SRPDOC140

Navajo & Hopi Relocation Comm. created by Public Law 93-531 1974

The First Annual Report of the

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HISTORICAL BACKGROUND

The expressed purpose of Public Law 93-531 which was enacted by the 93rd Congress of the United States and signed into law by President Ford on December 22, 1974 is: "To provide for final settlement of the conflicting rights and interests of the Hopi and Navajo tribes to and in lands lying within the Joint Use Area of the reservation established by the Executive Order of December 16, 1882, and lands lying within the reservation created by the Act of June 14, 1934, and for other purposes."

The conflict between the Navajo and Hopi tribes in this area historically dates back to the 17th century and can be directly attributed to their different traditions and life styles.

The Hopi Tribe historically has been an agricultural people residing within the framework of Pueblo communities. On the other hand, the Navajo culture inherently maintained pastoral and nomadic traditions which were evidenced by the constant shifting of their occupancy of land through the centuries as they sought grazing land for their sheep, cattle, and horses. As they moved, it would merely be a matter of time before these two cultural groups ultimately would find themselves in conflict over the use and occupancy of land. The movement of the Navajo in this region was brought about for a variety of reasons. However, their very rapid population growth and the need for more grazing lands to accommodate their increasing herds of sheep seems to have been the major factors causing their movement. In contrast, the Hopi Tribe remained relatively stable in the occupancy of their villages on the mesas and even experienced some population decline during periods of epidemics in the villages.

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Prior to 1868 there existed several unratified treaties between the United States government and the Navajo Tribe which tentatively outlined boundaries of Navajo land. It was the Treaty of 1868 which was concluded at Ft. Sumner, New Mexico that formally established a Navajo Indian reservation. The area identified represented a significantly smaller portion of lands than the Tribe had become accustomed to and very shortly proved to be insufficient to support the needs of the Tribe.

Comprising 3,314,330 acres and commonly referred to as the "Treaty Reservation", it consisted of a rectangle extending roughly from Ft. Defiance on the south to the Utah-Colorado border on the north, and from Shiprock on the east to Chinle on the west.

Gradually the Navajos started to shift beyond the boundaries of the "Treaty Reservation" and many returned to areas where they had lived prior to being taken to Ft. Sumner. Others sought valuable grazing lands and water holes in new locations. By 1880 it was estimated that half of the Navajo Tribe was in fact living outside of the boundaries of the reservation lands, and conflicts between the Navajos, the Hopis, and the incoming people who were settling the West started to increase.

As the westward movement of the Navajo continued, the Hopis perceived the coming of the Navajos as an encroachment upon their hunting areas, shrines, and crops. Subsequently, more frequent confrontations between the two tribes occurred. As a result, on December 16, 1882 President Chester A. Arthur by Executive Order established the Moqui (Hopi) reservation which consisted of a rectangular area of land encompassing approximately

2,472,095 acres "for the use and occupancy of the Moqui, and such other Indians as the Secretary of the Interior may see fit to settle thereon". The basic purpose of the 1882 Executive Order appears to have been to provide protection to the Hopis against encroachment by the Navajo, Mormon settlers, or others.

When the 1882 Reservation was created, approximately 1,800 members of the Hopi Tribe were living in the villages in the south central area and 300 Navajos were living within the boundaries of the new area. The Navajos were apparently of little concern, but a short six years later we find that the Office of Indian Affairs was receiving more and more complaints from the Hopis concerning "Navajos on their reservation". The influx of Navajos continued and population estimates show that from 300 in 1882 there were approximately 1,826 in 1900, 2,000 in 1911, 3,319 in 1930, 9,000 in 1973, and as of June 30, 1976 11,633.

Following the Executive Order of 1882 a series of extensions, additions, and land exchanges took place which made further adjustments to the land area of the Navajo Reservation. These efforts to keep peace and solve the conflicting interests of the Navajo and their neighbors only served to accommodate crises and the immediate needs for land.

In 1918 the United States Congress enacted legislation which precluded the enlargement of any reservation from public domain except by act of Congress and required the consent of Congress for any changes in the boundaries of any Indian reservation.

On June 17, 1934 the Congress enacted the "Arizona Boundary Bill" which was designed to round out and confirm the exterior boundary of the Navajo reservation in Arizona "for the Navajo and other such Indians as may already be located thereon", and included within the exterior boundaries of the reservations, lands which were traditionally Hopi.

During the early 1940's the BIA administratively established land management districts throughout the entire Navajo Reservation and including the Executive Order Re ervation of 1882. On April 24, 1943 Land Management District Six was drawn around an area exclusively in use by the Hopi Tribe. It is for this reason that the area consisting of Land Management District Six has in many people's minds become virtually synonymous with the "Hopi Reservation".

The records show, however, that from the very inception of the 1882 Executive Order, there has been a continuous dispute between the Navajo and Hopi Indians over the area more correctly identified as the Executive Order Reservation of 1882, excluding Land Management District Six. Pursuant to the Act of Congress, July 22, 1958 (Public Law 547) a United States District Court of three federal judges was established to adjudicate the conflicting claims and quiet title thereto in "the tribes of Indians establishing such claims pursuant to such Executive Order as may be just in law and equity".

The Court heard the case, known as Healing vs. Jones, Civil Number 579 in Prescott, Arizona in October of 1960. Its "Opinion, Findings of Fact and Conclusion of Law and Judgment", was filed by the Court on September 28, 1962. The Judgment of the Court can be summarized as follows:

1. Title to District No. 6 (the boundaries of which had been finalized on April 24, 1943 and which were described in the Judgment" was quieted AWARDED

exclusively in the Hopi Tribe, both as to surface and subsurface, including all resources subject to the trust title of the United States.

2. As respects the balance of the 1882 Reservation, title was quieted in the Hopi Tribe and in the Navajo Tribe, share and share alike, subject to the trust title of the United States. The two tribes were found to have "joint, undivided and equal rights and interests both as to surface and subsurface" to the part of the 1882 Reservation surrounding District Number 6 which is now commonly known as the Joint Use Area (JUA). The Joint Use Area contained approximately 1,822,082 acres and represented serious administrative problems. In addition, tribal tensions did not relax under the arrangement, and in essence the Court decision did not effectively resolve the dispute. Navajos still occupied and used the Joint Use Area. Some Hopi efforts to expand into the Joint Use Area for grazing and agricultural purposes were only partially successful. A few meetings of negotiating committees to attempt to resolve conflicts of rights and interests were held but without tangible results on most issues. In many respects, joint use on a fully equal basis could not have been expected to be successful while Navajos physically occupied the bulk of the JUA area. An exception was the matter of subsurface rights. The two tribes were able to negotiate agreements with the Peabody Coal Company concerning leases of lands near the northern boundary of the Joint Use Area. Such leases provide equal benefits to the two tribes.

Beginning during this period, the Hopi Tribe instituted proceedings in the District Court seeking in various ways to obtain or protect the Hopi

share of the surface rights and interests. While no attempt will be made here to extensively examine these proceedings, two general observations are made. The Court ordered livestock reduction to protect Hopi interests in the surface area from further deterioration by overgrazing. The Court also ordered that new construction in the Joint Use Area be limited to improvements jointly authorized by the Navajo and Hopi Tribes.

Beginning in the 92nd Congress and continuing in the 93rd Congress, a number of bills were introduced dealing with this controversy. Although the Healing vs. Jones decision was not in question, propoents of legislation both in and out of Congress became convinced that the Court's lack of jurisdiction to partition the Joint Use Area militated against a final settlement of the dispute.

No attempt to examine or summarize all the bills introduced in the Congress is made here. Public Law 93-531 was passed in the 93rd Congress and became law when signed by President Ford on December 22, 1974.

The Act provided for a negotiating period of 180 days with mediation assistance. Despite a background of earlier negotiation failures, it was clear that the Congress decided to give the two tribes one last opportunity to resolve the dispute by direct agreement. It was hoped that the subsequent provision of imposed settlement by court decision would provide adequate stimulus for successful negotiations.

Recognizing that settlement by negotiation might not be achieved, in whole or in part, the next procedural step of the Act was to provide a 90 day period for preparation of a report and recommendations to the District Court by the Mediator. The Mediator's report was filed on

December 12, 1975. Finally, the District Court was specifically empowered to decide the dispute, including partition of the Joint Use Area if the Court so determined. The Act also created an independent entity in the executive branch, the Navajo and Hopi Indian Relocation Commission.

Presently, this Commission has become operational and is awaiting the final decision of the District Court which will provide a tangible basis for carrying out its' purpose.

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pplicability.

The provisions of this Act and the regulations in this part y to the operations of the Commission, its members and employees, to all persons displaced by partitionment of the joint use area the 1934 Boundary Area Act.

Objectives.

The objectives of these regulations are to facilitate develop- t of a relocation plan according to the act, and to carry out the rected relocation as promptly and fairly as possible with a minimum ount of hardship and discomfort to the relocatees.

Definition of terms.

a. The Act. The "Act" is P.L. 93-531, approved December 22, 1974, providing for the final settlement of the conflicting rights and interst of the Navajo and Hopi tribes to and in the lands lying within the joint use area of the reservation established by Executive Order of December 16, 1882, hereafter referred to as JUA, and land lying within the reservations created by the act of June 14, 1934 hereinafter referred to as the 1934 Boundary Act Area, and for other purposes.

b. Appraisal. An "appraisal" shall refer to the value placed on the habitation and other improvements owned by relocatee that are fixtures on the land, which cannot