisco, Calif., November 20, 1888.

Respectfully forwarded to the Adjutant General of the Army, in connection with the instructions from his office of October 17th, 1888.

O. O. HOWARD,
Major General, Commanding.

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SAN FRANCISCO, CALIF., *November 20, 1888.*

Maj. Gen. O. O. HOWARD,
Commanding Officer Pacific Division:

Forwards copies of telegrams (from Cmdg. Officer, Ft. Wingate, to A.A.G. Dept. Ariz., and reply thereto) on the subject of the removal of trespassing Navajos on the Moqui reservation.

Official copy:

R. L. DICKSON,
Adjutant General.

A.G. Office, December 3, 1888.
For the Honorable Secretary of the Interior.

WAR DEPARTMENT, *December 7, 1888.*

Official copy respectfully furnished for the information of the Honorable the Secretary of the Interior.

N. C. ENDICOTT,
Secretary of War.

DEPARTMENT OF THE INTERIOR,
December 8, 1888.

Respectfully referred to the Commander of Indian affairs.

E. A. HOWARD, *Chief Clerk.*

KEAM'S CANON, A.T., *January 13, 1890.*

LETTERS FROM THOS. V. KEAM

Asking that certain Indians be allowed to visit Washington.
To Superintendent Baker, January 28, 1890.
To Secretary, February 17, 1890.
Letter to Agent Tankover, March 8, 1890.

DEPARTMENT OF THE INTERIOR,
INDIAN SCHOOL SERVICE,
OFFICE OF SUPERINTENDENT,
KEAM'S CANON, A.T., *January 14, 1891.*

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: In connection with my semi weekly report I have the honor to state that I have since last report been out over the reservation. Some, interesting different localities on and within the boundaries immediately reserved for the Moquis. I am satisfied that there can be a great deal done to advantage by properly directed efforts in opening up the springs to greatly increase the volume of water, and think Mr. Collins has the right man there now to attend to this work in the selection of Mr. Staufer whose name has already been sent to the Office I think.

Every thing is quiet. School flourishing, children ambitious, contented and happy. Several of the prominent Navajos who could not attend the council, sent representatives (some of them did not arrive till the next day after the council) notifying their brethren who had been occupying the Moquis grounds, that they must obey promptly the orders of the Government, to vacate the lands of the Moquis that the orders were perfectly just and right and at the same time assuring us a full and hearty cooperation in all that we are doing.

Very respectfully,

GEO. W. PARKER,
Special Agent.

KEAM'S CANON, A.T., *January 14, 1891.*

Relative to opening springs to Moquis Reservation and to council held with Navajo Indians relative to trespasses on the Moquis Reservation.

GEO. W. PARKER.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, February 14, 1890.

CHARLES E. VANDEVER, ESQ.,
U.S. Indian Agent, Navajo Agency,
Gallup, N. Mex.

SIR: I am in receipt of a petition from Messrs. A. S. Martin, A. D. Wolfe and thirty-seven other citizens of Arizona Territory, dated Navajo Springs in said Territory, June 26, 1889, and of one from Mr. Frank A. Brown, Dr. E. D. Harper and fifty-one others, citizens of New Mexico Territory dated Gallup, New Mexico June 27, 1889, in which complaint is made that the Navajo Indians roam over the country outside the limits of their reservation with their flocks of sheep and herds of horses, much to the annoyance of the settlers whose interests conflict with those of the Indians, and that owing to this and the fact that the two races do not understand each others language frequent quarrels and fights occur, and that the whites are continually annoyed and menaced, and said citizens urgently request that measures be adopted to keep the Indians on their reservation with the exception of those who have taken up claims under the homestead laws outside the limits thereof.

I am also in receipt by reference from the Department—of a letter of the same tenor from John H. Borman, Esq., dated January 3rd, 1890, addressed to Hon. Lewis Wolfley, Governor of Arizona, with the suggestion indorsed thereon of Hon. Nathan O. Murphy, Secretary and Acting Governor of the Territory, that in the interests of the public welfare too great care and caution could not be observed (in dealing) with the powerful Navajo tribe; also bearing Governor Wolfley's indorsement requesting that proper instructions be given to keep the Indians within the lines of their reservation.

In view of the number and character of these Indians and of the fact that they have heretofore in a great measure roved where they pleased in the country adjacent to their reservation, and that the same is now being rapidly filled with settlers who object most strenuously to the presence of the Indians among them, and are jealous of the latter enjoying any of the benefits of the country outside of the limits of the reservation set apart for them by the Government, a grave question is presented as to the means which should be adopted to keep the Indians on their reservation, and prevent friction between the two races, which may result in bloodshed, and be otherwise disastrous to both.

The matter is referred to you with directions to immediately take energetic and proper steps to keep the Indians—with the exception of those who have settled upon lands outside of their reservation for the purpose of taking homesteads—within the limits of their reservation, and to return roving Indians to the reservation.

You will however do nothing which in your opinion would endanger the peace. You are instructed to see that the Indians fully understand where the boundaries of their reservation run, and you will inform them that the lands within the same do apply sufficient for their needs, that white persons have no right to settle therein, and that the Indians should restrict themselves to their own country—except in cases where they take homesteads outside of same—and that should they fail to do so and continue to wander around in the vicinity of the white settlements, the Government would regard such conduct as a defiance of its authority, and a rejection by the Indians of a proper measure adopted for their own good and prosperity, and that such conduct would discourage their friends and weaken their power to help them.

Very respectfully,

T. J. MORGAN,
Commissioner.

KEAMS CANON, A.T.,
January 13, 1890.

Hon. T. I. MORGAN,
Commissioner of Indian Affairs,
Washington, D.C.

DEAR SIR: During my stay in Washington last summer, I talked with you in reference to a promise made some of the principal Chiefs of the Moqui Indians. This way that they should visit Washington, and talk with their Great Chief on matters of importance to them.

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At that time you desired me to write you this winter on the subject, as in the multiplicity of business it would no doubt pass from your mind.

When the matter was brought forward, and recommended by Mr. Oberly last winter, there were no incidental funds available for that purpose. Mr. Belt then informed me, he was not generally in favor of Indians visition the East, but with the Moquis he considered it an exceptional case, and when funds were available he favored it.

On my return here I told the Chiefs of the result of my talk, and they said they would wait anxiously for the time.

I rarely make a visit to the villages but they remind me of this promise, and say, that Indians from all the surrounding tribes have visited the Great Father in the East; they alone have not; although they have always been friendly, and do as the Great Chief desires.

One of the principal objects of this visit is, they tell me, to talk with you and settle the matter of yearly encroachments by Navajo herds, on the land and waters close to their villages. They also desire to see how the white man lives, and how he makes the different articles of clothing; implements they have seen here.

As none of this tribe has ever been East of Albuquerque, New Mexico; I believe it would result in great good. Being one of the most remote from civilization, and rarely leaving their homes, they have not the least idea, of this great country or its people. It would also have a beneficial effect on the school, which for some cause, the attendance is less now than at any time since its establishment. I have asked them why they do not send more children, when they express dislike for the Superintendent and his wife but fail to give me the reason. The Orabis have not sent a child yet, and say when asked, "the Government does not protect us against the encroachments of the Navajos".

Agent Vandever visited here a short time ago and I talked with him on this matter, he experssed a desire to have the Moquis visit the East; also some of the leading Navajos, and settle the matter of Navajo encroachment on Moquis land, and thereby prevent serious trouble, between the Moquis and surrounding Navajos.

Should you favor this visit, I would suggest the following head men of the Moquis: Shimo, Amowita, Polacca, La-lo-lame, and Honani. These are the rulers and leading men from different villages, and represent the whole tribe.

Very respectfully, your obedient servant,

THOMAS V. KEAM.

P.S. I have written this at the expressed wish of the chiefs.

DEPARTMENT OF THE INTERIOR,
INDIAN SCHOOL SERVICE,
OFFICE OF SUPERINTENDENT,
KEAMS CANON, A. T.,
October 17, 1894.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: In compliance with the eighth suggestion in your circular letter of July 27 marked "Education No. 1" I have to further report concerning the filling of this school.

Neither this report is, nor were my former ones, intended as complaints, but simply reports of the actual state of affairs.

There are now twelve children in school, more than a month since the first of the term. The chiefs in council told me that they would not fill the school so long as the Navajos were allowed to depridate upon them. This they did knowing full well that they had promised you that they would fill the school and that I would report their talk promptly to you. They are certainly keeping their word to me. The second mesa people and the Oriba's positively refused to be enumerated by the census enumeration and we had to stop that work when less than half accomplished. They treat us kindly personally but as to doing anything which the Government wants they positively refuse so long as certain wrongs from the Navajos are unredressed.

The police force is utterly worthless I have sent two policemen here after runaway children and they returned saying the children did not want to come and hence they could not bring them. The lawless Navajo around here have, I am

informed, successfully resisted arrest by U.S. troops within the last year, and now they are utterly regardless of any power and not only do the Moquis suffer but white people are not wholly safe. Not long ago they attacked some Moquis, in the Moqui corn fields, and beat them unmercifully leaving one nearly dead. He came in here completely exhausted from loss of blood and covered from head to feet with dried blood, to report the affair. The agent was promptly informed and sent back word that he would be over on the 5th of Oct. or sooner with troops to put the Navajos off the Moqui reservation. He has not come yet and the Moquis are more disgusted than ever with the U.S. Government. And the School stands a pretty poor chance of being filled unless something is done.

I can see no practical solution for the difficulty other than to have enough troops sent to arrest these lawless Navajos and take them to prison, put the others off the Moqui reservation and keep them off and then at the same time force the Moquis to fill their school at once and they have plenty of children and a large delegation away also. In your letter of Sept. 2d 1890 you say that some compulsion will be necessary with the Moquis. This is certainly true.

Whether my suggestion is the best solution of the difficulty or not you of course are the judge.

Command me to do anything you may see fit and it shall be done to the best of my ability and power.

Yours very respectfully.

RALPH P. COLLINS,
Supt.

CHILOCCO, INDIAN TERRITORY,
November 17, 1890.

Hon. R. V. BELT,
Commissioner Indian Affairs
Washington, D.C.

DEAR SIR: As you know, the Moquis live in villages on the summit of high mesas. The three which I visited on the first mesa are said to be 700 feet above the plain, are built on the solid rock where there is no vegetation of any character, and are approached by long tedious, tortuous ways. All supplies of every kind are either carried up by the women, taken up on the backs of burros, or drawn up in wagons, and the people subsist upon what they can raise in the little unfenced fields in the plain below,

The most vital points connected with the situation here seem to be the following:

First, the water supply. At the foot of the first mesa are two natural springs, which furnish water for the people and beasts in common. These should be reamed out, sunk deeper, walled with stone, covered over, and supplied with pumps. Along the valley of Keam's Canon for several miles there are mountain springs, which can doubtless be made to produce a larger flow of water than at present. In the opinion of Gen. McCook, Lieut. Baker, (a civil engineer) and myself it is possible to obtain water in numerous places in the valleys, at a very moderate expense. I gave directions in regard to commencing some test operations at once. The work can be done under the direction of an intelligent farmer and I have instituted inquiries to find a suitable man. Mr. Cooper, the so-called farmer, whom I found there, is utterly incompetent and was doing nothing whatever for the Government, although he was said to be working for the trader. I ordered him to report at once to the Supt. of the school, who was authorized to furnish him employment, and I will dismiss him as soon as I can supply his place.

Second, next in importance to the water supply, is wire enough to fence in their improvements, in order to protect them from the stock which runs at large. They will procure the posts and construct their own fences if supplied with wire. If this can be done this winter, a very considerable body of land will be enclosed and cultivated next Spring.

Third, several families are ready, I think, to come down from the mesa and make permanent homes in the valleys, if they can have lumber for roofs, floors, casings, etc. for their houses.

Fourth, the Moquis live more than 100 miles from the Agency, seldom see the Agent, and get very little help from him. In some way I think they should be cared for by the Supt. of the school, who is a man of superior intelligence, strict integrity, and sincerely interested in their welfare. He is gradually winning their respect and confidence, no easy thing to do after the unfortunate experience they have had with former Superintendents.

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Heretofore not only has little of profit been done for these people, but there has been constant waste as well as dishonesty. Many of the supplies sent to them have been unsuited to their use and have been thrown away; the money paid to the farmers has accomplished almost nothing: the $10,000 paid for the old and almost worthless buildings was a misue of public funds, and the last Supt. was not only incompetent but dishonest. I am glad to say that I believe the present Supt. will be able, not only to make a good school, but to help these Indians in a variety of practical ways, and what is done for them should be done through him. More can be accomplished through the school, however, than in any other way. It should be enlarged and if necessary be kept filled by force. But of this I have already written in a separate communication.

Fifth. The Moquis complain with justice of the Navajoes, who encroach upon their reservation, take from them their water supply, steal the products of their farms and maltreat them generally. They are indignant at the Government and have lost faith in its promises because it has failed to protect them against their unfriendly neighbors. Some vigorous steps should be taken to prevent this state of things, and, although the task is a difficult one, I do not despair of being able to devise a scheme by which it can be effectively done.

Sixth. Their reservation is much larger than they use or will ever need, and it would be a geat benefit to them if a portion of it could be disposed of and its equivalent were given to them in such improvements as I have already indicated. They are now in a condition to make profitable use of wagons, harness, and some simple agricultural implements, plows, hoes, spades, axes, etc., but these should be selected with judgment, properly stored, and distributed with some discrimination, and not thrown away as heretofore.

Seventh. At Holbrook I met Mr. Zuck, who had been commissioned by the Census Bureau enumerate to the Moquis. He had just returned from the trip and reported that he had been successful on the first mesa, tolerably successful on the second, but that entire failure had rewarded his efforts at the third. Orabi, where it is estimated there are as many Indians as on the other two combined. They are the most civilized and have a deep seated distrust and hatred of the Government. Their Chief, Lalolamy, who visited Washington last summer, has lost his opposition to civilization. While I was there brought three children, one of them his own, the first from the tribe, to school, and seems desirous to have his people adopt the white man's ways. In the council which I held, however, he made a strong and eloquent plea for protection by the Government against the Navajoes, saying that its failure to do so was the reason his people had refused to send their children to school.

The Moquis are peaceable, industrious, thrifty and provident, and I saw stored away in their rooms supplies sufficient to last them until another harvest. They are self supporting and with judicious help and direction they can be made fairly propserous. They are ninety miles from the railroad and are dependent for what they buy, aside from their barter with their neighbors, upon a single trader. Unaided by the Government they will doubtless continue to subsist as in the past and to maintain their snake dances, and other pagan customs but will make little, if any, progress in civilization. Even with Government aid their progress will almost necessarily be slow, and yet I believe, as already said, that a little judicious help and protection will greatly improve their present condition. A vigorous school, thoroughly equipped and properly maintained for ten years, cannot fail to make a vast change for the better.

Very respectfully,

T. J. MORGAN, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
INDIAN SCHOOL SERVICE,
OFFICE OF SUPERINTENDENT,
Keams Canon, Ariz., November 28, 1890.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: Since your visit here I have the honor to report concerning affairs.

The people of the second Mesa and Oriba made no moves toward bringing in children, but Io Lolomi sent word that his people in council threatened to kill him if he sent any more children. The same men threatened to kill the other friends of the school also. I, with the assistance of Mr. Keam and Mr. Scott went to Oriba and arrested the two worst men and am now holding them prisoners until the Oribas shall bring in their quota of children.

The example set before the second Mesa people of their Oriba brothers as prisoners had a good effect and now the three villages of the second Mesa have their full quota of pupils in school. Altogether we have now 59.

The first Mesa people are beginning to move down now. Three families are now camped below the school working at getting out posts for fences. One man is ready for wire and anxious to get to work on his spring.

I would like instructions as to how to proceed to get piping, pumps, wire, lumber, etc.

I believe that if encouraged now and helped they will move down as fast as we can provide for them.

I wish also to state concerning the Navajos that, notwithstanding your orders, they have been moving their herds out among the Moquis ever since you left. Until now they have eaten the last vestige of the Moqui corn stalks and the most of their winter grass. They are a standing insult to the Government and robbers of the weak and the complaints of the Moquis are not only just but call for most decisive action on the part of the Government.

I certainly think that troops should be sent out over to drive the Navajo herds from among the Moquis even though the Department should not be ready to deal with the whole Navajo tribe.

Very respectfully,

RALPH P. COLLINS, *Superintendent.*

]Telegram]

KEAMS CANON, ARIZ., *December 16, 1890.*

COMMISSIONER, INDIAN AFFAIRS,
Washington, D.C.:

A company of soldiers should be sent at once to remove trespassing Navajos from among the Moquis and arrest rebellious Oriebas any further delay in this action will work irreparable injury to the whole work among the Moquis.

PARKER, *Special Agent.*

KEAMS CANON, A.T.,
December 18, 1890.

Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: In complying with instructions in telegram of the 7th, I have the honor to state that I can do nothing further in rendering assistance to Supt. Collins in receiving children from among the Moquis. He has in regular attendance now (73) seventy three and I never saw any more promising children in an Indian school. If it is possible for the Government to send a company of soldiers here to remove the Navajos from this valley I am satisfied the Moquis will continue to move down from their villages on the cliffs to the valleys & erect buildings & fences & get their land under cultivation. At the sight of the troops I am satisfied that the Oribas who are now rebellions moved immediately succumb & concede to any demand made of them & they would in all probability bring in to school more children than Mr. Collins can accommodate with his present quarters. He is not taking into school any more boys at the present time.

The Navajos increase their dipectations on the Moquis. A reliable Navajo yesterday gave us the names of three of his people (Navajos) who have recently stolen (11) horses from the Moquis in addition to those reported a few days since. He sent the two medicine men (Oribas) who had been arrested for threatening the lives of the citizens over to the agent (Navajo agency) to be held for a time in confinement. Mr. and Mrs. Collins are very earnest & efficient workers in this field, and if it were possible for Mr. Collins to be appointed to the agency of the Moquis in addition to his duties as superintendent it would be a great benefit to his people & I am satisfied would tend greatly to their advancement in civilization & self support. If some soldiers can be sent here they should be permitted to remain at least two months to guard against the immediate return to the Navajos, and to convince the Moquis that the removal was permanent.

Very respectfully,

GEO. W. PARKER,
Special agent.

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DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 18, 1890.

To the Hon. SECRETARY OF THE INTERIOR.

SIR: I learn that a troop of cavalry has been ordered to Keam's Canon in resonse to a request from this Office transmitted by you to the Honorable Secretary of War.

The situation at that place is substantially as follows:

First: The Navajos have been for some time intruding upon the Moqui reservation, pasturing their herds, appropriating to themselves the water supply, in some instances stealing the farm products of the Moquis, and in one instance at least which came to my knowledge while there, assaulting violently one of the Moquis. The Moquis are a peaceable, law-abiding people, utterly unable to cope with the Navajos, and they have complained very bitterly at what they regard as the neglect of the Government to protect them from their insolent, aggressive neighbors.

It is very desirable that the Navajos should be forced to retire from the Moqui reservation, and, if practicable, those who have despoiled the Moquis should be arrested and punished by at least compelling them to restore the equivalent of what they have taken. Whether this is practicable or not I do not know.

Second. Recently the Moquis known as the Oreibes who live on the farthest mesa from Keam's Canon refused to allow Mr. Zook, the representative of the Census Bureau, to take a census of the village, saying that the white people were all liars and coyotes and that they would have nothing to do with them. They showed at that time a decidedly rebellious and ugly spirit.

Third. Up to the present year the Oreibes have positively refused to send any of their children to the school which has been established for them at Keam's Canon. During my recent visit, Lolomy, the chief of the Oreibes, brought in his own son and two others to the school and promised to bring others from his village. He subsequently brought others to the school. I learned that for this he was arrested and imprisoned and otherwise mistreated by members of his tribe and that two or three of the ringleaders threatened violence both to him and to others in case any further effort should be made to secure children for the school.

I think it desirable that these ringleaders should be arrested and kept in confinement until it is deemed best to release them. My impression is that they have already been arrested and are now in confinement at Keam's Canon awaiting the coming of the soldiers.

Fourth: The school at Keam's Canon is now in good condition, the buildings have been renovated, enlarged and furnished, and the school can accommodate perhaps 75 pupils. On my visit there I found only 14 children. I sent out and had 11 more brought in and required the different tribes to send in enough to fill the school. The people living on the first and second mesas have complied with this request and there are now 56 pupils in the school. It is very desirable that the people living on the farther mesa, the Oreibes, shall be required and compelled if necessary to furnish their quota so that the school may be filled. I do not think that it will be necessary to use any force to accomplish this but that the presence of the troops at that place will be sufficient to secure the end.

There is no agent for the Moquis proper. The agent for the Navajos who has also the Moquis under his charge, lives 90 miles away and cannot give to these people the attention which the present emergency requires.

I suggest, therefore, that the officer in command of the troops be directed to co-operate with Mr. R. P. Collins, Supertentendent of the school at Keam's Canon and take his advice as to what is most desirable to be done. Superintendent Collins has had large experience in dealing with Indians, is a very competent man of excellent judgment and I think he will not request anything of the military authorities which is unwise.

Special Agent Parker is now there and will assist by his advice and cooperation.

I do not anticipate that there will be any conflict or that the Oreides will resist the troops or make any disturbance. If they can be given to understand that the troops are there to protect them from their enemies, the Navajos, I think they will be glad at once to comply with the wishes of the Government regarding their children, and that they will offer no objection to the punishment of those who, without sufficient cause, have shown a rebellious spirit and have perpetrated acts of violence.

The Moquis are a very interesting people, industrious, frugal, thrifty, peaceable, even timid, and have made very little if any progress for many years, but they not have reached a stage when, if their children can be kept in school and the progressive element among them can be encouraged, they will make very satisfactory progress in the ways of civilization.

To secure this it may be desirable that a small body of troops should be stationed there for a few months until the matters suggested have been fully accomplished.

I have written thus fully with the hope that you would transmit this letter to the Honorable Secretary of War to be by him forwarded to the commanding officer in charge of the troops at Keam's Canon, in order that he may know somewhat fully the wishes of this Office and be prepared to act intelligently.

Very respectfully,

T. J. MORGAN, *Commissioner.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 22, 1890.

GEO. W. PARKER. ESQ.
U.S. Special Indian Agent,
Keams Canon, Arizona Territory.

SIR: I am in receipt of your letter dated December 14, 1890, in which you refer to your telegram of the same date, asking that a company of troops be sent to remove Navajos from the Moqui Reservation &c., and stating that nothing but the sight of soldiers will suppress the bad conduct of the Navajos, and that the Moquis are dissatisfied because a promise to remove the Navajos has not been fulfilled.

You further state that the friends of the school among the Moquis are in the ascendant, but that the enemies of the same are as rebellious as ever, &c.

In reply I have to say that under date of November 29, 1890, this office submitted a report to the Department concerning the condition of things at Keams Canon as reported by R. P. Collins, Esq., Superintendent of the school there with a view to the military authorities taking proper action in the matter, and on receipt of your telegram of the 14th instant, I telegraphed General McCook at Los Angeles, California, as follows: "Have troops been sent to Keams Canon, Greatly needed" to which he replied on the 17th instant as follows: "All the cavalry and one hundred eight mules have left Wingate for the Sioux country; a troop from Apache will proceed to Keams Canon via Holbrook where my written instructions will meet commanding officer of the troops".

On the 18th instant I submitted a full report on the subject to the Department stating that it was deemed very desirable that the Navajos should be forced to retire from the Moqui country, and if practicable those who had despoiled the Moquis arrested, &., and the school protected, and suggesting that the officer in command of the troops be directed to co-operate with Mr. Collins and take his advice in the matter of what was best to be done, and that you were there and would assist by your advice and co-operation. On the same date I transmitted a copy of the report referred to Mr. Collins for his information and guidance.

You are instructed to co-operate with said commanding officer and Mr. Collins, in such manner as may be proper to eject the Navajos from the Moqui country to protect the Moquis from the former, and to protect said school and as far as may be practicable secure redress from the Navajos for wrongs done to them. This office will rely upon your wisdom and judgment to cooperate in such manner with the commanding officer of the troops and Mr. Collins, as to prevent any conflict of authority with the military in the premises and to effect a full settlement of the trouble on the Moqui reservation if possible, and for that this office is determined to protect them fully from the wrongs of the Navajos and endanger an outbreak by them, but you will assure the Moquis that this office is determined to protect them fully from the wrongs of the Navajos, and to properly protect said school.

You are instructed to remain at Keams Canon until further directed in the premises by this office.

You will report your action in the matter.

Very respectfully,

T. J. MORGAN,
Commissioner.

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TROOP "H" 10TH CAVALRY,
Keams Canon, Ariz., December 28, 1890.

The ASSISTANT ADJUTANT GENERAL,
Department of Arizona,
Los Angeles, Calif.

SIR: I have the honor to report that pursuant to telegraphic instructions from your office dated December 17th, I was placed in command of Troop H, 10th Cavalry, and left Fort Apache, A. T. with it, en route to Keams' Canon the 18th instant; arriving at Holbrook Sunday the 21st, I received your letter of the 19th containing the instructions of the Department Commander, and reached this place December 24th.

Upon consulting Mr. R. P. Collins, Superintendent of the Indian School, it was learned that La-lo-mi, headman of the village of Areibi, who has been friendly to the school established here by the Government had been held a prisoner by the opponents of the school two days. La-lo-mi and his immediate relatives, notwithstanding the threats of the disaffected portion of the village, send their children to school, but he could not persuade the other members of the tribe to allow theirs to attend and thus fill the quota that had been designated as the proper proportion from that village.

Since the establishment of the school there has been opposition to it by the Areibis, who live most remote and are less progressive than the other villages. La-lo-mi with four others were recently taken to Washington and since his return has been anxious to have his children and those of the tribe receive the benefits of the school. The opposing faction went so far as to say they would kill La-lo-mi if he sent his children to school, and did confine him as before stated in one of their "estufas" or secret chambers until it was reported to Mr. Collins by some friends of the school, whereupon he was released. This happened about a month ago.

As the rest of the village had manifested no intention of complying with the directions of Mr. Collins it was believed that only a display or use of force could bring them to terms. Accordingly with Lieut. Rowell, 30 men Troop H, 10th Cavy., and Special Agent G. W. Parker, Mr. Collins, Mr. Keams, as Interpreter, I marched to the vicinity of the village Friday, camping for the night at the foot of the Mesa upon which it is situated. Word was sent to La-lo-mi that Mr. Collins had come to receive the remainder of the children, twenty-eight girls and eight boys. Early yesterday morning La-lo-mi came to came and said that he had been able to get a portion of the children, but none from any of the people that had opposed him. He was told that those were the children that must be forthcoming. He then returned to the village. At 9 o'clock A.M. we, accompanied by 20 dismounted troopers ascended to the town and found the entire populace assembled in the central portion, lining the streets, house-tops and all available standing space, except that apparently reserved for us. La-lo-mi at once stated that all the village had come together and were friendly to him, would do as he said and that the children were ready. The children were promptly placed to one side, examined by Mr. Collins, and sent to our camp.

As the census enumerator failed to obtain a count of this village, at Mr. Parker's request, they filed by and were counted by him. They numbered 750 men, women and children.

As friendly feeling was apparent and evidenced by the handshaking which followed. We were in the village a couple of hours.

La-lo-mi also said that as his people had done what the Government desired he wished the Government to do something for them as they were poor and weak they want the Navajoes kept from the land they cultivate and the waters they use: some axes, stoves and hoes. He said that some of his people would be glad to move down into the valleys if a little lumber could be given them to build.

The Navajoes have undoubtedly at times annoyed the Moquis in many ways, especially during the planting season when the water holes and springs are nearly dry by their numerous herds of sheep, and have committed depredations to a greater or less degree upon them always. I saw no Navajo herds in the vicinity of the Moqui Villages.

The Government school here under the supervision of Mr. Collins is now filled to its utmost capacity and appears to be in a thriving condition. There are children from all the Moqui villages, 42 from Areibi, 102 in all. I am confident that Mr. Collins will have no further trouble in keeping his school filled.

Very respectfully, your obedient servant,

CHAS. H. GRIERSON,
1st Lt. 10th Cavalry,
Commanding Troop H.

HOLBROOK, A.T., *December 31, 1890.*

GENERAL MCCOOK,
Los Angeles, Calif.

Lieut. Grierson is here and has completed his instructions splendidly one hundred and two children in school. Oreibas obedient and happy. He should be instructed to remove intruding Navajos from among the Moquis before leaving.

COLLINS, *Superintendent.*

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 31, 1890.

The Honorable, the SECRETARY OF THE INTERIOR.

SIR: For your information and with the recommendation that the Honorable Secretary of War be advised thereof, I have to say that I am in receipt of the following telegram from George E. Parker, Esq., U.S. Special Indian Agent, dated Keams Canon. Arizona, December 30, 1890:

"On Friday Lieut. Grierson and command accompanied Sup. Collins and myself to Oreiba village where we camped for the night at the foot of the mesa and had a conference with Chief La-Lu-Lu-My who expressed some doubts as to the results of our visit but upon marching up into the village in the morning we found Oreibas all assembled who greeted us cordially, offered us all the children we wanted. announced obedience in the future to any demands of the government. We took (20) twenty girls and nine (9) boys, total number now in school one hundred and two (102). We took census. Office letter of 22 received. We will handle Navajo question all right. No danger of any conflict. Soldiers must be permitted to remain for a while."

Very respectfully, Your obedient servant,

T. J. MORGAN,
Commissioner.

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Calif., December 31, 1890.

Lt. CHARLES H. GRIERSON,
Commanding Troop H, 10th Cavalry,
Keams' Canon, A.T.

SIR: During the Department Commander's interview with the principal men of the Moqui Village at Keams' Canon last November, complaints were made against certain Navajo Indians for trespassing upon the land cultivated by members of the Moqui villages and for grazing horses and sheep within the limits of the Moqui Reservation.

This business, as you are aware, belongs more particularly to the Interior Department, and should be attended to by the Agent of the Navajo and Moqui Indians stationed at Fort Defiance, Arizona, but, as you are on the ground, the Department Commander directs that you hold interviews with the Navajoes who are reported as trespassers upon the Moqui lands and explain to them that they should cease molesting the Moquis or interfering with them in their pursuits. It is known that the Navajoes and Moquis have intermarried and that there is continuous trading between them, and with this understanding you will be very guarded in your action, especially towards the Navajoes, and under no circumstances, if it can be avoided, will any harsh measures be taken towards them at this time. The lines separating the Navajo and Moqui reservations are not marked with a degree of plainess that an ordinary Indian can understand. There was no person at or near Keams' Canon known to the Department Commander who could even indicate points on boundary lines, and until this line is distinctly marked only pursuasive measures will be used towards the Navajoes in this regard.

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This important duty is entrusted to you, hoping that your presence there will prove as beneficial and crowned with equal success as rewarded your actions towards the disaffected Oeriba Indians, who so opposed the efforts of the Indian Department in its endeavors to instruct them and bring their lives more in harmony with the laws of civilization.

Please acknowledge receipt.

Very respectfully, your obedient servant,

H. K. BAILEY,
Captain, U.S. Army, A.A.A. General.

LOS ANGELES, CALIF., *December 31, 1890.*

T. J. MORGAN,
Commissioner, Indian Affairs,
Washington, D.C.:

Foregoing just received and repeated for your information. General McCook. Lieut. Grierson is here and has completed his instructions splendidly one hundred and two children in school Oreiba's obediant and happy. He should be instructed to move intruding Navajos from among the Moquis before leaving, signed Collins, supt.

McCOOK,
Brigadier General, Commanding Officer.

LOS ANGELES, CALIF., *January 15, 1891.*

BRIG. GEN. A. McD. McCOOK,
Commanding Department, Arizona.

In compliance with instructions of the Major General Comdg. the Army, reports upon letter from Interior Dept. of Dec. 18, 1890, requesting use of troops at Keams Canyon, Arizona, to remove trespassing Navajoes from among the Moquis, and to arrest certain rebellious Oreibis and make certain recommendations.

Official copy:

J. C. KELTON,
Adjutant General.

A. G. Office, January 13, 1891.
For the Interior Department.

[1st Endorsement]

WAR DEPARTMENT,
January 16, 1891.

Respectfully referred to the Honorable the Secretary of the Interior in connection with his letter on the subject dated the 18th ultimo whose attention is invited to the copy of the endorsement of the Commanding General Department of Arizona dated January 3, 1891, on page 4 of this report.

REDFIELD, PROCTOR,
Secretary of War.
E. M. DAWSON,
Chief Clerk.

[3rd Endorsement]

HEADQUARTERS DEPARTMENT OF ARIZONA,
Los Angeles, Calif., January 3, 1891.

Respectfully returned to the Adjutant General of the Army, inviting attention to the enclosed copy of the report of 1st Lieut. Chas. H. Grierson, 10th Cavalry, of December 28, 1890, and copy of my instructions to him of the 31st ultimo.

It is recommended that the line of demarkation between the Navajo and Moqui reservation be distinctly marked by indestructable monuments upon the natural elevations along the lines, and that the water in the neighborhood of the line and lying east thereof be reserved for the Navajoes, and that to the west for the Moquis. Until this is done I do not deem it wise to use force to prevent the Navajoes from grazing near the Moqui reservation.

The Navajoes or Moquis do not know where the line between their reservations is, nor do I; hence any coercive action on our part would not be wise until the line is definitely settled.

The presence of troops near the Moqui villages would certainly prevent Navajoes from using personal violence against the Moquis, or plundering from or destroying their crops, and it is my intention to take necessary action to prevent this.

A. McD. McCOOK,
Brigadier General, Commanding.

Mr. BOYDEN. We talk about fencing district 6. The Hopis don't want you to fence district 6. The Hopi are opposed to it for this reason. When the district was established, we had the Commissioner of Indian Affairs and many Bureau officials who assured the Hopi Tribe the line would not become a line of demarcation between them and the Navajo Tribe. It was for grazing purposes only. Yet when the court decided it, they said because the Navajos were kept out of District 6 that alone became exclusively Hopi. The Hopi Tribe did what the Government wanted them to do, they are forced out of the joint use area. And I want to offer these for the record.

Senator FANNIN. Without objection they will be made a part of the record.

(The material submitted by Mr. Boyden follows:)

[National Archives, BIA. Record Group 15, Classified Files, 1907... File Mark 10527-37-066 Navajo]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, March 5, 1937.

MEMORANDUM: RECOMMENDING PLAN OF ADMINISTRATION FOR HOPI AND NAVAJO RESERVATIONS

* * *

III

General Principles Underlying Proposed Set-up: With these factors conditioning the problem as outlined in Section II, and with the general background of the problem, as outlined in Section I, it is intended that this plan shall rest upon the following principles:

* * *

2. That all administrative matters which affect the Hopis and Navajo Indians jointly shall be distributed between the two superintendents on the principle that *the Hopi Superintendent will have jurisdiction in the other land management districts. This arrangement will be tentative until the definite boundary of the Hopi-Navajo reservation shall have been determined. This arrangement is established as a matter of administrative expediency and convenience and shall not be construed in any way as official boundary between the two tribes, or as prejudging in any way the boundary which is ultimately established.*

* * *

Recommended for approval by the undersigned:

WM. G. McGINNIES,
Director, Land Management Service, Navajo Service.
ALLAN G. HARPER,
Field Representative.
E. REESEMAN FRYER,
Superintendent, Navajo Service.
A. G. HUTTON,
Superintendent, Hopi Reservation.

Approved: JOHN COLLIER, *Commissioner,*
Date: March 3, 1937.
[Italic—Emphasis added.]

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[Wilmington Federal Records Center. BIA Field Records. Navajo Service, Window Rock, Ariz. FRC No. 72920, File 080]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington. March 16, 1937.

(Rec'd) Navajo Service,
Mr. E. REESEMAN FRYER,
Superintendent, Navajo Agency.

DEAR MR. FRYER: I am pleased to advise you that I have approved the "Memorandum Recommending Plan of Administration for Hopi and Navajo Reservations" which was transmitted to me by Field Representative Harper from Window Rock, under date of February 17, 1937, on behalf of Superintendent Hutton, Dr. McGinnies and yourself.

In approving the Memorandum, I believed it advisable to add a new sub-section (7) to Section III, in which I have further emphasized a thought which the memorandum itself has suggested; namely, the necessity of adjusting all plans and projects for the Hopis to their particular background and psychology. In mimeographing the Plan for circulation to Divisional heads, I have incorporated this additional sub-section in its proper place in the text.

Approval of the Plan carries with it authority to delimit an area to be reserved exclusively for the Moencopi Hopis. I would like you, Superintendent Hutton, and Dr. McGinnies to give this proposal further, careful thought, especially in regard to the problem of securing the concurrence of the Navajos in the proposal. I have no doubt of the advisability of delimiting such an area for the Moencopis; I am only anxious that the adjustment be made so as to avoid the possibility of conflict between the two tribes or future doubt as to the validity of the reserved area.

May I congratulate you and the other signers of the Plan upon your success in working out this very difficult problem.

Sincerely yours,

JOHN COLLIER, *Commissioner.*

[Italic—Emphasis added.]

[Wilmington Federal Records Center, BIA. Field Records. Navajo Service, Window Rock, Ariz. FRC No. 72954]

62000-35-301 (Amended 1-28-38) 16092.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington.

GRAZING REGULATIONS FOR THE NAVAJO AND HOPI RESERVATIONS

(Approved *June 2, 1937*)

Authority

The Secretary of the Interior has the authority to regulate the grazing of livestock on tribal lands within Indian reservations so as to prevent overgrazing and the destruction of the soil through erosion. * * *

Hopi Reservation

For the purpose of these regulations District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and By-laws of the Hopi Tribe.

(Signed) JOHN COLLIER,
Commissioner of Indian Affairs.

Approved: June 2, 1937.

(Signed) OSCAR L. CHAPMAN, *Assistant Secretary of the Interior.*

[Italics—Emphasis added.]

HOPI INDIAN AGENCY,
Keam's Canyon, Ariz., June 28, 1937.

Mr. E. R. FRYER,
General Superintendent, Navajo Service,
Window Rock, Ariz.

DEAR MR. FRYER: *We have had several cases in the past few months whereby the Navajo Indians are moving into areas occupied by the Hopis.* I have taken this matter up previously, however, I seem unable to get any consideration or any satisfactory action taken on the part of the land management people.

You will remember at the Flagstaff conference I stated at that time that the Hopis should not move out and the Navajos should not move in. While your district map shows all the land beyond the Denebito Wash as Navajo area, it is a gross error because the Hopis have farmed beyond the Denebito Wash for many years.

Recently a Navajo moved near the Denebito Wash and planted a new field, lying adjacent to land being farmed by Hopis, and this tract of land had been cleared and had been farmed by the Hopis themselves. When this matter was first taken up with the Navajos by my representatives the Navajos told us that Mr. Griffin from Pinon advised that they were to go down there and plant. A few days later Mr. McKinney went out and went into the situation and he told the Navajo his sheep could graze in that area and that they would have to give up the farming land to the Hopis. Another meeting was held on June 21st, at which were present Mr. Frazier from Tuba City, Mr. Griffin from Pinon, and several other head men from the Navajos, and they had never notified this Agency about this meeting. At this meeting Mr. Frazier stated that the Navajos should stay there and the Hopis should release it, and were told to get out pending further action. According to Mr. Miller of this Agency, Mr. Frazier further stated that if there were any more difficulties he would move the Navajos back and the Hopis across the Denebito Wash. He further stated that you would back him in anything he did along this line, and while I know the division of this land is a difficult matter, I feel that the Hopis are getting a raw deal all the way through.

Another case that took place the past winter was when a Navajo moved approximately eight miles from the Oraibi Wash to the Polacca Wash and established headquarters in an area on which the Hopis had grazed their cattle for the past thirty years. The cattle were run out of the area, and as a result the Hopis lost nearly a hundred head of cattle due to the moving from first one place to another, and Mr. McKinney approved of the Navajos moving clear in the area, which according to the interpretations of the Navajo grazing rules and regulations is entirely wrong.

The Hopi people are peaceful and want to abide by proper decision, however, I think it is time that either some of the district supervisors should stop saying certain land is the definite Hopi reservation, which has been brought to your attention before and that when a Navajo moves on to the Hopi's domain that he be forceably moved out.

There are several other cases of Navajos moving onto Hopi territory and grazing grounds, however, we are helpless in getting any action taken toward having them removed. We certainly receive a lot of criticism from the Hopis because we allow these Navajos to come into their territory when they have little enough as it is.

I will be very pleased to hear from you and try to carry out any suggestions you have to make in this matter. I know we must work this thing out together, and I am sure that you and I will not have a great deal of trouble in reaching a fair decision, however, I have felt that some of your district supervisors have wanted to adhere to your lines, as set up in your map, and as I have said previously, the Hopis have farmed beyond the Denebito Wash for a great many years and there are farms beyond the district line as set up in practically all directions, and if the attitude is going to prevail that the district boundary lines as established are final then it is time to change the lines so as to at least include all the land the Hopi has been occupying the past few years and not try to squeeze them more and more every year.

At the time of the district division I told the Hopis that this division was on a land management basis and not as a definite reservation boundary which explanation they accepted, however, when other Indian Service employees tell them the contrary it puts me in a bad light.

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The Hopi Tribal Council is quite upset about the present situation and anxious to bring the matter before the Indian Office, however, I have induced them to withhold taking any steps until you and I have had the opportunity to go into the cases and try to reach a satisfactory agreement.

With kindest personal regards, I remain

Yours very truly,

A. G. HUTTON, *Superintendent.*

[Italic—Emphasis added.]

WINDOW ROCK, ARIZ., *July 20, 1937.*

Mr. A. G. HUTTON,
Superintendent, Hopi Indian Agency,
Keams Canyon, Arizona.

DEAR MR. HUTTON: I feel rather negligent in this Hopi-Navajo Boundary matter. I had intended, long before this, to make a trip over to Keams Canyon and discuss with you a number of things which need to be "ironed out" relative to Navajo and Hopi use. As you perhaps know, I went in to Washington for what was presumed to be a week's business, and was held over for the Senate Committee's inquisition which lasted, in all, almost six weeks.

None of our people have any authority beyond that which has been recognized by both you and myself to make any decision relative to Navajo-Hopi boundary matters.

The new Grassing regulations provide that, for the purpose of the regulations only, District 6 shall be considered as the Hopi Reservation. These regulations, as you will note, were also drawn with careful consideration of Article I of the Hopi Constitution, which provides for the determination of the reservation in fact only by triangular action of the Hopi Council, the Navajo Tribal Council, and the Commissioner of Indian Affairs.

District 6 should not be recognized by any of our people as being a reservation. It is merely an area which defines land use as between Navajo and Hopi Indians. If you will let me know when it is convenient for you, Mr. Kouliarnies and I will come over to Keams Canyon, and attempt to work out with you a scheme which, as nearly as possible, will be agreeable to both sides.

E. R. FRYER,
General Superintendent.

[Italics—Emphasis added.]

U.S. DEPARTMENT OF THE INTERIOR,
INDIAN FIELD SERVICE,
NAVAJO SERVICE,
Window Rock, Ariz. August 25, 1937.

Memorandum to: Mr. Hutton, and District Supervisors Frazer, Griffin, Thomason, and Stocks.

At a meeting which Mr. McGinnies and I held on August 12 with Superintendent Hutton and the Hopi Council, *it was evident that much confusion exists as to the exact meaning of the boundaries of District 6. The belief seems to exist, among the Hopis, that the Navajo Service has created a reservation for the Hopi Indians; that, as a consequence to this assumed action, all Hopi Indians living outside of District 6 would be forced back inside of this boundary. Nothing is further from the truth.*

District 6 is just another Land Management District. We did attempt to include all Hopi range use. In several instances, however, this was impossible and there are still Hopi Indians living outside of District 6 ranging their stock and farming in other land management districts.

Hopis living in Districts 3, 4, 5, or 7 would have range rights equal to the Navajos in those districts. By the same token, Navajos living in District 6 (and there are many of them ranging their sheep well within the boundaries) would have the same rights and privileges as the Hopis. District boundaries merely hold existing use in status quo.

While from the land management standpoint District 6 is identical to all other districts from a strictly administrative standpoint it is entirely separate from all other districts. Hopi Indians are responsible only to Superintendent Hutton, who is in no way administratively responsible to the Navajo Agency.

As previously stated, Hopis living in Districts 3, 4, 5, and 7 would have status identical to that of the Navajos; their livestock will be charged to those districts. They will therefore be subject to the maximum limits of the districts in which they range.

Land Management Districts were set up primarily for the purpose of controlling range use. District lines do not prevent the free movement of people from one district to another to get wood, or for social purposes. Therefore, Hopi Indians can go outside District 6 for wood. We shall, however, attempt to set aside an area somewhere adjoining District 6 for the exclusive use of the Hopi Indians. In order to do this, it will be necessary to obtain the consent of the Navajo Tribal Council. Until this is done, no attempt should be made to restrict the Hopi or Navajos from cutting dry wood. The cutting of green timber has been covered in previous memoranda from the Forestry Division.

The following are examples of some of the complaints made by the Hopis:

1. A Hopi Indian, who claimed to be ranging in District 4, complained that he had been refused the right to place his bucks in one of our buck pastures.
2. Another Indian complained that when he attempted to cultivate his farm on the Dinnebito, he was told most emphatically to "get back inside of the boundary." According to Supt. Hutton, this man has farmed the place in question for a number of years.
3. The Hopis are being refused the use of a stock tank nine miles southwest of the Moencopi village.
4. Tribal delegates complained that they have not been notified of the location of District boundaries.
5. "A Navajo ate my green watermelons: then he stole my corn. But that isn't all; he sold me his hogan."

Summary

1. Navajos in District 6 remain where they are.
2. Hopis outside District 6 remain where they are.
3. The boundaries of District 6 do not prevent Hopis from going outside the District for wood.
4. Hopis ranging in Districts other than District 6 can participate in buck pastures and any other project offered Navajo stockmen.

Unquestionably, many controversies will arise between the Navajos and the Hopis until a reservation boundary for the Hopis is actually established and fenced. The Hopis, at this meeting, showed little inclination to consider a specific Hopi boundary. Most of them think only of their traditional "boundary", and may not wish, for some time, to consider objectively conditions as they actually exist. In the meantime, when controversies arise, it is suggested that the District Supervisor concerned get in touch with Superintendent Hutton and "iron our" the trouble on the ground. Settle the controversy and mail this office a memorandum stating the action taken.

E. R. FRYER,
General Superintendent.

[Italics—Emphasis added.]

[Wilmington Federal Records Center, BIA, Field Records, Navajo Service, Window Rock, Ariz. FRC No. 72920, File 080]

TOREVA, ARIZ., *October 5, 1937.*

Commissioner of Indian Affairs,
Washington, D.C.

SIR: *A special meeting of the Hopi Tribal Council was held at Oraibi, Arizona, on October 5, 1937, and the question of the land management districts as set up by the Navajo Service and Soil Conservation Service was discussed, and the Council passed a resolution that since these districts were created without the approval of the Hopi Tribal Council that they should not be recognized as setup at present for the following reasons:*

1. *It gives control of the greater part of the Hopi Reservation to the Navajo people, resulting in more Navajos settling on the Hopi Reservation, which will make a satisfactory settlement of the land question more difficult than ever.*
2. *District Six, as set up, does not include nearly all of the area that has been occupied by the Hopi Indians for a good many years. This especially includes grazing land and water holes.*

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3. *When difficulties arise between Hopi and Navajos it is impossible to reach a satisfactory settlement where two different agencies are concerned.*

4. *The Navajos in all districts bounding District Six claim that the boundary line of District Six established a definite Hopi Reservation and the Hopi people have not conceded any part of their reservation to the Navajos.*

5. *It is depriving many of the Hopi Indians of the use of land on which they have been making a living from their livestock, with the result that they have had to sell large numbers of cattle, making it almost impossible to earn a living in the livestock industry in District Six, leaving them in an unsettled frame of mind as to the future of themselves and their children as they fear further reductions will be made and leave them without any possibilities of their livelihood.*

If the Hopi people are to live in peace and harmony with those adjoining them and with themselves, it will be necessary that definite boundary lines be set up, giving the Hopi sufficient area on which they can carry on livestock and farming operations so that all the people may be able to make a living, and until such time it is requested that your Office leave the entire Hopi Reservation under the supervision of our Hopi Superintendent.

Very respectfully yours,

(Signed) WESLEY PONEOMA,
Acting Chairman, Hopi Tribal Council.

[Italic—Emphasis added.]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE COMMISSIONER OF INDIAN AFFAIRS,
Washington, December 28, 1937.

Mr. E. R. FRYER,
Superintendent, Navajo Service.

DEAR MR. FRYER. Pursuant to Sections 1 and 2 of the Grazing Regulations for the Navajo and Hopi Reservations, I have signed and herewith am promulgating the map, establishing land-management districts within the Navajo and the Pueblo Indian reservations, and setting down the carrying capacity for livestock in each of the districts.

It is understood that the district boundaries as promulgated are subject to change from time to time, and also that the carrying capacities are subject to amendment from time to time.

It is understood also, and it should be clearly explained to the Navajo and Hopi Councils, that the delineation of District No. 6 is not a delineation of a boundary for the Hopi Tribe, but is exclusively a delineation of a land-management unit.

Sincerely yours,

/s/ JOHN COLLIER,
Commissioner.

I certify that this is a true and exact copy of the original letter.

P. E. FOLMAN.

Subscribed and sworn to before me this __ day of April, 1938.

Notary Public.

[Italic—Emphasis added.]

EXHIBIT —

ORAIBI, ARIZ., *March 1, 1938.*

RESOLUTION OF THE HOPI TRIBAL COUNCIL

Whereas, the agreement of the Navajo and Hopi Agencies of March 5, 1937, for the transfer of the work of several divisions of the Indian service for the Hopi Tribe to the Navajo Service, although theoretically satisfactory, has not proved to the best interest or greater benefit of the Hopi Tribe, namely:

1. Because the expenditure of $60,000 of Road Funds appropriated for the Hopi Reservation has been mainly used for construction of roads on the Navajo Reservation.

2. The maintenance of Hopi roads has stopped since before February 1, 1938, due to expenditure of Hopi Road Funds elsewhere.

3. All heavy timber purchased with Hopi funds in previous years has been hauled to the Navajo Reservation, leaving bridges in a dilapidated condition in the Hopi Area.

4. CCC–ID work the past year has been small and at present the few Hopi men employed by CCC–ID are working for the benefit of the Navajo Reservation while no work of CCC–ID is being carried on for the Hopi Reservation.

5. *The Indian Office has administered the Hopi Reservation by Soil Conservation districts, limiting the territory and movement of the Hopi Indians without the advice, consent, or previous knowledge of the Hopi Tribal Council or Indians, although the Hopi Indians have not relinquished any rights or claims to the Hopi Reservation.*

6. *No effort is being made to keep Navajo Indians from moving from their districts into the Hopi Reservation and building homes there.*

7. And because, no status quo of residence in each district can be kept without the complete authority and supervision by one person.

The Hopi Tribal Council respectfully petition the Office of Indian Affairs that beginning July 1, 1938, all funds appropriated for the Hopi Tribe and Reservation be allocated to the Superintendent of the Hopi Agency for expenditure for the benefit of the Hopi Tribe and Reservation, as previously expended before the Navajo Service Agreement of March 5, 1937. This includes all funds for Roads, CCC–ID, Extension, Irrigation, Health, Education, Administration, etc. *Furthermore that the Superintendent of the Hopi be given full authority over the Hopi Reservation and that all Land Management Plans for the entire Hopi Reservation be administered by its Superintendent.*

PETER NAVAMSA, *Chairman, Hopi Tribal Council.*
SAM SHINGOITEWA, *Secretary, Hopi Tribal Council.*

Proposed by: Jackson Lomakema.

[Italic—Emphasis added.]

[Wilmington Federal Records Center. BIA Field Records. Navajo Service, Window Rock, Ariz. FRC No. 72920, File 080]

Commissioner John Collier's meeting with the Hopi Indians at Oraibi, Arizona, July 14, 1938

* * *

(Commissioner Collier:)

* * * *Next comes the boundary question. Nothing in the above paragraphs which I have read pre-determines or settles anything with regard to the ultimate Hopi Tribal boundary.* It is suggested that the Hopi Council shall designate a committee on boundary and that the Navaho Tribal Council shall designate a committee on boundary and that these committees enter into negotiations upon the matter of boundary. The Commissioner of Indian Affairs will be prepared to designate a representative to work with these negotiation committees. You see, the question of a boundary has to be approached from both sides, both tribes, and it has to be handled with some kind of help with both sides taking part. The Council could appoint such a committee and could limit the authority of such a committee any way it wanted to. I would not have the least idea that complete agreement could be reached between the Hopi and Navajo, but they might make some agreement. I am sure that in the long run the thing has to be settled by the Secretary of the Interior, but it ought to be preceded by a negotiation between the two tribes.

Now in the matter of the shrines and certain other things, I have this to suggest—It is suggested the boundary negotiating committees above proposed, that is the committee of the Hopi Council when appointed, shall go to work and prepare the description of each Hopi shrine and eagle hunting ground and any timber and wood privileges which are needed by the Hopis, with a view to negotiating for any needed protection or privilege in these matters.

I want to throw in just one remark aside from this paper about the boundary question which I have been hearing about for fifteen years at least. Almost everywhere that I go among Indian tribes, almost everywhere, or everywhere, I find that the tribes assert that they have by ancient right occupied, and all that, an area of land much larger than their reservation. I do not believe that there is a single exception to that. Frequently the boundary that they claim lies way off among lands owned by whites; sometimes it even includes great cities within its boundary. The Hopis are not very differently situated from all the tribes. They have a rightful claim to a larger area than it is possible for them to get, so a complete fulfillment of the Hopi wishes in regard to the boundary is not to be expected. The boundary that the Navajos claim goes clear out to the city of Albuquerque and includes the Jicarilla Apache Reservation. They can't have

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that, but we are trying to get more for the Navajo and I believe that the Hopi jurisdiction can be made to include more than District Six.

* * *

(Commissioner Collier:)

* * *

In the Navajo we have had a strong and very able, determined Superintendent and an able staff and they have been looking out after the Navajo interests with great strength, while in the Hopi for a good while past we have not had a strong, capable superintendent and because we did not have a good superintendent your requests did not reach us, explanations were not give to you and you were not taken into the confidence of your Indian Service friends. I do not mean that a lot of good things have not been going on. You have been getting all kinds of improvements in the last three years—roads, schools, etc., but the Hopis themselves have not been taken into the confidence of the Indian Bureau and they have felt that they were in the dark.

* * *

(Byron Adams:)

Of all the things presented this morning the most important one is the matter of the Hopi reservation boundary. The final statement that in the end the Secretary of the Interior will have to determine those boundaries, I admit that I think that will be the case, but we feel that we have a right to voice what we believe is necessary and right. I want to take up the matter of the district units outlined by the Navajo Agency. From time im(me)morial the Hopi has looked back to the beginning of life when their prophets told them the conditions and advised them not to take any land to live on that was rich or fertile soil but to take land where they would have a hard time making a living and because of such conditions no one would try to take the land away from them. This message is sacred to the people. It is sacred to the chiefs and in the worship of their gods they hold and that are dear to their hearts.

The original executive Hopi reservation records 38,060 square miles or 227,220 acres. That is the area of the original executive order and now the present District #6 just takes in the actual land that the Hopis are using, regardless of the fact that a certain government organization signed a contract that any area used outside of District #6 would be fully protected and recognized. That contract was drawn and we know that 30% of the Hopi interests are outside of District #6. We have been assured that we must not confuse this district line with the Hopi boundary line. I believe all the people are in favor of asking the Commissioner and the superintendent and representatives from the Navajo Agency, before the boundary lines are definitely settled, would it not be a good plan to take the boundary lines of the executive order as the district lines also. It would mean nothing to those living in District #6 because the Navajos will continue to be there and the Hopis will be there also and be benefitted by the removal of the small areas such as District #6. We believe that the Government recognized the fact that when this area was laid out the Government sent men out here, men that had sense, men who possessed physical capacity for endurance as there were no roads over which to travel. This was not easy. They proceeded with burros over these hills to survey land and to secure other valuable data and it took time and courage to go over these mountains and hills. We must give credit to these men in laying out this big area and country.

No doubt consideration was given to the natural watersheds in this northern district. Here are the Hopi lands and these natural watersheds are composed of five big washes which in the early days supplied the means for farming in this small district. If you combined this small area with the present area and diverted these dams that supply the Hopis, what is going to become of the Hopis with their natural supply of flood waters shut off? The allotment of funds for various developments in District #6 should be combined with that of District #4 and used on the Executive Order reservation as one district unit for the benefit of the Indians in that district, with the provision that it is a Hopi unit and in the selection of grazing range the Hopi shall have first choice. We must remember this, we are at the village of Oraibi, right out here is that big rock hill on which no vegetation will grow. These things must be taken into consideration. I believe our cause is just in asking that the whole area be assigned to us as a land management district instead of the small circle as given us now.

Two years ago Mr. Collier told us that the Hopis were just as important as the Navajos. We feel it too, and in this new day and age I believe our humble request should receive due consideration and the people dealt with through fairness and sympathy by the Government—the fairness that has been broken down in the last three years. We are too easy that we take the white man at his word too often. Mr. Collier has been fair in the policy which he said would be put on record and copies made and handed out so that "you will hold me at my word". Never in all my contact with "civilized life" have I met a man that made such a statement when it involves people who are still ignorant in the ways of civilized life and who depend on the administration for the improvement of conditions on the reservation. If that will be considered in the light of a request when the matter of the boundary and districts is settled we want it to receive some consideration.

Outside of what has been given us in District No. 6 there is very little hope and you may say "you Hopis are to blame for not taking advantage of the area given you". True, but don't condemn us too easily, because we are a peace-loving people and the Navajo is a fighter and because we do not want to commit murder we have withdrawn in order to have peace with the Navajo and he has taken advantage of us and has been given preference over all former rights that the Hopis had. When the Government confirms all this settlement of the Navajo the Government approves the illegitimacy of children. The Navajos are polygamous and because of the rapid increase of the tribe we have been made to suffer because the Government has not done its duty in demanding proper family life of the Navajo.

And another thing, the Executive Order of 1882 very plainly states that it is set aside for the Hopi and any other Indians that the Secretary of the Interior may designate. We do not know what that wording means, but our people know this; that at the time that order was made there were two tribes of Indians among the Hopis who had established residence here. The first is Hano, the second is Tewa. The Tewa still maintain their own language and characteristics. How do we know but what the wording means these two tribes. If it had meant the Navajo as the other tribe? If it can not, the Hopis think that the Navajos who are residing on the reservation are trespassing. Those are our complaints that our older men would like to make to you representatives from Washington. It is far from us to say anything that would be disagreeable to you, and if anything has been said that is amiss we want you to overlook our ignorance and view it from the point of what we try to say to you. I did not intend to say anything but pressure was brought to bear that I speak for them and I am sure that I have spoken the sentiment of the Indians here, and I hope that in the matter of the boundary and the district line, this little appeal should be thoroughly considered for the benefit of the Hopi tribe.

* * *

(Commissioner Collier:)

Now, the matter of the district and boundary. I am glad that Mr. Adams brought that up. We all know that the matter can not be settled today. What I would point out is this—Suppose, as a practical matter, that we make your Superintendent the Superintendent of the same area that Mr. Miller was superintendent of. You would have a condition where he would be Superintendent of the Hopis and about as many Navajos, and, as in the old situation, would be economically responsible for the Hopis and the Navajos in that area—the very things you wouldn't want because the Navajos are there. What we are trying to do is to devise an arrangement whereby the Hopis will be administered by the Hopi Superintendent in cooperation with the Hopi Council. Then when the final boundary is laid down, whatever it is, that will be the jurisdiction of the Hopi Superintendent. In the mean time, there would be nothing but grief to try to make him Superintendent of about 3,000 Navajos now living on the so-called Hopi Reservation.

My information may not be correct. At the time it was created, the area was occupied by Hopis and Navajos, way back in 1881. It was not created exclusively for the Hopis, and that fact was recognized by Congress through successive statutes as you will find in the Appropriation Act year after year. Appropriations made for this jurisdiction were for Navajos and Hopis.

All of that has no bearing on the question of what the ultimate boundary will be. I am sure that the first step in arriving at a satisfactory solution will be the appointment of this boundary committee to negotiate with the boundary

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committee of the Navajos with a representative of the Commissioner helping them. In the meantime, that boundary committee of the Hopis can take steps necessary to protect their shrines. That does not have to wait the final settlement of the boundary question.

* * *

(Chairman:)

In connection with the district unit No. 6, it has been told to me by one of the Government officials that those grazing permits still can be given to us beyond the district line. Permits have been given to stockmen to establish their ranch houses. If the Navajos residing outside of that district line would come to the Hopis and say to these men they can not build their ranch houses, then it would have to come back to the Council and I want to know whether I have the authority back of me to back me on that. I am not positive and I would like to get more information.

(Collier:)

I think that can be answered. The Council will have authority and the Government will back them. There are Hopis who do graze their animals beyond the boundary and they graze them under permits reaching beyond the boundary. Not only will the Hopi Superintendent have the power and the duty of protecting them in those permits, but it will be the duty of the Navajo Superintendent, also, to protect them in those permits. You have authority to protect them and your Superintendent will help you. If the Hopi goes beyond the boundary he must have permission from the Government. I understand that these permits are issued from the Government. If they build houses on their ranches to live in while they are with the sheep on the range I can not see that there would be any objection to that.

(Chairman:)

Also, I want to ask in regard to the question between the district and the reservation. As I understand it, the district does not mean our reservation. It was to be used only as a unit so that it would be recognized as a number to work on. Now, we have in the past passed a resolution in regard to the district set-up but we have not been given any definite answer from it and the reservation beyond that is inhabited by the Navajos. Could it be recognized as a district unit?

(Commissioner Collier:)

It could be, but it would not solve your problem any because you would still have the problem of the Navajos who are there.

Now we have this to speak about. The Navajo. As long as we have the Navajos residing on our reservation there is going to be trouble between the Navajos and the Hopis. Therefore, the reservation ought to be defined first and whatever policy comes from the Indian Office to our reservation we will be very glad to take up, but as the situation is, we can not be happy in dealing with the problem of definite progress on the so-called reservation. I do not believe there is any way we can thrash this thing out until we get a definite boundary.

(Fred Lomayesva, in Hopi language:)

Why should we settle this with the Navajos? It is our land and we should be able to settle it ourselves. It is ours and why must we get permits from them to graze on our own land.

(George, in Hopi language:)

I am going to ask the Commissioner this question. We have been discussing District #6 and we have District #6 on our minds. Do I get it that we must recognize District #6 as the Hopi reservation? Do we have no access to the land outside of District #6? Some of the Hopis have established homes outside of District #6. I want you to answer my question, Commissioner. Here is the question—Isn't it right that those having established homes outside of District #6 have a right to be there. I though that the land that these Hopis have occupied and established homes on belonged rightfully to the Hopis. Why is it that they have to have a permit to live outside of District #6. You mentioned about having a negotiation with the Navajos and a Government representative about determining the Hopi reservation. Well, it seems that you are stressing that same thing in our minds—that we have to get permits even to get out of District #6. It seems that we are negotiating now. I would like to have an answer to that.

(Commissioner Collier:)

I will try to answer that again. District #6, which I call the Hopi Land Management District, is at present the area over which the Hopi Superintendent has administrative control. Any land lying outside of what you call District #6

is under the jurisdiction of the Navajo Superintendent for the present. Whenever a final boundary is decreed, then in that final boundary the jurisdiction will be with the Hopi Superintendent and outside of it will be the Navajo Service. The matter of permits is quite distinct. Under the grazing regulations promulgated by the Secretary of the Interior ultimately all grazing of livestock on the Hopi as well as on the Navajo will be governed by permits issued to the owner of the livestock, just as it is done in every part of the Indian and white country. Where an Indian resident in one land management district needs to move across into another district he gets authority and that comes from the Government. This authority is attested by a paper—a permit. Eventually all grazing will be under permit. That has nothing to do with the reservation boundary. I am afraid the matter is still confused, but I have given you the best answer that I am able.

(Mr. Willard W. Beatty:)

The question was, if I have a home outside of District #6, do I own it or dont' I?

(Commissioner Collier:)

Inside of District #6 you have some Navajos. If there is a Navajo in this district who has an established right to stay there that right is not affected. If a Hopi has a property right established for grazing or farming outside of District #6 he stays there and it will be the duty of the Hopi Council and the Superintendent to look after him. When disagreement arises between him and a Navajo the matter will be referred to the Hopi Superintendent.

(Representative Pabanale:)

We had a meeting with the Navajo Superintendent last summer and it was thoroughly understood between the two superintendents and the people in general that an agreement was made and that those who had established homes outside of the district line are to stay there, and it was also thoroughly understood that those who do not belong within the district lines should be moved. Since this agreement was made no effort has been made to get those who have drifted in removed. The Navajos are the favorites of this controversy now. Whenever a Hopi wanted to get out of District #6 always a word came back and he would not be permitted to do so.

(Commissioner Collier:)

Yesterday I saw Mr. Fryer and he told me what steps they had been taking to remove one Navajo family that had drifted in here and had been put back. That agreement referred to is obviously the right agreement, and if it has not been enforced it should be and will be.

U.S. Department of the Interior,
Office of Indian Affairs,
Keam's Canyon, Ariz., March 10, 1939.

Commissioner of Indian Affairs,
Washington, D.C.
(Attention of Mr. W. V. Woehlke).

Dear Sir: In discussing Soil Conservation projects with the Hopi people, we find them quite disturbed because the work so far as they are concerned is confined to District six.

They are especially reluctant to approve drift fences. It is my opinion, and the opinion of the Soil Conservation technicians, that for better range management, some drift fences are necessary. The Hopis seem to feel that any fence may become a part of the boundary for the Hopis. I have reassured them thas no project undertaken by the Soil Conservation will in any way affect the final boundary settlement.

I believe that it would aid us greatly, and set the minds of the Hopis at peace, if you would write and assure the Tribal Council that nothing the Soil Conservation, or thal any of the other Government agencies does in the way of developing work projects in District six will have any effect on the boundary settlement.

I should appreciate an answer by return mail, if possible.

Respectfully,

Seth Wilson, *Superintendent.*

[Italic—Emphasis added.]

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CV-6417-201

MARCH, 20, 1939.

Mr. SETH WILSON,
Superintendent, Hopi Agency.

DEAR MR. WILSON: *In connection with the proposed construction of certain drift fences in District No. 6, it has been reported to me that the Tribal Council of the Hopis fears that such drift fences might become the boundaries of the Hopi Reservation. Will you please assure the Hopi Tribal Council that no drift or other fences built by the Soil Conservation Service, the Civilian Conservation Corps or any other Governmental agency will have any effect on the determination of the boundary of the Hopi Reservation. It may be necessary and desirable for good range management to build several drift fences, but there is no connection between fences built for better management of the range and the determination of the Hopi boundary. In fact, none of the work projects, undertaken by Governmental agencies in District No. 6, will be allowed to have any effect on the boundary settlement. Will you please bring this letter to the attention of the Hopi Tribal Council?*

Sincerely yours,

(Signed) JOHN COLLIER,
Commissioner.

[Italic—Emphasis added.]

JULY 1, 1940.

Mr. SETH WILSON,
Superintendent, Hopi Agency.

DEAR MR. WILSON: Mr. Stewart and I have been giving a great deal of consideration to the execution of the proposed division of use-rights between the Hopis and the Navajos in line with the Rachford recommendations. In order to accomplish this division of use-rights, we have been thinking of submitting to the Secretary an order phrased in line with the attached draft.

You will notice that the language of this order does not attempt to set up the Hopi Reservation, but rather to limit the use-rights of the Navajos on the Moqui (or Hopi) Reservation as established by Executive Order in 1882. In this manner the sensibilities of the Hopis will not be affected.

You will also notice that in the draft of the order we have described the area from which the Navajos are excluded by metes and bounds. We have taken this description from the description of the area established by Mr. Stewart in 1930 when he endeavored to bring about the same result which we are aiming at now. It will be necessary to produce a new description of the line as recommended by Mr. Bachford and as modified by joint agreement between you and Mr. Fryer. Mr. Stewart suggests that you run this line, with the assistance of Mr. Simington, and using CCC and SCS personnel, if available, for this task. Will you let Mr. Stewart know when you can undertake this job and when you want Mr. Simington's assistance?

I also want to call your attention to Article I of the Hopi Constitution. This article reads as follows:

"The authority of the Tribe under this Constitution shall cover the Hopi villages and such land as shall be determined by the Hopi Tribal Council in agreement with the United States Government and the Navajo Tribe, and such lands as may be added thereto in future. The Hopi Tribal Council is hereby authorized to negotiate with the proper officials to reach such agreement, and to accept it by a majority vote."

I would like to have your advice as to the procedure. Should we submit the text of the proposed secretarial order, together with the description of the line which you and Mr. Fryer will supply to the Hopi Tribal Council and request that the Hopi Council would not be in a position to take any action on this matter because of psychological and traditional reasons? If this is the case, should we proceed to promulgate the order in its final form and thereafter ask the Tribal Council to accept jurisdiction over the area delineated by this line, plus Mosecepi? This phase will have to be decided by you as we, at this distance, cannot answer the question whether the Hopi Council will or will not act on this matter.

Again there arises the question whether the text of this order should be submitted to the Navajo Council. That is a question which Mr. Fryer must answer, but as this order does not in any way affect the title to the lands involved, as it does not endeavor to set up a Hopi Reservation and exclude Navajos from this reservation, as the sole objective of the order is the proper regulation and distribution of use-rights as between

certain claimants, I believe that it would not be necessary to obtain the consent of the Navajo Council. However, we would be guided largely by your reaction.

Sincerely yours,

WALTER V. WOEHLKE,
Assistant to the Commissioner.

[Italic—Emphasis added.]

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Window Rock, Ariz., July 26, 1940.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

Attention: Mr. Walter V. Woehlke.

SIR: This will reply to your letter of July 1 concerning the division of use-rights as between Navajos and Hopis.

This matter will be covered more fully, no doubt, by Mr. Wilson in his letter of transmittal to you, to which will be attached a copy of a proposed Order which has been given our joint consideration and approval. We do not believe that the Secretarial Order proposed by Mr. Stewart would achieve the purposes of the Rachford study.

It would be a mistake, in my opinion, to present this matter to the Navajo Council since the only purpose of the Order is to effect a distribution of use rights as between the Navajo and Hopi tribes.

Sincerely yours,

E. R. FRYER,
General Superintendent.

[Italic—Emphasis added.]

HOPI AGENCY FILES,
Keams Canyon, Ariz., September 4, 1941.

Mr. E. R. Fryer,
Superintendent, Navajo Agency.

MY DEAR MR. FRYER: Reference is made to recent correspondence regarding proposed modification of the boundary of Land Management District No. 6 (Hopi), and to the proposed changes in the boundaries of a number of other districts as recommended in your letter of July 19.

In regard to the proposed modification in the boundary of District No. 6, your attention is invited to Article X of the Constitution of the Hopi Tribe which reads as follows:

"The authority of the Tribe under this Constitution shall cover the Hopi villages and such land as shall be determined by the Hopi Tribal Council in agreement with the United States Government and the Navajo Tribe, and such lands as may be added thereto in future. The Hopi Tribal Council is hereby authorized to negotiate with the proper officials to reach such agreement, and to accept it by a majority vote."

Your attention is also invited to Subsection (g), 25 CFR 72.13 of the Grazing Regulations of the Navajo and Hopi Reservation which reads as follows:

"For the purpose of the regulations in this part. District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and Bylaws of the Hopi Tribe."

Since it is prohibited by law to establish Indian reservations without specific authorization from Congress, and in view of the fact that the Solicitor has held that this law applies to the proposed establishment of the boundary of the Hopi Reservation as provided for in the above quotation from the tribal constitution and the grazing regulations, the proposed adjustment in the boundary cannot, therefore, be considered as a permanent adjustment of the reservation boundary but must be considered merely as a change in the land management district. In view of the foregoing, and since the constitution of the Hopi Tribe provides that the Hopi Tribal Council shall negotiate with the United States Government and the Navajo Tribe for the establishment of the boundaries of the reservation, it appears that the proposed changes in the boundaries of District No. 6 should be submitted to the Tribal Council for consideration and approval by an appropriate resolution.* * *

Sincerely yours,

WILLIAM ZIMMERMAN, JR.,
Assistant Commissioner.

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CV-6417-201

FORESTRY AND GRAZING,
October 27, 1941.

Mr. SETH WILSON,
Superintendent, Hopi Agency.

MY DEAR MR. WILSON: Reference is made to the letter of September 23 signed by you, the Chairman, Vice Chairman, and Secretary of the Hopi Tribal Council in reply to our letter of September 4 regarding proposed changes in Land Management District No. 6 (Hopi).

The ten questions asked in your letter are answered in the order enumerated:

1. Is the authority to establish new reservations or modify the Executive Order Reservation of 1882 "for Hopi and other Indians" vested only in Congress?

By Executive Order dated December 16, 1882, approximately 2,500,000 acres of land were set apart for "the use and occupancy of the Moqui (Hopi) and such other Indians as the Secretary of the Interior may see fit to settle thereon." By the Act of May 25, 1918 (40 Stat. 570), Congress provided that no Indian reservation shall be created nor shall any addition be made to one heretofore created, within the limits of the States of New Mexico and Arizona except by Act of Congress. Also, the Act of March 3, 1927 (44 Stat. 1347), prohibits any change in the boundaries of the reservation except by Act of Congress. Under date of February 12, 1941, the Solicitor of the Department of the Interior held that the prohibition of the 1918 and 1927 Acts is applicable to the Hopi Reservation.

2. Does the Secretary of the Interior recognize as legal residents of the Executive Order Reservation approximately 4,000 Navajos and 3,000 Hopis?

In effect the Solicitor, in the opinion referred to in the answer to question No. 1, held that where a statute or Executive Order created a reservation for a designated tribe or tribes, such tribes have the usual Indian title of use and occupancy even though the Secretary is privileged to settle further Indians upon the land and that such tribes have been considered as having the usual tribal property rights. In connection with the view expressed in this opinion I quote therefrom the following:

". . . I do not maintain that in this case the rights of the Hopis have become exclusive rights since there were Navajos upon the reservation at the time the 1882 order was promulgated, and Navajos have continued within the reservation in increasing numbers.

"My conclusion on this point is that, while the Secretary may control the settlement upon the reservation of the Navajo Indians, he may not deny the use and occupancy of any part of the reservation to the Hopi Indians without their voluntary action as such denial would be an alientation of their property beyond the authority of the Secretary."

3. Does the Navajo Tribe as mentioned in Article I of the Hopi Constitution and By-laws refer to the Navajo residents of the Executive order reservation or the entire Navajo tribe?

It is our opinion that only the individual Navajos residing on the 1882 Reservation on October 24, 1936, the date of the ratification of the Constitution of the Hopi Tribe by the Hopi Indians, and the descendants of such Navajos, have rights on the Reservation. Since, however, such Navajo Indians do not have a separate organization but are governed by the general Navajo tribal organization, Article I of the Hopi Constitution referred to the "Navajo Tribe" means the general Navajo tribe organization.

4. Does the authority of the Hopi Tribe in Article I give the council the right to negotiate for a permanent reservation or only the right to negotiate for use rights in the Executive Order Reservation?

The Hopi Tribal Council has the right to negotiate for a permanent reservation, but such boundaries as may be determined upon through such negotiations would not become final unless approved by Congress.

5. Is the Executive Order of 1882 the only legal recognition of rights to land of the Hopi Tribe?

It appears that the Executive Order of 1882 and the approved Constitution are the only positive acts taken by the Government in recognition of the rights of the Hopi Indians.

6. If the proposed changes in the present District require the approval of the Hopi Tribal Council, why didn't the original District require the approval of the Council?

The Grazing Regulations for the Navajo and Hopi Reservation (25 C.F.R. 72.5) provide that "The Commissioner of Indian Affairs shall establish land management districts within the Navajo and Hopi Reservation, based upon the social and economic requirements of the Indians and the necessity of rehabilitating the grazing lands." Section 72.13(g), Title 25, C.F.R., provides "For the purpose

of the regulations in this part, District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and By-laws of the Hopi Tribe? In view of this declaration any changes now proposed in the boundary of the district should meet with the approval of the Hopi Tribal Council.

7. *If the Hopi Tribal Council approves the changes in the District Boundary, would that mean that Article I of the Constitution has been complied with?*

Since the proposed change in the boundary of District 6 has no bearing on the establishment of the reservation boundary, the answer to this question is in the negative.

8. What farming rights do the Hopis have in the Executive Order Reservation of 1882? What grazing rights?

This question is closely related to question and answer No. 2. Farming and grazing rights of both the Hopi Indians and the Navajo residents must be recognized and not discriminated against.

9. Would approval of these proposed changes by the Superintendent bind the Hopi Tribe and nullify rights under Article I of the Hopi Constitution and By-laws?

Approval of the proposed changes in the boundary of District 6 would not nullify or affect the rights of the Hopi Indians under Article I of their Constitution. As stated in our letter of September 4, "Since it is prohibited by law to establish Indian reservations without specific authorization from Congress, and in view of the fact that the Solicitor has held that this law applies to the proposed establishment of the boundary of the Hopi Reservation as provided for in the above quotation from the tribal Constitution and the grazing regulations, *the proposed adjustment in the boundary cannot therefore, be considered as a permanent adjustment of the reservation boundary but must be considered merely as a change in the land management district.*"

10. How can the Hopi Tribal Council go about complying with Article I of the Hopi Constitution and By-laws?

If the Hopi Indians are desirous of establishing for their exclusive use an area out of the Executive Order Reservation of 1882, the first step to take would be negotiations between the two Councils. You, as Superintendent, with the cooperation of the Superintendent of the Navajo Agency, should take steps to bring the two Councils together and should make available the data, etc., necessary to the negotiations, with a view to entering into a formal agreement as to the location of the boundary of the proposed reservation. Upon completion of the negotiations and execution of formal agreement the matter should then be referred to the Office for initiation of the necessary legislation.

In closing we wish to reiterate that approval by the Hopi Council of the proposed changes in District 6 will in no way affect the rights of the Hopi Indians under Article 1 of their Constitution. It should also be borne in mind that the proposed changes in the boundary add 29,575 acres which has a carrying capacity of 1,655 sheep units yearlong. If, however, there is still any apprehension on the part of the Hopi Council regarding a possible loss of rights safeguarded by Article I of the Hopi Constitution, a formal resolution of acceptance is not necessary. If such is the only reason for not desiring to sanction the change in the proposed boundary of District 6, the Council could adopt a resolution providing in effect that it will interpose no objection to the change with a specific provision in the resolution that such action in no way affects the rights of the Hopi Indians under Article I of their Constitution.

Sincerely yours,

(Signed) JOHN COLLIER,
Commissioner.

Approved: January 8, 1942.

(Signed) OSCAR L. CHAPMAN,
Assistant Secretary.

[Italic—Emphasis added.]

[BIA.FR. Hopi Agency, Keams Canyon, Arizona. FRC No. 73598, File 342]

FEBRUARY 14, 1945.

BURTON A. LADD,
Superintendent, Hopi Agency.

DEAR MR. LADD: This is in reply to your letter of January 13 concerning the proposal to construct certain fences with AAA assistance.

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The proposed structures are in the nature of drift fences. Their construction will in no way affect any of the land claims of the Hopis and will not mean that the Hopis agree to the legal establishment of any boundaries to the Hopi reservation. These fences are designed to protect the interest of the Hopi stockmen and to prevent additional encroachments of Navajo livestock on Hopi ranges. In our judgment the proposed fences will have no effect on Hopi land claims, but will prove to be of great practical value to the Hopi stockmen.

I hope that arrangements can be completed so that work on the construction of these fences can be started at an early date.

Sincerely yours,

WALTER V. WOEHLKE,
Assistant to the Commissioner.

[Italic—Emphasis added.]

Hearing before the Committee on Indian Affairs, House of Representatives, 79th Congress, first session, Oct. 29, 1945, p. 27]

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D.C., April 26, 1945.

Mr. ROGER QUOCHYTEWA,
Governor of Oraibi (through Superintendent, Hopi Agency),
Keams Canyon, Ariz.

DEAR MR. QUOCHYTEWA: I have been awaiting receipt of your letter, which you stated in your telegram of April 5 that you were sending, protesting against the fencing in of district 6.

I assume that your objection to the fences is based on your fear that the building of such fences will in some way affect the claims of the Hopis to lands outside of district 6 within the Executive order reservation.

I want to assure that any fences built will in no wise be construed as establishing district 6 as the Hopi Reservation, or jeopardize any claims which you may have to other lands. The purpose of the fence is not to mark off the boundaries of the reservation, but merely to prevent cattle and horses from straying; to assist the stockmen in improving the quality of their herds, and in controlling the breeding program by preventing inferior sires from mixing with the herds.

It is not compulsory that a fence be built. Assistance can be obtained from the Agricultural Adjustment Administration which will almost pay the entire cost of the fencing, and it is an opportunity which the Hopi stockmen should take advantage of. Should the stockmen in the area desire to build the fence, I hope that you will not interpose objection.

Again let me assure you that the building of this fence will in no way affect your land claims.

Sincerely yours,

WILLIAM A. BROPHY, *Commissioner.*

[Italic—Emphasis added.]

Mr. BOYDEN. Moving to another question as to what the Government has done, I think these documents are less important now than they were before the House, although I want to introduce them to show how the Hopis have been denied their right to have grazing in this district.

Of course, they say we can't graze in this district because the Navaho have it all. Here are the applications and I think the decree of the court just rendered 8 days ago is sufficient to show us that it is through the Government neglect, it is through the Government's default, as far as protecting this minority people, that we have a situation here now where the Hopis have not been allowed to have their one-half interest even though the Supreme Court 10 years ago said it was theirs. This is not a matter that we can argue about any more, the Navahos had their day in court. They had a full 30 days before three judges and three pretrials in Phoenix and San Francisco, and then they had another trial taking 2 days at Tucson recently. They have been heard and the court has made its decision holding that the

United States has vacillated, equivocated and avoided its responsibility as trustee as far as the Hopi people are concerned.

Gentlemen of the Senate, we can't bring this bill to this point without exhausting the resources of the Hopi Tribe. We have strained those resources materially by getting this situation before you.

Remember this, the administration changes constantly, not only here in the Congress. I have talked to many administrative assistants and legal assistants who change while we are talking about this bill. In the Department it takes hours and hours of time to get them in a position where they understand what the situation is, because new people come in.

Over in the Department of Interior, when we introduced a partition bill, right after we won the case in 1962, we couldn't get a report out of the Department. It has taken us this long to get to a position where they realized what the situation was and came with a favorable report. After the report was about ready on this bill we got word from the White House that there would not be a favorable report. I know what this situation was because I was contacted personally, but we did have a Secretary of the Interior who stood up for it and said this is a situation that we know is just and we want to have a favorable report.

I don't think the President had anything to do with this, but the staff was contacted. I mention this to show it was very difficult to get this thing before us. Now it is before us, I think the people are aroused to it. We have had enough publicity nationally and so forth. This is not just a Navaho and Hopi problem, this is a problem to determine whether under the Constitution of the United States a minority within a minority can have an opportunity to have its rights after they have been adjudicated by the highest court of the land.

I think since the Navajo people have continued to take this land over and since they have used the television media with a movie star to express their will nationally, you might indulge me with a couple of lines of verse:

Justice is no eagle that commands the mesa heights—
It is an egg, fertile, fragile possibility of rights.
Hold it warm within your Council,
Beneath Congressional wing;
Expediency has no ardor
From which righteousness may spring.
Come the day of purification
It may live, self-nurtured, free.
But here neighbors covet lands—
Where is the equity?
In this world the many have force to crush the few;
Only thoughtfulness and courage can prompt
What's right to do.
Way out on the desert,
Where the sands and winds do blow—
O careful, Senate Members
Justice is in embryo.

Thank you, Senators.

(The complete statement of Mr. Boyden follows:)

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STATEMENT OF JOHN S. BOYDEN
before the Committee on
Interior and Insular Affairs
United States Senate
Washington, D.C.
H. R. 11128
92d Congress

My name is John S. Boyden. I am an attorney at law, duly licensed to practice in the State of Utah, in various federal Courts of Appeals, and the Supreme Court of the United States. I have represented the Hopi Indian Tribe of Arizona as their general legal counsel under contract approved by the Secretary of the Interior since the first day of September, 1951. I was instrumental in negotiation for, and drafting of the Act of July 22, 1958 (72 Stat. 402) which authorized the judicial determination of the rights and interests of the Navajo and Hopi tribes and all individual Indians claiming any interest in the area set aside by the Executive Order of December 16, 1882. I was the chief trial and appellate attorney in the case of Healing v. Jones, the action commenced pursuant to the authority of the aforementioned act. I was the chief trial attorney in the Hamilton v. Nakai proceeding for a writ of assistance to enforce the Healing v. Jones decree. I am also the approved claims counsel

for the Hopi Indian Tribe, and I was the trial attorney in the case of Hopi Indian Tribe v. The United States of America, Docket 196, before the Indian Claims Commission. As a result of my experience in the preparation and trial of those cases, I am familiar with the history of the Hopi people and their controversies with the Navajo Indian tribe.

Healing v. Jones was an action commenced by Dewey Healing, Tribal Chairman of the Hopi Tribal Council for and on behalf of the Hopi Indian Tribe, including all villages and clans thereof, and on behalf of any and all Hopi Indians claiming any interest in the lands described in the Executive Order dated December 16, 1882, against Paul Jones, Chairman of the Navajo Tribal Council of the Navajo Indian Tribe for and on behalf of the Navajo Indian Tribe, including all villages and clans thereof, and on behalf of any and all Navajo Indians claiming any interest in the lands described in the Executive Order dated December 16, 1882. The decision was rendered in that case on the 28th day of September, 1962, 210 F.Supp. 125, and was affirmed by the Supreme Court of the United States the following year, 373 U.S. 758. The Narrative Account of the Hopi-Navajo Controversy rendered by the court states that the ancestors of the present Hopi tribe occupied the southwestern table lands and canyons of New Mexico and Arizona before 1300 A.D. and perhaps as far back as 600 A.D., between Navajo Mountain and the Little Colorado River, and between the San Francisco Mountains and the Luckachukas. The court further stated that from all historic evidence, it appears that the Navajo first entered what is now Arizona in the last half of the 18th Century.

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Before the Treaty of Guadalupe Hidalgo in 1848 (9 Stat. 922), the United States Army was called upon to protect the settlers of New Mexico from the marauding Navajo tribe. Many Navajos were driven from the New Mexico territory to areas they had not previously occupied west of the New Mexico-Arizona state line. The raiding and pillaging was then transferred with increasing intensity from the New Mexico communities to the Hopi country. I do not imply that there had never been raids upon the Hopi prior to that time. Early reports indicate that the Hopi Indians had been the subject of attack, robbery and theft by the Navajo and other Indians many years before.

The relative position of the Navajos is shown by the fact that in 1858, Lt. Ives traveled east from First Mesa one day and then 24 miles on the next day before he reached the edge of the Navajo country which was then all east of the Hopi villages.

By 1882, the Navajo imposition on the Hopi became so desperate that Agent J. H. Flemming threatened to resign unless something was done to protect the Hopi interests. The Executive Order Hopi Reservation of 1882 was created for the specific purposes, among others, of reserving for the Hopis sufficient living space as against advancing Navajos and minimizing Navajo depredations against the Hopi; however, the Secretary of the Interior was also authorized in his discretion to settle other Indians in the area. (Healing vs. Jones, Finding 16) That particular clause was customary in executive orders at that time.

But there was then no intent to settle the Navajos within

the 1882 Moqui or Hopi Reservation. Secretary of the Interior William F. Vilas unequivocally stated to the Secretary of War as follows:

> The reservation of Moquis Indians was set apart by Executive Order of October 16, 1882, for them, and such other indians as the Secretary of the Interior may see fit to settle thereon. It comprises no land set apart for the Navajos, and no Navajos have been settled thereon by the Department, nor have they any right to drive or graze their flocks and herds over the Moqui lands.
>
> A recent investigation of the Affairs of the Navajo Agency, under whose jurisdiction the Moquis reservation and Indians are, has brought to the attention of the Department similar information of depredations by Navajos upon the lands, crops and other property of the Moqui Indians, and further, that the Navajo Agent, whose Agency is at considerable distance from the Moqui reservation, is not able, with his police, to correct the abuses.
>
> . . . .
>
> In view of this condition of affairs I believe the suggestion made by Mr. Welsh is a wise one, and I therefore have the honor to request that you will give the necessary orders for the movement of a company of troops or such other force as may be deemed necessary for the purpose, under the command of a judicious, discreet, and firm officer with instructions to visit the Moqui reservation and also the Navajo reservation and especially those portions of each lying adjacent the one to the other, and to remove all Navajo Indians found tresspassing with their herds and flocks on the Moqui reservation and to notify them that their depradations must cease and that they must keep within their own reservation.

Time will not permit a detailed review of facts showing why and how the Secretarial order was aborted, but the record clearly reveals that Hopi rights were sadly neglected and nothing of consequence was done to hold the Navajo within legal

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bounds.

From hundreds of exhibits, several pre-trials and one solid month of testimony the three judge federal court made the following findings:

> 21. None of the twenty-one Secretaries of the Interior who served from December 16, 1882, to July 22, 1958, or any official authorized to so act on behalf of any of these Secretaries, expressly ordered, ruled or announced, orally or in writing, personally or through any other official, that, pursuant to the discretionary power vested in him under the executive order he had "settled" any Navajos in the 1882 reservation, or had authorized any Navajos to begin, or continue, the use and occupancy of the reservation for residential purposes.
>
> 45. Congress at no time enacted legislation designed to, or having the effect of, terminating Hopi rights of use and occupancy anywhere in the 1882 reservation.
>
> 49. The failure of the Hopis, prior to the settlement of Navajos, to use a substantially larger part of the 1882 reservation than is embraced within district 6, was not the result of a free choice on their part. It was due to fear of the encircling Navajos and inability to cope with Navajo pressure.

The next chapter in the fraud on the Hopi people will serve to explain the present Hopi "fear of the fence." At the time grazing District 6 was created the Superintendents of the Navajo and Hopi Reservations recommended a plan of administration for the Hopi and Navajo Reservation. That plan provided:

> The Hopi Superintendent will have jurisdiction throughout District #6, and that the Navajo Superintendent will have jurisdiction in the other land management districts. This arrangement will be tentative until the definite boundary of the Hopi-Navajo reservation shall have been determined. This arrangement is established as a matter of administrative expediency and convenience and shall not be construed in any way as fixing an official boundary between the two tribes, or as prejudging in any way the boundary

> which is ultimately established.

The grazing regulations provided:

> For the purpose of these regulations District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and By-laws of the Hopi Tribe.

Hopi Supt. A. G. Hutton soon complained to Navajo Supt. E. R. Fryer:

> We have had several cases in the past few months whereby the Navajo Indians are moving into areas occupied by the Hopis.....
>
> At the time of the district division I told the Hopis that this division was on a land management basis and not as a definite reservation boundary which explanation they accepted, however, when other Indian Service employees tell them the contrary it puts me in a bad light.

Supt. Fryer replied:

> The new Grazing regulations provide that, for the purpose of the regulations only, District 6 shall be considered as the Hopi Reservation....
>
> District 6 should not be recognized by any of our people as being a reservation. It is merely an area which defines land use as between Navajo and Hopi Indians....

The Hopi Tribal Chairman complained to the Commissioner of Indian Affairs that District 6 did not include nearly all of the area that had been occupied by the Hopi Indians for a good many years, especially grazing lands and water holes. The Hopi Chairman further complained that the Navajos claimed District 6 established a boundary line between the two tribes. The Hopi Tribal Council passed a resolution protesting the limitations placed upon the Hopi and the lack of effort being made to keep

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Navajo Indians from moving from their districts into the Hopi Reservation and building homes there. Commissioner John Collier, Assistant Commissioner Walter V. Woehlke, Navajo Superintendent E. R. Fryer, Assistant Commissioner William Zimmerman, Jr., Commissioner Wm. Brophy and other BIA officials repeatedly assured the Hopi that any fences built around District 6 would in no way be construed as establishing District 6 as the Hopi Reservation, or as jeopardizing any claims which the Hopi may have to other lands.

With all the facts before it, the Court in Healing vs. Jones nevertheless found:

> 37. The events and official pronouncements between February 7, 1931 and July 22, 1958, indicate that all Navajos entering the reservation for purposes of permanent residence were impliedly settled therein by the Secretary or his authorized representative, at or shortly after the time of entry, and that on July 22, 1958, all Navajos residing in the 1882 reservation were accordingly settled therein pursuant to the Executive Order of December 16, 1882.

Thus the Hopi Exclusive Area was limited to District 6. But the court also found:

> 22. Prior to the years 1909 to 1911, while the second allotment project in the 1882 reservation was in progress, neither the Secretary of the Interior nor any authorized representative of the Secretary, acting in the exercise of the authority reserved under the executive order, expressly or by implication, authorized the Navajo Indian Tribe or any Navajos whether or not then living in the reservation area, to use and occupy any part of the 1882 reservation for residential purposes.

Obvious misstatements as to Navajo rights in the Executive Order Reservation were made and repeated by many officials, including those as high as the Commissioner of Indian Affairs, but

the implied settlement did not take place until after 1931. (Healing v. Jones, Finding 37).

The court in explaining the treatment of the Hopi at the hands of its guardian and the aggressive Navajo specifically held:

> 50. After the official settlement of Navajos in the 1882 reservation, the failure of the Hopis to make substantial use of the area beyond district 6 was not due to a lack of desire or a disclaimer of rights on their part, but to their exclusion from that area by Government officials. Throughout this entire period they continued to assert their right to use and occupy the entire reservation area. These Hopi protestations would doubtless have been even more persistent and vehement had it not been for the constant assurances given to them by Government officials, that their exclusion from all but district 6 was not intended to projudice the merits of the Hopi claims.
>
> 51. As a practical matter, the Secretarial settlement, of Navajos in the part of the 1882 reservation outside of district 6, even without Governmental restraint, probably would have greatly limited the amount of surface use the Hopis could have made of that part of the reservation. But there still would unquestionably have been a substantial movement of Hopis into the area had it not been for the administrative barrier and improper Navajo pressure.
>
> 52. Neither before nor after the Secretarial settlement of Navajos, did the Hopis abandon their previously-existing right to use and occupy that part of the 1882 reservation in which Navajos were settled.

Healing v. Jones is now the law. Its decree precludes the Hopi from recovering the greater part of the lands that were once his. He now fights to retain and repossess that which the Supreme Court of the United States has affirmed to be his. That judgment is:

> 1. The Hopi Indian Tribe, for the common use and benefit of the Hopi Indians, but subject to the trust title of the United States, has the exclusive

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right and interest, both as to the surface and subsurface, including all resources, in and to that part of the executive order reservation of December 16, 1882, lying within land management district 6, as defined on April 24, 1943....

2. Title in and to the part of the 1882 reservation described in the preceding paragraph of this judgment is quieted in the Hopi Indian Tribe for the common use and benefit of the Hopi Indians, subject to the trust title of the United States, and such land is henceforth a reservation for the Hopi Indian Tribe.

3. The Hopi Indian Tribe and the Navajo Indian Tribe, for the common use and benefit of their respective members, but subject to the trust title of the United States, have joint, undivided and equal rights and interests both as to the surface and subsurface, including all resources, in and to all of the executive order reservation of December 16, 1882, lying outside of the boundaries of land management district 6, as defined on April 24, 1943, such boundaries being described in paragraph 1 of this judgment, and title in and to all of that reservation except the described district 6, is accordingly quieted in the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike, subject to the trust title of the United States, as a reservation.

It seems ludicrous that we should stand here, ten years after the court of last resort in this land has spoken, trying to obtain that which the court has legally determined is ours.

The Navajo Tribe still wants to build its fences around District 6, but even the Navajos living within the exclusive Hopi area continue to abuse the judicial process, by procrastination and will not voluntarily obey the court order of ejectment.

Negotiations between the two tribes have become a mockery because the Navajos continue to withhold the Hopi one half interest outside of District 6 and the Washington Bureau of Indian Affairs will neither reduce the devastating overgrazing by Navajo

herds nor grant grazing permits to the rightful Hopi stockmen. All this is the problem even though the court has clearly pointed the way in the following conclusions of law:

12. The virtual exclusion of Hopi Indians, accomplished by administrative action extending from 1937 to 1950, from use and occupancy, for purposes of residence and grazing, of that part of the 1882 reservation lying outside of district 6, as defined on April 24, 1943, has at all times been illegal.

13. Neither the Navajo Indian Tribe nor any individual Navajo Indians have the exclusive interest in and to any part of the 1882 reservation.

The decision of the Honorable James A. Walsh, United States District Judge, rendered just eight days ago, on September 7, 1972, now brings the full weight of judicial force squarely upon the Navajo tribe and the Bureau of Indian Affairs. The Court concluded:

1. The plaintiff (Hopi Tribe) is entitled to an order of this Court directing the defendants (Navajo Tribe and United States) to grant and permit the joint use and possession of the surface, including all resources, in and to all of the Executive Order Reservation of December 16, 1882, lying outside of the boundaries of Land Management District 6 as defined on April 24, 1943, to the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike.

2. The plaintiff is entitled to a further order directing the clerk of this Court to issue a Writ of Assistance to compel performance of the judgment of this Court, entered herein on September 28, 1962, and to allow the plaintiff, the Hopi Indian Tribe, to enter upon said Joint-Use Area and with the Navajo Tribe, to jointly and equally use and benefit from the grazing forage and all other surface and subsurface resources of said area for the benefit of the respective members of said Tribes.

This decision makes legislative action absolutely imperative. Anyone reasonably acquainted with Hopi-Navajo relations understands that when Hopi and Navajo Indians are by circumstances

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thrown together the Navajo habitually and by nature impose upon the Hopi. His aggressive nature and customary behavior make life unbearable for the meek Hopi who naturally prefer to be imposed upon rather than to impose. Congress must now partition the joint-use lands, thus making the burden placed upon the United States by the Court in its recent decision a task with reasonable expectations for fulfillment. With a fence on the true and legal boundary, firm enforcement can result in tranquility to which the long-neglected and mistreated Hopi Indians are entitled at the hands of this great nation.

The Bill does one other thing not involved in the court's decree. It partitions the Hopi and Navajo interests in the Western Navajo Reservation which were recognized by the Act of June 14, 1934. 48 Stat. 960. That act permanently withdrew from all forms of entry or disposal for the benefit of the Navajo and "such other Indians as may already be located thereon" all of the lands described in the Act, without affecting the title to the Hopi Executive Order Reservation of 1882. The Hopi Tribe was then and still is situated within the area. The Solicitor of the Department of the Interior rendered his opinion that the "other Indians" provision of the Act was "without quibble" for the protection of the Hopi interest in the Western Navajo Reservation. That Hopi interest has been recognized by the Commissioner of Indian Affairs, the Secretary of the Interior and outside parties but it has never been defined. Administrative handling of those Hopi rights is again tainted with the same political

expediency, lax enforcement of orders and general lethargy.

This Bill delineates a Hopi boundary. The Hopi Tribe did not receive at the hands of the House of Representatives the lands it modestly requested. Nevertheless, the Tribal Council is unanimous in its opinion that a partition of this area without resort to further extended and expensive litigation is an absolute necessity. The Navajos continue to flock to every inch of land in the vicinity of Hopi Indians smothering Hopi existence in the same manner that has proved so fruitful for the Navajo in the past. Secretarial orders to desist construction in the Moencopi area unless authorized by both tribes have been violated by the Navajos while the Hopi Tribe respects and obeys authority.

The recent concentration of Navajo growth around Moencopi and District 6 suggests a deliberate plan to stifle Hopi activity and at the same time plead extreme hardship in relocating Navajos from their "ancestral" homes.

On June 9, 1972, after the hearings in the House of Representatives, an aerial examination of the District 6 line dividing the exclusive Hopi area from the joint-use area revealed 24 new Navajo dwellings in various stages of construction within a distance of from a few feet to two miles of the line. Most of them were less than one mile from the line. These now "ancestral homes," not withstanding Government financing, become a part of the relocation burden. In the event you have any impression that H. R. 11128 favors the Hopi tribe remember that moving of these

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new homes is financed by the Government under the terms of this Act, while the House Committee struck from the Bill the right of the Hopi tribe to sue the Navajo tribe for loss of use of its decreed lands and for the shameful damage to Hopi lands by Navajo overgrazing.

Navajo tradition provides a very convenient way of acquiring property that does not belong to the Navajos. A person who establishes residence will raise a family, then each of his daughters at a very early age selects a mate bringing the man to the same area as her father and there raise their family. In this manner all of the new people who are brought in as husbands for the Navajo women and their children claim direct relationship to the original settler and assert the right to all the land they can use in the area.

Since the Navajo tribe has used national television with a movie star to speak their will, perhaps this Committee will tolerate a few lines of verse that carry a message.

Justice is no eagle that commands the mesa heights -
It is an egg, fertile, fragile possibility of rights.
Hold it warm within your Council,
Beneath Congressional wing;
Expediency has no ardor
From which righteousness may spring.
Come the day of purification
It may live, self-nurtured, free.

But here neighbors covet lands -
Where is the equity?
In this world the many have force to crush the few;
Only thoughtfulness and courage can prompt
What's right to do.
"Way out on the desert,
Where the sands the winds do blow -
O careful, Senate Members
Justice is in embryo.

(With thinks to Carol Lynn Pearson from whose thought this adaptation sprang)

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Senator FANNIN. Mr. Boyden, you have other witnesses, I understand.

Mr. BOYDEN. Mr. Chairman, we would like to have the statement that was prepared by the witness filed and made a part of the record, the complete statement, and they will simply give a portion of it in order that they might all be heard.

Senator FANNIN. Without objection, these statements will be made a part of the record, and we will hear from the witnesses.

Mr. BOYDEN. This is Logan Koopee, vice chairman of the Hopi Tribal Council.

STATEMENT OF LOGAN KOOPEE, VICE CHAIRMAN OF THE HOPI TRIBAL COUNCIL

Mr. KOOPEE. Mr. Chairman and members of the committee, my name is Logan Koopee, vice chairman of the Hopi Tribal Council. I am from First Mesa Consolidated Villages which is still organized under the traditional Hopi pattern and beliefs of our ancestors. I appear here today in support of the bill H.R. 11128.

The Hopi people believe to have come to our present Hopi villages in clan groups. In our early migration each clan stopped at intervals where villages were built temporarily and later years deserted. The sites of these abandoned villages are indicated by ruins which are very numerous in the country. As the result of these migrations, certain clans claim rights to the springs and the area, and today at certain ceremonies the Hopis revisit these ancestral springs. The present ownership of Eagle Nest in the vicinity is a survival of a very similar claim.

Since time immemorial, the Hopi Indians have occupied and used this area now in consideration for farming and grazing. The Navajos were unknown in the area. Spanish and Mexican authorities respected the rights of the Hopi Indians to our traditional land and the Hopi pueblos which were established were recognized as Hopi pueblos or villages as early as 1540.

The fact is, our land dispute between the Hopi and Navaho goes back 90 years, when the executive order reservation of December 16, 1882, containing 2,500,000 acres, or 3,750 square miles, or a piece of land 50 miles wide and 70 miles long, was set aside by President Chester A. Arthur "for the use and occupancy of the Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon."

At the time of a creation of the Hopi Reservation there were but few Navaho families living within the Executive order of 1882. None of the 21 Secretaries of the Interior who served from December 16, 1882, to July 22, 1958, had ever settled any Navahos on the 1882 reservation. Also, the U.S. Congress at no time enacted legislation designed to terminate the Hopi rights of use and occupancy in the 1882 reservation.

The Hopi Reservation of December 16, 1882, as entitled was not titled the Hopi and Navaho Reservation, although government officials give opinion and try to make it appear that this is the case. The Hopi people were living in this area, occupying and using the land,

at the time when the first Spaniards visited the Hopi land in 1540. No report of any Navahos.

We feel the Hopi people certainly have a strong moral claim to the area, and we are justified in holding this view since nothing was said at the time it was created for the Hopis and Navahos then living on the land.

The very fact that the Hopis were living there from time immemorial seems to give us the right to say, "This is our land."

It is a historical truth that the 1882 reservation was set aside to protect the Hopis from the continued Navaho and white depredations. Honorable members of the committee, the rights, and title of the Hopis to all the land now described in this bill cannot be justly denied to the Hopis. The Hopis made profitable use of the land until the Federal Government shoved us onto the foot of our mesas, sugaring his action with "you Hopis are smart and progressive."

Because we have been struggling for many years to own land, we went to the Federal district court in Prescott, Ariz., in 1962 to settle the matter. This land suit, referred to as *Healing* v. *Jones*, was tried before a special three judge court. Both tribes, Navaho and Hopi, have presented their cases and the three judges recognized the "squatters" rights of the Navaho in 1882 reservation which, in effect, resulted in the loss of nearly a million acres of Hopi land to Navaho people.

Ten years have passed since the decree was made and the U.S. Supreme Court has affirmed the quieting of title in the Hopi to an undivided and equal half interest, the Hopis receive no benefit from that portion of the area.

The Navahos have taken over all the joint-use area and so abuse the land by overgrazing and overpopulation that today it is now unable to support Navaho stock. As a result the Navahos are forced to invade the Hopi Reservation to find grass and water.

The Navahos continue to have full use and occupancy of the entire area, half of which by law still belongs to the Hopis. In addition to that, there are still Navaho familes living in the exclusively Hopi Reservation and we have so far been unable to remove them.

The grazing rights in the joint-use area can be administered effectively only if partition is made. We do not want joint ownership because it is not practical—it is no good and we are dominated in the area.

Finally, we all agree that resort must be had to the U.S. Congress. Partition of the land is the only solution. We cannot negotiate because it has been a complete failure.

There is no question that the political power of the Navaho Tribe is growing bigger and stronger every year, and the problem of getting just adjudication of Hopi land right becomes more difficult. The Navahos are getting our land through sheer weight of population. It is time now for the Members of Congress and our true white friends to come and support the Hopi Nation. The peaceful Hopis do not intend that they shall be further stripped of land, rights, and property. The land must be divided and by this session of Congress, if not to the satisfaction of all concerned, then upon the basis of justice and fair play.

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This is the situation: I am a Hopi and have a heart of a Hopi. I am poor, but not without ambition. Now, will you gentlemen recognize our pleadings and consider very carefully the position taken by the Hopi Tribal Council, the governing body of the tribe. Within you, honorable committee members, my Hopi people's imagination, security, and hope for a life of decency and happiness lies.

In closing let me ask two questions:

One, why have the Hopis been deprived of their ancestral lands, held by them since time immemorial?

Two, are not the Hopis entitled to a future for themselves and their descendants who are citizens of the United States, just as well as the Navahos?

To neglect us would be unjust and un-American, we who are trying to go forward and make progress and make self-determination. I am suffocating in district 6, along with my fellow tribesmen. Please help us.

Senator FANNIN. Thank you, Mr. Koopee.

Mr. BOYDEN. Mr. Chairman, may I introduce two other sets of documents supporting Mr. Koopee's statements?

Senator FANNIN. They will be made a part of the record.

(The documents referred to follow:)

OCTOBER 27, 1964.

COMMISSIONER OF INDIAN AFFAIRS,
Washington, D.C.

SIR: Enclosed is a copy of a letter dated September 30, 1964, from Superintendent H. E. O'Harra, of the Hopi Agency.

Copies of the four applications for Range Allocation are also enclosed.

Other members of the Hopi Tribe have verbally requested their desire to use portions of their share of the 1882 Executive Order Area outside of District Six.

The regular three-year Hopi (District Six) permits expire on October 31, 1964. About 50 percent of the Hopi livestock operators have submitted their applications for grazing allocations on District Six. A plausible reason for this laxity is probably due to the fact that the Navajos are using unauthorized Hopi range without regards to permit, range control or grazing fees.

This situation places us and the Agency Superintendent in a vulnerable position when we try to impose proper application of 25 CFR 151 on the Hopi livestock operators.

We realize this condition cannot be remedied immediately but advice from our office is requested as to how we should proceed.

Sincerely yours,

W. WADE HEAD,
Area Director.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
HOPI INDIAN AGENCY,
Keams Canyon, Ariz., September 30, 1964.

Mr. W. WADE HEAD,
Area Director, Phoenix, Ariz.

(Attention: Land Operations (Range)).

DEAR MR. HEAD: We are enclosing four Applications for Allocation of Grazing Privileges forms for that portion of district 3 lying within the Joint Use Area of the 1882 Executive Order Reservation. These applications are from Hopi Indians who desire the privilege of using a portion of the Joint Use Area.

At the present time, only Mr. Albert, who resides at Moenkopi, has a permit on this portion. He is, however, requesting that his permit be increased to the maximum of 350 sheep units. All four of these applications are for the maximum of 350 sheep units.

Mr. ALBERT and Mr. Talawepi have talked to the Credit Officer here at the Agency regarding a loan for livestock. Our Credit Officer has assured them that when they are granted these permits, she will accept their applications for a loan. Both applicants have a good record of loan repayments.

We believe that Mrs. Smith has the ways and means of filling her permit when it is granted. As to Mr. and Mrs. Honeyestewa's plans on acquiring livestock for their permit, we are uncertain but presume they will also make application for a loan.

We believe that these applications should be submitted to the Area Director at the Gallup Area Office. It is our opinion that these applications should be decided on by the two Area Offices rather than being sent on to the Navajo Agency for their decision. We state this in view of the fact that the Joint Use Area of the 1882 Executive Order Reservation is supposed to have a Special Administrator whose duties were to include the administration of the grazing program, but who has not been appointed to date.

It will be greatly appreciated if you can keep us informed of the status of these applications. We will be very interested in seeing the outcome on them.

Sincerely yours,

H. E. O'HARRA,
Superintendent.

[Italic—emphasis added.]

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Form 5-235
(April 1960)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ALLOCATION OF GRAZING PRIVILEGES

Navajo-Hopi AGENCY Navajo-Hopi Joint Use RESERVATION

I (We) the undersigned Indian(s) enrolled on the said reservation hereby make application for an allocation of grazing privileges without competitive bidding as authorized by 25 CFR 151.11 and 151.13. I (We) believe that I (We) come within the requirements of the regulations authorizing such allocation of grazing privileges without competitive bidding. I (We) desire the grazing privileges on the following described lands:

District No. 3 Grazing Season Year long
(Show range unit number or area)

I (We) certify that the number of livestock over 6 months of age owned by me (us) and to be grazed under my (our) exclusive control and supervision are as follows:

Number of Livestock	Kind of Livestock	Ownership of Brand	Holder of Mortgage or Other Lien Against Livestock
2	Cattle	Walter Albert	None

I (We) own or control the following described land:

(Show legal subdivision and area)

Do you manage the livestock yourself? (This includes riding, herding, branding, rounding up, feeding.)

Answer Yes or No. Yes

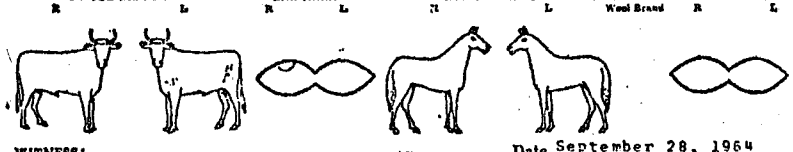
If you do not manage your livestock, who does it for you? Together with Walter Albert. Box 436, Tuba City, Arizona (Name and address)

Is your husband(or wife) a non-Indian? Answer Yes or No. No

If your husband (or wife) is an Indian is he (or she) enrolled at this agency? Yes

I (We) agree to acquaint myself (ourselves) with the requirements of the regulations and to abide by the same, and further understand that if a grazing permit is issued that I (We) will pay the grazing rentals annually in advance each year and to comply fully with the terms of the permit.

BRANDS AND MARKS ARE AS FOLLOWS:



WITNESS: Date September 28, 1964

(Applicant)

(Applicant)

(Any Additional Comments May Be Written on Reverse Side) 16—78767-1

SEPTEMBER 28, 1964.

To whom it may concern:

I would like to acquire a grazing permit in District No. 3 in the Navajo-Hopi Joint Use Area of the 1882 Executive Order Reservation. I would like to have this permit for the maximum 350 sheep units. When I am granted this permit, I would like to be assigned my own brand.

PAUL HOPI TALAWEPI.

Form 5-235
(April 1964)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ALLOCATION OF GRAZING PRIVILEGES

Navajo and Hopi AGENCY Navajo-Hopi Joint Use RESERVATION

I (We) the undersigned Indian(s) enrolled on the said reservation hereby make application for an allocation of grazing privileges without competitive bidding as authorized by 25 CFR 151.11 and 151.13. I (We) believe that I (We) come within the requirements of the regulations authorizing such allocation of grazing privileges without competitive bidding. I (We) desire the grazing privileges on the following described lands:

District No. 3 Grazing Season Year long
(Show range unit number or area)

I (We) certify that the number of livestock over 6 months of age owned by me (us) and to be grazed under my (our) exclusive control and supervision are as follows:

Number of Livestock	Kind of Livestock	Ownership of Brand	Holder of Mortgage or Other Lien Against Livestock
40	Cattle	Chet Smith	Maricopa Credit Union

I (We) own or control the following described land:

(Show legal subdivision and area)

Do you manage the livestock yourself? (This includes riding, herding, branding, rounding up, feeding.)

Answer Yes or No. No

If you do not manage your livestock, who does it for you? Walter Albert, Box 436, Tuba City, Arizona (Name and address)

Is your husband (or wife) a non-Indian? Answer Yes or No. No

If your husband (or wife) is an Indian is he (or she) enrolled at this agency? No

I (We) agree to acquaint myself (ourselves) with the requirements of the regulations and to abide by the same, and further understand that if a grazing permit is issued that I (We) will pay the grazing rentals annually in advance each year and to comply fully with the terms of the permit.

BRANDS AND MARKS ARE AS FOLLOWS:

WITNESS: Date September 28, 1964

(Applicant)

(Applicant)

(Any Additional Comments May Be Written on Reverse Side) 16—78767-1

SEPTEMBER 28, 1964.

To whom it may concern:

I would like a permit for the maximum number of sheep units (350) for the Navajo-Hopi Joint Use, Portion of District No. 3 of the 1882 Executive Order Reservation. At the present time, I have 40 head of cattle I would like to transfer into this area.

RUTH N. SMITH.

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Form 5-535
(April 1946)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ALLOCATION OF GRAZING PRIVILEGES

Navajo-Hopi AGENCY Navajo-Hopi Joint Use RESERVATION

I (~~We~~) the undersigned Indian(~~s~~) enrolled on the said reservation hereby make application for an allocation of grazing privileges without competitive bidding as authorized by 25 CFR 151.11 and 151.13. I (~~We~~) believe that I (~~We~~) come within the requirements of the regulations authorizing such allocation of grazing privileges without competitive bidding. I (~~We~~) desire the grazing privileges on the following described lands:

District No. 3 Grazing Season Year long
(Show range unit number or area)

I (~~We~~) certify that the number of livestock over 6 months of age owned by me (~~us~~) and to be grazed under my (~~our~~) exclusive control and supervision are as follows:

Number of Livestock	Kind of Livestock	Ownership of Brand	Holder of Mortgage or Other Lien Against Livestock
None			

I (~~We~~) own or control the following described land:

(Show legal subdivision and area)

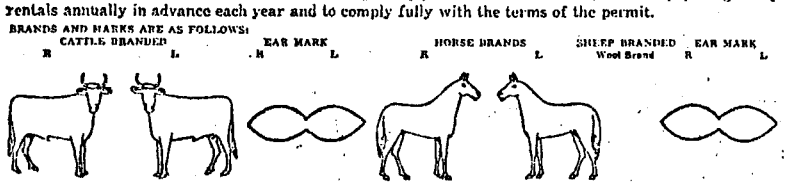
Do you manage the livestock yourself? (This includes riding, herding, branding, rounding up, feeding.)

Answer Yes or No. No.
If you do not manage your livestock, who does it for you? My husband, Ned Honeyestewa, of Hoteville, Arizona (Name and address)

Is your husband (or wife) a non-Indian? Answer Yes or No. No.
If your husband (or wife) is an Indian is he (or she) enrolled at this agency? Yes.

I (~~We~~) agree to acquaint myself (ourselves) with the requirements of the regulations and to abide by the same, and further understand that if a grazing permit is issued that I (~~We~~) will pay the grazing rentals annually in advance each year and to comply fully with the terms of the permit.

BRANDS AND MARKS ARE AS FOLLOWS:



WITNESS: Date September 28, 1964.

Mollie Honeyestewa
(Applicant)

(Applicant)

(Any Additional Comments May Be Written on Reverse Side)

SEPTEMBER 28, 1964.

To whom it may concern:

At the present time, I do not have a permit. However, my husband and I would like a permit for 350 sheep units in District No. 3 of Navajo-Hopi Joint Use, Area of the 1882 Executive Order Reservation. When we are granted this permit, we will also need to be assigned a brand for our livestock.

MOLLIE HONEYESTEWA.

Form 5-535
(April 1946)

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

APPLICATION FOR ALLOCATION OF GRAZING PRIVILEGES

Navajo-Hopi AGENCY Navajo-Hopi Joint Use RESERVATION

I (~~We~~) the undersigned Indian(~~s~~) enrolled on the said reservation hereby make application for an allocation of grazing privileges without competitive bidding as authorized by 25 CFR 151.11 and 151.13. I (~~We~~) believe that I (~~We~~) come within the requirements of the regulations authorizing such allocation of grazing privileges without competitive bidding. I (~~We~~) desire the grazing privileges on the following described lands:

District No. 3 Grazing Season Year long
(Show range unit number or area)

I (~~We~~) certify that the number of livestock over 6 months of age owned by me (~~us~~) and to be grazed under my (~~our~~) exclusive control and supervision are as follows:

Number of Livestock	Kind of Livestock	Ownership of Brand	Holder of Mortgage or Other Lien Against Livestock
5	Cattle	Walter Albert	None
3	Horses	Walter Albert	

I (~~We~~) own or control the following described land:

(Show legal subdivision and area)

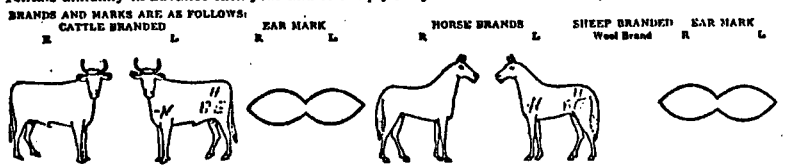
Do you manage the livestock yourself? (This includes riding, herding, branding, rounding up, feeding.)

Answer Yes or No. Yes.
If you do not manage your livestock, who does it for you? (Name and address)

Is your husband (or wife) a non-Indian? Answer Yes or No. No.
If your husband (or wife) is an Indian is he (or she) enrolled at this agency? Yes.

I (We) agree to acquaint myself (ourselves) with the requirements of the regulations and to abide by the same, and further understand that if a grazing permit is issued that I (We) will pay the grazing rentals annually in advance each year and to comply fully with the terms of the permit.

BRANDS AND MARKS ARE AS FOLLOWS:



WITNESS: Date September 28, 1964.

Walter S. Albert
(Applicant)

(Applicant)

(Any Additional Comments May Be Written on Reverse Side)

SEPTEMBER 28, 1964.

To whom it may concern:

I would like to increase my grazing permit to the maximum of 350 sheep units. At the present time, I have five (5) head of cattle.

WALTER S. ALBERT.

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CV-6417-201

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., March 3, 1965.

MR. W. WADE HEAD,
Area Director, Phoenix, Ariz.

DEAR MR. HEAD: On September 16, 1960, the Hopi Tribal Council adopted Resolution No. H-12-60, pursuant to authorization contained in their Tribal Constitution and By-Laws, establishing a grazing system in accordance with 25 CFR 151 and the approved range management plan for the Hopi Reservation.

Part 151.13 of the Code of Federal Regulations provides among other things that prior to the beginning of each new permit period the Indians in General Council or their duly authorized representatives shall authorize the following for tribal lands:

(*a*) The allocation of range units to Indian permittees eligible therefor pursuant to 151.11.

(*b*) The kind or kinds of livestock that will be allowed to graze on each range unit.

(*c*) The rate per head to be charged for allocations authorized under paragraph (*a*) above.

(*d*) The number of years for which grazing privileges are to be authorized subject to the maximum number of years prescribed by law and the limitation that all permits shall expire within the permit period established for the reservation.

(*e*) The number of livestock which may be grazed free of charge on range units comprised of tribal lands or on the tribal lands in range units comprised of tribal and other lands operated by Indian families, subject to the limitations of 151.9.

The matters thus determined will be entered in the official minutes of the meeting, and the action taken shall be final for the period concerned unless authority to modify such action is granted by the Commissioner.

The record indicates that permits were issued in accordance with Tribal Resolution H-12-60. Those permits expired on October 31, 1962. Resolution H-11-62 was enacted in September 1962, authorizing permits for another two-year period. Many of the eligible Indians have failed to sign their permits in the four-year period since November 1, 1960, because of lack of understanding of the permit system and its advantages to the livestock operators. Such operators have been in a state of trespass, but no action has been taken by the council or the Bureau because it was recognized that this was a transition period and the people needed time to accept the new procedure.

We understand the council has not yet enacted a new grazing resolution covering the period beginning November 1, 1964. Such a resolution is required by the General Grazing Regulations and Tribal Resolution H-12-60. Every effort should be made to obtain this resolution from the tribe. Permits should then be promptly prepared and given to each eligible tribal member. These permits not only provide for orderly use of the range, but protect the Indian livestock operators interest in the range. As the demand for range increases approved permits are the livestock operators' only insurance for continued use.

Please provide this office with a copy of the new resolution for the period beginning November 1, 1964, as soon as it is enacted, together with a copy of the schedule of allocations. We also would appreciate a subsequent report on the number of allocatees who failed to sign their permits, together with your comments and recommendations for action to obtain full compliance.

Reference is also made to your inquiry regarding grazing permits for Hopi livestock owners on the joint use portion of the 1882 Executive Order Reservation. Until appropriate adjustments are worked out and the overgrazed conditions there corrected, the Bureau is not in a position to approve such permits.

Sincerely yours,

WILL J. PITNER,
Acting Assistant Commissioner.

(Emphasis added.)

MAY 27, 1965.

MR. W. WADE HEAD, *Area Director,*
Phoenix, Ariz.,
Attention: Tribal Operations Officer.

DEAR MR. HEAD: We enclose two copies of approved minutes of the Hopi Tribal Council meeting of April 22, 1965.

We are also enclosing two copies of these minutes and the applications for grazing privileges which were acted upon by the Council at this meeting. Please route these items to the Branch of Land Operations.

The applications are for the following people:

Vernon Albert	Alfred Kaye, Sr.
Jacob B. Coochise	Julia K. Yestewa
Paul S. Humphrey	Raleigh H. Puhuyouma
Joe Komaquaptewa	Ferrell Secakuku
Thornton Naho	Charley Sekenvoyeuma
Leonard K. Mase	Elliott B. Suetopka
Fielding Q. Nehoitewa	Roy Tuchawena, Jr.
Roland A. Nehoitewa	

Enclosed also are six copies of the minutes for Central Office.

Sincerely yours,

CLYDE W. PENSONEAU,
Superintendent.

(Emphasis added.)

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
HOPI INDIAN AGENCY,
Keams Canyon, Ariz., July 26, 1965.

MR. W. WADE HEAD,
Area Director, Phoenix, Ariz.,
Attention: Branch of Land Operations (Range).

DEAR MR. HEAD: *Enclosed are two copies of the approved Minutes of the Hopi Tribal Council Meeting of June 7, 1965, pertaining to the approval of Grazing privileges for the Joint Use Area of the 1882 Executive Order Reservation.*

Also enclosed are two copies each of the Applications which the Council acted upon at this Meeting:

Ollie Talashie
Simon E. Scott
Bryan W. Scott
Bill W. Scott

These Applications are in the same category as the other twenty-five that have been submitted. To date, we have not received any indication as to what action we should take on these Applications.

Sincerely yours,

CLYDE W. PENSONEAU,
Superintendent.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
HOPI INDIAN AGENCY,
Keams Canyon, Ariz., November 17, 1965.

MR. W. WADE HEAD,
Area Director, Phoenix, Ariz.,
Attention: Land Operations (Range).

DEAR MR. HEAD: Enclosed are two copies of the approved minutes of the Hopi Tribal Council meeting held on August 4, 10, and 13, 1965. *Three applications for grazing privileges were approved by the Tribal Council for the joint use area of the 1882 Executive Order Reservation. We are also enclosing two copies each of the applications on which the Council acted.*

These applications are for the following people and sheep units:

Trester N. Hamana—325 sheep units
Neal A. Naha—130 sheep units
Alton and Daniel Honahni—320 sheep units

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This makes a total of 29 applications that have been submitted to the Area Office by this office. Total sheep units requested in these applications are 9709.

What action should we take on these applications? To date, we have not received an indication as to the procedure we should follow in processing such applications.

Sincerely yours,

CLYDE W. PENSONEAU,
Superintendent.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Phoenix, Ariz., March 5, 1970.

Mr. JOHN S. BOYDEN,
El Paso Natural Gas Building,
Salt Lake City, Utah.

DEAR MR. BOYDEN: As per your request we are enclosing copies of 32 applications for Grazing Allocations from Hopi people desirous of running livestock on the Hopi share of the Executive Order 1882 area. A list of these applicants is attached showing the number of cattle and horses each applicant has or would like to graze.

In addition the following correspondence is enclosed which refers to the applications:

September 30, 1964 letter from Superintendent O'Harra to Mr. Head.
May 27, 1965 letter from Superintendent Pensoneau to Mr. Head.
July 28, 1965 letter from Superintendent Pensoneau to Mr. Head.

The other correspondence pertaining to the billing for grazing sent by the Hopi Tribe to the Navajo Tribe covering the years 1963, 1964 and 1965 were mailed to you on March 2, 1970.

Sincerely yours,

GEORGE W. HEDDEN,
Assistant Area Director.

LIST OF HOPI PEOPLE REQUESTING GRAZING PERMITS ON THE EXECUTIVE ORDER AREA EXCLUDING DISTRICT 6
(SUBMITTED TO PHOENIX AREA OFFICE)

	Cows	Horses
Applied about Sept. 28, 1964:		
1. Walter S. Albert	84	3
2. Ruth N. Smith	87	0
3. Paul Hopi Talawepi	87	0
4. Mollie Honeyestewa	87	0
Applied about Feb. 18, 1965:		
1. Raymond M. Lalo	84	3
2. Leon Howato	87	4
3. Robinsen M. Lalo	50	1
4. Glen Seweingyauma	85	2
5. Theodore Naminghа	85	2
6. Ramson R. Honahne	85	2
Applied about May 27, 1965:		
1. Vernon Albert	85	2
2. Jacob R. Coochise	85	2
3. Paul S. Humphrey	85	3
4. Joe Komaqueptewa	100	4
5. Thornton Maho	60	4
6. Leonard K. Mase	85	1
7. Fielding Q. Nehoitewa	80	0
8. Roland A. Nehoitewa	80	0
9. Alfred Kaye, Sr	26	2
10. Julia K. Yostewa	12	0
11. Raleigh H. Pubuyouma	85	2
12. Ferrell Secakuku	25	0
13. Charley Sekenvoyouma	100	4
14. Elliott L. Suetopka	85	2
15. Roy Tuchawena, Jr	85	2
Applied about June 7, 1965:		
1. Ollie Talashie	78	2
2. Simon E. Scott	80	0
3. Bryan W. Scott	80	0
4. Bill W. Scott	80	1
Applied about Nov. 17, 1965:		
1. Trestor N. Hamana	75	5
2. Neal A. Naha	30	2
3. Alton and Daniel Honahne	75	4
Total	[1] 2,425	(54)72
Total, all animal units		2,497

[1] A.U.Y.L.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., March 7, 1969.

Mr. W. WADE HEAD,
Area Director, Phoenix Area Office.
Mr. GRAHAM E. HOLMES,
Area Director, Navajo Area Office.

DEAR MR. HEAD and MR. HOLMES: My letter of June 8, 1966, delineating the portion of the Navajo Reservation to be administered as though it were a joint use area of the Hopi and Navajo Tribes shown in *red* on the enclosed map is hereby modified to cover the area outlined in *blue* on the map.

This redefined area is an interim modification pending a proposal for final settlement of the disputed area which is to be submitted to the Navajo and Hopi Tribes by May 1, 1969, for their consideration.

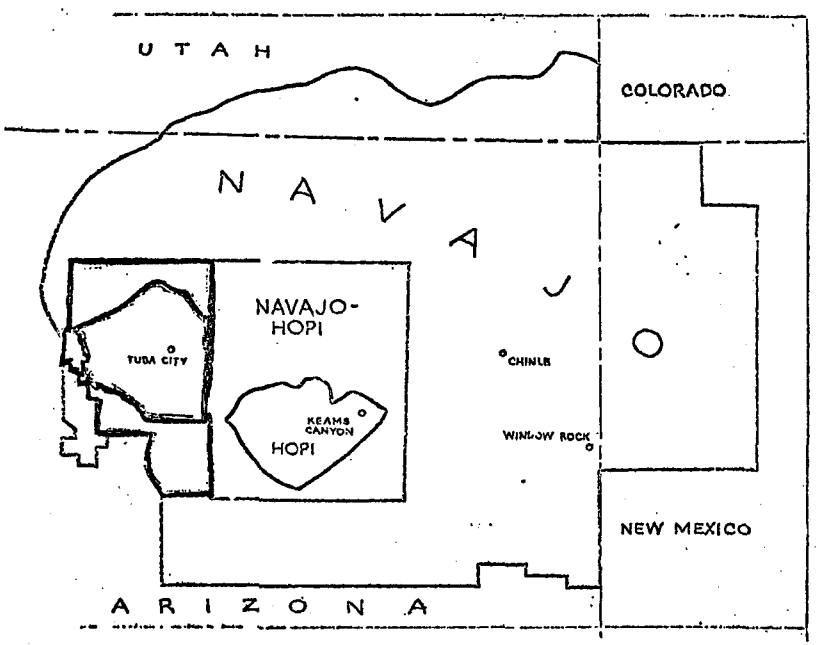
All other instructions in my July 8 letter and in my memorandum of October 31, 1967, to the Navajo and Phoenix Area Directors concerning public works typo projects remain in effect in the administration of the redefined area outlined in blue. The record shows that in no instance was progress on public works type projects beneficial to both groups halted or curtailed because of the July 8 letter and the memorandum of October 21.

Extra copies are enclosed for the Navajo and Hopi Tribes.

Sincerely yours,

ROBERT L. BENNETT,
Commissioner of Indian Affairs.

Enclosures.



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U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., May 13, 1969.

Mr. CLARENCE HAMILTON,
Chairman, Hopi Tribal Council,
General Delivery,
Polacca, Ariz.

DEAR CHAIRMAN HAMILTON: The Act of 1934 extending the boundary of the Navajo Reservation included an area west of the 1882 Executive Order reservation which had long been used by both Navajos and Hopis. In this area was the Hopi village of Moencopi, and adjoining land used by Hopis for crops and grazing.

The language of that Act: ". . . for the benefit of the Navajo and such other Indians as may already be located thereon . . ." gave clear recognition to Hopi rights within the area, without defining the extent or nature of those rights.

Over the years since 1934 conditions in the general vicinity of Moencopi have changed. More Navajos and Hopis are living there and using the land, new roads have been built, and agricultural and commercial activities have increased. With these changes and intensified pressures there have been heightened friction and increasing difficulties in administration and development.

On July 8, 1966, recognizing the Hopis' undefined interest in the lands in Arizona encompassed by the 1934 Act, I determined that the area could no longer be administered as though it were owned solely by the Navajo Tribe, which had been the case since passage of the Act.

I directed that in the portion of the Navajo Reservation west of the 1882 Executive Order reservation all actions take full cognizance of the undetermined Hopi rights. *Money from surface and subsurface resource management would be placed in a special fund, and a record would be made of all such collections and deposits since enactment of the 1934 Act.* I also directed that on rights of way, leases, and permits formal action by the Hopis as well as Navajos would be required, and that neither tribe should be permitted unilaterally to take actions that trespassed on the rights of the other. I urged the Hopis and the Navajos to negotiate to reach an early settlement of their respective interests as a basis for legislation to end the present confusion of ownership.

On October 31, 1967, the instructions in my letter of July 8, 1966, were modified to permit public works type projects to go forward on a determination by me without formal action by the Navajos and Hopis. On March 7, 1969, the area thus affected was reduced to eliminate a large part in the north and the south.

Following the issuance of my letter of July 8, 1966, the Navajos and Hopis started negotiations in an attempt to reach agreement on an area to be set aside for the Hopis to settle this age-long controversy.

Negotiating committees were appointed by both tribal councils and a series of meetings were held with Bureau officials, representatives of the two tribes, tribal officers, and tribal lawyers.

The tribal negotiating committees held three joint meetings, in Albuquerque on August 16, 1967; in Flagstaff on October 17, 1967; and in Phoenix on April 3 and 4, 1968. Prior to the first meeting the chairmen of the two committees exchanged a series of letters expressing the views of their respective tribes on the 1934 boundary Act and other aspects of the negotiations.

At the Albuquerque and Flagstaff meetings much of the discussion centered on Navajo concern over the effect of the Commissioner's July 1966, "freeze" on developments. This and other problems which it was hoped would be solved by negotiations were reviewed. At the second meeting in Flagstaff, a suggestion was made that a temporary Moencopi-Hopi area be established and the "freeze" lifted on the balance of the land under the Commissioner's order. The chairman of the Hopi Negotiating Committee gave an indication of that tribe's position when he stated that the Hopis feel they are really entitled to the entire 1934 area, but suggested that the Moencopis recognized the necessity to start with less than they feel they are entitled to and work from there.

It was not until the Phoenix meeting that both the Navajo and Hopi negotiators made specific proposals for an exclusive Hopi area. The first such proposal by the Navajo was for an area of 77 acres. This was countered by a detailed statement by the attorney for the Hopis on Hopi claims to an interest in all lands west of the 1882 Executive Order reservation added to the Navajo Reservation under the 1934 boundary Act.

The last proposal made by the Navajos was for an area of 19,354 acres (estimated), chiefly south and east of the village of Moencopi. This area "was to be considered for the exclusive use of the Hopi Indian Tribe with the understanding that the area outside be considered for the exclusive use of the Navajo Tribe." The chairman of the Navajo Negotiating Committee stated that the offer was subject to the approval of the Navajo Tribal Council. The Hopi negotiators rejected this on the grounds that the area "still eliminates a substantial area of both farming and grazing land now used by the Hopis in the Western Navajo, and also the area the Hopis used in 1934 and prior thereto."

The Hopis then made a counter offer of an area of 807,398 acres (estimated). The eastern boundary of this area was along the western line of the 1882 Executive Order reservation, and to the west at one point extended to the western boundary of the Navajo Reservation. This was rejected by the Navajos. No further efforts at negotiations were attempted since the wide gap between the thinking of the two tribes held little hope for a mutual agreement through meetings between them. I had reason to believe, however, that both Navajos and Hopi would be receptive to having the government take the initiative in proposing an area. I have therefore decided to make a proposal on the basis of available facts for your consideration. After review of your comments and any changes as a result of these comments, I plan to propose legislation to establish a Hopi-Moencopi area for Congressional action.

During the past 40 years, efforts have been made by various officials to set aside an area for Hopis living in the village of Moencopi and vicinity. These varied greatly in size and include the following:

	Acres
1930—Governor Hagerman	34,000
1930—Walker	90,000
1933—Walker-Dalton	246,000
1937—O'Neal-Hohnani	178,000
1937—Miller (Stockman)	200,000
1939—Page	102,000

The last of these was made from a 1937 field survey by Gordon B. Page of the Division of Economic Surveys of the Soil Conservation Services for a land management unit in the Moencopi area. The report covers stock ownership, agricultural plots, and outlines the boundaries of the area used by Hopi stockmen for grazing sheep, cattle, and horses. As of that date, according to the report, in addition to Hopis, some six Navajo groups lived in and operated stock yearlong in the designated area.

It is my conclusion that this report, reflecting use of the area in the Thirties, serves as a rational basis for a Hopi area in western Navajo to be set aside for exclusive Hopi use and administered by the Superintendent of the Hopi Agency at Keams Canyon. Certain boundary modifications from the area prepared by Page have been made in my proposal, and certain provisions included to meet present-day circumstances. Among these is the issuance of permits to Navajos now living and operating within the proposed area, and to Hopis living and operating outside.

The accompanying map identifies the area I have determined should be set aside for the Hopis. It totals approximately 105,000 acres and includes all dwellings in the village of Moencopi, and most of the irrigated land now used by the Hopis. With this map is a description of the area, and the conditions I propose to include with its establishment.

I wish to emphasize that I do not view this as a settlement of any aboriginal claims of the Hopi and Navajo Tribes in the area encompassed by the 1934 Act in the western Navajo. It is proposed as a solution to the pressing human and administrative problems now existing in that area which are hampering economic and social progress. Hopefully its establishment will enable both the Navajos and the Hopis to reach a better mutual understanding and eventually live and work together so that boundaries become unimportant.

I would appreciate comment at your earliest convenience.

Sincerely yours,

ROBERT L. BENNETT,
Commissioner of Indian Affairs.

Enclosures.

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Provisions for Operation of Proposed Hopi-Moencopi Area

PERMITS

Navajos now living and operating (grazing, agricultural and homesite) within the proposed exclusive Hopi Area will be given permits in the nature of life estates for the lifetime of the head of the household and the spouse to whom they are married as of the date of the Act. Hopis now living and operating in the Navajo Area will be given the same kind of permits.

WATER USE

The Pasture Canyon water supply system shall be administered in perpetuity by the Hopis. Such administration, as to use of present quantity of water shall be for the benefit of the present Hopi users and for the Navajo allotted lands. If and when additional water is developed in the future, it shall be administered by the Hopis for the maximum benefits to the Navajo and Hopi agricultural lands in the Moencopi-Tuba City agricultural area.

Any development and or use present and future of water from the upper division from Moencopi Wash shall be for the benefit of both Navajo and Hopi agricultural users.

UPPER PASTURE CANYON (OUTSIDE PROPOSED AREA BOUNDARY)

Farms in the canyon above Pasture Canyon Reservoir which are farmed by Navajo and Hopi will remain Navajo and Hopi in perpetuity.

Water use in the Upper Canyon will be by both Navajo and Hopi farmers who are using this land.

Irrigation water and supply system from Pasture Canyon will be controlled by the Hopis as described in section on permits and water.

The rights of ingress and egress will be assured both Navajo and Hopi to their farms and to construct and maintain dam and water supply systems.

Maintenance of the ditches from Pasture Canyon Dam to allotted land along the Moencopi will be the responsibility of the Hopis and Navajo farmers who receive water from this dam.

A right-of-way for present or any future supply ditch which will deliver water to the farms along the Moencopi will be assured in perpetuity.

DESCRIPTION OF PROPOSED HOPI-MOENCOPI AREA

1. Beginning at a point along the rim of Moencopi Plateau where the plateau meets the Navajo purchased land at approximately 5,000 feet elevation and on the north boundary of Sec. 9, T. 29 N., R. 11 E. (projected) thence,
2. Northerly and northwesterly along the rim of Moencopi Plateau to a point on the projected section line between Sec. 11 and Sec. 12, T. 31 N., R. 10 E., thence,
3. North along said section line to the center of Moencopi Wash thence,
4. Up the center of Moencopi Wash to a point where it meets the west boundary of Allotment No. 54, thence,
5. South and East to the SE corner of Allotment 52 thence,
6. North to the SW corner of Allotment No. 50 thence,
7. East and north around Allotment No. 50 to the NE corner thereof, thence,

(Nos. 8 through 16 of this description replaced by Nos. 8 and 9 of Secretary Loesch's description. Otherwise identical.)

8. West to the top of rim above highway thence,
9. Northerly and easterly along the rim to the NW corner of the C. E. Wood Sand & Gravel Permit, thence,
10. Northeasterly to a point on U.S. Highway 264 (between Tuba City and Oraibi) 800 feet south of right-of-way intersection of highways 264 and 164, thence,
11. Southeasterly along the highway center line approximately 1,000 feet to a point opposite the south corner of Blanche Taho Homesite thence,
12. Northeasterly along the SE boundary of said homesite to the east corner thereof, thence,
13. Northeasterly to the south corner of Andrew Kelly Homesite thence,
14. Along SE boundary of said homesite to the east corner thereof, thence,
15. Northeasterly following a projection of the SE boundary of said homesite to the center line of U.S. Highway 164, thence,

16. Along center line of highway easterly to the east boundary of Sec. 27, T. 32 N., R. 11 E., thence,
17. South to the center of Moencopi Wash, thence
18. Up the center of Moencopi Wash to the east boundary of T. 32 N., R. 12 E., thence,
19. South along the range line to a northeasterly extension of the Buck Pasture Fence, thence,
20. Southwesterly to Windmill No. A-149, thence,
21. Southwesterly along Buck Pasture Fence to a point where said fence intersects the south boundary of Sec. 5, T. 29 N., R. 12 E., thence,
22. Westerly along the section line on the south boundary of Sec. 6, T. 29 N., R. 12 E., and continuing along the section line on the south boundary of Sections 1, 2, 3, and 4, T. 29 N., R. 11 E., to the point of beginning.

U.S. Department of the Interior,
Office of the Secretary,
Washington, D.C., February 20, 1970.

Mr. Clarence Hamilton,
Chairman, Hopi Tribal Council,
General Delivery,
Polacca, Ariz.

Dear Chairman Hamilton: In accordance with my commitment to decide the Hopi-Navajo dispute in the 1934 area, so far as the same can be decided administratively, I have arrived at the conclusion delineated on the attachments. Except as noted herein and on the attachments, I affirm and ratify the boundary proposed by Commissioner Bennett's decision of May 13, 1969. I also hereby approve the contents of that letter, except that it is my conclusion that the boundary I have delineated is consistent with the land use patterns in existence in 1934.

Comparison with the maps will show that the only change I have made in Commissioner Bennett's proposed boundary as provided by his letter of May 13, 1969, is in the immediate vicinity of Moencopi itself, where I have determined that it is equitable to use the highway as the dividing line.

It is clear to me that the respective proposals of the tribes are unrealistic based on 1934 land use. It is also clear that Commissioner Bennett's proposed line represents a conscientious effort to arrive at a just solution taking into account certain modifications to avoid future controversy concerning use of the Navajo tribal lands purchased prior to 1934.

I append hereto a description of the proposed area, together with provisions for operation of the same and of adjacent areas.

You are aware that this proposed boundary is delineated for administrative purposes and to advise you of the future Departmental recommendation in the event either tribe or the Department requests implementing legislation.

Sincerely yours,

Harrison Loesch,
Assistant Secretary of the Interior.

Identical letter and enclosures to Chairman Nakai.

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Mr. BOYDEN. The next witness is Abbott Sekaquaptewa.

STATEMENT OF ABBOTT SEKAQUAPTEWA, CHAIRMAN OF THE HOPI NEGOTIATING COMMITTEE

Mr. SEKAQUAPTEWA. I am Abbott Sekaquaptewa. I am chairman of the Hopi Negotiating Committee and was chairman of the Hopi Tribal Council when the U.S. District Court rendered its decision in *Healing* v. *Jones*.

I am here today to once again reiterate the basis of our long-sought-after legislation to have our lands partitioned, so that we, too, as citizens of this country, will one day soon enjoy the use and occupancy of lands that are ours by birthright, and to do so without molestation by others.

The Hopi Indians have lived on this land since prehistoric times, going back more than a millenium. Hopi presence in this region antedates that of any other Indians now known in the region. Archeological studies and Hopi migration histories indisputably place our Hopi ancestors in this region since time immemorial. These histories are amply supported by ruins of former dwelling places and other artifacts which form an unquestionable and solid link between contemporary Hopi society and the time of our ancestors uncounted centuries ago. Spanish records amply support the Hopi dominion on this land.

On the other hand, Navahos are recent arrivals in Hopi territory and were unknown in this region until recent times, just in the past century and a quarter.

As has been stated, Hopi ranchers were ranging in the Little Colorado River Valley and into other outlying areas when the Bureau of Indian Affairs instituted the livestock reduction program in the late 1930's and 1940's.

As late as 1848, the Navaho western settlement penetration had not yet reached the area now referred to as the 1882 Hopi Executive order reservation. However, their depredations were a well-established fact to the east, and Mexican records at the time of the Treaty of Guadalupe Hidalgo in 1848, are replete with Navaho plundering, stigmatizing them as a people with whom depredation is a way of life.

The Hopis unhesitatingly put their trust in the U.S. Government after it took over Hopi affairs from Mexico in 1848, only to find that the new trustee would respond only to Navaho aggression. Hopi petitions to the Government for relief from the Navaho onslaught went unheeded. Instead, the Government rewarded the Navaho aggression with repeated concessions of Hopi lands and land right to the Navaho, too often because of expediency considerations.

This shameful conduct on the part of the Office of Indian Affairs in Hopi affairs is not uncommon even today. I refer to the discriminatory handling of livestock grazing permits in the 1934 boundary bill area, for instance, where Hopi stockmen still living today were told that new permits were closed to Hopis and would be issued only to Navahos.

Farm plots formerly occupied in the Lower Moenhopi Valley by Hopis were appropriated by the Government for agency use, then given to mostly Navahos who attempted to farm only for a few seasons, then abandoned them. By contrast, Hopis in neighboring plots still farm today, yet we are told that we do not utilize the land.

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The record of physical Navaho depredations is undeniable. Only when it became unbearable to the white settlers a century ago did the Government act by sending Kit Carson on his campaign. The campaign resulted in only a temporary relief from Navaho encroachment on Hopi rights.

The Hopi has found through hard experience that no law or concept of respect for the rights of others has any meaning for Navaho people. Why should it? They have gained all they have by aggressive tactics.

The Treaty of 1868 that was signed by the Navahos, setting aside a reservation for them and setting forth the conditions for keeping the peace, and their own peace symbol given the Hopis after release from captivity, were both immediately violated.

To illustrate the kind of regard they have for sacred treaties, a Navaho elder offered to buy this peace symbol back from the Hopis at a futile negotiating session in Window Rock several years ago. The 1868 Navajo Treaty also provided that they would never again carry on depredations or claim any territory outside their treaty reservation. That treaty is apparently not worth the paper it is written on. Depredations soon continued unabated. Hopi fields were plundered, then laid waste by burning.

Hopi herdsmen found alone were run down and slain by Navahos, who drove their flocks away. As a matter of fact, outlying ranchhouses are still being destroyed and burned today in spite of Navaho claims that we "lived in peace together for centuries." This is an outrageous misstatement of fact because they have been in Hopi territory a mere 125 years. Yet, in this brief period, they have chalked up many more malicious acts than I have recounted.

Now, the Navaho has added to his repertoire of lawlessness the emptying of Hopi stock water tanks and the erection of fences to prevent Hopis from their rightful use of joint-owned lands.

I understand that now, in their massive effort to deprive Hopis of their lands, they have resorted to having nationally known entertainment figures appear on national media propounding distorted facts on the legislation now pending before you.

There are overt and official acts of the Navaho Tribe which clearly illustrate their efforts to deny Hopi land use rights. I have here official correspondence from the Coal Mine Mesa Chapter of the Navajo Tribe, giving me an ultimatum to remove my cattle from district 3 of the joint-owned area. The members of this chapter constructed a fence last fall to fence my family and other Hopis off from grazing in an area that we have grazed for years, telling us the purpose of the fence was to prevent their stock from straying on the exclusive Hopi range and to keep our cattle from going on to joint-use lands. This makes a total mockery of Navajo claims that they are willing to have the Hopis exercise their joint-use rights. We submit copies of these documents for the record.

Senator FANNIN. The documents will be made a part of the record.

(The documents referred to follow:)

COALMINE MESA CHAPTER,
Tuba City, Ariz., October 19, 1971.

Mr. ABBOTT SEKAQUAPTEWA,
Post Office Box 123,
Oraibi, Ariz.

DEAR ABBOTT: Thank you for your letter dated October 15, 1971.

Please be informed that there will be a meeting at Coalmine Mesa Chapter on October 24, 1971 at 3:00 PM. The meeting that was scheduled for October 23, 1971 has been cancelled, due to another meeting that is scheduled at Cameron Chapter, where our chapter officials have been invited to attend their meeting.

Also be informed that the people living in the vicinity of where your cattle are at, in district 3, to remove all your cattle out from district 3 by October 26, 1971. If the cattle are not removed by the date given, the people will take action to remove the cattle.

We will be looking forward for you to attend our meetings to discuss some problems we are having at the present. Your cooperation will be appreciated.

Sincerely,

HUGH PADDOCK,
Coalmine Mesa Chapter Secretary.

COALMINE CHAPTER,
Tuba City, Ariz., January 3, 1972.

ABBOTT SEKAQUAPTEWA,
Post Office Box 123,
Oraibi, Ariz.

DEAR MR. SEKAQUAPTEWA: This letter is to inform you that your cattle are still in district #3. We wrote a letter before, dated October 19, 1971 to remove all your cattle out from district #3 by October 26, 1971, if the cattle are not removed by then, the community will take some action to remove the cattle. We are asking you again to remove all your cattle from district #3 by January 9th, 1972.

Please contact the Coalmine Mesa Chapter of what your decision is immediately. Your cooperation will be appreciatd.

Sincerely,

HUGH PADDOCK,
Coalmine Mesa Chapter Secretary.

Mr. SEKAQUAPTEWA. In spite of these and other facts, the Navajo officialdom denies deprivation of Hopi rights and seeks to cover up by statements such as "The Hopis have the erroneous idea that a livestock fence would somehow limit the ingress and egress of the Hopi people into the joint-use area." It seems to me that actions speak louder than words, particularly with respect to this situation. This is especially true when Navajos drive Hopi cattle off from the so-called joint-use area in violation of Hopi rights. I have personally stopped Navahos who were driving my cattle off joint-owned lands several times. Upon one occasion, last fall, I stopped one man who was driving my cattle three times in one day.

This violation of human dignity and the stripping away of a minority people's birthright is unequaled anywhere. Yet, the Government continues to look the other way and allows the aggressor to move at will.

Our elders, mindful of our long history of peace, have taught us to believe in the brotherhood of man. We have been disillusioned in discovering that the U.S. Government does not share this belief, that appeasement of the Navaho is the paramount consideration in Federal policy in Hopi affairs. But Hopi patience is not inexhaustible, and our endurance has run out. We can no longer sit still while further indignities multiply upon our heads.

When the 1882 Hopi Executive order reservation was established, the primary purpose was to protect Hopi rights from further encroachment by Navahos. But the encroachments did not stop, and appeasement of the Navaho again dictated Federal policy. I cannot help but wonder when and if the U.S. Government will learn that appeasement of aggression only sells the humble and the meek down the river.

We cannot blot from our tribal memory the grief and despair brought upon our people by Navaho intruders who took a Hopi

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woman by her hair and swung her around, then deprived her of her property. Neither can we easily forget the many instances of violent harassment employed by Navahos to intimidate and prevent Hopis from having the use of their customary wood-gathering areas. Cattle rustling is common today in what seems to be a vacuum of law and order enforcement mechanisms. All of our efforts and proposals to achieve an orderly return of our rightful share of the 1882 reservation to us have been frustrated by Navaho refusals to negotiate seriously. Navaho encroachments, on the other hand, continue to the point where in another few years even some portions of our exclusive reservation will be lost if enforced partition of our land is not effectuated now.

Existing livestock drift fences continue to be cut by Navaho herders, and their stock driven onto Hopi range. Yet, Navaho and Government officials naively propose such fences as a solution.

The decrees of the Federal courts and other Government regulations are blatantly defied by Navahos with impunity. They insult our intelligence with clamors for negotiation, while dissolving their own negotiating committee behind the scenes.

Today we arrive at the crowning conclusion that only a congressional mandate giving back to the Hopis what is rightfully theirs, with absolute enforcement provisions, will satisfy the urgent consciences of justice and equity.

The history of Navaho encroachment and recalcitrance in the Moencopi-Tuba City area is simply a repetition of a familiar old story. How many times must we repeat the story of the indignities heaped upon the Hopi man who was forced out by Navahos from his homesite at Moenave under threat of death, then was forced to take a few cattle as "payment." All the while a gutless Government agent stood by and supported the Navaho outrage. Within a fortnight the cattle were rustled by the Navahos, and appeals for help to the same Government agent were, of course, useless.

Livestock water development projects were constructed in this area with the assistance of Hopi cooperation at a time when Navahos had nothing to do with such projects. Yet the Government saw fit to give these same improvements and adjacent grazing land to the Navahos. Tuba City, a former Mormon settlement named after a Hopi chieftain, is today designated as a Navaho agency. Every effort by the Moencopi Hopis to exercise their prior right to this land is challenged and blocked by Navahos, with the tacit approval of the Federal Government.

We have bitterly found that the highest levels of Government bureaucracy do not have the intestinal fortitude to even attempt to resist the Navaho political power, preferring instead to sacrifice the rights of the Hopi minority.

At this point in our lifetime, it has been demonstrated that forced amalgamation only compounds intercultural problems, yet Navaho and governmental officials toy with that fantasy in the Hopi-Navaho situation—a conflict between two vastly different cultures.

How long will the Government stand by and ignore this gross violation of human rights and dignity? Will the Congress also stand by and allow this state of affairs to continue, when it so diametrically contradicts the very principles upon which your forefathers founded

this Nation? Today, when our enlightened country in search of its conscience desperately reached out for opportunities to correct injustices to the Nation's minorities, will the Congress be found wanting? Or will you who hold the destiny of the Hopi people finally demonstrate to us your sincere concern for the Nation's real minorities and make a just decision?

We come here only to seek justice. We ask nothing that is not ours by birthright. Whatever land the Congress sees fit to return to us will never be more than a fraction of our God-given domain.

We can no longer honestly proclaim our confidence about the virtue of living in peace and harmony with other people. We wonder if it is not more commendable in the eyes of the white man's government to aggressively assert ourselves and ignore the rights of others and the law of the land. We have seen aggression work for the Navaho.

Our faith is shaken in the virtues of the Christian and the Hopi way.

To us, the Hopi people, our land is the basis of our existence. Without it we cannot survive. May you help restore our faith and restore the future of our posterity.

I appreciate the opportunity to testify before the Congress.

Senator FANNIN. Thank you very much.

Mr. BOYDEN. The next witness is Dewey Healing.

STATEMENT OF DEWEY HEALING, MEMBER OF THE HOPI TRIBAL COUNCIL

Mr. HEALING. My name is Dewey Healing. I am a Hopi-Tewa from First Mesa of the Hopi Reservation. I am a member of the Hopi Tribal Council and formerly chairman of the tribal council. You have probably heard of the case of *Healing* v. *Jones*. I am the Healing in that lawsuit.

I have spent over 20 years doing the best I can to help find a solution to our land problem. We have had many hard times. At the time of the *Healing* v. *Jones* trial in Prescott, Ariz., in 1958, we borrowed an old army truck to go down and testify because few of us had transportation. We traveled with our bedrolls and stayed in an army tent and a church that had been offered to us while the Navahos stayed in more than a floor of Prescott's best hotel.

We Hopis thought that at last our land problem was to be settled for good. We were disheartened when we found out later that we had been given only a small portion of our land, the rest of the Hopi Executive Order Reservation to be used jointly with the Navahos.

Beginning right then, we knew that we could not live jointly with them because of the vast differences in the way of life, culture, and background of our two entirely unrelated tribes. History has shown that it is not possible for the Hopis and Navahos to live together and intermingle without constant friction.

Although we recognized that the decision in *Healing* v. *Jones* was a compromised decision, we accepted it in good faith and as good citizens. We have tried now for 10 years to make it work without success. The Navaho people continue to trespass on Hopi land. They continue to overgraze the joint-use land and deny Hopis their rightful use.

How can I, a man who is not versed in your ways; how can I convince you of the problem that we face in the person of the Navaho

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Tribe, if the white people are not willing to believe what I testify to from my own experience? How can I convince you that you must act now to do what is right? When we went to Federal court in *Healing* v. *Jones*, we expected a decision that would finally settle our problem. Instead we found that the court did not have the power to give us back our land separate from the Navahos. It is hard to believe that after 10 years, we still do not have even what the court has given us.

I fear that there are some among you who are not sure of this bill, thinking that it will hurt people. To us, it is the only solution to the problem. One thing is certain—in the future we will know what was the right thing to do and what was the wrong thing to do. But our job today is to act on this problem and not to run away from it.

It is true that you are not personally to blame for this problem, but you are the ones today who have the responsibility to act. You are face to face with the greatest land problem ever faced by anyone in Indian affairs. But you have the chance to take part in settling a problem which men in high office have been afraid of for 90 years.

It is no use to be afraid of this problem any more. If it is not settled now, it will always be with us like a cancer, eating at men's consciences. Each time a new representative of the people enters the Senate Chambers or a new Interior Department official takes office, he will be confronted with the same problem.

We put our lack of knowledge and experience openly before you. We speak what we feel, not knowing whether what we say will offend you. Because of this, we speak what is in our hearts and we speak honestly.

I have now learned, and I am convinced, that the only solution now lies with the Senate of the United States. You have the power to make laws. You have the power to order that those laws be enforced. The Congress has jurisdiction that the courts do not have to partition our land and give it back to us.

Remember that the bill before you will partition for us only that portion of our land from which Hopi homesteaders have been driven out by Navahos in recent times. We must remember that before this land problem ever came about, our lands went far beyond the boundary fixed by the House of Representatives. My people ranged into the Little Colorado River Valley. Hundreds of Hopi cattle ranged in Blue Canyon. They ranged into Black Mesa, and they even tended orchards in what is today called Canyon De Chelley, far outside the boundaries of the 1882 Hopi Executive Order Reservation.

The Hopi people, and many of the friends of the Hopi people, look to you now to provide the solution to our problem. This problem was first experienced by our grandfathers, and today we are still experiencing the same problem.

In closing, I want to urge you to partition all of our land in both the Hopi Executive Order Reservation and in the 1934 Navaho Reservation so we may live in peace with a chance to protect what is left of the lands that were once ours.

Senator FANNIN. Thank you, Mr. Healing.

Mr. BOYDEN. The next witness is Mr. Thorton Maho.

STATEMENT OF THORTON MAHO, HOPI TRIBAL MEMBER

Mr. MAHO. My name is Thorton Maho. I am 67 years old. I live in the village of Polacca, which is within district No. 6.

For nearly 60 years I have grazed livestock in the Hard Rock area inside district No. 6 near the boundary line.

I have testimony to give before the Senate today on how I get along with my Navaho neighbors.

I begin back some years ago, maybe 20 years, when an old Navaho burned our hogan. That Navaho was named Be-Ga-Lee. Because he had very little money or belongings he said he could not pay for the hogan. He told me that other Navahos forced him to burn it. He promised to cut posts and rebuild, but he never did. He is dead now.

About 10 years ago Bobby Hosteen, Mike Yazzie, and Tom James took a calf from my small herd and butchered it. These men are all Navaho from Hard Rock Mission in the joint-use area. We tracked them down and prosecuted in the Hopi Tribal Court. They were all convicted.

There have been about six other times when my cattle have been stolen, but I have not caught the Navahos who did it.

In 1964 some Navahos rounded up some of my livestock. They then were riding, roping, and dragging them around. They ruined my registered bull by crippling his hind legs. That bull cost $600.

In 1967 my Navaho neighbors shot another registered bull in the stomach and the bull died. He cost about $500. I tried to find the name of the man who did this. I questioned my neighbors. They say, "Ho-la"—"I don't know."

In 1970 some Navaho again roped and bothered my cattle. They broke the leg of a heifer and I had to butcher it.

In 1971 there were more cases of roping and dragging. My neighbor, Dan Begay, a Navaho, saw the ones who did this but refused to give me their names.

This year the Navahos burned my ranchhouse. They burned my corral and stole wood from me. They shot holes in my water tank during one of the worst dry periods I can remember. They destroyed my old house trailer. They took six calves from me. And they stole my only riding horse. Because I have no truck, I must now walk wherever I go or get somone to drive me.

I have pictures with me of the damage the Navaho did. They show my burned ranch house, my burned corral, my ruined trailer, and my punctured water tank. I would like the Senators to see these pictures so you will know I speak the truth.

I would like to say one other thing. Hopi cattlemen try to improve their livestock. We use only registered bulls. Nowadays I am worried that I am not improving my cattle business, as I should. This is because the Navaho do not use registered bulls and send their bulls into my herd.

Before every breeding season, I go to Navaho stock owners to move their livestock away from my herd. They always say, "all right," but they never move them. The Navaho have not spent one penny on my registered bull and still they benefit from it. At the same time their bulls take down the quality of my herd.

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This is the hard life I have been going through, so I strongly want H.R. 11128 to be passed.

Thank you.

Senator FANNIN. Thank you. The pictures will be made available for the other Senators.

Mr. BOYDEN. The next witness we know as Sam Shing.

STATEMENT OF SAMUEL P. SHINGOITEWA, REPRESENTATIVE OF THE HOPI VILLAGE OF MOENCOPI, ARIZ., TO TRIBAL COUNCIL

Mr. SHINGOITEWA. My name is Samuel P. Shingoitewa. I am one of the two duly elected representatives of the Hopi Village of Moencopi, Ariz., to the Hopi Tribal Council. I am also a member of the board of directors in Moencopi Hopi Village.

I was selected to be the spokesman for the Hopi Indians living in the Moencopi-Tuba City area of the Western Navaho Reservation of 1934. Moencopi is located approximately 13 miles west of the western border of the Hopi 1882 Executive order reservation. Under H.R. 11128 we would be included in an undivided Hopi Reservation.

Our Hopi people of Moencopi are ambitious, taking pride in farming and livestock raising, conducting their own way of farming and grazing management which is very different from our neighboring nomadic Navaho sheepherders.

For centuries—long before the birth of Christopher Columbus' grandmother—our ancestors occupied this territory. We have evidences of their old sites, potsherds, and cliff dwellings deliberately left by our ancestors to mark the Hopi territory if it ever became necessary to show where the Hopi lands were located. It now appears that this time has come.

In prior centuries our territory has always been recognized and respected by our neighboring Indian tribes—Supais to the west, Apaches to the south, Zunis, Taos to the east, and Paiutes and Utes to the north.

The Navaho was then a curiosity, raiding upon other tribes of Indians.

Seldom did problems arise which our forefathers were not able to solve, even in the face of drought and pestilence over which they had no control. Our people managed to survive, though at times they tottered on the brink of extinction.

Our traditional lands began to slip away from our use when the treaty of Guadalupe Hidalgo of 1848 was broken by the U.S. Government almost as soon as it was signed. Then, concerning the treaty with the Navahos of 1868, the Government again failed to enforce the provisions of that treaty and did not contain the Navahos.

Article 9, section 3, provides that the Navahos will not attack any persons at home or traveling, nor molest or disturb any wagon trains, coaches, mules, or cattle belonging to the people of the United States, or persons friendly therewith. This has never been enforced.

After the Spanish Government left the Hopi country in 1680, another white man came—Bahana—representing the U.S. Government. This our Hopi people have been waiting for—a white brother—who would say that he had come to stay and would help the Hopis out in their troubles, and would do away with their enemies.

In the year of 1863, Kit Carson came with his armies and started rounding up the Navahos, which gave the Hopis some hope that their desires might come true. Since then a government agency was established with an understanding with the superintendent that he had power in Washington, D.C., and with the promise to the Hopis that anything that may solve their problems could be asked of him, and that he would do it. Since then promises upon promises have been made to the Hopi people, as different agents came in.

The Hopis lost all hope because their pleadings for peace never have been answered. So up to this date we have found that all those sweet talks from the agents were nothing but were only idle promises.

We have been gradually deprived of our rights to our land and materials necessary for our needs, and with time it has become worse. At this point I would like to cite a few Hopi reports of incidents committed by the Navahos upon the Hopis in the past and present them for your information.

The first report is from Earl Numkena and concerns the removal of the Hopis from the settlement of Moenave near Moencopi about 1920. At that time six Hopi families lived in that area. The family names were Earl and Lewis Numkena, Poleyestew, Nasetoynewa, Seweinptwa, and Poli Payestewa. They had erected substantial homes, developed irrigation systems, raised fruit trees, poultry and livestock. The Government forced these families out without compensation and replaced them with Navahos who have ruined what was once a productive area.

The second report is from James Humetewa and covers a period from 1927 to 1936. During that period the following incidents occurred:

(a) One steer stolen and butchered near Salt Springs by Navahos Sweat Billigody and Naenee Begay.

(b) One steer stolen and butchered east of Cameron by Navaho Harrison Knight.

(c) One horse stolen and sold by Navaho Bas-Naa-Nee.

(d) One heifer killed and butchered by Navaho leader Maxwell Yazzie's father.

(e) Two horses stolen and driven 250 miles away.

The Navahos who participated in these crimes were tried and found guilty.

The third report is by myself and concerns trespass by the Navaho livestock. Moencopi is a farming district. To protect the fields from grazing livestock we have built fences. But in the last 6 years, the Navahos have brought and permitted their livestock to go into this area. They have knocked down fences both day and night. They have checked the brands on these animals but they have refused to be of any help. I have talked to the Navaho grazing chairman without any result.

The fourth report is by Alton Honahni. He states that almost every Hopi at Moencopi who has tried to gather firewood near the village has been harassed by the Navahos. Axes have been taken, wagonloads of wood have been dumped, and horses driven off.

The fifth report is from Bennie Tewa and concerns recent cattle rustling. In June of this year Bennie Tewa had 10 head of his cattle stolen by a Navaho neighbor. Fortunately, he was able to recover the herd.

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The sixth report is by Forest Kay, who is 72 years old and lives in Moencopi. On an evening in July of this year, while returning home following a family outing, Forest Kay was confronted and threatened by a Navaho only 3 miles from Moencopi. The Navaho, John Maloney, pushed and pummeled Forest Kay, saying that the Hopis have no right to walk around in that area. The matter was reported to the Navaho police, but no action has been taken.

The last report is from Gerald Howard and Jacob Coin. On August 20, 1972, Gerald Howard, his wife, who is a Navaho, and Jacob Coin went to a squaw dance which was attended by other Indians who were nearly all Navaho. Soon after their arrival they were confronted by some Navahos who said the Hopis were taking their land. The Navahos proceeded to beat up the Hopis and Mr. Howard's wife. Coin lost several teeth, and Mr. Howard received several cuts requiring stitches to close. The Navaho police were notified but they took no action.

These are only a few examples of what the Hopis in this area have had to contend with.

If you would like more information concerning any of these reports, I will be happy to provide it for you. We can specify other incidents back several hundred years.

So, today, we are asking for justice. We ask that H.R. 11128 be enacted into law. It is not everything we want in many ways, but we are desperate. We need help now.

Thank you.

Senator FANNIN. Thank you, Mr. Shingoitewa.

Mr. Boyden, time is running out, we do want to complete the testimony this morning for the Hopis. If they are just statements, I would like to ask you some questions that I think are important, that are very much involved, and it is the decision of the committee to get this information. If they can just summarize their statements to a greater extent, the statement will be made a part of the record.

Mr. BOYDEN. Do we have any further time allowed to us?

Senator FANNIN. We will have time for them to make limited statements, verifying these are their statements and they wish to adopt them as a part of the record.

Mr. BOYDEN. All right.

STATEMENT OF EMORY SEKAQUAPTEWA, A MEMBER OF THE HOPI INDIAN TRIBE

Mr. SEKAQUAPTEWA. I am Emory Sekaquaptewa. I speak today as a member of the negotiating committee for the Hope Tribe. I have a written statement which I will ask the committee to make a part of the record.

Senator FANNIN. The statement will be made a part of the record.

Mr. SEKAQUAPTEWA. Let me state from my experience in 10 years and having attended all of the negotiations between the two tribes—let me state that the character of those—the nature and character of those negotiations have run something like this: They have refused to recognize the decision handed down by *Healing* v. *Jones*. They use the negotiating conferences as a forum to try the case all over again. They try to distract us from the realities of it, by pointing to some good social relations between the two tribes. They even went so far as to

intervene—that is, the leaders of the Navaho Tribe—intervene in the negotiations in order to frustrate us.

On one occasion, in Arizona, on September 16, after the two tribes agreed there would be no non-Indians participating in the conference, or in any way connected with the conference, we met there and the Navahos offered to present an offer, and before they presented the offer for our consideration they retired to a hotel and inadvertently I and my associates discovered them huddled around the tribal attorney, obviously discussing strategy.

On another occasion in Flagstaff, the Navaho negotiating committee prepared as an opening statement a written statement by the tribal chairman indicating that he had great doubts and suspicions about any negotiation settlement.

On another occasion, in Albuquerque, the Navaho committee arrived there a day prior to the appointed date of our meeting and decided they would not keep the appointment with the Hopi negotiating committee, on some reasoning that the Commissioner of Indian Affairs, or one of his representatives, was there, or because their tribal attorney was not going to be there, and these are only to point out that the argument that this matter be settled by negotiation has come to an end. We have exhausted it, given every opportunity to settle this matter by negotiation.

Recently the Navahos appealed to the subcommittee of the House of Representatives to kill H.R. 11128 on arguments that under new Federal policies, Indians should work out Indian solutions to Indian problems. They have also argued that times and conditions have changed in favor of negotiation.

Let me say just by a sentence that Indian self-determination is meaningful as a concept when applied to the internal affairs of tribes, but has no such significance or meaning when applied to the external affairs between two tribes. What I am saying is, if the two tribes externally take matters with another tribe, that the U.S. Government is a necessary party to any negotiation, any matter.

There is a lot of water gone over the bridge already at this point. Lots of laws affect both individual and tribal affairs of each of these tribes and these cannot be avoided. The two tribes are beyond that point now. They have no authority to alter some of these laws already vested in the two tribes. The obvious situation here is that the negotiation route offers the best advantage for the Navaho people. Even when the negotiations fail. When they do fail this is to their greatest advantage. This offers the greatest opportunity for procrastination and caprice.

The idea that conditions have changed is something I would like to say something on. The conditions have not changed. It need only be said that the most significant condition which gave Navahos the superior position in any negotiation has been their 100-percent occupation and use of the joint-use area. So any idea of negotiation has got to recognize that most important position of the Navahos is unchanged; therefore, could not result in any changed attitude on their part.

Let me say that the Hopi people will not abandon their lifestyle, not even to conform to the notion that might makes right, or that possession is 90 percent of the law, by moving out into the land to

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roam with their herds. It has been the Hopi practice to go out by day and come back by night. They leave their implements out in the field and the herds in their corrals, fields and herds do not suffer through owner neglect, though they may have suffered the depredations of the Navaho intruders. It is wrong and inequitable to force him and his family to make adjustments to a different standard of industry by requiring him, against his will, to move into the land and follow his herd around just to demonstrate possession, when under the law property rights do not require it, he is entitled to be left unmolested and undisturbed in his own country.

The only thing that will bring this about is to partition this land, and I appeal to this committee to consider seriously that partitioning is the only answer.

Thank you.

Senator FANNIN. Thank you, Mr. Sekaquaptewa.

(The complete statement follows:)

STATEMENT OF EMORY SEKAQUAPTEWA

before the Committee on

Interior and Insular Affairs

United States Senate

Washington, D. C.

H. R. 11128

92d Congress

I am Emory Sekaquaptewa. I was born at the village of Hotevilla on the Hopi Indian Reservation in 1928. Even before I entered school I accompanied my father, and frequently, my maternal uncles to look after the grazing of sheep and cattle on open ranges located about fourteen miles to the south of Hotevilla. From that time to the present, my family in its extended sense has always, and continuously, occupied and used that range which spills over into District 3 on the joint-use area of the 1882 Reservation. By the time of World War II, my father and uncles had built a permanent dwelling for family occupancy and we moved into the house in order to be closer to our work with the livestock and the fields and orchard. My mother had by then began to raise poultry to supplement family means during those years when the war effort rendered meat and poultry products scarce. Two of my older brothers had gone off to fight in the war, which left the family with younger boys and less hands to work and it was necessary to abandon the commuting practice from Hotevilla.

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Most of my adult years have been spent on the Hopi Reservation in various occupations including private business, teaching, and later in both elective and appointive offices of the Hopi Tribal Government. I have been a member of the Hopi Land Negotiating Committee from its inception in 1963 and subsequently chaired the committee for two years. From that time to the present I attended all of the negotiations held between the Hopi and Navajo negotiating committees attempting to settle by agreement equal use of that part of the Executive Order Reservation of 1882 which was decreed as jointly held by the Court in Healing vs. Jones.

Beginning with the first negotiating conference held in Scottsdale, Arizona, on August 6-7, 1963, and throughout all of the negotiations since, the Navajos have rejected the decisions in Healing vs. Jones. They have refused to discuss any matter relating to the rights of Hopi use in the jointly held area recognized in that decree; instead, they have insisted on discussing matters relating to the merits of the case which had already been litigated. They used the negotiating conferences as a forum to try the case all over again. They tried to distract our attention from the realities of the situation, both as to matters of law and fact, by pointing to good social relations existing between individual members of the two tribes. They tried to shame us by implying that Hopis are motivated by greed in going beyond their traditional bounds of farming as a principal industry to livestock operations which somehow was to be taken by us as an intrusion on Navajo privilege. They insulted us with inferences that Hopis preferred

to stay on their mesa tops engaged in long rituals and ceremonies and have no need or interest in occupying lands beyond their mesa-top villages. They tried to have us accept the notion that boundaries or any lines which tend to mark boundaries, are contrary to the beliefs and traditions of the Hopi. These are but some of the ways by which the Navajos attempted to avoid any discussions based on conclusions of law and fact in Healing vs. Jones.

Furthermore, the interruptions made by the Navajo tribal attorney and the Chairman of the Navajo Tribe on two occasions respectively were clearly intended to frustrate the negotiations between the two tribes. In Flagstaff, Arizona on September 16, 1963, after agreement that no non-Indians, including tribal attorneys, should be involved in the conference, the two committees met during which the Navajo delegation offered to present a statement for consideration by the Hopis. Before presentation of this offer, the Navajo delegation retired to a local motel restaurant where I and two of my Hopi colleagues inadvertently discovered them huddled around their tribal attorney in apparent discussion of strategy. Needless to say, no offer was presented. On another occasion also in Flagstaff, (October 17, 1967) a written statement of the Chairman of the Navajo Tribe was read as an opening statement by the Navajo committee, indicating the Chairman's doubts and suspicions toward negotiated settlements. Then, on June 20, 1968, the Navajo committee met in Albuquerque, New Mexico, on the day before the date scheduled for the negotiating conference at the same place between the two tribes. At that meeting, the Navajo delegation decided not to keep

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its appointment with the Hopi delegation on reasoning that the Commissioner of Indian Affairs was not personally present, although his representative was there, and because the Navajo tribal lawyer was absent also.

Recently, Navajos appealed to the Subcommittee of the House of Representatives to kill H. R. 11128, on arguments that under new federal policies, Indians should work out Indian solutions to Indian problems. They also argue now over news media that conditions and times have changed favorably toward solution of the joint-use area by negotiation.

Indian self-determination, is meaningful, as a concept, where applied to the internal affairs of tribes - but it does not seem to work when viewed in the context of affairs that go outside those bounds. Under the law, Indian tribes do not have power to deal with other tribes absent the right and power of the U. S. to intervene. In other words, whenever two tribes interact, the U. S. Government is automatically a third party because of its Trustee position. Thus, pure self-determination in such inter-tribal matters is impossible.

In addition, too much water has gone under the bridge now in regard to rights and privileges that have attached by virtue of court decisions and statutes of Congress having general applications to Indians. Such decisions and statutes cannot be ignored. This leaves very little to the two tribes in negotiating substantive issues of law and fact which look, for their validity, beyond the power of the two tribes to alter.

This does not mean that Indian self-determination is an empty concept for it has almost inexhaustive meaning when applied to internal affairs

of tribes and to dealings between a tribe of Indians and the Federal Government in accordance with recognized standing between the two.

Under the circumstances here, the plain and obvious truth is that the negotiation route offers the greatest advantage to the Navajo tribe, even when negotiations utterly fail. This offers the greatest opportunity for delay through procrastination and caprice. Indeed, the mere passage of time without solution is the essence of Navajo advantage in this land controversy. Even now, as we cope with necessary delays in attempting to work out the only real and practical solution, conditions on the land are changing to the detriment of the Hopi tribe. Navajos are moving into areas around the periphery of District 6 for residential and grazing purposes, not withstanding severe limitations caused by the deterioration of the land and the restrictions placed on developments by administrative polices presumably designed to keep the status quo until solutions can be worked out. These new settlements cannot, by any stretch of the imagination, be founded on any reasonable exercise of right nor on any reasonable determination of need. On the contrary, these settlements are intended to create conditions which will later be urged as obstacles to any plan for relocation, undoubtedly citing undue hardhsip to the so-called "uprooted" people as unconscionable.

As to the argument that times and conditions have changed in favor of negotiations, it need only be said that the most significant condition at the time of Healing vs. Jones, which gave Navajos the superior position in attempted negotiations, was the exclusive use and occupation of the joint-use area by them. That condition remains the same today. In fact, that condition today is compounded by numbers of Navajos now

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living there through increased migrations following the Court degree.

The Hopi people indeed acknowledge and appreciate the good social and cultural relationships wherever they exist between individual members of the two tribes. We want to encourage these. In spite of the long standing political and legal conflicts between the two tribes, the Hopis and Navajos, as cultural groups, have carried on ceremonies in mutual appreciation and respect. Intermarriage between members of the two tribes is increasing. But even such constant and stable social and cultural intercourse cannot presume political candor at governmental levels. Especially so when two tribes, as the Hopi and Navajo, are fiercely proud of their tribal heritage. The situation is somewhat like the relationship between the colonies and England in the 1700's. In that case there was much more to bring them together socially and culturally, yet they remained politically far apart.

The Hopi people will not abandon their life style, not even to conform to the notion that might makes right, or that possession is 90% of the law, by moving out into the land to roam with their herds. It has always been Hopi practice to do out into the land by day and to return by night, leaving implements in the fields and herds in the corrals. His fields and his herds have not suffered through his neglect though they may have suffered the depredations of the Navajo intruders. It is wrong and certainly unfair to force him and his family to make adjustments to a different standard of industry - for he has worked out his own system that best fits his spiritual and material needs. He is entitled to be left unmolested and undisturbed in his own country. Only the partition of the 1882 joint-use area will achieve these results.

Senator FANNIN. Now, we do not want to limit the time of the Navahos or Hopis to present the testimony that they consider vital in this bill. Inasmuch as we have eight or more witnesses, if we could have the witnesses come forward and you desire to call upon them, and limit their testimony as much as possible. As I understand the full testimony is in the statements that will be made, is that right?

Mr. BOYDEN. That's right.

Senator FANNIN. We will not be limiting anyone from testifying to the extent they desire by holding them to just their statement.

Mr. BOYDEN. We will have a short statement here by Jacob Coochise, who is representing the livestock reservations and he will speak on behalf of all three people who represent livestock associations.

STATEMENT OF JACOB B. COOCHISE, REPRESENTING HOPI LIVESTOCK ASSOCIATIONS

Mr. COOCHISE. My name is Jacob B. Coochise. I am a Hopi Indian of the Roadrunner clan, and I come from the First Mesa Consolidated Villages on the Hopi Reservation.

I am here today, representing all of the Hopi livestock associations and independent livestock owners of the Hopi Reservation who are in strong support for passage of H.R. 11128.

Dating as far back as the 18th century, Padre Carcias, a Spanish explorer, documented in his diary in 1776, that Hopi livestock were seen grazing between Oraibi and Moencopi and that Hopis at that time were utilizing lands beyond the 1882 Hopi Executive order reservation which was later established by President Chester A. Arthur for the Hopi Tribe.

Between the establishment of this reservation and the present day, the Federal Government continues to allow the Navaho to encroach upon lands by their inability to exercise their trust responsibilities to Indian tribes.

In 1962, the Hopi further lost half of their Executive order reservation to the Navaho by court decree in the Federal district court in Prescott, which rules that grazing management district 6 would be exclusively Hopi land and that the 1882 Hopi Executive order reservation outside of district six would be jointly owned by the Navaho and Hopi Tribes, share and share alike on a 50–50 basis. To this day, the Hopi is not allowed to use lands which are rightfully and legally his.

Many Hopi livestock owners would like to use the Hopis' half interest of the 1882 reservation, but the Navahos have overgrazed and destroyed the land. The only solution is to partition these lands between the two tribes so the Hopi could fence their portion and begin a range rehabilitation program.

After a period of years, Hopi livestock could be introduced gradually as the land becomes productive. As you all know, the Hopi has implemented good range management practices for many years and had received awards from the Secretary of the Interior for cooperation and achievement in protecting the range. At present, there is a shortage of grazing land within district 6 and Hopi livestockmen need additional lands for grazing the cattle they now own.

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I am a livestock owner. These practices of livestock ownership have been handed down to me from long generations by my uncles. My ranch is located 20 miles from the Hopi villages. Since the court decree at Prescott, my warehouse located at the ranch was burned to the ground along with all the feed for my animals which was stored in this structure. And, recently, my corral gates, which were padlocked, were torn down by chopping instruments, and all my branding irons were found in a twisted heap.

Some young Navahos recently paid a visit to my ranch and broke all the windows of the ranchhouse. I tracked the culprits to where they entered and exited from district 6—exclusive Hopi Reservation. This is what is happening to the Hopi today. So we stand before you today, the U.S. Senate, to help us correct this gross injustice. You, as our white brother, long ago agreed to protect and help us; we are asking that you stand by your pledge. Later today, you will hear testimony by another of our group who will explain this pledge from the white brother to his Hopi brother.

Please study our plea and help us. The Hopi and the Navaho, of different cultures, cannot live together. We only wish to have our rightful share of this land so we can use this land as we wish for our people now and in the future.

We have been living and learning the ways of our white brothers. We are progressing and multiplying at the same time and cannot live our lives economically in so small a territory.

We wish to move out of district 6. It has been a long time, we need to stretch our legs, we have been humble and bent over long enough.

Please help us. Thank you.

Mr. BOYDEN. Will the other two livestockmen give their name.

Mr. SEKAQUAPTEWA. Ferrell Secakuku and Emmett Navakukua.

Senator FANNIN. All right, your statements will be made a part of the record.

Mr. BOYDEN. This will conclude our testimony. We will put the other statements in.

Senator FANNIN. Will you have all of the other witnesses stand and identify themselves by name?

Mr. BEGAY. My name is Nathan C. Begay.

Mr. LEWIS. My name is Hubert Lomoduksie Lewis.

Mr. NASAFOTIE. My name is George Nasafotie, Sr.

(The statements referred to follow:)

STATEMENT OF FERRELL SECAKUKU

before the Committee on

Interior and Insular Affairs

United States Senate

Washington, D. C.

H. R. 11128

92d Congress

My name is Ferrell Secakuku, I am a Hopi Indian from Second Mesa, Arizona, Hopi Indian Reservation, member of the Shipaulovi Village, and carry out my annual Hopi Indian tradition and religious beliefs with my respective society of Snake and Sand Clan, which have been carried on for centuries.

I am a rancher with land use rights on the Hopi Indian Reservation in common with my father, two brothers, nephew, and my uncle.

The grazing land we now use is only a limited portion which in no way will establish an economic herd. I am here today representing many Hopi ranchers who also have limited land use for their livestock. Therefore, I will testify on behalf of H. R. 11128.

We are known throughout the history of man to have been peaceful people. We were never at war with the United States nor the Spanish government. The only White men we ever destroyed were the Spanish priests who had desecrated our religion.

Our religion teaches us to help one another, protect our mother earth for livelihood for all mankind depends on it for survival. We

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take care of our land because our land takes care of us.

We have lived through many centuries of turmoil because of strange and difficult influences of the White man, neglect of the United States Government and the pressures of the Navajo for the past 125 years. Nevertheless, the Hopi people remained in their present traditional domain and pattern of livelihood because of our religious beliefs.

Rather than take so much of your time talking about Hopi traditional and religious beliefs, I would like to point out in my testimony only those portions which have caused and hinders our present situation.

About 125 years ago, the Hopis came into real contact with the Navajo people when they began to migrate into our land. The raids and stealings of the crops and livestock were taking place. At times, even Hopi hostages were taken away.

Since then, the Hopi traditional domain continually reduced in size. Letters after letters were sent, talks after talks were had with representatives of the big white father of Washington, D. C. who was supposed to be the trustee of our land. But nothing was ever done about it. The Hopi were never given a chance to exercise the use of their land.

Hopis have engaged in the livestock business in addition to raising an abundance of native crops because that was their livelihood.

Between 1868 and 1934, the Navajos managed by their nomadic way of life and persistant raids to coerce the U. S. Government to expand

their reservation from the original treaty reservation of about three million acres to over 12 million acres.

From 1936 to the late 40's, Hopis were confined to the little area of District Six, and were forced to reduce their livestock. The U. S. Government told the Hopi people that these districts were formed only for grazing purposes, therefore, did not represent the reservation. Many Hopis refused to accept the establishment of the districts therefore refused to submit to reduction but were jailed and their livestock sold. The other districts where Navajo families had already established their homes by trespass and squatting there were given larger areas and even permitted by the Bureau of Indian Affairs to expand their herds.

In spite of the ten million acres that the Navajos have gained since 1868, they began to overstock and overgraze the land. These lands included a majority of the Executive Order Reservation of 1882 that was set aside for us Hopis.

Reduction was attempted on Navajo herds but was successfully prevented by the Navajo council.

In 1959, the Hopis went to court in hopes to regain all of the 1882 Executive Order Reservation. Unfortunately, the three judges in 1962 decreed that we must use the land jointly with the Navajos on one-half and one-half terms giving only District Six exclusively to the Hopi. So the problems persist but at least we thought we could now use portion of land that is now ours.

Immediately following the court decree, 44 of the Hopi ranchers

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applied for permits for the Joint-Use area. We waited years only to be told by the BIA Commissioner in Washington, D. C. that we can't have it. The most asinine, stupid and ridiculous reason that the Commissioner gave was that the land was already overgrazed by the Navajo people. So as you can see, the Bureau of Indian Affairs is aware of the situation, but dares not to face up to the mighty Navajo to reduce their livestock.

According to the BIA report on present stocking rates, the range on the Joint-Use area is overstocked at 400% of the carrying capacity. The Hopi District Six is overstocked too but only by about 25%. Our overstocking would reduce to zero immediately if we get our 1/2 share of the Joint-Use area. Also it will allow other members of Hopis to enter the livestock business.

Most of the ranchers we represent would cry with happiness if they would be given opportunity to use their share of the land. The only solution for this undertaking would be to equally divide the land and fence it. This is the only way for the ranchers to build up economic livestock herds. Most of them barely make ends meet.

Because we are law abiding citizens and full of patience by tradition we listened to the Government and waited tirelessly for so long, but we cannot wait any longer. We were assured and given hope by BIA that the land problem would be resolved in the not too distant future. We heard the Navajo leaders saying the only way this will be solved is to leave out the high powered white lawyers, the United States Senate lawmakers and negotiate just with them.

If only someone could realize that the Hopis have tried to negotiate. After ten years since the court decree - nothing happened. The Navajos don't know what it means to negotiate.

The Navajo disregarded the court decree and continued to push upon Hopi land and now they began encroaching into the exclusive Hopi District Six. At this moment, several Navajo families are living on our exclusive property. Just last week, they constructed another hogan.

Don't they respect the law? Doesn't their Chairman tell them of their rights? When will the Navajo people and the American public learn that Hopis won't stand any longer to be deprived of their rights?

We are not totally blaming the Navajos for all their past actions - U. S. Government is also responsible. We are only bringing out facts so our land can be equally divided for the best interests of both tribes.

The United States Government, in its inability to exercise its trust responsibilities to the Hopi people, is a main cause of the present situation between both tribes.

It is time that the United States Government fulfills its obligation to rectify the situation they have created.

As an individual Hopi, and I know many other Hopi ranchers have some real good Navajo friends too, I do not want my friendship to be broken, but friendship dies under present conditions.

Your help is needed now. Thank you for listening.

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STATEMENT OF EMMETT R. NAVAKUKU
before the Committee on
Interior and Insular Affairs
United States Senate
Washington, D.C.
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92d Congress

My name is Emmett Navakuku. I am a Hopi Indian from Shungopavi Village on the Hopi Reservation.

I am a rancher and member of the Second Mesa Livestock Association, one of five livestock organizations on the Hopi Indian Reservation. I am also a member of the Hopi Grazing Committee which consists of representatives from each livestock organization.

I am here today representing many Hopi stockmen who are also farmers, to testify on behalf of H. R. 11128. The stockmen know what the situation really is like, especially around the boundary of District Six.

The U. S. Government has been reluctant to help us when we have asked for protection from the Navajo raiding and stealing. Within the past 10-15 years, the Hopi stockmen requested from the U.S. Government BIA that trespass by Navajo livestock within District Six be prevented. But the BIA said they did not have

the authority to carry out any trespass action. The Hopi stockmen then recommended to the Hopi Tribal Council to pass an ordinance to prevent the trespass of any unauthorized livestock in District Six. The Hopi Grazing Committee was then formed to work on the trespass problems, along with better range utilization for Hopi stockmen.

The Hopi-Navajo land dispute has been discussed at many livestock organization meetings. We have carefully reviewed the question as to how the Hopi people could equally use their half of the Joint-Use area. We have concluded that the only solution to this land dispute is to partition the 1882 Joint-Use area equally between the Hopi and Navajo tribes. The Hopi stockmen feel definitely that an exclusive Hopi reservation is the only way possible to raise an economic herd and to encourage other Hopi people to go into livestock business.

I also want to correct some false statements by certain news media regarding impoundment of Navajo livestock trespassing on District Six. Statements such as, "Hopis provoke Navajo people into violence," are untrue. Certainly any livestock if taken care of properly would not wander off and trespass, but Navajo sheep and horses do just this.

The Hopi Police Ranger is only doing his duty by enforcing the Hopi Tribal Ordinance. Beginning in 1970, the Hopi tribe began to enforce its ordinance which the Hopi stockmen unanimously supported in order to prevent the Navajo trespass. Range surveys

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and reconnaissance were implemented. During just one of those days, over twelve hundred trespassing Navajo livestock were seen grazing on the Hopi grass.

Since then, over one thousand Navajo livestock have been rounded up and impounded and four hundred and twenty-seven livestock have been sold at auctions. As a result of this action by the Hopi tribe, certain Hopi properties have been destroyed in reprisal. To name a few, ranch houses were broken into and some burned, corrals destroyed, stock water tanks drained, livestock stolen, mutilated, and butchered on the range. Hopi stockmen today do not want any serious trouble, we want to use our portion of the land that is rightfully and legally ours so we too can say that the United States Government has done justice for the Hopi Indians.

Hopi people, by tradition, are law-abiding people. They have educated themselves in some of the White Man's ways of doing things so they may be able to cope with the outside world. Yet, they are traditionally keeping the Hopi way of life. If true justice is to be shown, then we the Hopi people ask the United States Senate to take action in favor of H. R. 11128.

The foregoing testimony is true and sincere which the Hopi stockmen have asked me to say. And I want to thank each of you for hearing our plea. May the many Hopi blessings be with you.

STATEMENT OF NATHAN C. BEGAY

before the Committee on

Interior and Insular Affairs

United States Senate

Washington, D. C.

H. R. 11128

92d Congress

My name is Nathan C. Begay. I am an employee of the Bureau of Indian Affairs. I serve as Tribal Operations Officer at the Hopi Indian Agency, Keams Canyon, Arizona.

I am of Hopi and Navajo decent but I have spent all my life on the Hopi jurisdiction.

During this spring, because of unrest on the borders of District Six between the Navajo and Hopi tribes, the Commissioner established the "Courtesy Patrol" whose job it was to prevent livestock trespass into the exclusive Hopi reservation and to educate the Navajo people that Hopi livestock had a right to graze in the joint-use area of the 1882 Executive Order Reservation.

At approximately 4:15 P.M. on Thursday, June 22, 1972, I and Samuel Miller arrived at Thornton Mahe's corral in the Hard Rock Area within the Hopi Indian Reservation (District Six) where the Hopi Tribal Ranger Elmer L. Randolph and Ranger Aid Ephraim Pawwinnee had impounded approximately 190-195 head of Navajo sheep and goats for trespassing on the Hopi Reservation.

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Present in the area at the time of our arrival were Ranger Randolph and Aid Pawwinnee, Hopi Policeman, Jerry Surveyor, Hopi Police Trainee, Randall Mahle, and BIA employees Marvin Jones and Emnett Navakuku.

Policemen Surveyor and Mahle were attempting to catch a saddled horse near the corral. After some chasing, the horse was caught and impounded in the corral.

Courtesy Patrol #2 had been in the area but had left to perform their assigned duties. Courtesy Patrol #2 had been called back into the area by radio as the sheepherder, a Navajo woman who has been arrested had escaped while the rangers were impounding her livestock. The Navajo woman was sighted north of the corral and the Rangers followed and returned her to the corral. At this time, a pickup truck load of Navajos, women, men, and children, had come to the corral and talked with the prisoner. Policeman Homer Kooyaquaptewa and a Police Cadet Trainee had arrived in the area in the meantime and transported the prisoner to the facility at Keams Canyon. The pickup truck load of Navajos stayed for a time and after talking with Policeman Surveyor left the area but soon came back with about fourteen people, Navajo men and women and demanded the release of the livestock.

After talking with the Hopi group to no avail, the Navajos stayed around the corral and kept talking in the Navajo language amongst themselves. After sometime, about twenty minutes, one of the Navajo ladies approached the Ranger and demanded that the livestock be let out of the corral. The Ranger released the horse and saddle, after which, a Navajo

male, Jimmie Begay rode off in the direction of the nearest Navajo home on the released Navajo horse.

More Navajo people arrived in pickup trucks and cars by this time and demanded the release of the livestock. One trailer load of thirty-five sheep and goats had by this time left for the Old Sales Corral at Keams Canyon. While the demands for the release of the livestock continued, another Hopi vehicle and trailer arrived to load the sheep and goats. About this time, a Navajo male, Jimmie Begay, who had left the area on the released horse came back over the ridge about a half mile away carrying a .22 caliber rifle and approached the Navajo group.

One of the Navajo women had a conversation with Jimmie Begay, at which time he put the .22 caliber rifle in the back of a red pickup truck. Police Captain Matthew Silas and Policeman John Poleahla had arrived by this time and Captain Silas and Surveyor started toward the pickup truck to get the rifle. Jimmie Begay ran toward the pickup truck, but Captain Silas arrived first and confiscated the rifle. After which time, Jimmie Begay, ran shouting toward the corral gate and began to pull it open, at this time, all the Navajos jumped out of their vehicles and converged on the corral. Navajo men and women began throwing bottles, sticks, wire, boards, rocks, and other items at the Hopi group. The Hopi group attempted to protect themselves and the livestock, but soon were overpowered and fighting broke out in the corral, all around the corral in between the vehicles until the policemen began to use mace on the Navajos. Fighting broke off for about a minute until the Hopi group attempted to handcuff Jimmie Begay, then fighting broke out again until Jimmie Begay was pulled away from the ranger, taking with

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him a set of handcuffs which were placed on his wrist, other Navajos pulled him off and he escaped with a set of handcuffs belonging to Ranger Randolph. The Hopis were overpowered and the animals were released by the Navajos who number about thirty-five by this time. The younger Navajos fell in behind the livestock to herd them back out of District Six (Hopi Reservation).

In all the fighting, I personally saw one young Navajo lady hit Ranger Randolph on the back of the head with a wrench and Captain Silas with a 4/4 board. Others in the Hopi group were also injured which I witnessed but because of all the fighting, I cannot identify the people who were involved.

Before we left, after the herds were taken toward the boundaries of the Hopi Reservation, I personally heard one Navajo male state that they would KILL the people on the COURTESY PATROL and another Navajo young lady, the same one who had hit Ranger Randolph, say that if the Hopis did not leave the Thornton Maho Corral Area, two more pickup loads of Navajos would arrive to KILL all the Hopis.

Two middle aged Navajos actually tried to persuade the Navajo people involved in the fighting to refrain from violence against the Hopi group, but their pleas were unheeded by others. (Navajo).

The names of the Courtesy Patrol #2 on duty at the time of this incident are Elmer Douma and Herman Lee who were present at the time of the incident and witnessed all that happened.

STATEMENT OF HUBERT LOMODUKSIE LEWIS

before the Committee on

Interior and Insular Affairs

United States Senate

Washington, D. C.

H. R. 11128

92d Congress

My name is Hubert Lomoduksie Lewis. I belong to the Badger Clan. I'm a resident of upper Moencopi Village in Cocoinio County, in the great state of Arizona. I was raised as a child in the village of Moencopi. I attended the Bureau of Indian Affairs School in Moencopi and the Phoenix Indian School, in Phoenix, Arizona. I have also served my country as a member of our United States Armed Forces for 4 years. After that I have spent a couple of years in your so-called civilized world. But being a Hopi Indian I wanted to be back among my own Hopi Indian people.

Since coming back to my home grounds I have been engaged in village affairs for approximately nine years. I have served as a board member, Lt. Governor, and at present, serving as Governor of Upper Moencopi Village Council, which is the governing body of that village.

The village of Moencopi is governed by rules and regulations set up by the people of Upper Moencopi. It is a chartered government. The

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village was told that if we want to be recognized by the United States Government, the village of Moencopi would have to organize some form of government; and at which time the village of Moencopi adopted a village constitution. Since that time the village of Moencopi has worked with the Hopi Tribal Council and the United States Government, which is trustee of the Hopi Tribe.

The Hopis have long regarded Tuba City as part of their home grounds. In olden times this area was known to the Hopis as white sands. It was called white sands because of a spring where water bubbled to the top mixed with white sand. The Hopis came to Moencopi and Tuba City area long before the Navajo came into this area. The purpose was to plant their fields. They came from Oraibi, because there was plenty of water in Moencopi. Moencopi translated into English means "running water."

A Hopi Indian by the name of Tuve left Oraibi with his wife and went to live with Mormon settlers in Salt Lake City, Utah. Tuve returned to Moencopi to settle, but being afraid of marauding Indians who roamed around that country, he invited the Mormons to settle with him promising them good land for their protection of his family, and property. After Tuve settled, it was named after him. The Mormons came, developed the spring and made three reservoirs. After a time the Mormons erected a cotton mill. Later the United States Government reimbursed the Mormons with monies for improvement on the land and moved them out. At first any development in the Tuve area had to have the approval of the Hopi Indians, before the government started a project.

A school was started in Blue Canyon for the Hopi Indians, so the children from Moencopi Village wouldn't have to travel all the way to Keams Canyon Boarding School. It was upon the request of the Hopi Indians from Moencopi to get a school closer to the village, which the government did by building the boarding school in Tuve City. Hopi Indians attended this school until the United States Government admitted the Navajo Indian. In time, the Hopi children were no longer allowed to attend this school.

As time went on, the Navajo began to migrate into the Tuve City area.

In the year 1934, Congress passed the Boundary Bill of June 4, 1934 which refers to as the Western Navajo Reservation. This bill created the reservation for the Navajo and the other Indians residing therein. The United States Government did this without the consent of the Hopi Indians and the Hopis still believed in the United States Government trust.

A number of incidents have occured involving the Hopi and Navajo tribes. The Hopi women have for generations used piki stones that one can only get in the Moenave Valley. This stone is an everyday tool for Hopi women. It is used for our traditional dances, for Hopi weddings, and many other social events. A Hopi man was told not to get any more of this stone by the Navajo tribe, because this was their land. The man was put into jail for this. Also, the Hopis were told not to quarry any stone to build homes.

There is a water reservoir in the Moencopi-Tuba area which the

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Hopi use for irrigating their crops. The Federal Government in recent years has stocked this reservoir with fish and the Navajo tribe in turn sells fishing licenses to only Anglo and Hopi Indians while the Navajo didn't need one, claiming this is their water reservoir. The Hopis have used this reservoir since the Mormons built it.

In Moenave, which is also a Hopi name meaning "water running" a Hopi farmer and his brothers were told by the Navajo and BIA officials that they would have to leave this farming area because the Navajo again claim this area. Why was a Hopi name given to this area if the Navajos claim it?

By this time the Hopi had about enough of this work against them. So they requested what right the Hopi and Navajo had over in the 1934 Reservation. A solicitator's memorandum of his findings clearly states the Hopi interest in the area, but leaves unanswered questions about the nature and extent of such rights. The Hopi tribe have long claimed rights in the area encompassed by the boundary bill and traditional claims of using this area. They have largely been ignored by the Bureau of Indian Affairs and wholly by the Navajo tribe.

Leases and permits have been granted throughout the area without regard for any Hopi interest. It is evident the Government of the United States of America can no longer continue to adminster the area as though it was owned soley by the Navajo tribe. The Bureau of Indian Affairs have tried many ways to administer the 1934 bill by trying different administrative processes, but have not come up with a solution that is satisfactory to both tribes. On July 8, 1966, the

Commission of Indian Affairs sent a letter to both tribes for administrative processes. He froze any area of the reservation west of the 1882 Executive Order Reservation. In part it states, "no action shall be taken by an official of the Bureau that does not take full cognizance of the undetermined rights and interest of the Hopi Indians in the said area." Recently a lease was given to a restaurant operator for a site almost on the doorstep of Moencopi without Hopi consent. There are others which the Hopi tribe didn't consent to like the 30 unit mutual housing, low rent houses, a commercial laundry and cleaner that construction was started on, and close to a hundred homes, while the Hopi have built but one small community center.

Up to this point it seems like the Navajo tribe can about claim anything it wants. The United States Government is supposed to keep in trust all lands that were used by the Hopi. We had a meeting with the local Navajo Chapter one time and one of their leaders stated. "Why should we abide by the rules that the Government tries to enforce upon us? Why don't we go ahead and build wherever we can?" Does this indicate anything to you, gentlemen? You will have to decide who rightfully owns that land and I hope your God guides you and your fellow colleagues to petition it so we each can have our own. This gentlemen, I leave in your hands.

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STATEMENT OF GEORGE NASAFOTIE, SR.

before the Committee on

Interior and Insular Affairs

United States Senate

Washington, D.C.

H. R. 11128

92d Congress

My name is George Nasafotie, Sr. I am 65 years old and have lived all my life on Second Mesa inside District Six. I have held religious positions in my kiva.

I want to tell you why I think the Senate should act with approval on H. R. 11128.

Some people will say that this Bill is not necessary because the Hopi and Navajo will be able to work out their problems together. I say this is not true. Let me explain why.

The Hopi people are deeply religious. Much of our life is concerned with traditional ceremonies and customs which are centuries old. Our villages are governed not by political leaders, but by religious leaders.

Several of our most basic traditions are involved in the consideration of this Bill.

The first one deals with our understanding of the allocation of land. In the beginning the first Kikmongwi or Chief as

religious leader of his community authorized the assignment of land to the various clans for farm use.

On arrival, each clan appealed for the Kikmongwi's approval. This practice is similar to a foreigner seeking entry to the United States.

Under the Hopi System, if accepted on the basis of worthiness, the valid title to the land would be officially recognized as belonging to a clan for its exclusive use.

The designated points on the boundary of the clan's lands are marked by sacred Shrines which are to be respected.

And so, for over one thousand years the Hopis have occupied this area. They were the first ones there in human state. Our traditions place great emphasis on this fact of priority.

A second tradition deals with the use of the land itself. We believe that we must respect and wisely use the land and its resources. If we take care of the land, it will take care of us.

A third tradition is that the Navajos oppose the Hopis. They have been our traditional enemies for over one hundred years. They have violated our sacred Shrines and have encroached upon our clan lands. Our religious teachings say they are our enemies.

Now, I think you can see why it has been impossible for the Hopis to resolve this dispute without the help of Congress.

The Navajos have ignored our religious traditions by

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over-running land which was long ago granted to certain clans. In addition, Navajos have spoiled this land by severe over-grazing and abuse.

The Hopis are a peaceful people. And so, despite our traditions we have tried to cooperate with the Navajo. This has not worked, and I now believe that it will never work.

So, I urge your support of H. R. 11128. This Bill will partition this area so that we may again live in peace and honor the traditions which have always been so important to us.

Thank you.

Mr. BOYDEN. Now, the Governor of Moencopi has a statement which he feels he has an obligation to present to the committee.

Senator FANNIN. That may be presented. We are not trying to limit the testimony inasmuch as it is all in print and we have a copy of the statement. I don't see that will detract in any way from the testimony.

Mr. BOYDEN. We appreciate that, and we don't want to impose upon the time of the Navaho people.

(The statement referred to is in the appendix.)

Senator FANNIN. Mr. Pahona.

STATEMENT OF DUKE PAHONA, HOPI INDIAN TRIBE MEMBER

Mr. PAHONA. My name is Duke Pahona. By virtue of my office as Chief Crier of First Mesa, I have in my possession a sacred peace symbol of the Navahos called the Tiponi which I now exhibit to you. The Tiponi was prepared by the Navaho people and presented to the Hopis when they were released from Fort Sumner. It is a sacred emblem which signifies that the Navaho repented of their evil treatment of the Hopi people and is to serve as a reminder through the years of this sacred covenant. It has been passed down through my clan, and I am charged with its safekeeping. The Tiponi is similar to the Ark of the Covenant which was preserved and maintained by the children of Israel.

Anthropologist Gordon MacGregor knew of its existence long before the Hopis commenced any action to regain their land and wrote to Commissioner John Collier on August 6, 1938, regarding the Tiponi:

> The First Mesa or Walpi people made an agreement with the Navaho some time about 1850 establishing a boundary line. The Navaho were to cross it only on condition of good behavior. As a sign of good faith the Navajos are said to have presented a feather shrine or symbol, which First Mesa still preserves. A pile of rocks some distance west of Ganado and on the old road once marked this line. First Mesa, of course, would like to see this line from the east limit of the reservation.

This line is in the same general vicinity as the line drawn by Gov. David Merriweather in 1855 to mark the boundary line between the Navaho and the Hopi people.

The Navahos gave a symbol of peace to the Hopis after their return from imprisonment at Fort Sumner, making the same promises as they did in their treaty of 1868.

After telling of their experiences and hardships, how the women and children were crying, and how they pleaded daily with the officers telling them that if released they would never cause trouble any more, the Navahos came to the Snake Clan at Walpi with peace offers.

On their first three attempts, the Navahos were refused by the Hopis, who told them they would soon return to their old ways. On their fourth approach, the Navahos brought with them a sacred symbol of peace, called a Tee-po-ni.

The Hopi did not make a peace offering, the Navaho himself did, saying, "I bring you this peace symbol to signify that should I ever again recall my ways and return to my depradations upon you, that

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this, my symbol of peace, my own making, will turn on me and pass sentence on me."

The Navaho has now reverted to his former ways, and his own word must now be carried out.

Should any of you wish to view this symbol, you may do so.

Mr. BOYDEN. The other gentleman who has a statement to introduce, represents these people, Viets Lomahftewa.

Mr. Pahona is exhibiting the peace symbol to which he has referred.

We will now submit to any questions you care to ask us.

Senator FANNIN. First of all, Mr. Hamilton, I would like to have you respond.

The bill has been considered and passed in the House, do you feel there is any hope for the Hopi and Navaho people working out a negotiated settlement to this land dispute? We have a great deal of testimony now, and I would like your response to that question?

Mr. HAMILTON. Like I said, we tried. Like I stated in my testimony four meetings were held with them and I believe the only solution to the problem is the enactment of 11128. Without partition of this land I don't think we are ever going to have any kind of peace between the two tribes.

Senator FANNIN. Thank you, Mr. Hamilton.

Mr. Boyden, do you see any other alternative?

Mr. BOYDEN. I do not.

Senator FANNIN. Are you willing to give estimates before the committee on the extent to which Navaho people in the disputed area depend on livestock production for their livelihood? We got some figures that one-third were not involved. Would you say two-thirds are involved?

Mr. BOYDEN. This is a very difficult thing for me to determine, with all the study I have made on this and my acquaintance with the Navaho people, and we have a different number in this area every time that I hear numbers from any source, and I would just—I don't think anybody can tell you exactly how many people are in the joint-use area. I feel whatever is in there, that less than half of them would have to be moved, and I think that there probably is a third, and I am basing it, possibly, on what Mr. Pratt found as a sample, probably a third do not have livestock and work other places and return there. Two-thirds do have livestock, but it ranges from just a few sheep up to considerable.

Senator FANNIN. Thank you, Mr. Boyden. I will submit the same questions to the Navaho witnesses.

Will you summarize for the committee the most recent decision of the U.S. district court, referred to as the *Tucson* decision?

Mr. Boyden. I can summarize that decision by reading two "findings of fact" in that decision, some of which have been testified to here today. Those are summarized in findings 28 and 29.

Senator FANNIN. On what page, I have a copy here?

Mr. BOYDEN. Page 7, it says:

Since September 28, 1962, the defendant Navaho Tribe, and individual members thereof, have and do now continue to resist the efforts on the part of the Hopi Tribe and its members to gain possession or use of any portion of the surface of said lands outside of District 6 and continue to overgraze, misuse, and damage the lawful interests of the Hopi Tribe awarded by this Court.

The defendant United States, by and through its officers, the Department of Interior, the Bureau of Indian Affairs, employees and agents, since September 28, 1962, to the present time has vacillated, equivocated, delayed and denied the Hopi Tribe and its members any substantial possession or use of the surface of said Joint-Use area.

That sums up the position of both the United States and the tribe.

The court then concludes we are entitled to the joint-use, and they also say we are entitled to have the clerk issue a writ of assistance to compel that joint use.

As the Secretary testified, and I agree with him, that is a mighty difficult thing to do, unless authority is given.

Senator FANNIN. Do you have any additional witnesses? It is now 12 minutes to 12. We will recess at 12 and come back at 1 o'clock. We want to give the representatives of the Navaho Tribe sufficient time to present their case, at least the same amount of time you have been given, if you want to take this time between now and 12, you can do so.

Mr. BOYDEN. We have sufficient copies of these "findings of fact" and "conclusions of law" for all of the Senators on the committee and I would like to submit copies of those at this time.

Senator FANNIN. Fine, they will be submitted to the members of the committee.

Mr. BOYDEN. I regret that we have some people that are so anxious to speak to this. An attempt to put those people on would be anticlimactic. There is one thing that has not been brought out orally that I might add to.

With respect to the livestock men, we have three people here. Their associations have met and they have passed a resolution, which we would like to have made a part of the record. We will submit it.

Senator FANNIN. Fine, if you will submit it it will be made a part of the record.

Mr. BOYDEN. These people have reduced livestock when it has been necessary, voluntarily. There isn't any question about it.

One thing that happened in that case just tried, a woman by the name of Smith had asked for a permit to graze in the joint-use area. The attorneys for the Navahos asked if she had made an application for a loan to buy cattle. We didn't know, but we inquired, and that was a good sample. We found she not only had cattle, but had to go off the reservation and hire pasture for her cattle. We have cattle. We don't think we ought to be required to reduce because we are 25 percent over at this time, because we own a half interest in the rest of the reservation.

If we get this land it is going to take a long time to rehabilitate it. The Hopis feel this land is sacred and do not want to desecrate it, and they want to go along with proper management.

Senator FANNIN. Is there anything further?

Mr. BOYDEN. We have one Hopi, he is Mr. Viets Lomahaftewa.

STATEMENT OF VIETS LOMAHAFTEWA, MEMBER OF THE HOPI TRIBE, READ IN HOPI AND TRANSLATED BY ABBOTT SAKAQUAFTEWA

Mr. LOMAHAFTEWA. My name is Viets Lomahaftewa. I was born on the Hopi Reservation in Arizona. There I grew and learned the lifeways of the Hopi, receiving my first initiation into the Kachina ceremonies. As I grew into manhood, I attained a higher priesthood,

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with instructions to be of service to my priesthood, the Two Horn Society.

In that capacity also I have come to appeal to you again.

As time passed, I became well versed in the functions of that society and then was ordained as chief priest. Although custom required but 4 years to serve in that office, I served 24 years. Although I was not weary of my duties and responsibilities in that office, I nevertheless passed it on to my ceremonial son to succeed me.

Thereafter, I assumed another high priesthood which is of my Tewa lineage at First Mesa. Again, in that capacity, I also appeal to you.

My grandfather Honanie instructed me in the traditions of my people, and taught me just as you have been instructed by your teachers. Although I was very young, he told me that I would understand as I grew and matured. "When you are grown and if you are humble, you will know", he said. I was instructed in the traditional land boundaries marked by shrines. This is a choice land that was chosen by our ancestors as a homeland. The land possesses many resources. These resources were for our benefit. We ask nothing that does not belong to us.

Yet, I was taught also that there would be people of evil purpose who would work against us. There are people among you also who will work against the best interest of my people. There are people among us today whose sole purpose is to disrupt our lives.

My grandfather has always taught that, as Hopi people, we must own and enjoy our land in our own name. I speak the truth, knowing that one who speaks untruth cannot long survive. My concern is the welfare of my people who aspire to the ideals of a bountiful life taught under our traditions. I speak with hope that rains will come and the land will burst forth in full bloom and we shall not want. But still, we know that obstructions to attainment of these blessings are not yet all overcome.

Now the Navaho roams the land and wherever he camps for a time he claims all the land surrounding it. Our fathers and our grandfathers have seen the day coming when Navaho oppression will make life difficult for us. I was taught that the white man would accept and carry out the responsibility for correcting the wrongs done under this oppression. Even so, courage must be the first ingredient toward a just solution. The Navaho must be separated from our midst.

Providence willing, our life will once again be blessed.

I do not want us to continue to weary ourselves time and again returning to Washington in constant appeals.

I have come to speak to you with the knowledge of truth, that it is your responsibility to purge this problem from among us. On that basis, I appeal to you to accept this bill as the just solution.

Thank you.

Senator FANNIN. Thank you.

Mr. BOYDEN. Mr. Chairman, on behalf of the Hopi Tribe we want to thank you and Chairman Jackson particularly for this opportunity to be here. We have fought all of the way and it has not been easy to even get a hearing, and for this opportunity we are indeed grateful, and the tribe has asked me to express that particularly to the chairman and to yourself.

Senator FANNIN. We will recess until 1 o'clock at which time the Navaho tribal witnesses will be heard.

(Whereupon, at 12 noon, the hearing was recessed, to reconvene at 1 p.m.)

AFTERNOON SESSION

Senator FANNIN. The hearing will come to order.

We will now hear from the Navaho tribal witnesses.

Vice Chairman Skeet, will you come forward? Before having your testimony, at this time I would like to have a statement on H.R. 11128 by Congressman Harold Runnels entered into the official record.

(The statement referred to follows:)

STATEMENT OF HON. HAROLD RUNNELS, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Mr. Chairman, I want to thank this committee for allowing me to testify in opposition to H.R. 11128, a bill which relates to the rights of the Hopi and Navaho Tribes.

When President Chester A. Arthur's executive order of 1882 was issued to set aside the 2,472,095 acre reservation for the Hopi Indians, the intent was to protect these original Americans from further encroachment by outsiders. The thousands of nomadic Navaho Indians, who had been located nearby as the result of another government decision, were not directly included in the 1882 order. Obviously, many of them didn't even know about the piece of paper which automatically created an invisible boundary around 2,472,095 acres of land. Their culture was based upon seasonal movement from place to place. Many of them probably did not even understand the idea of owning a set quantity of land. They grazed their animals up and down the canyons of the arid desert, ekeing out an existence as best they could.

Several hundred Navajos lived within the imaginary boundary when it was created in 1882. Families grew and over the years others settled in the area and began adopting the idea of occupying a piece of land and claiming it as their own ranch. The Hopis tenaciously clung to their own culture which was quite different from that of the Navaho. They lived in villages and shunned the life of movement on the open range. Theirs was an existence on the high mesas, a material and spiritual being within certain territorial limits passed down from one generation to the next. Over the decades thousands of Navahos came to settle in the valleys below the mesas. Their children and their grandchildren knew no other land as home.

The ambiguity between the 1882 order and reality eventually evolved into serious problems between the two tribes. The Hopis soon learned that if they were to adopt the non-Indian concept of possessing material wealth through land they had to rely on the 1882 order. The Navaho's learned that the federal government's failure to enforce the 1882 order had legal implications of its own and could be used to their benefit. In 1958 Congress created a special Federal District Court to resolve the conflict between the two tribes. As if by conscious design, the Court continued the federal government's custom of compounding the problem instead of solving it. It held that both tribes had joint, undivided equal interests in approximately 1,800,000 acres within the 1882 boundary.

To many of the Indians involved, this decision represented nothing more than unintelligible words, a continuation of the federal government's series of inept attempts to solve an Indian problem with non-Indian laws. The decision was not enforced and the conflict continued. The Department of Interior persisted in its policy of inaction.

Congress was not to be outdone by the District Court or the Interior Department. It created a Navaho-Hopi Boundary Dispute Commission. Keeping in step with the custom established over the years, the Commission has proceeded to do absolutely nothing. As far as I know, it hasn't even met.

Today you are being asked, by the sponsors of H.R. 11125, to continue the mishandling of this problem in a manner which has become the vogue of the 1970's, the expenditure of an incredible amount of the taxpayer's money. You are

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asked to spend $16 million to uproot thousands of people from the land that they worship. Once again the heavy hand of Washington bureaucracy looms over the Navaho. Where will Washington send these people this time? The Navaho's long Walk of the last century automatically comes to mind.

How much tax exempt property will be acquired for these displaced people? Will it become a new haven for industry? Will it eventually fall into the hands of a developer and become another retirement community in the Southwest which receives all of the benefits provided by a state government but is exempt from state taxation?

How much land does each displaced Navaho rancher need? Will the Navaho have anything to say about the location of his new home? Who will provide public services to these people? Who will pay for them?

The Navahos and Hopis should solve their problem on their own terms in a manner which they and their children's children can live with. An all-Indian council made up partially of Hopis and Navajos should be created. It should be empowered to work out a solution agreeable to both tribes. The Department of Interior should be directed to implement the recommendations of the council and it should be made clear that if a solution is not agreed to by the two tribes, the council will draw its own boundary and arbitrate its own solution. Under these conditions I feel the tribes would arrive at a solution which they would honor and respect. Indians to solve Indians problems is the key here, not legislation empowering Washington bureaucrats to compound past mistakes.

I urge this Committee to reject H.R. 11128.

Senator FANNIN. Do you want others to sit at the table with you, Vice Chairman Skeet?

Mr. SKEET. Yes.

Senator FANNIN. Mr. Skeet, will you proceed as you desire? You have a formal statement; do you want to read it?

Mr. SKEET. Yes, I want to read my statement.

Senator FANNIN. Yery well.

STATEMENT OF WILSON C. SKEET, VICE CHAIRMAN, NAVAHO TRIBAL COUNCIL

Mr. SKEET. Before I read my statement, I would like to say that for the witnesses for the Navaho Tribe, we have six names listed here. We did submit the name of Dr. Annie Wauneka.

Senator FANNIN. She will be recognized as a witness. You may proceed.

Mr. SKEET. Mr. Chairman and members of the committee, I am Wilson C. Skeet, vice chairman of the Navaho Tribal Council. I am appearing before you today on behalf of the Navaho Tribal Council. Mr. Peter MacDonald would be present before you today, but he is in the hospital recuperating from the effects of a much-needed operation. He has asked me to bring to you his greetings and express his regrets that he could not be here at this time of trial and trouble for the Navaho people.

Senator FANNIN. Mr. Skeet, before you proceed, I do want you to express our regrets to the tribal chairman and our best wishes to him for a rapid recovery.

Mr. SKEET. Thank you.

The chairman and I, together with the Navaho Tribal Council, have spent much time considering the effects of the bill that is before you today, and I would like to present to you some of our common thoughts about this measure.

Passage of the bill you are considering today in its present form would be a major tragedy for the Navaho Tribe and a tragedy for

the Hopis as well, because of the ill-feelings this bill will create, if passed.

Above all, however, it would be a greater tragedy for the United States to treat the first American in this way. This statement is not mere talk, but should be a conclusion reached by anyone who looks at the text of the bill and things about what it will do to the people. It is hard to believe that this bill has been given such serious consideration to this date.

This bill is a Navaho expulsion bill. Under its provisions approximately 6,600 people are to be removed from their homeland, land on which they and their ancestors have lived for generations. These Navaho people, who depend upon the livesto k and their land for a living for themselves and their families will find it hard to understand why they are being forced to move. If they were here, they would ask you to explain: "Why?" "For what purpose?"

Now, they think they know the answer. Some of the Hopis want to increase their livestock, even though their numbers have not increased. The Hopis want room, not for people, but for livestock, even though they have traditionally tilled the soil for centuries. Yesterday, you heard Mr. Loesch and Mr. Bruce tell you their answer: We, the Navaho, are to pay for the mistakes of the Government.

We think there must be a better way and a better answer for our people and the Hopi.

You should ask whether, with the people's lack of understanding of the fairness or justice of expulsion, they can be expected to voluntarily move. Or, whether we will be forced by this bill to go back to the 19th century and wait for the U.S. Army to go to the joint-use area to enforce the law. Of course, that is not to say that the Navaho people are violent or accept violence as a way of life, in spite of the fact that an artificial urgency has been created by the Hopi, through the news media, which, in fact, is not true.

The many reports of violence and aggession are not supported by the facts known to the people who live in the joint-use area. The "David and Goliath" public relations approach is undermined by the fact that the Navaho "Goliath" has an $850-per-capita annual income, and for the most part expends his energy in attempting merely to feed his family in an economic environment of 65-percent unemployment. Instead, this bill provides $16 million—a sum of money which bears little or no relationship to the actual losses which would be suffered.

In many ways, this bill will be worse for the Navaho people than the "Long walk" was for our ancestors. At least then the United States gave us Fort Sumner and protection so that we would not starve or freeze or suffer hostile raids from our enemies. This 20th century Navaho "Long walk" does not even provide a trail upon which to walk.

Nor does this bill provide land upon which the people may make a living. The Indians affected by this bill depend upon their livestock to live. They are neither trained nor equipped to do other work, even if they had the opportunity. Our culture is not your culture. If they are dumped onto other Indian communities they will become dependent on welfare and charity, which will be the only alternative to starvation.

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They, like you, are a proud people. They do not accept handouts, except as a matter of imposed necessity. Prior to the coming of the "Discoverers of America" there was no welfare. This legislation perpetuates and encourages what we have always attempted to refuse in the first place.

I look at the complicated legal description of the land described in the Steiger bill as that which should be turned over to the Hopi Tribe. As a man with 25 years' experience in livestock operation and business, who comes from a clan that has lived by the raising of animals for generations, I find that we have been provided with the four corners of a rectangle which are the least suited for the raising of livestock.

The southwest corner of the rectangle is primarily land which can be best descirbed as sand dunes, totally without either surface or running water, and a place in which it seldom rains. I look to the southeast corner, and I find rocks, flat land, rugged volcanic buttes, a land that, except as a matter of necessity, is uninhabitable and almost without vegetation or habitation of any wild beings except for an occasional coyote or lizard. Is that a fair division of the joint-use area?

I look at the northeast and I find more rock of greater altitude, the same barren bedrock, with occasional deposits of blue clay, perhaps used by the Hopi for their traditional pottery. If livestock could find their way through the brush and survive in the altitude, they would still find little upon which to graze.

I look toward the northwest of the land supposedly allocated to the Navaho and I find more sand dunes, more bedrock, and the rocky and steep edge of Black Mesa, more suitable for mountain goats than human habitation. Is that a fair division of the joint-use Area?

I then look at the area which is supposedly provided to the Hopi Tribe. In the 1934 area, which sould be beyond the scope of this hearing. I find plentiful water deposits in the north pasture canyon area and Moenkopi Wash. 208,600 acres have been proposed for less than 60 Hopi families who live back to back in the Hopi style of apartment house, as opposed to 130 larger Navaho families.

Further, in this area we find a substantial part of the 825 miles of paved road which service the totality of the Navaho Reservation. Highway 89 provides a commercial development for the Hopi, the like of which is not provided for the Navaho in the land proposed to be allocated to that tribe. Is that a fair division of the joint-use area?

It may be that the uranium deposits which have been in part discovered and worked near Cameron, Ariz., extend through the subsurface strata of this westernmost proposal for the Hopi. While it may be that the intention is to split the royalties to be derived from mineral exploitation in this area between the two tribes, obviously the tribe that controls the surface, as provided in the Steiger bill, also controls the initial dealings with those outside interests—whomever they may be, as yet unannounced and unknown—which may fix and determine the quantity and quality of the income to be obtained from this source of wealth. A view of the northernmost boundary of the proposed expanded Hopi Reservation indicates that the line has been drawn to include Blue Canyon Wash, the headwaters for Moenkopi Wash, which is one of the more significant sources of the most scarce item in this part of the country—water.

This area also feeds the Dennebito Wash. It also encompasses the geological anticlines which suggest the potential presence of substantial oil, gas, coal, and other mineral wealth and the opportunity to exploit both these minerals and their byproducts.

Again, supposedly, we share in the wealth, but because of the control of the surface in the Hopi, we apparently have no voice in the prospecting or in the initial exploitation, and are left with the role of receiving half of what the Hopis negotiate with the presently unknown outside interests. Is that a fair division of the joint-use area?

A glance at the southeast allocation of the Hopi proposed expansion shows, once again, the presence of water to a greater degree than that provided to the Navaho by this proposed bill, This water originates in the headwaters of Jeddito Wash and is the slender thread by which many of our people barely subsist. Is that a fair division of the joint-use area?

We know not how these lines were drawn. We believe that they were not drawn by accident, because of the substantial difference in natural resources allocated to the Hopis, as opposed to the Navahos. We had no hand and little opportunity to investigate or review these matters which require technical expertise and finances that, newspaper reports to the contrary, are not within the capability of the Navaho Nation. Nor has the Bureau of Indian Affairs or its immediate superior agency, the Department of the Interior, made any known attempt to sort out, grade, classify, or evaluate the worth of what is to be apportioned. Our trusteeship appears to have been abandoned. We must, therefore, place our faith and trust in you, the members of this Senate committee.

In addition to this abandonment, we are faced, as you will hear from subsequent testimony, with great emotional problems for our people who would be forced to embark on a mass migration to nowhere.

We, therefore, respectfully request your consideration of the Navaho proposal to personally view this area, to conduct the necessary hearings in the field, so as to understand that the numbers with respect to what appears to be an equal division of acreage are meaningless.

The representatives of the United States have told you nothing about the facts, and they have no plan to deal with the Navaho even though they have great resources to aid them, which the Navaho do not have.

This committee should not recommend the Steiger bill without knowing the true facts and having a concrete plan.

We also ask you to understand that we do not intend to deprive the Hopi Tribe of its fair one-half share of the wealth of this land. We ask only that you consider whether it would not be both morally right and equitable to divide this wealth by allowing the Navaho to remain as he has for generations upon the surface of this land and to take into consideration the continued occupancy of the surface, by giving the Hopi a disproportionately greater royalty for the development of the subsurface rights.

I would also like to point out that in the testimony given before this committee by the administration yesterday, that several statements were made to the effect that more Navahos were migrating into the area. This is not true. Any increase in Navaho population in the 1882 area is due to Navaho birth rate, not the moving from one place to another.

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It is indeed hard to understand, in this mahogany-paneled hearing room, the barren, infertile land that we so desperately seek to maintain. We so earnestly beseech you for this apportionment that we are willing to voluntarily offer that which is probably monetarily most valuable, a larger part of the subsurface.

I might say, if you have any questions I will try to answer them, and the next witness will be Mr. George P. Vlassis, our general counsel.

Senator FANNIN. On page 3 of your testimony, it says, "If they are dumped onto other Indian communities, they will become dependent on welfare and charity." Do you know how many are now on welfare, of the people referred to in your statement?

Mr. SKEET. We heard yesterday about 31 percent and this morning about 33 percent percent. We feel it is about 30 percent. They are not totally on welfare. We have a program going just to supplement their income. They are working and trying to make a living along with supplementation.

Senator FANNIN. You have not made a survey to determine how many are actually on welfare?

Mr. SKEET. We didn't conduct any survey, actually.

Senator FANNIN. On page 5 of your statement, near the last paragraph, ending with "Is that a fair division of the joint-use area?" and starting with "Again, supposedly, we share," Chairman Jackson has asked for a suggestion. Maybe Mr. Vlassis can tell me if you answered his question and submitted to the Justice Department what is to be done?

STATEMENT OF GEORGE P. VLASSIS, GENERAL COUNSEL OF THE NAVAHO TRIBE

Mr. VLASSIS. Senator Fannin, a proposal, will be submitted later in some detail in connection with this matter.

Senator FANNIN. Very good. We will await that presentation.

I have one other question I will ask. On page 7, I would like to ask what revenue has been forthcoming in the last 10 years. You speak of giving a greater proportion of the royalty of the subsurface right. What are you actually talking about in dollars and cents?

Mr. VLASSIS. In that connection, at the present time it is limited to one-half of any of the royalties.

Senator FANNIN. What I am trying to determine is what are we talking about, $100 or $1 million?

Mr. VLASSIS. We are talking in terms of millions of dollars.

Senator FANNIN. How much has been forthcoming in the least 10 years?

Mr. VLASSIS. The mining leases have been in existence for 8 years, and the amount paid on royalties, I am not sure of the figure, but at the conclusion of the hearing I can give you the exact amount.

Senator FANNIN. Very good. Mr. Vlassis, you can testify at this time.

Mr. Vlassis. I would like to make a request on behalf of Chairman MacDonald, who was operated on yesterday. He requested that before I make any statement that I read his letter to the committee for the record.

SEPTEMBER 12, 1972.

INTERIOR AND INSULAR AFFAIRS COMMITTEE,
Senate Office Building,
Washington, D.C.

DEAR CHAIRMAN AND MEMBERS: As Chairman of the Navaho Tribal Council, I regret to inform you that tomorrow I am scheduled for a much-needed gall bladder operation. The timing could not be worse, as it comes when I, as the leader of my people and as a Navaho, am sorely needed to plead the case of the Navaho Nation before the Senate Committee on Interior and Insular Affairs.

On September 14 and 15 you are scheduled to listen to the presentation of the Department of Interior, the Hopi Tribe and the Navaho Nation, all of which will give disparate views on the same subject matter—the possible carving up of some of the most barren, infertile and uninhabitable land located within the Continental United States; yet land by necessity that has become part of the Navaho culture and tradition for generations. While I feel confident that Vice Chairman Wilson C. Skeet and the other representatives of the Navaho will present our position in detail for your consideration, I would feel remiss in my duties without providing you some indication of my personal feelings concerning this proposed Bill, H.R. 11128, which, as you know, would relocate only Navahos—perhaps as many as 10,000—in order to provide room for livestock the Hopis have yet and may never acquire.

Having testified at the House hearings and listened to the representations of the Department of the Interior, the Bureau of Indian Affairs, and the Hopis, I continue to remain both dismayed and astounded at the lack of knowledge displayed and the hopefully inadvertent misrepresentations made by all parties.

I would like to make it perfectly clear that any issues with respect to trespass and violence between the two tribes have been used and re-used by the news media for what artificial urgency might be derived from perpetuating a false state of urgency in order to obtain legislation which might otherwise never be considered after thorough reflection. Such violence simply does not exist. I do not believe that there has been a homicide as between Hopi and Navaho or Navaho and Hopi which took place on the Reservation in the last 50 years, nor do I believe that the drawing of a new boundary line would do anything but increase the chances of the presently mythical "violence." Without boundaries, there is no trespass.

As you consider this legislation, I would think the foremost focus is, why should a bill which forcibly removes the largest ethnic group of people from the lands of their forefathers be enacted as the only "just, fair and equitable solution" to a controversy that has existed since 1958?

Almost any anthropologist, be he neutral or biased agaist one tribe or the other will readily concede the almost exclusive Navajo occupancy of the Joint-Use Area since before 1882, the time of President Arthur's Executive Order creating the 1882 Reservation. These lines were drawn without regard to the actual location of the Navaho or the Hopi and at the time these boundaries were established in Washington, they were not established in the minds of my people nor those of the Hopis. No visible markers or fences were ever placed on the exterior perimeter.

For over 100 years the Bureau of Indians Affairs administered the area as if it were solely Navaho-occupied, and, in fact, with rare exception, that was and now is the case.

Somehow, until recent interference by outside sources, our two peoples have lived in relative harmony, at least harmony as compared to the rest of the countries that occupy this glove and, particular, as compared to the peoples who occupy any major metropolitan area in the United States, This degree of harmony has suddenly been categorized as open warfare, yet neither the Hopi nor the Navaho customarily travels with arms unless hunting. Doors are not locked at night, and the intercourse between the two peoples as they meet at the boundary line of District 6—the exclusive Hopi area—has always been comparatively harmonious.

As I submit my life to the hands of a physician in whom I have great faith to operate with the same skill and care as if I were his brother, I must also submit the Navaho peoples' destinies to a Committee of the great Senate of the United States of America. I have faith in my physician, as I have faith in you, that you will remember that two brands of justice should not exist in this democracy and that the surface rights to the land in question should be allocated to those who have lived their meager existences for generations thereon—the Navahos.

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If money is to be paid as a result of the proposed relocation, as provided in the H.R. 11128, such procedures must be considered directly contrary to the many Indian Claims Commission cases which allowed those who have settled on Indian lands to remain thereon without any right other than of possession. If justice is to be applied equally to the Indian and to the non-Indian, then the Hopis should receive monies for relinquishing their rights to land which they did not occupy as of the time of the Executive Order of 1882.

However, it is my firm belief, that, in the words of President Nixon, there should be "Indian solutions to Indian problems" and our proposed Indian solution is to provide the "apartment-dwelling" Hopi with a disproportionately greater share of the underground wealth of the Joint-Use Area so that we may continue to live in the fashion which has been our culture and which has been maintained and fostered throughout 100 years of administration by the Bureau of Indian Affairs.

Again, I am sorry that I cannot be present before this Committee which is to consider a matter of greatest significance to the Navaho Nation since the Long Walk.

Upon further reflection, this Steiger bill is, to me an even greater travesty than the Long Walk, because it provides no trail or land by which the Navaho people can walk to a new life.

Very truly yours,

PETER MACDONALD
Chairman, Navaho Tribal Council.

Senator FANNIN. I want to express our sympathy to Mr. Peter MacDonald. Our best wishes for a rapid recovery.

You may proceed now.

Mr. VLASSIS. Thank you. In the interest of saving time, I will submit my prepared statement and make a few comments.

Senator FANNIN. Your complete statement will be made a part of the record.

(The complete statement follows:)

STATEMENT OF GEORGE P. VLASSIS,
GENERAL COUNSEL FOR THE NAVAJO TRIBE
TO THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
September 15, 1972

Gentlemen. I am George P. Vlassis, and I am appearing before you today on behalf of the Navajo Tribe.

First, I would request that Chairman Peter MacDonald's letter dated September 12, 1972, addressed and delivered to all of the members of this Senate Committee, be made a part of the record. As you now know, he underwent a major operation in Albuquerque which prevented his appearance at this hearing, and just before his admittance to the hospital, he made a personal request that his remarks be included as a part of this proceeding.

The measure you are being asked to consider, H.R. 11128, seeks to partition over two million acres of land in the State of Arizona between the Navajos and the Hopis, the result of which would be a total land allocation of 300 acres per Hopi on their proposed Reservation as compared to less than 100 acres per Navajo on their proposed Reservation. I would like to provide a perspective to orient the members of this Committee with respect to the impact of the action which you are being requested to forward. I would ask that you compare the area which this Committee is considering with that of some of the states of the Union. For example, the partition area is 46 times as large as the District of Columbia, and over one and a half times as large as the State of Delaware.

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It is approximately half as big as Hawaii, and one-third the size of Massachusetts, New Hampshire and Vermont. This is no small parcel of land; this is an immense area, involving the lives and hopes of thousands of people.

Comparing the partition area with that of some of the counties in some of our key states is even more striking. For instance, the partition area is approximately one and one-half times the area of King County, Washington, Anchorage Census Area, Alaska, and Laramie County, Wyoming. The partition area is almost three times the area of Bernalillo County, New Mexico, Ada County, Idaho, Minnehaha County, South Dakota, and the combined areas of Oklahoma and Tulsa Counties, Oklahoma. Finally, the area is approximately the same size as the combined areas of Salt Lake and Weber Counties, Utah, Cass and Grand Fork Counties in North Dakota, Denver, Jefferson and El Paso Counties, Colorado, and slightly larger than the combined areas in New York State of The Bronx, Erie, Kings, Nassau, New York, Queens, Suffolk, and Westchester Counties.

These rough comparisons are meant to bring home the fact that we are dealing with extremely large areas of land and that the decision made by Congress will affect large numbers of people. Yet, does not one pause at the thought that Westchester County's mere 293,520 acres greatly exceeds in economic value the two million plus acres to be considered by this Committee?

Of course, the size of the area to be partitioned is not the only indication of the impact of the proposed Congressional action requested by H.R. 11128. The Department of the Interior asks you to expend $16 million in order to provide a pasture for livestock which they do not presently own, and further asks you to remove 6,628 Navajos to clear the pasture, which is almost barren of grass or other feed for the cattle which they hope to acquire sometime in the future.

An equitable solution must be reached, but in order to approach that solution, the size of the problem and the long historical background should be reviewed. Perhaps then, and only then, the pieces of the puzzle will come together. And, finally, I would like to indicate how the Navajo Nation views this pasture proposal and to present its alternative to this apparent folly.

We have prepared two maps which are attached hereto as Exhibit 1 and Exhibit 2. The first has a large area colored in blue, which represents the land inhabited by the Navajos during the 1800's, as found by the Indian Claims Commission and the United States District Court in a decision called "Healing v. Jones." For reasons that may best be healed by the passage of time, the United States concluded in 1864 to remove a good part of the Navajos from this area on foot and to place them some 450 miles distant by forced march at Fort Sumner, near the Pecos River in New Mexico.* The Navajos were thus in larger part removed to an

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* Many Navajos escaped the scorched earth policies and forced starvation of Kit Carson by fleeing to hiding places on Navajo Mountain, Black Mesa and the Four Corners Area which now marks the meeting place of the States of Colorado, New Mexico, Utah, and Arizona.

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area far beyond their traditional homelands.

In 1868 a treaty was made, perhaps because it was decided that it was more expensive to feed the Navajos than to fight them, and it was agreed between the Tribe and the United States that the Navajos would be returned to only a portion of their ancestral lands. Thus, the first Navajo Reservation area was created in 1868.

Obviously, it was substantially smaller in area than the lands occupied by the Navajos prior to their relocation to Fort Sumner. The boundaries of the 1868 Reservation Area were not distinctly marked. Despite the vast size of the Navajo Reservation at that time, the semi-arid land in the Reservation was considered incapable of providing support for all of the Navajos. Consequently, great numbers of Navajos wandered to their traditional homes, far beyond the paper boundaries of the Reservation, as much as 150 miles distant. [Healing v. Jones, 210 F.Supp. at 135.]

Congress was slow to recognize the ultimate fact that the reservation boundaries did not reflect either the area of actual use or the ancestral use by the Navajos of the land. As a result, for the next 100 years, the United States attempted to expand the reservation boundaries to ultimately reflect reality.

The last major period of expansion took place in post-1900 period which ended approximately 1933 and 1934. Exhibit 2

demonstrates the final areas added to the Navajo Reservation to make up the present boundaries of the Reservation.

The 1882 Area, depicted in light blue with the small white circle, has never been technically added to the Navajo Reservation by Congressional act, but it has been occupied by the Navajos from the early 1800's. It is this area which is the focal point of the dispute and which H.R. 11128 would divide, by giving the Hopis 905,100 acres from the 1882 Area plus 208,600 acres from the adjoining 1934 Area, which area is not even within the scope of the title of this proposed bill, or an award of approximately 280 acres per Hopi*, as compared to 916,980 acres, or an award of approximately 110 acres per Navajo* living in the joint-use area.

The small area represented on Exhibit 1 is reproduced on Exhibit 2 in larger scale and shows the white area was expanded from its original circle of 16 miles in radius, drawn in 1891, which contained the Hopis, to the 631,000 acre triangular area found by the Court in Healing v. Jones to be the area of exclusive Hopi possession and use. That same decision also found that the surface and subsurface rights, recognizedly different, should be jointly and equally used by both tribes. The Hopis and the Navajos are now requesting a joint and equal use of the

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* Based on 1970 Census figures.

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value of this area and it is the purpose of this presentation to assist in determining what might be a fair and equitable solution.

The problem would be an easy one, if the land were unoccupied and unused. In fact, as shown by the second Exhibit, there are approximately 8,743* of Navajos and no Hopis occupying the 1882 Area, commonly referred to as the "Joint-Use Area."

Against this background of conflicting land use, Congress, in 1958, introduced legislation to allow a Federal three-judge panel to adjudicate the interests of the Navajo and Hopi Tribes in and to the Joint-Use Area in question. The Courts did so adjudicate those rights in Healing v. Jones.

Sometime after that decision, for reasons which are not altogether clear, Congressman Steiger introduced H.R. 11128 which, as the brown portion of Exhibit 2 shows, attempts to partition the Joint-Use Area in rather curious and uneven fashion and to gratuitously add to the Hopi holdings an area which is not now, nor ever has been, in actual dispute, consisting of a 208,600-acre portion of the 1934 Executive Order Reservation near Moenkopi.

While the original reasons for the introduction of the proposed Bill are not clear, there have been several attempts to justify it for these reasons:

1. It attempts to solve alleged threats of violence and

* Based on 1970 Census figures.

range war between the Navajos and the Hopis residing within the district;

2. It will allegedly serve as a functional solution to the problem of 400% overgrazing within the district*; that is, the Navajos' grazing animals in excess of the capacity of the land to carry such grazing; and

3. H.R. 11128 will implement Healing v. Jones.

The immediate effect of H.R. 11128 is to eject or expel 6,628 Navajos from their ancestral homelands. The witnesses who will follow will demonstrate that there is not now, nor has there been, the kind of violence that would justify this measure; that the Bill cannot have any effect upon the problem of overgrazing (except to increase the problem); and that it does not in any sense implement the decision of Healing v. Jones. I will address myself to problems of Congressional policy presented by H.R. 11128 and, particularly, the inconsistencies of H.R. 11128 with the past historical treatment of Indian problems.

Apparently, H.R. 11128 is based on the assumption that the best solution available to this conundrum is to remove all Navajos from certain portions of the 1882 Area, pay them an insufficient amount for their interest within the area, and perhaps relocate them to some other area of land, as yet unspecified in the Bill. The remedy of relocation is a drastic one. Its most recent use, in the Second World War against Japanese-American citizens, has been widely criticized and continues to haunt our national conscience to this day.

As many of us recall, in the spring of 1942 Executive Order No. 9066 was issued pursuant to an Act of Congress, and

* Common sense indicates that a reduced land base without more will merely exasperate and increase the percentage of overgrazing.

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the Federal Government began the systematic and inhumane evacuation and internment of all Japanese within the Western Defense Area of the United States. Thousands of Japanese-American men, women and children were evacuated from their homes, the fabric of their lives torn apart, and shipped to what can only be called concentration camps. In the face of the extraordinary exercise by Congress and the Executive of the war power and the Executive power to exclude, the United States upheld this particular example of relocation in an opinion known as Korematsu v. United States, 323 U.S. 214 (1944). Commentators, both contemporary and subsequent to that decision, which have criticized both the law of the Executive Order and the Supreme Court, are legion. In light of this stream of criticism, which continues to this day, it is extraordinary to find, within H.R. 11128, in Section 8, a provision that would have the same impact upon the Navajos as the Executive Order of World War II had upon the Japanese-American citizens. What is more astounding is that this bill is not by any stretch of the imagination a Korematsu situation; no war exists, no threat to the peace and safety of the United States can be found or manufactured, and certainly we are not attempting to exclude the First Americans as members of an alien government. Yet, in black and white, and urged seriously for the consideration of the United States Senate, is language which will duplicate the evacuation previously imposed upon Japanese-American citizens.

Mr. Justice Jackson wrote, in a dissent to Korematsu, the following words, which fully illustrate the extent of Korematsu's "crime":

> "Korematsu, however, has been convicted of an act not commonly a crime. It consists merely of being present in the state whereof he is a citizen, near the place where he was born, and where all his life he has lived."

If the Senate acts upon H.R. 11128, the Navajo will stand accused of the same crime Korematsu stood accused and convicted of. To pass this Bill then and to order the evacuation of the Navajos from their traditional homelands, when they have done nothing but be present in the state where they were citizens, near the places where they were born, and where they have all lived their natural lives, is simply unconscionable.

This simple parallel is unavoidable and inexplicable. We ask only that the United States Senate consider very carefully the policy of relocation expressed in the proposed bill. Annexation or exclusion by governmental fiat, while quite common in certain portions of the world is repugnant to all modern notions of fair play, ethics and morality in the Free World.

Aside from any technical legal problems inherent in applying the policy of relocation to the Indian, precedent in international affairs contrasts sharply with the proposed solution.

For example, in the Treaty of Paris ending the Revolutionary War, it was specifically provided that Congress

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would recommend to the legislatures of the various states that the estates of Tories, that is to say individuals who had taken up arms against the government of the United States, would be returned to them (Treaty, Article V). It was specifically provided that there would be no future confiscations or prosecutions against any person or that any person would have to suffer any future loss or damage whether to life, liberty, or property because of the part which they took in the Revolutionary War (Treaty, Article XI). Similarly, the Webster-Ashburton Treaty of 1842 and the Treaty with Great Britain of 1846, which established the 49th parallel as the northern boundary of the United States, saved grants of land made by both parties to the treaties.

Finally, the Treaty of Guadalupe Hildago of 1848, ending the war with Mexico, specifically provided:

> "Article VIII. Mexicans now established in territories previously belonging to Mexico, and which remain for the future within the limits of the United States . . . shall be free to continue where they now reside . . . retaining the property which they possess in the said territories, or disposing thereof, and removing the proceeds wherever they please, without their being subjected, on this account, to any contribution, tax, or charge whatever. . . .
>
> In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to it guaranties equally ample as if the same belonged to citizens of the United States."

Thus, in dealings with foreign countries, even in situations where a clear military victory was established by the United

States, it was careful, by treaty, to preserve and protect the rights of those individuals who were residents and citizens and property holders of land which would, under the terms of the treaties, become a part of the United States. While this solicitude for such foreigners is certainly to be commended and to be looked upon as a wise and understanding part of American history, it is incomprehensible that such solicitude shown for foreigners (foreigners which, in several cases, had just finished hostilities against the United States) is not similarly shown to these first citizens of the United States, whose only offense is that they wish to remain on the land where they were born and arised. It is indeed unfortunate that there is a paucity of similar language in Indian treaties; nevertheless common decency should require a similar interpretation in the absence of specific language, particularly where the peoples affected have many times fought and died in defense of this country--peoples whose particular talents proved time and time again to be invaluable in modern warfare waged to protect this land and what these Navajos thought was their land. These surviving staunch defenders of our country would, if this proposed Bill is seriously considered, be treated less generously and less fairly than those who have been our foreign enemies. The inevitable conclusion is that H.R. 11128 is wrong, immoral, biased, and out of step with the American way.

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This proposed legislation, in simplest terms, by requiring the relocation of Navajos to implement its provisions embodies a brand of justice which can only be considered peculiar to Indians. Where the United States Government, on behalf of its citizens, has either taken land from the Indian or entered into treaty arrangements with the Indian in which land was purchased, the United States has provided one remedy for the Indian whose land was taken: money damages. Even where a treaty has been found to be unconscionable, as several have been so found by the Indian Claims Commission, the Indian does not have the option of getting the return of his land (the Blue Lake situation being a quasi-exception to the contrary). Rather, he has been told by the Congress and the Indian Claims Commission that he must accept money. This Bill would not allow this sort of treatment for the Navajos; rather it would simply take their homelands from them and force them to relocate to other unspecified areas.

Because this proposal is expensive, entailing the expenditure of approximately $16 million, and because it perpetuates and dignifies the very drastic remedy of relocation, we simply ask that Congress look carefully at H.R. 11128 in light of the problems and history of the Japanese removal. If we have saved our foreign enemies' lands after international war, and if we limit Indian remedies to money damages when injured

by non-Indian interests, then it appears inescapable that a special Navajo "removal remedy" seems most unbalanced and unfair. Upon careful review, we believe that this Committee will conclude, as has the Navajo, that this proposed solution is much worse than the existing problem. This need not be the case. There is at least one sensible solution which accords with the actual past and present usage of the area.

In Healing v. Jones, the three-judge District Court clearly recognized the difference between subsurface and surface rights. There is nothing in that original decision which requires equal division of surface rights and equal division of subsurface rights. It would be entirely consistent with Healing v. Jones, and with our past history and treatment of the Navajo and other Indians, to allow a disproportionate share of the mineral and subsurface interests to the Hopi in exchange for the surface rights now being exercised by the Navajo. This solution would not entail the drastic relocation now proposed, which is clearly unnecessary, because the Hopi have never been a pastoral people and do not need the surface land as do the Navajo. Moreover, this proposal does not purport to immediately solve the problem of subsurface rights, but merely says such rights shall be "jointly administered." This potential procedure, or "plan for a plan," leaves as many areas of dispute open as it apparently is intended to close.

We respectfully request that this Senate Committee give the Navajo proposal sufficient consideration to reject H.R. 11128 and adopt the Navajo proposal as a realistic, humane, and equitable solution.

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EXHIBIT I

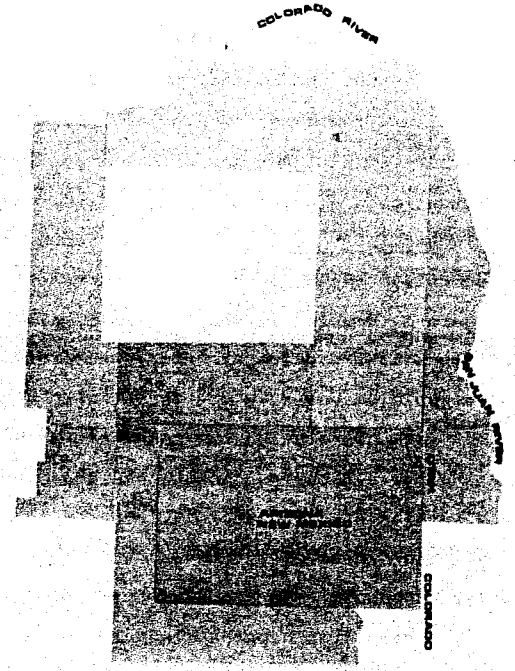
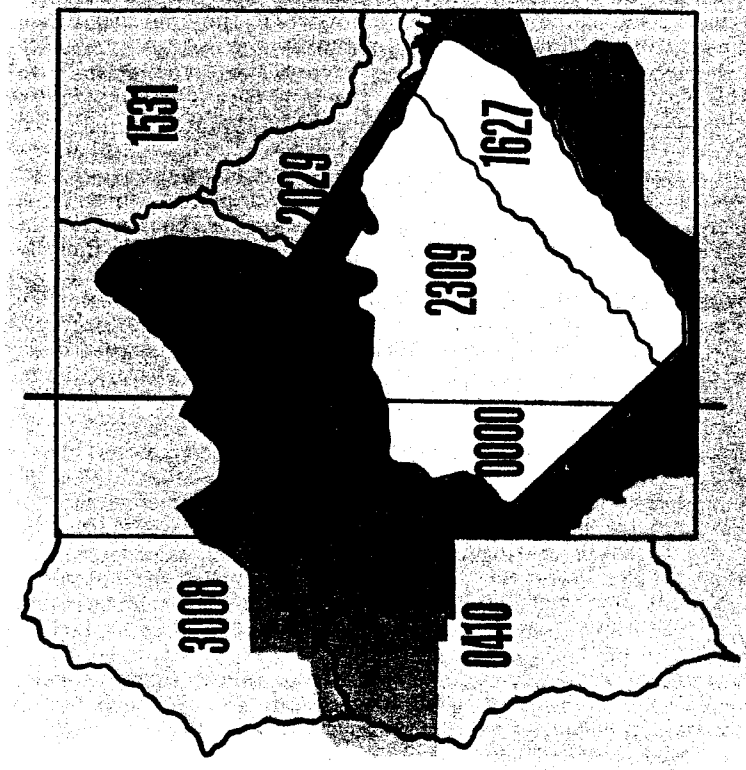


EXHIBIT II



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Mr. VLASSIS. As I listened to the testimony the last 2 days from the Department of the Interior and the Hopi Tribe and counsel, I have the feeling we are talking about a real estate development. All of the maps today have drawn lines, and the lines that have been shown are lines with relation to land. The discussion has been with respect to land.

For the first time, I would like to present a people map, because to me the basic issue is one of people and not where the lines are drawn with respect to acquisition of land ownership.

The Department of Interior was not very clear with respect to where the Navahos had settled within the 1882 area. Our map shows in red the location of the hogans and houses in the area from which they are supposed to be forcibly expelled. Those red dots add up to 719 frame houses, 950 hogans, making a total of 1,669 buildings which have been placed there by the Navaho over a period since 1882.

Contrary to remarks that have been made earlier, you will notice that, in fact, the Navaho removal area is the area that is most densely populated.

If the issue is viewed as I believe it should be, as one of people, then the real issue is people with respect to grinding gut poverty.

The discussion has to take place in terms of not who gets what land, but how do the people live.

The green dots represent the buildings that are located in the area which would remain unaffected by the Steiger bill.

The issues that exist between the two tribes because of their proximity, I do not believe can be characterized as a real estate development, and that is the way they have been characterized today. In fact, there are six issues, one is with respect to livestock grazing.

Now, the livestock grazing proposal that has been made is to say take away the land base of the Navaho, who is 400 percent overgrazed, already and give it to the Hopi who is only 25-percent overgrazed, and in that fashion we can make the Navaho maybe 700-percent overgrazed.

It does not make sense, if you are going to take something away from people who live in grinding poverty already and give it to a tribe who already is in better circumstances, by their own testimony, something has to be provided legislatively or otherwise in place of what is taken away. No proposal to that effect has been made other than the cavalier approach, here is $16 million and if everyone likes that, that is fine.

As Senator Bellmon asked yesterday, that would come out to $3,000 on a per capita basis, and that wouldn't buy an awful lot of land, and certainly not cover the grief that goes with moving.

There is no mention in the bill about any water being allocated to the area, merely to transfer the ownership and in that respect the bill is also defective.

Another problem the bill is supposed to have solved is the people-to-people problem. We talked about trespass and violence. This morning you heard about the incident with the shovel and 4 by 4, in which a Hopi got hit over the head, I won't deny the incident took place, but I certainly would deny that the passage of the Steiger bill would reduce these incidents, if anything, it would increase those incidents.

Another thing the bill is designed to do is create a situation in which the total equivalent of all the Hopi population is moved in order to give what the Hopis believe to be their fair share of the wealth of the land.

It cannot be denied that in days gone by the Navaho have taken the position that it did not want to move and did not want to give anything. That is not the position of this administration and never has been.

There have been a number of discussions to the effect that the Navahos have failed to negotiate. That is simply not the case. Since Chairman MacDonald was inaugurated and I became general counsel for the tribe in March 1971, on March 13 we offered to the Hopi Tribe a three-pronged proposal. We offered a partial or full livestock fence in order to reduce the alleged instances of violence. The Hopis chose to interpret that as a Berlin Wall and rejected the proposal, even though we offered to do it at Navaho expense.

We then offered the establishment of a joint Hopi-Navaho grazing committee. That was rejected.

We then offered the creation of a third reservation to the 1882 area, to be jointly administered. That was rejected.

Just a month ago, in Albuquerque, we met with Harrison Loesch, Louis Bruce and the chairmen of the Navaho Tribe and Hopi Tribe. The subject of that meeting was with respect to establishing an administration for the joint-use area. The Navahos agreed to that proposal and so did the Hopi. Three days later the Hopis rejected the proposal. The Navahos are open to the proposal and still available for negotiation.

I would hope these instances would dispell the idea that the Navahos have continued to remain unyielding, because they have not.

Now, with respect to the general presentation as to the Hopi position, there has been a great deal of fire and brimstone as to how this particular tribe has suffered politically at the hands of the United States, who has been described as dilatory and vacillating. Yesterday Commissioner Bruce mentioned the book, "Bury My Heart at Wounded Knee". There is no better catalog of the atrocities perpetrated against the Indian tribes of the United States than this single book. You will find no atrocities perpetrated against the Hopis in this book, because it simply didn't happen.

The last thing I would like to say, while I can't recite poetry very well, I would like to give you the words of what Manuletto said when he was released from imprisonment after the Long Walk:

> The nights and days were long before it came time for us to go to our homes. The day before we were to start we went a little way toward home because we were so anxious to start. We came back and the Americans gave us a little stop and we thanked them for that. We told the drivers to whip the mules, we were in such a hurry. When we saw the top of the mountain from Albuquerque, we wondered if it was our mountain, and we felt like talking to the ground, we loved it so, and some of the old men and women wept with joy when we reached our homes.

Senator FANNIN. We will ask the questions after the witnesses testify. Perhaps some of the questions may be answered after the testimony.

Mr. VLASSIS. Mr Schifter is the next witness.

Senator FANNIN. Mr. Schifter.

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STATEMENT OF RICHARD SCHIFTER, WASHINGTON COUNSEL OF THE NAVAHO TRIBE

Mr. SCHIFTER. Chairman MacDonald, in his letter to the committee, and Vice Chairman Skeet, in his testimony, have so eloquently pointed out that enactment of H.R. 11128 in its present form would truly be a tragedy for the Navaho Tribe, the Hopi Tribe, and for the United States. Anyone who will carefully examine the text of the bill and will contemplate its consequences will find it difficult to believe that a bill so fraught with potentially disastrous results could ever have received serious consideration.

The Navaho Tribe's plea to you is not to decide this case on a typed or printed record in Washington, on conflicting evidence and after what is essentially legalistic argument. The tribe's plea is that the committee visit Arizona to see for itself, to establish the facts, and to render its decision after it has indeed had an opportunity to collect all relevant data.

Such relevant data will not only include aspects of the past and present, but aspects of the future as well. Yesterday members of this committee, the Assistant Secretary and the Commissioner all commented on the very serious problem of overgrazing on the Navaho Reservation. These comments had a direct bearing on the subject matter of this bill, for tied in with the question of the future ownership of the 1882 Executive order reservation is the question of future land use, and as Mr. Vlassis has just pointed out, tied to future land use is ultimately the future of the people.

On the vast but barren lands of the Navaho Reservation live more than 130,000 people. Livestock herding has been and remains an important part of their economy. Yes, they have overgrazed, but not, as was said yesterday, to add to the status of the individual family heads, but because there have been more families and more mouths to feed. It has been necessity, sheer economic necessity that has compelled an increase in the number and size of herds.

What is unquestionably needed on the Navaho Reservation to solve the problem of overgrazing is a comprehensive program of economic development that will permit a shift of some families now dependent on livestock herding to other forms of employment. To make this shift possible, other economic opportunities will have to be developed, but it must be recognized that any such shift will not come about overnight. A 45-year-old livestock herder cannot be trained to be a farmer or a medical-records technician, but his children might be.

A program of Navaho economic development is indeed desperately needed, for the people of the Navaho Reservation are among the poorest in the country, living on incomes and on a standard of living far below those found in the slums of our cities.

Yet, rather than begin to solve this problem, the bill before you would exacerbate it. As Vice Chairman Skeet said, it is a Navaho expulsion bill. As if conditions were not bad enough as it is, we are now going to make them worse by uprooting more than 6,600 people, without even knowing where we are going to move them to. Secretary Loesch pointed out yesterday that he didn't have the slightest idea where they were going to go. On top of that, the taxpayers of the United States are going to be paying $16 million for that move.

Please consider this one aspect of the matter: we are dealing with some of the poorest people in the country and instead of doing something to improve their lives, we are going to expend millions of dollars just to move them around, to pay for their moving expenses, to tear down their homes in one place and build new ones elsewhere. Not only that, after Secretary Loesch told you that the Navahos overgraze their land to the extent of 400 percent, H.R. 11128 proposes to take about 1 million acres from them. This surely is not a way of curing the overgrazing problem.

The bill does, as I have just said, authorize the expenditure of $16 million, but Senator Bellmon correctly pointed out yesterday that that amount falls far short of the real need. The purposes for which the authorized fund may be expended are identified in section 11 of the bill, as follows:

(a) for the purchase of relocation land by the tribe (but only if a majority of the heads of households approve the use of money for that purpose);

(b) to pay actual, reasonable moving expenses;

(c) to pay the cost of a "comparable replacement dwelling";

(d) to pay the fair market value of other improvements which the expelled families leave behind.

Now, let us take a look at what this means when translated into dollars. The cost of land in the area surrounding the reservation is a minimum of $30 per acre. If the tribe were able to replace the land it loses under H.R. 11128, the cost of such replacement would thus be at least $30 million.

Then there is the matter of actual moving expenses. The estimate of such expenses offered by Congressman Steiger is $3,000 per family. A recent survey conducted by the Navaho Tribe indicates that 6,628 individuals belonging to 1,262 families are to be expelled. This would mean a removal cost of $3,786,000.

Finally, there is the matter of dwellings and other improvements. Let us place that figure, extremely conservatively, at $7,000 per family. This total would be $8,834,000.

Thus, just to stand still, the expenditures under this bill would have to total over $40 million. But the bill authorizes only $16 million, a clear indication that it will cause the people affected to regress even further.

Let us not think that by having the Congress establish a $16 million ceiling, we have effectively limited the cost of this expulsion program to the United States. The amount of $16 million is just the down payment. The added costs of dislocation will show up in welfare, health and other appropriations for years and decades to come. Once again, I plead that you consider these costs, that you consider the enormous social consequences of expelling more than 1,200 livestock herding families from their homeland before you take this fatal step.

Yesterday, Secretary Loesch made reference to the fact that 31 percent of the families who are proposed to be expelled are the recipients of welfare payments. This may have conjured up the image of people sitting in the sun and just collecting their welfare checks, and may have made you wonder whether they could not collect these checks equally well if they lived elsewhere.

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But the image is wrong. This is how incomplete data can easily mislead. My Navaho friends tell me that in most instances these welfare payments are income supplements. The families in question work and work hard but do receive financial assistance in order to be able to get by. I am sure you will agree that a working family which receives some financial assistance will be far better able to raise children who can find their way into our economy than a family which is completely on welfare. Yet families of the latter class is what H.R. 11128 proposes to create. The mark of this change will surely be left on the next generation, the children of the expellees. And the cost of this change will surely be bequeathed to the next generation of taxpayers.

The question that suggests itself at this point is how this bill, this proposal to expel thousands of people from their homes and make a down payment of $16 million of the taxpayers' money to facilitate that task, ever saw the light of day? How could this bill have received the support of the administration and the House of Representatives?

The answer is that some myths have grown up in recent years and months, myths which have swayed some people to such an extent as to cause them to conclude that H.R. 11128 is the only way of solving an existing impasse. But that conclusion, based on false premises, is simply wrong.

Let me now deal with the foremost myth, the legal myth. That myth has it that the decision rendered by the U.S. District Court for the District of Arizona in 1962 in *Healing* v. *Jones* and summarily affirmed by the U.S. Supreme Court in 1963 requires that an area of approximately 1,822,000 acres be divided between the Hopi and Navaho Tribes by drawing a line on a map and awarding approximately one-half of the land to one tribe and the other half to the other tribe. To those who subscribe to this view, the only issue is just where to draw the line. H.R. 11128, they say, takes the bull by the horns by drawing a line which would settle the problem once and for all.

This proposition, that the approach of H.R. 11128 is the only practical way in which the Congress can comply with the decision in *Healing* v. *Jones*, squares neither with the facts nor with the law. There are other, far more practical ways of dealing with the problem.

With regard to the 1,822,000 acres with which we are here dealing, *Healing* v. *Jones* was basically a declaratory judgment. What the court decided was that the Navaho and Hopi Tribes owned, respectively, compensable undivided one-half interests in these 1,822,000 acres.

In arriving at this conclusion, the court also held that the compensable, constitutionally protected right of the two tribes was by no means a right of long standing, that it was created by act of Congress as recently as 1958. The court further noted that in 1958, and for many decades before them, the area in question was occupied almost exclusively by Navahos.

Though the *Healing* court decided who had an ownership interest in the land, the plenary power as to how this land is used and disposed of remains with the Congress of the United States. As long as the rights of ownership vested in the tribes and protected by the fifth amendment are respected, it is up to you to decide, as a matter of policy and not of law, how the public interest will best be served in settling this controversy.

Here are the crucial facts on which your policy decision must be based:

A. The Navahos have for at least the last 120 years used and occupied this land; they have lived on it and grazed it.

B. At no time during these last 120 years have the Hopis used this land for anything other than occasional ceremonial purposes.

C. The *Healing* court found that prior to 1958 neither the Navahos nor the Hopis had a vested right in the land, but that Congress, in 1958, conveyed to each tribe a one-half undivided interest in it.

Thus, we have use and possession for generations on the side of the Navahos, and, essentially, a landlord's interest on the side of the Hopis, a landlord's interest acquired 14 years ago.

I must say to this committee that I seriously doubt that *Healing* v. *Jones* was correctly decided, that Congress really intended to convey in 1958 to the Hopis a one-half interest in land which the Navahos had used and occupied for a century. But *Healing* v. *Jones* is now law and I must say it is a credit to Mr. Boyden and his advocacy that it is law. To clear up any doubt on this question, let me say that the Navaho tribal leadership fully recognizes that fact and understands its implications.

But the question remains as to what Congress may and should do in a situation in which members of one tribe have for generations lived on land in which another tribe has now acquired an interest.

There was a time when the Congress wrestled with a similar problem and came up with a solution sharply different from that contained in H.R. 11128. It was in 1913, in the case of *United States* v. *Sandoval*, 231 U.S. 28, that the U.S. Supreme Court rendered a decision which shook the non-Indian community of New Mexico.

Approximately 12,000 non-Indians who thought the land on which they lived was their own were, under the holding of the *Sandoval* case, mere squatters on lands of the Indian pueblos of New Mexico. After 11 years of uncertainty, the Congress finally resolved the issue by passing the Pueblo Lands Act.[1] That act allowed non-Indians who could show that [2] they had lived on Pueblo land for a certain period of time to quiet title to their respective tracts. The Indian owners were paid the value of the land by the U.S. Government.

Thus, if the Congress were to follow the precedent set by the Pueblo Lands Act, it would in this case convey the complete interest in the 1,822,000 acres to the Navaho Tribe and pay the Hopis the value of their share of the interest in the land. At $30 per acre, this would cost about $27 million. The Hopis could use that money to improve their existing holdings, or, over a period of time, acquire additional rangeland, or both. In the long run this would be a far, far less expensive solution than enactment of H.R. 11128.

The problem posed by the Navaho-Hopi controversy also bears some resemblance to the Alaska Native claims issue, which occupied the attention of this committee for many years. In that case the claims of the Natives were not based on recognized title, but on a historic interest in much of the land, very much like the interest which the Hopis had in the disputed land prior to 1958. In the Alaska

[1] Act of June 7, 1924. 43 Stat. 636.
[2] Since 1902 with color of title; since 1889 without color of title.

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Native claims situation, as we all know, no one suggested the mass removal of settlers to make possible the return of land to the Natives.

Could it be, may I ask, that where the settlers are white, we pay off the original owners in cash, but where the settlers are Indian, we find expulsion and removal an acceptable alternative? Can such a racially discriminatory approach be considered as meeting the constitutional requirement of due process? I submit that it cannot and that H.R. 11128 would, if enacted, be vulnerable to a challenge of its constitutionality on the ground of invidious discrimination.

To sum up on the legal issue: *Healing* v. *Jones* decided the question of the respective ownership interests in the land, but the power to decide how the land should be used is vested exclusively in the Congress of the United States, a power limited only by the fifth amendment limitation that a person's property may not be taken without due process of law.

I have, so far, discussed the legal myth on which H.R. 11128 is based. Now let me briefly touch on some of the other myths.

One of them is the historical myth. It is sometimes alleged that the entire area here under discussion was used and occupied by the Hopis until the Navahos came in and pushed them out. As any student of anthropology who knows the Southwest will confirm, the Hopis have for centuries reside in villages on mesas, all located within an area which is now recognized as the Hopi Reservation. They also farmed and grazed the areas immediately surrounding their mesas. But because they engaged in farming, lived in settled communities and made intensive use of their land, tley traveled far less extensively than did the nomadic and pastoral Indian tribes.

Mr. Chairman, one of the witnesses mentioned this morning that it was customary for Hopis to go out in the morning and come back at night. That is the Hopi way of life. I happened to discuss this matter at noon with one gentleman who knows the area well and asked him how long it would have taken to go from the mesas into the area that is supposed to be added to the Hopi Reservation, by this bill at a time when there were no roads and carts. I was told it would have been a day's trip to get out there. So it is obvious that this could not have been at that time—we are talking about a period in the 19th century—a customary way of getting about. While the Hopis did visit areas at some distance from their mesas, the major purpose of these visits was religous, rather than a search for sustenance, and their claims to vast areas are basically of a religious character, rather than founded on economic use.

The Indian Claims Commission concluded that the use made of the area by the Hopis at the time of the Treaty of Guadalupe Hidalgo in 1848 was sufficient to sustain a claim of use and occupancy.

Senator FANNIN. There is a vote. We will recess this hearing for 10 minutes and return.

(Recess taken.)

Senator FANNIN. The hearing will be resumed. I am sorry about the interruption, but we do have votes which we must get to.

Mr. SCHIFTER. There is no doubt that immediately following the annexation of the Southwest by the United States, the pressure of white settlement in New Mexico caused a great many Navahos to

move west and to make use of the vast, unoccupied area in the present State of Arizona with which we are here dealing.

The Hopis now claim that as the Navahos moved west, they began to crowd the Hopis. I submit that any fair reading of the evidence points to one conclusion: that the interference by the Navahos about which the Hopis complained, and which was put in the record this morning by Mr. Boyden and other witnesses in let us say, the last quarter of the 19th century, took place in the areas immediately surrounding the Hopi villages. These were the areas which the Hopis used for farming. These are the areas which today lie well within the 631,000 acres which were once known as District 6 and today constitute the Hopi Reservation. Thus, the areas in which the Navahos long ago interfered with Hopi use and occupancy are today clearly and unmistakably Hopi country and no Navaho challenges the rights of the Hopis there.

The area here under discussion, they area with which H.R, 11128 deals, is one which the Hopis entered only on occasion and then only for religious observances or similarly temporary purposes. That area, once largely unoccupied, has for more than a century been increasingly populated by Navahos. It is populated by them now.

If the area under discussion was occupied by Navahos, why was it included in what H.R. 11128 calls the 1882 Executive order Hopi Reservation? The answer to this question is that we are dealing with another myth, which H.R. 11128 attempts to write into law. The Executive order of 1882 *did not* establish a Hopi Reservation. It established a reservation for the Moqui—Hopi "and such other Indians as the Secretary of the Interior may see fit to settle thereon." The Executive order of 1882 thus left the question of use and occupancy of the reservation to administrative discretion. As the court in *Healing* v. *Jones* found, Navahos had lived on the Executive order reservation "from long prior to the creation of the reservation in 1882." For more than half a century, the Navaho population of the Executive order reservation has exceeded the Hopi population. While the Secretary of the Interior had orignally merely acquiesced in Navaho presence on the reservation, the Healing court found that since 1931, the Secretary had impliedly "settled" the Navahos on the reservation within the meaning of the term in the 1882 Executive order.

Mr. Chairman, may I add here, that one of the points made repeatedly, is that Navahos continue to stream into this area, that just during the last decade they have continued to stream into it. I am told by persons thoroughly familiar with the situation and field investigation will, I am sure bear this out, that the only population increase you are getting now is from new births. There is very, very little movement now in this area in terms of people coming from the other parts of the Navaho Reservation to move onto the Executive order reservation. It is a stable population, save for births and deaths.

What the court further found is that since 1927 the Interior Department has considered measures to divide the Executive order reservation between the Hopis and Navahos. It took some time for the idea to take hold, but in 1936 an area of 488,000 acres was set aside by the Office of Indian Affairs for exclusive Hopi occupancy, while the remainder of the Executive order reservation was allocated for use by the Navahos.

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The dividing lines between the areas of Hopi and Navaho occupancy remained the subject of continuing discussion in the years immediately following. It was not until 1943 that they became final. At that time, the Office of Indian Affairs decided to expand the Hopi area of occupancy by more than 25 percent to a total of 631,000 acres, and to establish the new boundaries as the definitive lines of separation between the Hopi and Navaho areas of occupancy. The Healing court described the consequences of this 1943 order:

> Many Navaho families, probably more than one hundred, then living within the extended part of district 6, were required to move outside the new boundaries and severe personal hardships were undoubtedly experienced by some.

Thus, acting under the authority vested in it by the 1882 Executive order, the Department of the Interior in 1953 divided the reservation by allocating about 631,000 acres for Hopi use and 1,822,000 acres for Navaho use. I am not saying that any formal legal determination was made that had to stand for all times. This was an administrative determination that was made at the time when there were no vested rights on anyone's part. It is this 1943 decision of use rights of the 1882 Executive order reservation which H.R. 11128 seeks to upset.

The argument which is made in support of H.R. 11128 is that the nullification of the 1943 division of the reservation is indeed a direct consequence of the 1958 statute, Public Law 85–547. Let us analyze just what this means as to the alleged congressional intent in enacting Public Law 85–547:

A. Congress knew that it had the power to make adjustments in the Executive order reservation without violating any vested rights of either the Hopis or the Navahos.

B. At that time, the largely agricultural Hopis held about 180 acres per capita, and the largely pastoral Navahos held about 207 acres per capita.[1]

C. If the theory of H.R. 11128 were to be accepted, Congress intended in 1958, without being under any compulsion to do so, to change the land allocation to 441 acres per capita for the Hopis and 104 acres per capita for the Navahos.

Just why Congress should have had that in mind, doesn't appear in the record, and I simply submit it could not have been intended.

Even if Congress, in accordance with the decision of *Healing* v. *Jones*, wanted to give the Hopis an additional right, is it realistic to assume that it intended to skew the use allocation so drastically? The answer is obviously "No."

The purpose of the 1958 statute, I submit, was to let the Indian use rights ripen into vested rights and then to make an economic and financial settlement, particularly so as to resolve ambiguities relating to mineral developments in the Executive order reservation. It is inconceivable that Congress intended in 1958 to initiate a large-scale Navaho expulsion program when the Bureau of Indian Affairs had 15 years earlier resolved the land use problem and there was no good reason for upsetting the solution then agreed on.

There is one other myth to which I should address myself: The range war and bloodshed myth. Unless Congress quickly passes H.R. 11128, the House was told, a range war will break out between Hopis and Navahos, and people will get killed.

[1] According to *Healing* v. *Jones*, the 1958 population of the 1882 Executive order reservation consisted of 8,800 Navahos and 3,500 Hopis.

Once again, there is no basis in fact for this assertion. There has been no range war and there will be no range war. No one has gotten killed. There has been some difficulty caused by the fact that livestock occasionally strays across the unmarked and unfenced line between Navaho land and Hopi land. Unless that line is fenced, cattle will continue to stray across it. Furthermore, if the line between the two reservations were relocated, as proposed by H.R. 11128, the problem of straying livestock will by no means be cured.

I have, so far, spoken against the basic assumption underlying H.R. 11128, the assumption that the 1,822,000 acres should be divided equally between the Hopis and Navahos. Yet even if this basic assumption were accepted, H.R. 11128 would be defective.

One of the holdings of *Healing* v. *Jones* is that the interests of the Navahos and Hopis in the land here in issue are equal. Therefore, if the land is to be divided between the two tribes, each is to receive land of equal value. But no evidence at all has been submitted that the 905,100 acres allocated to the Hopis and the 916,980 acres allocated to the Navahos are of equal value. On the contrary, on the basis of their analysis of the location of water and, therefore, livestock and people on the land in question here, the Navahos believe that the land allocated to the Hopis is substantially more valuable than the land allocated to the Navahos. Thus, if H.R. 11128 were held to be constitutional, it would give rise to a claim against the United States, resulting from what appears to be a shortchanging of the Navaho Tribe. As said before, the $16 million constitutes only a downpayment.

So far, my testimony has addressed itself to that portion of H.R. 11128 which deals with the 1,822,000 acres located within the Executive order reservation of 1882. But the bill attempts to dispose of another land area as well. Under the provisions of section 5, 208,600 acres located within the area added to the Navaho Reservation by the act of June 14, 1934, 48 Stat. 960, are to be added to the Hopi Reservation. There has been no judicial or even quasi-judicial determination on which this proposed new boundary line between the Hopis and Navahos is based, nor has the Congress conducted any investigation and made any determination which would justify the drawing of this line and transfer of the land in question to the Hopi Reservation.

Moreover, as you heard Secretary Loesch say yesterday, incorporated into section 5 is an area simply taken from the Navahos so as to make it possible for the Moencopi community of Hopis to be directly connected to the expanded Hopi Reservation. As I have already stated, Congress has the power to reallocate Indian land in this manner, but such reallocation gives rise to a claim for compensation. The Secretary's admission yesterday is clear evidence for the fact that the Navaho Tribe would have yet another claim against the United States if H.R. 11128 is enacted into law.

It was also said yesterday that the Navaho Tribe has not come up with counterproposals to H.R. 11128. That is not the case. The tribe did submit proposed amendments to H.R. 11128 and has made other settlement suggestions. The reason why there has been no movement toward settlement in recent months is that as long as H.R. 11128 was moving forward, the Hopis had no incentive to settle and the Navahos simply could not settle on these terms.

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But that does not mean that a settlement between the tribes is not possible. Ever since he took office in 1971, Chairman MacDonald of the Navaho Tribal Council has emphasized that he is anxious to see this intertribal dispute resolved. The solution which the Navaho Tribe would most enthusiastically support is the one adopted by the Congress in the Pueblo Lands Board and Alaska Native claims laws, the solution of paying off the vested right of the Hopis. Alternatively, Chairman MacDonald has advocated a process of mediation and arbitration, which involves both tribes and takes place right on the ground in Arizona, after an investigation and appraisal of all relevant facts.

I am authorized to submit with this testimony a draft bill which embodies that concept. It is a bill based on the principle that no one will be moved unless he can be resettled. The question might be asked as to how this result can be accomplished while still giving the Hopis the one-half interest to which they are entitled. The answer is that it is generally assumed that the value of minerals in the land here in issue substantially exceeds the value of the surface. What a mediation and arbitration commission can thus propose is that while most of the surface rights are awarded to the Navahos, the mineral rights will be divided in such a manner as to convey to the Hopis an interest equal to one-half of the value, both surface and subsurface, of the entire tract.

I have recently had a discussion with an official of the Bureau of Indian Affairs who pointed out that one of the major problems today, the reason we have this very serious overgrazing situation, is that since 1964 no steps have been taken in this area to improve the range. In other words, there has been no investment in any effort to make it possible for the area to sustain a larger number of livestock. There is, therefore, another possibility of our accomplishing something for the development of the local economy: by making this kind of investment in range improvement. In other words, rather than using the money to move people around, let us use it to improve the range so that it might be possible to graze more livestock there.

Such a solution would be humane, would be constitutionally sound and in keeping with the decision in *Healing* v. *Jones*, and would prove far less expensive to the United States than the Pandora's box of H.R. 11128.

(The draft bill referred to follows:)

A Bill

To provide for a resolution of the conflicting interests of the Hopi and Navajo Tribes in the reservations established by the Executive Order of December 16, 1882 and the Act of June 14, 1934, 48 Stat. 960, respectively, and for other purposes.

Sec. 1. There is hereby created and established a Navajo-Hopi Boundary Commission, whose purpose it shall be to resolve the dispute between the Hopi and Navajo Tribes as to the respective rights and interests of these tribes in the reservations established by Executive Order of December 16, 1882 for the Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon and as to the rights and interests of the Hopi Indian Tribe in those lands described in the Act of June 14, 1934, 48 Stat. 960 as vacant, unreserved and unappropriated lands on which said Tribe was located on the date of said Act and which are outside the Executive Order Reservation.

Sec. 2. (a) The Commission shall consist of a Chairman and eight other members, who shall be appointed by the President. Three of the members of the Commission shall be members of the Navajo Tribe and three of the members of the Commission shall be members of the Hopi Tribe. In selecting those six members the President shall consider their residence and occupation so as to make them representative of the general class of persons most likely to be directly affected by the

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work of the Commission. The remaining three members shall be persons who shall not have any direct or indirect interest in the determination of the Commission.

(b) The Commissioners shall hold office during their good behavior until the dissolution of the Commission as hereinafter provided. Vacancies shall be filled in the same manner as the original appointments. Members of the Commission may be removed by the President for inefficiency, neglect of duty or malfeasance in office after notice and an opportunity to be heard.

(c) Members of the Commission shall receive compensation in the daily equivalent of the rate provided for grade GS-18 in Section 5332 of Title 5, U.S. Code, for each day they are engaged in the business of the Commission, and shall be allowed travel expenses, including a per-diem allowance, as authorized by Section 5703 of Title 5, U.S. Code, in connection with their services for the Commission.

(d) The Commission shall convene at the call of the Chairman, but must convene at least bi-weekly, to review activities and prescribe tasks for each member of the Commission and the staff thereof. The Chairman of the Commission shall report quarterly to the President and the Congress on the progress of the work of the Commission in fulfilling the purposes of this Act. The Commission, by

majority vote, shall appoint, fix the pay of, and prescribe the duties of such staff as is necessary to carry out the purposes of this Act in expeditious fashion.

(e) Appointments to the Commission, and the appointment of any staff by the Commission, shall be made without any regard to political affiliation or partisan considerations of any kind, and said staff shall not be otherwise employed.

(f) The Commission shall collect and consider all data relevant to proposing a reasonable, just, fair and legal settlement of the Navajo-Hopi controversy, including, but not limited to, actual use and occupancy, religious use, availability of in-lieu land, the general economy of the area, and future opportunities of the residents to earn a livelihood.

(g) Five members of the Commission shall constitute a quorum and official action may be taken only upon the affirmative vote of at least three members, except as provived in Sec. 3(b). A special panel consisting of one or more members, upon orders of the Commission, may conduct any hearing or investigation, or any other proceeding, and submit the record of such hearing, investigation or proceeding to the entire Commission for action thereon.

(h) The Commission shall have the power to call upon any of the departments or agencies of the United States

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for any information it may deem necessary in carrying out its functions under this Act.

(i) The existence of the Commission shall terminate with the submission of its final report to the President and to the Congress in accordance with the provisions hereof.

Sec. 3. (a) Within one year from the date of its first meeting, the Commission shall submit to the Navajo and Hopi Tribal Councils one or more proposals for the disposition of the rights and interests in the land described in Sec. 1 of this Act. Said Tribal Councils shall within ninety days following the submission of any proposal endorse or reject such proposals. Failure to act within the allotted time shall be deemed a rejection. If both Tribal Councils endorse a proposal, such proposal shall constitute the resolution of the controversey and shall be incorporated in the final report of the Commission.

(b) If the Tribal Councils disagree on acceptance of all proposals submitted to them, the Commission shall review any comments submitted by said Councils, and shall thereafter enter its own determination, which must be approved by a majority of the members of the Commission. Such determination shall be incorporated in the final report of the Commission.

(c) Any proposal submitted to the Navajo and Hopi Tribal Councils under subsection (a) or the determination under subsection (b) may provide for the expenditure of not to exceed $16,000,000 for the purchase of additional grazing land, for the improvement of the grazing capacity of the land described in Section 1 or for other programs designed to improve the economic conditions of the residents of said land.

Sec. 4. (a) Within thirty months from the date of its first meeting, the Commission shall submit a final report to the President and the Congress, which shall have the force and effect of a final judgment and shall be conclusive upon the Navajo and Hopi Indian Tribes and all other Indians as to all rights and interests of the respective tribes or Indians in any lands which are determined and settled by said report.

(b) No final report shall be filed pursuant hereto unless adequate provisions have been made for relocation of any Indians to be displaced by such settlement on lands with an economic base comparable to that of their presently occupied lands, in accordance with the provisions of Sec. 6 of this Act.

Sec. 5. If the final report of the Commission requires the removal of any Indians, the Secretary of the Interior, hereinafter referred to as the Secretary, is authorized and directed

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to remove the Indians displaced by such determination and their personal property, including livestock, to the lands assigned to them in lieu of the lands from which they are being displaced. Such removal of Indians shall take place over a period of ten years with approximately ten per centum of any such Indians to be removed each year, but no displaced Indians shall be required to be relocated until his portion of the in-lieu land has, in fact, been assigned to him. No displaced Indian shall be allowed to increase the number of livestock which he grazes in the area described in section 1 of this Act after the final determination of the Commission and the allocation of the in-lieu land has actually been made, nor shall he retain any grazing rights in the land from which he was removed.

Sec. 6. (a) The Secretary shall determine the aggregate livestock carrying-capacity of the land from which Hopi and Navajo Indians shall be removed pursuant to section 5 hereof and shall allocate to the Hopi and Navajo Tribes, respectively, such funds as shall be necessary to purchase land of livestock carrying-capacity sufficient to sustain the livestock owned by the tribal members displaced from their land in accord with good grazing practices as determined by the Secretary. The lands purchased with such allocations shall be held by the United States in trust for the respective tribes, as part of their reservations.

(b) Persons removed pursuant to section 5 hereof shall be given assignments on the lands purchased by their respective tribes under subsection (a) of this section.

Sec. 7. (a) All Hopi and Navajo Indians moved pursuant to the provisions of this Act shall be considered "displaced persons" within the meaning of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894). For the purpose of determining payments due under that Act, such Indians shall be deemed to own the land on which their habitation is located.

(b) The United States shall purchase from each such Indian any habitation and other improvements owned by him on the area from which he is being moved. The purchase price shall be the fair market value of such improvements.

(c) In addition to the above payments, the Secretary shall pay to each Indian family moved pursuant to this Act the sum of $3,000 for indeterminable expenses and personal hardship.

Sec. 8. The Secretary is hereby authorized and directed to accomplish the following:

(a) Survey and monument the boundaries of the Hopi Reservation as determined under sections 3 and 4 of this Act.

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(b) Erect a boundary fence on said boundaries and construct a service road paralleling said fence.

Sec. 9. The determination of the Commission shall constitute, as between the Navajo Tribe and the Hopi Tribe, a full and complete settlement, release, remise, discharge and settlement of all past or present claims arising out of the dispute over the lands whose future ownership is determined by the Commission's final report.

Sec. 10. There is hereby authorized to be appropriated $16,000,000 for payment pursuant to sections 3(c) and 7 of this Act and such sums as are necessary to carry out the other provisions of this Act.

Senator FANNIN. Will you call the next witness, Mr. Vlassis?
Mr. VLASSIS. Donald Mose.

STATEMENT OF DONALD MOSE, SR., NAVAHO TRIBAL COUNCILMAN

Mr. MOSE. Mr. Chairman and members of the committee. My name is Donald Mose, Sr. I am a delegate to the Navaho Tribal Council and I reside on the land which is the subject of this hearing.

I have read in the various newspapers, heard on the radio, and even on the floor of Congress a few months ago, that there is a range war going on in the joint-use area and that the Steiger bill is necessary to prevent this war and violence. This committee and the House committee have also been led to believe that widespread violence is the "Indian" way of resolving problems. The newspapers and radio are wrong, and I believe the Congress has not been told the truth. I regret that the committee has not lived in, or even seen, the joint-use area so that its members could see for themselves that there is no war and no real violence.

I have lived in the joint-use area for 53 years, my family, my father and mother who are over 80 years old, also have lived there, and I have many Hopi friends. For instance, the Hopi vice chairman, Logan Koopee, and I have known each other since our youth. Mr. Dewey Healing, former Hopi chairman, and I are friends. In fact, he has hauled sheep manure from my stock corral for his pottery making. I have given him sheep and he, in turn, has given me goods. He has visited with me last March.

We have always lived in peace with our Hopi neighbors. But just as not all Anglos are peaceful, some Indians have also provoked isolated incidents, Still, our land is safer and more peaceful than that which surrounds this building. I can leave my home and not lock the door, for I fear no Navaho. And no Hopi robber will come in the night. Here, we are warned to put everything valuable in the hotel safe, chain our doors, and not walk out into the street at night.

Whether this violence was first started by the Hopi advisers to make a stronger appeal to Congress, using the horror of a range war, is no longer a question. The question is whether people will respond to these scare words, much like our sheep respond to shouts and loud noises, without regard for the correctness or impact of their action. The truth behind the shout of a range war is that there have been a few isolated incidents, but our tribal council has gone out of its way to patrol the District 6 boundary and to join in the setting up of a courtesy patrol to prevent such incidents.

It is neither the Navaho way nor the Hopi way to use violence in solving problems. As the traditional Hopi have told you, and as they told the House, violence is not their way. The true Hopi are a peaceful people, the true Hopi is a peaceful man. The true Navaho follows what we call "the pollen path, by which we seek harmony with nature and harmony and peace with man." When Navahos have a problem, we sit and talk, and continue to talk over the problem until it is solved. We solve problems by talking, not by shooting and fighting.

I can understand why the Congress has been told of a war and violence. Hopi leadership and a few powerful Hopis may be convinced

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that they can gain much new land by provoking some violence. And Mr. Steiger, whom we thought was a just and fair man, has not bothered or been able to find out the true facts. But the facts are as I I have told you: we are peaceful people, both the Navaho and the Hopi, violence is not our way of life, and violence has not been our way of resolving this problem. If you pass this bill thinking you will avoid a war or violence, you will do great injustice to the Navaho in trying to solve a problem that does not exist. Navaho and other Indian history is full of instances where the Government has taken action against Indian people on the basis of false information, only later to regret the consequences.

From the "Trail of Tears" to the "Long Walk" to "Wounded Knee", the Government has done things which are later regretted, but not undone. You have the chance to stop another such mistake. I ask for myself, my family, and my people that you may not make a mistake and that you let the truth prevail.

Thank you, Your Honor.

Senator FANNIN. Thank you.

The next witness.

Mr. VLASSIS. Mr. Glen George.

STATEMENT OF GLEN GEORGE, TUBA CITY, ARIZ., NAVAHO TRIBAL COUNCILMAN

Mr. GEORGE. Thank you, Mr. Chairman and members of the committee.

My name is Glen George, and I am the councilman who represents Tuba City Chapter in the Navaho Tribal Council. I appreciate this opportunity to present my constituents' views on the bill you are considering today. We have discussed this bill among ourselves many times, and I have been asked to present our views to you.

My area was established in 1934. It has never been a part of the controversy which led to the introduction of the Steiger bill. This area has never been the object of any court action and the *Healing* decision that you have been told of, said nothing about the 1934 area. I do not understand why our lands are involved now, but I understand that the Steiger bill will take our lands from us and give it to the Hopi. In return, we are to be moved to a place not yet known. My constituents and I are disturbed and concerned about this bill.

We live here, 1934 boundary. Our land is good land. It has water and it is fertile. It's good land for livestock, but not very good land for farming, the traditional Hopi use of the land. The Hopi have always lived and now live in a small area, Moencopi Village. The Hopi in this area number about 1,000 and roughly 600 of these actually live in Moencopi. More than 200 of these people are employed by the BIA in the Tuba City Agency. Very few make their living from the land or cattle, unlike the Navaho.

We number more than 3,000. More than 200 of us depend on the land and livestock for their total income. And approximately 70 percent of these Navahos depend upon sheep that graze upon this land for daily food, as a much needed supplement to their other income, which in total provides them a very bare living. The Hopi have no sheep, except one Hopi who had less than 50 sheep, and only a few

Hopi have cattle. They do not need this land to feed themselves as we do.

Some of my constituents are veterans who fought for this Nation. They and I do not understand why this country is now taking our land. I too have served over 20 years in the U.S. Marines and the U.S. Air Force. Mr. Chairman, I ask your permission to supplement my statement with an affidavit from one of these veterans.

Senator FANNIN. You may do so.

Mr. GEORGE. We have heard that one reason for the Steiger bill is the prevention of violence, but there is none in my area. And we have not found any other reason for this bill. We have asked ourselves: If the Hopi do not need the land and if it has never been involved in the dispute over the 1882 reservation—why are the Hopi being given our land? It makes no sense—we have always lived with the Hopi in peace and harmony. Their people and ours have married; they use our medicine men for certain ceremonies, as we use theirs, we attend Christian churches side by side; we buy from their merchants in Moencopi and they buy from ours in other places.

We have no answer to these questions. We can see no reason for you to take our land from us. We think your justice demands that you answer these questions before you drive us from our lands. We wait for your answers.

Senator FANNIN. Thank you very much, Mr. George.

(The affidavit referred to follows:)

AFFIDAVIT

(June 22, 1972; 3:55 p.m.)

I, Elmer Douma, witnessed the arrest of Joann Yonnie, riding a brown and white gilding trying to interfere with Ranger Elmer Randolph. The ranger at the time was herding the sheep and goats to Thornton Mabo's corral with his pickup. The lady tried to herd the sheep back towards her home scattering them between the Ranger and herself. The Ranger got out of his pick up and went towards her and as he approached her she started whipping him with her horse whip. The Ranger pulled her off the horse trying to keep her under control but she struggled to get away. They struggled for awhile falling to the ground. She kicked him near the jaw letting her go for a while. Then he got control of her putting the whip on her wrists to tie her up. He then took a rope out of the back of the pickup to tie her wrists more securely.

June 23, 1972.

ELMER DOUMA, *Courtesy Patrol.*

Senator FANNIN. The next witness is Dr. Bendheim.

STATEMENT OF OTTO L. BENDHEIM, M.D., PHOENIX, ARIZ.

Dr. BENDHEIM. I am Dr. Otto Bendheim from Phoenix, Ariz. I have made a statement in writing which I would like to submit at this time. I should like to amplify and emphasize a few points.

Senator FANNIN. Very well, your full statement will be made a part of the record.

Dr. BENDHEIM. I am a psychiatrist, physician, and medical doctor in private practice of medicine in Phoenix. I am here today not as an advocate of one bill or another, simply because I am interested in the health and welfare of the Indian people, my patients for a good number of years, 30 years to be exact, and in a very intimate way in the last 14 years, as consultant for the Public Health Service.

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I have treated hundreds of Indian patients of all southwestern tribes, and in order to be better prepared in this work, I have undertaken a study of anthropology and I have a Ph. D.

The guiding principle, as I see it in any conflicts of any two groups of people, would be to do the least harm to the fewest people and to find a solution that would be of greatest benefit to the most.

Looking over the articles of this bill there are only two points to which I should like to address myself, and that is the section which has to do with the reduction of livestock and the other section which has to do with the removal of people from their land.

In most instances, we need not to be purists about finding answers as to what would happen if these pieces of legislation will be passed. We have history and pieces of experience, bitter experience, to learn from what has happened in the past. I have seen the tragedy that has befallen the Indian tribes and the amount of suffering it has caused, mental, medical, social, which is unheard of in the general population of the United States. This has been true for all time. It has been, unfortunately, true for the Hopis. Their way of making their livelihood has been disrupted by the white man's intrusion in the southwestern area.

The Navaho has suffered innumerable and terrible hardships particularly three I think should be pointed out. The "Long march," the terrible walk in 1864, where the Navaho Nation was reduced in numbers by the thousands, which they survived because of their courage and because finally the Government admitted its mistake and permitted the people to return to at least part of its ancestral lands.

They had hardly overcome this terrible wound, and just started to adjust, when we came in with the support of the Army and forced upon them an educational system far removed from the reservation, thousands of miles away, California, Pennsylvania, forced their children away, exposed them to strange cultural influences, influences of life which alienated them from their own people and caused untold hardship.

Then in the 1930's a very well meaning Government felt something should be done to help the economy of these tribes, particularly in regard to overgrazing. Now there was a real problem and the Government tried to do it right, but unfortunately the Government was not aware of the psychological or social impact of this particular legislation. As a result the livestock reduction imposed upon the people from the outside by force, the suspicion, the attitude of hostility toward the white government was reaped in, the wounds were open again, and all of the wounds were opened again, with one "benevolent piece of legislation."

These wounds had hardly healed, when again the Government steps in, in which again action by force is to be taken with regard to No. 1, livestock reduction, against the will and probably to be enforced by force of law, and No. 2, deportation of people.

Now the latter is an almost unheard of activity of the U.S. Government to engage in. You have heard this morning that somebody compared it to the Japanese relocation. We are talking about a nonlimited, but permanent displacement of people who are guilty of one crime or another, the crime being that they have been born and raised in an area which has been in the possession of their ancestors for 100 years

or longer. We are talking about 6,000 people, or close to 7,000 people, on the Navaho side, that would be deported, possibly by force, over their objection, without their consultation. We are talking about 20 to 40 people on the Hopi side who would suffer a similar fate.

Certainly these two tribes inspire nothing but emulation on our side. The Hopis are the most peaceful people on earth. The Navahos have been the most peaceful of all nations on earth for 100 years. There has been no aggression, there has been frustration caused by economic pressure, by being forced to live on a reservation. The most fertile part of this reservation was surrendered to the people of New Mexico in 1868, and they were forced to the most infertile part, and miraculously their numbers have increased way beyond any other Indian tribe, and they have been forced to migrate in the only direction in which it was possible for them to expand, west. There was no possibility for them to go into the canyons, there was no possibility to go to the south, where the white settlers have settled. There was only one way for them to go.

We have to go back 200 years to find any history of livestock grazing of any amount for the Hopi people. The Navahos, their livelihood has remained one of livestock herding. We are dealing here with approximately 5 percent of the Navaho Nation, 67,000 people out of 137,000 people. This would be equal to talking about the deportation of 10 million Americans, forceful removal from their homesites, without provision for their future welfare.

You are not taking into consideration the sacredness with which these people hold to their land, not in a material way as such, as being considered real estate, but a very personal way.

The result of livestock reduction and the result of deprivation of livelihood and deportation would be No. 1, the realization of all of the suspicion and hostility of the Indian for the white government No. 2, the rekindling of a sense of powerlessness, of not being permitted to live their own lives, their own way, and make their own decisions.

No. 3, in the nation, their own culture, loss of their own sacred traditions, because many would be forced to leave the reservation. You have seen the disastrous result of many of our Indian tribes to relocate in urban areas. You have looked into the gutters and slums of these areas and you have seen the amount of alcoholism, and prostitution, and delinquency that has occurred in the Indian population of these cities, and has not occurred in their homelands.

This committee should take into consideration the human suffering that would occur if these two solutions were imposed upon the people. The Hopis, for whom I have nothing but love and respect, whom I have treated for many years, have not utilized this land in any near fashion that the Navahos have. I have talked to many Hopis who have been satisfied with their way of life. They may be frustrated over the fact that certain lands which in the past they considered their possession, they may be angry, but there is no desperation, there is no alienation from their culture. They are much less threatened than any other tribe in the nation has ever been threatened. They say they are threatened by the Navahos. They have been deprived of some of their ancestral lands which they haven't utilized too much, they have been deprived by penetration of the Navaho, when the Navaho who had no other way than to take possession of land which was available.

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Before enforcing the deportation of 5 percent of a beautiful nation, Mr. Chairman, I should like to offer two alternatives:

One, would be to do nothing. I know some of my Navaho friends would like this, but I would not like it, because I know it would perpetuate the real anger and frustration you have heard expressed by our Hopi friends.

Two, to find compensation for the Hopis for the land which in the distant past was their land which are a vital need to the Navaho.

Thank you, Mr. Chairman.

Senator FANNIN. Thank you Dr. Bendheim.

(The complete statement of Dr. Bendheim follows:)

STATEMENT OF OTTO L. BENDHEIM, M.D., PSYCHIATRIST
TO THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
SEPTEMBER 15, 1972

Mr. Chairman and members of the Committee, I am Dr. Otto Bendheim and I am appearing before you today because of my interest in Indian Health, particularly mental health. I am a psychiatrist practicing in Phoenix, Arizona. I have been in the private practice of psychiatry since 1938. I am a member of the Arizona Medical Association, American Medical Association, The American Psychiatric Association, The Intramountain Psychiatric Association, The Arizona Psychiatric Association, as well as a Diplomate from the American Board of Neurology and Psychiatry. In addition, I am a Ph.D candidate in anthropology specializing in Southwestern Indians at Arizona State University. I've published two papers on Indian medicine, and am Consultant in Psychiatry for the Indian Health Division of the Public Health Service. I have been a consultant in psychiatry for the Indian Health Service since 1958. During that time I have had the opportunity to treat thousands of Indian patients, many of whom were Hopi as well as Navajo, particularly in my capacity as Mental Director of Camelback Hospital, a private psychiatric Hospital in Phoenix, Arizona.

As you know, preventative medicine is rapidly coming to the fore in the entire medical profession. I fully concur and subscribe to the principle that where medical problems can be avoided this is a far preferable solution to treating the illness after it has occurred. The pending legislation carries with it such inevitable disastrous

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psychiatric consequences that I am here today to urge this Committee to consider means to prevent these devastating psychiatric occurrences from taking place. From a psychiatric standpoint, what is wrong with the proposed legislation is that it represents a government-imposed deportation of over 6,000 Navajos (as well as a few Hopis) and in addition, represents government-imposed livestock reduction on the Navajos.

As a psychiatrist I am acutely aware that in dealing with Indians generally we are dealing with that ethnic group in the Nation which has the highest rate of mental illness, as well as suicide. These psychiatric problems can be directly traced to the removal and destruction of traditional ways of life of the various Indian Tribes in the country. With respect to the Navajo in particular, three incidents represent specific instances of governmental action which had disastrous psychiatric effects upon the people. The first of these was the forced removal to Ft. Sumner by Kit Carson and the Army in 1864. The second of these was the forced removal of Navajo children from their parents to be placed in missions and government schools; and, the third was the disastrous livestock reduction program of the 1930s and '40's. It is particularly important to note that from a psychiatric standpoint it is irrelevant whether or not the government is acting in what it considers to be a benevolent pattern as at least it could be argued with respect to education and livestock reduction, or whether or not the government was acting strictly in its own interest, as was certainly the case with the Navajo removal to Ft. Sumner.

Each of these instances of forced governmental activity taken by the white government in Washington on the Navajo People had three

basic effects: (a) hostility toward the white people and government; (b) destruction of Indian self-reliance, and (c) alienation from the Indian culture. These forced governmental programs rekindle and reinforce a pre-existing suspicion and hostility toward white people and the white government, and the Bureau of Indian Affairs, all of which represented the white culture by which Navajos were and are surrounded. When each of these programs were put into effect whatever rapprochement had taken place between the anglo and Navajo culture was lost. At times the Navajo reaction took the form of over hostility. Much more frequently it manifested itself by withdrawal by the Navjos from the dominant white culture, and a reinforcement of their pre-existing ideas that white people are exploitative, not understanding, and basically hostile to the Navajos.

The second effect of these instances of government action against the Navajos, and perhaps the most unfortunate effect of these instances, was the creation and reinforcement of Navajo powerlessness. The Navajo concluded that they were not really masters of their own fate and that they were not, and would not be permitted to make decisions on their own on a voluntary basis, but rather that decisions would be imposed upon them by people who were not involved in their culture, or who misunderstood it, their traditions, their way of life, and their way of thinking. Each time the government would relent from such a destructive policy the self-reliance would begin to build up again, but each time there was an example of government imposition upon the Navajos, the self-reliance was destroyed.

The third effect of these instances of governmental imposition upon the Navajos was an alienation of the Navajos from their own

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culture. This Navajo traditional land-based culture of sheepherding, deriving their livelihood from the meat of the sheep, the wool of the sheep, making blankets, rugs and other items provided them with a means of being self-reliant, and independent, and fulfilled within their traditional culture. When, for example, the government forced livestock reduction upon the Navajos, large numbers of them reverted to handouts and were forced to rely on welfare. Others were forced to leave the Reservation and became the nomadic fringe inhabitants of cities such as Gallup, Flagstaff, Phoenix, Los Angeles, etc. In many instances they were not, however, successful and adapted inhabitants of these cities; rather, many of them turned to alcohol, drugs, prostitution and other sociopathic behavior. In my opinion this sociopathic behavior was a direct result of the alienation from their culture.

It is important to remember that the Navajo carries around with him the ethnic history of his people. This is to say that the Navajo of today carries around with him the Long Walk, the livestock reduction, as well as all the other instances of government-imposed decisions. A period of government understanding and attempts to revive Indian culture may cause the Indian, and the Navajo, to function well from a psychological standpoint, but, especially because the Indian concept of time differs from that of the anglo concept of time, from a psychological standpoint the Long Walk, the forced taking of children to schools, and livestock reduction happened not only to the people involved, who are now historical figures, but as well to all present-day Navajos who are aware, either consciously or sub-consciously of their tradition and history. Thus, livestock

reduction, for example, did not operate on the Navajo mind as an isolated incident, rather it brought back the whole history of unsatisfactory dealings between the Anglo government and the Navajo.

This Bill, which will involve the deportation of over 6,000 Navajos, as well as the virtual elimination of Navajo flocks in the Joint-Use Area, thus does not stand alone. It stands as part of the history of dealing with the Navajo by the Federal government, which has been destructive of the Navajo. I hope that you will forgive me for spending so much time on past history, but as a psychiatrist in my practice with Indians, I have seen how important past government dealings with Indians are in creating and enlarging the problems which these Indians have in dealing with the society of today. Thus, I hope that you can consider this legislation in light of its historical antecedents. Dealing with the Indian mind in general, and the Navajo mind, in particular, it is extremely important to remember that you are not writing upon a clean slate--but upon a slate which is already imprinted with the bases for hostility, powerlessness and alienation.

In addition, it is important to realize the role of land and livestock in the Navajo way of life. The average white American moves some four times in his lifetime and his attachment to the land is likely to be minimal. This is especially true in the Southwest where the rate of moving far exceeds that for example in New England. To the typical Anglo, land is in the nature of other material items, such as an automobile or stocks and bonds. To the Indian, and more particularly to the Navajo, land represents something which is sacred--something which does not have a value in terms of dollars and cents. Similarly, while livestock are bought and sold, the Navajo are

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basically not a materialistic or capitalistic people. They do not consider land and sheep as personal possessions, but rather the means by which they make their livelihood are considered God-given gifts. The Greeks received olives from the Gods and most Indian tribes received maize (corn) from the Gods. In this way the Navajo have been given the land between the Four Sacred Mountains and they have been given the sheep, not from the Spaniards from whom the sheep have come historically, but rather from the Gods. It is difficult for us Anglos to appreciate the manner in which Navajos look upon land and livestock. The best analogy I can think of is to compare it with the way we look upon water or air, in the sense of something that belongs to all of us.

One example of the way in which the Navajo is tied to the land is shown by the way the umbilical cord is treated by traditional Navajos: In the case of a boy, his umbilical cord is buried in the sheep corral or the cornfield so as to increase the flock or the crop and to make him a good shepherd and a good worker. There is an old Navajo saying, "If the cord is lost, the boy runs around and is no good." If the child is a girl her cord may be buried in the corral for the same purpose as was the boys, or it may be buried on the West side of the Hogan under the loom to make her a good housekeeper and weaver. Thus, even from birth the Navajo is tied to the land.

Thus, to the Navajo, the land and the livestock represent not merely material assets but things that are sacred and that nurture the people. And yet the Bill before this Committee is one that would deport Navajo people some 6,00 or more of them, from their native land never to return. It is important to realize that this

is land that the Navajo have lived on for their entire lives, and that even young Navajos who are raised in the tradition will share the same ethnic memory. Thus, the forced evacuation - the forced deportation from this land - will have these bad psychiatric effects that I have already referred to. What is worse, is that it will not affect only the 6,000 odd people in the area (and it is difficult to talk "only" of 6,00 human beings), rather this deportation will affect the entire tribe because to the extent that the tribe looks on itself as a unit and certainly vis-a-vis the white anglo culture the tribe does look on itself as a unit, the bad effect will extend to the entire tribe.

It has been argued that the Hopi, because of the court decision in 1962 and the fact that they have not been on the land, would suffer equal psychological and psychiatric problems. This is simply not the case. It may very well be true that because the Hopis have hoped to gain access and possession of the lands now under discussion and to the extent that these hopes have not been fulfilled there would be frustration. From a psychiatric standpoint, however, the results caused by frustration would be far less than those caused by deprivation and deportation of the Navajos. We must keep in mind that at worst the Hopis have frustrated hope for which an alternative solution can be found. To the over 6,000 Navajos, they have the land with all its meaning to them and are now being faced with the very real and horrible possibility of being deported from this land, never to return. Let me say for the record that I do not believe that any Hopis should be deported or evacuated either, but the point is that as I understand this legislation no one is arguing

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that the Hopis should be deported or evacuated from their Mesas. Both the psychiatry and anthropology of the Hopi people establish that they are basically an agricultural urban type people dwelling in an urban type village on the Mesas. The Mesas are terribly important to the Hopi People--as important as the Navajo land between the mountains is to the Navajo People. But the Hopi Mesas are not in question. What is in question is land which has been lived on by the Navajo for many, many years and what is in question is a proposal to deport the Navajo from these lands. As a psychiatrist I can assure this Committee that the potential damage caused by Hopi frustration is of nowhere near the order of the inevitable psychological and psychiatric damage which will result should this Bill be passed and forced evacuation and forced livestock reduction take place.

The possibility of hostility between the parties should this Bill be passed is a very real one. As a doctor I look forward to the avoidance of bloodshed and yet given the attachment of the Navajo to the land I could not assure this Committee that hostilities would not take place. Contrary to the image apparently created in the press, the Navajo as well as the Hopi are not an aggressive people. Certainly over a hundred years ago, and in times before that the Navajo were an aggressive, war-like people. But since Ft. Sumner the Navajo are a peaceful people just as are the Hopi. My treatment of the Navajo as well as the Hopi has clearly revealed this. Unfortunately, the stirring up of hostility between the Tribes has caused some change in these pre-existing conditions. I honestly believe that had there been no litigation and no legislation that

the Navajo and Hopi, together, could have worked out the problem which confronted them.

I would like to return to an area I touched on before. That is the forced nature of this legislation. From a psychological standpoint the best agreements are one which have been reached between the actual parties concerned. They are the agreements most likely to be kept and they are the agreements which provide the least problems, both in enforcement and in resultant side effects. It is when decisions are forced from outside that problems result and I would add, that the problems accrue not only to those who are harmed, but also to those who seemingly benefit from the outside intervention. I have examined the Navajo proposal, the alternatives to the present Bill.

While I believe that it would have been unquestionably workable in a setting before the outside hostilities had come about, I still feel that this proposal has merit and that this proposal can work. It certainly is far better than forced deportation and forced reductio

The question of relocation has come up. In the course of my practice I have had the opportunity to work with patients who were relocated under BIA voluntary relocation projects. These projects, particularly with respect to the Navajo, were an outright failure. The tie of the Navajo to the land, which I have already discussed, prevents this relocation from being successful. In fact, if I were asked to characterize it I would have to characterize it as disastrous The same problems which have resulted from forced government relocatio have also resulted, in most cases, where relocation was on a "voluntary" basis. The same alienation, the same sociopathic problems, the same unproductiveness on the part of the relocated people has plagued us.

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I would point out that if it were conceivable to relocate or to give additional lands, if there is a genuine Hopi need and interest for additional land, that the land should be provided elsewhere to the Hopi. Inasmuch as the Hopi are not presently living in the Joint-Use Area or in the 1934 area with the exception of the Moenkopi settlement (which I do not feel should be disturbed) the Hopi, because they are not presently living on the land and presently do not have an attachment, should be given whatever acreage this Committee deems fair in some other area.

It has been said that the Navajo are an adaptive people and that they should be able to adapt to this Bill. This is a misreading, both of the Navajo mind and the Navajo history. It is true the Navajo have been adaptive--they have taken the sheep, the horse, the use of silver and various other devices and techniques--but where the adaptation has been successful, it has been on the Navajo's own terms and it has been a decision that has come from the Navajo rather than one which has been imposed on the Navajo. It is important that the Navajo be given an opportunity to participate in the decision-making process. That is why the Navajo alternative has merit, and should be favorably considered by this Committee. It provides this participation which is so important. I am not arguing that the present Bill could not be enforced, but from a psychiatric standpoint the results of such an imposition would be disastrous. I have already dealt with these psychiatric problems. It would certainly lead to sociopathic behavior, alcoholoism, prostitution, increased use of drugs and various other behavior, both destructive to the individual, as well as society at large. I cannot believe that in

1972 the United States government is willing to permit these kinds of events to take place. I believe I am closer to the Hopi people in my anthropological and psychiatrical knowledge than I have ever been with the Navajos. I sympathize very greatly with them. I will say their traditional way of life has been threatened much, much less by anything the government has done than the traditional way of life of the Navajos. When we look at our gutters in our cities and in the ghettos, we don't see that many Hopis. We do see many Navajos. To a large extent the Hopis have been able to remain on their Reservation and live in their traditional way. They have not been deprived of this way of life in the way that thousands of Navajos have been deprived. I would hate to see bloodshed arise out of this Bill, but in the past bloodshed has arisen when the government has moved in and intervened.

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Senator FANNIN. The next witness.

Mr. VLASSIS. Wauneka.

Senator FANNIN. Dr. Wauneka, we want to apologize for overlooking you and not having you on the list of witnesses. We are pleased to hear from you.

STATEMENT OF DR. ANNIE D. WAUNEKA

Dr. WAUNEKA. Thank you, Senator Fannin. I would read my statement. My statement begins in this manner, it has some connection with the doctor's statement. The serious effects on Navahos families if they are forced to move from their homes in the Navahos-Hopi joint-use area, September 1972.

Mr. Chairman and other distinguished members of the U.S. committee:

As many of you know, most of my life has been spent in health work for the Navaho people and other Indian people in our country. In doing this work, I have learned much about the health problems of Indian people and the various things that are a part of Indian life on a reservation that contribute to their health problems.

Naturally when Representative Sam Steiger introduced his bill, and then what followed in the Congress of the United States, I could see what would happen to Indian people who have lived on the land in question for hundreds of years; I became deeply concerned, not only because of the serious economic effects on these families but mostly because of more serious effects such a move would have on their physical and mental health.

I know that you know that Indian people have economic and health levels much below those levels found in the general population of the United States, and, therefore, any move by the Congress of the United States that would make these levels worse has your grave concern.

I have come here today to present you with facts that I have asked to be acquired. I am sure you will agree those facts show clearly that to forceably remove Navaho Indians from the land their forefathers have lived, died, and are buried on, will have seriously damaging emotional, cultural, and social consequences.

In July of this year, a survey was started to obtain an objective evaluation of how the heads of Indian families and members of their families located within the Steiger bill area would respond if they were forced to move. A representative sample of members of heads of families were interviewed by Indian Mental Health Workers who could speak both the Indian and English languages.

At this point, Mr. Chairman, I would like to introduce the person who is responsible for the survey, that assistant director of our mental health program, Mrs. Eloise DeGroat.

Senator FANNIN. Thank you.

Dr. WAUNEKA. These fieldworkers interviewed 184 families and recorded the response of the people on a questionnaire. Copies of each individual family interview, amounting to 2,024 family members, I have here with me and I will leave copies with you.

For the next few minutes, I will try to present to you the highlights of these interviews, but for you to get the complete story you must read them all.

The questions the people were asked were simple and direct:

Question 1. How many members of your family live here? The survey showed the average family had 11 members.

Question 2. How long has your family occupied this land? Average years the 184 families occupied land was 55 to 60 years.

Many stated that it was since their forefathers returned from Fort Sumner over 102 years ago, and some never went to Fort Sumner. These were Navahos who came back after signing of the treaty of 1868.

Question 3. Do you own livestock? (a) How many? (b) What kind?

The results showed the average family of the 184 surveyed owned 61 sheep, 11 goats, 8 cattle, 3 horses.

Question 4. Do you know what the Steiger bill is?

Of the 184 families, 69 percent of 127 families said they know what the Steiger bill is.

Question 5. If the Government asks you and your family to leave this land, what will you do: (a) Move? (b) Stay? (c) Fight? (d) Don't know?

The answers to this question are full of deep emotion. The Navaho people have strong ties to the land on which their forefathers have lived and died, and up to now they have been able to live off and deeply love their land and they do not want to move. One example of their feelings is this answer:

> All my relatives and I talk of defending our land if need be. We will not move. Our livestock will suffer and we will die of lonesimy. This land is too much a part of me. I live off her and she is my mind. The land makes me think of what to do and when.

Now, to go on to the other five questions briefly:

Question 6. Do you think that the Government will ever ask you to move?

In answer to this question, 67 percent of the families said no, 15 percent said yes, 16 percent said don't know, and 2 percent said might.

Question 7. Are there ceremonial or sacred sites of extreme importance located within the disputed area?

One hundred percent of the 184 families replied, yes to this question.

Question 8. If you had to move where will you go?

Eighty-four percent of the families had nowhere to go, 6 percent had relatives to go to, 10 percent did not know.

Question 9. Do you think the Hopis have a justified complaint?

Eighty-one percent answered no, 19 percent did not know, 0 percent answered yes. Many voiced the opinion that non-Indians were causing the problems.

Question 10. What do you think could be done about the disputed land problem?

Seventy-three families feel this should be solved through negotiations between the tribal leaders of the two tribes and/or the people.

In reading each response, it is obvious 100 percent of the people feel the Steiger bill should be defeated.

In closing I would like to bring two other important facts to your attention:

First, on August 22, 1972, a review of files of known Navaho servicemen who fought for their country in Vietnam and who live, or whose families who survive them, live in the disputed area, was compiled. This list is attached and numbers 160. There are probably

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many others whose names are not on file. Seven of the known 160 were killed in action in Vietnam, and their survivors live in the disputed area.

The list of these is attached for your reference.

Second, attached is a letter to me dated July 27, 1972, from Robert L. Bergman, M.D., chief, mental health program, Indian health service, which gives a psychiatrist's evaluation of the psychological effects on families if they are forced to move from their homes in the joint use area. I would be glad to give this letter to you if you want me to and submit a copy. In brief, it says the ties of Navaho people to their land and their stock are much stronger than similar ties among non-Indian Americans. A traditional Navaho man's sense of self is deeply involved in his ability to support himself and his family with his livestock. A loss of livestock and land by such a person is a blow to identity and self-esteem. Some of the likely effects are family disorganization and increased rates of depression, suicidal attempts, and violent crime.

Mr. Chairman, I hope you read this affidavit that we submit to you, and in fact I have one here that I would like to leave for the record purpose, and I hope that it is the one you read, because it contains the questionnaires, which I think all of you should read.

Senator FANNIN. The letters you referred to will be made available to the committee.

Dr. WAUNEKA. Thank you, Mr. Chairman, I am quite sure and I am pleading with you that every Member of the Senate makes some study of this very crucial and important matter.

This does not mean, Mr. Chairman, that because the Congress people in Washington are thousands of miles way, it seems to me they feel this not their problem, they are not near to it, and I don't think you should have this feeling and I think you should discuss it carefully and thoroughly. We are the ones that will live with whatever decision is made between the Navaho and Hopi Tribes.

I am sorry to say the attorney for the Hopi Tribe, Mr. Boyden, is flooded with hatred, but we intend to live and rub shoulders with the Hopis so long as we are there. So make a careful decision now.

I thank you for allowing me to bring to your attention the kinds of facts I am sure you agree you need to know in making the great decision you are faced with concerning the Steiger bill.

I have spoken to you from my heart and with a true tongue.

Thank you.

Senator FANNIN. Thank you, and the letter you referred to from Dr. Bergman will be made a part of the record. I know the committee wants to be fair and equitable and certainly all of the information you have given us will be taken into consideration.

(The letter referred to follows:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
PUBLIC HEALTH SERVICE,
July 27, 1972.

From: Mental Health Branch, Navajo Area Indian Health Service.
Subject: Status of Families in the Joint Use Area.
To: Mrs. Annie D. Wauneka, Chairman, Health Committee, Navajo Tribal Council.

On July 24, 1972, Mrs. Annie D. Wauneka, Chairman of the Health Committee of the Navajo Tribal Council requested the Mental Health Branch of the Navajo Area Indian Health Service to study the probable psychological effects on families

if they are forced to move from their homes in the joint use area. This is our first report.

Although in the distant past the Navajo people were semi-nomadic, they have now been settled for many generations. Each family not only has land recognized as its own, for themselves and their livestock, but also each is a part of an intricate web of familial, religious, economic and social relationship within the neighborhood in which they live. Without the land and without the relationship with immediate neighbors, each family's way of life would be impossible. In the course of our work with Navajo people, it has often been difficult for the non-Indian members of our staff to grasp the strength and importance of the Navajo Peoples' tie to their land. It is necessary to know that most traditional families have been living in the same place beyond the memory of any living person and that one's place on the physical earth forms a part of the individual's identity to the same extent that a non-Indians profession or even nationality does. A change in a traditional Navajo's place is a change in his most basic self. A voluntary move is difficult, a forced move would be seriously damaging.

Our work and the work of other community mental health programs convinces us that mental health in a group is enhanced by stability and autonomy. Where people are in a state of change because of economic, social, or political pressure, on the other hand, alcoholism, suicide, violence, family disorganization, and physical illness increase. In individual cases we have treated, the loss of livestock or land has often been the first step in the disintegration of a family with the result that formerly self-respecting and self-sufficient people slide into the life of alcoholic drifters in the towns bordering the reservation.

The suicide rate for Indians of all tribes is significantly greater than for the population of the United States as a whole. Though the Navajos are approximately one quarter of all Indians, the overall high suicide rate is not due to them. It is due to the exceptionally high rates among some tribes, and the high rates of suicide appear to be correlated with destruction of traditional ways of life. It seems a convincing hypothesis that the Navajo's relatively low suicide rate is due to the fact that there have been less serious breaks in the continuity of their development than there have been in the history of other tribes.

The two most serious such breaks in Navajo history were the imprisonment in Fort Sumner, and stock reduction. Both events brought about great suffering and did damage that has lasted to this day. Thousands died on the way to Fort Sumner and while there, and these deaths certainly were due to despair and impotent rage as well as to infection and privation. Stock reduction whatever the merits of the case for its necessity was experienced by those whose stock was reduced, as a usurpation. They took no part in the decision and felt themselves to be the victims of implacable forces beyond their control. Depression, violence, alcoholism and a widespread apathetic loss of purpose were the results, only now being overcome.

It has been noted among other people that moves are particularly hard on the elderly. Where buildings have been condemned for civic projects or patients moved from a familiar to an unfamiliar nursing home, one of the effects has been a startling increase in the death rate among old people. A Navajo example of a related occurrence took place during the blizzard of December, 1967. An 85 year old woman evacuated from her snowbound hogan and taken by helicopter to a clinic for treatment of her upper respiratory infection was made so anxious by her strange surroundings that she felt impelled to return home as soon as she was better. Despite the terrible weather and the deep snow, she set out to walk home and died in the attempt. Some of the old people in the area under dispute have told us that they will die rather than move and there may be more truth to their statements than even they realize.

Some of the young men whom we have interviewed have talked of fighting to stay where they are. It is impossible to predict exactly what will happen, but though large-scale violent resistance is unlikely, an increase in various other forms of violent behavior is almost inevitable. Forcing the break up of a community increases the level of frustration, anxiety and anger, at the same time that it breaks down ordinary means of the social control and healthy channelling of anger. Though the original target of the rage may be remote and inaccessible, it will be discharged in some way just the same. Depression, suicide attempts, and violent crime are some of the paths that will be taken.

These conclusions are based on our knowledge of the situation through the ordinary activities of the mental health branch, and on interviews of people threatened with the possible move. Our survey and interviews will continue, but we will conclude this first report with a few statements from our early interviews.

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No definite conclusions can be based on these statements, but they give the flavor of the situation.

A middle aged man: "This is where we've been all our lives and where our fathers and grandfathers were born. This is where our grandfathers are buried. It is impossible to move. We won't. I don't want to die anywhere else. I'll die here."

A 25 year old man: "In the old days, when the white man tried to push us Indians out of someplace, the men would stick a spear into the ground and that meant, 'this is where I'll stay, even if I died here.' That's the way I feel about it. I don't think I'll move. We fought a long way away from here, a lot of us; we even went across the ocean and fought because somebody was trying to take some land from some people we didn't even know. We did that. This is our land. We'll fight for it too."

A 63 year old woman: "I can see what it will be like if they push us out. We hear about these disasters—tornadoes, hurricanes, floods. I see pictures in the paper: homes wiped out, people without anything. That's what this will be like—a disaster like that. Our homes will be wiped out and even our land. We won't have anything. It's hard living already and here we are, we're going to have to start over again from the very beginning."

Senator FANNIN. Do you have further witnesses?

Mr. VLASSIS. We have no further witnesses. We have some statements and exhibits we would like to submit, however.

Senator FANNIN. You will submit them and they will be made a part of the record.

Mr. VLASSIS. The minutes of the meeting of the Navaho Tribe and Hopi Tribe, dated July 7, 1972, which indicates that the council for both tribes and chairman for both tribes agree to the establishment of a joint administration of three Navaho and three Hopis to handle the administration of the 1882 area on a temporary basis.

I also enclose as an additional exhibit, which was agreed to, the plan, which was agreed to on July 7, and repudiated on July 10, by the Hopis.

In addition to that I would like to submit a statement of Elizabeth Beyal, director of the Tribal Work Experience for the Navaho Tribe, dated September 15, 1972, which deals with the economic impact of the Steiger bill with respect to the Navaho Reservation which indicates in summary form that the damage to the tribe alone is the number in the bill, $16 million with respect to the improvement and damage to the economy. That does not have anything to do with moving expenses or the cost of acquisition of additional lands.

In addition to that you asked the question earlier of Vice-Chairman Skeet with respect——

Senator FANNIN. I had several questions.

Mr. VLASSIS. This was in connection with the amount of welfare on the reservation. I have two separate figures for the reservation as a whole. It appears to be 24.2 out of a total approximation of population of 130,000 for the 1882 area, the sum is 31.1 percent on welfare, out of the total population estimated at 11,173 people. Those figures should be taken into consideration with due regard to the fact they are supplemental to the efforts of the people trying to make a living rather than a substitute for making a living.

Senator FANNIN. The documents will be made a part of the record.

(The material submitted by Mr. Vlassis is in the appendix.)

Senator FANNIN. I would like to ask some questions now. The question I have for Mr. Skeets, do you feel—I will ask the same question of you or the vice chairman. Perhaps I should address the vice chairman, since I did address this to the chairman before this morning.

Do you feel there is any hope of the Hopi and Navaho people working out a negotiated settlement to this land dispute?

Mr. SKEET. Mr. Chairman, yes, I do feel thet further negotiations can be had between the two tribes.

Senator FANNIN. It is your opinion that something can be worked out that could be satisfactory to both sides?

Mr. SKEET. Yes.

Senator FANNIN. A question for the legal counsel for the Navaho Tribe. I will ask you, Mr. Vlassis, if you will summarize for the committee the most recent decision of the U.S. district court concerning the Navaho-Hopi dispute?

Mr. VLASSIS. The judgment has ordered, on September 30, a Saturday, which is rather unusual, that the Hopi Tribe will be entitled to an order of the court with respect to a writ of assistance to gain some use in the 1882 area and he is to submit a plan at that time. That is the actual holding. The balance of the decision are findings of fact.

Senator FANNIN. Thank you, Mr. Vlassis. Do you see any other alternative sort of physical partition as a solution to the dispute?

Mr. VLASSIS. Yes, first I would like to say that I don't think that negotiation is fruitful as long as this bill is pending in Congress, because we are unable to negotiate as evidenced by the agreement that we made which was immediately repudiated a few days later. I think in the absence of pending legislation that it will be quite possible to negotiate a settlement along the line which we suggested in the bill we submitted, of making an unequal division of the wealth beneath the land in order for us to keep the surface of the land or alternatively, and probably much cheaper in the long run, would be to provide a sum of money to compensate the Hopis for their interest in the land and allow all of these red dots and green dots to stay where they have been for generations.

Senator FANNIN. Is this recommendation made in accordance with the statement that was made earlier in the testimony by Mr. Richard Schifter?

Mr. VLASSIS. I think so.

Senator FANNIN. What impact has the introduction of H.R. 11128 had on the Navaho Tribe's recent willingness to negotiate a settlement of the Navaho-Hopi land dispute?

Mr. VLASSIS. I think the introduction of the bill and the change of administration of the Navaho Tribe have come at approximately the same, so it is extremely difficult to conclude whether the bill prompted the negotiation or whether it was the change in the administration of the Navaho Tribe. I suspect a little of both.

Senator FANNIN. Several witnesses contend that the Hopi have failed to effectively utilize the 1882 reservation land. Do you feel that the Hopi have been given equal opportunity by the Navaho and Federal Government to utilize such land?

Mr. VLASSIS. I think in the past that was not true. But I think since Chairman MacDonald was inaugurated they have been offered the opportunity. For instance I have been present at conferences where the question is asked by a Hopi as to how is it we are able to obtain a grazing right in the 1882 area. The answer by Chairman MacDonald on every occasion and by Vice Chairman Skeet, has been to the effect make an application to the Grzaing Committee just as

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any Navaho would. No such application, as far as I know, has ever been made.

Senator FANNIN. I think the answer by one of the departmental witnesses was that they had sent a telegram to them; the wording of the telegram effected their utilization of this procedure.

Mr. VLASSIS I think that is correct. I think the Government did send a telegram to that effect which certainly to some degree must have intimated that to the Hopi Tribe.

Senator FANNIN. Will you give a statement to the committee of the extent that the Navaho people in the disputed area depend on livestock for their livelihood?

Mr. VLASSIS. I would guess 75 percent.

Senator FANNIN. Mr. Chairman, would you agree with that?

Mr. SKEET. Yes.

Senator FANNIN. Seventy-five percent depend on their livelihood?

Mr. VLASSIS. I am saying 75 percent dependence; it may be a combination of welfare and other things.

Senator FANNIN. Thank you very much. Do you have any further testimony or information you would like to give this committee. We have just about used up the same amount of time that we did this morning on the Hopis. I was gone for about 10 minutes and we have now had about 2 hours of testimony.

Mr. VLASSIS. We have nothing further.

Senator FANNIN. Thank you very much.

The record will be kept open for 7 days for further information to be submitted.

Thank you all for being here with us today. The meeting is adjourned.

(Whereupon, at 3:10 p.m., the hearing was concluded.)

APPENDIX

(Under authority previously granted, the following statements and communications were ordered printed:)

STATEMENT OF HON. JOSEPH M. MONTOYA, A U.S. SENATOR FROM THE STATE OF NEW MEXICO

Mr. Chairman: The Senate Committee on Interior and Insular Affairs is now in the process of considering H.R. 11128, legislation which attempts to resolve a long-standing dispute between Navajo and Hopi Indians over reservation land in northeastern Arizona. The controversy surrounding these lands is deeply rooted in history. Furthermore, the policies and practices of the U.S. Government have done more to exacerbate this problem than to resolve it. After two days of hearings regarding this matter, I think that it is readily apparent that any attempt to resolve this controversy which ignores the complex cultural, economic, ecological, and legal factors involved is bound to fail.

Although the supporters of H.R. 11128 state that this legislation will provide a final, equitable solution to the Navajo-Hopi land dispute, it is my opinion that the many obvious flaws in this bill provide sufficient justification for this Committee to reject H.R. 11128 in its present form.

Basically, H.R. 11128 seeks to implement a 1962 decision of the U.S. District Court of Arizona (*Healing* vs. *Jones*) which stated that the Hopi and Navajo Indians share joint, undivided, and equal interest in and to all of the reservation land created by President Chester A. Arthur's executive order of 1882. It also attempts to resolve another Navajo-Hopi dispute over land located within the area added to the Navajo reservation by the Act of June 14, 1934 (48 Stat. 960).

The Hopi claim that the only way they can actually enjoy their joint, undivided, and equal interest in the 1882 and 1934 areas is to partition these lands among the two tribes so that each is defined by clear boundaries. Navajos residing on land set aside for the Hopi would be required to move off; Hopis residing on Navajo land would also be forced to move elsewhere. Thus relocated, each tribe could pursue its own interests free of molestation from the other. Unfortunately, this "neat" solution is fraught with diffiiculties. Most of these have been discussed in testimony before this Committee, but I would like to review them briefly here.

First, H.R. 11128 would require the forced removal of thousands of Navajo Indians from their present homesites to an as yet unspecified area. Such removal closely parallels the relocation of Japanese-American citizens during the Second World War, an action which has been universally condemned as unduly harsh and inhumane. You simply cannot uproot a group of people, as this bill contemplates, without doing enormous psychological and social damage to those involved. These consequences seem to have been entirely overlooked or summarily discounted by the authors of H.R. 11128. In fact, no mention of them is even made in the House Report on the bill. Certainly in this day and age, any proposal to relocate such a large minority group should be more carefully thought out.

It should also be remembered that in the 1860's, the U.S. Government interned a large portion of the Navajo tribe at Fort Sumner, New Mexico in an effort to "civilize" the tribe and put an end to Navajo raids on other Indians and settlers in the Southwest. This action has yet to be forgotten by the Navajo. The forced removal of yet another portion of this tribe would re-awaken the painful memory of the Fort Sumner experience and make the average Navajo even more suspicious of the government and its programs.

Furthermore, legal counsel for the Navajo has indicated that the removal provision of H.R. 11128 might be challenged as unconstitutional on the grounds of violation of due process and invidious discrimination. It would certainly be the height of folly for this Committee to approve legislation which could easily be struck down by the court.

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Second, although H.R. 11128 has been proclaimed as the final solution to the Navajo-Hopi dispute, several persons have observed that the passage of this bill would not eliminate tension between the two tribes but would rather increase it. The Navajo tribe has had little opportunity to participate in the drafting of this legislation which so drastically affect them Wilson Skeet, Vice Chairman of the Navajo Tribal Council, asserts that the partition of land provided for in the bill is grossly unfair, especially in terms of range resources. The Navajo are also extremely upset about the proposed partition of the 1934 Navajo Reservation area. Any controversy which is settled without the participation and consensus of both parties in the dispute is bound to create ill feeling and resentment among members of the excluded party. Thus, Navajo-Hopi relations may deteriorate even further if H.R. 11128 is passed.

Third, the cost of H.R. 11128 has been grossly underestimated. Section 11 of the bill provides $16 million to pay the moving expenses of thousands of Navajos, to compensate them for improvements they made on the land from which they are to be evicted, and to provide them with land elsewhere. The Navajo's very able Washington counsel, Mr. Richard Schifter, has demolished this cost estimate in his testimony before the Committee. Schifter conservatively estimated that an expenditure of $40 million would be required to finance the removal of these Indians to comparable lands elsewhere. He also indicated that several claims will probably be brought against the government by the Navajo Tribal Council for lands summarily taken from the tribe if this legislation is passed.

The costs do not stop here. Assuming that the affected Navaho are all relocated in one area, the Bureau of Indian Affairs would be required to furnish them with new schools, health facilities, roads, and other improvements at an as yet undetermined cost. Additionally, Harrison Loesch, Assistant Secretary of the Interior for Public Land Management has told this Committee that it may be necessary to fence the new Hopi reservation created by H.R. 11128 to prevent future incidents of livestock trespass. This fence will cost at least $1 million and probably more. In view of these facts, I am certain that this Committee will wish to make a careful review of the overt and hidden costs H.R. 11128 will entail.

Fourth, information presented by the Department of Interior before this Committee to justify their support of this legislation has been appalling by poor, given the extremely complex nature of this problem. I have just cited the Department's vague and inadequate cost estimates. I would now like to point out some additional examples of non-information supplied by Interior to guide this Committee in its decision:

1. We do not know exactly how many Indians live in the joint use areas of the 1882 and 1934 reservations, nor do we have any of the necessary socio-economic data required to make intelligent decisions about their fate: sex, age, education level, sources of income, family size, occupation, number of livestock, language, literacy, years of residence, etc.
2. It has not been determined where these Indians can be adequately resettled if they are required to move.
3. We do not know how many Hopi actively support the partition scheme of H.R. 11128. Clarence Hamilton, Hopi Tribal Chairman, was elected in November 1969 in an election in which only 30% of eligible Hopi voters participated. Tribal factions are known to exist among the Hopi. Some Hopi do not even recognize the existing tribal government structure and hence ignore its rulings. A complete survey should be made by BIA personnel to determine the views of every adult Hopi on the partition scheme.
4. Data on actual incidents of aggression between Navaho and Hopi herdsmen has not been presented, yet such information should be readily available from field agencies of the BIA. Why have we not heard about these incidents from field agents?
5. No evidence has been submitted that the land allocated to the Hopi and Navaho is of comparable value, either in range resources, minerals, or any combination thereof. In fact, no estimates have been given regarding the mineral value of the disputed lands at all. Do such estimates exist?
6. The partitioning of lands in the 1934 Navaho Reservation area between Hopi and Navaho has not been justified by any judicial or quasi-judicial determination.
7. The criteria by which land allocations were made in the bill have not been adequately explained.

These examples of non-information, along with other inconsistencies in hearing testimony, clearly indicate how poorly researched H.R. 11128 has been. Frankly,

I do not see how the Senate Interior and Insular Affairs Committee can even seriously consider this legislation with so much vital data missing.

Mr. Chairman, we all recognize that the U.S. Government's role in the Navajo-Hopi land dispute has been extremely shoddy. Over the years, both the executive and legislative branches of government have failed to squarely face up to this problem and to act intelligently to solve it. It now seems that Congress recognizes that we can no longer run away from the problem. We should therefore move with all possible speed to ensure that this controversy is resolved once and for all, and that both parties participate in the settlement process. It may be that neither tribe will be particularly happy with the final settlement, given the passions which surround this matter. Nevertheless, it is incumbent that the two tribes reach a settlement so that their energies may be directed toward more positive pursuits.

It has been charged that the Navajo have not been willing to negotiate a settlement, that they have remained adamant in their refusal to allow Hopis to peacefully enjoy their rights in the joint use area of the 1882 reservation-right which were established by the U.S. District Court of Arizona in 1962 (*Healing* vs. *Jones*) and affirmed by the Supreme Court. I believe that the introduction of H.R. 11128 has made it clear to the Navajo that they must negotiate, or else be confronted with an imposed solution.

Unfortunately, the Hopi obviously have no incentive to negotiage a settlement as long as they believe H.R. 11128 has a chance of passage, because this bill is obviously more favorable to them than certain possible alternatives.

Although the District Court of Arizona has ruled that Navajo and Hopi have joint, undivided and equal interest in the joint-use area of the 1882 reservation, Congress has the power and responsibility to determine how the 1882 joint use area is specifically used and disposed of. Congress should now act forthrightly to ensure that a proper and lasting settlement is devised which both parties can live with. I have already indicated why I believe H.R. 11128 does not constitute such a solution. Given the many flaws of H.R. 11128, I urge this Committee to give serious consideration to the Navajo proposal that a Navajo-Hopi Boundary Commission be established for the purpose of resolving this dispute. Within a reasonable time limit, the Commission should be required to submit to both the Hopi and Navajo Tribal Councils, one or more proposals for the disposition of the disputed lands. If the two tribal councils cannot agree on a proposal, then the Commission would be required to make a final judgement by a majority vote

I believe that this is the only way to proceed, given the complexity of the problem at hand. Congress should not rush blindly ahead and attempt to solve this dispute on the basis of inadequate and contradictory information. Only a commission can adequately deal with all facets of the problem. It would be to this Committee's credit to establish such a body and thereby initiate a process leading to a just, final settlement of this controversy.

JULY 7, 1972.

MEETING BETWEEN THE NAVAJO TRIBE AND THE HOPI TRIBE

The following people attended the meeting between the Navajo and Hopi Tribes:

Assistant Secretary Harrison Loesch, Department of the Interior.
Mr. Irving Schwartz, Bureau of Indian Affairs.
George E. Halty, Navajo Tribe.
Donald Moses, Navajo Tribal Council.
Carl L. Todacheene, Navajo Tribal Council, Resources Committee.
Wilson C. Skeet, Navajo Tribe.
Peter MacDonald, Navajo Tribe Chairman.
George Vlassis, Navajo Tribe, Attorney.
Logan Koopee, Hopi Tribe.
John S. Boyden, Attorney, Hopi Tribe.
Clarence Hamilton, Hopi Tribe Chairman.

Secretary LOESCH. This is just an extremely informal meeting for a plan, for a plan, for the administration of the 1882 Executive Order. What we want is a general consensus. On June 5, 1972 I wrote to Clarence Hamilton and Peter MacDonald concerning the 1934 area. The freeze on that area has been bad for everybody concerned. Development should be allowed without to strict limitations in the areas of the 1934 area that are recognized to be Navajo and Hopi.

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I suggested that the freeze could be lifted and sent you a proposed map. The Navajos were asking to be allowed to develop in the Tuba City area and the Hopi Tribe in the Moencopi areas. The proposal is taking two areas, one for the Navajo Tribe and one for the Hopi Tribe and allowing developing. Peter, you were concerned about discrimination against Navajos that live in the proposed Hopi area. I would like to see if we cannot wind this up generally and set a consensus and move ahead on that. Agreeing that there are a few Navajos in the Moencopi area and recognizing concern that they be fairly treated, are you agreeable to allowing the Hopi Tribe to develop the area?

Mr. MacDonald. I have no disagreement.

Secretary Loesch. Clarence, do you have any objections to allowing free Navajo development.

Mr. Hamilton. I do have one objection regarding wells to be drilled. I think that both Tribes should agree on any wells that will be drilled.

Secretary Loesch. Suppose that we excepted from the agreement the drilling of new wells except by agreement by both tribes. Will it then be acceptable. All I am asking is for your view about this comparatively small part of the 1934 area, I think we are going to have to arrive at a solution.

Mr. Boyd. We don't want to appear to be reluctant. I have given this water business a lot of thought. The prospecting and drilling of wells cannot be done without the concession of both tribes. We think this will bring us closer together.

Mr. MacDonald. I personally would like to see development in these two areas where we know these areas are occupied. Because of the freeze, housing, etc. has not taken place. We would like to see this development. With the understanding that there are Navajos living in this area. If the rights of these people can be protected, I agree with the developing.

Secretary Loesch. Let me make it clear that it would be impossible to draw a line to take in all Navajos or all Hopis. I don't think that we are going to be moving people around. Consequently, a Navajo living in the Hopi area, why would he have any difficulty with the Hopi Tribe. Suppose a Hopi does live within the red line, would the Hopi Tribe have any reluctance in allowing him to do that. I was not proposing, by lifting the freeze for this particular area that it be nonexclusive or exclusive for any tribe. I don't see that leaving the freeze would have any bearing on it.

Mr. Boyden. If there was any building in the different areas, the consent of the tribes would be obtained.

Secretary Loesch. Let me ask Peter, would the Navajos be willing to accept this lifting of the freeze with the exception of the water development provision.

Mr. MacDonald. If that is required to make the agreement I am sure the Navajos will go along with it.

Secretary Loesch. Clarence, you are going to have a special meeting Monday. Would you find out about the lifting of the freeze. I will wait to hear from you. But, assuming that I get a favorable answer, I would propose to write an amendment to the Secretarial Order lifting the freeze in whole or in part and leave the freeze as it is for the rest of the area that it covers in the 1934. That is the way we will proceed on that. Lets turn to the 1882 area and talk about a plan for a plan. I don't look on our draft of June 16 as being perfect by any means. Does everyone agree that we are going to make no administrative progress until the 1882 area is removed from the standard way of administration that BIA handles it now. Do we accept the concept of a separate Agency for the area. Whether it would become permanent would depend on what happens in Congress and in court. We would look on it as a temporary situation. Are we agreed?

Mr. MacDonald. If this is the next step, it is sort of a formal body with which to work in this area. If its going to resolve the problems that we have in that area and hope that whatever we resolve will become a basis for a permanent solution to that area. It is important that all of the things that are happening in that area be given some kind of attention so that we don't injure one another.

Secretary Loesch. It is difficult to handle the thing in the fragmented way it is now. A separate agency, the boundaries of authority would be the 1882 area. A couple of weaknesses in the proposal. I think it is necessary to get a decision making mechanism lower than the Secretary. If you agree, and I take it you do, that we should set up a separate outfit for that area straight out of Washington. I propose that we have the administration out of the Commissioner's office. Lets go through the Plan of Operation-Joint Use Area paragraph by paragraph. The first paragraph sets up an advisory board to be established by the Commissioner. An advisory board to the BIA would be established by the Commissioner.

Mr. MacDonald. The joint use area is just one-half of the problem. The other half is District 6. My belief is that if you set this up you have taken out problems for this out of the joint use area and set this mechanism in its place to deal with District 6.

Secretary Loesch. There is not any argument that this District 6 is exclusive Hopi area. I don't think it should be included in a separate mechanism. The real problem in the joint use area is the over-grazing. We could arrange grazing districts inside that area. I am not talking about enforcing any Hopi rights to the surface of that area. I am trying to form a mechanism that will be able to address itself to the grazing problem in a realistic way.

Mr. MacDonald. What it does, this mechanism, is set-up to deal with the Navajos only. It doesn't have anything to do with the Hopis. If we are talking about this separate administration to deal with this area this might make sense.

Secretary Loesch. We have to recognize two things. First that District 6 is exclusive Hopi and two that the Hopis have rights of some nature that will be at some time determined by the courts. So, the two areas should not be administered under a single head. If there is a better way, fine.

Mr. MacDonald. How would this thing work when applied? The joint use is only one-half of the problem. I am talking about trespassing. If this group has authority to deal with the trespass problem, then it would have to tie-in with the District 6. I think that we should have a fence around District 6.

Secretary Loesch. We reduce grazing to the care and capacity of the disputed area.

Mr. MacDonald. You are not going to reduce trespassing problems unless you get rid of livestock.

Secretary Loesch. I am not ruling out the idea of a fence around District 6. As a matter of fact, the Hopis would not object to a fence unless they would not feel that because of the past history of District 6 they fear that a fence would be another means of limiting their rights to District 6. I am thinking that if we were able to get the real problem of grazing set, which is not trespassing but over-grazing, we probably would greatly reduce the trespassing problem.

Secretary Loesch. I don't think the final authority could be in the advisory board but in the Secretary for fencing. The right of the Hopis to District 6 has been determined. What has not been decided is how that right is going to be enforced.

Mr. Boyden. Fencing around District 6, if some assurance is give of the Hopi right in the District 6.

Secretary Loesch. Do you believe, that for openers, a fence would be suitable, granted the Hopis got all their rights? Say that you were not worried about the Hopis being fenced in.

Mr. Boyden. Yes.

Secretary Loesch. I do not believe, until we get this mechanism set-up to attack the problem, that there is a particular way to reduce the grazing. I think I agree with the Hopi position. The problem is over-grazing in this area. My hopes are that we get this mechanism set-up. That in the first supplemental for '73 we get some money to start attacking the over-grazing problem by means of subsidy, etc. I don't have any intentions of enlarging Hopi use of this area. My way would be to set-up a mechanism to seek money. Before I can take any steps I have to have a mechanism.

Mr. Boyden. This proposal, we don't find anything wrong, except that it does not recognize the Hopi rights. It is a good, honest attempt to try to do something. This advisory board may become a decision making board, and if we are go along with Indian self-determination, the board should have nothing but Navajos and Hopis, equal amount.

Secretary Loesch. I would be willing to go on that.

Mr. Todacheene. The Navajos are a great nation . . . the board could not have equal amount both Hopis and Navajos. . . .

Secretary Loesch. The Court has decided that the Hopis have a 50–50 joint ownership right in the disputed area so you couldn't put it on a population basis. If somebody can suggest a better mechanism, no one will be happier than me. If you would rather have it any other way that is okay by me, if it give a fair share to each Tribe.

Mr. Vlassis. I think the main problem is to see that no one gets hurt. Bot its not just fine to make one thing conditional on another thing.

Mr. MacDonald. I feel that we couldn't talk about anything other than the first phase. I am all for some kind of a mechanism to resolve the problem. Something that will bring us one notch closer to a solution. By recognizing human

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problems, they can be solved by being humane. I am anxious to see on what plane the Hopis would like to discuss this. At least we leave here after coming to some place where we are all together.

Mr. MOSES. What would be duties of advisory board. If the board says I have to move, where would I go, where do I take my livestock. My people are not ready to move.

Secretary LOESCH. The fact is that the Department has recognized well that I had no authority to move anybody anywhere. If Congress decides that that is the only solution, that is a Congressional matter.

Mr. SCHWARTZ. I think we are not looking at the picture of this thing in its broadest sense. My idea is that you have one of the biggest opportunities these two Tribes together. I believe perhaps the Hopis have not been as persistent in the past as they should have been. I believe the Navajos have gone further in this. The Hopis could be the greatest friends that you have because they understand some things about agriculture. The Navajos feel that Navajo open stock range is best. There is good in both. It's going to be impossible to do this thing right away. I don't think the Hopis would ask a Navajo to get off the land. You have Hopis that have been on Navajo land. I think that if you get together on the basis of developing an industry, go into feeding, packing, selling, why you people could have the biggest operation in the United States. You people have an opportunity here that you should follow. Every department of the Government that I have talked to wants to help you people to get together. What you have to do is get together and say, 'we want to go somewhere'. The two of you together can make progress. You have a big opportunity.

Mr. VLASSIS. If it is made perfectly clear that the Department doesn't feel that it is within their power to make any relocation of any Hopis or any Navajos we would go along with it.

Secretary LOESCH. The executive branch would not relocate a soul in this thing. Its a court responsibility. It is an executive responsibility to get the grazing down to the level the land can stand. What we are attempting to do here is make a start.

Mr. HAMILTON. I don't think I go along with the Advisory Board. I think the Navajos will still have control of it.

Secretary LOESCH. What you are saying is that the plan provides now two members by the Hopis, two by the Navajos and two by the Commissioner and you feel that members by the Commissioner would side with the Navajos. If that's how you feel that is the reason you have recommended three Hopis and three Navajos.

MR. VLASSIS. Does he go along with the revision of the proposal.

Mr. HAMILTON. Yes.

Secretary LOESCH. If we have all agreed among ourselves, we all think this Advisory Board is important. With three Hopis and three Navajos it seems that at some point the board will be split. In that event the Commissioner or the Secretary will have to make a decision. I would like to see two reports from the board, one with the Navajos view and one with the Hopi view when they cannot agree, so that the decision maker will have both positions before him.

Mr. VLASSIS. There have been times when it has been difficult to obtain information needed from the Bureau. We would like someone from the Administration attached to the Board permanently. Some person in the Bureau who has a permanent position with the Board so that the board will have full information.

Secretary LOESCH. I have no objection. Do you have any objections Mr. Boyden.

Mr. BOYDEN. No.

Secretary LOESCH. If you all believe that eventually we are going to have to cut the rest of the 1882 area into grazing districts, if we get down to proper range management, if a guy is required to graze in his allotted district then we will have to do some fencing. It may very well be that in some districts, you maybe able to leave it open to everyone grazing. I think it is important that we establish permanent water development, corrals, access roads.

Secretary LOESCH. Let's take this plan, paragraph by paragraph. (see attachment for changes made in paragraphs 1 through 6 by the Tribes) I think we should add the following paragraph to this plan:

"The plan of operation for the joint use area is an interim program not intended to prejudice either Tribe in relation either to litigation or legislation concerning ownership and or use of the joint use area."

Does everyone agree?

Mr. BOYDEN. Yes.

Mr. MACDONALD. Yes.

Secretary LOESCH. Is there anything else possible about this besides litigation or legislation that either Tribe could be prejudiced on?

No comments were made.

Secretary LOESCH. Gentlemen, I am pleased as I can be.

Mr. BOYDEN. We want to cooperate with both patrols. We have erosion problems. We do not want Navajo people in jeeps out there. We want it to be supervised by the Department if someone is rounding up cattle.

Secretary LOESCH. I agree that District 6 is Hopi ground and the Navajos have no business there. The problem of trespassing is there until we get the number of cattle down. I believe that it would be a very good thing for District 6 to be fenced. I recognize that the Hopis will not be willing to do that until they feel that such a fence will not prejudice them in regard to the joint use area. Do you all agree that we have six people on the Board?

Both TRIBES. Yes.

Secretary LOESCH. Would you people do me one other favor, I will inform the Bureau what has happened. Will you each, as Tribes, give full consideration to the objectives we are after, really consider who should be on this Board. We are looking for people, while fully protecting their tribal interests, who are reasonable, who will not nit pick over things that don't matter, who will put themselves in the other fellows shoes. There will be issues that cannot be resolved by the Board. When that happens the Commissioner will be given a full report on both sides By choosing the Board properly. . . .

Mr. BOYDEN. This is action that is being taken by you. This is not contemplated that this be approved by the Navajo or Hopi Tribal Council?

Secretary LOESCH. No. I will go back to Washington, have it typed up and have it put out as an order. Then I will officially notify the two Tribal Chairman that this is an order.

PLAN OF OPERATION—JOINT USE AREA

In accordance with President Nixon's message on Indian self determination, the two tribes must be involved in all aspects of planning and implementing to assure success. It is with such a concern and interest that this initial concept is presented.

1. It is agreed that a separate administration responsible directly to the Commissioner of Indian Affairs will be instituted for the 1882 Executive Order area outside the boundaries of District 6 (the "joint use area").

2. The Commissioner will establish an Administrative Officer for the joint use area reporting directly to him. At the outset, the Administrator will be staffed by four positions.

3. A six member Advisory Board to the Administrator of the joint use area will be established. Three members of the Board will be selected by the Hopi tribe and three members will be selected by the Navajo tribe. The Advisory Board will recommend policies and procedures and advise the joint use Administrator.

4. The location of the administrative office of the joint use area will be designated by the Commissioner after consulting with the two tribes and the Advisory Board.

5. After full consultation with the Advisory Board, the Administrator will submit recommendations to the Commissioner on:

a. means of assuring so far as possible both tribes the protection of their own interests.

b. administrative and management responsibilities of the area of jurisdiction.

c. the positive and negative aspects of assumption of all Bureau programs within the joint-use area.

d. the organizational structure, necessary staff, feasibility of transferring staff from other areas, the necessity for new hires and position ceilings and related cost, etc.

e. devising a plan for reconstituting the present grazing districts, providing management and control therefor, fencing thereof, and other management or facility considerations and installations as may be appropriate.

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f. purchasing and selling stock for associations of tribal stockmen, joint ventures with other tribes for grazing and marketing, feedlots, slaughtering and packing operations, location of irrigated pasture, leasing of same and exploration into leasing natural grazing on other Indian reservations.

g. permanent water development.

h. interim stock feed programs.

i. erosion and flood control measures.

j. cost analysis of all facets of the above and others as deemed necessary.

6. Investigations of possible cooperative programs for the permanent economic development of the area shall be a concurrent responsibility of the Advisory Board.

7. The Commissioner shall initiate the above recommendations as soon as possible.

8. The plan of operation for the joint use area is an interim program not intended to prejudice either tribe in relation either to litigation or legislation concerning ownership and/or use of the joint use area.

STATEMENT OF ELIZABETH BEYAL, DIRECTOR, TRIBAL WORK EXPERIENCE PROGRAM, AND JOHNNIE FRANCIS, ASSISTANT DIRECTOR, ON THE ECONOMIC IMPACT OF THE STEIGER BILL

Mr. Chairman, and members of the Committee.

Much of the testimony before this Committee has dealt with the human effects of the Steiger Bill, or more properly, the inhuman effects. There is another side, equally dismal, and that is the bad economic effect of this bill on the Navajo people.

Approximately 6,600 Navajos (1200 families) are to be moved, and if we assume that these Navajos owned only the least valuable homes (hogans) they would lose the $500,000 total cost of their homes. If some of these people owned frame houses instead of hogans, this would add considerably to the cost and loss of relocation, inasmuch as the average frame house is worth about $3,000 instead of the $500 average value of a hogan. The move would, in fact, according to a recent survey by the Navajo Tribe, result in the loss of 719 frame houses and 950 hogans, or a total loss of $3,400,000. The cost of outbuildings such as corrals and sweathouses must be added to these figures and will approximately double them.

The relocated Navajo people will also have to replace their homes. Assuming a cost of $10,000 per family for suitable housing, an expenditure of $12,000,000 will be necessary to provide replacement housing. This does not take into account the cost of moving, nor the cost of replacing outbuildings, such as corrals and sweathouses.

Third, since these people would be forced to reduce the livestock within the Steiger Bill area from the current estimate of 85,000 sheep units to 11,000 sheep units (½ of the permitted number), there would be a tremendous loss in the productive value of these animals. For example, if the remaining Navajos chose to keep the permitted 11,000 sheep units as sheep, the net income loss, which is the productive loss less the value that would be received as a result of the sale of the animals, would be over $3.75 million.

Fourth, the Navajo who now butcher their own sheep and livestock and use the wool therefrom would have to buy their mutton from the trader and buy their wool to weave rugs, one of the mainstays of their livelihood. Assuming the average Navajo family now butchers and uses some 15 sheep annually, at $20 per sheep, this would mean an additional cost to that family of $300 per year which, for the 1,200 families, would represent an additional $360,000 of loss per year.

Fifth, the Navajos who now have sheep use them as payment for ceremonies and these too would have to be purchased from outside sources. Such ceremonies are typically repeated a total of four times, and the host is also obliged to provide food for the family and friends attending the ceremony. However, no reliable estimate of the increased ceremonial costs to each family resulting from the loss of their livestock can be made.

Sixth, there is the question of opportunity costs. Younger Navajos who could no longer engage in the livestock business as a result of the Steiger Bill would either have to be retrained at considerable expense to themselves or the government or simply go on welfare. Older people, for whom livestock is a way of life, would be unable to be trained to do anything else, and their only recourse would be total reliance on welfare at considerable expense to the federal government.

Thus, productive people would be rendered unproductive, which is not only emotionally tragic for the people, but is economically a bad thing.

Finally, the Navajo Tribe, the Bureau of Indian Affairs and the Public Health Service have invested large sums of monies and materials in the development of water in the Joint Use Area and the area described in Section 5 of the Steiger Bill. The Navajo Tribe has invested over $2,000,000 for water development, in addition to the large sums of monies which were utilized to provide health and educational facilities which will all be lost if the Steiger Bill is passed. Such facilities will not be used by the Hopi, because they will not have a population increase equal to the number of Navajos relocated, during the short period allowed for relocation. To this must also be added the cost of additional health and educational facilities at the relocation site, which is not provided by the Steiger measure.

These sums, which do not include any provision for the purchase of grazing land, and the cost of moving or the other items we have listed, in total amount to almost $16 million—the amount of the Steiger Bill, which, as you can see, is clearly inadequate.

TELEGRAM

MIAMI, FLA., *Sep. 14, 1972.*

Senator LAWTON CHILES, *Senate Office Building, Washington, D.C.*

The Miccosukee Tribe of Indians of Florida opposes H.R. 11128. This bill would force more than 6000 Navajos to move from land which they have occupied for generations. We are astonished that a new Indian Removal bill can be seriously considered in 1972. This bill reminds us of the forced removal of the Cherokee, Choctaws, Miccosukee and other southeastern tribes from their land in the 19th century. We give our full support to the Navajo Tribe.

Please include this telegram in the record of the Senate hearing on H.R. 11128

BUFFALO TIGER,
Chairman Miccosukee Tribe of Indians of Florida.

STATEMENT OF MR. EUGENE LEWIS, SR. ON BEHALF OF THE NAVAJO VETERANS ON THE NAVAJO RESERVATION

My name is Eugene Lewis, Sr. from Whitecone, Arizona. I am a Navajo Indian veteran who served for four years in the Marine Corp in the South Pacific during World War II. I was born and raised on the 1886 Executive Order Reservation and I have lived there all my life—47 years.

I was recently elected and recommended by the Whitecone Chapter to submit this statement to the Navajo-Hopi Land Dispute Commission to become a member of that committee and represent the Whitecone Community.

Since I am a veteran, I feel that the Navajo Veterans should be heard and represented in Washington during our next visit to the Congressmen and Senators. I feel this way because we veterans were the ones that defended this country in time of need and national emergency.

Our Navajo forefathers made a death march to Fort Sumner in 1864 and many of them died during this march of hunger, disease and other sicknesses. After four years of imprisonment and suffering they returned to their homeland and were given what is known now as the Navajo Indian Reservation.

The United States Government stripped them of guns and knives that the Navajos used to defend themselves. They were told by the Federal Government that it is wrong to fight and kill others. But in 1941 the Japanese bombed Pearl Harbor and the same United States Government returned to the Navajo Reservation and gave guns and sharp weapons to many of our Navajo boys to fight along side them against the Japanese. During this terrible war the Navajo language was used also to defend this country. People say that our language is the hardest language in the world to learn, and this was proven when the Japanese could not translate or interpret signals during the war. The Federal Government used the Navajos to fight their war and also used their language to defend this country but now it is these very same people who are saying that the Navajos should move off their homeland and give it to the Hopis. When I was in the Philippine Islands with Sam Nez, who also comes from Whitecone, we experienced another death march on the island of Bataan. We did this in the name of the United States, also in the process of trying to defend this country.

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I therefore feel that I have earned the land that I live on, not to mention that it originally belonged to the Indians. I do not intend to give up this land to anyone. If I am requested and forced to leave I will still not leave the land that I love. We have settled down in good homes that we made with our hands and we have livestock and water that we developed in the Executive Order area. I feel that the least the Government can do is protect what we have developed for ourselves. My great grandfather and grandmother are also buried in the disputed area, where they lived all their lives. Back in those days we Navajos have never heard or seen one single Hopi living close to the Whitecone or Indian Wells area. I have experienced the two previous death marches and I feel strongly that a third death march is going to erupt if Congress ever passes the Steiger Bill. The Steiger Bill will displace about 8,000 Navajo people, which is not an easy thing to do if you have lived in a certain area all your life. I hear many Navajos say that there will be bloodshed between these two friendly tribes if the Steiger Bill is ever passed. People from my area are therefore strongly against the enactment of the so-called Steiger Bill. The Federal Government can draw boundary lines either on or over our land, but when we are asked to move we will simply not move.

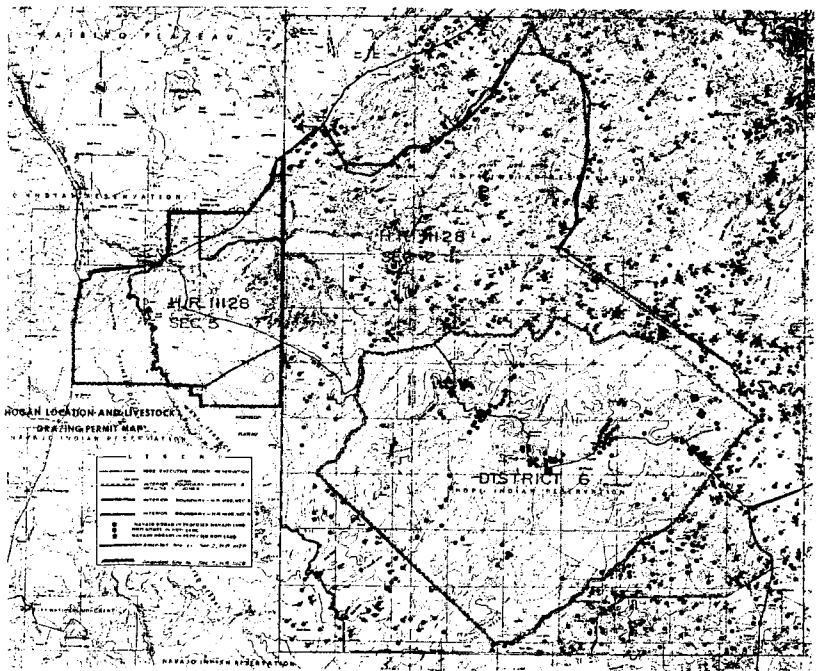
EUGENE LEWIS, Sr.,
Whitecone, Arizona.

STATE OF ARIZONA,
County of Apache ss:

Subscribed and sworn to before me, by Mr. Eugene Lewis, Sr. of Whitecone, Ariz., this 6th day of Sept., 1972.

BETTY L. SHOWOLTER,
Notary Public.

My Commission Expires Sept. 3, 1974.



MAP OF 1882 EXECUTIVE ORDER RESERVATION AND 1934 BOUNDARY-ACT RESERVATION

THE NAVAJO TRIBE,
Window Rock, Navajo Nation, (Ariz.), July 3, 1972.

MEMORANDUM

To: Mr. Peter MacDonald, chairman, The Navajo Tribal Council.
From: Mr. Art Arviso, director, Office of Operations.
Subject: Incident of June 22, 1972, pertaining to the District No. 6 boundary dispute.

On June 22, 1972, at approximately 4:30 p.m., Jerry Yonnie C# 74574 and Ben Begay, C# 17771, who were riding in a vehicle driven by Bobby Hosteen C# 2069 enroute from Winslow, Arizona, were let out of the vehicle on the road about 1½ mile east of the Hard Rock Mission.

As they were walking south from the road toward their house which is ½ mile north of the District No. 6 Boundary Line, they noticed the family sheep trespassing into about ¼ mile into District No. 6. About the same time, a Courtesy Patrol approached their location and advised them to herd the sheep back into District No. 4.

They proceeded to do so and the Courtesy Patrol departed. At approximately 4:45 p.m., while Jerry and Ben were in the process of hearding their sheep back, Hopi Tribal Employee, Ranger Elmer Randolph, and one Hopi male approached their location in a GSA pick-up truck. Ranger Randolph was going to arrest Jerry and Ben, but they advised the Ranger that they were not herding the sheep. The Ranger and the Hopi male started herding the sheep toward a corral, across the main road located 1½ miles east of Hard Rock Mission and ½ mile south of the District No. 6 Boundary on the Hopi Reservation.

Jerry and Ben walked home and informed Jean Yonnie, C#1855, DOB: 12/15/38. Joann Yonnie, C#1856, DOB: 04/17/37, had herded back some goats west of the house when she rode south to the crest of the hill. She noticed that the Hopi Rangers were driving her sheep further away from District #4. She went over there and tried to draw the sheep back. Ranger Elmer Randolph then got out of the pick-up and caught up with Joann, who was on horseback. The Ranger was holding the rein while Joann was trying to whip her horse's head to make the horse turn. Instead of whipping her horse, she whipped the Ranger. Ranger Randolph supposedly said, "Damm you" and grabbed Joann by the left arm and pulled her off the horse. She fell on the ground. In the process of getting up, she was pushed over again. At that time, the Courtesy Patrol returned. The Courtesy Patrol consists of one Hopi male and a Navajo male. Ranger Randolph then got the whip from Joann and tied her hands backwards. This is when she felt pain on her hands. Joann supposedly said, "Why do you run around after sheep like a Coyote?" Ranger then pushed Joann into the pick-up and advised the Hopi male, member of the Courtesy Patrol, to take her to the Corral and wait there. The Ranger and the Hopi drove the sheep to the Corral on foot. Joann was taken to the Corral by the Hopi Courtesy Patrol in the Ranger's pick-up. The Courtesy Patrol then returned to where the sheep were and assisted in driving the sheep. Joann then got out of the pick-up and walked approximately 100 yards west where she met some Navajo Communication men, who were working on the Utility pole. There were three Navajos and one White man. One of the young Navajo men untied her hands. She told him what had happened to her. Joann then walked back to the road behind the hill, west of the Corral. The Courtesy Patrol passed by her. Later the Ranger and the Courtesy Patrol returned. At that time, Roy F. Begay, C#18098, DOB: 03/05/46, and Steven Begay C#18010, DOB: 07/04/54, both of Hard Rock, arrived at the same time. Joann hurriedly informed Roy that her sheep were impounded, and she was thrown off the horse. She also related how she fought with the White man (Ranger). She advised Roy to contact the family.

The Ranger then handcuffed Joann's hands backwards, and placed her in the pick-up again. Roy followed the Ranger to the Corral. There were two Hopi Patrol Cars there and a truck with a horse trailer (which had some sheep in it). Some of the Hopi Police were chasing Joann's horse north of the Corral, when Mary Jean Yazzie, C#2233, DOB: 02/02/39, Nina Yazzie, C#2232, DOB: 07/14/36 and their father, Jimmie Yazzie, C#6066, DOB: 02/19/01, all of Hard Rock noticed the Hopis chasing a horse. They were coming back from Pinon when they saw the dust at the Corral, so they proceeded onto the Corral to see whose livestocks they were. Joann was placed in one of the Patrol cars. Two whitemen were inside the Patrol car, Nina talked to Joann. Joann informed Nina about the fight

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and elaborated on how she was thrown off her horse. Joann was immediately taken away.

Mary and Roy departed from the Corral. Steve got off near Jean Yonnie's house. Mary, Jimmie and Nina went to the sheep owner's house. Jean Yonnie is the owner of the livestock. They stayed there for awhile and went back to their own house where they informed Anita Yazzie, C#2230, DOB: 05/09/32. Prior to Mary, Nina and Jimmie Yazzie's arrival, Roy F. Begay stopped by the house and informed Anita. Anita then departed and went to Kee James' house, three miles north of Hard Rock where she picked up Alta James, C#19081, DOB: 03/17/48, Anna James, C#19058, DOB: 02/15/43, and Willie Begay, C#127,582, DOB: 05/03/56. Kee James, C#3991, DOB: 07/19/03, Violet Shorty, C#6097, DOB: 1922, Hosteen Sonny, C#3993, DOB: 7/7/19, and Zonnie Sonny, C#6098, DOB: 08/10/24, all departed from there to return to Jimmie Yazzie's house. Mary also went back with Nina, Leita Yazzie, C#99458, DOB: 07/02/55, Catherine Yazzie, C#3597, DOB: 1913, and Jimmie Yazzie.

Roy F. Begay stopped by Bobby Hosteen's house and informed him of the incident. Roy also advised Bobby that they might borrow some chapter money. Bobby Hosteen was a chapter officer.

Roy went home and picked up his brothers, Peter, 16 years old, Paul, 13 years old. Kee Furcap, Peter Altsisi, C#117,953, DOB; 07/15/44, Sarah Teasystwho, C#168,099, DOB: 12/19/48, James Altsisi, and Jimmie Bekis went back to the Corral. Bobby Hosteen and his family, Marian Watson, C#3966, DOB: 12/15/19, Sharon Watson, C#108,191, DOB: 04/07/54, and Francis Watson, C#108,192, DOB: 03/18/53, all of Hard Rock, also went to the Corral.

Anita and Mary arrived there with the load of Navajos. They just stood around the Corral. Roy F. Begay arrived there too, unloaded and departed. Later Bobby Hosteen arrived. Bobby Hosteen went to the Hopi Police and asked Matthew Silas to release the sheep, but Ranger Randolph said "No". When Roy dropped off his load of people, he went back to Jean Yonnie's house and picked up Jerry Yonnie and Ben Begay.

Sarah Teasyatwho attempted to reason with the Hopi Ranger, but did not talk to them. Captain Matthew Silas advised the family that Joann was in the hospital.

Anita Yazzie was at the Corral gate when the Hopi Officers sprayed mace into her eyes. Then Anita went for the mace can. During the struggle, Catherine Yazzie tried to help Anita. They were both sprayed with mace. Jimmie Bekis then pushed over the Hopi Officer. Three Hopis tried to subdue Jimmie. When Jerry Yonnie, Peter Altsisi, Ben Begay, Steven Begay and James Altsisi jumped in to separate them, they also were sprayed with mace.

Leita Yazzie and Sharon Watson jumped into the Corral. Anita Yazzie and Violet Shorty opened the gate. Most of the women fought with Hopis, and the men started another fight behind the Corral and trailer.

Jimmie Bekis had one hand handcuffed. Hosteen Sonny jumped on the horse and tried to rope some Hopi officials. Ranger Randolph ran all over the place trying to get away but was subdued and hit over the head with a tire rod by Mary Jean Yazzie. One of the Hopi Officers yelled, "Take the sheep". Matthew Silas was hit over the head with a long board by Jimmie Bekis. The sheep were drawn out of the Corral and immediately herded back toward District #4. Bobby Hosteen tried every effort to stop the fight but was pushed aside by the crow. The Hopis retreated, jumped into their units, and took off. The Navajo family also disbursed, jumped into their vehicles, and chased the sheep back to District #4. Courtesy Patrol just observed what had happened. They too left with the Hopi Officers. The Hopis did not return.

Mary Jean Yazzie then made a phone call to her cousin, Tillie Littleman Yonnie, from Hard Rock Mission. She informed her of the incident. Tillie L. Yonnie then called the Police Station, but the party just said, "I don't know what to do". Tillie then called Robert McCabe at his house and informed him of the incident.

Courtesy Patrolman, Lee Herman, called Chinle BLO on the radio. The dispatcher at BLO received the radio call. Mrs. Antoinette Cadman then called the Acting Superintendent, Chinle Agency, Ray C. Swanson. At 1844 Hours, according to Chinle Police Department telephone log, Mr. Swanson called the Police Station regarding the incident, just the impoundment of 200 sheep and goats 1½ miles east of Hard Rock, ½ mile south of the boundary line. Officer-in-Charge, William Yellowhair, was informed by dispatcher, Ernest Claw.

At 2257 Hours, Mr. Joseph A. Bia, Criminal Investigator, was informed by Patrolman Jerome McCabe to stand-by. There was a conflict at Hard Rock.

At 2259 Hours, Chinle received a Hot Line call from Headquarters. Navajo Police Department was ordered send units out to Hard Rock area. Joseph A. Bia was contacted again by Jerome McCabe at 2300 Hours.

Dispatcher also called Robert McCabe at 2300 Hours. At 2316 Hours, Lt. Kinney was alerted of the traffic. At 2318 Hours, Officer K. Shirley was called at the Sub-station and ordered to go to Hard Rock. At 2320 Hours, Officer Edward George was alerted and ordered to pick up Billy Attakai and leave his unit at Pinon. Joseph A. Bia and Lt. Kinney loaded up necessary equipment and departed at 2413 Hours. They arrived at Hard Rock at 1:30 a.m., June 23, 1972.

At 0220 Hours, June 23, 1972, received Hot Line from Headquarters. Chinle was ordered to patrol the area 24 hours a day until further notice. Captain Edmund Henry and Tuba City Officers were present.

Joseph A. Bia retired at 0514 Hours.

On June 24, 1972, at 1:45 p.m., Joseph Bia interviewed Joann Yonnie, C#1856, DOB: 04/17/37, of Hard Rock, Arizona.

Mr. Bia took three color photographs of Joann's bruised arm and the scene where Joann was thrown off the horse. Mr. Bia also picked up one government ball point pen, and a piece of a sweater, which was claimed by Joann Yonnie.

The handcuffs on Jimmie Bekis was removed by Bobby Hosteen. Handcuff #B2515.

ART ARVISO,
Director, Office of Operations.

STATEMENT OF FRANK GISHEY, CHAIRMAN, NAVAJO DISTRICT NO. 17 COUNCIL, NAVAJO NATION

Chairman Jackson and members of Senate Committee on Interior and Insular Affairs, we as elected official of District No. 17 of Navajo Nation, at our duly called meeting on September 17, 1972 felt that members of the Senate Committee on Interior and Insular Affairs are not familiar with the Bill in question (HR 11128). We feel that neither Congressman Steiger nor majority of the senators have a proper and complete knowledge of both Navajo and Hopi Tribe's socio-economic problem of today and yet never the less, U.S. Congress is in the process of passing this bill.

The question remains as to the constitutionality of the bill in terms of due process of law or contained in the 5th amendment of the U.S. Constitution. You are also reminded that in the Indian Bill of Rights passed by Congress in 1968. We believe the individual Indian's rights has been infringed upon. In order to make a humane and a just decision on this grave problem, we sincerely ask that the committee hold some field hearings on the Bill in question before any decision is rendered.

There are such known cases in point; as an example, U.S. vs Sandavol (23 V.S. 28) of New Mexico. Where non-Indians where discovered living in Indian land. In this case the non-Indian lived on Indian land for 12 years. The case of U.S. vs Sandavol, the Federal government paid the Indian land owners rather than moving 12,000 non-Indians to another land.

Our strong recommendations, as elected officials of Navajo Nation is to request the Committee to lend an ear to the case of U.S. vs Sandavol which has set a precendent. Therefore, we recognize that the court has made an outstanding decision in the case of U.S. vs Sandavol. We pray that Congress of this great nation will make their decision with the cited case in mind. When the committee considers the Steiger Bill in light of the case cited, the tax payers of this great Nation will not be burden with prolonged appropriations for years to come to properly implement the provisions of the Bill. Sixteen million dollars is merely a down payment.

We sincerely and respectfully request that you give our statement your utmost consideration that the Navajos proposed to be removed by the Bill be allowed to remain on their birth right homeland upon which they have loved and worshiped for many generations.

MEMORANDUM

To: Jimmy Shorty, Staff Assistant to the Chairman.
From: Elizabeth Beyal, Director, Tribal Work Experience Program.
Subject: Welfare Statistics—Navajo Reservation.

The welfare assistance program funded by the Bureau of Indian Affairs Branch of Social Services is identified as General Assistance. Each of the five

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agencies on the Navajo Reservation operates a General Assistance program in connection with the Tribal Work Experience Program. The statistics, therefore, are readily available from our office at Window Rock. It must be remembered that the caseload and subsequently, the funds expended, fluctuate from month to month on a small scale. The statistics given below is as of September, 1972:

Agency	Cases	Persons	Funds
Shiprock	496	2,081	$83,557
Tuba City	1,566	7,016	297,811
Crownpoint	2,015	8,317	313,285
Chinle	1,413	5,664	251,366
Fort Defiance	1,928	7,398	318,513
Total	7,418	30,476	1,264,532

State welfare statistics from the 3 states, Arizona, New Mexico and Utah are not readily available. The information we do have is not current and I would question its accuracy. Information on expenditure of funds is never included in their sporadic reports but it can be assumed to be somewhere near $10 million with 3 states combined. I would venture that one place to obtain accurate welfare statistics would be through the Department of Health, Education & Welfare in Washington, D.C. Arizona's statistics is as of June, 1972, Utah, June, 1972 and New Mexico, June, 1971.

State	Cases	Persons	Funds
Arizona	1,806	4,290	Information not available (estimate $10,000,000).
New Mexico	2,015	6,452	
Utah	690	2,200	
Total	4,511	12,942	

It is hoped this is the information you requested and that it will prove of some use. Please let me know should you have any question.

STATEMENT OF TONNY BOWMAN, STUDENT, ANTIOCH SCHOOL OF LAW

There have been a number of things that have been distorted by Mr. John S. Boyden, the white attorney for the Hopi. Mr. Boyden, in my humble opinion may know the language and the culture of our neighbor the Hopi, but I can assure you that he does not know the Navajo.

What we have seen before the senate hearing was the practice of traditional law. Traditional law, only brings out what is "just" for one party and not for the other. It stops there, justice is assumed done and nothing needs to follow, but in reality that is not the case. One example is *Healy* v. *Jones*, where the decision of the court neither stopped the dispute, nor made any suggestions or plans to settle the matter that is before you peacefully and fairly. *Fairness*, I believe is what people want for both the Hopi and Navajo, tribally as well as individually. For this reason it seems very odd and unjust for the Senate committee to make a decision on only evidences gathered from the deep reaches of the imaginations, Book of Mormon, history books and similar materials.

These are not enough, my leaders, to render a just and fair decision on this bill. At this time another in-depth, on site investigation and evidence ought to be gathered and presented to the Senate Committee by a field trip and investigation to Arizona.

What is also absent from this Senate hearing is the presence of the "Philosophy Gap" between the American Indians and the white people, because American Indian philosophy takes in religion, customs, economy, law, etc., and these are inseparable and is their whole culture. In the European governments many things have special entities, such as law, religion, etc., because they are clearly separated. For this reason, it has been mentioned that some Navajos are still living in an exclusive Hopi area. Gentlemen, would you say, in this enlightened and understanding year of 1972, "ignorance of the Law is no excuse?" To the people who

truly don't know the language you speak let alone know the complex Europea type laws and regulations that the United States government legislates and U.S Courts decide.

Gentlemen of the committee, put yourself in the shoes of a Navajo livestoc raiser and you will see the realistic and dreary life from his early childhood to hi dying day, and the things he has to endure and survive from natural elements le alone the forces and pressures from the U.S. Government and the lawyers wh make and pass judgment, some for their own glory and personal gains and other on insufficient information.

Indians, specifically Navajo are not by nature as habitually aggressive as whit people are as shown by the Federal Trade Commission during the past summer o 1972, in trader investigations that the FTC carried out with the Bureau of India Affairs. From the evidence gathered by the FTC, the Navajos were shown t have taken abuses in silence and in return all that most of them ask for is "fai treatment." One of the Hopis who testified here, Mr. Samuel P. Shingistew knew about this because he both listened and testified at the public hearing i Tuba City, Arizona, on August 31, 1972. No Navajo threw him out, although h used strong language against Navajo consumers. Navajos being aggressive an warlike is too general and is distorted and the testimony by Mr. Boyden is fille with hatred and prejudice. Unfortunately, H.R. 11128 is being carried out i the name of justice and makes it abhorrent to that concept.

There is alleged vying for water, natural resources, and mineral interest an control by the upper and lower states of Colorado and Arizona and this bill i intended and designed to weaken the Indians' land and water rights. Aside fro this, passage of this bill will start Indians fighting each other not only on the Ho and Navajo Reservations but also on other reservations in Idaho, Utah, Nevad Montana, Washington, and other places where there are joint land holdings amon Indian tribes.

The Commissioner of Indian Affairs mentioned that he formed a courtesy patr to prevent confrontations after alleged violence in the joint area. I know of th patrol. They are unarmed, and their primary mission is to prevent incident secondly, to inform the people about where the disputed boundary lies, an thirdly, to prevent any stray animals from wandering into either area. This h not been brought out clearly. But, this was all after the fact of an employee the Hopi, a white range rider, who is an unpleasant, arrogant, and hostile perso who seems to delight in causing incidents to make the Navajos mad. There a civil suit filed against this person, because it is alleged that he was brutal to 98-year old Navajo man. It seems that was a calculated provocation to start th mentioned incident that some people testified about.

I would encourage this committee to make a careful investigation before does anything else to promote this bill H.R. 11128, because this bill should hav the views and perspectives of both the Hopis and Navajos, and the consequenc should spell out carefully, the procedure for an orderly, peaceful, and fair trans tion and enforcement. We are not at war, where one tribe has to lose and the oth wins. I would like to enter into the record a resolution by the Navajo trib council in 1957, asking for funding for the Hopi so they can have equal represent tion in the land dispute with the Navajos. This shows that Navajos are not a that selfish.

RESOLUTION OF THE NAVAJO TRIBAL COUNCIL—BILL TO REFER NAVAJO-HO BOUNDARY LINE DISPUTE TO COURT

Whereas: 1. As bills have been introduced in the United States Senate and t House of Representatives (S. 962 and H.R. 3789) providing for reference to t Federal Courts of the problem of determining the relative rights of the Navaj and the Hopis in the areas of conflicting land use within the area of the Executiv Order of December 16, 1882, and

2. The General Counsel of the Navajo Tribe has recommended, and t Council fully concurs, that it would only be fair and equitable for the Governme to lend to the Hopi Tribe sufficient funds to prepare such case and pay its attorn in order that the Hopis may be properly represented and the litigation prosecut to conclusion as rapidly as possible.

Now therefore be it *resolved that:* 1. The Navaho Tribal Council hereby ratifie adopts, approves, and confirms in principle H.R. 3789 and urges that it do pa Congress and be approved by the President of the United States.

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2. The Council urges and recommends that the bill congain a provision authorizing a loan of funds from the Government to the Hopi Tribe to defer the expenses of the proposed litigation and pay its counsel fees.

3. The officers of the Teibe and the General Counsel be and they hereby are authorized to consider and approve on behalf of the Tribe any and all amendments which may be proposed to H.R. 3789 which are deemed by them to be expedient, necessary, or advisable and in the best interests of the Navajo Tribe in order to facilitate passage of the act, for the purpose of bringing to a conclusion the long-standing conflict over land use between the Hopis and the Navajos.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Arizona, at which a quorum was present and that same was approved by a vote of 66 in favor and 0 opposed, this 8th day of May, 1957.

PAUL JONES,
Chairman, Navajo Tribal Council.

STATEMENT OF THE COUNCIL OF UPPER MOENCOPI

There have been many meetings held on the matter concerning the land situation and the rights of the Moencopi Hopis and stock owners with the Honorable Commissioner Bennett. The Commissioner has instructed both tribes on the best methods of reaching a solutions that would be to the advantages of the two tribes at the local level. Only one meeting has been held and no solution reached.

The Navajo Tribe has set dates after dates for continuation of these meetings and they have postponed these dates for reasons known only to them. The Moencopi Hopi Committee has been available and have been willing to meet with the Navajos at all times.

Now, it is apparent that the Navajo Tribe and the local Navajos had no intention of continuing these negotiations, it justify the Moencopi Hopi people to present our problems to this Honorable Body at this time.

Since the Navajos do not seem to realize the seriousness and the importance of the matter and their lack of interest, we the Hopi people of Moencopi and the Hopi Tribe of Arizona are requesting your considerations on this land matters. It is within your powers and authorities to consider in all justice and fairness our side of this problems.

It is our opinion that the rights of the Moencopi Hopis have been denied them and that the practice of prejudice is being instigated by the Bureau of Indian Affairs, Navajo Area, and the Navajo tribe in this section of the reservation. We would like to call your attention to the meaning and our analysis of the meaning of the 1934 Boundary Act and the Solicitor's opinion on the matter.

The Act of June 14, 1934, states in part that: "All vacant, unreserved and unappropriate public lands, including all temporary withdrawals of public lands in Arizona heretofore made for Indian purposes by the 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."

The "such other Indians" in this Act could only mean the Hopis who had been residing in this area before the enactment of the Bill. We analyzed this to mean that we Hopis had the same rights and privileges within this boundary. This Bill does not define any portion or what per cent of land within this Boundary Act to the Navajo or to the "other Indians". Therefore we believe that we have the same rights and privileges to the entire land use within this Boundary Act. We assumed that we had half interest in this 1934 Boundary Bill Act.

The Solicitor's Opinion of July 1, 1966 followed the same line of thoughts and further emphasises the "such other Indian" by including "The history of the Act discloses beyond quibble that Congress recognized this fact and included—the other Indians—provision for the express purpose of protecting the rights of Hopi Indians.

Now, is there any doubt as to the interest and the rights of the Hopis within this boundary. The Solicitor states that it is beyond quibble: The 1934 Boundary Bill Act was approved and passed by Congress and has become the law of the country. Does the Navajo tribe, the Bureau of Indian Affairs, the Navajo Area

Office and the Hopi tribe realize the meanings of this Act. Can we as separat parties disregard the legal terms of this Act. Can the Navajo say that this is a exclusive Navajo Reservation. Can the Bureau of Indian Affairs disregard th rights and interest of the "other Indians" within this boundary. If our interpr tations of this Act is right, the 1934 Boundary Act has become a law and whethe we like it we must abide to it. The Navajo tribe must realize that there is anoth tribe involved within this boundary and that this "other Indians" have equ rights and interest within this boundary. And that they must be considered in a matters affecting land and mineral resources.

The Navajo tribe may be a large tribe and they may have political advanta over the Hopi tribe, but they do not have the political advantage of human righ and the laws regardless of the population. Neither do they have the dictatori powers in matters of human justice. And neither can they dictate to the Burea of Indian Affairs and to the government.

Now we come to the communication of the Commissioner of Indian Affai dated July 8, 1966 to both of the Area Directors of the Hopi Area Office ar The Navajo Area Office. And to the Navajo Tribe. "Effective July 1, 1966, undetermined Hopi interest in the area so delimited shall officially be recogniz by placing in a special deposit account all moneys derived from the use ar management of the surface and sub-surface resources therein. No action shall taken by an official of the Bureau that does not take full cognizance of the und termined rights and interests of the Hopi Indians in said area. This will necessita formal action by the Hopi as well as by the Navajo Tribe on all those cases whi hypothecate the surface or subsurface resources for exploration, mining, righ of-way, traders, or other use or occupancy authorized by permits, leases, or licens The same rule will apply to any action which might be taken by the Governme for which the law, policies, or regulations requires prior tribal consent. By t same token, neither tribe shall be permitted unilaterally to take actions with said area that trespass on the rights of the others."

We find in this communication that the Commissioner had and does rec nize the rights and interest of the Hopis in this area. With recognition the Co missioner issued a memorandum instructing and setting forth restrictions to t Navajo Area Director and the Navajo tribe. This was meant to acknowledge t fact the Hopi did have rights and interest in the 1934 Boundary Act. There is question as to the rights and interest of the Hopis in the 1934 Act. There is alternative but to recognize the meaning of the Act. At the Negotiation meeti in Flagstaff, Arizona, a memorandum from the Navajo Chairman was read whi states: that the Navajos are meeting under severe coercion. That the Nava are coming to the negotiation table desperate to do something to get the fre lifted. The Navajo must pay a price to get their projects underway. He a stated that the Hopis are seeking to expand their reservation to the Moenc area and that many years ago the Hopis were given temporary grazing use arou Moencopi and to date this area is still used. He quoted a section from the Nav Tribal Grazing Regulation labeling the Hopis as aggressive and anti-social. parently the Chairman is not versed in the actual facts concerning the situati in this area. He states that the Government settled the Navajos in this area a treaty. This is not a Treaty Reservation. He asked, what is to be done with Navajos in the event that the Hopis are given grazing area. The Navajo has ma claims that they are the richest Indians in the United States and that they take care of their people by instituting industrial developments on their reser tions. The Navajo population has reached such a proportion that it cannot cont itself. The communical laws are not effective to them.

Now we come to the problems at hand.

Let us go back and review a brief history of the Hopi. The Hopi is the origi tenant of the Northern Arizona. His ruins substantiate that fact. He was for to moved from one locality to another due to the elements of nature. His ru are in evidence in the North Central and Northeastern part of Arizona. Th is no one, expert or otherwise can prove that these are the ruins of the Nav Your history states that Oraibi is the oldest continuous settlement in the Uni States. The Hopi ancestors has given this verbal instruction which has b carried to this generation. "We are a very poor people depending on our Almigh for existence. We have traveled and made settlements in various places. have been instructed to leave our settlements as they are as our prophecy s they will become valuable and will be used in the future. These ruins will be claims of the future Hopis in claiming the Lands of the Hopis. We have these ruins as your homesteads. People from across the big water will come am

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you. He will have his own methods of living and will be forcing you out of your lands. Learn his way of live and remember the things he tells you. Learn his tongue well for you will need that, his methods and our prophies to re-claim lands that we have homestead for you.

The Spainard came and subjacated the Hopis. In the Spanish-American War of 1898 which is just a seventy years ago, the United States took over this territory. The Guadaloipe Hidalgo Treaty made certain provisions relating to the Pueblo and Moki (Hopi) land ownership. An excerpts taken from W. Hallett Phillips, Washington D.C. dated November 5, 1893." In my opinion the government has no more right to allot and partition the land of the Moki towns than they have to do so with the lands belonging to any other towns embraces within the ceded territory. It is true the Supreme Court in their opinion proceeded to show that the lands belonging to the Taos Pueblo had been confirmed to it by an Act of Congress. But in regards to the question which I now present to you, it can make no difference so far as the position of the United States is concerned whether the Mokis have a paper title to heir land. They still hold them as they have held them from time immemorial in full right of the property and the fact that no patent may have been issued to them does not affect the question as to whether Congress intended that the allotment set should applies to these people. If so applicable than Congress has done what the Supreme Court has declared they have no right to do, that is, treat the Pueblo people as Indian tribe. The lands in question are occupied by the towns and fields of the Mokis. The title of these people ante-dates the Spanish or Mexican occupation and never was regarding by those nations as standing on the same footing as other Indian claims. This is a historical fact which the Court have decided." For further reference see attachment., No. 1.

In the case of Healing vs Jones, Civil No. 579, Prescott, dated September 28, 1962. This case was determined on the IMPLIED decision. On Page 213, Section 21. "None of the twenty-one Secretaries of the Interior who served from December 16, 1882 to July 22, 1958, or any official authorized to so act on behalf of any of these Secretaries, expressly ordered, ruled or announced, orally or in writing, personally or through any other official, that, pursuant to the discretionary power vested in him under the executive order he had "settled" any Navajos in the 1882 reservation, or had authorized any Navajos to begin, or continue, the use and occupancy of the reservation for residential purposes".

Prior to this, on or about June 2, 1937, the Navajo Area Office proceeded to establish a Range Management program and set out to define area for each District Management. District No. 6 was set aside for Hopi District Management area. This was done without consulting the Hopi Tribe. This was forced on the Hopi tribe. But the Range Management officially specified that this would not and will not be a Hopi Reservation. Yet when the case of Healing vs Jones was determined, this area became the Hopi Reservation.

Now, if the Navajo Area Office, Bureau of Indian Affairs, Department of the Interior and Congress can be so complacent in these two matters, than we the Council of Moencopi on behalf and for our people do hereby demand that the "Freeze Area" as proclaimed and promulgated by the Commissioner of Indian Affairs on July 8, 1966 become a part of the Hopi Reservation. This area is defined by Commissioner Bennett as follows "Therefore, the following instructions shall apply only to that portion of the Navajo Reservation lying west of the Executive Reservation of 1882 and bounded on the North and south by westerly extensions, to the reservation line, of the northern and southern boundaries of the said Executive Order Reservation". (For further reference see attachment No. 2.) We feel that the determination of the Healing vs Jones was an unjust in that it was an implied decision. We feel that in the final determination of defining the Hopi Reservation is Range Management District Six is unfair in that it was set aside only for range management purpose. This indicates that the two-tongue policy of the white man is still at work.

Now in our demand, we are of the opinion that the Commissioner was under the delegated authority of the Department of the Interior in promulgating the "Freeze Area". We are of the opinion that we are entitled to this area moreso because this was proclaimed from the Washington Office. Prior to this we have been the scapegoats, the outcast of the Bureau. Neither the Hopi Agency nor the Navajo Agency would consider our appeals for assisitance. Negotiation with the Navajo tribe is fruitless, they are not the compromizing tribe. Their way is the only right way.

Moencopi has been a settlement since 1860, cattle and horses grazed twenty to thirty miles in all directions. Sheep camps were ten or more miles away from the

village because there were no Navajos to molest these stock. Through these people' effort school was established in Blue Canyon and was later moved to Tuba City The Navajos began to move in when the Mormans were evicted. It may have bee to our advantages if the Hopis did not asked for school to be established here

In closing we appeal to you to consider our case in all fairness and justice.

Thank you.

OFFICE OF W. HALLETT PHILLIPS,
Washington D.C., November 5, 1893.

Hon. D. M. BROWNING.
Commissioner Indian Affairs.

SIR: For many years I have been deeply interested in the Mokis of Arizona These people the most important of the Pueblo or town Indians occupy severa Pueblos in the northern portion of Arizona. I have only recently ascertained tha allotments are being made of their lands. The matter to which I wish to call you attention, is whether the allotment law is applicable to these people and in th connection I particularly direct you to the decision of the Supreme Court of th United States in the case of United States against Joseph, reported in the Unite States Supreme Court Report 614. This holds that the Pueblo Indians are no Indians in the sense in which that word is used in the general laws of the goverr ment regulating our intercourse with the Indians and that rights and title to lan As is no doubt known to you the Pueblo Indians have for over a thousand yea occupied their lands and towns and have attained a high degree of cultivatio They have always been self-supporting and occupy the peculiar position of dwelle in towns and at the same time agriculturists. The Mokis in their art and man factures are the most advanced of all Pueblos. Their ownership of their lands und the decision of the Supreme Court, is as much a vested right as those possessed b any other community. The fact that they hold their land in common does no affect their proprietory right nor afford our government any justification for the interference any more then it would sanction interference with the propert arrangement of our own citizens. The rights of these people were recognized by th Spanish government, by Mexico, and were solemnly promised in our treaty wit the last named country.

Mr. Justice Miller says in his opinion they hold their land in common and this respect they resemble the Shakers and other communistic societies in th country and cannot for that reason be classed with the Indian tribes to which tl general laws of the government are directed. The decision continues:

"Turning our attention to the tenure by which these communities hold the lar we find it is wholly different from that of the Indian tribes to whom the Act Congress applies. The United States have not recognized in these later any oth than a passing title, with the right of use until by treaty or otherwise that rig is extinguished, and the ultimate title has been always held to be in the Unit States, with no right in the Indians to transfer it or even their possession witho consent of the government. The Pueblo Indians, on the contrary, hold their lan by a right *superior to that of the United States*. Their titles dates back to grants ma by the government of Spain before the Mexican Revolution. A title which w fully recognized by the Mexican Government and protected by it in the Trea of Guadaloupe, Hidalgo, by which this country and the allegiance of its inhab tants were transferred to the United States."

It was accordingly held that the inhabitants of the particular Pueblo in questi had a title to their lands which could not be interfered with by the United Stat The main point of the decision was that the United States could not treat the people as Indians or differently from other inhabitants or citizens of Mexico, a that they were under the Treaty entitled to similar rights. This is very fully show in the learned opinion of the Supreme Court of New Mecixo in the case of Unit States against Santisvivien and United States against Joseph, 1st. New Mexi Report, 592.

This opinion was fully affirmed by the Supreme Court of the United States. N executive order or similar governmental action could affect the status of the people or alter their rights to their land. The treaty of Guadaloupe Hidal provides for the protection of the rights of the inhabitants of the ceded count to their property. This includes the claims of towns or Pueblos. [In my opini the government has no more right to allot and partition the land of the Mol towns than they have to do so with the lands belongings to any other tow embraced within the ceded territory. It is true the Supreme Court in their opini

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proceeded to show that the lands belonging to the Taos Pueblo had been confirmed to it by an Act of Congress. But in regards to the question which I now present to you, it can make no difference so far as the position of the United States is concerned whether the Mokis have a paper title to their land. They still hold them as they have held them from time immemorial in full right of property and the fact that no patent may have been issued to them does not affect the question as to whether Congress intended that the allotment act should be applies to these people. If so applicable than Congress has done what the Supreme Court has declared they had no right to do, that is, treat the Pueblo people as Indian tribes. The lands in question are occupied by the towns and fields of the Mokis. The title of these people ante-dates the Spanish or Mexican occupation and never was regarded by those nations as standing on the same footing as other Indian claims. This is a historical fact which the Courts have decided]. The Pueblos were incorporated into the mass of Mexican citizenship and were confirmed in all their rights except those of independence. If it is determined that the rights of these people to their lands is simple as equitable one this equitable right constitutes property and it devolved upon this government to protect it by the necessary formal acts. But the question as to the nature of the title to their lands does not govern the inquiry as to whether the Mokis can be treated as other Indians to whom the general laws of Congress are to be applied. This last question the Supreme Court had disposed of in the negative, and this determines the power of the Department in this case to apply the allotment law.

The question of the title can only properly arise when the government asserts some superior right to the land or such right is claimed by some one under the government. It is not necessary there should be a grant or concession in writing. It is sufficient if there is a right or title recognized by the former government and such right or title may rest on the general law of the land. As previously shown the laws of Mexico recognize and confirm the Mokis in all their land rights of ownership. The Act, of Feb. 18th, 1891 (26th Stat. 794) provides for allotments in any case where a tribe or bands of Indians is located upon a reservation created for their use. This cannot be applied to the Pueblo people for they are under the decisions of the Court have not like other Indians the use merely, but have also plenary ownership of their lands which they have possessed for many centuries. Their status cannot be affected as said by the Supreme Court by the fact, that an agent had been appointed for them nor ought it to be controlled by the further fact that for some governmental purpose the extent of their lands has been defined by the Department. I am informed that the allotments have been made without the knowledge of the Mokis, who are totally unacquainted with our language or our usages. Owning to this they have not protested, but I do not think this any reason to prevent you from taking notice of the matter and executing justice to this interesting and ancient people. General Armstrong has been among the Mokis and is familiar with them. They should be confirmed in their title to their lands the same as the Pueblos of New Mexico, of which Territory Arizona was a part when the confirmations were made and it is greatly to be hoped that some means will be found of doing this by the action of the land office if legislation (legislative) action is not deemed necessary.

Very respectfully

W. HALLETT PHILLIPS.

U.S. DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C. July 8, 1966.

Mr. GRAHAM E. HOLMES,
Area Director, Navajo, Window Rock, Ariz.

DEAR MR. HOLMES: The conflict between the Navajo and Hopi Tribes over their respective rights in the Executive Order Reservation of 1882 was resolved by *Healing* v. *Jones*. The decision in that case unequivocally and finally gave joint and common ownership of the surface and subsurface of the 1882 Executive Order Reservation lying outside of District 6 to the two tribes.

Thus, the ownership and rights in that particular area are forever settled insofar as this Bureau is presently concerned. All actions whatsoever taken by officials of the Bureau (rights-of-way, traders licenses, leases, etc.) which hypothecate in any way the resources of the jointly owned area of the 1882 Executive Order Reservation must be guided by the reality of common ownership.

Another problem which has perplexed the Bureau for years is the administ tion of that area in Arizona encompassed by the Act of June 14, 1934 (43 St 960), popularly known as the "Boundary Bill of 1934." This Act confirmed to Navajos, and other Indians residing therein, ownership to certain Execut Order additions made to the Navajo Treaty Reservation of 1868. The Hopi Tr has long claimed rights in the area encompassed by the "Boundary Bill." Th have largely been ignored by the Bureau, and wholly by the Navajo Tri Historically, these claims have been confined to the general region of Moenc and Tuba City and to the country lying between them and the Hopi Villag

In recent years, the Attorney for the Hopi Indians, acting on their behalf, asserted the claims of the Hopi and protested actions taken unilaterally by Navajo Tribe and/or the Bureau in the area referenced without consent if, or that matter, consultation with, the Hopi Tribe. Leases and permits have b granted throughout the area without regard for any Hopi interest. Only recen a lease was given to a restaurant operator for a site almost on the doorstep Moencopi without Hopi consent. Moneys collected from leases, rights-of-w traders licenses, and other sources have been credited throughout the ye solely to the Navajo Tribe.

Now comes an urgent request for a right-of-way, submitted by the Ariz Public Service Corporation, to construct a transmission line across the 1 "Boundary Bill" area. The application for a right-of-way has been approved the Navajo Tribe but the Hopi Tribe was not originally made a party. A consequence, the Hopi Tribe has directed its counsel to take appropriate le action should a crossing be attempted without the consent of the Hopi Tri and to take such other action as needed effectively to administer the rights the Hopi Indians in the 1934 reservation.

That action stimulated a request to the Solicitor for an opinion as to the ext and nature of Hopi rights in the 1934 "Boundary Bill" area as a guide for pro administration of the area to which the Hopis have historically made their cla That opinion is attached hereto. It affirms the presence of Hopi interests in area but leaves unanswered questions about the nature and extent of such rig It appears likely the answer to that multiple question can be supplied only the Congress and/or the Federal Courts.

It is evident the Government can no longer continue to administer the a as though it were owned solely by the Navajo Tribe. Without attempting prejudge, prejudice, or anticipate any future action that might be taken by tribes in friendly negotiation, or by the Congress finally to adjudicate the resp tive interests of the tribes, it does not appear reasonable to administer the t of the reservation area in Arizona, confirmed by the Act of June 14, 1934 though it were jointly owned by the Hopi and Navajo Tribes. Effective ministration requires of me a prudent judgment.

Therefore, the following instructions shall apply only to that portion of Navajo Reservation lying west of the Executive Order Reservation of 1882 bounded on the north and south by westerly extensions, to the reservation l of the northern and southern boundaries of the said Executive Order Reservat

Effective July 1, 1966, an undetermined Hopi interest in the area so delim shall officially be recognized by placing in a special deposit account all mor derived from the use and management of the surface and subsurface resou therein. No action shall be taken by an official of the Bureau that does not t full cognizance of the undetermined rights and interests of the Hopi Indian the said area. This will necessitate formal action by the Hopi as well as by Navajo Tribe on all those cases which hypothecate the surface or subsur resources for exploration, mining, rights-of-way, traders, or other use or occupa authorized by permit, lease, or license.

The same rule will apply to any action which might be taken by the Governm for which the law, policies, or regulations require prior tribal consent. By the s token, neither tribe should be permitted unilaterally to take actions within said area that trespass on the rights of the other.

The administration of the area delimited above will, if long continued, pla financial hardship on both tribes and will magnify the costs and difficulties administration.

The period of hardships and administrative difficulties would be shorte materially by a friendly confrontation of the tribes, to the end that in face-to-f talks they might agreeably negotiate out what they consider to be their respec interests and thus form the basis for an early and amicable legislative presenta to the Congress of a bill to end confusion of ownership.

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In anticipation of Hopi demands for cash reimbursement from the Navajo for whatever their share may prove to be in revenues collected from at least the area described herein, all of which revenues have heretofore been deposited to the credit of the Navajo Tribe, the Area Director for the Navajo should commence a search for the records of collections and deposits of funds derived from the resources within the area since the date of the enactment of the so-called "Boundary Bill" of June 14, 1934.

Sincerely yours,

(Signed) ROBERT L. BENNETT,
Commissioner.

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