

is a military advantage of tremendous importance.

Of course, it would be necessary for Britain to persuade its chief arms-making allies to join in: if Britain were to renounce research into certain kinds of military equipment, and in effect leave these things to them, they would have to leave certain other things to Britain. NATO needs specialisation in R & D—agreements among the allies on who does what, instead of the present wasteful practice of several countries each doing almost everything, and almost every country duplicating at least some things.

If the research work were farmed out in this way, the actual production could be shared among the countries interested in buying the product. The current competition for the plane to replace the F-104 in some of NATO's air forces shows how. The United States, France and Sweden have paid the R & D costs for their entries. But no matter how it comes out, the buyer countries (Belgium, Denmark, Norway and Holland) will be able to produce at least 40 per cent of the material for all the planes they buy, a hefty percentage of any sold to third countries, and a significant amount of the material used by the seller countries themselves in making planes for their own air forces. The buying countries could even find themselves employing more people on production lines than they would have been able to find work for on the research benches if each had tried to design its own plane.

There are some things Britain is better qualified to do than any other country, and there are some things other countries can do more efficiently. A lot of Britain's R & D money is now being spent on the wrong sort. This is the best place for the defence review to do its major surgery. It is here that those several hundred million pounds can be found with a minimum of damage to the security of Britain.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for routine morning business having expired, morning business is concluded.

#### SURFACE RIGHTS IN THE 1934 NAVAJO RESERVATION

The PRESIDING OFFICER. Under the previous order, the Senate will now resume the consideration of H.R. 10337, which the clerk will state by title.

The assistant legislative clerk read as follows:

A bill (H.R. 10337) to authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Pafute Indians, and for other purposes.

The Senate resumed consideration of the bill.

The PRESIDING OFFICER. Under the previous order, debate on this bill shall be limited to 2 hours, to be equally divided and controlled, respectively, by the Senator from Arizona (Mr. GOLDWATER) and the Senator from South Dakota (Mr. ABOUREZK); with 1 hour on any amendment in the first degree, and one-half hour on any amendment to an amendment, debatable motion, or appeal.

Who yields time?

Mr. METCALF. Mr. President, I believe that on Tuesday last when this bill

was first considered, the time allotted to the Senator from Arizona (Mr. GOLDWATER) was transferred to me as representative of the committee.

The PRESIDING OFFICER. I am informed that that is correct. My previous statement should be corrected to say that debate on the bill shall be limited to 2 hours, to be equally divided and controlled by the Senator from Montana (Mr. METCALF) and the Senator from South Dakota (Mr. ABOUREZK).

Mr. ABOUREZK. Mr. President, I have a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will please state it.

Mr. METCALF. Mr. President, will it be taken out of the Senator's time, then, if he has time?

Do we have to yield time for a parliamentary inquiry, Mr. President?

The PRESIDING OFFICER. Yes.

Mr. METCALF. Then the Senator from South Dakota has time, and he has to yield his own time for his parliamentary inquiry.

The PRESIDING OFFICER. The Senator from South Dakota will make the parliamentary inquiry on his own time.

Mr. ABOUREZK. I ask unanimous consent that this inquiry not be charged to either side.

The PRESIDING OFFICER. Is there objection?

The Chair hears none. It is so ordered.

Mr. ABOUREZK. My inquiry is this, Mr. President. Last week, when the bill was first brought up, how much time was used by the side represented by the Senator from Montana before the bill was set aside?

Mr. METCALF. Mr. President, I ask unanimous consent that all time be set aside and that we renew time.

The PRESIDING OFFICER. I am informed by the Parliamentarian that we are starting anew. No time has been charged up to be calculated now. At the present time, there are 2 hours on the bill, as I previously stated.

Mr. ABOUREZK. Senator METCALF and I think, Senator FANNIN used up some time the other day which we did not get to match. What I am interested in is getting that amount of time added to our side if we could do that, because they gave opening statements.

Mr. METCALF. Well, Mr. President, the Senator from South Dakota interrupted the Senator from Montana in the midst of his opening statement. As a result of the interruption by the Senator from South Dakota, we conceded that we might carry over this bill until today. At that time I asked, and the Senator from South Dakota was on the floor, unanimous consent that all time be renewed when the debate was continued today. The idea that the Senator from South Dakota has gained additional time because of his interruption and his intervention in the opening statement is something that the Senator from Montana cannot concede.

The PRESIDING OFFICER (Mr. PROXMIRE). The Senator from Montana is correct. All time begins as of now, and whatever time was taken before has been canceled by a unanimous-consent request of the Senator which was

granted by the Senate when we were in session last.

The Senator from Montana has the floor.

Mr. ABOUREZK. Further parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. Will the Senator from Montana yield for that purpose?

Mr. METCALF. Well, the Senator from South Dakota has time. If he wants to propound a parliamentary inquiry on his time, I certainly will yield.

Mr. ABOUREZK. We already have an agreement that this inquiry will not be charged to either side.

The PRESIDING OFFICER. The Parliamentarian informs the Chair that that was for one inquiry, not for a series of inquiries.

Does the Senator yield for that purpose, or does he ask unanimous consent?

Mr. METCALF. I shall concede the unanimous consent that the Senator from South Dakota may continue his parliamentary inquiry.

The PRESIDING OFFICER. As I understand it, the Senator from Montana has asked unanimous consent that the Senator from South Dakota may make a parliamentary inquiry without its being charged to either time, is that correct?

Mr. METCALF. That is correct.

Mr. FANNIN. Reserving the right to object, Mr. President, and I shall not object, I wish to make it known that if the Senator from South Dakota continues delaying action on this matter, it will be necessary to continue to use time.

Mr. ABOUREZK. Mr. President, it is not my intent to attempt to delay the legislation. The only thing that I am asking is that the Chair has ruled, then, that all time starts anew. My question is, Does the other side of this issue, represented by the Senator from Montana and the Senator from Arizona, intend once again to repeat their opening statements without giving us the right to have an equal amount of time?

The PRESIDING OFFICER. May I say to the distinguished Senator from South Dakota that the Parliamentarian informs me that that is not a parliamentary inquiry. We have no knowledge of the intentions of the distinguished managers of the bill.

The Chair is not in a position where he can respond to that question.

Mr. ABOUREZK. We are ready to proceed, if they are.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. METCALF. Mr. President, when this bill was previously considered—

Mr. MONTOYA. Will the Senator yield for a unanimous-consent request?

Mr. METCALF. Yes, I yield.

Mr. MONTOYA. Mr. President, I ask unanimous consent that my legislative assistant, Mr. Mike Daly, be allowed to be here in the Chamber and to advise me with respect to this bill during the pendency of it.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOMENICI. Will the Senator yield?

Mr. METCALF. I yield to the Senator from New Mexico (Mr. DOMENICI).

Mr. DOMENICI. Mr. President, I ask unanimous consent that Bruck Pasternak of my staff be granted floor privileges during consideration of this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METCALF. I yield to the Senator from Arizona (Mr. FANNIN).

Mr. FANNIN. Mr. President, I ask unanimous consent that during the floor debate and votes on H.R. 10337, to resolve the Navajo-Hopi land dispute, the following individuals be allowed the privileges of the floor: Harrison Loesch, Fred Craft, Mary Adele Shute, Margaret Lane, and Irving Emerson of Senator GOLDWATER's staff.

The PRESIDING OFFICER. without objection, it is so ordered.

Mr. METCALF. Mr. President, when this bill was considered and brought up previously, my opening statement was interrupted by the Senator from South Dakota. I had asked, as has already been brought out, unanimous consent to renew that opening statement at this time. Subsequently, I asked unanimous consent that my opening statement be included in the Record for November 26 at page 37545. The statement is printed in full therein. It is my opening statement for this matter, and it has been available for my colleagues to read and to understand some of the preliminary issues involved. Therefore, I shall now read my opening statement, but I yield such time as he may need to the senior Senator from Arizona (Mr. FANNIN), who has been working so diligently on this bill in the Committee on the Interior.

I also authorize him to yield such time as he may need to his colleagues.

Mr. ABOUREZK. Will the Senator yield for a unanimous-consent request?

Mr. METCALF. Yes, I am delighted to yield to the Senator from South Dakota.

Mr. ABOUREZK. Mr. President, I ask unanimous consent that Teresa Burt, of Senator KENNEDY's staff, be allowed privileges of the floor during debate and vote on this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METCALF. As I understand, Mr. President, I do not have to renew my unanimous-consent request for the various committee members who have been authorized to be on the floor by previous unanimous-consent request for this bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. METCALF. I thank the Presiding Officer.

Mr. FANNIN. Mr. President, I express my appreciation and thanks to the distinguished Senator from Montana for the manner in which he has handled this legislation. I wish to say to the distinguished Senator from South Dakota that, due to his interruption, the Senator from Arizona did not have the opportunity to present his statement and will do so at this time.

Mr. President, the bill before the Senate, H.R. 10337 as amended by the Senate Interior Committee, represents the

culmination of a long period of dedicated work. As you have heard, the troubles between the Hopi and Navajo Tribes which necessitated a congressional solution are of very long standing indeed. They began even before the setting aside of the Hopi Reservation in 1882 and have continued without remission and to the great detriment of both tribes ever since. In 1958, Congress made its initial attempt to solve the matter but did not recognize that considering the overwhelming number of the Navajo and the long history of conflict, no solution could be achieved without provision for partition of the jointly held lands. That the 1958 act was only partially successful is proved by the 16 years of litigation and the failure to enforce court decrees which followed passage of that bill.

For many years both preceding and following that 1958 act, Senator GOLDWATER and I have been personally and deeply involved in this affair, as indeed have all the residents of my State of Arizona. I assure you that the committee bill and the committee amendments to it which have been mentioned by our esteemed colleague from Montana (Mr. METCALF) represent the best judgment of those most acquainted with the problem after long and dedicated examination of possible solutions. No solution is perfect. Administration of this bill will necessarily result in a certain amount of dislocation and the removal of some persons from their present residences. It must not be forgotten however, that those who must be moved are not in their present locations by any right which can override the right of the Hopi Tribe to the use of the lands to which it is legally entitled. And the financial advantages to those who do move represent a great opportunity for them and for the Navajo Tribe.

You have heard an outline of the legislative effort which has gone into the production of this bill both on the House side and in this body. The bill, as our committee has reported, allows one last chance for mutual agreement and settlement between the tribes, but failing such a solution, the U.S. District Court for the District of Arizona is mandated to partition the land in accordance with the guidelines of the bill and to enforce its decision in the usual way. The bill provides guidelines which require the court to minimize any such possible impacts. It also provides authority for the acquisition and transfer to the Navajo of up to 250,000 acres of public lands to prevent a so-called loss of land base claimed to be suffered by the Navajo Tribe as a result of partition. It is to be noted that in truth there would be no such loss of land base if the Navajo Tribe had obeyed the court decision and allowed the Hopi the use of land to which that tribe is entitled. Nevertheless, in leaning backward to prevent personal hardship and dislocation, the committee has seen fit to deal generously with the Navajo.

The section of the bill which has perhaps caused the most controversy and which is the main subject of a "Dear Colleague" letter Senators have received from its opponents, is section 8, which legislatively transfers to the Hopi Tribe

approximately 243,000 acres in what we call the Moencopi area. It is uncontroverted that the Hopis are entitled to the use and occupancy of land in this area. There have been questions as to the amount and there have been questions as to the process by which they should be put into possession. The experience of 15 years of litigation following the 1958 act with its attendant bitterness, heavy expense, and preemption of court time, persuaded the House Interior Committee, the House, and the Senate Interior Committee that we should not repeat such a fiasco. For this reason, the bill provides a direct congressional disposition of that portion of the Moencopi area to which, in the opinion of the committee, the Hopis are entitled under the 1934 act. That act defined the boundaries of the area allocated to the Navajo Tribe and to such other Indians as were located thereon. It would be foolish to deny that the Navajo Tribe is bitterly opposed to this provision of the bill and it and its lawyers are threatening litigation should the bill pass as written. But the Constitution of the United States clearly grants the Congress the right and duty to handle such matters, and it must be realized that the amendment to this section proposed by its opponents specifically provides for litigation on the same massive scale as did the 1958 act. So, there could be litigation in either event and it is the judgment of the House and of the Senate Interior Committee that the risks and expense of litigation attacking this provision are far less and far more expeditiously disposed of than would be the case if Senator ABOUREZK's amendment were adopted.

The consideration of these matters by the Congress has been fraught with difficulty, has been subject to emotional display by both tribes, and is traumatic to all members of the committees who have studied the situation. But this bill represents the best judgment after extended and mature consideration, double and triple sets of hearings in the House and full hearings in the Senate. It will not be cheap to administer—the total cost is estimated at \$52,000,000—but is reasonable and indeed a bargain price to pay for the final solution of this long-festered matter which has inhibited the development of the tribes, unnecessarily depleted their substance in legal fees and expenses, caused extreme difficulty to the Bureau of Indian Affairs through at least five administrations, and troubled the entire State of Arizona for at least as long. The effort to obtain a proper bill and a proper legislative solution has been nonpolitical and bipartisan and has crossed almost all the philosophical attitudes and shades of political opinion represented in this body. The bill before us represents a great deal of dedicated work by a large number of people and expresses the consensus of that group. The changes made in H.R. 10337 by the Senate Interior Committee have been examined and informally passed upon by many of the members of the House Interior Committee, and we are unofficially informed that body stands ready to accept them. There is, therefore, every chance that this bill will become law in

the immediate future if we pass it as written and amended by the Senate Interior Committee.

Senators have already heard, and I cannot too strongly repeat that the bill as written is a delicate balance which, if not maintained, will result in total unacceptability by the House and will negate the results of many months work. I strongly urge the Senate to pass it as amended by the Senate Interior Committee.

The PRESIDING OFFICER (Mr. PROXMIER). Who yields time?

Mr. METCALF. I yield the Senator from Arizona (Mr. GOLDWATER) such time as he may require.

Mr. GOLDWATER. Mr. President, first I want to thank the Senator from Montana for his long and faithful work in this field. It is always reassuring to find committee members who know and honor their responsibilities, and I thank him for it.

I rise in support of the Senate Interior Committee bill—H.R. 10337—to resolve a century old land dispute between the Hopi and Navajo Indian Tribes. Mr. President, this is important: All of the land in controversy is within the State of Arizona.

As an Arizonan, I have lived with this issue all of my life. I have seen the dispute grow and fester as the result of a policy of "wait-and-see" by Congress, bureaucratic indifference by Federal officials, and illegal governmental restraints on Hopi rights in the area. In the words of the Ninth Circuit Court of Appeals:

It is now undoubtedly past time for Congress to act to alleviate the hardship occasioned by (this long history.)

The main dispute involves the claims of the two tribes to land within a reservation in northeastern Arizona created by the Executive order of December 16, 1882. There is no question as to which tribe was there first. The Hopis were.

In fact, the U.S. District Court for Arizona stated in 1962 that:

No Indians in this country have a longer authenticated history than the Hopis. The Court has also found that "(b)efore 1300 A.D., and perhaps as far back as 600 A.D., the ancestors of the Hopis occupied the area (in dispute)."

In fact, Mr. President, the village of Oraibi is the oldest continuously inhabited village on the North American Continent. It is my belief, and I am somewhat of a student in this field, that that village is over 2,500 years old.

As to the Navajo, the court said:

From all historic evidence it appears that the Navajos entered what is now Arizona in the last half of the 18th Century.

This is at least 450 years later than the Hopis.

Mr. President, when the Spaniards first came into northern Arizona and northern New Mexico in 1542, there is no mention—no mention in any diary or any writings—of a tribe known as Diné, which is the Navajo name for their people, or Navajo, which is a word either derivative from the Spanish "navaja" which means clasp knife or fighting knife, or a word handed down by the Tewa Indians meaning something else.

There is no record at all of their having been there.

The court said that in 1882 an Executive order was issued to reserve for the Hopis sufficient living space against advancing settlers and Navajos. But because of the dispossession of the Hopis from most of the 1882 reservation by what Federal courts have described as "the combined effects of Navajo intrusions and depredations" and illegal "administrative action extending from 1937," the Hopis have been denied the joint and equal interests in the joint use areas of the reservation to which the Federal courts universally have held that they are legally entitled.

There are at least four Federal court decisions, including one by the Supreme Court, which have decided that the Hopis have right to the actual joint use and possession of the lands in this area. However, the exclusion of the Hopis from the land has been so severe that the District Court of Arizona found that:

Hopi use of the Joint-Use Area for grazing since September 28, 1962, has been less than 1% because of the harassment, mistreatment, verbal abuse, and threats of the Navajos.

According to the court, Navajo activities, approved by governmental inaction, have included mutilation of Hopi livestock by cutting off their tails or ears and the shooting of cattle.

Mr. President, it is long past the time when Congress should have assumed its responsibility over Indian affairs and mandated a settlement of this tragic dispute. It is time we cease studying the issue and aid these two tribes in reaching a just and prompt decision of their dispute.

This is exactly what the committee-reported bill will do. It provides a final negotiation process. It gives the court needed authority to partition the land in the event no voluntary settlement is reached. And it provides for fair and generous payments for any persons who relocate pursuant to the settlement or partition order.

If the final negotiation fails, the bill provides for partition in equal shares. The last thing in the world that the Hopis want is the sellout of their interest after years of struggle to protect their right of use and possession of the land.

Throughout a decade of attempted past negotiations with the Navajo Tribe, the Hopi Tribe has consistently rejected the proposal that they give up their interest and the Navajos keep all or most of the land. For this reason, the language of the committee bill must be retained which provides for a partition line to be drawn in shares equal both "in acreage and quality."

Any change of this criteria can only be a "Trojan's horse" for buying off the Hopis, who are unwilling to be paid off. There has been an unlawful taking of land from the Hopi people and I believe strongly that any compulsory resolution of the issue should return the land to the Hopi Tribe.

Finally, Mr. President, I turn to a second area of land in dispute between the

two tribes, called Moencopi. The Hopi Tribe held, and still claims, aboriginal rights in the area. It is an unchallenged fact that their use of Moencopi precedes that of the Navajo.

Mr. President, let me inject here a little more on that argument. When the Navajo treaty was first signed in 1868, it recognized as treaty land about 1,500 acres of land in an area we now call Canyon de Chelly. Do not ask me why it is called that, but it is called Canyon de Chelly. Since that time nontreaty lands have been granted to the Navajo by Presidential proclamation to the extent that the total land area of the Navajo reservation is now 16 million acres, larger than many eastern States, with a population of probably over 130,000.

Now, I mention this because at times the Navajos will claim aboriginal rights. I can remember, as relatively young as I am, when no Navajos lived around Moencopi Wash. It has historically been a site—in fact, a village named Moencopi of the Hopi and the Moencopi Wash rising as it does on Black Mesa, and flowing down there with this rather paltry stream of water, has for hundreds and hundreds of years been practically the only irrigated land that these Hopis should have.

I mention it for another purpose: that there is no question as to which people settled there first. You need only go back into Mormon books to discover which Indians the Mormons first talked with when they came and established Tuba City, which is a trading post on the west banks of Moencopi. They talked with the Hopi. The Navajo had not come yet.

The Hopi Tribe actually claims an interest in about 1 million acres of Moencopi based upon statutory language regarding that area which is similar to the language interpreted by law as to the 1882 reservation which gives the Navajo Tribe a half interest in that reservation. The Hopis refer to the language in the 1934 Act of Congress setting aside a reservation "for the benefit of the Navajo and such other Indians as may already be located thereon."

As the Hopis obviously were in that area in 1934 when this reservation was set aside, they claim that they are in a position to have the benefit of the same kind of interpretation as the Navajos had in the language creating the 1882 reservation. The Navajo Tribe, on the other hand, contends the Hopis have rights only to some 34,000 acres they now occupy within Moencopi.

The committee provision for partition of some 243,000 acres to the Hopis, leaving 95 percent of the western Navajo Reservation with the Navajos, is a compromise between the two competing positions I have described. The area chosen is based on natural boundaries and settlement locations.

It is also consistent with the Walker-Dalton line, which was a survey of the land used by the Hopi in this area in 1933, just 1 year before passage of the 1934 Reservation Act. The Walker-Dalton survey reported that the Hopi Tribe then used approximately 246,000 acres in Moencopi.

Now, Mr. President, I might inject here that land is a very sacred thing to the Hopi Indian. It has practically no such strength to the Navajo. But just as we settled a dispute in this body last year over a lake in New Mexico that the Indians claimed was theirs and should be theirs because of the religious significance—and I backed that to the hilt—so are we talking today about land that has great religious significance to the Hopi. Do not ask me how they divide it up. No non-Indian can tell you, but they can go out on that reservation and tell you, "This is the land of such-and-such a god. This is the land of such-and-such a religious day."

So they divided it up, not with a map, only with the knowledge and the knowing of their medicine men. So we are not talking here just about something that might be of monetary value to them. We are talking of something that has very sacred value to them.

I was a little amused the other day in the campaign in Arizona when a candidate running for a seat in the House of Representatives suggested going up on the Hopi lands and drilling wells. Well now, this is the last thing you do on Hopi land because they do not like holes being drilled in their god, the God of the Earth.

I can recall Hotevilla, which is a small village some distance from Moencopi, when the Indian Service drilled a well and the Indians demanded that it be taken down, and it was, but it was transferred about 3 miles away to a village called Bakabi because the inhabitants did not cling to the religious belief that the citizens of Hotevilla believed in.

And now, Mr. President, the committee provision is a considered and logical resolution of the Moencopi issue and is necessary to put these tribes in possession and use of their lands now, without awaiting the outcome of several decades of court battles between the tribes. I might add that the 1934 Reservation Act has no yardstick for judicial partition and this issue is clearly the kind of policy decision which Congress must make on its own.

Mr. President, I recognize that the Navajo Tribe may present the question of "just compensation" in the Federal courts should Congress pass the Moencopi provision, but even if such a court case were eventually successful and the United States had to pay compensation, this would not affect the partitioning of the lands effective immediately with passage of this bill.

In closing, Mr. President, I say that I have the greatest respect and admiration and, even love, for both of these tribes. Since I can remember, since I was a boy of about 6 years old, I have been living with, working with, and visiting these people. I have tremendous respect for both of them. They are among the finest people that you could find on this Earth.

I might say, Mr. President, if we non-Indians patterned ourselves after both the Navajo and the Hopi we would be in a lot less trouble. They have very, very high moral standards. They have very high religious beliefs that they adhere

to. They believe in their families; they believe in ritual; they believe in passing on the wonderful heritage of heart that is theirs.

They do not want to change. They do not want to live like non-Indians. They want to live like Indians have lived for thousands and thousands of years.

We are going to see them change, no question about that. We can see changes beginning amongst the Navajo, particularly those who live close to the communities surrounding the reservations.

We are not asking for anything against the Navajo and for the Hopi, even though the Navajo is the largest tribe in the United States and probably contains 20 to 25 percent of all the Indians that come within the United States, with all the 400 tribes within the continental limits of the United States, and the Hopi, a relatively small tribe of some 7,000, living on a much smaller reservation—in fact, I have said if I were politically smart I would be backing the Navajo.

I do not happen to be particularly politically smart. I believe the Hopi is right, and I think it is time that we set this whole matter straight by action in the body.

I ask for the support of the Senate for H.R. 10337 as the best way of ending the serious disputes between the tribes, and securing the rights and the welfare of both people.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. METCALF. Mr. President, I would suggest now that we make our opening statements and that the Senator from South Dakota make his opening statement.

Mr. ABOUREZK. Mr. President, how much time is remaining to both sides?

The PRESIDING OFFICER. The Senator from Montana has 35 minutes remaining; the Senator from South Dakota has 60 minutes remaining.

Mr. ABOUREZK. Mr. President, I ask unanimous consent that Sherwin Broadhead be allowed the privilege of the floor during this debate and vote on this matter.

The PRESIDING OFFICER (Mr. McIntyre). Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, I noticed that when the Senator from Arizona (Mr. GOLDWATER) made his opening statement and when he read his prepared statement he talked about the depredations of the Navajo, the size of tribe, and how they push around the Hopi. Then when the remarks came off the cuff from the Senator from Arizona following his written statement, he talked about the warmth and the goodness of both the Navajo and the Hopi people.

I would rather associate myself with his off-the-cuff remarks than with his written statement.

I think, as chairman of the Indian Affairs Subcommittee, the work that I have done in the field of Indian affairs both here in the Senate and in private life back in South Dakota bear out my feelings for the Indian people throughout the country, and I do believe that we ought not try to paint a bad picture of one tribe

or the other in an effort to get some kind of legislation passed or defeated because to do that is to do injustice to the people of the Navajo and the Hopi as well.

I personally consider the Navajo and the Hopi to be equally generous, kind, outgoing, and very, very, good people.

My effort in trying to oppose what some of the members of the committee have done, in this case the majority of the members, is to try to achieve some balance at some element of fairness in the dealings of the Congress with respect to the Navajo and with the Hopi. I do not believe we ought to try to make either tribe sound bad.

As a matter of fact, the shootings and the violence that have been talked about in newspaper reports, and that have been referred to in one or two of the opening statements here this morning, happened only in the newspapers, for the most part.

When I went down and chaired hearings in 1973, the Navajo sat on one side of the hearing room and the Hopi sat on the other side and they mingled with each other in a very friendly fashion at the recesses the committee had during the hearings.

In addition, I would also like to point out that of the references to the bad feelings between the two tribes, they simply do not exist. They exist only in the minds of their lawyers and of their non-Indian proponents on both sides.

Last year, or the last time the chairman of the Hopi Tribe, Abbott Sekaquawewa, was inaugurated, during his last inauguration the Navajo leaders, including the tribal chairman, attended his inauguration. Now, Peter MacDonald, chairman of the Navajo Tribe, will soon have an inauguration ceremony—I think it is in January—and the leaders of the Hopi Tribe have already indicated they are going to attend. It is a kind of family gathering.

So I would hope that nowhere on the floor of the Senate today during this debate that any Senator use the word "depredation" by one tribe against another because it simply does not exist and I think we do a disservice to both tribes by trying to bring that up.

Second, I want to state that the Navajo, the Navajo people themselves, did not become aware until just recently, I am sure, of the Executive order that was signed in 1882 giving equal and joint interest to what we call the joint use area to both tribes.

The Navajos through the years, wandered about, they grazed their sheep and their cattle, and the Bureau of Indian Affairs even encouraged them to stay in the joint use area because they built schools for the Navajo, they provided some of the service that the BIA provides for all Indians for the Navajo in that area without ever being really tough about it.

So the BIA really did nothing to disapprove of the Navajos moving onto this area.

When Senator GOLDWATER talked about 16 million acres of other land the Navajo could move onto, we really are talking about people and how they make a living and what they do on the land.

The Senator talked about 16 million acres of land that has not all that much grazing property included with it. If we put 6,500 or 8,000 Navajo people in the other part of the Navajo Reservation, which is already over used, we have done an injustice to the Navajo people already living there and to the Navajo that are being taken out of the joint use area that they consider to be their home, that they do not believe they have wrongfully taken from anybody, because, very truthfully, they do not understand joint use area, they do not understand Executive orders, and they do not really understand property lines, because that is not the Indian way of doing things.

I think if we are going to do this, we ought to make some kind of provision to find land to put those people on so that they can continue to live the way they have lived since their beginning.

Now, the talk about relocation money, the talk about the BIA and the Government helping relocate those 8,000 Navajo, or 6,500, whatever the figure might be agreed upon, the talk about making it easy for them to move is meaningless, as well, when we talk about people whose only relationship to anything is a relationship to land, where money means so much less than land.

How does one tell the Navajo stock grazer and his family that they can no longer graze their stock on the places they have grazed them since they were born and since they were small children? That is something that is going to be very difficult for the Government to do.

In my effort in trying to slow down what I consider to be a removal from the land of the Navajo people in the joint use area over a very short period of time, my efforts are to prevent a class of refugees being created that the Government and Congress and every Member of this Senate will regret when that time comes.

I agree and the Navajo agree, the leadership at least right now agrees, that the Hopis are absolutely entitled to what the court has awarded them, and I agree with that. I do not disagree, and I think they ought to have it coming to them.

The Hopis have indicated they will graze their livestock on that land. They do not want to live there because they live on the mesas. In all the hearings we have had, they never said they intended to live on that joint use area.

In reality, what we are doing if we do this in the rush that the Senators from Arizona would like to do, we are replacing human beings with livestock and I do not think that is fair. It is not fair at all.

I want to just refer briefly to the Moencopi area. The Moencopi area is off to the side of the 1882 treaty area. As Senator FANNIN said in his opening statement, the 1934 act said the Moencopi area is granted to the Navajo Indians and such other Indians as may thereon be located.

Then without adequate testimony, without adequate investigation by the Interior Committee or the Indian Affairs Subcommittee on Moencopi, the committee awarded all 243,000 acres of the Moencopi area to the Hopi without

knowing who has property rights, who has any kind of rights to that area.

Now, it was said by Senator METCALF at an earlier time that he wanted to end the litigation of the Moencopi area. It has never been litigated.

I can guarantee that this congressional imposition of 243,000 acres, part of which is Navajo land, 243,000 acres just given to the Hopis without consideration of the Navajo rights, will certainly bring a lot of litigation that we will regret later on. I think we will be making the greatest mistake of our lives if we do this arbitrarily, as the majority of the committee wants to do, to give the Moencopi land arbitrarily, absolutely and totally to the Hopis. In my opinion, it is a violation of the fifth amendment right of the Navajo people, the right not to have their property taken from them without due process of law. That certainly will be the basis for a new lawsuit the minute that the President signs this particular provision into law.

There was no testimony at any stage of the hearing process, no investigation by the committee staff, as to who has the right in that Moencopi land.

Senator MONROYA will offer an amendment to redress that particular grievance.

I would ask that the Members of the Senate try to be fair in this matter, as we have tried to be. I do not think we ought to railroad or steamroll anything over the wishes of either one tribe or the other. I think that would be the height of unfairness.

Mr. President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. METCALF. Mr. President, we do have a committee amendment, as I mentioned in my opening statement. I believe at this time it would be appropriate to call up the committee amendment. I yield to the Senator from Arizona (Mr. FANNIN) on this amendment.

Mr. BIBLE. Will the Senator from Montana yield to me for a statement on this bill, ahead of offering the committee amendment?

Mr. METCALF. I yield to the Senator from Nevada.

Mr. BIBLE. Mr. President, I rise in support of the committee bill and to urge its approval without amendment.

It has been 16 years since the Congress enacted special legislation providing for judicial settlement of the conflicting claims of the Hopi and Navajo tribes to the lands within the 1882 Hopi Reservation. The Federal court in Arizona rendered its decision in 1962—more than 12 years ago. That decision was affirmed by the Supreme Court in June 1963—more than 11 years ago.

The dispute persists not because there is any question about the respective rights of the Hopi and the Navajo tribes to the lands, but because action by the Congress is needed to implement the decision of the court. Action by the Congress is needed to finally resolve a long and bitter controversy that has persisted since well before the turn of the century.

And if the Senate fails to act now I have no doubt that the next Congress will have to confront the same issue. This is a problem that neither the courts nor the tribes have been able to settle.

The House has twice approved the necessary legislation. In the 92d Congress the House-passed bill died here in the Senate. The bill now before the Senate passed the House last May. It is now up to the Senate to join with the other body to provide the means for resolving this controversy. I hope we will do this today.

The committee bill now before the Senate represents a compromise which really favors neither tribe. It protects the interests of both tribes. The Hopis very much desire that they receive possession of their half of the jointly owned lands. The bill accomplishes this objective by requiring the court to partition to the Navajo and Hopi Tribes equal area and equal quality of lands. Any difference in the area or quality of the lands partitioned under the bill is to be de minimus. This is as it should be, because according to the court decisions that is the right of each tribe.

The Navajos have been concerned about the problem of relocation. The bill very adequately handles this matter as well. Under the bill's provisions, Navajo families will be paid for their households at an extremely fair rate. In addition, an incentive payment is provided to Indian families if they elect to resettle early. This incentive diminishes each year, thus encouraging an early, voluntary resolution of the conflict.

The bill also creates a commission which is empowered to study the anticipated resettlement problems and affords an opportunity to the tribes to avoid contemplated difficulties.

Moreover, the bill requires that each tribe attempt once again to resolve their differences through mutual agreement under the auspices of the Federal Mediation and Conciliation Service.

Finally, like the House-passed version, the Senate Interior Committee bill solves the growing problem of Hopi-Navajo relations in the area around Moencopi. The Hopi tribe is awarded approximately 250,000 acres in this area, all of which land has been determined by the Indian Claims Commission to be aboriginal Hopi land. The Navajos are granted the right to acquire an additional 250,000 acres of land, adding it to their reservation. This matter is handled in such a way to avoid years of litigation and further resettlement problems.

In short, the committee's bill represents a compromise which answers virtually all of the difficult questions involved in this controversy. It should be passed now without further delay, and without amendment.

Mr. President, I yield the floor, and I thank the Senator from Montana.

Mr. METCALF. I thank the Senator from Nevada for a very appropriate and helpful statement.

Mr. JACKSON. Mr. President, H.R. 10337, as amended, would provide for the resolution of two longstanding and often bitter land disputes between the Navajo

and Hopi people. This bill is in no small part made necessary by a century of failure of the Federal Government to meet its basic trust and legal obligations to the two tribes. It, moreover, is the culmination of 16 years of well meaning, but halting efforts by Congress to facilitate a resolution of these disputes.

H.R. 10337, as amended, is a complex legislative proposal which is the product of lengthy and difficult committee mark-up sessions. This measure was shaped during four markup sessions in August and September after two full Congresses of hearings and investigations. The consensus is embodied in the 11 guiding principles which the committee employed in designing H.R. 10337, as amended. Although these principles are listed on pages 19 and 20 of the report, they are worth inserting at this point in the RECORD. Mr. President, I ask unanimous consent that they be so printed at the end of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. JACKSON. Mr. President, during mark-up, the committee discovered that no bill pending before it adequately reflected these guiding principles. Instead, we found it necessary to offer to the Senate today an entirely new measure in the form of a substitute amendment to H.R. 10337. Throughout the consideration of this substitute bill, rollcall votes were taken, several of them resulted in divided votes. Yet, the unanimous vote to report the measure to the Senate floor is evidence that I and, I assume, other members of the committee who may have cast losing votes in committee mark-up, believe that the bill generally provides for a fair, equitable, and lasting resolution of the disputes.

In my mind, the most difficult issues confronting the committee concerned the use of land partitioning as a means of resolving the joint use area and Moencopi area disputes. I would like to review these issues for my colleagues.

In 1958, against a long-standing history of controversy over the joint use area, the Congress enacted a law authorizing the Hopi and Navajo Tribes to enter into suit before a special three-judge panel of the district court in order to settle the conflicting rights and interests in and to that area. In 1962, the district court for the district of Arizona reached a decision on the resulting suit. The Healing against Jones decision found, among other things, that the two tribes possessed "joint, undivided, and equal rights" to the area. However, the court also stated that it could not divide those rights because it did not possess the requisite authority to order a partitioning of the land. This decision was affirmed by the Supreme Court in 1963.

The subsequent history of the area has been replete with numerous administrative and judicial efforts to define and enforce a true sharing of the joint, undivided, and equal interests of the two tribes in an area which is under the effective control of only one tribe, the Navajo. The most recent event in this

history was the September 12, 1974, decision of the ninth circuit court in Hamilton against MacDonald. This court firmly denied appeals by the Navajo Tribe from orders of compliance issued by the district court. These orders required the Navajo Tribe to follow a plan of the Federal Government to preserve the respective rights of the tribes in the joint use area as determined in the Healing decision.

This plan, among other things, provides for removal of livestock from the joint use area, restricting further Navajo building, and platting of new management units for use in future land recovery programs. In reaching the decision, the circuit court suggested that there might be sufficient grounds to find the Navajo responsible for "ouster" of the Hopi and for "waste" of the land resource.

At the outset the committee recognized that the driving force behind any Navajo-Hopi legislation was to provide the missing partition authority to the district court. We also held no illusion that, if final judicial resolution were to prove necessary, the court would, in all likelihood, exercise that authority. The report summarizes the reasons for this belief: the court, in effect, asked for this authority; the court has enjoyed scant success in attempting to enforce both tribes' rights and interests absent the authority; both tribes are vehement in their demands for the land itself and not for any compensation in turn for surrendering rights and interests, and both tribes' economy and culture are closely linked to the land.

Yet, no one on the committee could remain absolutely sanguine about authorizing the use of this partitioning power. The potential adverse economic, cultural, and social impacts which could result from a precipitous wielding of this power are indeed awesome. We need not speculate on what these impacts might be; we need only review the truly disgraceful history of past official Indian removal efforts. The committee strongly believed that, with this potential, the partition authority could not be granted to the court in an unfettered manner. We recognized a critical responsibility to provide the court with guidelines concerning the exercise of that authority.

First the bill states that, if the authority is exercised, the lands divided must "insofar as is practicable, be equal in acreage and quality." This is a clear recognition of the desire of both tribes for the land and not for compensation for lost rights and of the finding in the Healing case that the tribal interests in the joint use area are "equal".

Yet this guideline is strongly conditioned by the "insofar as is practicable" language, by the various means of meeting the equality standard, and by the proviso which allows departures from the equality standard with compensation from the tribe with a greater-than-equal share of the divided land to the tribe with the lesser share. The committee believed that departures from the equality standard might be required for numerous

reasons, all of which are stated in the other guidelines for the court contained in section 6 of H.R. 10337, as amended.

However, the most important of these guidelines and the one which is stressed in the report is the guideline which provides that any partitioning should be done so as to keep the most densely settled areas of one tribe within that tribe's reservation. This clearly is the best way to minimize the potentially adverse impacts of relocation which I have already mentioned.

Mr. President, I have said that partitioning is a particularly powerful tool and a tool which will likely be employed by the district court if it is called upon to make a final adjudication of the joint use area dispute. I have also described how we have attempted to control the use of that power. However, the best way to insure that the power will not be used unwisely is not to use it all.

For this reason and in the belief that the best and most lasting resolution of any dispute is one agreed to voluntarily by the parties involved, H.R. 10337 provides for a 6-month negotiating period concerning the joint use area controversy. We have made every effort to structure the negotiating process so as to provide an environment which offers the best possible opportunities to arrive at a full agreement. Among other things, we have required the tribal councils to certify negotiating teams with full power to bind their respective tribes, and we have provided to those teams the service of a professional mediator and a Presidentially appointed interagency committee to facilitate requests of the mediator for information, personnel or services from Federal agencies.

Mr. President, it is in the interest of both the Navajo and the Hopi that every effort be expended to achieve a voluntary negotiated settlement rather than submit to a compulsory judicial settlement. Clearly, both tribes can, through the negotiating process, protect their most vital interests, interests which a court which is not steeped in the culture, society, or economic life of each tribe may not even perceive. I, for one, expect that each tribe will, in a spirit of enlightened self-interest, enter the negotiations with the desire to make them work and to avoid a dictated judicial settlement.

The second difficult issue concerned the method of resolving the Moencopi area dispute. My views on this issue are set forth in a separate statement I will be making today.

Mr. President, despite this one concern of mine on the Moencopi area, I wish to reiterate my full support for H.R. 10337, as ordered reported. No settlement can avoid inflicting a measure of hardship, no settlement can be designed which will be joyfully embraced by all interested parties. The committee has labored long and hard to tailor a legislative proposal to provide for an equitable and lasting settlement of the Navajo-Hopi land disputes. I believe we have succeeded in meeting this basic purpose.

I commend H.R. 10337, as amended, to my colleagues. I believe it merits your support.

**EXHIBIT 1**

**V. COMMITTEE CONSIDERATION OF LEGISLATIVE ALTERNATIVES**

During its deliberations on the several proposals pending before the Committee, the members followed certain guiding principles. These principles were:

1. That justice and equity for the Hopi and Navajo people dictate an early resolution of the joint use area and the 1934 reservation lands disputes and swift Congressional approval of the necessary enabling legislation;
2. That the decision of the three-judge Court in the *Healing* case that the Navajo and Hopi Tribes have joint, undivided and equal rights and interests in the joint use area should in no way be disturbed or overridden by the provisions of any bill ordered reported by the Committee;
3. That no matter how successful a court might be in devising a fair and equitable judicial resolution of the joint use area dispute it would still be a dictated, rather than a voluntary, solution; and, therefore, that a voluntary settlement between the two tribes is distinctly preferable and that a final negotiation process should be provided and so structured to afford the tribes the opportunity to willingly negotiate such a settlement;
4. That, in the event the two tribes fail to reach a voluntary settlement of the joint use area dispute through the negotiating process, the dispute should be referred to the U.S. District Court for the District of Arizona for a compulsory judicial resolution;
5. That, despite the failure of past negotiation attempts, the two tribes, when faced with enacted legislation calling for a compulsory judicial resolution if a final, voluntary negotiation effort fails, may enter the negotiation discussions with a renewed desire to arrive at their own solution to the controversy;
6. That the environment most conducive to successful negotiations would be one that provides the two tribes with the maximum freedom to concur in any settlement or settlement provision which is not contrary to law or to the *Healing* decision;
7. That, if the negotiating process fails, the District Court should have the flexibility to tailor a final adjudication, including partition of the joint use area, consistent with its decision in the *Healing* case;
8. That any compulsory judicial settlement will, in all likelihood, include a division of the lands of the joint use area, rather than any arrangement which would call for continued joint use of, or the purchase by one tribe of the other tribe's interests and rights in, the entire joint use area;
9. That any such division of the lands of the joint use area must be undertaken in conjunction with a thorough and generous relocation program to minimize the adverse social, economic, and cultural impacts of relocation on affected tribal members and to avoid any repetition of the unfortunate results of a number of early, official Indian relocation efforts;
10. That an immediate legislative resolution of the 1934 reservation lands dispute is preferable to beginning now for that dispute a duplication of the lengthy process initiated by the 1958 Act authorizing suit over the joint use area dispute; but that any immediate legislative resolution relating to the 1934 reservation lands must be accompanied by a relocation program identical to and for the same reasons as that suggested above for the joint use area; and
11. That because of the Federal Government's repeated failure to resolve the land disputes, the major costs of resolution should be properly borne by the United States.

The Committee, therefore, rejected the four pending measures, and ordered reported an amendment in the nature of a substitute to H.R. 10337 which contains provisions reflecting the foregoing principles.

Mr. HUGH SCOTT. Mr. President, I come here today with peace pipe in hand to vote on a measure which holds the promise of settling the century-old land dispute between the Hopi and Navajo Tribes. This old and bitter dispute is well known to Arizonans. However, in the cause of justice and equity, I would like to state the problem and bring my colleagues up to date on significant, recent developments.

An executive order of 1882 set aside approximately 2,500,000 acres in Arizona as a reservation for the "Hopi and such other Indians as the Secretary of the Interior may see fit to settle thereon." After years of steady encroachment of Navajo onto the reservation, Congress enacted in 1958 a jurisdictional statute conferring authority on a three-judge district court to determine the relative rights of the two tribes in the area.

In 1962, the court, in a decision affirmed by the Supreme Court, held that, except for an approximately 600,000 acre tract which was exclusively Hopi, the balance of the 1882 reservation was held by both the tribes in joint, undivided, and equal ownership. It is important to note that the jurisdictional act did not authorize them to partition joint interests. I repeat, the 1958 act did not confer authority on the court to partition joint interests between the two tribes. This is the crux of the legislation now before us.

Now to the heart of the problem. Unless the land is equally partitioned with each tribe holding exclusive use over its own share of the 1882 joint use area, there will never be a settlement of the dispute.

This problem has gone to court at least four different times with no final answer as yet. Most recently, in its opinion of September 12, 1974, in the supplementary proceedings in the *Healing* case, the U.S. Court of Appeals for the Ninth Circuit clearly stated that the U.S. Government is delinquent in not providing further authority for solving the problem, including either authority to the court to partition, or direct congressional partition.

H.R. 10337 responds to this charge. It has the support of the Department of the Interior, my distinguished colleagues from the State of Arizona, Senators BARRY GOLDWATER and PAUL FANNIN, and I urge favorable consideration of this measure today.

Mr. METCALF. Mr. President, I would like to now call up the committee amendment.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. METCALF. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

1. On page 42, line 17, strike "and".  
2. On page 42, line 25, strike the period and insert in lieu thereof a semicolon followed by "and".

3. On page 42, after line 25, insert the following new clause:

"(3) for the adjudication of any claims that either tribe may have against the other for damages to the lands to which title was quieted as aforesaid by the United States District Court for the District of Arizona in such tribes, share and share alike, subject to the trust title of the United States, without interest, notwithstanding the fact that such tribes are tenants in common of such lands: *Provided*, That the United States may be joined as a party to such an action and, in such case, the provisions of sections 1346(a)(2) and 1505 of title 28, United States Code, shall not be applicable to such action."

4. On page 43, line 17, strike "The" and insert in lieu thereof "Except as provided in clause (3) of subsection (a) of this section, the".

Mr. METCALF. Mr. President, as I mentioned in my opening statement, this amendment was agreed to by all members of the committee. I have supplied the Senator from South Dakota and other interested Senators with the committee amendment. I ask that the Senator from Arizona be recognized to explain it.

Mr. FANNIN. Mr. President, first of all, I want to express my appreciation to the senior Senator from Nevada, one of the most knowledgeable men in Interior affairs in the Senate, for his very able statement which is certainly in line with his fairness, and the fair play that he has expressed, during his long tenure in the United States Senate. I am certainly very proud of my distinguished colleague from Nevada.

Mr. President, inadvertently, this particular stipulation was not included in the Senate bill. We have the committee amendment for that reason.

On page 12 of the bill at the desk, H.R. 10337, on line 20, is the content of this particular stipulation.

Mr. President, as you know, it is necessary to grant specific authority for most litigation between tribes, and in fairness to both the Navajo and Hopi Tribes, proper claims and causes of action should be authorized. The 1958 act which initially allowed such matters to be litigated, but which did not provide a final solution, must be supplemented by authority to adjudicate damage and other claims. It is alleged that either tribe, but more particularly, the Hopi Tribe, may have a valid claim for damages to lands adjudicated to them, but kept in the forcible possession of the Navajo Tribe following the 1963 decision of the U.S. Supreme Court. In fairness and without prejudging the merits of any claims, both tribes should have a forum in which to litigate them if in fact such claims do exist.

As Senators have already heard from my esteemed colleague, the Senator from Montana, the floor manager of the bill, this provision was inadvertently omitted from the committee amendment to the House bill and its reinsertion is approved by the committee. I urge the Senate to approve it as the only amendment to the bill.

Mr. President, I believe we have the support of the committee. I do not know whether the distinguished Senator from

South Dakota has objection to the amendment. I hope not.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

Mr. METCALF. May I be heard on the amendment?

The PRESIDING OFFICER. The Senator from Montana.

Mr. ABOUREZK. Will the Senator from Montana yield briefly?

I want to say I have no objection to the amendment.

Mr. METCALF. Mr. President, I want to concur with the statement made by the Senator from Arizona about the Senator from Nevada. This matter has been before the committee for a long time.

We had an ad hoc committee which was studying the Navajo-Hopi problem. The Senator from Nevada served on that committee before this matter came up before the full Committee on Interior and Insular Affairs. So he is most knowledgeable, both from the standpoint of his activity and service on that special ad hoc committee, and as a result of his service and participation in the markup and the consideration of this bill. I think that especially we should listen to his advice and counsel, because this matter has been before Congress for a long, long time.

Mr. President, I concur wholeheartedly in the statement of my colleague from the State of Arizona. The recent September 14, 1974, decision of the U.S. Court of Appeals for the Ninth Circuit underscores the fact that a valid claim may well exist in the Hopi Tribe arising from ouster from the lands in which they have an interest. Although the Hopis and Navajos may have the right to press their causes in the supplemental proceedings of Healing against Jones, we ought to make certain that each tribe has the right to seek redress for claims.

The language of this amendment was contained in H.R. 10337, as passed the House, and was included in the substitute version of the bill as ordered reported by the committee. When the bill was ordered reported, the committee authorized staff to make what proved to be numerous technical and conforming changes. Among those changes was the deletion of this amendment's language.

Both majority and minority staff quickly recognized that the deletion of this provision was not technical. They immediately notified both the committee chairman and my colleague from Arizona, the ranking minority member of the committee. When the September 14 decision was handed down, the substantive nature of the amendment became clearly evident. The joint staff recommendation was that the deletion of the language was contrary to the committee's intent and that, therefore, the provision should be restored. I understand the chairman and ranking minority member fully concurred in this recommendation, but decided not to call another committee markup to make this single correction and, instead, simply amend the bill during floor action.

Mr. ABOUREZK. Mr. President, I want to add one or two words.

The matter that the Senator is trying to take care of may already be in the bill, but it does not really bother me at all to have a specific authority. I read from page 43, section (c):

Either tribe may institute such further original, ancillary, or supplementary actions . . .

I just want to point out that authority already is in there, but it does not matter at all.

So far as the special ad hoc committee to deal with the Hopi-Navajo question is concerned, I think it would be useful to point out that they did not take any sort of action on it at all. It was disbanded when I became chairman of the subcommittee, without their having done any investigation or having any hearings. But that does not detract from the interest the Senator from Nevada has in this matter.

Mr. METCALF. The Senator from South Dakota is correct in saying that the bill without the amendment may be adequate to take care of the situation. But especially after the circuit court decision on September 24, it may be that we have to nail down some of the provisions in the bill on which the Senator from South Dakota and the rest of the committee are thoroughly in agreement. That is the purpose of offering the committee amendment.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The committee amendment was agreed to.

The PRESIDING OFFICER. Who yields time?

Mr. MONTOYA. Mr. President, is the bill open to amendment?

The PRESIDING OFFICER. The bill is open for amendment.

Mr. MONTOYA. Mr. President, on behalf of myself, the junior Senator from New Mexico (Mr. DOMENICI), the junior Senator from South Dakota (Mr. ABOUREZK), and the senior Senator from South Dakota (Mr. MCGOVERN), I send an amendment to the desk.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk proceeded to read the amendment.

Mr. MONTOYA. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On pages 26 through 28, strike section 8 in its entirety and insert in lieu thereof the following:

Sec. 8. (a) Either tribe, acting through the chairman of its tribal council for and on behalf of the tribe, is each hereby authorized to commence or defend in the District Court an action against the other tribe and any other tribe of Indians claiming any interest in or to the area described in the Act of June 14, 1934, except the reservation established by the Executive Order of December 16, 1882, for the purpose of determining the rights and interests of the tribes, in and to such lands and quieting title thereto in the tribes.

(b) Lands, if any, in which the Navajo Tribe or Navajo individuals are determined by the District Court to have the exclusive interest shall continue to be a part of the Navajo Reservation. Lands, if any, in which the Hopi Tribe, including any Hopi village or clan thereof, or Hopi individuals are determined by the District Court to have the exclusive interest shall thereafter be a reservation for the Hopi Tribe. Any lands in which the Navajo and Hopi Tribes or Navajo or Hopi individuals are determined to have a joint or undivided interest shall be partitioned by the District Court on the basis of fairness and equity and the area so partitioned shall be retained in the Navajo Reservation or added to the Hopi Reservation, respectively.

(c) The Navajo and Hopi Tribes are hereby authorized to exchange lands which are part of their respective reservations.

(d) Nothing in this section shall be deemed to be a Congressional determination of the merits of the conflicting claims to the lands that are subject to the adjudication pursuant to this section, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

On page 36, lines 12 and 13, strike "later than one year prior to the date of enactment of this Act" and insert in lieu thereof "after May 29, 1974".

On page 44, lines 16 through 20, strike subsection 19(b) in its entirety and insert in lieu thereof the following:

"(b) The Secretary, upon the date of issuance of an order of the District Court pursuant to sections 8 and 3 or 4, shall provide for the survey location of monuments, and fencing of boundaries of any lands partitioned pursuant to sections 8 and 3 or 4."

The PRESIDING OFFICER. How much time does the Senator from New Mexico yield?

Mr. MONTOYA. I yield myself such time as I may require for my opening statement on the amendment.

Mr. President, I offer an amendment to section 8 of H.R. 10337, a bill intended to resolve the land dispute between the Hopi and Navajo Indians. This land dispute involves two distinct tracts of land. One area is referred to as the 1882 Executive Area which will be the subject of another amendment to be offered later on. The other area, which is the subject of the pending amendment, is called the Moencopi Area. This amendment will alter the approach taken by the Interior Committee to the Moencopi section of the bill. The amendment refers the Moencopi matter to the courts for final disposition. I believe that this proposition will prove to be a more equitable and a more efficient solution to the Moencopi land dispute than is the course charted by the committee.

The Moencopi Area is a 243,000-acre tract of land which was first incorporated into the Navajo Reservation by act of Congress in 1934. Today, just as in 1934, the Navajos reside on 209,000 acres of this land. The Hopi occupy the balance of the acreage. When Congress established this situation in 1934, its clear intent was to guarantee the rights of all resident Indians within the Moencopi area—not just the Navajo—not just the Hopi. All the resident Indians were to enjoy the right of living within the Moencopi Area. Before the writing of this bill in this Congress, it had never been argued that

the Hopi have special claim to the land within the Navajo Reservation, outside of 34,000 acres they have traditionally occupied in the Moencopi Area. Nor has such a Hopi claim ever been defined or quantified in any court proceeding. Yet section 8 of H.R. 10337 awards all 243,000 acres of Moencopi land to the Hopi. This unwarranted taking of land is the first defect in the committee proposal.

The second defect of the bill is that it is unconstitutional. To take land from one tribe and give it outright to another tribe is in clear violation of the fifth amendment. I am not alone in this belief. The administration, the Secretary of the Interior, and the Navajo tribe share in it, also.

The administration believes section 8 to be unconstitutional and has formally warned Congress on three separate occasions this year of its opinion. The Secretary of the Interior expressed his opinion in his report to the Interior Committee on the Moencopi provisions of the bill. He said that these provisions are constitutionally suspect and may cost the U.S. Government \$10 million should a judgment be rendered in favor of the Navajos on this question.

There is no question that the Navajo Tribe will contest the constitutionality of section 8 in the courts. The nature of the question would undoubtedly require resolution by the Supreme Court. It may be conservatively estimated that the ensuing legal battle will take at least 3 years and consume thousands of dollars in legal fees. To argue that section 8 provides the quickest of all possible solutions and to prefer it for that reason is naive and thoughtless.

The committee has adopted the point of view that the Navajo-Hopi land dispute should be brought to a speedy resolution. Opponents of this amendment will contend that the unamended bill is impartial and that it represents a swift legislative solution to a problem that has already consumed the energies of the courts and the Congress for far too long. The Senate would be deceiving itself, if, by a quick approval of the bill here today, it believed it had resolved the Moencopi dilemma. Rather than writing the concluding chapter to the Navajo-Hopi land dispute, the Senate will be preparing the ground for new and extensive litigation over the Moencopi Area, saddling the American taxpayers with the wasteful and costly relocation of Navajo living within the Area and creating a legacy of human misery for those Indians who will have to sustain the shock of relocation.

The Senate must face the human reality of the enactment of section 8. The punitive character of this section of the bill cannot be escaped. At least 1,200 and perhaps as many as 2,000 Navajo living in the Moencopi Area would be forced off the land that they have lived on all of their lives. Where are they to go? What are they to do? It has been said that these relocated Indians will be easily absorbed into the Navajo economic development projects, such as the Navajo irrigation project, now under construction. This is an illusion created by those who favor a quick solution.

There is nothing in the background of the Navajo who live in the Moencopi area to indicate that they will be easily assimilated into such projects. These people are among the poorest, least educated minority groups in the United States today. They speak little or no English. They are accustomed to making their living by herding sheep. They have often been living on the land for their entire lives. A forced relocation would produce massive social disruption in their accustomed way of life, and is likely to be resisted. It would be a human tragedy that would undoubtedly attract national attention. The Senate should exercise its good judgment by avoiding, not inviting, a social confrontation like those that have occurred in the recent past.

While we are looking at the human costs involved in relocation, let us look at the cost in dollars of the committee bill as well. When the Navajo-Hopi land dispute was under consideration in the Interior Committee, I introduced a bill along with Senators DOMENICI and MOSS. This bill would have authorized \$28 million for economic development in the area. The bill avoided relocating anyone. It was intended to benefit the area economically. Yet the committee saw fit to reject its provisions. By contrast, the committee bill is going to cost \$52 million to relocate the Navajo living on land to be given to the Hopi. And, as I have mentioned earlier, the Secretary of the Interior predicts that a \$10 million judgment against the United States may result from a constitutional challenge in the courts favoring the Navajo position. That would bring the total cost of the committee bill to \$62 million.

I think that is a very high price to pay for a bad solution to the Moencopi problem. The amendment I offer wouldn't cost anybody anything. There would be no relocation and no relocation costs.

It used to be said that misery was cheap. For the first time in history, it may become expensive.

Another issue which we need to recognize is the issue of invidious discrimination. This is the foundation upon which this piece of legislation has been built. If this were a private non-Indian property dispute, it would have never come to Congress in the first place. It would have been settled in the courts. Representative STEIGER, who was the chief proponent of the Hopi position in the House of Representatives when this bill was on the floor in that chamber in late May, acknowledged the racial distinction to be made in his case by stating openly, and I quote from the CONGRESSIONAL RECORD:

I would simply tell the gentleman that the distinction between that situation and this one is that in those instances, every one of those instances, we are dealing with non-Indians occupying and believing they have a right in the lands. Here, we are dealing with two tribes. That is the distinction.

We should treat this property dispute among Indians just as we would treat a property dispute among non-Indians. As I have said, if non-Indians were involved it would be an issue to be settled in the courts. This is precisely what the amendment I offer proposes to do.

For all the reasons outlined here, I believe the committee approach to the Moencopi portion of the Navajo-Hopi land dispute bill is defective. The amendment I propose is to be preferred to the committee solution. It should be remembered that judicial proceedings have yet to occur over the Moencopi situation and that the committee itself emphasized the importance of a swift resolution of the matter. The Moencopi amendment offered here fulfills this committee objective. It avoids a constitutional challenge to the bill. It prevents the relocation of over a thousand Indian families. I urge the Senate to exercise good judgment by adopting the Moencopi amendment to H.R. 10337.

The PRESIDING OFFICER. Who yields time?

Mr. DOMENICI. Will the Senator from New Mexico yield for 5 minutes?

Mr. MONTROYA. I yield to the junior Senator from New Mexico.

Mr. DOMENICI. I thank my distinguished colleague from New Mexico.

Mr. President, first let me say that I have a great deal of esteem and respect for both Senators from Arizona. I compliment them in this matter, not only because they are both concerned and knowledgeable, but because they want to see the matter resolved. I wish to assure them that I do not take the floor today, nor have I been part of, trying to prolong a very long-standing need to clarify legislatively the disputes between the Hopi and the Navajo Indian tribes.

I wish to say, however, to the junior Senator from Arizona that in no way, either, do I want to interfere with property rights that are in his State, but I do believe that, since the Navajo Nation sits astride both States—and I know the Senator is aware of that—one-third of their people reside in our State and, in a sense, this is a national Navajo problem in that it affects them as a nation.

I have tried, in my short term here, certainly with far less experience, knowledge, and time, than the distinguished Senator from Arizona has had, to look at this problem and try to be fair. The Senators from Arizona do not want only a solution; they want a solution that is right.

Permit me now to talk just about the Moencopi problem, because I do not pretend to be part of amendments that will seriously change the joint-use legislation. I wish to assure them of just one minor amendment in that regard. I am talking only of the Moencopi, the 243,000 or 250,000 acres that have been variously referred to here today, in terms of amount.

It appears to me that if we are looking for a right solution, we certainly ought not to take 243,000 acres of land that, in 1934, the Congress of the United States clearly and unequivocally recognized the right of the Navajo people in and to by specifically saying that this land was for the Navajo Indian and such other Indians as may occupy it. Then we, as a nation, passed that law to permit the Navajo to occupy it over all of these years.

Then, somehow or other, because we have looked at the confusion that has

stemmed from the joint-use area and from the Executive order of 1882 that had the reverse declaration, for the Hopis and such other Indians that occupy it, we have concluded that, as to the 243,000 acres, we are going to make a determination that it belongs totally to the Hopis.

It appears to me that it is not a question of who occupied it first. It is not a question, even though eloquently presented by the junior Senator from Arizona, of original title or even of who occupied it for what kind of sincere religious purposes or the like, but rather, a question of looking at it now in the light of what the U.S. Government has done to the whole area. If we are going to divide up the Executive order land after years of dispute, it appears to me to be right and fair to give both tribes a very simple opportunity to go to court, and provide that court with the jurisdiction that has been lacking heretofore with reference to the joint-use area. The reason that the dispute is here, on the joint-use area, is that the district courts have said, "We do not have enough jurisdiction to complete the battle, to complete the fight, to make the kind of split in surface rights that is needed."

The amendment proposed by Senator MONTOYA, which I join, as it concerns the Moencopi land, would vest the courts with that right.

We go to court once and for all and we will have been finished with the Hopi, but we will not have denied the Navajo, with the same kind of right we are now saying the Hopis have had in court, and been denied that same decision in court for lack of jurisdiction. Quite to the contrary. They would go to court and the Moencopi could be resolved.

I fail to find—of course, I could be wrong—based on previous hearings before the Senate or its committees, anything that clearly indicates that the 243,000 acres is anything other than an arbitrary decision, saying that we have the strong feeling—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. DOMENICI. Will the Senator yield me 3 more minutes?

Mr. MONTOYA. I yield 3 more minutes.

Mr. DOMENICI. I fail to find anything in the report that indicates that we have done other than determine that the Navajos have violated Hopi rights somewhere, sometime in the past, and to make up for that, we are going to give them this 243,000 acres. It does not appear to me that the committee amendment is doing violence to the basic premise of the committee bill. It remains intact. In fact, it is a very logical extension of its conclusion, to vest the courts with the same right on the Moencopi that ultimately we are vesting the court with on the joint-use land. But, no, we are not going to do that today. We are going to say with regard to the 243,000 acres, that in recompense for past actions of the Navajo or the U.S. Government, we are going to give them that entire piece of land.

In conclusion, I feel just as firmly as they do that all we are trying to do is what is right on the Moencopi tract of

land. We are not going to delay it any longer in the courts than the process by which they seek to resolve it, for, certainly, the validity of the law, the claim of the Navajo Nations to something other than compensation, and then compensation will take an awfully long time. Our amendment will put it into the courts to be resolved under standards set out by Congress.

I wish to conclude by saying that, with reference to the Indians and their culture, I could not, as eloquently as Senator GOLDWATER has, express my great admiration and love for the Navajo and for the Indian people in my State and others.

I have great respect for their traditions and their cultures. I do not come here to choose political sides; and I would remind those who think we are choosing the Navajos because they are in our State that certainly they are in our State, the State of New Mexico, but as far as the Indian people are concerned other than the Navajos, there are many thousands of them, and they are not in unanimity as to what is the fair and equitable or historically sound solution to this particular problem.

I rise in respect for their customs, and because they respect our laws. It appears to me we are saying to the Navajo Nation, "We want respect for your laws and ours, but as to Moencopi, we have a strong feeling it all ought to belong to the Hopis."

I do not think that is fair. I do not think 2 or 3 years in court would conclude the matter inconsistent with the serious concerns that the Senators from Arizona, Montana, and Nevada have expressed regarding Moencopi. I think the courts would decide it with the same basic concerns they have.

But even the administration says a legislative solution is the wrong one. They say a judicial determination of the Moencopi rights would be preferable.

I thank my distinguished colleague from New Mexico.

Mr. GOLDWATER. Mr. President, will the Senator from Montana yield to me?

Mr. METCALF. I yield the Senator from Arizona such time as he may require.

Mr. GOLDWATER. Mr. President, what we have argued in the committees is precisely the argument we are going through now. The delay of a solution to this issue would delay the settlement of this particular problem involving the Moencopi Wash by at least two decades. We have had four court decisions in this matter. Every court decision has found the same facts. I understand the Navajo people are now paying \$250 a day to the court as a fine for contempt of court.

If we go to this kind of amendment, the Navajo people can go to court. They can go to court to decide whether or not they would be receiving just compensation for the land they lose.

Let me give a few of the arguments against this proposal.

First, the court would have no yardstick criteria on which to draw—

Mr. ABOUREZK. Mr. President, will the Senator yield?

Mr. GOLDWATER. Not right now.

The 1934 Reservation Act contains no criteria for the court to work with. This is the kind of policy decision that Congress itself must make.

Second, putting the Moencopi issue into the courts will delay a settlement of the issue for two decades, just as the 1882 joint use area dispute has been delayed for 16 years.

Third, the Hopi Tribe has unquestioned title to land in the Moencopi area.

As to the last statement, the rights of the Hopi Tribe to lands within the 1934 reservation are based on the 1934 act itself.

This law provides that the lands within the 1934 reservation "are hereby permanently withdrawn—for the benefit of the Navajo and such other Indians as may already be located thereon."

Now, no one can question the fact that the Hopi were already located within the area. In fact, they have been there since at least the year 1100. Thus, the Hopi claim they are entitled by law to about 1 million acres in the 1934 reservation.

The Navajo, on the other hand, would rewrite the 1934 law to read what it does not say, that lands are reserved for other Indians "only to the extent they were then occupying and using the lands." But this is not what the statute says. And, even if it were, there is strong evidence, according to the Walker-Dalton survey made in 1933, that the Hopi then used about 246,000 acres in the area, which is approximately the figure used in the committee bill.

I would add that the legal title of the Hopi Tribe to land in the Moencopi area is also recognized by the United States and by several public utility corporations. In 1969, when the Arizona Public Service Co. and other electric companies were applying for a right-of-way to construct a transmission line across the 1934 reservation, the Secretary of the Interior informed these companies it would be necessary for them to obtain the consent of the Hopi Tribe. The companies were granted the request by the Hopi Tribe and in turn the Hopi Tribe was paid \$161,400 for the right-of-way.

This right-of-way covered an area far outside the boundaries that would be partitioned to the Hopis by the committee bill.

In conclusion, and in the interest of saving time, I ask unanimous consent that statements made by the Supreme Court that indicate the authority and responsibility to resolve this dispute under cited decisions of the court be printed in the RECORD.

There being no objection, the statements were ordered to be printed in the RECORD, as follows:

Congress has the authority and the responsibility to resolve this dispute under decisions of the United States Supreme Court:

"These Indian tribes are the wards of the Nation. They are communities dependent on the United States—dependent largely for their daily food; dependent for their political rights . . . from their very weakness and helplessness, so largely due to the course of dealings of the Federal Government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the powers." (*U.S. v Kagana*, 118 U.S. 375) 1886

"Not only does the Constitution expressly authorize Congress to regulate commerce with the Indian tribes, but long continued legislative and executive usage and an unbroken current of judicial decisions have attributed to the United States as a superior and civilized nation the power and duty of exercising a fostering care and protection over all dependent Indian communities within its borders whether within its original territory or territory subsequently acquired, and whether within or without limits of a state." (*U.S. v. Candelaria*, 271 U.S. 432)

Mr. ABOUREZK. Mr. President, will the Senator from New Mexico yield me a few minutes for a question of the Senator from Arizona?

Mr. MONTOYA. How many minutes?  
Mr. ABOUREZK. Five minutes?

Mr. MONTOYA. I have only 11 minutes remaining. I yield the Senator from South Dakota 2 minutes, and will yield him more if he needs it.

Mr. ABOUREZK. Mr. President, I ask the Senator from Arizona if he will not concede that there has been no litigation on the subject of the Moencopi area. I know he said there were four lawsuits, but I wonder if he will concede that there were no lawsuits involving the Moencopi area.

Mr. GOLDWATER. The Senator is correct. If I made that inference, I was wrong. There were four decisions on the land east of Moencopi, north of the villages on which the joint boundary is in dispute between the Navajo and the Hopi.

Mr. ABOUREZK. And the Moencopi area has yet to be litigated by any State, except for rights granted in this bill to the Hopi; will the Senator concede that?

Mr. GOLDWATER. No, I will not concede that by any means. It has been decided by the Walker-Dalton survey, and on the basis of that survey, that funds should go to the Hopis for lease permits in these areas; and it has been decided in my mind by the fact that the Hopis were using these areas long before the Navajos came along.

Mr. ABOUREZK. If Senator GOLDWATER says there has been a decision of some sort, I wonder if the Senator will be willing to tell the Senate who has determined who has the rights in that land, because I do not know, very frankly.

Mr. GOLDWATER. The Walker-Dalton survey, in 1934, decided they were entitled to about 264,000 acres; it may have been a little more or a little less.

According to communications I have introduced to the House committee, written by a former Commissioner of Indian Affairs, there was never any dispute about this. This whole thing, I might say, only came up on the part of the Navajo within the last several years. It was never contended, to my knowledge, in any prior dispute.

The PRESIDING OFFICER. The Senator's 2 minutes have expired.

Mr. ABOUREZK. Will the Senator yield me 3 more minutes?

Mr. MONTOYA. Mr. President, how many minutes do I have remaining?

The PRESIDING OFFICER. The Senator has 8 minutes.

Mr. METCALF. How much time do I have?

The PRESIDING OFFICER. The Senator has 26 minutes.

Mr. METCALF. I yield.

Mr. ABOUREZK. I did not understand what survey the Senator referred to. What was that, that the Senator said granted the Hopi about 264,000 acres?

Mr. GOLDWATER. If the Senator will yield, I just put this in the RECORD:

In 1933, just one year before the passage of the Act of July 14, 1934, Superintendent Walker and William Dalton, Sr., an employee at Tuba City, made a survey of the land used by the Hopi at that time. This became known as the Walker-Dalton Line which incorporated approximately 248,000 acres. A portion of this extended into the Joint Use Area, but the Pasture Canyon area was erroneously omitted.

Mr. ABOUREZK. I confess never having heard of that survey before, due to it never having been offered into evidence or testimony at any of the hearings. It takes me and the rest of the committee members, I am sure, by surprise. I wonder if I might have a little time to look at that survey before we go on with this issue. Does the Senator have an extra copy?

Mr. GOLDWATER. I am glad to let the Senator look at this. It came from the law office of Boyden and Kennedy.

Mr. ABOUREZK. Came from where?

Mr. GOLDWATER. The law office of Boyden and Kennedy.

Mr. ABOUREZK. That is, the attorneys for the Hopi tribe?

Mr. GOLDWATER. They are lawyers for the Hopis, but, as good lawyers, they have researched the subject very carefully. I am glad for the Senator to read it. The information came from the Secretary of the Interior. I introduced it in the House earlier.

Mr. ABOUREZK. Mr. President, I reserve the remainder of my time.

Mr. METCALF. Mr. President, who has the time? The Senator from New Mexico has the time, does he not?

Mr. MONTOYA. Yes, I yield 3 minutes to the Senator from Washington.

Mr. JACKSON. Mr. President, I rise in support of the proposed amendment providing for a judicial resolution of the Moencopi area dispute. Those who will oppose this amendment will suggest that a vote for judicial resolution of this dispute is a vote to prolong the dispute needlessly. They will point to the enactment of the 1958 act providing for judicial resolution of the joint use area dispute and note that that dispute is only now being resolved 16 years later. Mr. President, clearly a legislative resolution would, in the best of circumstances, provide a swifter and more certain resolution to the dispute. However, no matter how persuasive may be the argument for an immediate solution to the dispute, it can be persuasive only if the positions of the various parties to the dispute are known. To press this argument in the case of the Moencopi is in fact to beg that final end, in my mind, most critical question: How can you partition the land according to the rights and interests of the respective tribes when you do not have any firm ideas of what those rights and interests are.

No one disputes that both tribes have

asserted genuine rights and interests in the Moencopi controversy, but these rights and definitions have never been adequately defined. The Moencopi area was not considered in the Healing decision, thus no judicial determination of the rights and interests of the tribes in that area has been made. Furthermore, the executive branch has not defined these rights and interests with any certainty. Various official surveys and statements have declared the Hopi interests in the Moencopi area to be anything from 34,000 to 246,000 acres. The Navajo argue, that, at best, the Hopi interest is no more than 34,000 acres, whereas the Hopi have provided evidence suggesting an exclusive interest in as much as 917,000 acres. In light of this total disagreement on the relative rights and interests of the two parties, it would seem to me that any congressionally mandated partitioning of the area would be an arbitrary action—an action certainly challengeable in the courts.

Therefore, despite my fervent desire to see a swift resolution to all outstanding disputes between these two honorable people, I cannot, in good conscience, support an inadequately thought out and justified settlement in precipitous pursuit of a final resolution.

This matter was voted on in the committee, I may say, and I voted for the amendment. It lost by a narrow margin. I hope, today, the Senate will adopt this amendment.

I yield back to the distinguished Senator the remainder of my time.

Mr. METCALF. Mr. President, I yield to the distinguished Senator from Arizona.

Mr. FANNIN. Mr. President, the desire of the committee and the desire of all Senators is to cut down on the expense and to eliminate long years of litigation.

If we look at what has happened in the joint land use program, we see the fallacy of not settling this matter when we have the opportunity to do so.

The present bill will prevent the excessive litigation that we fear and, Mr. President, the uncertainty over the ownership of the land that will continue during the years of litigation which would otherwise take place. This land, by forced circumstances, will continue to be damaged by neglect, and neither tribe will gain by that neglect, so we are placing both tribes in an untenable position, without this legislation.

This amendment is an attempt to derail this bill, which attempts to settle this matter. It is an attempt to prevent Congress from acting. We cannot allow this diversion from a final decision. We must act favorably on what the committee has proposed and what was in the House bill when it came over to the Senate.

The House spent considerable time investigating what would be most fair and equitable in the Moencopi area.

The claim was made that there has not been anything said about Moencopi. This information I am going to give was produced as a result of Senator ABOUREZK's request at the Winslow hearing in

Arizona, a couple of years ago, in 1973. At that time information was furnished by James Stewart, who was the former Director of the Indian Bureau, Lands and Minerals Division. At the time this all happened, he went to the Hopi reservation and made an explanation of a proposed bill which never passed Congress.

The figure of somewhat over 30,000 acres is derived from the letter of Navajo counsel which was written in response to the request at the Winslow subcommittee hearings. In that letter, counsel concludes that about 32,000 acres was all the Hopi Indians occupied in 1934. James Stewart, then Director of the Indian Bureau, Lands and Minerals Division went to the Hopi Reservation and made an explanation of a proposed bill which never passed Congress. From his statements to the various villages of the Hopi Tribe, the erroneous conclusion was derived.

In complete answer to the Navajo attorney's letter, the affidavit of James Stewart was submitted for the record wherein he concludes that the Hopi ought to be given nearly 1 million acres in Moencopi rather than the 243,000 listed in the committee bill. It will be noted that Mr. Stewart personally recommends:

In view of the fact that the Courts have now taken a large portion of the original Hopi Executive Reservation from the Hopi people, it is now my considered opinion that justice requires that an area equal to that taken away should be added to the Hopi Reservation in the vicinity of Moencopi and should be a contiguous tract of land between the Hopi Reservation and the Moencopi section.

Mr. Stewart is recommending that justice requires that the Hopi Tribe be given approximately 917,000 acres in the Moencopi area. The House bill gave only about 243,000 acres.

So, Mr. President, we have the opportunity to settle this matter—and as far as liability of Congress is concerned, with regard to constitutionality, Congress has the unchallenged right to settle this matter. It was not a Navajo reservation exclusively. It is very unlikely that litigation by the Navajo will be successful. We do not know what would happen, but if there is going to be litigation anyway, we should settle the matter in accordance with the rights of the Hopi Tribe, also.

No more burdensome case can be imagined than relitigating the same kind of case as the 1882 area. That has cost both tribes millions of dollars.

So, Mr. President, some will try to lead us to believe that the committee proposal on the 1934 area would leave the Navajo with none of the 1934 area.

Let us realize that the Navajos in this legislation are receiving an additional 250,000 acres. Now, it is not whether or not they are entitled to it or whether or not the Hopis are entitled to certain lands. This additional acreage was decided upon as being more than equitable. In fact, the committee leaned over backward to try to be more than fair with the Navajo Tribe because of the arguments that have been made over the years.

Mr. President, I trust that this amendment will be defeated.

The PRESIDING OFFICER. Who yields time?

Mr. METCALF. Mr. President, I yield myself such time as I may need.

Mr. President, I regret very much to differ with the distinguished chairman of the committee when he says that the decision arrived at here by the committee and by the committee bill was precipitous and without thought. I would like to narrate my own experience here.

I was on another committee and on another markup, and I had left my own proxy with the chairman, and he voted it in accordance with his own views.

He said he would like to have this matter decided in the courts. I have a great deal of respect for the chairman and I thought I would abide by the decision unless I needed to change my opinion. I read the hearings, I read the reports of the various counsel and attorneys, both Mr. Boyden, as quoted by the Senator from Arizona (Mr. GOLDWATER), and counsel for the other side. Then, in the committee I asked for a reconsideration. After lengthy debate and much discussion we reconsidered the vote, and then voted the committee version of the bill on a 9-to-6 vote.

So there has been careful consideration in the committee on this matter. There has been long consideration of this controversy over more than one Congress.

Now, we talk about whether we will have a settlement of the various issues by passing this bill or by litigation.

I suppose that we can never avoid litigation. As I read all of the hearings and all of the matters that are before Congress today I believe that the constitutional question is resolved in favor of the Hopis.

There is not a constitutional question that has been raised by the Senator from South Dakota or the Senator from New Mexico. If Congress acts within the jurisdiction and within the scope of our powers, if the litigation that emanates from our decision to try to end the litigation and try to make an equitable and a fair solution to this longstanding controversy—we should decide it on the basis of what we believe to be the equity and the fairness and let the other side then raise the constitutional question.

As I say, I do not know whether we can ever say that we will resolve this question, but decision after decision, one after another, along the line has demonstrated the legitimate interest which the Hopis have in the land which section 8 refers to. While it has not been directly on these specific acres, the principles and issues involved in this long series of decisions culminating in several cases in the U.S. district court, circuit court of appeals, and U.S. Supreme Court, back again to the ninth circuit, and so forth, have demonstrated that the issues which we are concerned with here have been fully considered and already resolved.

We, the same as the others, can sit here and can read these cases all day; but we should decide today that we are going to try to end this litigation.

I emphasize that the committee bill from the Senate has provided a generous settlement to the Navajos. We have improved on the House bill by, among other things, providing special relocation awards, awards for additional land, all of which amount to at least an additional \$9.5 million for relocation, for benefits, for payments, which will accrue to the benefit of the Navajos.

We have in short, provided a very generous settlement.

We are deciding this on the issues that have already been decided over and over again by every court: the District Court of the State of Arizona, ninth circuit court, the U.S. Supreme Court, all of whom have decided these very issues even though they have not focused them directly on the specific land involved.

I believe we can settle this matter today in the Senate of the United States with generous recognition of the claims of the Navajos and at the same time resolve these differences that have been growing and growing and have not been resolved over many, many years. This is not a precipitate decision. This is a matter of careful, long-term consideration by the committee, by the Congress—not only in this but other Congresses—and I urge my colleagues to vote down the amendment offered by the very able and distinguished Senator from New Mexico.

Mr. ABOUREZK. Mr. President, I yield myself such time on the bill as I might need to respond.

The Senator from Montana made a statement that there have been several court decisions which have adjudicated the principals involved here. I would respectfully and reluctantly dispute that statement. It was also made by the Senator from Arizona in a strong manner of speaking.

There have been no court decisions and to say otherwise is misleading. There has been nothing to settle this matter.

I want to turn just briefly to the letter from the lawyers of the Hopi Tribe. Apparently, I have page 8 of the letter addressed to Forrest Gerard, a staff member on the Interior Committee.

I have never seen this letter before today. It states—and this is his word—that there is no other documentation known, unless the Senator from Arizona has more, that there is a so-called survey line called the Walker Dalton line that established some fictional amount of acreage granted to the Hopi as a result of this survey.

Nobody has ever heard of it before this day, at least I have not, and it has never been given to me.

I wish to read to the Senate the summary of a letter from the Hopi lawyer, which I requested from him, dated April 12, 1973. This followed the hearings in Winslow, Ariz. I asked him if he would submit to the committee his legal position on all of these issues.

Now, I shall read what he says in summary of his very long letter. This is page 16 of his letter:

No. 1. The Hopi Indian interest in the 1934 Reservation is a tribal interest.

That is this Moencopi area.

No. 2. And this is the very key point.

The Hopi tribe has an undetermined interest in all lands described in the 1934 Reservation except:

There are two areas, as follows:

The 1882 area, which we do not discuss right in this amendment anyhow, and lands exclusively Navajo.

He does not determine anywhere in this letter of April 12 how many acres, yet he has sent an ex parte letter to a staff member on the committee, and he has not distributed that letter to anybody else that I know of saying that there is a line.

Now, I think this is not only irregular, but also it is unfair. It is unfair to bring this up in a debate at the last minute, to say there is a fictional line—which I seriously question—that exists on the word of the Hopi lawyer who has never bothered to bring it out either in written letters, written testimony, or verbal testimony, and I have heard him talk every time we had hearings because I have sat through it as chairman of every one of those hearings. I think it is totally misleading and unfair to say there is a determined interest in the Moencopi area on the part of either the Navajo or the Hopi, because we just do not know, and that is the plain truth of it. We do not know, and this Moencopi area has not been considered at length in committee.

It has not been considered hardly at all because there has been no testimony from anybody as to who has what rights except in a very general sense.

I yield the remainder of my time.

The PRESIDING OFFICER (Mr. HELMS). Who yields time?

Mr. FANNIN. Mr. President, will the distinguished Senator from New Mexico yield so I may answer?

Mr. METCALF. I yield to the Senator from Arizona.

Mr. FANNIN. I thank the Senator from Montana.

With due respect to what the Senator from South Dakota has said, I have a copy of a letter sent to him on April 12, 1973, by Boyden & Kennedy, Law Offices, signed by Mr. Boyden, that outlines in detail the information that has been brought up. The House hearings have pages of information concerning what has been discussed here. I am sure if the distinguished Senator from South Dakota would want to go back on the record, he will find everything he has talked about has been covered thoroughly, even in 1972.

I just want to pass on to the Senator that with this letter, and in other information available in the hearings by the House and Senate, these matters have been fully covered.

I thank the Senator from Montana.

The PRESIDING OFFICER. Who yields time?

Mr. METCALF. Mr. President, I yield myself 1 minute.

I regret very much that the Senator from South Dakota denied that this matter had been considered carefully in committee and over a long period of time. As lawyers, we can take issue with each other as to what the courts have decided. It would seem to me that, as I have analyzed various court decisions—and I have

read them all—the courts have decided the basic questions in controversy here.

Mr. ABOUREZK. Will the Senator yield?

Mr. METCALF. No. I have only yielded myself 1 minute.

When he said that this matter was not carefully considered in committee, he is completely wrong. It was considered not only in committee, in discussion, but also was considered on a motion to rehear, and considered after a lengthy discussion. The record is replete with evidence on this matter. It is very unfair for him—

The PRESIDING OFFICER. The Senator's time has expired.

Mr. METCALF. I yield myself one-half minute.

It is very unfair for him to come up and say that this matter has only been casually considered, as he has stated. As I said, as a lawyer, he can analyze the cases if he wants to. He comes to one conclusion and I come to another. But he knows, just as I know, because we sat in that committee and we sat on those hearings, how many hours we spent in considering this very important matter and this very subject.

The PRESIDING OFFICER. Who yields time?

Mr. GOLDWATER. Will the Senator yield for 1 minute?

Mr. METCALF. I am delighted to yield.

Mr. GOLDWATER. So that we might make the record as complete as possible, I call my colleague's attention to page 125 of the printed hearings before the Committee on Interior and Insular Affairs.

I ask unanimous consent to have that short history of the Moencopi situation made a part of the RECORD.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

#### MOENCOPI

##### HISTORICAL BACKGROUND

The Hopi Indian Tribe historically occupied the area between the Hopi villages and the Grand Canyon. The village of Moencopi, wherein 1,200 Hopi Indians now live was and is now the major settlement of the Hopi Indians in that area. It served as an agricultural area for the Hopis living in Moencopi, Bakabi and Hotevilla. The farms are irrigated from the waters of Moencopi Wash and Pasture Canyon. Fathers Escalante and Garces during the years 1775 and 1776 observed large herds of Hopi cattle drifting around the village of Moencopi. It was necessary that the cattle be taken out a distance of at least 15 miles from the farm land so that they would not eat or destroy the crops. When Mormon settlers moved into the area near Tuba City, they assisted the Hopis in developing their irrigation system and farm lands. A school was built in Tuba City soon after the turn of the century and many Government and Navajo families moved into the area for the first time. Prior to that time the only neighbors of the Hopis were several Paiute families.

##### INDIAN CLAIMS COMMISSION

The Findings of Fact in Docket 196 of the Indian Claims Commission dated June 29, 1970, held in Finding of Fact No. 20 that the aboriginal title of the Hopi Indian Tribe as of 1882 included a large tract of land to the west of the 1882 Reservation. The lands

partitioned to the Hopi in the Moencopi area in H.R. 10337 and S. 2424 are well within the aboriginal lands designated by the Indian Claims Commission.

##### CONGRESSIONAL ACTION

The Act of June 14, 1934 (48 Stat. 960) permanently withdrew certain lands for the benefit of the Navajo Indians and such other Indians as were already located thereon. At that time, the entire Hopi Tribe was situated within the boundaries described in the Act thus acquiring contemporaneous rights with the Navajo Tribe in the reservation area. There is nothing in the 1934 Act which attempts to determine the quantum of land to be given to any particular Indian or tribe of Indians.

##### HOPI NEEDS IN MOENCOPI AREA

The lands partitioned to the Hopi Tribe in the Moencopi area must include the following:

1. Present Hopi villages and farm lands located in the Moencopi Wash area.
2. The lands surrounding the Pasture Canyon water shed for the protection of the Hopi Pasture Canyon Water development.
3. Sufficient range land to graze Hopi cattle belonging to the Moencopi residents.
4. Two commercial corners located on the east side of the intersection of U.S. Highway 160 and Arizona Highway 264.
5. Sufficient land to join the Moencopi area to the Hopi lands located in the 1882 Reservation.
6. The use of a highway as a division or boundary between the Hopi interests and the Navajo Reservation.

##### NAVAJO USE AND POPULATION

The Navajo people living in this area are relatively few in number and of very recent origin. The line proposed in S. 2424 and H.R. 10337 will affect approximately 200 Navajo dwellings.

##### PRESENT-DAY PROBLEMS REQUIRING PARTITION

The bitter disputes between the Hopi and the Navajo Tribes in the 1882 Joint Use Area has carried over into the Moencopi area. Navajo livestock recently have destroyed some Hopi crops. A Navajo tribal member has attempted to build a home on the commercial corner traditionally reserved for the Hopi. A Hopi was arrested by Navajo police and his fishing equipment was confiscated for fishing on the Pasture Canyon Reservoir, and has been convicted in the Navajo Tribal Court. Another Hopi found Navajo cattle grazing 50 miles distant from their assigned range area trampling his corn field. The cattle were rounded up and impounded by the Hopi police and Mr. Honahni was arrested by the Navajo police for theft. Navajo police refuse to respond to Hopi requests for assistance in the Moencopi area claiming they have no jurisdictional authority, yet the Navajo Court has ordered a Hopi man to pay for a cow which he struck and killed with his car in the village of Moencopi.

Mr. GOLDWATER. I do want to read one short sentence.

The Findings of Fact in Docket No. 156 of the Indian Claims Commission dated June 29, 1970, held in Finding of Fact No. 20 that the aboriginal title of the Hopi Indian tribe as of 1882 included a large tract of land to the west of the 1882 Reservation.

I might add that that would include the Moencopi land.

The PRESIDING OFFICER. Who yields time?

Mr. ABOUREZK. Does that law apply in the Moencopi area?

Mr. GOLDWATER. The Indian Claims Commission said that as of 1882 the Hopis had rights to a large area of land

west of the original Navajo reservation. At that time, the Navajo reservation did not extend past that line.

Mr. ABOUREZK. Did they say how large an area?

Mr. GOLDWATER. I do not remember that the figures were in there or not. It was a large area of land held by the Indians.

Mr. ABOUREZK. It has never been adjudicated by anybody.

Mr. GOLDWATER. The Senator said he never heard of this before. It was in the record.

Mr. ABOUREZK. I never heard of this Walker-Dalton Line before. I will tell you that.

Mr. GOLDWATER. I might remind the Senator it was contained in a letter written to him in April of 1973.

Mr. ABOUREZK. I am sorry, it is not.

Mr. GOLDWATER. We have a copy of the letter.

Will my senior colleague make that a matter of record?

Mr. ABOUREZK. How was a letter addressed to me on the Walker-Dalton Line discussed?

Mr. FANNIN. Mr. President, I ask unanimous consent that the letter referred to, dated April 12, 1973, from Boyden & Kennedy to the distinguished chairman of the subcommittee be printed in the RECORD at this point.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

BOYDEN & KENNEDY,  
Salt Lake City, Utah,  
April 12, 1973.

HON. JAMES ABOUREZK,  
U.S. Senate,  
Washington, D.C.

DEAR SENATOR ABOUREZK: At the hearing of the United States Senate Subcommittee on Indian Affairs of the Committee of Interior and Insular Affairs held in Winslow, Arizona, on March 7, 1973, you requested that legal counsel for the Navajo and Hopi Tribes present a written opinion as to the views of each tribe regarding the Hopi interest in the 1934 Navajo Reservation. I hope the following analysis will meet your requirements.

In order to understand the Hopi position, I believe it is necessary to give brief mention of the early history of the Hopi people in the area. The United States District Court for the District of Arizona convened as a three judge court in the case of *Healing v. Jones*, 210 Fed. Supp. 125, 373 U.S. 758, 83 S. Ct., 1559, 10 L. Ed. 2d 703 (1962). In its narrative account of the Hopi-Navajo controversy the Court stated:

"The Hopis are a remnant of the western branch of the early house-building race which once occupied the southwestern table lands and canyons of New Mexico and Arizona. Before 1300 A.D., and perhaps as far back as 600 A.D., the ancestors of the Hopis occupied the area between Navajo Mountain and the Little Colorado River, and between the San Francisco Mountains and the Luckachukas.

"No Indians in this country have a longer authenticated history than the Hopis. As early as 1541, a detachment of the Spanish Conqueror, Coronado, visited this region and found the Hopis living in mesa villages, cultivating adjacent fields, and tending their flocks and herds. In 1692 another Spanish officer, Don Diego De Vargas, visited the area where he met the Hopis and saw their villages. American trappers encountered the Hopis in 1834. In 1848, by the Treaty of Guadalupe Hidalgo, 9 Stat. 922, this area

came under the jurisdiction of the United States."

The Court further stated:

"From all historic evidence it appears that the Navajos entered what is now Arizona in the last half of the 18th Century."

In Docket 196 before the Indian Claims Commission in the case of the *Hopi Tribes vs. the United States of America*, considerable evidence was taken as to the relative position of the Navajo and Hopi Tribes in the year 1848 when the United States assumed sovereignty over the area. An examination of that record will disclose that in 1848, the Meriweather Line was the separation between the Hopi and Navajo Tribes as established by both the Hopi and the defendant witnesses. The Meriweather Line is east of the Executive Order Reservation. Dr. Fred Eggan, of the University of Chicago, an expert on Hopi History and Culture, at page 7416 of the official transcript of his testimony, delineated the East side of the Hopi territory as the Meriweather Line. This was confirmed substantially by the defendant's witnesses, Dr. Ellis at pages 7580, 7706 and 9389, by Dr. Reeves at 7901 and 7918, and by Dr. Schroeder at page 8591 of the transcript. Hopi tradition establishes the East boundary of Hopi land and the West boundary of Navajo land as a line running East of, but parallel to, the Meriweather Line, West of Ganado (Tr. Petrat 9644-5, 9678-80, 9693). This line is marked with a boundary marker [Exs. 69-1, m, n and o (Hopi)]. The agreed traditional boundary was solemnized by the delivery of an Indian "tiponi" by the Navajo to the Hopi as a reminder of the promise. A Hopi witness produced the toponi before the Commission (Tr. Pahona 7476-77, 7482). The anthropologist, Gordon MacGregor, in a report to the Commissioner of Indian Affairs in 1938 stated as follows:

The First Mesa or Walpi people made an agreement with the Navajo some time about 1850 establishing a boundary line. The Navajo were to cross it only on condition of good behavior. As a sign of good faith the Navajo are said to have presented a feather shrine or symbol, which First Mesa still preserves. A pile of rock some distance west of Ganado and on the old road once marked this line. First Mesa, of course, would like to see this line form the eastern limit of the reservation. (emphasis added) [Ex. 55, p. 2 (Hopi)]

This report was written 13 years before the Hopi filed its petition with the Commission. The fact that the evidence supports the line where it was drawn by Meriweather is crucial. The Commission held that as of December 16, 1882 the Hopi Tribe had exclusive Indian title to the following described tract of land:

Beginning at the northeast corner of the 1882 Hopi Executive Order Reservation, 100° W. Longitude and 36°30' N. Latitude, thence due south on the 100W. Longitude to its intersection with the Pueblo Colorado Wash, thence southwesterly following the Pueblo Colorado Wash and the Cottonwood Wash to the Little Colorado River, thence northwesterly along the Little Colorado River to its intersection with 111°30' W. Longitude, thence northeasterly on a line to the intersection of Navajo Creek and 111°W. Longitude, thence southeasterly to the place of beginning. 23 Ind. Cl. Comm. 277, 306.

The tract as above delineated is illustrated on Exhibit A attached hereto. The Commission has had before it a motion of the Hopi Tribe for nearly a year requesting a determination as to earlier dates of taking and the relative position of the Hopi at that time but no ruling has yet been entered. It will be observed that the tract the Commission held was exclusively Hopi in 1882 includes considerably more land than encompassed in the line drawn in the Steiger Bill as it passed the House in the last session.

Another historical factor that has bearing upon the question now being presented is the executive intent regarding the Navajo Reservation as gleaned from the Executive Orders promulgated by the various presidents of the United States.

The Executive Order of October 29, 1878 signed by President R. B. Hayes extended the Navajo Reservation to the west, as shown upon Exhibit A, withdrawing the land from sale and settlement "as an addition to the present reservation for Navajo Indians." The Executive Order of January 6, 1880, signed by the same president further extended the Navajo Reservation "as an addition to the present Navajo Reservation in said territories." It will be noted that both of these Executive Orders describe land east of the 1882 Executive Order Reservation set aside for the Hopi Tribe.

It is significant to note that when the Executive Order of May 17, 1884 was signed by Chester A. Arthur withdrawing lands north and west of the Hopi Reservation, they were not made a part of the Navajo Reservation. The language employed was "withheld from sale and settlement and set apart as a reservation for Indian purposes."

The Executive Order of January 8, 1900 signed by President William McKinley set aside land west of the Hopi Reservation but within the 1934 boundaries. Again it was not reserved for the Navajo Reservation but the President then employed the words, "withdrawn from sale and settlement until further orders." (emphasis ours)

The Executive Order of November 14, 1901 signed by Theodore Roosevelt withdrew land south and west of the Hopi Reservation, again it was not made a part of the Navajo Reservation, but the President employed this language,

"... be, and the same is hereby, withdrawn from sale and settlement until such time as the Indians residing thereon shall have been settled permanently under the provisions of the homestead laws of the general allotment act approved February 8, 1887 (26 Stat. 388), and the act amendatory thereof, approved February 28, 1891, (26 Stat. 794)."

The Executive Order of November 9, 1907, as superseded by the Executive Order of January 28, 1908, both signed by President Theodore Roosevelt set apart "as an addition to the Navajo Reservation" land east of the Hopi Reservation with the exception of a small portion south of the Reservation. See Exhibit B.

The Executive Order of February 10, 1913 "set aside for use of Navajo Indians" land east of the Hopi Reservation. This order was signed by President William Howard Taft.

On May 7, 1917 President Wilson describes land west of the Hopi Reservation but it is significant that that order did not make it a part of the Navajo Reservation although it recognized some Navajo interest therein by employing the following language:

"It is hereby ordered that the following described lands in the State of Arizona be, and they are hereby, reserved from all forms of disposal and set aside temporarily until allotments in severalty can be made to the Navajo Indians living thereon, or until such other provision can be made for their welfare." (emphasis added)

While this Order was superseded by the Order of January 19, 1918 signed by the same president, the same language was employed, the additional Executive Order being made "for the sole purpose of correctly describing the lands intended to be withdrawn by that Order."

We recognize that Congress may disregard Executive Orders or confirm the same at its will; however, the executive actions prior to the establishment of the 1934 Reservation have more than an interesting significance in that there appears to be a uniform action

on the part of both the Executive Department and the Congress of the United States to protect the Hopi interest.

**HOPÍ TRIBAL INTEREST (NOT LIMITED TO MOENCOPÍ HOPÍ)**

The Act of June 14, 1934 (48 Stat. 960), among other things, provided as follows:

All vacant, unreserved and unappropriated public lands, including all temporary withdrawals of public land in Arizona heretofore made for Indian purposes by Executive Order or otherwise within the boundaries defined by this Act, are hereby permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as may already be located thereon. (emphatic added)

From the foregoing we must conclude:

A. That the Act encompasses all of the specified land "within the boundaries defined by this Act."

It will particularly be noted that within the boundary thus delineated are situated the December 16, 1882 Executive Order lands, "withdrawn from settlement and sale, and set apart for the use and occupancy of the Moqui (Hopi), and such other Indians as the Secretary of the Interior may see fit to settle thereon."

B. That the above described lands were withdrawn "for the benefit of the Navajo and such other Indians as may already be located thereon." In other words, the above described lands were withdrawn for the Navajo and such other Indians as were then (June 14, 1934) already located within the boundaries defined by the Act.

There can be no serious dispute concerning the fact that Hopi Indians were then already located thereon. The village of Oraibi, has existed in its present form for at least 1100-1150 A.D., giving rise to claims that Oraibi is the oldest continually inhabited village in the United States. In 1582 Antonio de Espejo, a Spanish merchant from New Mexico, organized an expedition that eventually took him through Zuni and on to the Moqui country where he visited Awatovi, Walpi, Sungopovi, Mishongnovi, and Oraibi. Onate, who had been sent in 1598 to the Moqui (Hopi), to gain submission of the Moqui Indians to Spain and the Catholic Church, saw the Moqui farms at Moencopi in 1604. Many of us know from personal knowledge and observation that all of the presently existing Hopi villages were inhabited by the Hopi Indians in 1934. But to lift the matter from possible reasonable controversy, the documented record discloses that in the closing months of 1932 five meetings at various Hopi villages were held to discuss the then proposed legislation to extend the exterior boundaries of the Navajo Reservation. The three villages on the First Mesa (Walpi, Tewa, Shitshumovi) favored allowing the land and Agency situation to remain as it then existed, while the Second Mesa villages (Mishongnovi, Sipaulavi, Shungopavi), and the Third Mesa villages (Oraibi, Hotavilla, Bababi) except the "conservation" group at Oraibi, wanted a distinct Hopi Reservation of much greater extent than proposed, and a separate Hopi Agency. Moencopi is one of the villages given representation on the Hopi Tribal Council as established in 1936. It is common knowledge that this village existed more than two years prior to the adoption of the constitution.

Thus we see that all of the Hopi villages were included within the area in question at the crucial time.

Associate Solicitor, Richard F. Allen, accurately analyzes the situation in the following language:

"It is beyond question that Hopi Indians resided in the area defined by the Act at the time of its passage. The history of the Act discloses beyond quibble that Congress recognized this fact and included the 'other

Indians' provision for the express purpose of protecting Hopi rights." (Memorandum Opinion of Associate Solicitor, Indian Affairs, July 1, 1966.)

Since all of the Hopi villages were included within the described area the Act in effect permanently withdrew the lands for the benefit of the Navajo and Hopi Indians, and not just Navajo Indians and the Hopi Indians in and around the village of Moencopi. There is no provision in the Act that any of the Indians of the area should be confined in their use and benefit to the area of lands they were then occupying and using.

The Act does not refer to the Navajo Tribe but to the Navajo Indians. The Navajo Tribe regards its claim to the area in question as a Tribal claim, yet the same language with respect to other Indians they regard as an individual interest. By what reasoning may the one group of Indians be termed as fish while the other is termed as fowl? The theory of the Court in *Healing v. Jones* determining that the Navajo interest was a Tribal interest can be applied with equal force to the Hopi interest in the 1934 Reservation.

The few scattered Palute Indians, some now enrolled members of the Navajo Tribe, present a very different factual situation. Fair treatment of this group is well provided in the Steiger Bill.

**STATUS OF EXECUTIVE ORDER RESERVATION OF DECEMBER 16, 1882, UNCHANGED**

The language of the Act, as above analyzed, is modified by inclusion of a phrase after the semicolon as follows:

However, nothing herein contained shall affect the existing status of the Moqui (Hopi) Indian Reservation created by Executive Order of December 16, 1882.)

Scrutiny of the modification logically leads to these conclusions:

(a) The 1882 Executive Order Reservation was not excluded from the description of the land withdrawn for the benefit of the Indians specified in the Act.

If the Congress had withdrawn the lands described in the act, excepting the 1882 Executive Order Reservation, a large number of the Hopi Indians would not have been "located thereon". However, by leaving the 1882 Reservation within the description and providing that its status should not be affected, Congress unequivocally included the Hopis in the villages of the Executive Order among "other Indians as may already be located thereon." Status is defined as the condition or position with regard to law. The existing status is the status quo; thus, we see that the condition or circumstances in which the Hopi Indians within the 1882 Executive Order Reservation stood at that time with regard to their property remained unchanged. Later the Act of July 22, 1958 provided the means to determine the rights and interests of the Navajo Tribe, Hopi Tribe and individual Indians to the area set forth in said Executive Order (72 Stat. 402). Those rights were adjudicated by the United States District Court for the District of Arizona in the case of *Healing vs. Jones*, supra.

(b) The beneficiaries of the Act of June 14, 1934 remained unchanged by the modification.

**EXCLUSIVE NAVAJO LANDS**

We admit that it may be argued with some persuasion that the lands taken from the Tusayan National Forest, Arizona, by the Acts of May 23, 1930 and February 21, 1931, as additions to Western Navajo Indian Reservation may not be thereafter regarded vacant unreserved and unappropriated public lands, and were, therefore, not included within the terms of the Act of June 14, 1934.

It might also be argued that lands acquired with Navajo Tribal Funds within the area for equitable reasons became the exclusive property of the Navajo Tribe. These lands are

referred to as the checkerboard lands and are all outside of the area proposed as an exclusive Hopi Reservation.

**MOENCOPÍ WATER RIGHTS**

We are indeed familiar with the Act of July 12, 1960. This Act resulted from the introduction of duplicate bills in the Senate and House (S. 2322 and H.R. 8295). These bills were introduced for the purpose of authorizing the Secretary of the Interior to transfer to the Navajo Tribe all of the right, title and interest of the United States to any irrigation project works constructed by the United States within the Navajo Reservation and for other purposes. When we learned that these bills were before Congress for consideration, and after the Interior Department had made favorable reports upon the Legislation, we objected that this would be in direct opposition to the rights of the Hopi Indians within the 1934 Reservation. As a result of our objection, and under authorship of the Hopi Attorney the bills were amended to "except the Reservoir Canyon and Moencopi-Tuba Project works." The framers of the bill were very careful to avoid any implication of a determination of the rights of the parties as between the Hopi and Navajo Tribes. Two other exceptions in the bill exemplify this point. It was provided "that exclusion of Reservoir Canyon and Moencopi-Tuba project works from the scope of this Act shall not be construed to affect in any way present ownership of or rights to use the land and water thereof."

This was left for later determination. Section III of the Act, also in a precautionary manner, provided "the transfer to the Navajo Tribe pursuant to this Act of any irrigation project works located in whole or in part within the boundaries of the reservation established by the Executive Order dated December 16, 1882 for the use and occupancy of the Moqui (Hopi) and such other Indians as the Secretary of Interior may see fit to settle thereon shall not be construed to affect in any way the merits of the conflicting claims of the Navajo and Hopi Indians to the use or ownership of the lands within said 1882 Reservation." In this manner, any implication of a determination of the rights of either Tribe to the Executive Order Reservation or the Hopi rights in the 1934 Reservation was studiously avoided. The Treaty of June 1, 1868, is of dubious value to the position cited since by that Treaty the Navajo Tribe relinquished all rights to occupy any territory outside their reservation as thereby established. Further the Tribe agreed to make the Reservation its permanent home and agreed as a Tribe that they would not make any permanent settlement elsewhere. They also agreed that if any Navajo Indian should leave the reservation therein described to settle elsewhere, they would forfeit all the rights, privileges, and annuities conferred by the Treaty.

**RECOGNITION OF THE HOPÍ INTEREST**

On the 24th day of September, 1969, the Secretary of the Interior informed the Salt River Project Agricultural Improvement & Power District, Arizona Public Service Company, City of Los Angeles, Department of Water & Power, Nevada Power Company, and Tucson Gas & Electric Company as follows:

"The rights-of-way and easements requested in the Application are on lands within the boundaries of the Navajo Reservation in Arizona, described, confirmed and ratified by the Act of Congress of June 14, 1934 (48 Stat. 960). The Solicitor of the Department of the Interior has heretofore determined that the Hopi Tribe of Indians has an interest in the area described in the 1934 Act. The Solicitor stated that it is not possible to define the nature and extent of that interest.

"Consequently, before the Department of the Interior may approve grants of right-of-

way and easements within the area described in the 1934 Act, it will be necessary that you obtain the consent of the Hopi Tribe of Indians by appropriate resolution of its governing body."

The Hopi Tribe by its Resolution No. H-44-69 granted the requested rights-of-way on the 22nd day of October, 1969. After a careful examination of the title questions involved by the attorneys for the interested companies acquiring the rights-of-way the Hopi Tribe was paid \$161,400 for the granting of the same.

LEGISLATIVE HISTORY OF THE ACT OF  
JULY 14, 1934

The language of the Act of July 14, 1934, is not ambiguous and therefore extrinsic aids to construction are not necessary. Nevertheless, a careful examination of the history of that Act lends little comfort to the position asserted on behalf of the Navajo Tribe.

A brief look into the legislative history of the statute creating the 1934 Reservation casts light upon the purpose of including the phrase "other Indians."

In 1932, the Commissioner of Indian Affairs, Charles J. Rhoads, deemed it advisable to establish once and for all the exterior limits of the Navajo Reservation as well as set aside specific land areas for the exclusive use of the Hopi Indians. A tentative draft of a bill to be submitted to Congress to bring about this end was prepared by the Bureau of Indian Affairs. The draft, which defined the boundaries of the Navajo Reservation, read in part as follows:

"THAT all vacant, unreserved and unappropriated public lands, including all temporary withdrawals of public lands in Arizona heretofore made for Indian purposes by executive order or otherwise within the boundaries so defined are hereby permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as the Secretary of the Interior may see fit to settle thereon." (emphasis ours)

The phrase "and such other Indians as the Secretary of the Interior may see fit to settle thereon" was a customary one to give the Secretary discretion in the matter. It did not necessarily mean those residing therein.

With the exception of a very few individual Palutes, the only Indians other than the Navajo living within the boundaries defined by the tentative bill were the Hopi. The omnibus nature of the words "such other Indians as the Secretary of the Interior may see fit to settle thereon" led Special Commissioner Haggerman to suggest in a letter to Rhoads dated May 28, 1932, changing the foregoing phraseology.

I presume that the phrase: "and all other Indians as the Secretary of the Interior may see fit to settle thereon," is necessary in order to take care of the Hopi Indians. Might it not be well, however, instead of using that phraseology, to so change it as to confine the "other Indians" to the Hopis, reading perhaps something as follows: For the benefit of the Navajo Indians and for the Hopi Indians in such part of said territory as the Secretary of the Interior or Congress may determine. (Gallup Area Office Files)

Commissioner Rhoads responded to Haggerman's suggestion of changing the wording "and such other Indians" in a letter to Haggerman dated June 14, 1932.

[I]t may be said that this was used more for the purpose of giving the Secretary of the Interior discretionary powers as to the use of the lands. It does not in any way apply to the Hopi Indians, whose reservation is especially taken care of and defined . . . [in] the proposed bill. Therefore, we are striking from our office copy of the bill the following words . . . "and such other Indians as the Secretary of the Interior may see fit to settle thereon." Obviously the Navajos will need all these lands for years to come and hence the

use of these words may lead to controversy in the future. We will take appropriate steps to correct the copies of the bill accordingly . . . (L-A 28237-32 JS)

The views of the Commissioner expressed by the foregoing letter received immediate opposition from the Hopi Tribe who petitioned the Commissioner to personally visit the Hopi Reservation in order to explain in detail the proposed legislation. (Cl. File 8970-30-308.2. Western Navajos, Part 1) Commissioner Rhoads answered the Hopi petition in a letter of August 1932, stating that he would be unable to travel to the Hopi country because of previous commitments. The Commissioner explained to the Hopi in the same letter the general purpose of the legislation:

The primary object of the proposed bill is to fix a definite outside boundary line for the entire Navajo reservation in Arizona, beyond which no further land expansion can take place except by purchase. Provision is made for exchanges and consolidation whereby private owners of lands within the proposed boundary line can give up their land holdings to the Navajos and obtain lands of equal value outside of the reservation boundary, from the vacant public domain.

The only part relating to the Hopi Indians is on page 5 of the draft of the proposed bill reading as follows:

"Provided further, that the Secretary of the Interior is hereby authorized to determine and set apart from time to time for the exclusive use and benefit of the Hopi Indians, such areas within the Navajo boundary line above defined, as may in his judgment be needed for the use of said Indians:

This Hopi provision means that should the bill become law, the Secretary of the Interior may, if it appears to be the best interests of the Indians, set aside reasonably large areas within the Navajo boundary for the sole use of the Hopi Indians. It is not contemplated that any lands will be so set aside without consultation with the Hopi Indians, and all those interested in their welfare. (Cl. File 8970-30-308.2 Western Navajo, Part 1, Gallup Area Office Files.)

The Commissioner's explanation of the legislation failed to satisfy the Hopi particularly since the explanation did not state in whom the legal title to the Executive Order Reservation of 1882 would be vested after passage of the bill. The Hopi asked Commissioner Rhoads for a full and detailed report concerning ownership of the 1882 Reservation. (Cl. File 8970-30-308.2 Western Navajo, Part 1.) The Hopi demand brought about a revision of the tentative draft by the Commissioner which reads as follows:

lands . . . are hereby permanently withdrawn from all forms of entry or disposal for the benefit of the Navajo and such other Indians as may already be located thereon.

Commissioner Rhoads explained in a letter of September 24, 1932, that his change, has been made so as to fully protect the rights and interests of the Hopi Indians within the area until such times as they themselves agree to some definite boundary lines. (Classified File 8970-30-308.2 Part 2, Western Navajo)

During the latter part of 1932 some attempts were made to actually partition the land between the Navajo and Hopi to settle their boundary disputes. However, there was no unanimity among the government officials and the Indian Tribes as to the actual mechanics of dividing up the lands between the Navajos and the Hopi. The Secretary of Interior Ray Lyman Wilbur, after considering the draft of the bill extending the exterior boundaries of the Navajo Reservation, asked that it should contain a proviso which would render the Executive Order Reservation of December 16, 1882 unaffected by the passage of the bill creating the 1934 Reservation. He stated,

"The bill extending the exterior boundaries

of the Navajo Reservation should contain a proviso that it will not affect the existing status of the Moqui (Hopi) Reservation as established by the Executive Order of December 16, 1882. (See Supt. Edgar K. Miller's letter to the Hopi Indians [Gallup Area Off. Files, 304.2])

It is quite clear from legislative history that while a further reservation was established for the Navajos the express language of the 1934 statute recognized not only the Hopi interested in the 1882 reservation but also their interest in the other areas outside of the 1882 reservation. In effect, the bill as reported both in the Senate and the House incorporated a letter from the Secretary of the Interior which states:

"It is of importance to observe here Section 1 contains a provision safeguarding the right of the Hopi Indians to their lands, which are centrally located within the present Navajo Reservation."

This purpose was accomplished by the words "However, nothing herein contained shall affect the existing status of the Moqui (Hopi) Indian Reservation created by Executive Order of December 16, 1882," but the claim of the Hopi Indians in the entire area outside of the Executive Order Reservation of 1882 was also protected by the words; "and such other Indians as may already be located thereon."

SUMMARY

1. The Hopi Indian Interest in the 1934 Reservation is a tribal interest.

2. The Hopi Tribe has an undetermined interest in all lands described in the 1934 Reservation except:

a. The Hopi Executive Order Reservation of December 16, 1882 which has now been fully determined.

b. Lands exclusively Navajo.

(1) Navajo Treaty Reservation (Proclaimed Aug. 12, 1868) (15 Stat. 687).

This treaty stated the lands described therein were "set apart for the use and occupation of the Navajo Tribe of Indians, and for such other friendly tribes or individual Indians as from time to time they may be willing, with the consent of the United States, to admit among them."

(2) Land from Tusayan National Forest (Act of May 23, 1930) (46 Stat. 378). "Added to and made a part of the Western Navajo Indian Reservation."

(3) Amended Act of May 23, 1930 (Act of Feb. 21, 1931) (46 Stat. 1204). Enlarges the lands taken from Tusayan National Forest and added to Western Navajo Reservation.

(4) Lands relinquished under Sec. 2 of Act of June 24, 1934 (48 Stat. 960). This Act provided that any privately owned lands relinquished to the United States under Section 2 of the Act would be held in trust for the Navajo Tribe of Indians.

3. The status of the Executive Order Reservation of December 16, 1882 was not changed by the Act of June 14, 1934.

4. The interest of the Hopi Tribe in the 1934 Reservation has been recognized by the Secretary of the Interior of the United States and public utility companies acquiring rights-of-way over and upon said reservation.

5. The undetermined interest of the Hopi Tribe in the 1934 Reservation has been preserved and protected by the Congress of the United States.

Respectfully submitted,

JOHN S. BOYDEN,

Attorney for the Hopi Tribe.

Enclosures.

Mr. ABOUREZK, Will the Senator tell me on which page the Walker-Dalton line is discussed?

Mr. FANNIN. This is a very lengthy letter.

Mr. ABOUREZK. Will he state which page? Could it be that the Senator does

not refer to the page because it does not exist in there?

Mr. FANNIN. I have no intention of deceiving anyone about the facts in this case. Everything is very clear.

Mr. ABOUREZK. Will the Senator be kind enough to refer to the page number?

Mr. FANNIN. As far as the Walker-Dalton line—I think it has been said once—in 1933, just 1 year before the passage of the act, on July 14, 1934, Superintendent Walker and William Dalton, Sr.—

Mr. ABOUREZK. Which letter is the Senator reading from?

Mr. FANNIN. From the information furnished to the Senator from South Dakota.

Mr. ABOUREZK. Will the Senator please be more specific?

Mr. FANNIN. I will send the Senator a copy of this particular document.

Mr. ABOUREZK. Then, will the Senator concede that it is not in the information sent to me?

Mr. METCALF. Mr. President, the record speaks for itself. I am prepared to yield back the remainder of my time on this amendment, if the Senator from New Mexico is prepared to yield back the remainder of his time.

Mr. MONTOYA. I just want to make one short statement.

Before I do that, I would like to ask for the yeas and nays on the pending amendment, and any amendment thereto.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. MONTOYA. Mr. President, I have a modification to the amendment that I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. Is there objection to the modification of the Senator from New Mexico? The Chair hears none.

Mr. MONTOYA. It is a modification by way of section (e), to the first part of my amendment.

The PRESIDING OFFICER. The modification will be stated.

The legislative clerk proceeded to read the modification.

Mr. MONTOYA. Mr. President, I ask unanimous consent that further reading of the modification be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MONTOYA'S modification is as follows:

At the end of the amendment after sec. (1), add the following new subsection:

(e) The Secretary of the Interior is authorized to pay any or all appropriate legal fees, court costs, and other related expenses arising out of, or in connection with, the commencing of, or defending against, any action brought by the Navajo or Hopi Tribe under this section.

Mr. MONTOYA. The modification is merely a subsection which reads as follows, in addition to my amendment:

The Secretary of the Interior is authorized to pay any or all appropriate legal fees, court costs, and other related expenses arising out of, or in connection with, the commencing

of, or defending against, any action brought by the Navajo or Hopi Tribe under this section.

Is the modification accepted? I can modify it as a matter of right, is that correct?

Mr. METCALF. The yeas and nays have been ordered.

The PRESIDING OFFICER. There has to be unanimous consent.

Mr. METCALF. We did not know what the amendment was and it had not been read. I am not proposing to object to this amendment.

The PRESIDING OFFICER (Mr. BARTLETT). The Chair would like to say that the Chair asked if there was objection and none was heard. The amendment has been modified.

Mr. METCALF. Hereafter I am not going to agree to any unanimous-consent request until we know what the subject of the unanimous consent is. Yeas and nays were ordered on the amendment. The amendment could not be modified without unanimous consent.

The PRESIDING OFFICER. The Senator is correct.

Mr. METCALF. We did not know what the modification was.

Mr. MONTOYA. Mr. President, I submitted the modification to the distinguished manager of the bill.

Mr. METCALF. I am not going to object to the modification, but I am going to object in the future to any unanimous-consent agreement until I know what the unanimous-consent agreement is.

The PRESIDING OFFICER. The Chair would like to state the Senator from Montana is correct. The clerk did not read the modification. The Senator from New Mexico asked that it not be read. It was not read.

Mr. METCALF. I agree with the modification. I believe that the attorney fees should be paid in the event that his amendment is agreed to. My argument is not with the Senator from New Mexico. My argument at the present time is that we have submitted to us a unanimous-consent request before we know what the proposition is upon which we are agreeing.

Mr. MONTOYA. I want the record to clearly show that we did submit the modification of the amendment.

Mr. METCALF. I overlooked it, and I apologize.

Mr. FANNIN. This Senator did not receive a copy of the amendment.

Mr. MONTOYA. It is right there.

The PRESIDING OFFICER. The time of the Senator from New Mexico has expired.

Mr. METCALF. I did not object to the modification.

Mr. MONTOYA. In view of the colloquy which has taken place, may I address myself to the Senator from Montana? Will he yield time on the bill?

Mr. METCALF. I did not understand the question. Do I have some time?

The PRESIDING OFFICER. The Chair would like to state that an objection at this time comes too late. The amendment has been modified by unanimous consent.

The time of the Senator from New Mexico has expired. The Senator from Montana has 11 minutes on the amendment.

Mr. METCALF. I yield to the Senator from New Mexico such time as he may need to propound a question or suggestion.

Mr. MONTOYA. I need about 3 minutes. Will the Senator yield me 3 minutes?

Mr. METCALF. I am glad to yield 3 minutes to the Senator from New Mexico.

Mr. MONTOYA. I thank the distinguished Senator from Montana.

Mr. President, we have heard quite a bit of argument here this afternoon. Most of the argument has been directed toward what we call the joint use area and the legislative and judicial proceedings or history which have set in with respect to the joint use area.

My amendment does not deal with that specific area. My amendment deals with an area immediately to the west of the so-called joint use area which was created in 1882 by Executive order of President Chester Arthur. The area with which I deal in my amendment is an area that was designated as an extended part of the Navajo Reservation by the act of 1934.

There has been much to do about court decisions having been determined with respect to the rights of the Navajos vis-a-vis the Hopi, and vice versa. I say categorically that there have been no judicial decisions with respect to the Moencopi area, the extension of the Navajo Reservation which took place under the legislative act of 1934.

What are we going to do if we sustain the committee position? We are going to say to the world that in 1934, the Congress of the United States gave this land, by way of an extension through legislation, to the Navajo Tribe. Now, in 1974, by legislative fiat, Congress is taking it away from the Navajo Tribe and awarding it to the Hopis. I hate to use this term in this debate, but some would say—

Mr. FANNIN. Mr. President, will the Senator yield?

Mr. MONTOYA. I will yield on the Senator's time.

Mr. METCALF. The Senator from New Mexico is talking on my time.

I am delighted to yield to the Senator from Arizona.

Mr. FANNIN. Mr. President, I should like the Senator from New Mexico to explain how the Government gave that land to the Navajo Tribe in 1934.

Mr. MONTOYA. In the first place, I might say that throughout the years—

Mr. FANNIN. If the Senator can be specific.

Mr. MONTOYA. I am going to answer the question.

Throughout the years, by Executive fiat or by rulings or concessions by the Secretary of the Interior, there has been impliedly an extension of the Navajo Reservation.

Under the 1934 act, the Moencopi area was set aside as an extension of the Navajo Reservation, on the same terms

and conditions as was the 1882 act by Presidential Executive order—

The PRESIDING OFFICER. The Senator's 3 minutes have expired.

Mr. METCALF. Mr. President, I yield myself such time as I may need.

The exact phraseology of the 1934 act establishing the reservation was "to the Navajo and such other Indians as may be located thereon."

As the Senator from Arizona (Mr. GOLDWATER) has suggested, the Hopis were the other Indians that were located thereon.

Does the Senator from New Mexico need a couple of more minutes?

Mr. MONTOYA. Yes, I would like to have a couple of more minutes, and I will discuss the aboriginal claims of the Hopis.

Mr. METCALF. I am delighted to yield 2 minutes to the Senator from New Mexico.

Mr. MONTOYA. I thank the Senator from Montana. I would like to have an explanation from the Senator from Arizona as to what that 1934 act meant and whether or not we are retroceding in our steps by virtue of this action.

Let us argue a little about the aboriginal rights of the Hopi vis-a-vis the Navajo.

#### HOPi LAND CLAIMS

The Hopi have argued that they have a better historic claim than the Navajo to the land of the Moencopis and the 1882 area. In support of their position, they cite a finding of the Indian Claims Commission that they, the Hopi, were the aboriginal inhabitants of a large area extending well beyond the boundaries of both the 1882 and the Moencopi areas and encompassing a region which is almost as large as the entire western half of the present day Navajo reservation. This "we were first" argument must be placed in proper perspective. Both the Hopi and the Navajo have old and honorable claims on the land. The Hopi have wandered intermittently through the area since pre-Columbian times and the Navajo, in their shorter tenure, have effectively settled and used the land to graze their sheep.

Let me point out that my own State of New Mexico was aboriginally dominated by the Navajo, Apache, and Pueblo Indians as determined by the Indian Claims Commission. Yet I do not believe Congress contemplates giving New Mexico, Colorado, or any other southwestern State, including Arizona, back to aboriginal Indian groups. Why then should it choose to honor the aboriginal claim of the aboriginal Indian groups. Why then should it chose to honor the aboriginal claim of the Hopi to the Moencopi area? These aboriginal claims are far too vague and far too old to offer any guidance in the settlement of this contemporary dispute. The Senate should remember that the pertinent history in the Navajo-Hopi land dispute begins with the 1934 act of Congress.

All we are asking in this amendment is for the same privilege that we are giving to the Hopi with respect to the 1882 area.

CXX—2379—Part 23

The PRESIDING OFFICER. The Senator's time has expired.

Mr. METCALF. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has 3 minutes remaining.

Mr. METCALF. I am delighted to yield 3 minutes to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, inasmuch as aboriginal title has been raised, I will not dispute the fact that the Navajo, either under that name or some other name, may have lived in what is now New Mexico before they lived in Arizona. However, I will recall this little bit of history.

When the Spaniards first visited what is now New Mexico and what is Arizona in 1540 and 1542, there was no mention made by any of those wandering Spaniards about the Navajo, the Navajá or any other name, even their own name Dineh. But they did recognize the Zuni Tribes, the Pueblo Tribes, and the Moquis. The Moquis, as we know them from ancient times, were the ones who came up from Mexico, probably 3,000 years ago, and settled all through upper Sonora and lower Arizona. They probably at one time were part of the Subaipori Tribe and probably built the giant ruins at Casa Grande, and the late Hopis who came up around 780 to 800 built many of the Mesa ruins we now see in the Black Mountain area.

There is no question that the Navajo came to this country many, many years ago, probably among the first wave of Indians some 10,000 years ago. They are related to the Eskimo; they are related to the Apache; they are related to tribes in the East. But the Hopi have occupied this land long, long before the Navajo, and I suggest that aboriginal title right has a great bearing in the decision of this body.

The PRESIDING OFFICER. One minute remains.

Mr. METCALF. Mr. President, I yield 1 minute and such time on the bill as may be required to the Senator from Arizona.

Mr. FANNIN. Mr. President, I think we should clarify what was in the 1934 act, showing that the land was in trust for these Indian residents. It stated: "to the Navajo and such other Indians as are located thereon."

It is very clear in that respect, so far as the 1934 act is concerned.

So far as the Bureau of Indian Affairs is concerned, James Stewart, then the Director of the Bureau of Indian Lands and Minerals Division, went to the Hopi Reservation and made an explanation of the proposed bill, which never passed Congress. At that time, an affidavit by Stewart was submitted. It was submitted to our committee, and it is in the hearings. He concluded that the Hopi should be given nearly 1 million acres in the Moencopi area rather than the 243,000 in the committee bill.

I think it is very clear that we should not try to confuse the issue. The 1934 act is specific, and it is not in any way in question so far as the present legislation is concerned. We are following that act completely.

The PRESIDING OFFICER. All time has expired.

Mr. ABOUREZK. Mr. President, I yield myself 3 minutes on the bill.

The PRESIDING OFFICER. The Senator from South Dakota is recognized.

Mr. MONTOYA. Will the Senator yield at this point, briefly?

Mr. ABOUREZK. Yes, I yield.

Mr. MONTOYA. Mr. President, if we are going to cite what different individuals have said about entitlement of the Hopis or the Navajos, let us go into the hearings I do not recall what page it is, but I have a statement which quotes the report of Gov. H. J. Hagerman, who was commissioned by the Secretary of the Interior to make a study of the Navajo-Hopi land dispute or problem. With regard to the so-called Moencopi area, the area we are dealing with in this amendment, he wrote to the Commissioner of Indian Affairs as follows:

I . . . recommend that the areas as approximately designated on the inclosed sketch map be set aside and fenced for the exclusive use of the Hopis.

An area of about 28,000 acres adjacent to and south of the Moencopi village, most of which will be contained in township 31 north, range 11 east Gila and Salt River meridian.

I do not want to read any more from this report, because it appears in the hearings. I merely wish to emphasize that a duly appointed individual, commissioned by the Secretary of the Interior and the Commissioner of Indian Affairs, made this report, thus restricting the entitlement of the Hopis to a lesser area than what my amendment contemplates giving them.

Mr. FANNIN. Mr. President, will the Senator from Montana yield to answer the statement the Senator from New Mexico just made?

The PRESIDING OFFICER. Who yields time?

Mr. METCALF. Will the Senator from South Dakota permit me to yield to the Senator from Arizona to respond to the Senator from New Mexico?

Mr. ABOUREZK. It is on the Senator's time.

Mr. METCALF. I yield to the Senator from Arizona.

Mr. FANNIN. I thank the distinguished Senator from Montana.

In answer to the Senator from New Mexico, I know that he is very certain of his facts, but the statement concerning Mr. Hagerman was an erroneous conclusion. It has all been brought out in the testimony. There is full testimony in this regard. I am sure that if the Senator will read the full statement, he will discover that this conclusion was made erroneously.

Mr. ABOUREZK. Mr. President, I yield myself time on the bill.

To talk about aboriginal title in the Moencopi area disregards the vested title in the area. That was vested in 1934, when Congress passed the act which gave the Moencopi area to the Navajo Indians and to such other Indians as reside thereon.

The exact rights of each tribe have not been determined. If we want to talk about aboriginal title, I wonder if any

of the Senators here would be willing to give the original lands to whoever had aboriginal title to Phoenix, Ariz., and to Billings, Mont., back to those people who had aboriginal titles?

Mr. GOLDWATER. If the Senator will yield, I say that there are suits in the courts now to do just that.

Mr. ABOUREZK. Is the Senator going to argue in favor? Is the Senator willing to give it back to those with aboriginal title?

Mr. GOLDWATER. If the courts say that they go back to the Indians, I am not going to argue with the courts.

Mr. METCALF. Will the Senator from South Dakota yield?

Mr. ABOUREZK. I asked if the Senator is willing to give them back, and I think that the answer is no. The Senator obviously is not going to do that.

We have a vested title, vested by the 1934 act, the amount of acreage undetermined, and it is folly to try to say otherwise. To give every single acre to a tribe that has an amount undetermined in there is unfair on the part of Congress.

I reserve the remainder of my time.

Mr. METCALF. Mr. President, I yield myself one-half minute to respond to the Senator from South Dakota, who refused to yield to me.

The only reason we passed the Alaska Native Claims Act is because of aboriginal title. We overturned vested title. That was one of the greatest rewards that we have given to native claims in my memory in the Congress of the United States. We disregarded vested title in that case and said that aboriginal title is the evidence that we are going to look to in order to do justice to native claims.

Here we have two Indian tribes, one of which has aboriginal title that dates back almost to time immemorial, and the other of which has title that just dates back to the beginning of the 20th century. It seems to me that to argue about vested title, the distinguished chairman of the Subcommittee on Indian Affairs is arguing against the benefits to the very Indians that he is trying to represent.

The PRESIDING OFFICER. Who yields time?

Mr. METCALF. Mr. President, I am prepared to vote on the amendment or to ask for a vote. As I understand it, under the unanimous-consent agreement, we cannot vote until after 4 o'clock.

The PRESIDING OFFICER. The Senator is correct.

Mr. MONTOYA. The yeas and nays have been ordered.

Mr. METCALF. The yeas and nays have been ordered.

A parliamentary inquiry, Mr. President.

The PRESIDING OFFICER. The Senator will state it.

Mr. METCALF. Do we move forward to another amendment?

The PRESIDING OFFICER. That can be done. The bill is open for subsequent amendment.

Mr. MONTOYA. I have another amendment.

Mr. METCALF. All debate on the pending Montoya amendment is concluded?

The PRESIDING OFFICER. The Senator is correct, unless time is taken off the bill in the future between now and 4 o'clock.

Mr. METCALF. May there still be debate on the Montoya amendment or any subsequent amendment under time allocated for the bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. MONTOYA. Mr. President, I send to the desk an amendment which I offer in behalf of myself, the junior Senator from New Mexico (Mr. DOMENICI), the Senator from South Dakota (Mr. McGOVERN), and the junior Senator from South Dakota (Mr. ABOUREZK), and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The assistant legislative clerk read as follows:

On page 24, line 22, after "lands shall," add "subject to the provisions of subsection (b) of this section."

Mr. MONTOYA. Mr. President, I yield myself such time as I may require under this amendment.

The question that lies at the heart of this amendment is, once again, a question of relocation. It deals with the 1882 area about which we have spoken intermittently during the debate on the previous amendment.

In the case of the Moencopi amendment, just passed, we were talking about the relocation of 1,200 to 2,000 Indians. Now we are talking about the removal of up to 8,500 Indians.

The bill itself talks about relocation in section 6. This section sets forth eight guidelines which the U.S. district court must follow when and if the time comes when it must partition land within the 1882 area.

Mr. President, I am happy to note that there is no Senator who favors relocation as a reasonable and humane method of social policy. The members of the Interior Committee who heard the testimony on this problem are those who favor this solution least of all. Their aversion toward the brutal techniques of the 19th century is reflected in section 6, guideline (b) which directs the district court to draw boundary lines separating the Navajo and the Hopi sections of the 1882 area in such a way as to "minimize and avoid undue, social, economic, and cultural disruption, insofar as practicable."

The committee deserves to be commended for including this language in guideline (b). Its effect should be to reduce significantly the number of Indians who will be forced from their land. And it should lower the social temperature in which this land dispute settlement is carried out.

That number and that temperature could be reduced even further, however, by the inclusion of similar language in one of the other guidelines—guideline (d). Guideline (d) provides that as the court divides the land, it should award to each side land which is "equal in acreage and quality, insofar as practicable."

In other words, the court is directed here to split the land on as close to 50-50 basis as possible.

Our amendment simply requires the district court judge to take the possibility of social, economic, and cultural disruption into effect as he determines how to split up the land.

Let me make the point very clearly: guideline (b) requires the district court judge to take social, economic, and cultural factors into consideration as he draws on a map the boundary lines separating the Navajo and the Hopi lands. What we are proposing is to amend the guideline (d) to require that same judge to take these very same considerations into effect as he decides how much land to give to each side.

Understand that we are not attempting to give the district court judge the authority to award a disproportionate share of land to one tribe at the expense of the other. Adoption of our amendment will not remove from the court the requirement to divide the land equally. It will simply subordinate this goal to the goal of avoiding undue social, economic and cultural disruption.

I suppose that someone might stand up now and charge that any deviation from a strict 50-50 split is contrary to Healing against Jones and contrary to the intent of the Interior Committee. But such an assertion would be wrong.

The committee itself very clearly contemplates the likelihood of a less-than-perfect division of land. The proof of this is in section 6(d) in the provisos. Let me read them to you:

*Provided*, That if such partition results in a lesser amount of acreage, or value, or both to one tribe such differential shall be fully and finally compensable to such tribe by the other tribe. The value of the land for the purposes of this subsection shall be based on not less than its value with improvements and its grazing capacity fully restored: *Provided further*, That, in the determination of compensation for any such differential, the Federal Government shall pay any difference between the value of the particular land involved in its existing state and the value of such land in a fully restored state which results from damage to the land which the District Court finds attributable to a failure of the Federal Government to provide protection where such protection is or was required by law or by the demands of the trust relationship.

Why did the Interior Committee write that language into the bill if it did not believe that one tribe might end up with slightly more land than the other? Why, then, should the committee's spokesmen object to this amendment on the grounds that it might cause a minor deviation from some ideally perfect split of land? The point is that they should not object.

Other guidelines in section 6 give further direction to the manner in which the land is to be partitioned. Guideline (e) calls for the land to be partitioned in such a way that it will be contiguous to the reservation of the tribe which is to receive it. Guideline (f) requires that the land partition "follow terrain which will facilitate fencing." This sounds very reasonable to me, but it leads me to ask whether it is more important to guarantee that the land be contiguous and be

easy to fence than it is to avoid "social, economic, and cultural disruption?"

I do not believe that it is.

Mr. President, this amendment is a minor one. Some may even call it a technical amendment. But its intention is very clear and very important. It is intended to give the district court a small measure of discretion in dividing land so as to avoid relocation of long time inhabitants.

In closing, let me reiterate that this amendment seeks to reduce as much as possible the necessity of relocation. It seeks to do nothing else. We must remember that there can be no solution to this problem which holds less likelihood of success than relocation; no solution which threatens more to turn into disorder than relocation; no solution which is more insensitive to the infamous history of the Long March and the Trail of Tears than relocation.

To whatever extent we can avoid all of that, we should. I urge the adoption of the amendment, and I hope the committee will approve it.

Mr. METCALF. Mr. President, the committee certainly does not approve of this amendment. It is not a minor amendment. It cuts out the very heart of the bill.

I call attention to the fact that we heretofore have been talking about the Moencopi provision, but now we are talking about the joint-use area.

I hope to have something in addition to say on this amendment, but I first yield to the Senator from Arizona (MR. FANNIN).

Mr. FANNIN. I thank the distinguished Senator from Montana.

I would say to the Senator from New Mexico that I think his figure of 8,000 is very misleading. I do not know where he got the figure. The administration counts 6,000 for both the joint-use and the Moencopi areas. The fact is, I think we will agree, that no one knows the population for certain, and that is why the committee mandated a census after the partition is ordered.

On page 30 of the committee report, in the next-to-the-last paragraph, it states:

The Committee wishes it clearly understood that the flexibility provided in this subsection is not to be interpreted as an invitation to develop a final adjudication of the joint use area dispute which contains a substantially unequal division of lands. Instead, the flexibility is provided to allow a limited divergence from the equality standard, if necessary, in order to honor the other guidelines in section 6. For example, the Committee expects that, if, in designing a partition plan, it is discovered that a minor divergence from an equal division of acres, or value, or both would clearly result in a drawing of boundary lines which would preserve to one or the other tribe a particularly densely populated area, thus significantly reducing the necessity for relocating households and minimizing "social, economic, and cultural disruption" as called for in the third guideline (subsection (c)), then the flexibility provided in the "insofar as is practicable" language would permit that division and the proviso calling for compensation would be invoked.

Mr. President, what this amendment would do is put one stipulation ahead of all others. It was not, I am sure, the in-

tent of the committee, nor do I think it is the intent of the Senate, to so provide. I do not think it would be fair to give one criterion preeminence over all others. I hope the Senator will understand that this is just exactly what would happen.

Mr. GOLDWATER. Mr. President, will the Senator yield me a few minutes of time?

Mr. METCALF. Mr. President, I yield 2 minutes to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, in listening to the explanation of this amendment, it sounds very nice. But as I understand it, it would merely transfer subparagraph (b) under the provisions of subparagraph (d), which, if I understand correctly, would result in the Navajo winding up with either more land than they have now or more land than the Hopis have.

The figure of 8,500 Navajo, which the Senator used to quote the number who will be moved, I rather dispute. I wish I had a more accurate figure. I have flown over that area and taken pictures, trying to make a computation of how many people might be down there.

We are talking about a seminomadic people, and they may live there in the summer, but when the winter snows come they move somewhere else where it is warmer. I have never heard a figure approaching 8,500, although I have heard the president of the Navajo Tribal Council use as high as 15,000.

Mr. President, let me make a couple of points on this effort to change the whole meaning of the bill.

The Navajos have been using this land for years and years. This is not something that has happened lately. And the Hopis have been disputing the use of this land for years and years. But nothing has come of it.

Even four court decisions have been defied by the Navajo, and as I mentioned earlier, I understand they are now paying \$250 a day under order of the court because they will not obey the court.

It is my understanding that the Navajo nation has even issued trading post permits on Hopi land, and that if the truth were known, they owe the Hopi Tribe about a million and a half dollars for this action, which in my opinion is completely wrong.

We hear a lot of talk about forcing people to move. I do not think we need to force people to move. I think this thing can be settled. But I will say, as one who has tried to get the two tribes together for nearly 20 years, that I see no hope of getting the Navajo people, under their present leadership, to sit down with the Hopis and work something out whereby nobody is going to be hurt.

I think it can be done. But the Navajo leaders have repeatedly refused to sit down with the Hopi leaders and work something out. I do not think they have the best interests of the Hopi at heart. In fact, I doubt very much if the present leadership of the Navajo people have the best interests of their own tribe at heart.

I hope that this amendment would be defeated. I think we have discussed this broad general purpose of the bill long enough throughout the years. We have

listened to the court decisions, we have listened to the experts on the subject and, I think, it is up to us as a legislative body to make the move that is needed.

Mr. METCALF. Mr. President, the Senator from New Mexico cited some bill and tried to use that citation as his idea of what the committee intent was. But the committee has expressed its intent in specific language in the report.

On page 30 of the report—and I call this to the attention of the Senator from South Dakota so that he may read it—it provides:

Thus, the Committee recognizes both the responsibility to provide partitioning authority and, if judicial adjudication should become necessary, the likelihood that such authority would be exercised. The Committee, however, fully understands that this particularly potent authority, once exercised, will structure substantially the remainder of the provisions of any judicial settlement.

That is why this is not a minor amendment but strikes at the very heart of the bill.

Then the report goes ahead and says:

The committee does believe that, if the judicial settlement is to be equitable and fair, any division of the lands of the joint use area must be equal.

That is a flat statement of the majority opinion of the committee.

I want to call to the Senator's attention that while the Moencopi matter came up on a 9-to-6 vote, that came up on a 10-to-3 vote, and the chairman of the committee voted in favor of the proposition that is in the committee bill at this time.

That is the U.S. Supreme Court decision—

The very definition in the Healing decision of the interest of the land as "joint, undivided, and equal" also strongly suggests that, if the interest is to be divided, it is to be done on an equal basis.

That is what the committee said; that is what the district court said and the U.S. Supreme Court affirmed; that is what all the witnesses who have testified before the committee have said, that we have to have an equal division. The amendment of the Senator from New Mexico would strike out this equitable and equal division, this proposition that all are going to share in the mineral rights and eliminate all the work, all the concentration, all the efforts that the various people on the committee have devoted, not only this year but in past years, to the solution of this problem.

I strongly urge the defeat of this amendment.

Mr. MONTOYA. Mr. President, will the Senator yield to me for a minute?

Mr. METCALF. I would be delighted to.

Mr. MONTOYA. I wish to put a question.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. MONTOYA. May I say most respectfully that I intend nothing else than what I said with this amendment, and I think it merely reinforces and emphasizes the approach the committee is making by virtue of the provisions and guidelines set out in section 6.

Now, let me read the section to which

my amendment refers and to which it ties. It is subsection (b) on page 24 of the bill. Subsection (b) reads as follows:

The boundary lines resulting from any partitioning of lands in the joint use area shall be established so as to include the higher density population areas of each tribe within the portion of the lands partitioned to such tribe to minimize and avoid undue social, economic, and cultural disruption insofar as practicable.

Now, this is a mandate to the court when it engages in dividing the land and establishing the boundary lines. My amendment will merely say that in any partition of the surface rights to the joint area, the same area, the lands shall, subject to the provisions of subsection (b) of this section which I have read, insofar as is practicable, be equal in acreage and quality.

I do not see any inconsistency with the text of the guidelines contained in section 6. I think this fortifies the section to the point where the judge will have to concern himself not only with section (b), not only with section (c), but also with section (d), and I see no inconsistency. I see no derogation from the real thrust of the guidelines and the particular section 6. That is the point I am trying to make.

I fail to see in the argument advanced by the Senator from Montana that I am doing an injustice to the very letter and spirit of the particular section of the committee brought out in the committee bill.

Mr. METCALF. Mr. President, the committee has devoted almost five pages, from page 26 to page 31 of the committee report, to an explanation of the guidelines by which these particular sections 5 and 6 should be implemented.

The amendment of the Senator from New Mexico highlights one of those guidelines, one of those subsections, and does not take into consideration the rest of the subsections.

We have said we laid down these guidelines, subsections (a), (b), (c), (d), (e), (f), (g), and (h), and he highlights one of them and says, "We are going to look at this over all the other propositions."

We believe that equity, in accordance with the judicial decisions involved, demands as nearly as is possible equal division of the lands, and we believe that equity, as nearly as possible, says that we should have the mineral rights jointly held and jointly administered. We have said that in these various sections, and we laid down these guidelines.

Instead the Senator from New Mexico would put one of the guidelines ahead of all the others. I do not believe that is what the committee intended. I do not believe that is what the court intended.

We said that you should do things in accordance with (a), (b), (c), (d), (e), (f), (g), and (h), and we have explained that in several pages in the report. I think it is clear in the report, it is not subject to explanation or analysis, and the committee report speaks for itself here, and it speaks for itself in an analysis of the three-judge district court decision that divided this land.

So the Senator from New Mexico has talked about adjudication in the previous amendment, but there has been ad-

judication, and there has been plenty of adjudication on these issues.

The committee has carefully considered this and decided that there should be various subsections taken into consideration in the guidelines, and I certainly do not think we should minimize these other considerations and highlight just this one.

Mr. ABOUREZK. Mr. President, will the Senator from New Mexico yield?

Mr. MONTOYA. I yield to the Senator from South Dakota such time as he may require.

Mr. ABOUREZK. Mr. President, I want to speak, first of all, very briefly on the contents of the committee report.

The Senator from Montana relies very heavily upon what is said in this report, especially on page 30. Let me read from the report:

The committee does believe that, if the judicial settlement is to be equitable and fair, any division of the lands of the joint use area must be equal.

He relies heavily on that sentence.

Let me say, as a member who sat through every single word of testimony and every minute of markup of this bill, that that is not what was decided in the committee. This report was prepared by the committee staff, and it is no secret that I have no control over what the staff writes, and apparently the committee has no control over what the staff writes so far as the report is concerned. It is totally contradictory to what was decided by the majority of the members of the committee.

To refer specifically, to give specific evidence of that fact, we discussed in the committee the language of partition, and we agreed in the committee that if we were to have a meaningful negotiation between the Hopi and the Navajo prior to an imposed settlement, that we could not write in the terms of that settlement. It would be ahead of time because it would preordain the terms of the settlement, and we wanted to avoid that.

Yet, in agreement with that, at my suggestion, in using the phrase "in the partition" in each one of these sections, they changed the word to "any" partition, recognizing the fact that the parties or the court, whoever it might appoint for master, might decide that there would be no partition, some partition, total partition. But certainly nobody in the committee agreed to the fact that there would be an equal division of the land, and that is totally erroneous and totally misleading, and I am sorry it had to refer in the report. It is reviewed in my separate views in the back part of the report.

Now, let me try to express what Senator MONTOYA's amendment is attempting to do.

What it is attempting to do is what appears in subsection (b) of this section, and that is that when and if there is a partition of the land, that those who decide upon the partition must try to minimize and avoid undue social, economic, and cultural disruption insofar as practicable.

Now, what is wrong with that? If we are to be humane in all the plenary

power we are exercising over those Indians, should we not take into account the social, economic, and cultural disruption?

Let me read, Mr. President, from the statement of Dr. Thayer Scudder, an anthropologist hired by the Navajo to go down and do a study of a forced relocation of the Navajo people. This is on page 2 of his typewritten statement, I do not know what page it is in the hearings record.

He says:

Almost without exception people resist forced relocation.

We did not need an anthropologist to tell us that, we can take judicial notice of that.

He goes on to say:

Where resistance fails and relocation occurs, the resulting trauma is very extreme.

I think we probably know that without an anthropologist telling us.

Now, I want to continue with his statement:

Indeed, it is difficult to imagine a more grievous insult to a community than to be forced to leave a beloved habitat.

This is especially true of illiterate people and of the elderly who have lived out their lives in a single rural community. While this would include the majority of the Navajo people in the Joint Use Area, including men who have formed deep attachments to their homes and to the land, it applies especially to Navajo women.

He goes on to describe that the reason it would be especially a great hardship on Navajo women is because of the line of descent and the line of inheritance from Navajos which go through the matrilineal side of the family.

Mr. President, the only thing this amendment is asking for is some kind of justice to people who have been mistreated and abused, not by the Hopi, but by those people who have tried to determine their lives.

I do not think it is too much to ask for to take into consideration what kind of cultural and social hardship these people will have to put up with as a result of forced relocation.

Mr. METCALF. Will the Senator yield?

Mr. MONTOYA. I yield to my colleague. How much time do I have?

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. DOMENICI. How much time does the Senator have on the amendment?

The PRESIDING OFFICER. The senior Senator from New Mexico has 12 minutes.

Mr. DOMENICI. May I ask for 3 minutes from my distinguished colleague? I am not going to address the substance of the amendment.

Mr. MONTOYA. I yield 3 minutes to the Senator.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. DOMENICI. May I address the question to the Senator from Montana, please?

Mr. METCALF. Surely.

Mr. DOMENICI. As I read this, I put

myself in the position of being a court and assume we do intend to provide guidelines for a court, we hope it never gets there, we hope it happens another way, but what I want to ask the Senator is that I find in section 6, as we look at the guidelines, a reference to Senator Montoya's language that requires that the court take into consideration these words, minimize and avoid undue social, economic and cultural disruption insofar as practical.

The Senator has pointed out that that is changed in subsection (b).

Now, I ask the Senator, that is preceded in that very section by what a court could very well find is the only area that they have to be concerned about in solving that definition, and it says, in doing that, they will divide the principal population centers of these two tribes so as to minimize the social, economic and cultural disruptions.

My specific question to the Senator is, if the court does, in fact, take the high-density population areas of the tribes, and makes sure that they are each given to the respective tribe, have they complied totally with the section, including the social, economic, and cultural disruption, have they or have they not?

Mr. METCALF. As I said to the Senator's colleague from New Mexico, subsection (b) from which the Senator quoted is a part of a series of guidelines which are laid down in section 6.

I think all of us are agreed that we should take into consideration such things as social, economic, and cultural disruption, and avoid it insofar as possible, but then we go ahead in subsection (d) in other subsections of section 6, and say that taking these things into consideration, we shall have as near as possible an equal and equitable land division.

So we say, sometimes, in order to avoid these disruptions spoken of in subsection (b), the court may give the other tribe, whether Hopi or Navajo, some land to offset that; but to highlight this one guideline and to say that this is the only thing we should take into consideration is against the decision of the district court, affirmed by the U.S. Supreme Court, and against the expressed intention of the committee itself.

This is only one of the things to be taken into consideration.

Mr. DOMENICI. Let me say, if we can talk a little longer, because I do not think I understand what I would be supposed to do if I were the judge, I would like to ask again, if I looked at the evidence and I found that I had taken the high population areas of each respective tribe and I had determined that each would get that further on, and I made a finding that this is so that we will minimize and avoid undue social, economic, and cultural disruption, I ask the Senator from Montana, have I complied with the intention of the Congress of the United States, or might I take the social, economic, and cultural disruptions into consideration as it affects others than the high-density areas of each tribe?

Mr. METCALF. We say insofar as practicable. Then, of course, we say that the land given to each tribe shall be as

nearly contiguous as possible. Then we say we will not interfere with any of the identified religious shrines. All those things have to be taken into consideration.

If the Senator were the judge, he would take this part of the bill, section 6, and look at the guidelines—that is, (a), (b), (c), and so forth—and he would apply all of these guidelines insofar as possible. He would not put social, economic, and cultural questions so that somebody had a little tiny area way off in one part because you would look at subsection (e) where it says that the land be contiguous insofar as practicable. I just use that for an example.

But, again I reiterate, the question that is presented by the amendment of the Senator from New Mexico (Mr. MONTROYA) disregards these other propositions for the judge to take into consideration and just lays down this proposition. It forgets about equal and equitable distribution.

Mr. DOMENICI. What if we did not want to put Senator Montoya's language in section (e) but wanted it to be just another section so that it would be clear that the court would not be limited in the consideration of social, economic, and cultural disruption to the dividing up of the high density areas?

If I understood the Senator, he was not saying that the court would have compiled with the consideration of social, economic, and cultural disruptions.

The court would not necessarily be through with that consideration by dividing up the high density areas. I thought the Senator said the court would consider social and economic disruptions insofar as practicable, even aside and apart from how it divided up the high population areas.

Mr. METCALF. That would be part of the high population areas.

Mr. DOMENICI. But not necessarily the total consideration.

Mr. METCALF. Certainly it would be taken into consideration.

Mr. MONTROYA. Will the Senator yield for the yeas and nays?

Mr. ABOUREZK. Will the Senator withhold that for a moment?

Mr. MONTROYA. I withdraw my request.

Mr. METCALF. We are talking on my time, but we will continue the colloquy with the distinguished Senator from New Mexico.

The whole proposition is that we have laid down a series of guidelines for the guidance of the judge in the event of an adjudication. One of these guidelines is we say we do not want to interfere with social, economic, and cultural affairs. Another guideline says we want to have the separate areas as contiguous as possible. Another says we are not going to interfere with religious shrines, to take one from another.

All of these have to be read together, and the judge would read them together. But the Senator from New Mexico is erasing these other guidelines and saying that equal distribution of property insofar as possible, equitable distribution insofar as possible, and joint ownership of the mineral rights are all to

be minimized or forgotten behind section (b). That is not what we want the judge to do. That is not the committee intent. The committee wants all the guidelines applied.

Mr. ABOUREZK. Will the Senator from Montana yield?

Mr. METCALF. On the Senator's time.

Mr. DOMENICI. I believe I have the floor. I will yield to the Senator from New Mexico.

Mr. MONTROYA. Will the Senator from New Mexico yield at this time?

Mr. DOMENICI. I will be delighted to yield.

Mr. MONTROYA. I will ask the Senator from Montana what specific language in my amendment destroys any property rights and eliminates the consideration of all guidelines in section 6. I want to know that.

Mr. METCALF. The Senator's amendment says, on page 24—

Mr. MONTROYA. Yes, on line 22. My amendment has only the words "subject to the provisions of subsection (b) of this section."

Mr. METCALF. That is exactly what I have been trying to emphasize.

Mr. MONTROYA. How can the Senator say that that language connotes the elimination of the consideration of the guidelines?

Mr. METCALF. But it does not say subject to subsection (a), (b), (c), (d), and others. The Senator just says subject to subsection (b). Why do we have to have that language if the Senator wants to take into consideration the various guidelines that we have outlined in (a), (b), (d), (e), (f), and (g)?

Mr. MONTROYA. Will the Senator consent to a modification subject to the provisions of subsections (a), (b), (c), and the other guidelines in this section? Would he consent to that?

Mr. METCALF. I see no reason why we should say subject to the provisions of subsections (a), (b), (c), (d), (e), (f), (g), and (h) because that is what we are saying in the bill. But if the Senator will say that, and he feels that he has to reiterate it again, if he will say in all of the subsections "subject to all of the subsections" in section 6, I have no objection to just repeating what we have already said.

Mr. MONTROYA. Then I so modify my amendment.

The PRESIDING OFFICER. Will the Senator send his modification to the desk?

Mr. MONTROYA. On the amendment which I have proposed, it would read in subsection (d)—

Mr. METCALF. Has the unanimous-consent request been propounded yet?

Mr. MONTROYA. No, because I have not submitted the modification.

Mr. METCALF. I reserve the right to object.

Mr. MONTROYA. Is the Senator going to object?

Mr. METCALF. I do not know. I have not heard the amendment.

The PRESIDING OFFICER. The Chair would like to state to both Senators that unanimous consent is not required.

The Senator may modify his amendment if he desires.

Mr. MONTOYA. I so modify it. It will read as follows—

The PRESIDING OFFICER. The Chair informs the Senator from New Mexico that he must send his modification to the desk.

Mr. MONTOYA. Mr. President, I would like to suggest the absence of a quorum, the time not to be taken from me.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. MONTOYA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GOLDWATER. Mr. President, I ask for the yeas and nays.

The yeas and nays were ordered.

Mr. METCALF. Mr. President, whoever has time, I would like to have a colloquy.

Mr. MONTOYA. Mr. President, I should like to ask the Senator from Montana a couple of questions.

Mr. METCALF. Mr. President, may we have information as to how much time remains on the amendment?

The PRESIDING OFFICER. The Senator from New Mexico has not sent the modification to the desk.

Mr. METCALF. May we have this colloquy before we have the modification?

The PRESIDING OFFICER. As the result of the yeas and the nays having been ordered by unanimous consent, the Senator must have unanimous consent to modify his amendment.

Mr. MONTOYA. I recognize that.

Mr. METCALF. Mr. President, will the Chair inform me as to how much time remains?

The PRESIDING OFFICER. The Senator from Montana has 8 minutes, and the Senator from New Mexico has 7 minutes.

Mr. METCALF. I yield such time as may be necessary for the Senator from New Mexico to propound some inquiries.

Mr. MONTOYA. I thank the Senator from Montana.

I ask the Senator, first, is it the intention of the proposed legislation to trigger consideration during the partition or division process of the essential and particular details set out in the guidelines under subparagraphs (b), (c), (d), (e), (f), and (g)?

Mr. METCALF. Yes. All the guidelines specifically enumerated in section 6 would be taken into consideration by the court in making a determination and an adjudication as to the division of land.

Mr. MONTOYA. It is also the intention that this take place irrespective of any conflicting language or implied language to the contrary contained in the committee report?

Mr. METCALF. The committee report, in the opinion of the Senator from Montana, explains the entire effort of the committee to make an equal distribution. In subsection (b), the committee recognized that in certain areas of these reservations there would be a higher

density of population. Some would have more people; more people would be involved than in other areas.

I am sure it was not the intention of any of us to say that the social, economic, and cultural disruptions would not be considered in all other areas of the reservation. We just decided that in higher density areas perhaps they would not get as much land or the land would be more valuable, but ultimately the decision would be equal and equitable.

Mr. MONTOYA. I thank the Senator from Montana.

Mr. ABOUREZK. Mr. President, will the Senator from New Mexico yield 1 minute for a question?

Mr. MONTOYA. Do I have time?

Mr. METCALF. I have time, and I will yield.

Mr. ABOUREZK. What I want to clarify, by way of legislative history, is to ask the manager of the bill, the Senator from Montana, this question: In partitioning the surface rights to the joint use area, when and if any court does that partitioning, is it the intention of the legislation for the court to look at, to minimize, and to avoid undue social, economic, and cultural disruption insofar as possible?

Mr. METCALF. That is the intention as expressed in subsection (b).

Mr. ABOUREZK. But what would the intent be for any partition that might occur?

Mr. METCALF. Any partition that might occur. And it is the understanding of the Senator from Montana that line 12, where it says "higher density population," is to take into consideration the fact that population varies on the reservation; but the entire partition shall be subject to the provisions of social, economic, and cultural disruption.

Mr. ABOUREZK. Mr. President, I see no need for further pursuance of this amendment, if that indeed is the intent of the manager of the bill.

Mr. MONTOYA. Mr. President, in view of the explanation and the answer given by the manager of the bill to the questions propounded by myself and the junior Senator from South Dakota, I ask unanimous consent that the order for the yeas and nays be vacated, so that I can withdraw the amendment.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. FANNIN. Mr. President, will the Senator yield?

Mr. METCALF. I yield.

Mr. FANNIN. In order that we thoroughly understand the situation that exists—

Mr. METCALF. The Senator has withdrawn the amendment.

Mr. FANNIN. I understand that.

I want to make it clear that a record was made in the committee on the issue that the distinguished Senator from South Dakota has been discussing. The issue lost. The amendment was defeated by a vote of 10 to 3. I do think that fact should be made part of the Record at this time.

At this time, I extend my appreciation to the staff members, both for the ma-

ajority and the minority, who so adequately handled this measure and the report.

The report does reflect the intent of the majority of committee members. When the distinguished Senator from South Dakota challenges the report, I think it should be made clear that the vote was predominantly in favor of the various issues he has discussed.

Mr. President, so far as the partitioning is concerned, any judicial settlement that requires partitioning of the land in approximately equal shares will be in accordance with the Healing case, and that should be made clear. The report and the bill have been subjected to highly partisan interpretation, but it is crystal clear that the committee decided that such a judicial partition is inevitable, falling tribal agreement. If there is not to be partition, why establish a commission to relocate persons who must move on account of partition? Why the guidelines to the court on partition? In short, what is the purpose of the bill if not to provide judicial authority and direction for partition? I feel that this should be brought out.

Also, when the distinguished Senator from South Dakota quotes from one of the attorneys for the Hopi Tribe, I think he should bring out that he did not question the statement of an anthropologist who testified on behalf of the Navajo Tribe. I read from the record:

Senator FANNIN. Dr. Scudder, how much time did you spend on the Navajo reservation in coming to these conclusions?

This is what the Senator has referred to today, with respect to the effect it would have on the movement of different members of the Navajo Tribe.

Professor SCUDDER. Let me qualify what I am going to say by saying I am talking from a theory. The theory has been applied to members of all three major racial groups.

I went to the Navajo Reservation to see if it could be applicable there during a 4-day field trip.

I just wanted to make clear that he spent 4 days on the reservation and became an instant expert.

Mr. METCALF. Mr. President, I yield to the Senator from Washington for a unanimous-consent request.

#### RIVERS AND HARBORS PUBLIC WORKS

Mr. JACKSON. Mr. President, I ask the Chair to lay before the Senate a message from the House of Representatives on H.R. 10701.

The PRESIDING OFFICER (Mr. BARTLETT) laid before the Senate a message from the House of Representatives announcing its disagreement to the amendments of the Senate to the bill (H.R. 10701) to amend the act of October 27, 1965, relating to public works on rivers and harbors to provide for construction and operation of certain port facilities, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. JACKSON. I move that the Senate insist upon its amendments and agree to the request of the House for a

conference on the disagreeing votes of the two Houses thereon, and that the Chair be authorized to appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer (Mr. BARTLETT) appointed Mr. LONG, Mr. HOLLINGS, Mr. STEVENS, Mr. JACKSON, Mr. JOHNSTON, Mr. HANSEN, Mr. GRAVEL, Mr. BENTSEN, and Mr. BUCKLEY conferees on the part of the Senate.

#### SURFACE RIGHTS IN THE 1934 NAVAJO RESERVATION

The Senate continued with the consideration of the bill (H.R. 10337) to authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purposes.

Mr. JACKSON. Mr. President, I wish to take 10 seconds to express my deep appreciation to the Senator from Montana (Mr. METCALF) for the long hours, the tremendous amount of time and, indeed, the careful effort that he has put into the pending legislation. This has been a most difficult task, both in the committee and on the floor. I wish to say that in my judgment, he has been, as always, a fair and honest judge, trying to handle a very difficult dispute. I express my deep appreciation to him for this yeoman service.

Obviously, the other Senators on the committee have done their fair share on both the minority and the majority side, but I do wish to take this opportunity to single out the Senator from Montana for the special effort he has made.

Mr. METCALF. Mr. President, I thank the chairman of the committee for his kind words.

I wish to reiterate what I said to the Senator from New Mexico in my response to the Senator from South Dakota. In my opinion, there is no question that when there is equal and equitable distribution of the lands, the various propositions that are now in subsection (b) whether they are high-density population lands or low-density population lands, or with any of the other lands involved on the reservation, will be taken into consideration along with the other subsections in section 6.

I say to the Senator from South Dakota that the committee report on H.R. 10337 reflects the views of a majority of the committee. The Senator from South Dakota rather eloquently set forth his dissent from that report. Those who desire may read both of our positions, but I think that a useful service has been performed today by exploring the question of high-density population areas, because we want all of these factors to apply to all of the land. We merely want to say that when we have the question of high density areas of population, we can take into consideration the various factors that are contained in other parts of section 6.

Mr. GOLDWATER. Will the Senator yield?

Mr. METCALF. I am delighted to yield.

Mr. GOLDWATER. Mr. President, regardless of how the vote comes out on this matter, I know that I express the gratitude of the people of my State and my Governor for the wonderful work that the Senator from Montana has put into this. I wish to express the same feelings to my senior colleague, who has served as Governor and who has put up with this problem for so many years.

As I say, regardless of the outcome, I wish to express the thanks of the people of my State, particularly Indians of both tribes, for the wonderful work both of them have put in on this bill.

Mr. METCALF. I thank the Senator from Arizona.

If we can resolve the joint-use and Moencopi land disputes today, we will have achieved justice and equity for the Hopi and the Navajo Tribes. In addition, we will have resolved an issue which is of grave concern to the non-Indians in the States of New Mexico, Arizona, Utah, and Colorado.

Mr. FANNIN. Mr. President, if the Senator will yield, I should like to join my colleague (Mr. GOLDWATER) in paying tribute to Senator METCALF for chairing the hearings in so many instances, for doing extensive work in the committee, and for taking over here as floor manager of the bill. He has performed yeoman service under a very tough situation. He has stood up for what he thought was right. I am very proud that he has been willing to devote the time, the research, and the energy that was necessary to make conclusions, which demanded great thought and careful consideration of all parties involved.

I feel that he has performed a fine service for both the Navajo and the Hopi Tribes.

Mr. METCALF. Mr. President, I have an amendment that I send to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will state the amendment.

The legislative clerk read as follows: At the appropriate place insert the following:

Section 10 of the Act entitled "An Act to promote the rehabilitation of the Navajo and Hopi Tribes of Indians and a better utilization of the resources of the Navajo and Hopi Indian Reservations, and for other purposes", approved April 19, 1950 (64 Stat. 47; 25 U.S.C. 640) is repealed effective close of business December 31, 1974.

Mr. METCALF. Mr. President, the hoped-for passage of this legislation will complete the question of the Navajo and Hopi controversy, and there will no longer need to be a Joint Committee on Hopi-Navajo Indian Administration, which was created in 1950. Therefore, as a part of this bill, we should discontinue existence of this joint committee. That is the purpose of the amendment.

The PRESIDING OFFICER. Who yields time on the amendment?

Mr. ABOUREZK. Mr. President, I have no objection to that amendment.

The PRESIDING OFFICER. Do the Senators yield back their time?

Mr. ABOUREZK. I wish to speak, just for a moment, if I may.

Mr. METCALF. The Senator has time on the bill.

Mr. ABOUREZK. I wish to speak on this amendment.

Mr. METCALF. Certainly.

Mr. ABOUREZK. I wish to inform the President that the time I am taking now will be the time I am entitled to on this amendment as an adversary party.

Mr. President, while I am not looking for any thanks, and I certainly do not expect any, I do not want the impression left that it was only the Senator from Montana who was involved in all of this procedure. I wish to say that the Senator from Montana, at least during this session of Congress, became active only in the very latter part of this work. He did a very good job and was very intently working on this in the latter part of our deliberations. But I do not want the impression left that he is the only one who has any wisdom on the Hopi-Navajo question at all, since I chaired all of the hearings and attended all of the markup sessions that we had on this legislation, and certainly had at least as much information given to me as the Senator from Montana, if not more. I just wish to correct what might be an erroneous impression.

So I just want to correct what might be an erroneous impression, which itself does not detract from the great work the Senator from Montana has done.

Mr. METCALF. Mr. President, I want the RECORD to show that the Senator from South Dakota did hold hearings, and has worked long and hard on this bill. He has had very firm convictions about how the decisions should be made and on the determination of the various lawsuits. As chairman of the Subcommittee on Indian Affairs, he has been outstanding not only on this legislation, but on other Indian legislation. I certainly appreciate his assistance in all Indian legislation. I regret very much that we have differed in some respects as to the decision on this particular bill, but we certainly have agreed on basic Indian policy.

Mr. ABOUREZK. I do want to say also that while this amendment will be accepted by everyone involved and perfunctorily voted upon, the yea-and-nay vote that is coming up will be on Senator MONTROYA's amendment dealing with the Moencopi area, which is to the west of the large joint use disputed area. If I may be permitted to do so, I should like to make a 30-second summary of the issue for Senators who have come into the Chamber since our earlier debate.

The committee, over my objections as chairman of the Indian Affairs Subcommittee, decided to award all 243,000 acres of that land to the Hopi Tribe, in spite of the fact that the 1934 act which was passed awarded it to the Navajo Indians and such other Indian tribes as thereon might reside.

My objection arises as a result of the fact that neither the committee nor any court nor any body constituted by anyone at all has ever adjudicated that matter, and that we do not know the respective rights of the parties, and it ought to be decided by litigation.

That is the issue, and that is why I ask that the Members of the Senate support the Montoya amendment, which will allow a duly-constituted body to dig into

the facts, to find out who lived on the land in 1934, and to make the determination as a result of that investigation.

I reserve the remainder of my time.

Mr. FANNIN. Mr. President, before the debate on this issue is brought to a close, I would like to extend my appreciation to the minority members of our committee for their diligent work and attendance at committee hearings, and the great help they have given us. The Senator from Oklahoma now in the chair (Mr. BARTLETT) was extremely helpful, and also my colleague from Arizona (Mr. GOLDWATER), who is probably the best-versed Member of the Senate on Indian affairs. For years he has dealt with our Indian people, not only in Arizona but throughout the Nation. It was through his great help, patience, and understanding that we have been able to come to many of the conclusions that have been incorporated in the bill.

So I pay deserved tribute to him, and express my appreciation.

From the majority members of the committee, we have had excellent cooperation. The distinguished Senator from Montana (Mr. METCALF) not only has cooperated with us in this particular instance, but we have had the pleasure of working with him for several years on the Indian Affairs Subcommittee, and I feel that he has done a great service in taking over a very difficult situation, not only in this instance but in many others.

I feel that the tributes that have been paid to him are certainly well deserved.

The PRESIDING OFFICER. Is all remaining time yielded back?

Mr. METCALF. Mr. President, I yield back the remainder of my time.

Mr. ABOUREZK. I yield back the remainder of my time.

Mr. METCALF. Mr. President, before yielding back my time, I yield to the assistant majority leader, the Senator from West Virginia, for a unanimous-consent request.

#### UNANIMOUS-CONSENT AGREEMENT

Mr. ROBERT C. BYRD. Mr. President, I have been asked by the distinguished majority leader to propound the following unanimous-consent request:

That when the Senate completes its business today, it stand in adjournment until 10:30 a.m. tomorrow;

That at 11 a.m. tomorrow, the 1 hour of debate under rule XXII on the motion to invoke cloture on the conference report on H.R. 15977, the Export-Import Bank Act amendments, begin running, and that upon the disposition of that vote on cloture, if the vote to invoke cloture fails, the Senate then proceed to the consideration of S. 3394, the bill to amend the Foreign Assistance Act of 1961; and

That at 4 p.m. tomorrow, if the message from the House of Representatives is available, the Senate proceed to vote on the overriding of the President's veto of the GI educational benefits bill, with one-half hour prior to that time, to be equally divided between the majority leader and the minority leader or their designees, for the purpose of debating the override.

Both of those votes will be mandatorily rollcall votes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia? The Chair hears none, and it is so ordered.

#### SURFACE RIGHTS IN THE 1934 NAVAJO RESERVATION

The Senate continued with the consideration of the bill (H.R. 10337) to authorize the partition of the surface rights in the joint use area of the 1882 Executive order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Palute Indians, and for other purposes.

Mr. METCALF. Mr. President, I ask unanimous consent that Mr. Bill VanNess of the staff of the Committee on Interior and Insular Affairs be accorded the privilege of the floor for the remainder of the day.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. METCALF. Mr. President, no discussion of the Navajo-Hopi land disputes would be complete without our paying tribute to the dedication and hard work the distinguished Senators from Arizona, Mr. FANNIN and Mr. GOLDWATER, have addressed to these issues over the years.

Their work on H.R. 10337 has been difficult because members of both tribes reside in Arizona. But, in my opinion, they have always exhibited a desire to achieve justice and equity for both groups and bring this unfortunate intertribal land dispute to an end.

I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. BARTLETT). All remaining time having been yielded back, the question is on agreeing to the amendment of the Senator from Montana.

The amendment was agreed to.

Mr. METCALF. I yield back the remainder of my time on the bill.

The PRESIDING OFFICER. The question now is on agreeing to the amendment of the Senator from New Mexico.

Mr. METCALF. We vote first on the Montoya amendment?

The PRESIDING OFFICER. The Senator is correct. On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. ROBERT C. BYRD. I announce that the Senator from Texas (Mr. BENTSEN), the Senator from Delaware (Mr. BIDEN), the Senator from Idaho (Mr. CHURCH), the Senator from California (Mr. CRANSTON), the Senator from Mississippi (Mr. EASTLAND), the Senator from North Carolina (Mr. ERVIN), the Senator from Indiana (Mr. HARTKE), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Minnesota (Mr. HUMPHREY), the Senator from Massachusetts (Mr. KENNEDY), the Senator from Washington (Mr. MAGNUSON), the Senator from Rhode Island (Mr. PASTORE), the Senator from Illinois (Mr. STEVENSON),

the Senator from Missouri (Mr. SYMINGTON), the Senator from New Jersey (Mr. WILLIAMS), and the Senator from Arkansas (Mr. FULBRIGHT) are necessarily absent.

I further announce that the Senator from Georgia (Mr. TALMADGE) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. PASTORE), the Senator from Washington (Mr. MAGNUSON), the Senator from Massachusetts (Mr. KENNEDY), and the Senator from Minnesota (Mr. HUMPHREY) would each vote "yea."

Mr. GRIFFIN. I announce that the Senator from Oklahoma (Mr. BELLMON), the Senator from Massachusetts (Mr. BROOKE), the Senator from New Jersey (Mr. CASE), the Senator from New Hampshire (Mr. COTTON), the Senator from Nebraska (Mr. CURRIE), the Senator from Maryland (Mr. MATHIAS), the Senator from Delaware (Mr. ROTH), the Senator from Virginia (Mr. WILLIAM L. SCOTT), and the Senator from South Carolina (Mr. THURMOND) are necessarily absent.

I also announce that the Senator from Illinois (Mr. PERCY) and the Senator from Ohio (Mr. TAFT) are absent on official business.

I further announce that, if present and voting, the Senator from Maryland (Mr. MATHIAS) and the Senator from South Carolina (Mr. THURMOND) would each vote "yea."

The result was announced—yeas 37, nays 35, as follows:

[No. 509 Leg.]

#### YEAS—37

Abourezk	Jackson	Fackwood
Bayh	Javits	Pell
Byrd, Robert C.	Johnston	Proxmire
Chiles	Long	Randolph
Clark	Mansfield	Ribicoff
Domenici	McClellan	Schweiker
Eagleton	McGee	Sparkman
Gravel	McGovern	Stafford
Hatfield	Mondale	Stennis
Hathaway	Montoya	Tunney
Hollings	Muskie	Welcker
Hughes	Nelson	
Inouye	Nunn	

#### NAYS—35

Alken	Cannon	Helms
Allen	Cook	Hruska
Baker	Dole	McClure
Bartlett	Dominick	McIntyre
Beall	Fannin	Metcalf
Bennett	Fong	Metzenbaum
Bible	Goldwater	Moss
Brock	Griffin	Pearson
Buckley	Gurney	Scott, Hugh
Burdick	Hansen	Stevens
Byrd,	Hart	Tower
Harry F., Jr.	Haskell	Young

#### NOT VOTING—28

Bellmon	Ervin	Roth
Bentsen	Fulbright	Scott
Biden	Hartke	William L.
Brooke	Huddleston	Stevenson
Case	Humphrey	Symington
Church	Kennedy	Taft
Cotton	Magnuson	Talmadge
Cranston	Mathias	Thurmond
Curtis	Pastore	Williams
Eastland	Percy	

So Mr. MONTROYA's amendment, as modified, was agreed to.

The PRESIDING OFFICER. If there be no further amendment to be proposed, the question is on agreeing to the committee amendment in the nature of a substitute, as amended.

The committee amendment in the na-

ture of a substitute, as amended, was agreed to.

The **PRESIDING OFFICER**. The question is on the engrossment of the committee amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

Mr. **METCALF**. Mr. President, if the Senator from South Dakota is prepared to yield back the remainder of his time, I am prepared to yield back the remainder of my time.

Mr. **ABOUREZK**. Mr. President, I am prepared to yield back my time so that we can have a vote on passage.

The **PRESIDING OFFICER**. Has all time been yielded back?

Mr. **ABOUREZK**. I yield back the remainder of my time.

Mr. **METCALF**. I yield back the remainder of my time.

The **PRESIDING OFFICER**. The yeas and nays have not been ordered.

Mr. **GOLDWATER**. I ask for the yeas and nays.

The **PRESIDING OFFICER**. Is there a sufficient second? There is a sufficient second.

The yeas and the nays were ordered.

The **PRESIDING OFFICER**. The bill having been read the third time, the question is, Shall it pass? The yeas and nays have been ordered, and the clerk will call the roll.

The second assistant legislative clerk called the roll.

Mr. **ROBERT C. BYRD**. I announce that the Senator from Texas (Mr. **BENTSEN**), the Senator from Delaware (Mr. **BIDEN**), the Senator from Idaho (Mr. **CHURCH**), the Senator from California (Mr. **CRANSTON**), the Senator from Mississippi (Mr. **EASTLAND**), the Senator from North Carolina (Mr. **ERVIN**), the Senator from Arkansas (Mr. **FULBRIGHT**), the Senator from Indiana (Mr. **HARTKE**), the Senator from Kentucky (Mr. **HUDLESTON**), the Senator from Minnesota (Mr. **HUMPHREY**), the Senator from Massachusetts (Mr. **KENNEDY**), the Senator from Washington (Mr. **MAGNUSON**), the Senator from Rhode Island (Mr. **PASTORE**), the Senator from Illinois (Mr. **STEVENSON**), the Senator from Missouri (Mr. **SYMINGTON**), and the Senator from New Jersey (Mr. **WILLIAMS**) are necessarily absent.

I further announce that the Senator from Georgia (Mr. **TALMADGE**) is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island (Mr. **PASTORE**), the Senator from Washington (Mr. **MAGNUSON**), the Senator from Massachusetts (Mr. **KENNEDY**), and the Senator from Minnesota (Mr. **HUMPHREY**) would each vote "yea."

Mr. **GRIFFIN**. I announce that the Senator from Oklahoma (Mr. **BELLMON**), the Senator from Massachusetts (Mr. **BROOKE**), the Senator from New Jersey (Mr. **CASE**), the Senator from New Hampshire (Mr. **COTTON**), the Senator from Nebraska (Mr. **CURTIS**), the Senator from Maryland (Mr. **MATHIAS**), the Senator from Delaware (Mr. **ROTH**), the Senator from Virginia (Mr. **WILLIAM L. SCOTT**), and the Senator from South

Carolina (Mr. **THURMOND**) are necessarily absent.

I also announce that the Senator from Illinois (Mr. **PERCY**) and the Senator from Ohio (Mr. **TAFT**) are absent on official business.

I further announce that, if present and voting, the Senator from South Carolina (Mr. **THURMOND**) would vote "yea."

The result was announced—yeas 72, nays 0, as follows:

[No. 510 Leg.]

YEAS—72

Abourezk	Goldwater	Metzenbaum
Aiken	Cravel	Mondale
Allen	Griffin	Montoya
Baker	Gurney	Moss
Bartlett	Hansen	Muskie
Bayh	Hart	Nelson
Beall	Haskell	Nunn
Bennett	Hathfield	Packwood
Bible	Hathaway	Pearson
Brock	Helms	Pell
Buckley	Hollings	Proxmire
Burdick	Hruska	Randolph
Byrd	Hughes	Ribicoff
Harry F., Jr.	Inouye	Schweiker
Byrd, Robert C.	Jackson	Scott, Hugh
Cannon	Javits	Sparkman
Chiles	Johnston	Stafford
Clark	Long	Stennis
Cook	Mansfield	Stevens
Dole	McClellan	Tower
Domenici	McClure	Tunney
Dominick	McGee	Welcker
Eagleton	McGovern	Young
Fannin	McIntyre	
Fong	Metcalf	

NAYS—0

NOT VOTING—28

Bellmon	Ervin	Roth
Bentsen	Fulbright	Scott,
Biden	Hartke	William L.
Brooke	Huddleston	Stevenson
Case	Humphrey	Symington
Church	Kennedy	Taft
Cotton	Magnuson	Talmadge
Cranston	Mathias	Thurmond
Curtis	Pastore	Williams
Eastland	Percy	

So the bill (H.R. 10337) was passed. The title was amended so as to read: "An act 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."

**AMENDMENT OF THE EXPORT-IMPORT BANK ACT—CONFERENCE REPORT**

Mr. **MANSFIELD**. Mr. President, I ask unanimous consent that the Senate return to the consideration of the conference report on the Export-Import Bank.

The **PRESIDING OFFICER**. The conference report on H.R. 15977, will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 15977) to amend the Export-Import Bank Act of 1945, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by a majority of the conferees.

The **PRESIDING OFFICER**. Is there objection to the consideration of the conference report?

There being no objection, the Senate proceeded to consider the conference report.

CLOTURE MOTION

Mr. **PACKWOOD**. Mr. President, I send to the desk a cloture motion.

The **PRESIDING OFFICER** (Mr. **CLARK**). The cloture motion having been presented under rule XXII, the Chair, without objection, directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate upon the adoption of the conference report on H.R. 15977, the Export-Import Bank Act Amendment.

Bob Packwood, Robert P. Griffin, Lee Metcalf, Mike Mansfield, Hugh Scott, J. Glenn Beall, Jr., Joseph M. Montoya, Howard H. Baker, Jr., Frank E. Moss, Wallace F. Bennett, Robert T. Stafford, Edmund S. Muskie, John Tower, Thomas J. McIntyre, Lowell P. Weicker, Jr., Harold E. Hughes, Bill Brock.

The **PRESIDING OFFICER**. The question is on agreeing to the conference report.

**FOREIGN ASSISTANCE ACT OF 1974—S. 3384**

AMENDMENT NO. 2001

(Ordered to be printed and to lie on the table.)

WHY REWARD THE U.N.

Mr. **HARRY F. BYRD, JR.** Mr. President, the American Ambassador to the United Nations and such distinguished U.S. Senators as **HUBERT H. HUMPHREY** of Minnesota and **GALE W. MCGEE** of Wyoming have taken the view that, to use Senator **HUMPHREY**'s words:

The United Nations Charter as adopted by the Congress of the United States and ratified by the Senate, has the same standing as a provision of our Constitution. It is a supreme law of the land.

Of course, I totally reject such an extremist view.

But if there is widespread belief that United Nations actions is legally binding on the United States, I would think that even the most ardent advocates of world government would begin to have second thoughts as the result of U.N. activity during the month of November.

First, the United Nations ousted a legitimate member, South Africa, because of that country's internal policies. This is in specific violation of the U.N. Charter which prohibits interference in the domestic affairs of a member state.

Then having silenced the voice and vote of a duly constituted member, the United Nations followed that up the next day with this action: It provided a forum and treated as it would a head of state the leader of a terrorist group known as the Palestine Liberation Organization. The PLO not only objects to the internal policies of a United Nations member and sovereign state, Israel, but actually challenges its existence as a nation. In addition, the U.N. gave the terrorist organization official observer status.

A militant, unreasonable majority