A SELECTED ANNOTATED BIBLIOGRAPHY OF THE NAVAJO-HOPI LAND DISPUTE ©*

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A Brief History of the Navajo-Hopi Land Dispute

In 1882, President Chester Arthur established a two and one-half million acre reservation for the Hopi Tribe and "such other Indians as the Secretary of Interior may see fit to settle thereon." Navajos lived within the borders of this reservation, and as Navajo population grew and expanded into the area traditionally used by the Hopis, land use conflicts developed between the tribes.

After many years of attempts to resolve these conflicts, Congress passed a statute authorizing litigation between the Hopi Tribe and Navajo Nation to settle title to the 1882 Reservation. 72 Stat. 403, P.L. 85-547 (July 22, 1958). In 1962, the United States District Court for the District of Arizona declared that, except for a portion of the reservation used exclusively by Hopis, the Navajo Nation and Hopi Tribe had joint equitable title to the reservation (the "Joint Use Area"). Because the much larger Navajo population occupied most of the Joint Use Area, land use conflicts continued. The Hopi Tribe brought suit to enforce its right to equal use of the land, and the federal courts ordered controversial livestock reduction and enjoined new construction by Navajos.

Congress then passed the Navajo-Hopi Settlement Act in 1974, 25 U.S.C. §§ 640d *et seq.* , 88 Stat. 1712, P.L. 93-531 (Dec. 22, 1974), providing for the appointment of a mediator to assist in negotiating a settlement and partition of the Joint Use Area. The mediation effort was not successful, and the district court adopted the mediator's recommendation for a partition of equal acreage to each tribe.

The Settlement Act also established the Navajo-Hopi Indian Relocation Commission to relocate members of each tribe who lived on land partitioned to the other tribe. The vast number of relocatees were Navajo--approximately 1000 families had to be relocated. Relocation is widely viewed as a costly administrative disaster: relocation was started without homesites to which Navajos could move and practice their traditional herding and farming lifestyles. Homes were thus provided for many Navajos in towns surrounding the reservation, such as Flagstaff; however, lacking marketable skills in the Anglo community, many Navajos lost their homes and became victim to unscrupulous loan sharks and real estate agents. And relocation was traumatic for a large number of the traditional Navajos: some refused to leave their

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homes, have brought lawsuits asserting a First Amendment religious right to remain on land partitioned to the Hopi Tribe, and vow to resist relocation at all cost. Mediation efforts are presently underway to reach a compromise to allow these Navajos to stay on Hopi land, such as long-term lease of the area in exchange for the provision of other land and lease payments to the Hopi Tribe. The proposed settlement has come under fire, however, and it is unclear whether any proposal will be approved by Congress.

Another set of legal disputes regarding money damages arose from the partition of the 1882 Reservation. Congress authorized the Hopi Tribe to sue the Navajo Nation for "owelty," or a payment to equalize the value of the land received by the tribes in the partition, for "rental payments" for Navajo use of the Hopi partitioned land both prior to partition and pending relocation, and for payments for damage done to the Hopi partitioned land by years of overgrazing by the Navajos. The district court has entered final judgment in these cases (the opinions are as yet unpublished), and an appeal is expected.

The Settlement Act spawned a final lawsuit between the Navajos and Hopis. When the 1882 Reservation was created for the Hopi Tribe, it excluded the Hopi village of Moenkopi. This village and the surrounding areas used by the Hopi people were included within the Navajo Reservation, the final boundaries of which were established in 1934. The Settlement Act thus authorized a lawsuit to settle Hopi claims to the 1934 Navajo Reservation. In the ensuing court action, the district court partitioned the area jointly used by the tribes in 1934; the partition line does not require the relocation of any Hopi or Navajo people. The district court also determined that the San Juan Southern Paiute Tribe had used certain areas of the reservation in 1934, but held that the Settlement Act did not authorize partition of any land to the Paiutes. These decisions are presently under appeal to the Ninth Circuit.

This "selected" annotated bibliography is intended primarily to survey the case law of the Navajo-Hopi land dispute, a continuing legal odyssey which has spanned almost 40 years. I also mention a number of books and articles which have been written about the dispute, but this section of the bibliography does not provide extensive annotation nor do justice to the vast amount that has been written about the land dispute over the years. I hope that this bibliography will provide a framework for understanding the legal dispute, and a reference for finding relevant case law and extra-legal materials.

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An Annotated Bibliography

Case law:

I. The 1882 Reservation Dispute

A. The establishment of the Joint Use Area

Healing v. Jones, 174 F. Supp. 211 (D. Ariz. 1959)

The United States District Court for the District of Arizona, acting as a three-judge panel, held that the dispute was not a "political question" outside of the Article III jurisdiction of the federal courts. The court also declared that the 1958 Act had conveyed a vested equitable interest in the Hopi Tribe and any other Indians the Secretary of Interior had "settled" on the Reservation.

Healing v. Jones, 210 F. Supp. 125 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963)

In perhaps the most important decision of the land dispute, the three-judge district court panel held that, subject to the trust title of the United States, the Hopi Tribe had an exclusive interest in that part of the reservation within the boundaries of "land management district 6," which was to be the Hopi Reservation. Further, the court held that the Navajo and Hopi tribes had an equal, undivided interest in the 1882 Reservation outside of "district 6" (the Joint Use Area) and that the court did not have jurisdiction under the 1958 Act to partition the Joint Use Area between the tribes. This set the stage for the legal battles ahead regarding shared use and the push to partition the reservation.

The court exhaustively discussed the history of Hopi and Navajo settlement of the 1882 Reservation, and the United States' role in encouraging Navajo use of this area. The opinion is thus an excellent source for information about the history of the dispute.

B. Efforts to enforce equal use of the Joint Use Area

Hamilton v. Nakai, 453 F.2d 152 (9th Cir. 1971), cert. denied, 406 U.S. 945 (1972)

Due to continuing conflicts with Navajos over the use of grazing land, the Hopi Tribe brought this action to enforce equal use of the Joint Use Area under Healing. The Ninth Circuit held that the district court had authority to issue a writ of assistance to enforce the Hopi right to equal use of the area.

United States v. Kabinto, 456 F.2d 1087 (9th Cir.), cert. denied, 409 U.S. 842 (1972)

The Ninth Circuit upheld the ejectment of 16 Navajos from what had been declared as exclusive Hopi Reservation in Healing. The court held that individual Navajos were not allowed to collaterally attack the Healing judgment, that they had been adequately represented by the tribe, and rejected their claims of aboriginal right to occupancy.

Hamilton v. MacDonald, 503 F.2d 1138 (9th Cir. 1974)

The Ninth Circuit affirmed the district court's writ of assistance to the Hopi Tribe (1) requiring the Navajo Nation to reduce livestock grazing, to restrict new construction

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in the Joint Use Area, and to jointly share all income from rental or mining revenues, (2) requiring the government to establish a range restoration program, and (3) requiring the issuance of an equal number of grazing permits to each tribe. The court found that the Hopi Tribe had been prevented from using most of the Joint Use Area by the Navajo Nation and government officials, and refused to reconsider arguments regarding the equity of joint ownership.

Sekaquaptewa v. MacDonald, 544 F.2d 396 (9th Cir. 1976), cert. denied, 430 U.S. 931 (1977)

The Ninth Circuit affirmed the district court's refusal to extend the period for compliance with the writ of assistance requiring livestock reduction, the district court's order citing the Navajo Nation and its tribal chairman Peter MacDonald for contempt for failure to reduce livestock and to control new construction, and its order canceling all livestock grazing permits. The Ninth Circuit held that the district court had jurisdiction to order livestock reduction, despite the interim passage of the Settlement Act, which required government measures to reduce livestock. The court also held that individual Navajos were not entitled to notice and hearing before their grazing permits were canceled.

C. The partition of the Joint Use Area

Sekaquaptewa v. MacDonald, 575 F.2d 239 (9th Cir. 1978)

The Ninth Circuit affirmed the district court's decision to partition the Joint Use Area between the Navajo and Hopi tribes, holding that the district court had not abused its discretion in adopting the mediator's partition plan based on equitable distribution of acreage and quality of land. The case was remanded to the district court to determine a dispute regarding the location of a boundary line of the Joint Use Area.

Sekaquaptewa v. MacDonald, 626 F.2d 113 (9th Cir. 1980)

The Ninth Circuit approved the final partition line ordered by the district court, after consideration of the boundary dispute.

D. Continued Navajo presence on Hopi Partitioned Lands

Navajo Tribe v. Andrus, Secretary of Interior, 644 F.2d 790 (9th Cir. 1981)

The court rejected the Navajo Nation's contention that an Environmental Impact Statement was required before the Secretary of Interior commenced stock reduction pursuant to judicial and congressional mandates.

Hopi Tribe v. Watt, 530 F. Supp. 1217 (D. Ariz. 1982), aff'd, 719 F.2d 314 (9th Cir. 1983)

The Hopi Tribe challenged the government's regulation of Navajo grazing on Hopi land. The district court held the government retained authority to protect the grazing rights of Navajos awaiting relocation and life tenancies if Hopi concurrence could not be obtained. The Ninth Circuit affirmed.

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Sidney v. MacDonald, 536 F. Supp. 420 (D. Ariz. 1982), aff'd, Sidney v. Zah, 718 F.2d 1453 (9th Cir. 1983)

The district court cited the Navajo Nation and its tribal chairman for contempt for failing to remove certain Navajo structures built on the land partitioned to the Hopi Tribe, finding that the Navajo Nation had not made a good faith effort to secure the compliance of individual Navajos with the court's prior prohibitions against new construction. The district court ordered the disassembly of the offending structures and payment of a $500 per day fine until the structures were removed. The Ninth Circuit affirmed.

E. The relocation of Navajos

Walker v. Navajo-Hopi Indian Relocation Comm'n, 728 F.2d 1276 (9th Cir.), cert. denied, 469 U.S. 918 (1984)

Navajo individual was not entitled to relocation benefits when she had moved off of the Hopi Partitioned Lands prior to the passage of the Settlement Act.

Begay v. United States, 865 F.2d 230 (Fed. Cir. 1988)

Navajos were not entitled to economic, social, cultural and psychological damages for the alleged failure of the Relocation Commission to provide decent, safe and sanitary housing and counseling to ease the impact of relocation; relocatees were instead limited to the benefits provided by the Settlement Act.

Bedoni v. Navajo-Hopi Indian Relocation Comm'n, 878 F.2d 1119 (9th Cir. 1989)

The Ninth Circuit held that the Relocation Commission had breached its fiduciary obligation to assist a Navajo family in receiving the maximum benefits allowed under the Settlement Act by incorrectly informing the family not to include their children in their relocation application.

Manygoats v. Navajo-Hopi Indian Relocation Comm'n, 735 F. Supp. 949 (D. Ariz. 1990)

The district court reversed the Commission's decision that plaintiff was not a "head of household" and thus entitled to relocation benefits.

Benally v. Hodel, 940 F.2d 1194 (9th Cir. 1990)

The Ninth Circuit affirmed the district court's holding that individual Navajos did not have standing to seek an injunction against relocation until the Relocation Commission complied with the mandates of the Settlement Act and other federal laws.

F. First Amendment challenges to relocation

Manybeads v. United States, 730 F. Supp. 1515 (D. Ariz. 1989)

The court rejected the challenges to the Settlement Act brought by Navajos subject to relocation from the Hopi Partitioned Lands. The court held that relocation did not violate the Navajos' right to free exercise of religion or equal protection, did not breach the government's trust relationship, and would not violate international law.

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