THE TAKING OF HOPI LAND: A HOPI PROSPECTIVE

Relocation of Navajo families from lands partitioned to the Hopi Tribe, as a result of the 1974 Navajo-Hopi Settlement Act, has generated international concern and outrage. It has been condemned as a modern genocidal policy of the United States, engineered by the greedy energy companies eager to exploit the vast mineral resources underneath tribal lands.

Hopi, notwithstanding the "traditional elders" whose opposition to relocation has been misconstrued and highly publicized by anti-relocation activists, have received very little attention. They are regarded as the other party to the dispute, the "forgotten Indians" as John Collier, former Commissioner of Indian Affairs, described them when he was reporting on the Navajo-Hopi land dispute in the 1930's. As a result, the official Hopi position on relocation has been criticized as inflexible and unreasonable.

The facts surrounding the relocation controversy are not as simple and straight-forward as the public is led to believe; it is a complex issue involving two tribes with contrasting lifestyles and tribal histories, forced by the United States Government to "share and share alike" the same land originally set aside for the Hopis by the Executive Order of 1882.

However, the illegal taking of Hopi aboriginal lands (tutskwa) did not begin in 1974 when Congress gave 40 percent of the 1882 area to the Navajos, or in 1934 when Congress enacted the Navajo Reservation, encompassing a major portion of Hopi traditional lands, or in 1882 when the President took a fraction of Hopi lands and created an Executive Order Reservation for Hopis. The first unconstitutional taking of Hopi lands occured in 1848 when the United States took control of all Hopi lands and turned it into "public domain" status. The United States would later concede that by 1950 it had illegally taken away 85 percent of Hopi aboriginal lands.

Given a long history of having been pushed around by the Navajos and ignored by the United States, the Hopis understand very well the hardships that relocation can cause. After 100 years of domination, the United States Federal District Court in Arizona finally acknowledged that the present land-use pattern of the Hopis had not been a "matter of free choice", but a result of Navajo intrusion and depredations "often in violation of Navajo treaty obligations, expediently sanctioned by bureaucratic indifference and ... illegal government restraints on Hopi use (of the 1882 area)."

The purpose of this presentation is to provide a summary of the major historical events leading up to the present controversy from a Hopi perspective. The Hopis have a saying, that to plant a straight row of corn, one must keep looking back to the point of origin. Likewise, to understand the relocation issue, one must study its historical background.

The pattern of taking away Indian lands in the United States is familiar to the Hopis. First, the U.S. clears the way declaring Indian lands "public domain", thereby allowing white settlers to move in. Then, treaties, executive orders, and legislative acts are enacted to confine Indians onto small "reservations" without constitutional protection or due process. Finally comes the cleansing process whereby the Federal Government clears itself of wrong-doing by offering token payment to Indians, based on the land values of the 1800's.

The unconstitutional taking of Hopi lands followed this precise pattern with one exception; the settlers, or "squatters" as the Court described them, were Navajos. Pointing to members of the Committee on Interior and Insular Affairs, Chairman Peter MacDonald said, "We Navajos, in the best of American tradition, came into a land that was empty...and did exactly what your ancestors did." Former Hopi Chairman Abbott Sekaquaptewa called MacDonald's statement a doctrine of "Navajo Manifest Destiny", arguing that the area in question was not "empty", but was inhabited and used by ancestors of the Hopi, called Moti Senom "First People" in Hopi and Anasazi in Navajo, long before the coming of white men or Navajos. The Federal Courts, including the United States Supreme Court, agreed.

The present Hopi villages are located on three mesas in Northern Arizona. Each village is an independent community with its own form of government, with the exception of the First Mesa villages which operate as a consolidated government. Some villages are organized in a traditional manner under the hereditary chiefs (Kikmongwi), while others have adopted modern forms of government run by elected officials. The Hopi Tribal Council is the central government composed of representatives from a majority of the twelve villages. The head of the Council is the Chairman, who is elected every four years in a reservation-wide popular election.

The village of Oraibi is considered to be the oldest continuously inhabited community on the North American continent, dating back to at least 1150 A.D. and probably much earlier. Archaeological studies and findings demonstrate conclusively that ancestors of the Hopis occupied all of the Little Colorado River plateau and basin before the birth of Christ. The Federal Court in Healing v. Jones found that "no other Indians in the United States has a longer authenticated history than the Hopi. As far back as the Middle Ages the ancestors of the Hopis have occupied the same area." This finding, confirmed by the United States Supreme Court, was also noted by the United States Indian Claims Commission.

According to Hopi oral tradition, the Navajos are newcomers (considered only visitors) to the southwest. In his testimony before the 1955 Hopi Hearings, David Monogye, religious leader of the Hopi Independent Nation, explained that there is a land dispute between Hopis and Navajos, "Both tribes are pulling on land which we know belongs to Hopi. We all know that not very long ago there were no Navajos anywhere in this section of the country." Healing v. Jones confirmed this, "From all historical evidence it appears that Navajos entered what is not Arizona in the last half of the 18th century." There is no record of Navajos in the chronicles kept by Spaniards when they explored the Hopi province of "Tusayan" in 1540, 1583, or 1598, or at any time during the mission period at Hopi from 1629-1680. In fact, not until the mid 1700's were there any references to Navajos west of the current Arizona-New Mexico state line.

The court finding is consistent with Hopi oral tradition, which speaks of Navajo ancestors coming from the north where they lived in houses made of ice. Their language belongs to the Athapaskan family along with Apaches and that of other tribes who migrated from the North. Many Athapaskan languages, very close to Navajo, are spoken in Northwestern Canada and Alaska today. The closeness of these languages suggest that Navajo only separated from the Northern Athapaskan within the last 600 years.

In contrast, Hopi migration legends all point to origins in the southwest, from which different clans migrated and then returned. Hopi language family extends from the Shoshones to the north and west, to the Aztecs in the south. Hopi is situated at the geographical center of this language family.

The first white men to come to Hopi country were the Spanish conquistadors looking for the "Seven Cities of Cibola", a mythical settlement built out of pure gold. Their arrival in 1540 began a long period of domination lasting until 1680 when they were driven out by a brilliantly planned and executed rebellion involving Hopis, Zunis and other pueblo tribes along the Rio Grande in what is now New Mexico. In 1820, the Mexican Government officially took over the Hopi area, which remained under their jurisdiction until 1848 when the Treaty of Guadalupe Hidalgo relinquished the land to the United States. The Mexican government inserted the following stipulation to protect the property rights of its citizens, which included the Hopis.

In the said territories, property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these, and all Mexicans who may hereafter acquire said property by contract, shall enjoy with respect to its guarantees equally ample as if the same belonged to citizens of the United States.

Shortly after the Treaty was signed, the entire area encompassing the Hopi province of Tusayan was opened to the white settlers under the doctrines of "Manifest Destiny" and "public domain." This act of the United States was to be the first of many violations of an international treaty agreement, a treaty which mandated the United States Government to "inviolably" respect the property rights of the Hopis and to protect them from the "savage tribes", i.e. Navajos (Indios barbaros in Spanish).

The United States, like the Spanish and Mexican governments, made no effort to respond to Hopi petitions seeking protection from the Navajos. The government was finally forced to take military action, not to protect the Hopis, but the white settlers who were under increasing attacks from Navajos. In 1862, Col. Kit Carson began a brutal campaign, destroying Navajo fields and livestock in the process of rounding up the Navajos. Many Navajos eluded capture by hiding out in the Black Mesa area north of the Hopi villages.

After the Carson roundup, the Hopis were assured that the Navajos were to be permanently confined to lands in New Mexico. With this assurance, the Hopis began moving back to their customary land-use areas. By 1890, Hopi and Tewa cattlemen were running their livestock as far east as Ganado, as far south as the Little Colorado River, and as far west as Cow Springs near Kayenta. The name "Cow Springs" is, infact, a literal translation of the Hopi name for the place... Wakasva.

In 1868, the United States entered into a treaty of friendship with the Navajo Tribe. In return for agreeing to cease hostilities, the Navajo were given 3.4 million acres of land, mostly in New Mexico, well to the east of the Hopi villages approximately 150 miles distant.

Article 13 of the treaty recites:

The Tribe herein named...agreed to make the reservation herein described their permanent home, and they will not as a Tribe make any permanent settlement elsewhere.

Shortly thereafter, to the dismay of the Hopis, who had never entered into any treaty agreement with the United States, the Navajos began moving into Hopi territory. Around this time, a band of Navajos, fearing another roundup, approached the Hopi village of Walpi seeking permission to remain on their land. The meeting resulted in a covenant of peace which was sealed by a sacred Navajo object. ("Tiponi" in Hopi). The Navajos were granted permission to stay, but only temporarily, and on the condition that they cease depredations forever.

The Navajo-Hopi covenant of friendship was quickly broken by the Navajos. By 1880 the trespass problem became so acute that the United States Indian agents began to consider ways to stop Navajo expansion into Hopi territory. One proposed remedy was to redefine the western boundary of the Navajo treaty reservation beyond which the Navajos would not be permitted to wander. Hence, in 1878, the first of a series of fourteen Executive Orders were issued, each time conceding more Hopi land to the Navajos, until by 1943, the Hopis were confined to a 650,000 acre land area.

In 1878, Hopi Agent William R. Mateer proposed that a reservation extending 30 miles along the Little Colorado River, 50 miles south of the Hopi villages, be set aside for the Hopis, and that the entire Tribe be relocated to the new land. A year later, Indian commissioner Ezra A. Hoyt asked Mateer to formalize the relocation proposal. Mateer resigned before submitting his plan. The idea of moving the entire Hopi Tribe to make room for Navajos was previously proposed in 1866 by another Indian Agent who toyed with the idea of moving the Hopis to the Tonto Basin in central Arizona, and by a Mormon missionary, Jacob Hamlin, who proposed a resettlement in Utah.

After Mateer's proposal died, several attempts were made to define a reservation boundary around the villages to protect them from the intrusion of Navajos, Mormons, and "white intermeddlers." It was not until December 1882 that an Executive Order Area (EOA) consisting of 2,500,000 acres was set aside for Hopis, and "such other Indians as the Secretary of Interior may see fit to settle thereon." Approximately 300 Navajos were living, but not "settled" on the 1882 area at the time.

In their haste to create the reservation, the Federal agents failed to include the Hopi village of Moenkopi, and a large portion of the Hopi aboriginal lands, such as the San Francisco Peaks near Flagstaff, portions of the Grand Canyon, and sacred areas around Window Rock, site of the present Navajo capitol.

The EOA did not accomplish the objective of keeping the intruders out. Indeed, by 1890, Secretary William Villas was compelled to dispatch U.S. troops to evict Navajos from the EOA. The troops arrived on Christmas Eve. In the spirit of Christmas, and the fear of "inflaming the minds of Navajos", the troops were instructed to avoid any "harsh measures" against them. Instead of evicting the trespassing Navajos, the troops were used to conduct a pre-dawn raid on Oraibi. Over 100 Hopi children were kidnapped and taken to Keams Canyon Boarding School. Similar raids would continue in subsequent years, this time by Navajo police officers

hired by B.I. A. school officials. In 1895, nineteen (19) Hopi religious leaders were imprisoned at Alcatraz, a Federal penitentiary in San Francisco, for disobeying Federal Indian policies... policies which outlawed the Hopi religious ceremonies. The military expeditions did not curb Navajo encroachment onto EOA. Instead, emboldened by the Federal Government's fear of aggravating Navajos, many Navajos families moved closer to the villages until they were camped less than 15 miles away.

In 1891, Special Indian Agent, George Parker and trader Thomas V. Keam devised and executed a plan to stop the Navajo encroachment. They drew a circular boundary around the Hopi villages with a radius of 16 miles from the imaginary center of the villages (Mishongnovi), and marked the boundary with stone monuments. Afterwards, they boasted to their superiors that the land dispute was brought to a "satisfactory conslusion." Eight years later, the Federal troops were again requested to return the troublesome Navajos to their treaty Reservation but did nothing. The "Parker-Keam line" encompassed an area consisting of approximately 450,000 acres.

In 1892, the Dawes Severalty or Allotment Act of 1887 was put into practice on the Hopi reservation. Under the Act, each Hopi family would receive a piece of land sufficient in size for farming and grazing. Surplus lands would be returned to the United States. Many Hopis objected to the allotment program and raised havoc with government surveyors by pulling out survey stakes at night. In 1894, an extraordinary letter objecting to allotment as signed by 123 Hopi leaders with their clan symbols and was presented to the President. In a concluding statement, the Hopis made reference to a "land area set aside" (EOA) for them and requested that the boundary be marked to keep the Navajo out. The petition by Hopis and friends forced the government to suspend the allotment project but did not stop Navajo trespassing.

In 1907, the Federal Government reinstated the allotment program. This time, Navajo families were allotted Hopi land. The second allotment was abandoned in 1911; however, Navajo families who accepted allotments were considered to have established an interest in the 1882 EOA, and the Federal Government began to talk about Navajo rights. The demand for grazing lands caused by the rapid increase in Navajo and Hopi livestock persuaded Senator Carl Hayden from Arizona to call for an investigation to determine the desirability of dividing the EOA Reservation between the two tribes.

The dispute over grazing areas was aggravated by a new Bureau of Indian Affairs (BIA) policy of encouraging Hopis to reclaim their customary use areas. Government protection was promised, and this prompted Hopis to begin moving their livestock and farms further away from the villages, causing the Navajo to complain bitterly about "Hopi trespassing." By 1925 this policy was cancelled because it was "too successful." and the BIA ordered Hopis to move back to the mesas.

By 1927, the Navajo completely surrounded the 1882 EOA and began moving in greater numbers onto lands being used by white homesteaders and ranchers. Congress acted promptly to curtail Navajo expansion into white-held areas by enacting a law prohibiting future establishment of Executive Order Indian Reservations in Arizona and New Mexico. Both Hopis and Navajos were not considered to have the same rights as American citizens at this time.

Having been effectively stopped from encroaching on non-Indian lands, the Navajos began moving in greater numbers onto the 1882 EOA. By 1930, the estimated Navajo population exceeded 3,500, eleven times greater than the original population of 300 counted in 1882. In that year, formal studies were commissioned to divide the EOA between the Hopis and Navajos. Special Navajo Agent H.J. Haggerman, who was then in charge of the Navajo Land Expansion and Acquisition Program, was selected to study the land issue and to propose a formal solution. Haggerman came up with a proposal to confine the Hopis to a 438,000 acre reservation within the 1882 EOA, and to attach the remaining land to the proposed Navajo reservation.

On February 1931, Commissioner C.J. Rhoades and Secretary of Interior Ray Lyman Wilbur accepted the Haggerman proposal. In accepting the recommendation, the two officials stated that it had been the hope of the Department of Interior that Navajos and Hopis would become so friendly that they would enjoy joint use of EOA without fighting. It was their reluctant conclusion that this was not possible, hence the need for separate reservations. This hope of share and share alike was echoed by Healing v. Jones, when it created the Navajo-Hopi Joint Use Area (JUA) in 1962.

In February 1932, the Department of Interior submitted to Congress a legislative proposal defining the exterior boundary of the Navajo Reservation. Including the Navajo Boundary Bill was the Haggerman plan to reduce the 1882 EOA to 438,000 acres for Hopis. The language was dropped after vigorous protest by the Hopis. In June 1934, the Navajo Boundary Bill was passed with the provision that the land is also for "such other Indians settled thereon." This was intended by Congress to protect the Hopi village of Moenkopi and its grazing, intended by Congress to protect the Hopi village of Moenkopi and its grazing, farming, medicinal plants, wood gathering, religious, and other traditional Hopi uses of the area.

Four days later, on June 18, 1934, Congress enacted the Indian Reorganization Act (IRA). IRA was hailed as a new era in Federal-Indian relations. It promised Indians self-government, economic aid, protection of natural resources, and an end to the allotment program. For the traditional Hopi leaders, however, it meant further erosion of individual village soverignty and land base.

Under the Act, the Secretary of Interior was authorized to develop rules and regulations for the proper use and management of Indian lands and resources. In early 1936, pursuant to the Act, the Secretary issued regulations providing a method of establishing "land management districts" within the 1934 Reservation. In their determination of district boundaries, however, the BIA, with the consent of the Navajo Tribe, embraced not only the 1934 Navajo Reservation, but all of the 1882 EOA without the consent of the Hopis. Land Management District Six was the only grazing area left entirely within the 1882 EOA. It consisted of 650,920 acres, identical in size to the Haggerman proposal, and similar to the 1892 "Parker-Keam Line." The districting of the 1882 EOA, according to Healing v. Jones., resulted in the official settling of the Navajos in the area.

In December 1936, the Hopi Constitution and By-Laws were adopted, pursuant to IRA. the constitution, crafted by Oliver LaFarge, was approved by 650 Hopis and Tewas out of a total population of 4,500. Those who signed were under the impression that the constitution would

protect their aboriginal land base. In a revealing diary, LaFarge wrote that "the Hopis will accept a constitution because (we decided that they should . . .

The Hopi Constitution states that, "The authority of the Tribe shall cover the Hopi villages and such land as shall be determined by the Hopi Tribal Council in agreement with the United States Government and the Navajo Tribe. "The phrase "shall cover the villages" was intended to mean District Six. hence, the Hopis were deceived into committing themselves to District Six and to negotiations with the Navajos for jurisdiction over the remainder of land within 1882 EOA. The Navajo Tribe was advised against adopting a Constitution, and are not legally bound to similar restraints as are Hopis.

The questionable legality of the Hopi constitution is important as it bears directly on the United States Indian Claims Commission's devastating ruling on the Hopi petition (Docket 196) seeking compensation for damages stemming from the illegal taking of Hopi lands by the United States Government. The petition was filed on August 3, 1954 on behalf of all the villages, even those villages which protested vigorously against the petition and the questionable conduct of the attorney for the Hopis. The religious Hopi leaders warned the Hopi Council that the filing of Docket 196 represented the final step in the extinguishment of Hopi title to its aboriginal lands. They were right.

On June 29, 1970 the Commission ruled that the Executive Order establishing the1882 Hopi area had the legal effect of extinguishing Hopi interest in all of their lands outside the 1882 area. Furthermore, the commission ruled that the United States Government had extinguished the Hopi aboriginal title to all land within the 1882 EOA with the exception of District Six. The ruling went through appeals and finally resulted in a still controversial $5,000,000 compromise settlement. The settlement was approved by a handful of Hopis (229) at a meeting boycotted by an over-whelming majority of Hopis.

Following several years of adjustments to the District boundary, the Office of Indian Affairs formally confide the Hopis to a 650,970 acre reservation in April of 1943. Department of Interior Solicitor Nathan H. Marigold objected to the districting of the 1882 EOA on the grounds that it excluded Hopis from using and occupying a major portion of their land without their consent. He also determined that the District Six boundary violated a 1927 statute prohibiting the changing of Indian reservation boundaries in Arizona and New Mexico.

The BIA officials responded to the Solicitor's opinion by assuring the Hopis that their interest in the 1882 EOA was not affected by District Six. For all practical purposes, however, District Six locked Hopis onto a tiny island. Realizing that the Hopi Tribal Council was powerless to act on behalf of the Tribe, the villages withdrew their representatives, causing the Council to collapse.

In 1943, the BIA implemented the livestock reduction program. In their zeal to reduce cattle and sheep to the severely limited carrying capacity of District Six, Federal livestock inspectors began a mass extermination of animals without notice and without compensation for the value of the livestock destroyed. The reduction program severely impacted many Hopi families whose only source of income came from the livestock industry. Third Mesa ranchers were hit the hardest because of their continuing opposition to federal policies. Forty-four (44%)

percent of their livestock were destroyed , and several sheepmen were incarcerated in a federal prison near Tucson for refusing to accept livestock permits.

After the reduction, several Hopis began a movement to reorganize the Tribal Council. The group was not interested in reorganizing the Council for mineral leasing purposes, as frequently alleged by the Big Mountain Support Group, but to use the Council as a forum for bringing their grievances regarding the livestock reduction, illegal establishment of District Six, Navajo trespassing and encroachment and the callous conduct of BIA officials before the American public.

Meetings, some lasting days, were held in all the villages in an effort to unite the Tribe. Karl Nasewytewa, former Chairman of the Hopi Tribe, was instrumental in organizing the meetings. He recalled that the leasing of coal was never mentioned in any of the meetings. "You have to remember," he explained, "that Hopis did not understand the value of money in those days. We were interested only in getting our land back from the Navajos, and bringing the wrong done to us before Congress and the American people," The BIA reacted to the group by calling them "troublemakers: and successfully blocked their effort to reactivate the Hopi Tribal Council. As a result, the Council remained inactive until the 1950's when the BIA found it necessary to reorganize the Council for mineral leasing purposes.

In the mid-1940's, energy companies had begun showing keen interest in mining the rich coals, uranium, gas and oil resources beneath the 1882 EOA. But because of the undefined status of the title to the 1882 EOA, complicated further by the absence of a functioning Hopi Tribal Council, the local BIA officials were in a quandary over leasing procedures. "Our most difficult problem," wrote Hopi Agency Superintendent Burton Ladd, "is the procedure in granting a lease."

Pressured by oil companies "continually requesting...bidding for oil and gas leases", the Superintendent pleaded with his superiors in Washingtron to address the problem. On June 6, 1946, Acting Interior Department Solicitor Felix Cohen responded to BIA concerns by issuing an opinion giving both the Navajo and Hopi Tribes an interest in the mineral estate in the 1882 EOA. The interest was not defined, however, and mining development continued to be hopelessly stalled.

Impatient with the slow progress of resolving obstacles to leasing, the corporate interests began lobbying the Arizona congressmen to work out an interim procedure. In a 1957 letter to Congress Steward Udall, an officer for Valley National Bank wrote, "A number of us have wondered for some time why it would not be possible (to) enable the Bureau of Indian Affairs to lease disputed Hopi-Navajo lands while the oil boom is accelerating." By 1964, the Navajo tribe was persuaded to sign a coal lease in the 1882 EOA, without the consent of the Hopi tribe. The lease agreement recites that because of the Navajo Tribe's lease, the Hopi Tribe had <u>no choice</u> but to approve the lease also.

Anxious to begin mineral leasing, the BIA officials began pressuring the Hopis to reactive the Hopi Tribal Council. Officials were warned not to mention coal leasing but to emphasize the advantages of having a functioning Council. "At all costs avoid urging this step as a convenience to the Federal Government or the oil companies which would like to lease Hopi

land. These considerations, wrote Assistant BIA Commissioner D'Arcy McNickle, "will not persuade the Hopi Indians."

> The Hopis were warned that if they didn't organize, the oil companies and their "smart lawyers" could pressure Congress to give the Secretary of Interior authority to lease their land without their consent. By 1951, the Hopis were pressured to hire John S. Boyden as their Land Claims Attorney and General Counsel. Boyden, who boasted of knowing the Hopi since 1938, was well aware of the financial benefits to be gained, if only the Hopis could be persuaded to reorganize the Council and clear title to the 1882 EOA. He noted that "Black Mesa is now declared by leading petroleum geologists to be the largest unexplored, potentially oil-rich geologic formation remaining in the United States." He pointed out that Peabody Coal Company has estimated that in Black Mesa alone there was an estimated 200,000,000 tons of mineable coals that could bring royalties of $50,000,000 to the Hopi and Navajo Tribes. Boyden failed to mention that Peabody could make over $300,000,000 on the sale of coal alone.

In 1957 Congressman Steward Udall introduced H.R. 3789, which was enacted into law on July 22, 1958. The Act established the 1882 EOA as trust land for Hopis and other such Indians as the Secretary may settle thereon, pursuant to the Executive Order of December 16, 1882, and authorized the Hopi Tribe and "other such Indians" to resolve title to the reservation via litigation. Two weeks later Boyden filed a lawsuit, Dewey Healings vs. Paul Jones, in the Federal District Court in Arizona, claiming title to all of the 1882 EOA.

The Navajo tribal attorneys took a calculated risk by conceding to Hopis the original boundary of District Six, hoping to secure the balance of the reservation as exclusive Navajo reservation. This gave the Hopis the go-ahead to exert Jurisdiction over the area no longer in dispute by, among other things, vigorously pursuing mineral leasing. By 1961, the Hopi Tribal Council concluded its first mineral agreement with Fisher Construction Company to prospect for coal in District Six. The tribe received $10,000, which was used to support the on-going quite-title litigation.

On September 28, 1962, a special three-judge tribunal issued a decision in Healing v. Jones. The court determined that the Hopi Tribe had an exclusive ownership interest in District Six, and that the two tribes have a "joint, unidvided, and equal interest as to the surface and subsurface including all resources" in the remainder of the 1882 EOA. The ruling created the Navajo-Hopi Joint Use Area (JUA).

Two years later, the Hopi Tribe conducted the "Hopi Gas and Oil Lease Sale," Fifteen oil companies submitted bids totalling $3,000,000 for the right to explore for oil and gas within District Six. By 1966, Mr. Steward Udall, in his new capacity as Secretary of Interior under the Kennedy Administration, approved a questionable coal lease negotiated by Boyden. The leases between the Hopi Tribe and Sentry Royalty Company, a subsidiary of Peabody Coal Co., involved 58,000 acres of JUA 40 miles northwest of the Hopi villages. The acreage leased exceeded the maximum acreage of 2,560 acres allowable under the Federal mineral regulations in Indian lands (C.F.R. 186.9). It is interesting to note that none of the parcels of land leased for gas and oil exploration in 1964 exceeded 2,560 acres.

Secretary Udall also approved the sale of precious underground fossil water to Peabody for $1.65 per acre/foot. At the time, Arizona Power Authority was paying the Gila River Indian Tribe near Phoenix $20 acre/foot, and Secretary Udall was aggressively pursuing plans to develop the Central Arizona Project which proposed to sell water from the Colorado River to southern Arizona customers for $56 per acre/foot. Boyden, who negotiated that water sale, was at the time familiar with another Federal water project, the Central Utah Project, which proposed to sell water in his home state for between $24 and $30 per acre/foot.

Billions of gallons of valuable Indian water has been, and continues to be mined by Peabody for coal slurry operations. The water mixed with coal is slurried to Bullhead City, Nevada, making the slurry operation the only project that is permitted to transport water to another state in the western United States.

After the Healing v. Jones decision was handed down, Hopi tribal negotiators tried for a period of 10 years to work out an arrangement with the Navajo tribe to use the JUA on a "share and share alike" basis. By 1970 it became evident that the Navajo Tribe had no intention to share the land and that the Federal officials were equally inclined to ignore the Court decision. When 10 years of negotiations failed to produce any substantial benefits, the Hopis appealed to the Federal District Court to enforce its decision in Healing v. Jones. Following more hearings and testimony, the Court issued its Findings of Fact, supporting an Order of Compliance that directed the Navajo Tribe and the United States Government to permit Hopis to use and enjoy their equal interest in the JUA. Included in the Findings of Fact are the following:

* The Navajo Tribe denied the right of the Hopi Tribe to use or possess any of the surface of the JUA.

* Navajos mutilated Hopi livestock and drove Hopi-owned cattle from the JUA.

* Hopi livestock in the JUA were termed "trespassing" by BIA officials and ordered removed.

* Hopi use of the JUA for grazing since 1962 had been less than 1% because of harassment, mistreatment, verbal abuse and threats.

* As of 1968, the range in the JUA was overstocked by Navajos to the extent of 400% of its carrying capacity.

* Since 1962, the Navajo Tribe had damaged and misused the JUA by over-grazing.

* 80% of the range was in poor condition, ranging from 0% to 25% of its maximum forage.

* The defendant United States of America had failed and neglected to take any action to control such misuse.

The Navajo Tribe ignored the Court order, and as a result, Navajo Chairman Peter MacDonald was cited with Contempt of Court and ordered to pay heavy fines.

By now it had become evident that the only way Hopis could ever enjoy their interest in the JUA was to have it partitioned. Consequently, a bill was introduced to that effect. The Navajo Tribe responded by submitting a bill to buy out Hopi interest in the JUA with a Federal loan. Following 2 years of hearings and intense lobbying by both tribes, Congress enacted the 1974 Navajo-Hopi Settlement Act, popularly known as the "Relocation Act." The Act supported the Hopi Tribe's long-standing position that Hopi lands are not for sale, now or ever.

The Act authorized the Federal District Court to divide the JUA on the basis of equal acreage and equal value, but only if both tribes fail to work out a cooperative land-use arrangement within 180 days. Congress instructed the Court to pay special attention to human harsdhip factors and to minimize the human suffering as much as possible. This became the principal criteria in partitioning the land.

Federal Mediator William Simkins was appointed by the Court to direct Navajo-Hopi negotiations to achieve a settlement. Failing that, he was authorized to prepare a division boundary with the participation of the two tribes. At the beginning of the negotiations, both tribes endorsed an Agreement in Principal which read as follows:

> Both tribes agreed that the resolution must take into account the personal hardships of the Navajo people affected. In addition, the parties agreed that the resolution will result in the near future in the restoration to the Hopi Tribe of its existing use of an equal share of the surface area of the Joint Use Area.

Both parties also agreed, though not in writing, to an eight-point procedure for carrying out the "Sacred Places" criteria in Section 6(c) of the Settlement Act:

> In an division of the surface rights to the Joint Use Area, reasonable provisions shall be made for the use and right of access to the identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

Referring to sacred places, the mediator noted:

> Data submitted to mediators by the BIA identifies a total of 145 Hopi shrines and other types of sites of religious significance. Similar BIA data shows 19 Navajo sacred places, scenic sites, and archaeological location (13 in the JUA and 6 within District 6). A Navajo presentation to the mediators expands that total of 32 (25 in the JUA and 7 within District Six). If the Hopi data were to include scenic sites or archaeological locations without particular significance, the Hopi total would be much larger than the figure of 145.

The mediators recommended that a special "Navajo-Hopi Sacred Places Committee" be established with 3 representatives from each tribe. The committee would resolve all questions that may arise in the implementation of Section 6(c).

When the negotiations broke down, Simkins submitted the partition proposal which the Federal District Court approved on February 10, 1977. The decision was appealed by the Navajo Tribe, arguing that the boundary line would create severe hardships on Navajos. The court rejected the appeal, noting that the Navajo Tribe failed to consider "a great deal of evidence...in which the balancing of equities favors the Hopi Tribe. Included is a long history of economic retardations of the Hopi Tribe from land to which they were legally entitled under the United States treaty obligations." However, because of additional Navajo objections, mostly on minor technicalities, the relocation process did not begin until 1979, <u>five years after the enactment of the 1974 Settlement Act.</u>

By then, the population of Navajos on land partitioned to the Hopis (HPL) had increased dramatically from the 3,500 individual Navajos counted by Federal mediators and Navajo enumerators in 1975 (a figure confirmed by Navajo Chairman MacDonald four times in a 1978 hearing before the Committee on Interior and Insular Affairs) to 9,000 Navajos! The figure continues to climb in leaps and bounds, reaching as high as 36,000 Navajos according to data produced by former Navajo Chairman Peterson Zah in 1986.

The number of new Navajo dwellings also increased dramatically. For example, on July 4, 1974, the Center for Remote Sensing and Cartography took aerial photographs of Navajo homes situated on HPL. The photographs were compiled and taken to the field for confirmation 15 days later. Navajo and Federal field personnel counted additional dwellings not in the photographs. In the Pinon area alone, 55 new dwellings were found to be under some phase of construction, and new trailers were being moved in. It was evident that the Navajo Tribe was encouraging its people to move rapidly onto HPL before the relocation process started so they could take advantage of generous relocation benefits and frustrate the process at the same time.

The 1974 Settlement Act, which was amended in 1980, provides $60,000 to $72,000 for new homes; $5,000 bonus payments; generous cash payments for all exixting structures and improvements; 120 "life estate leases" for disabled and elderly Navajos so that they would not have to relocate; 150% incentive payments to encourage livestock reduction; 400,000 acres of new lands; as well as substantial discretionary funds to relieve relocation problems, provide counseling, and develop infrastructure, e.g. roads, water wells, electricity, etc., on the new lands.

To date the Settlement Act has provided over $100,000,000 for Navajo relocatees, including $1,500,000 for repair and renovation of homes previously acquired by Navajos under the Act.

Included in the new Navajo lands is the 35,000 acre Paragon Ranch located in New Mexico. This land as selected by the Navajo Tribe, <u>not because of its suitability for resettlement of Navajo families, but because of the rich deposits of coal underneath the ranch.</u> Interior Secretary James Watt blocked the selection of the ranch because of the Federal Government's plans to develop a coal-rich San Juan Basin. The Navajo Tribe sued to acquire the land. The Navajo-Hopi Relocation Commission, created under the 1974 Settlement Act to

carry out the relocation, supported the Navajo Tribe. William Lavell, attorney for the Commission, testified before the 1982 Hearing on Proposed Withdrawal of Lands in New Mexico that:

> The transfer of these lands to the Navajo Tribe and the ultimate planned generating plant would be a very tangible and realistic means of bringing substantial economic benefits to the Navajo people and the relocatees in particular. The Commission sees the transfer of the Paragon Ranch to the tribe as a vital ingredient necessary to make a successful relocation program.

Lavell left his position with the Commission shortly thereafter to work for the Navajo Tribe.

The Navajo Tribe has entered into a joint venture with the Bechtel Corporation and the Public Service Company of New Mexico to develop a 500 megawatt coal-fired generating plant on land supposedly acquired for relocation of Navajos from HPL. Because of the planned development, no Navajo relocatee has applied for resettlement on the Paragon Ranch. In fact, Navajo squatting on the Ranch prior to its acquisition had been told that they will have to be relocated to make room for strip-mining. Interestingly, the American public has not heard any outcries of hardship from this particular group of Navajos who are being told to relocate.

In 1981, a third round of Navajo-Hopi negotiations began. The objective of the negotiations was to further minimize Navajo hardships via land exchanges. The Hopis, at the urging of former Senator Barry Goldwater, offered to exchange 34,000 acres in the Big Mountain area, stronghold of the anti-relocation group, for the same number of "Navajo acres in 16 separate Navajo free parcels." The proposal, which if accepted would have effectively prevented the relocation of the Big Mountain Navajos, was rejected by Chairman MacDonald without any serious discussion. The negotiations ended in Decemer 1985 when the Navajo Tribe failed to respond to another land exchange offer.

The 1974 Settlement Act expired on July 7, 1986. The highly sensationalized and publicized fear of large-scale evictions of Navajos from the Big Mountain area by Federal Marshals did not occur, to the chagrin and dismay of the international media and hundreds of anti-relocation activists who had spent months preparing for the confrontation. On that day, the Hopi Tribe hosted a "prayer breakfast" for all Indian people.

On August 5, 1987, the Navajo Tribal Council unanimously passed a resolution endorsing a comprehensive land settlement proposal prepared by the Navajo-Hopi Task Team (a misnomer since no Hopis were involved). One part of the proposal calls for 400,000 acres of Hopi Partitioned lands to be added to the expanding land base of the Navajos. The proposal was incorporated into a bill and introduced in the 101st session of Congress but failed to pass.

The Navajos are supported by an international network called the Big Mountain Support Group (BMSG). The BMSG, mostly non-Indian activists, has gained notoriety among the Hopis for meddling in the internal affairs of the two tribes. Eager for publicity, the BMSG has filed a First Amendment lawsuit to further frustrate the relocation process. The lawsuit is based on an "access vs. occupancy" theory developed by BMSG attorneys with the help of anthropologists. According to this theory, the Navajos must <u>physically occupy</u> the HPL to

carry on their religion, while Hopi religious leaders require only access to their shrines. The Hopi elders who previous supported the Navajos have declined to participate in or endorse the lawsuit. Arguments have been heard from all concerned parties and the court has yet to rule on the case.

In the winter of 1986, a warning by the BMSG to shoot "trespassers" was posted prominently near their camp, which is located on land partitioned to the Hopi Tribe. In that same year, Navajo Chairman MacDonald threaten to march 6,000 relocatees to reoccupy Hopi land. Reports of vandalism and lawlessness are continuing to this day, while Federal officials are standing idly by for fear of aggravating the Navajos. Indeed, the conduct of the United States Government continues to follow the same pattern of neglect started over 100 years ago.

As you can see, the Hopi people have been and continue to be the victims in the illegal taking of their lands. Nearly 85 percent of their traditional land base has been lost to the Navajos. Hopis are completely surrounded by the 16,500,000 acre Navajo reservation, and they cannot expand their land base as the Navajos are doing. Several Congresses, administrations, and Federal Courts, including the Supreme Court on three occasions, have acted to restore some justice to the Hopis by giving them a small portion of their land back. For this, the Hopis are thankful.

> One evening, after the referendum on the Hopi constitution was completed, Oliver LaFarge made a somber observation about the Hopis:
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> "The Hopis have been operated on by everyone, official and unofficial, from Coronado through Kit Carson and General Scott to Oliver LaFarge. In almost every case they have suffered for it. They still stand almost where they did, but they are slightly cracking. Why they should trust any white man is a mystery to me."

Yet, the Hopi people continue to have faith that justice will prevail. As Hopi Chairman Ivan Sidney said to Congress, "The Hopi people have, and are continuing to demonstrate, a strong commitment to pursuing peaceful solutions to land problems through the mechanism of the American legal system. We continue to have faith that the American system of law and government, which is founded on obedience to law, will prevail."

It will indeed be a travesty of justice, if the United States of America once again turned its back on the Hopi people...the people of peace.