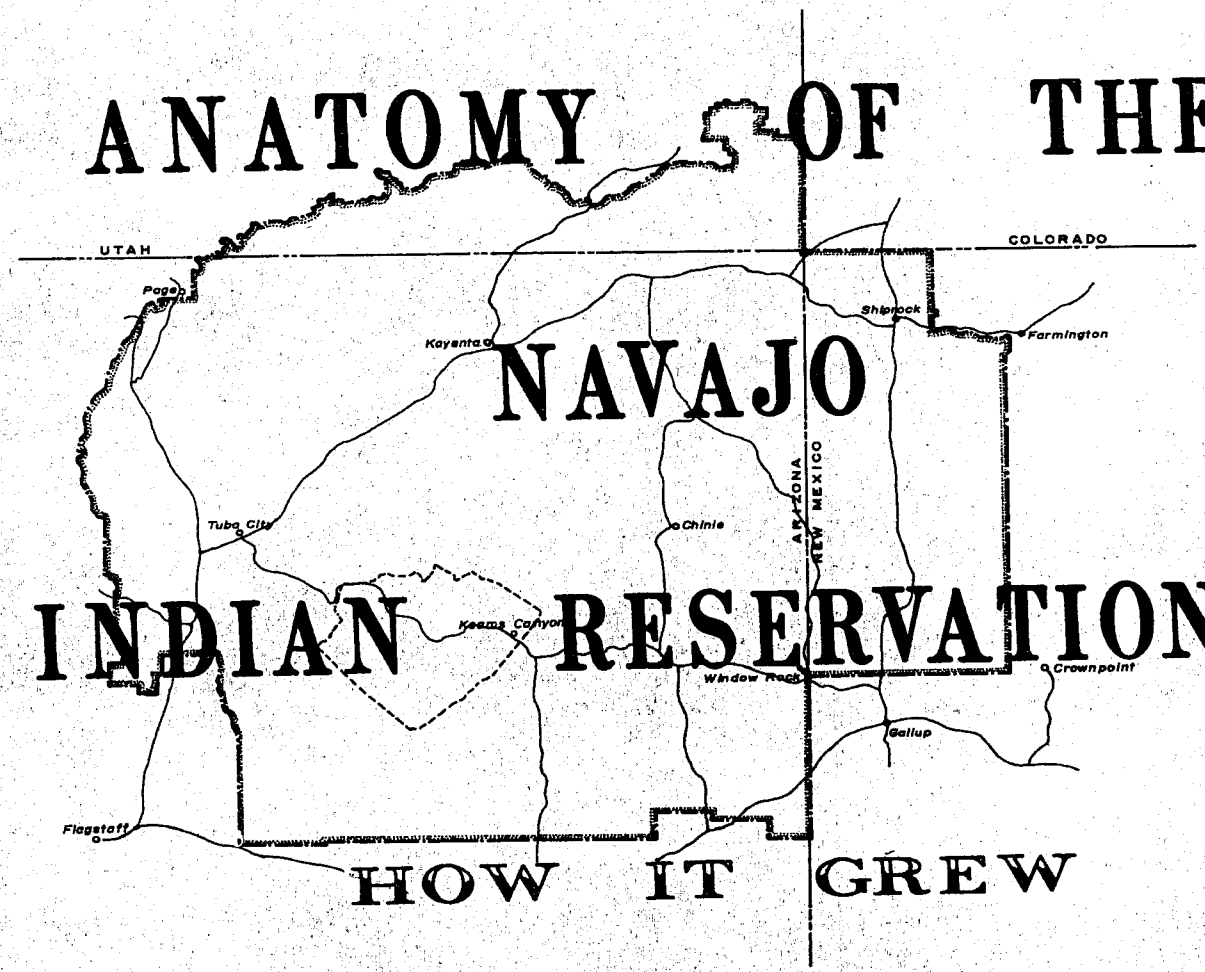
ANATOMY OF THE NAVAJO INDIAN RESERVATION: HOW IT GREW



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THE NAVAJO NATION
WINDOW ROCK, ARIZONA
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I N T R O D U C T I O N

This book has been prepared to answer the many questions arising from the complex nature of Navajo land holdings and land use, how the Navajo Indian Reservation was created, and how it grew to its presently-established dimensions.

Beginning with Map No. 1, which is a skeleton outline of the Navajo Indian Reservation as presently constituted, sequential Maps No. 2 through No. 21 illustrate progressively how the space within this skeleton outline gradually became filled to become the Navajo Indian Reservation.

Following each map are the documents supporting each addition, revocation, exchange, or other transaction involved.

Map No. 22 shows the three satellite Navajo reservations of Alamo (or Puertocito), Cañoncito, and Ramah.

Following Map No. 22 is a tabular breakdown by acreages of Navajo land use in Arizona, New Mexico, and Utah - both on and off the reservation.

Preceding Map No. 1 is a DIGEST OF CONTENTS from which can be ascertained at a glance the chronological sequence of enactments leading up to the creation of the present Navajo Indian Reservation.

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P R E L I M I N A R Y N O T E

The Treaty of June 1, 1868, all Executive Orders, and Acts of Congress with Annotations, Cross-references, and History contained herein, unless otherwise specified, are from the NAVAJO TRIBAL CODE, Appendix.

An Executive Order is an Order signed by the President of the United States.

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TREATY OF JUNE 1, 1868

Treaty between the United States of America
and the Navajo Tribe of Indians;
Concluded June 1, 1868; Ratification advised July 25, 1868;
Proclaimed August 12, 1868 (15 Stat. 667)

ANDREW JOHNSON,

President of the United States of America,

To all and singular to whom these presents shall come, greeting:

WHEREAS a treaty was made and concluded at Fort Sumner, in the territory of New Mexico, on the first day of June, in the year of our Lord, one thousand eight hundred and sixty-eight, by and between Lieutenant-General W. T. Sherman and Samuel F. Tappan, commissioners, on the part of the United States and Barboncito Armijo, and other chiefs and headmen of the Navajo tribe of Indians, on the part of said Indians, and duly authorized thereto by them, which treaty is in the words and figures following, to wit:

ARTICLES of a treaty and agreement made and entered into at Fort Sumner, New Mexico, on the first day of June, one thousand eight hundred and sixty-eight, by and between the United States, represented by its commissioners, Lieutenant-General W. T. Sherman and Colonel Samuel F. Tappan, of the one part, and the Navajo Nation or tribe of Indians, represented by their chiefs and head-men, duly authorized and empowered to act for the whole people of said nation or tribe, (the names of said chiefs and head-men being hereto subscribed,) of the other part, witness:

ARTICLE I. From this day forward all war between the parties to this agreement shall forever cease. The Government of the United States desires peace, and its honor is hereby pledged to keep it. The Indians desire peace, and they now pledge their honor to keep it.

If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once to cause the offender to be arrested and punished according to the laws of the United States, and also to reimburse the injured persons for the loss sustained.

If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States and at peace therewith, the Navajo tribe agree that they will, on proof made to their agent, and on notice by him, deliver up the wrongdoer to the United States, to be tried and punished according to its laws; and in case they wilfully refuse so to do, the person injured shall be reimbursed for his loss from the annuities or other moneys due or to become due to them under this treaty, or any others that may be made with the United States. And the President may prescribe such rules and regulations for ascertaining damages under this article as in his judgment may be proper; but no such damage shall be adjusted and paid until examined and passed upon by the Commissioner of Indian Affairs, and no one sustaining loss whilst violating, or because of his violating, the provisions of this treaty or the laws of the United States, shall be reimbursed therefor.

ARTICLE II. The United States agrees that the following district of country, to wit: bounded on the north by the 37th degree of north latitude, south by an east and west line passing through the site of old Fort Defiance, in Cañon Bonito, east by the parallel of longitude which, if prolonged south, would pass through old Fort Lyon, or the Ojo-de-oso, Bear Spring, and west by a parallel of longitude about 109° 30′ west of Greenwich, provided it embraces the outlet of the Cañon-de-Chilly, which cañon is to be all included in this reservation, shall be, and the same is hereby, set apart for the use and occupation of the Navajo tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them; and the United States agrees that no persons except those herein so authorized to do, and except such officers, soldiers, agents, and employés of the Government, or of the Indians, as may be authorized to enter upon Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article.

ARTICLE III. The United States agrees to cause to be built, at some point within said reservation, where timber and water may be convenient, the following buildings: a warehouse, to cost not exceeding twenty-five hundred dollars; an agency building for the residence of the agent, not to cost exceeding three thousand dollars; a carpenter-shop and blacksmith-shop, not to cost exceeding one

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thousand dollars each; and a schoolhouse and chapel, so soon as a sufficient number of children can be induced to attend school, which shall not cost to exceed five thousand dollars.

ARTICLE IV. The United States agrees that the agent for the Navajos shall make his home at the agency building; that he shall reside among them, and shall keep an office open at all times for the purpose of prompt and diligent inquiry into such matters of complaint by or against the Indians as may be presented for investigation, as also for the faithful discharge of other duties enjoined by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his finding, to the Commissioner of Indian Affairs, whose decision shall be binding on the parties to this treaty.

ARTICLE V. If any individual belonging to said tribe, or legally incorporated with it, being the head of a family, shall desire to commence farming, he shall have the privilege to select, in the presence and with the assistance of the agent then in charge, a tract of land within said reservation, not exceeding one hundred and sixty acres in extent, which tract, when so selected, certified, and recorded in the "land-book" as herein described, shall cease to be held in common, but the same may be occupied and held in the exclusive possession of the person selecting it, and of his family, so long as he or they may continue to cultivate it.

Any person over eighteen years of age, not being the head of a family, may in like manner select, and cause to be certified to him or her for purposes of cultivation, a quantity of land, not exceeding eighty acres in extent, and thereupon be entitled to the exclusive possession of the same as above directed.

For each tract of land so selected a certificate containing a description thereof, and the name of the person selecting it, with a certificate endorsed thereon, that the same has been recorded, shall be delivered to the party entitled to it by the agent, after the same shall have been recorded by him in a book to be kept in his office, subject to inspection, which said book shall be known as the "Navajo Land-book."

The President may at any time order a survey of the reservation, and when so surveyed, Congress shall provide for protecting the rights of said settlers in their improvements, and may fix the character of the title held by each.

The United States may pass such laws on the subject of alienation and descent of property between the Indians and their descendants as may be thought proper.

ARTICLE VI. In order to insure the civilization of the Indians entering into this treaty, the necessity of education is admitted, especially of such of them as may be settled on said agricultural parts of this reservation, and they therefore pledge themselves to compel their children, male and female, between the ages of six and sixteen years, to attend school; and it is hereby made the duty of the agent for said Indians to see that this stipulation is strictly complied with; and the United States agrees that, for every thirty children between said ages who can be induced or compelled to attend school, a house shall be provided, and a teacher competent to teach the elementary branches of an English education shall be furnished, who will reside among said Indians, and faithfully discharge his or her duties as a teacher.

The provisions of this article to continue for not less than ten years.

ARTICLE VII. When the head of a family shall have selected lands and received his certificate as above directed, and the agent shall be satisfied that he intends in good faith to commence cultivating the soil for a living, he shall be entitled to receive seeds and agricultural implements for the first year, not exceeding in value one hundred dollars, and for each succeeding year he shall continue to farm, for a period of two years, he shall be entitled to receive seeds and implements to the value of twenty-five dollars.

ARTICLE VIII. In lieu of all sums of money or other annuities provided to be paid to the Indians herein named under any treaty or treaties heretofore made, the United States agrees to deliver at the agency house on the reservation herein named, on the first day of September of each year for ten years, the following articles, to wit:

Such articles of clothing, goods, or raw materials in lieu thereof, as the agent may make his estimate for, not exceeding in value five dollars per Indian—each Indian being encouraged to manufacture their own clothing, blankets, etc.; to be furnished with no article which they can manufacture themselves. And, in order that the Commissioner of Indian Affairs may be able to estimate properly for the articles herein named, it shall be the duty of the agent each year to forward to him a full and exact census of the Indians, on which the estimate from year to year can be based.

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And in addition to the articles herein named, the sum of ten dollars for each person entitled to the beneficial effects of this treaty shall be annually appropriated for a period of ten years, for each person who engages in farming or mechanical pursuits, to be used by the Commissioner of Indian Affairs in the purchase of such articles as from time to time the condition and necessities of the Indians may indicate to be proper; and if within the ten years at any time it shall appear that the amount of money needed for clothing, under the article, can be appropriated to better uses for the Indians named herein, the Commissioner of Indian Affairs may change the appropriation to other purposes, but in no event shall the amount of this appropriation be withdrawn or discontinued for the period named, provided they remain at peace. And the President shall annually detail an officer of the Army to be present and attest the delivery of all the goods herein named to the Indians, and he shall inspect and report on the quantity and quality of the goods and the manner of their delivery.

ARTICLE IX. In consideration of the advantages and benefits conferred by this treaty, and the many pledges of friendship by the United States, the tribes who are parties to this agreement hereby stipulate that they will relinquish all right to occupy any territory outside their reservation, as herein defined, but retain the right to hunt on any unoccupied lands contiguous to their reservation, so long as the large game may range thereon in such numbers as to justify the chase; and they, the said Indians, further expressly agree:

1st. That they will make no opposition to the construction of railroads now being built or hereafter to be built across the continent.

2d. That they will not interfere with the peaceful construction of any railroad not passing over their reservation as herein defined.

3d. That they will not attack any persons at home or travelling, nor molest or disturb any wagon-trains, coaches, mules, or cattle belonging to the people of the United States, or to persons friendly therewith.

4th. That they will never capture or carry off from the settlements women or children.

5th. They will never kill or scalp white men, nor attempt to do them harm.

6th. They will not in future oppose the construction of railroads, wagon-roads, mail stations, or other works of utility or necessity which may be ordered or permitted by the laws of the United States; but should such roads or other works be constructed on the lands of their reservation, the Government will pay the tribe whatever amount of damage may be assessed by three disinterested commissioners to be appointed by the President for that purpose, one of said commissioners to be a chief or head-man of the tribe.

7th. They will make no opposition to the military posts or roads now established, or that may be established, not in violation of treaties heretofore made or hereafter to be made with any of the Indian tribes.

ARTICLE X. No future treaty for the cession of any portion or part of the reservation herein described, which may be held in common, shall be of any validity or force against said Indians unless agreed to and executed by at least three-fourths of all the adult male Indians occupying or interested in the same; and no cession by the tribe shall be understood or construed in such manner as to deprive, without his consent, any individual member of the tribe of his rights to any tract of land selected by him as provided in article [5] of this treaty.

ARTICLE XI. The Navajos also hereby agree that at any time after the signing of these presents they will proceed in such manner as may be required of them by the agent, or by the officer charged with their removal, to the reservation herein provided for, the United States paying for their subsistence en route, and providing a reasonable amount of transportation for the sick and feeble.

ARTICLE XII. It is further agreed by and between the parties to this agreement that the sum of one hundred and fifty thousand dollars appropriated or to be appropriated shall be disbursed as follows, subject to any condition provided in the law, to wit:

1st. The actual cost of the removal of the tribe from the Bosque Redondo reservation to the reservation, say fifty thousand dollars.

2d. The purchase of fifteen thousand sheep and goats, at a cost not to exceed thirty thousand dollars.

3d. The purchase of five hundred beef cattle and a million pounds of corn, to be collected and held at the military post nearest the reservation, subject to the orders of the agent, for the relief of the needy during the coming winter.

4th. The balance, if any, of the appropriation to be invested for the maintenance of the Indians pending their removal, in such manner as the agent who is with them may determine.

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5th. The removal of this tribe to be made under the supreme control and direction of the military commander of the Territory of New Mexico, and when completed, the management of the Tribe to revert to the proper agent.

ARTICLE XIII. The tribe herein named, by their representatives, parties to this treaty, agree to make the reservation herein described their permanent home, and they will not as a tribe make any permanent settlement elsewhere, reserving the right to hunt on the lands adjoining the said reservation formerly called theirs, subject to the modifications named in this treaty and the orders of the commander of the department in which said reservation may be for the time being; and it is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty; and it is further agreed by the parties to this treaty, that they will do all they can to induce Indians now away from reservations set apart for the exclusive use and occupation of the Indians, leading a nomadic life, or engaged in war against the people of the United States, to abandon such a life and settle permanently in one of the territorial reservations set apart for the exclusive use and occupation of the Indians.

In testimony of all which the said parties have hereunto, on this the first day of June, one thousand eight hundred and sixty-eight, at Fort Sumner, in the Territory of New Mexico, set their hands and seals.

W. T. SHERMAN,
Lt. Gen'l, Indian Peace Commissioner.

S. F. TAPPAN,
Indian Peace Commissioner.

BARBONCITO, *Chief.*	his x mark
ARMIJO.	his x mark
DELGADO.	his x mark
MANUELITO.	his x mark
LARGO.	his x mark
HERRERO.	his x mark
CHIQUETO.	his x mark
MUERTO DE HOMBRE.	his x mark
HOMBRO.	his x mark
NARBONO.	his x mark
NARBONO SEGUNDO.	his x mark
GAÑADO MUCHO.	his x mark

COUNCIL:

RIQUO.	his x mark
JUAN MARTIN.	his x mark
SERGINTO.	his x mark
GRANDE.	his x mark
INOETENITO.	his x mark
MUCHACHOS MUCHO.	his x mark
CHIQUETO SEGUNDO.	his x mark
CABELLO AMARILLO.	his x mark
FRANCISCO.	his x mark
TORIVIO.	his x mark
DESDENDADO.	his x mark
JUAN.	his x mark
GUERO.	his x mark
GUGADORE.	his x mark
CABASON.	his x mark
BARBON SEGUNDO.	his x mark
CABARES COLORADOS.	his x mark

Attest:

GEO. W. G. GETTY,
Col. 37th Inf'y, Bt. Maj. Gen'l U. S. A.

B. S. ROBERTS,
Bt. Brg. Gen'l U. S. A., Lt. Col. 3d Cav'y.

J. COOPER MCKEE,
Bt. Lt. Col. Surgeon U. S. A.

THEO. H. DODD,
U. S. Indian Ag't for Navajos.

CHAS. MCCLURE,
Bt. Maj. and C. S. U. S. A.

JAMES F. WEEDS,
Bt. Maj. and Asst. Surg. U. S. A.

J. C. SUTHERLAND,
Interpreter.

WILLIAM VAUX,
Chaplain, U. S. A.

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ANNOTATIONS

Authority over Reservation, 3
Education, roads and other services, 2
Historical, 1
State authority and jurisdiction, 4

1. **Historical.** "On June 1, 1868, a treaty was signed between General William T. Sherman, for the United States, and numerous chiefs and headmen of the 'Navajo nation or tribe of Indians'. At the time this document was signed the Navajos were an exiled people, forced by the United States to live crowded together on a small piece of land on the Pecos River in eastern New Mexico, some 300 miles east of the area they had occupied before the coming of the white man. In return for their promises to keep peace, this treaty 'set apart' for 'their permanent home' a portion of what had been their native country, and provided that no one, except United States Government personnel, was to enter the reserved area. Implicit in these treaty terms, as it was in the treaties with the Cherokees involved in Worcester v. State of Georgia, was the understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed. Since then, Congress and the Bureau of Indian Affairs have assisted in strengthening the Navajo tribal government and its courts. See the Navajo-Hopi Rehabilitation Act of 1950, § 6, 64 Stat. 46, 25 U.S.C. § 636, 25 U.S.C.A. § 636; 25 CFR §§ 11.1 through 11.87NH." Williams v. Lee (S.Ct. of U.S. 1959) 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251.

See Oliver v. Udall (C.A.D.C. 1962) 306 F.2d 819, and In re Lynch's Estate (1962) 92 Ariz. 354, 377 P.2d 199, quoting from Williams v. Lee.

One of the last treaties with Indians was entered into with the Navajo Indians in 1868. Warren Trading Post Co. v. Moore (1963) 95 Ariz. 110, 387 P.2d 809, reversed on other grounds. Warren Trading Post Co. v. Arizona State Tax Commission (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

The Navajo Reservation was set apart as a "permanent home for the Navajos" in a treaty made with the "Navajo nation or tribe of Indians" on June 1, 1868. Warren Trading Post Co. v. Arizona State Tax Commission (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

Long before the Treaty of 1868, in fact from the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference, and had exercised through statutes and treaties a sweeping and dominant control over persons who wished to trade with Indians and Indian Tribes. Id.

Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the Reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities. Id.

2. **Education, roads and other services.** In compliance with its treaty obligations the Federal Government has provided for roads, education and other services needed by the Indians. Warren Trading Post Co. v. Arizona State Tax Commission (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

3. **Authority over Reservation.** Congress recognized the authority of the Navajos over their Reservation in the Treaty of 1868, and has done so ever since, and if this power is to be taken away from them, it is for Congress to do it. Williams v. Lee (S.Ct. of U.S. 1959) 358 U.S. 217, 79 S.Ct. 269, 3 L.Ed.2d 251.

National Labor Relations Board had jurisdiction to order the holding of representation election in a mining plant located on the Navajo Reservation even though under Treaty of 1868 Tribe has broad powers of self government, including right to exclude outsiders, and Tribal Council had decided to prevent union activity on the Reservation. Navajo Tribe v. National Labor Relations Board (C.A.D.C. 1961) 288 F.2d 162, cert. den. 366 U.S. 928, 81 S.Ct. 1649, 6 L.Ed.2d 387.

To same effect as Williams v. Lee. Oliver v. Udall (C.A.D.C. 1962) 306 F.2d 819, cert. den. 372 U.S. 908, 83 S.Ct. 720, 9 L.Ed.2d 418.

The provisions of Article II of the Treaty of 1868 between United States and the Navajo Tribe of Indians reserves to the Navajo Tribe the power to exclude non-Navajos from the Navajo Reservation, with the exception of those persons authorized to enter thereon by virtue of the treaty itself, a law of the United States, or an order of the President of the United States. Dodge v. Nakai (1969) 298 F.Supp. 26.

The Civil Rights Act relating to Indians imposed new responsibilities upon the Navajo Tribe with respect to both the manner in which it could exercise its governmental powers and the objectives that it could pursue through their implementation. Id.

Congress may modify the manner in which Indian Tribes may exercise their quasi-sovereign powers. Id.

When Navajo Tribe adopted as Tribal law the Code of regulations of Department of Interior generally applicable to Indian Tribes and Secretary of Interior approved the action by the Navajo Tribe, the Secretary's law and order Code no longer applied to Navajo Tribe. Id.

4. **State authority and jurisdiction.** The Navajo Indian Reservation is not a completely separate entity existing outside the political and governmental jurisdiction of the State of New Mexico. Montoya v. Bolack (1962) 70 N.M. 196, 372 P.2d 387.

The test of state court jurisdiction is whether the state action impinges on the Reservation Indians to make their own laws and be governed by them. Batchelor v. Charley (1965) 74 N.M. 717, 398 P.2d 49; Warren Trading Post Co. v. Moore (1963) 95 Ariz. 110, 387 P.2d 809, reversed on other grounds Warren Trading Post Co. v. Arizona State Tax Commission (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

The levy by Arizona of a tax on the gross proceeds or gross income as applied to a federally licensed Indian trader with respect to sales made to Reservation Indians on the Navajo Reservation cannot stand. Warren Trading Post Co. v. Arizona State Tax Commission (S.Ct. of U.S. 1965) 380 U.S. 685, 85 S.Ct. 1242.

The assessment and collection of such a tax would to a substantial extent frustrate evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians on the reservations except as authorized by Acts of Congress or by valid regulations promulgated under those Acts. Id.

This state tax on gross income would put financial burdens on the Indian trader or the Indians with whom he deals in addition to those Congress or the Tribes have prescribed, and could thereby disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable by the Indian Commissioner. Id.

Indian traders trading on the Reservation with Reservation Indians are immune from a state tax like Arizona's, not simply because those activities take place on the Reservation, but rather because Congress in the exercise of its power granted in Art. I, § 8, cl. 3, of the Constitution has undertaken to regulate Reservation trading in so comprehensive a way that there is no room for the states to legislate on the subject. Id.

State laws apply on the Reservation unless such application would interfere with Reservation self-government or impair a right granted or reserved by Federal law. Industrial Uranium Co. v. State Tax Commission (1963) 95 Ariz. 120, 387 P.2d 1013.

Article II of the Treaty of 1868, did not exclude Arizona from collecting transaction privilege taxes from mining company in connection with mining, producing and shipping uranium and vanadium ores from lands in Arizona held in trust by the United States for the Navajo Tribe. Id.

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