

Jerry Kammer

**THE
SECOND
LONG WALK**

The Navajo-Hopi Land Dispute

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the Navajos refer to them by the name Tusavuhta, meaning "to pound," because, as the Hopis explain it, Navajos sometimes killed their enemies by pounding their heads with rocks.

The best and the worst of Navajo-Hopi relations can be seen in the experiences of two Hopi families, the Nahas and the Navasies.

Neil and Myrtle Naha became close friends with the Navajo families near their ranch at Teesto, in the southern portion of what became the Joint Use Area. One of their daughters married a Navajo, and they pointed out that intermarriage has long been common. "We were just like one family," Mrs. Naha said in 1979. "We'd visit each other, they used to babysit our children, we looked after each other. In no way did they hurt us the way Abbott [Sekaquaptewa] has been saying." Mr. Naha said he was upset that Navajo families, including his friends the Miller Attakais and the Tom Bahes were being forced by the JUA partition to move out. "We don't have any anger with the Navajos," he said. "We feel for them because they been there all these years. They really feel bad about it. They're always talking about it." The Attakais and Bahes have already been forced by the government to move once, in 1943 when District 6 was expanded. There was room for them at that time just south of the District 6 line. Now they don't know where they can go.

A few miles northeast of Teesto, in the Jeddito Valley, the Navajo population was increasing rapidly in the 1920s and 1930s, and the family of young Melvina Navasie was being caught in a squeeze. When Melvina was a child and herded her family's sheep, Navajos on horseback used whips to chase her away from grazing land they wanted for their own. They made life miserable for the Hopi family, trampling their crops and vandalizing their home. The most grievous insult came in the early 1950s, when Navajo youths hung Melvina's father by his feet in a hogan. He died a month later from hemorrhaging. But Melvina's family stayed on at Jeddito.

Now the Navasies are eager to see the Navajos relocated. "We want them out because we know that the Navajo harrassment will always be there as long as the Navajo remains around us," Mrs. Navasie told a Senate committee in 1978. Their land at Jeddito has been partitioned to the Navajos, and the Navasies have plans to move a short distance to the Hopi partition area, from which Navajos

are to be relocated. "We have waited all our lives to live in peace and for the Hopi people to get back some of their lands we have lost to the Navajo people," Mrs. Navasie said.

In most instances, Navajo-Hopi relationships have been less sharply defined. When Walter Albert moved to Sand Springs around 1920, Navajos rode up on horseback and demanded that he go back to his village, where they said Hopis belonged. Mr. Albert stayed on at Sand Springs, however, and gradually won the acceptance and affection of his Navajo neighbors. He remains there today. Mr. Albert also has a home in Moencopi village, where he talked about the old days as his children watched a movie on the color TV next to a wall that held nearly a dozen kachina dolls. He spoke more comfortably in Hopi than in English, letting his son Roy interpret for the visitor. Mr. Albert said he learned to speak Navajo at Sand Springs, sang with his neighbors at their Squaw Dances, and enjoyed the big get-togethers they had each year at branding time. He said he lived at Sand Springs primarily during the summer, and when he returned to the village to do carpentry or masonry on government construction projects, he hired a Navajo to tend his herd. Still, he added, some Navajos were not so friendly and rustled his stock from time to time.

Roy offered an explanation for the ambivalence of Hopi feeling toward the Navajos. "We're entirely different cultures," Roy said. "In Hopi society the man does most of the work. He is responsible for growing the food. But with the Navajos, the woman took care of the sheep, while the man was a raider, a stealer. The Navajos were my father's best friends, but still he couldn't trust them. There's a saying in Hopi: When you shake hands with a Navajo, be careful, because his other hand might be reaching for your pocket. We got along pretty good, I suppose, but it's hard for us to feel bad that they have to move out." Roy said he resented the failure of the government to make a final definition of land rights between the two tribes a long time ago. He gave an example of how this failure has damaged his friendships with Navajos in recent years. "If you don't mention the dispute with them, it's okay. But nowadays a Hopi doesn't go out to a Squaw Dance unless he wants to commit suicide." Drinking is commonplace as fry bread at Squaw Dances nowadays, and hostility quickly finds its way to the surface.

How the Hopi public feels about the land dispute is difficult to

measure. Opinion polls haven't made it to the mesas yet, and there remains a strong reluctance on the part of many to become involved in political squabbles. Certainly the votes that have elected Abbott Sekaquaptewa to two consecutive four-year terms as tribal chairman must be seen as an endorsement of his hard line. But most Hopis don't vote. Participation in tribal elections is chronically poor because of indifference or outright hostility to the tribal council. In the 1973 elections, while the land dispute was flaring in Congress, 861 Hopis went to the polls. In the three villages of Shungopavi, Hotevilla, and Bakabi, with a combined population of nearly 2,000, only 86 votes were recorded.

An outsider traveling the mesas in 1978 and 1979 got varied reactions to the land dispute. A member of a road construction crew who flagged him to a halt on Highway 264 said, "I don't know much about that. I guess it's just the council that wants that." At the Keams Canyon Cafe a Hopi waitress said, "I don't pay any attention to it." And a teacher from Moencopi said he "couldn't care less" about the land dispute. There were plenty of voices on the other side. A Hopi teacher at the BIA boarding school at Tuba City said she thinks the Navajos should be moved "back where they belong." And another Moencopi resident said the Navajos are getting what they deserve.

"The Average Hopi Isn't Going to Benefit Very Much"

In the light of the Hopi claim before Congress that Navajos in the JUA threatened them with cultural extinction, it is important to note that the first serious Hopi attempt to make use of range land well beyond the mesas began in the 1920s, when an emergent group of economic individualists, breaking the centuries-old pattern of Hopi life, recognized cattle raising as an attractive alternative to the traditional farming economy. The land close to the villages was taken up by clan holdings, but areas farther out were not subject to traditional claims. The hearty few who made the effort to move there were confronted by Navajos already in the area who frequently harassed them back to the mesas. In a number of instances, however, the Hopis persevered and held their ground. It must be emphasized that only a few Hopis tried to move from the mesas, that the great majority of the people stayed in the

agricultural economy, and that the Navajo threat to Hopi farming lands was checked with the establishment and subsequent enlargement of District 6. The Navajos now living in the JUA represent no threat to the Hopi culture. Instead, they are a hindrance only to what might be called a new Hopi elite, most of whom are relatively affluent and who want to expand their cattle holdings. Albert Yava speaks of this new Hopi elite in *Big Falling Snow*: "We used to have groupings by clans and families and kiva lodges, and now we have to add a grouping by wealth. The well-off Hopi has special interests. If he owns a lot of cattle for example, that land we have been contesting with the Navajos is much more important to him than to a poor family in Shipaulovi. The average Hopi isn't going to benefit very much from the land settlement."⁶ Myrtle Naha said the same thing more succinctly. "Who's going to live out there?" she asked. "The people in the villages don't want to move away from the mesas."

The Hopi family that will gain the most from partition of the JUA is one of the least traditional, most affluent families in the tribe—the family of Abbott and Wayne Sekaquaptewa. They are a remarkably talented and grimly determined family with a fascinating history. The father of Abbott and Wayne Sekaquaptewa was one of the Hopi children dragged off to school by government agents at the beginning of the twentieth century. At school in Phoenix and Riverside, California, Emory Sekaquaptewa, Sr., learned the machinist's trade. He took to the new ways eagerly, working at a BIA school in Idaho before returning home to Hotevilla around 1918. "Everyone was expected to forget what they learned off the reservation and come back to being a Hopi again," his son Wayne said sixty years later. But Emory had different ideas. He made his first overt break from tradition by refusing initiation into the priesthood. Then, as we have seen, he and his wife Helen incurred the wrath of their neighbors by taking on Bahana ways. The Sekaquaptewas were mocked for trying to become Bahanas, their children were beaten up, they became pariahs.

Emory's family had a farm on clan land twelve miles southwest of Hotevilla, near the border of what became the enlarged District 6. When the harassment in the villages became intolerable in 1935, the family moved to the farm, growing corn and grazing sheep and cattle. To communicate with his neighbors, Emory learned to speak Navajo. In a book she wrote with the mother of Con-

gressman Morris Udall, however, Mrs. Sekaquaptewa recalls the difficulty her family had with some of the Navajos in the area:

The wagon road that the Navajos traveled going to Oraibi to trade passed right by our garden, and many times they stopped and helped themselves to the melons, fruits, and vegetables. If they traveled on horseback, their trail passed right in front of our house, and nothing was safe. We sometimes went into the village for a few days and on our return we would find the door broken in, food taken, and things generally scattered about.⁷

Emory and Helen Sekaquaptewa raised extraordinary children. Abbott and Wayne are not the only ones to have achieved distinction. Emory, Jr., was the first Arizona Indian to attend West Point. Health problems forced him to resign during the first year, but he went on to earn a law degree and is now a member of the faculty at the University of Arizona. Eugene is a Marine veteran of the Iwo Jima invasion.

Abbott was born in 1929, six years after Wayne. He spent most of his adolescent years laid up in Phoenix with severe arthritis that still cripples his legs. Intense, curious, he read incessantly. Years later, after he was appointed by the governor of Arizona to a state board which required its members to have high school diplomas, Abbott went down to the State Education Department and in one day earned his high school equivalency diploma. An article in the *New York Times* in 1979 described him as "a stern, crippled man, whose life contains no humor, little joy, and a fierce devotion to what he perceives as his people's interest."⁸ Lacking the priesthood initiation that is traditionally a prerequisite for a leadership position, marked by a physical handicap and membership in a controversial family, self-conscious about his lack of formal education, Abbott Sekaquaptewa is a man determined to prove himself. He worked in a number of mid-level positions with the tribal council before serving three one-year terms as chairman in the early 1960s. When he selected the number 13 as his personal brand at the family ranch, he made a grim statement of his defiant approach to life. He has led the Hopi fight to have Navajos expelled from the JUA. Anthropologist Richard Clemmer describes Sekaquaptewa as a man who "burns with a commitment to Hopi ethnicity and a passion for unremitting vengeance against the Navajo."⁹

Those closest to Abbott Sekaquaptewa say he has made the land dispute his life. They say he frequently puts aside other tribal issues to concentrate single-mindedly on assuring that the victory his tribe won over the Navajos in 1974 does not slip away. During an interview at his Oraibi office in 1978, he spoke seethingly about "having our noses rubbed into the dirt by the Navajos," being "robbed blind," and "100 years of indignity." He said the Navajos were not the only ones to suffer from stock reduction in the 1930s, that his family were forced to sell all but a few of their animals. But if he has intensely angry feelings about the Navajos, he also has intensely fond feelings for the land. "Man, I'd like to see this land bloom the way the elders said it used to when the grass grew knee-high and the sunflowers bloomed in the valley and made the whole land bright yellow, and the hummingbirds and butterflies flew in the cornfields. That is life. That was happiness."

Sekaquaptewa acknowledged that partition of the JUA is turning over to the Hopis large areas no Hopi ever attempted to settle because of their distance from the mesas, for example, Big Mountain. He insisted, nonetheless, that the Hopis used the entire JUA before the Navajos came. "They say the Hopis weren't using the land," he said ("they" being the Navajos). "The point is: by what standards? Why should the Hopis have to be judged according to the standards of the Navajos or the white man? We were using that land. But we have a different way of using it—gathering wood, hunting, visiting shrines. There were antelope in this area before the Navajo moved in. And the one and only reason why there are no antelope here is the same reason the eagles are going—because the Navajos have moved in." He countered a question about his feelings for Navajo relocatees by referring to the Hopis who were intimidated from the land by the Navajos. "It is time someone else did a little giving," he said. "The hardship is not limited to contemporary Navajo citizens. We know more about hardship in this whole case than they do."

It is clear that Abbott Sekaquaptewa and his family know a great deal about hardship. But it is also clear that the Sekaquaptewa family is anything but typical of the Hopi Tribe and that their determination in the land dispute is a major factor in the expulsion of many Navajos who never harmed the Hopis, who simply made their homes on land the Hopis used only periodically.

The Troublesome Concept of Joint Use

In 1978, Glenn Emmons, commissioner of Indian affairs in the Eisenhower administration, recalled that he had "just groaned" when he heard in 1962 that a Joint Use Area had been established. Emmons said the 1958 legislation authorizing a lawsuit between the Navajos and the Hopis had been intended to bring about a final definition of ownership of the disputed land. Far from resolving the land dispute, however, the court had merely redefined it with a troublesome equation for ownership of three-quarters of the 1882 reservation: Hopi equals Navajo. "It will now be for the two tribes and government officials to determine whether with these basic issues resolved, the area outside District 6 can and should be fairly administered as a joint reservation," the court decreed.

The task of acting on the Healing decision fell in 1963 to Indian Commissioner Philleo Nash, who recalled in 1977 that the Joint Use Area quickly became known in the BIA as the "No Hope Area." When Nash called representatives of the two tribes together at Scottsdale's Valley Ho Hotel on August 6, 1963, he said he was "not approaching the question of joint use or joint administration in any kind of pessimistic attitude." He might have added that he wasn't really optimistic either.

The negotiations went nowhere fast. The Navajos insisted that they be allowed to buy out the Hopi interest and suggested that the Hopis use the money to buy public land in Arizona. They said they could not accept the relocation of several thousand of their people which would be required by equal partition of the JUA. The Hopis were just as firm in their refusal to sell and their demand for a timetable for Hopi use of half the JUA. Navajo counsel Norman Littell expressed the futility of the negotiations when he said, "What has evolved is a clear picture of the irresistible force meeting the immovable body." Armed with a court ruling that they owned half the land, the Hopis were the irresistible force. Settled in great numbers throughout the JUA, the Navajos were the immovable body.

Philleo Nash might have been tempted to use the cliché about being caught between a rock and a hard place to describe his indelicate position. A federal court had dropped an extraordinarily sensitive controversy in his lap and had almost blithely suggested that he get together with the two disputants to decide what to do

about it. Nash dismissed the Hopi recommendation that separate grazing districts be established for Navajos and Hopis, with authority over the districts to be vested in the respective tribes. This would be "a form of partition," Nash said, and the BIA had no authority to partition. Abbott Sekaquaptewa had another idea. Why not set up a single grazing district the tribes could share equally? That would have had the same practical effect as partition, because it would have pushed thousands of Navajos off the range, Nash recognized. The idea "will require some study," he responded lamely.¹¹

The commissioner's headaches were not limited to the partition issue. Hopi counsel John Boyden demanded action to stop Navajos from overgrazing the JUA range, announcing indignantly that the carrying capacity there was declining drastically. "We feel that it is imperative and to the best interests of both tribes that immediate stock reduction be had," Boyden said. He insisted that the Hopis had "a right to ask the government to protect our property."¹²

A federal court would hold in 1974 that Navajo use of the entire 1882 reservation had been "expediently sanctioned by government indifference." A review of official government correspondence and the series of events preceding the establishment and enlargement of District 6 appears to justify the conclusion that the court was only partially correct. Certainly it would be unfair to accuse Philleo Nash, Indian commissioner from 1961 to 1966, of bureaucratic languor. By the time the courts turned the dispute over to Nash, he had only a choice between two unpleasant alternatives. He could force the Navajos to give up half the range, by imposing stock reduction even more drastic than that attempted by John Collier, or he could maintain the status quo, waiting for the courts and Congress to devise a precise formula for use of the JUA. If he chose the first alternative, he would be confronted with the economic and cultural demoralization of several thousand already impoverished Navajos. If he chose the second, he would be neglecting his responsibility to protect Indian lands and the judicially recognized rights of the Hopis.

Nash's vacillation at the conference table with the two tribes is understandable. He admitted that Interior "has taken a very lenient attitude towards overuse on the Navajo land because of the human factor," then went on to hedge awkwardly in response to

Boyden's demand for protection of the JUA range. First Nash promised he would move "as rapidly as possible" to stop overgrazing. A few minutes later he backed off that position, saying he did not want to "leave the impression with the Hopis that we are going to have a crackdown, because we are not." He later moved to neutral ground with the weak pledge that Interior would move to stop overgrazing with "deliberate speed."¹³ As events developed, Interior would not take a strong stand on the issue of Hopi rights in the JUA until 1972, when a man named Harrison Loesch was the assistant secretary for Land Management.

The Hopi Energy Connection Foreshadowed

Desire to get at the mineral wealth of the 1882 reservation had long made the land dispute a matter of interest beyond the two reservations. The *Healing* court found that wherever mineral wealth was discovered in the JUA the two tribes would have to negotiate with energy companies for its development and share equally in its profits—even if the JUA were partitioned. In the post-*Healing* talks with the Navajos, Boyden said the Hopis might not allow mineral development unless there were movement toward Hopi control of half the JUA, and he hinted broadly that the Hopis would welcome oil company pressure on Interior to partition the land. If the Hopis did not link subsurface development with surface control, "then the matter of partition is of no interest at all for the oil companies," he said. "But if partition was holding up the oil development, the oil companies would be awfully interested in getting the legislation. It is just practical."¹⁴

Oil Leases in District 6

For years before the early 1960s there had been speculation that the 1882 reservation, and District 6 most especially, held great reservoirs of crude oil. An editorial writer for the *Arizona Republic* gushed optimism in 1948: "Interest in the mineral wealth that lies under the ground in Arizona is intensified by a geologist's report that the Hopi Reservation in Arizona 'contains the largest oil fields in the country.'" He posed a provocative question: "Is oil to repeat for the Arizona Hopi the tale of fabulous wealth it brought to the Osage of Oklahoma?"¹⁵

Abbott Sekaquaptewa certainly hoped so. And now that the tribe held exclusive ownership of District 6, he opened the doors to eager oil companies. At a meeting in Keams Canyon in September 1964 to open sealed bids from companies seeking the opportunity to drill, Sekaquaptewa said income from oil leases would be “the first step toward economic development and the eventual independence of the tribe.” Representatives of twelve oil companies listened anxiously as the bids on fifty-six tracts were announced.¹⁶ The right to explore for oil went to the highest bidder for each tract, and the top fifty-six bids brought a quick \$984,256.31 to a tribal treasury that had never before held such an amount. By the end of October, total lease income had swollen to \$2.2 million, and the tribe was finally able to pay John Boyden for his years of work on the land dispute. Boyden submitted a bill of \$780,000 for the work that had culminated in the *Healing* decision. But he would receive even more. In a moment of euphoric generosity, a tribal councilman said he thought Boyden had done so much for the tribe that he should be a millionaire. The rest of the council agreed and voted to pay Boyden \$220,000 more than he had asked.

The highest bid for a single tract was \$95,748.56 at Keams Canyon. The second highest bid for the same tract was \$2,802.12, prompting one oil man to explain, “You play your cards as you see them, and you don’t look back.”¹⁷ The oil companies would need all the stiff-upper-lip spirit they could muster after drilling dozens of dry wells in District 6. Their geologists had been deceived by the twists and folds in rock formations, which usually indicate oil and natural gas traps below. All the wells came up dry, and the leases were abandoned.

A Coal Lease on Black Mesa

Although the dream of fabulous oil wealth was not realized, there never was any doubt about the vastness of JUA coal deposits. In 1966, the Peabody Coal Company signed a thirty-five-year lease with the Navajo and Hopi tribal councils, allowing it to mine a large part of Black Mesa, a thirty-three-hundred-square-mile “island in the sky” in the northern JUA. The coal would be used to fire two electrical generating stations far from the mine. With water drawn from deep below the mesa, it would be flushed through a pipeline 273 miles to the Mohave generating station, located on the Nevada side of the Colorado River and operated by Southern

California Edison. It would also be transported to the so-called Navajo plant at Page, Arizona, by a 78-mile railroad constructed specifically for that purpose. Operated by the Salt River Project of Arizona, the Navajo plant was constructed after Representative Wayne Aspinall, powerful chairman of the House Interior Committee, persuaded (some said “forced”) the Navajos to sign away rights to 34,100 acre feet in the Upper Colorado River Basin. The Navajos, according to historian Alvin Josephy, Jr., “were eager for the new income and job opportunities that the Salt River Project negotiators promised them. But the Navajo eagerness did them in. Somehow, in a classic repeat of business dealings between Indians and whites, they failed to realize that they held very good cards in their hand, and neither the Department of the Interior—which should have protected them but instead participated in the poker game against them—nor their tribal attorneys guided them in playing their chips to their own best advantage.”¹⁸ The coal lease and water deal were made during the administration of Navajo Chairman Raymond Nakai. In 1974, when Peter MacDonald was chairman, a lawyer hired by the tribe called the waiver of water rights “a miserable deal for the Navajo Tribe.”¹⁹

The Hopis Move on Two Fronts

The post-*Healing* negotiations begun by Philleo Nash in 1963 reached their low point eight years later, when John Boyden led a Hopi delegation to Window Rock for a meeting with the Navajo Tribal Council. The Navajo position was laid out for all to see by Carl Todacheenie, a councilman from Shiprock, a town in the New Mexico portion of the reservation and far removed from the JUA:

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 example. If they can do it, we have done it already. We’re settled out there, and we’re not going to advise our people to move out regardless who says. They probably got to ~~SHIPROCK~~ ^{SHIPROCK} our heads. That’s the only way we’re going to move out of there.

Todacheenie's statement was the most forceful expression yet of Navajo solidarity against partition and of the tribe's conviction that the federal government would not take the drastic step of evicting Navajos from the JUA. To the Hopis, it was another demonstration of Navajo arrogance. They were determined to achieve partition and removal of the Navajos, and they were convinced that the *Healing* decision would ultimately win them half the disputed land if they persisted. "The wheels of justice grind slow but exceedingly fine," John Boyden often told frustrated tribal leaders. As early as 1963, after Philleo Nash told the Hopis he would not remove Navajos from the JUA, Boyden had gone to Congress with partition legislation. But the bill sponsored by Colorado's Wayne Aspinall got nowhere. Seven years later, the tenacious Hopi general counsel prevailed upon Arizona Congressman Sam Steiger, whose district included much of the JUA, to sponsor another partition bill. The Steiger Bill was part of a two-pronged Hopi offensive, because at the same time Boyden sought help in the federal courts.

In early 1970, Boyden petitioned the district court in Tucson for a writ of assistance to enforce Hopi rights as cotenants of the JUA. He claimed the Navajos had denied the Hopis joint use and that the United States had failed to act on the *Healing* decree. Judge James Walsh, one of the three federal judges who heard the *Healing* case, denied the petition with a one-sentence explanation that the 1958 act "left to Congress rather than the courts the question of tribal control over lands in which the Navajos and the Hopis were found to have a joint and undivided interest." The judge was taking the position that Congress had tied his hands. But the Ninth Circuit Court of Appeals in San Francisco disagreed, citing a principle established by the Supreme Court that the power to render a judgment implicitly includes the power to enforce it.

The issue of Judge Walsh's authority to issue a writ of assistance was a tightly technical legal question. But when Judge Ben Duniway wrote the appeals court's opinion, he digressed from legalese to make an interesting commentary on the land dispute. Rejecting the Navajo argument that widespread Navajo settlement of the JUA made it impossible to grant the Hopis use of half the land, he wrote, "Obviously, where the tract of land is large and the population is sparse, these [arguments] are straw men."

This statement demands attention. For the appeals court action was legal dynamite that exploded in the center of the land dispute logjam, sending out shock waves that helped to trigger the

Navajo and Hopi Land Settlement Act of 1974. The federal court was moving the land dispute toward resolution by making "straw men" of one of the starkest facts of life on the Navajo Reservation: the land was already filled beyond its capacity to support the livestock economy. Navajos outside the disputed lands were struggling to eke out a subsistence living and could hardly make room for relocatees from the JUA. One has to ask if Philleo Nash, who spoke of the "No Hope Area," knew more about this melancholy situation than Judge Duniway, who spoke of "straw men."

The Ninth Circuit court was attempting to move the land dispute off dead center, to give the *Healing* decision some practical meaning. In this it was powerfully successful. The court wanted Judge Walsh to act, but what action it anticipated was far from clear, as this passage from Judge Duniway's opinion shows:

A district judge is not a creature without imagination. He can hear testimony from the parties and the United States as to what the actual situation is, and can tailor the relief to be afforded to the facts that confront him, always bearing in mind that the objective is to achieve what the court has decreed, the exercise by the Hopi and the Navajo of their "joint, undivided, and equal interest."

The Navajos appealed the ruling to the Supreme Court, arguing that to allow the Hopis use of half the JUA would damage "several thousand Indians, their families, their homes, their livelihood, and their historic and emotional attachment to the land." The Supreme Court affirmed the decision of the Ninth Circuit, however, and the case moved back to Judge Walsh's Tucson courtroom in the summer of 1972, when the Hopis were ready with hard evidence on damage done to the JUA range by Navajo overgrazing.

Under Boyden's questioning, range expert Barry Freeman testified that a 1964 BIA survey established that the carrying capacity of the JUA was 22,036 sheep units. A 1968 livestock enumeration counted 88,484 sheep units there, he said, indicating an overstocking rate of 400 percent. Freeman catalogued the depressing toll of overgrazing. Eighty percent of the JUA range was producing zero to 25 percent of its potential, and 20 percent of the range was producing 25 to 50 percent of its potential, he said. Freeman explained that as overgrazing continues, the quality of the range declines, as desirable species of vegetation are replaced by species

poorer in palatability, nutritional value, and rate of development. He said the JUA range had probably lost carrying capacity since 1964 and concluded that "without remedial treatment in terms of reduced livestock numbers, the introduction of range management practices, and very good, judicious livestock management, this area can only continue to deteriorate."

For the Navajos, there was no refuting Freeman's testimony. The land was indeed dying. It was being smothered by Navajo stock. They responded in the only way they could. The land might be saved if the court ordered stock reduction, they said, but a people would be destroyed. Dr. Otto Bendheim, chief consultant in psychiatry for the Indian Health Service, described what the stock reduction program of the 1930s had done to the Navajo psyche. Bendheim said stock reduction had "rekindled, reinforced a preexisting suspicion and hostility of white people, for the white government, the Bureau of Indian Affairs—all the way up to the government in Washington, representing the entire white culture by which the Navajos were surrounded." This antagonism sometimes resulted in violence, Bendheim continued, but more generally manifested itself in "withdrawal by the Navajos from the dominant culture and [their] being reinforced in their preexisting ideas that white people are exploitive, are not understanding, and hostile to the Navajos."

Bendheim talked gravely about other consequences of stock reduction—alienation from that which had long defined "Navajo," and subsequent self-rejection and self-destruction:

As well as they were able to live in a traditional way, engage in what they knew best—animal husbandry, particularly sheep herding, deriving their livelihood from the meat of sheep, the wool of sheep, making artifacts . . . they were to that extent self-reliant, independent, and were living in their traditional culture. But when the sheep supply became insufficient for this purpose, they had to look for other means of making a livelihood. Many of them, very large numbers, reverted to handouts, welfare by the government. Others had to leave the reservation and become nomadic, fringe inhabitants of the fringe cities, such as Gallup, Flagstaff, Phoenix, Los Angeles, Denver, Salt Lake City, Albuquerque, where hundreds of Navajos lived, many of them in the gutters, many of them unfortunately given to alcoholism, some of them to prostitu-

tion. This, I believe, was a direct effect of their discontinuation of their traditional pattern of functioning.

The Ninth Circuit had made another round of stock reduction inevitable when it ordered Judge Walsh to fashion a remedy. Still, counsel for the Navajo, George Vlassis, sought to convince the court that stock reduction would be an excessively harsh, even brutal remedy. He maintained that the vantage point of a courtroom deprived Judge Walsh of the firsthand experience of life in the JUA necessary to make a fair decision, and he asked that the court appoint a special master to hold hearings and document the circumstances of the Navajos before reporting back to the court with a recommended course of action. "Decisions made which affect people who live substantially below the edge of poverty as defined by the mainstream of society must be made with great deliberation and due regard for the grit and determination that these people are required to have to survive from day to day," Vlassis said.

John Boyden was in no mood for further deliberation and said it was high time some regard was shown to the Hopis. "The inconvenience of people who are destroying somebody else's land seems to be the only obstacle to giving justice at this time," he said. Boyden mocked Navajo claims of hardship with a statement that may have been intended to remind Judge Walsh of Judge Duniway's "straw men" remark. "They have no trouble moving forward," Boyden said. "The time they have difficulty is moving back to their own country."

Ever since it established grazing districts in the 1882 Reservation, the Bureau of Indian Affairs had recognized that Navajo settlement there was an accomplished fact and that attempts to remove Navajos would involve far more than inconvenience. Essentially, the Bureau was recognizing the human rights of people who subsist on the land. The decisions of the federal courts were guided by the logic of property rights. The *Healing* court found that the Hopis had as much right to use the land as the Navajos. Nearly a decade later the Ninth Circuit ruled that Judge Walsh had the power to enforce that right. Judge Walsh did just that in the fall of 1972. He found that since the *Healing* decision, Hopi use of the JUA for grazing "has been less than 1 percent because of the harassment, verbal abuse, and threats of the Navajos," and that the Navajos "continue to overgraze, misuse, and damage the lawful interest of

the Hopi Tribe awarded by this court." The Bureau of Indian Affairs, he found, "still continues to procrastinate, vacillate, and refuse to deliver to the Hopi Indians or to assist the Hopi Tribe in obtaining their one-half undivided interest in the surface of said Joint Use Area."

Judge Walsh ordered specific steps to assist the Hopis. He directed that Navajo stock be reduced to half the carrying capacity of the JUA range within one year, when Navajo grazing permits in the area were to be cancelled and new permits would be issued—half to the Navajos and half to the Hopis. According to BIA figures, the 1,150 Navajo families in the JUA owned 5,000 horses, 8,000 cattle, and 63,000 sheep and goats—the equivalent of 120,000 sheep units—on land capable of supporting only 22,036 sheep units. Because the Navajos were entitled to only half the carrying capacity, their stock had to be reduced by 90 percent. The average family would be allowed 9.5 sheep units. The other major directive in Judge Walsh's order was a prohibition on any new Navajo construction in the JUA. Ever since the *Healing* decision the BIA had denied the Navajos in the JUA any funds for schools, housing, or public works projects. Judge Walsh's order had the effect of making their circumstances even more difficult.

Navajo officials did little to encourage their people to comply with the order, maintaining that was the responsibility of the BIA. So John Boyden went back to court once again, this time asking Judge Walsh to find the Navajos in contempt. Judge Walsh spoke impatiently from the bench, announcing his determination to carry out the legal process begun in *Healing*. "There has to be a day of reckoning," he said. "Either that decree means something or it doesn't. And if it has to be done by the court's directing the United States to go out there and do it involuntarily and at all costs, it will be done."

In January 1974, as the House Interior Committee studied legislation to partition the JUA, Judge Walsh denied a Navajo motion for more time to reduce their stock. Four months later, he found Peter MacDonald in contempt for not observing the stock reduction order and fixed a fine of \$250 for each day Navajo stock remained above half the carrying capacity. The contempt order was the first blow in a one-two combination that staggered the Navajos on May 29, 1974. For at the same time Judge Walsh was finding the Navajos in contempt, the House of Representatives,

2,000 miles away, was passing legislation to partition the JUA equally between the two tribes and evict several thousand Navajos.

The Hopis Go to Bat for the Power Companies

During the time John Boyden was preparing his strategy for the courts and Congress, Hopi Chairman Clarence Hamilton, the predecessor to Abbott Sekaquaptewa, was winning sympathy for the Hopi land dispute cause among some very powerful economic forces. Hamilton played a fascinating role in what the *Wall Street Journal* said might be "the most significant environmental struggle of the decade," the showdown between energy companies and environmentalists over plans to develop a massive electrical grid in the open-sky country of the Southwest.²⁰

In 1971, six huge coal-fired electrical generating plants were either being operated, constructed, or planned by a consortium of twenty-three power companies known as Western Energy Supply and Transmission (WEST) Associates. Two of those plants were the Mohave and Navajo stations. Most of their electricity was to be supplied to the rapidly expanding markets of Phoenix, Tucson, Las Vegas, and Los Angeles through transmission lines hundreds of miles long. Environmentalists warned that pollutants from the electrical plants would mar the skies over six national parks, including the Grand Canyon, twenty-eight national monuments, the national recreation areas at Lake Mead and Lake Powell, and the Navajo and Hopi reservations.

"So the stage seems set for the old familiar ecology shootout," the *Wall Street Journal* reported a bit facetiously. "Over here, in the black hat, industry, greedy, rapacious, insensitive as stone to anything but the bottom line on the income statement. Over there in the white hats, the conservationists, bent on heading off the black hat before he shoots up the town."²¹ When the Senate Interior Committee held a series of hearings on national policy regarding energy and the environment, an executive with the Salt River Project, the Arizona agency that manages the electrical plant at Page, framed the problem more literally: "Sooner or later, everyone is going to have to realize that we have to pay some environmental price to live in the way we've grown accustomed to live. Maybe this is where and when we learn what the price, the tradeoff, is going to be."²²

Black Mesa, the energy source for two of the plants in the WEST system and an area sacred to both Navajos and Hopis, became the symbol of environmentalists' determination to limit the tradeoff and preserve the pristine beauty of the Southwest. Several environmentalist groups joined forces with sixty-two Hopi traditionalists who filed suit in federal court seeking an order to halt the strip mining of Black Mesa. The traditionalists had an urgent sense of purpose. Believing that man's disrespect for the sacredness of the earth put the entire world at risk, they spoke of Hopi prophecies that warned:

There would be a change in the pattern of life as we near the end of the life cycle of this world, such that many of us would seek the materialistic world, trying to enjoy all the good things it has to offer before destroying ourselves. Those gifted with the knowledge of the sacred instructions will then live very cautiously, for they will remember and have faith in these instructions, and it will be on their hands that the fate of the world will rest.

It was their responsibility to live carefully so as to delay for as long as possible the inevitable destruction of the world by fire, the traditionalists believed. In a statement accompanying their lawsuit, they expressed alarm at the technology of the white man:

We, the Hopi leaders, have watched as the white man has destroyed his land, his water, and his air. The white man has made it harder for us to maintain our traditional ways and religious life. Now for the first time we have decided to intervene in the white man's court to prevent the final devastation. We should not have had to go this far. Our words have not been heeded. We can no longer watch as our sacred lands are wrested from our control and as our spiritual center disintegrates. We cannot allow our spiritual homelands to be taken from us. The hour is already late.

Although it emerged from a centuries-old prophetic tradition, the suit itself was a tightly reasoned challenge to the right of the Hopi Tribal Council to approve a lease on behalf of the Hopi people. The lawyer for the traditionalists, Robert Pelcyger of the

Native American Rights Fund, noted that because some Hopi villages had decided not to send representatives to the council, only eleven of the eighteen council seats had been filled, and "of these, only six or seven were properly certified," according to procedures specified in the Hopi Constitution. Therefore, Pelcyger argued, the council lacked a legal quorum, and the secretary of the interior's action in approving the lease was "arbitrary, capricious, an abuse of discretion."

The case collapsed before the court considered the issues it raised. The court ruled that in order for the case to proceed, the traditionalists must join the tribal council as defendant along with the secretary of the interior. But since the council was recognized by the federal government as a sovereign governing body, it was immune from suit.

Lawyer Pelcyger was frustrated and angry by this legalistic Catch 22. "It is as if the American courts were powerless to grant relief to American citizens when the federal government ignores the Bill of Rights," Pelcyger wrote in his appeal to the Supreme Court. The court rejected the argument and refused to hear the appeal.

In approving the Black Mesa lease Interior Secretary Stewart Udall had hailed it as a boon for an economically depressed area. Udall said the strip mine on Black Mesa and related electrical generating projects would mean "new jobs, large tax benefits, and tremendous economic advantage, not only in royalties and jobs for the two Indian tribes, but for the entire Southwest."

Udall's Department of the Interior also had a stake in western energy development. Through its Bureau of Reclamation, Interior owns 25 percent of the Navajo plant and has plans to use its portion of the plant's output to pump water from the Colorado River to the Central Arizona Project, which will meet part of the state's growing water demand. Alvin Josephy reported that the "planning, testing, negotiations, and lease and contract signings" associated with the Black Mesa coal development program "were carried out so quietly that they provide a classroom example of how serious has become the lack of accountability by government agencies working hand-in-glove with industry in the United States today." He criticized the failure of government agencies to allow for public review or to assess the environmental impacts of planned energy development. "The atmosphere and environment, fundamental to the quality and

future of life of a huge part of the Southwest, encompassing thousands of square miles in many states, was literally appropriated by the members of the power consortium," Josephy wrote in a 1971 article in *Audubon Magazine*.²³

Public interest in the "ecology shootout" was spurred by the report that the only man-made object visible in a photograph taken by the Gemini 12 satellite at an altitude of 170 miles was the plume from the Four Corners plant, a member of the WEST system on Navajo land in northwestern New Mexico. When New Mexico state officials called for a moratorium on power plant development because of the attendant environmental problems, Interior Secretary Rogers Morton responded by naming a study group to make a "comprehensive examination" of WEST plans. A year later, in July 1972, the *Washington Post* reported²⁴ that the Environmental Protection Agency had "charged the Interior Department with giving superficial attention to potential damage to the environment."²⁵ As the publicity mounted, the Los Angeles City Council voted not to take part in the Page power plant unless environmental standards were strengthened.²⁶

Clarence Hamilton came forward to defend the power plants. Addressing the Arizona Advisory Commission on the Environment, the Hopi chairman said, "In a real sense, we consider ourselves fortunate to have these power plants developed in the areas around our reservation. Income from the sale to these plants can be of great benefit in improving the economy of my people. Without the power plants we would have no market for our coal and our economy would suffer."²⁷ Al Wiman, a reporter from Los Angeles television station KABC, learned that the speech had been written by the Hopis' Salt Lake City public relations firm, David W. Evans, and Associates, who also represented WEST. When David Evans, a member of the firm, learned that Wiman was planning to reveal his findings in person to the Arizona Advisory Committee on the Environment, he traveled to Los Angeles in an attempt to dissuade Wiman from making the trip. Wiman went anyway.²⁸

Peter MacDonald, meanwhile, was not sounding nearly as friendly to the energy companies. Shortly after he was elected tribal chairman, he said he would try to renegotiate the Navajo portion of the contract with Peabody. He told the Senate Interior Committee that if the power plants "pollute our homelands, we

will do everything within our power to alter that situation . . . My father gave me clean air and clean water, and I will give the same to my son. We will not turn our land into another Los Angeles, and we won't let anyone else do it." MacDonald announced that the tribe was establishing an environmental authority to monitor the mines and plants, and said, "If they cause us any harm or damage, we will do everything or anything that is necessary to stop that harm."²⁹

In a 1974 article for the *Washington Post*, free-lance writer Mark Panitch put the energy controversy in the context of the Navajo-Hopi land dispute:

The relationship between the Hopi council and the power companies became almost symbiotic. On the one hand, Hamilton speeches written by Evans would be distributed through the public relations machinery of 23 major Western utilities. On the other hand, these utilities would tell their customers, often through local media contacts, that the Hopis were "good Indians" who wouldn't shut off the juice that ran their air conditioners.

Because of the efforts by representatives of the Hopi to present that tribe's viewpoint, the Hopi rapidly took on the aura of the underdog who just wanted to help his white brother. Some of the Navajo, on the other hand, were saying threatening things about closing down polluting power plants and requiring expensive reclamation of strip-mined lands.

Panitch added an interesting detail about the relationship between Peabody Coal and the Interior Department. He said that when citizens wrote to the department for information on Black Mesa, "they were sent a brochure prepared and published by the Peabody Coal Company."³⁰

Hopi defense of strip-mining and coal-fired power plants was the first demonstration of the Hopi ability, in concert with their public relations allies from Salt Lake City, to win favorable attention in the Southwest. It was also a demonstration of how meticulously John Boyden had planned his strategy to win passage of legislation to partition the JUA and relocate Navajos. At the post-*Healing* discussions in Scottsdale, Boyden had spoken of plotting

to win help from the oil companies, but in the 1970s it was coal interests who had the most at stake in the land of the Navajo-Hopi land dispute. Two facts demonstrate the extent of the land dispute's importance to coal interests. First, the Joint Use Area contained huge reserves of recoverable coal. And second, even though the Navajos and the Hopis will share equally in mineral development anywhere in the JUA, the tribe that controls the surface controls access to the subsurface by its authority to grant rights-of-way.

In 1977, when the Joint Use Area was partitioned between the two tribes, much of the coal-rich land was turned over to the Hopi Tribe.