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PROVIDING FOR THE SETTLEMENT OF THE NAVAJO-HOPI LAND DISPUTE, AND FOR OTHER PURPOSES

SEPTEMBER 9, 1996.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs, submitted the following

REPORT

[To accompany S. 1973]

The Committee on Indian Affairs, to which was referred the bill (S. 1973) to provide for the settlement of the Navajo-Hopi land dispute and for other purposes, having considered the same, reports favorably with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

REPORT ON S. 1973, THE NAVAJO-HOPI LAND DISPUTE SETTLEMENT ACT OF 1996

PURPOSE

The purpose of S. 1973 is to ratify the settlement of four claims of the Hopi Tribe against the United States and to provide the necessary authority for the Hopi Tribe to issue 75 year lease agreements to Navajo families residing on Hopi Partitioned Land. This legislation will ratify the Settlement and Accommodation agreements among various parties, including the Department of Justice, the Hopi Tribe, the Navajo Nation, and the Navajo families residing on the Hopi Partitioned Lands.

BACKGROUND

The Navajo-Hopi Land Dispute Settlement Act of 1974[1] was enacted in an effort to settle land disputes which have divided the Navajo and Hopi Tribes for more than a century. The Act was intended to bring about a settlement of all of the rights and interests

[1] P.L. 93–531, 25 U.S.C. §§ 640d et seq.

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of the two tribes in lands known as the 1882 Executive Order Reservation and the 1934 Navajo Reservation. The origins of this longstanding dispute can be traced to the creation of the 1882 Hopi Reservation and the 1934 Navajo Reservation. On December 16, 1882, President Chester Arthur signed and executive order that set aside approximately 2.5 million acres of land for the Hopi Tribe and "such other Indians as the Secretary of the Interior may see fit to settle thereon." In June of 1934, the Congress enacted two laws which established the exterior boundaries of the Navajo Reservation and set aside the lands within the reservation for the Navajos and "such other Indians as may already be located thereon."

At the time of the 1882 Executive Order a small but indeterminate number of Navajos resided on portions of the reserved lands. Similarly, at the time of the 1934 enactments, Hopi and other Indians, including the San Juan Southern Paiutes, resided on the lands reserved as part of the Navajo reservation. Most of the Hopi residents of the 1934 Reservation were located in the village of Moenkopi near Tuba City. Throughout the 1890's and to this day, the Hopi and Navajo Tribes have disputed the right to title and occupancy of the lands in both reservations based on the 1882 Executive Order and the 1934 Acts of the Congress.

In the early 1940's, the Secretary of the Interior established twenty-one grazing management districts on the 1882 Reservation and the 1934 Reservation in an effort to control livestock and improve range management and soil conservation. Of these grazing districts only District six, located in the south-central portion of the 1882 Reservation, was identified as an exclusively Hopi district. All of the remaining districts were assigned to the Navajo Nation. The establishment of these grazing districts significantly intensified the disputes between the Navajo and Hopi Tribes, with the Hopi Tribe vigorously protesting the establishment of District Six.

Despite efforts to defuse tensions and promote cooperation between the two tribes, the underlying disputes regarding jurisdiction over lands in the 1882 Reservation and the creation of District Six resulted in legislation which authorized suits between the Navajo and Hopi Tribes to quiet title to the 1882 Reservation.[2] The legislation authorized the Tribes to file suit in the Federal District Court for Arizona "* * * for the purpose of determining the rights and interests of [the Navajo and Hopi Tribes] in and to [the 1882 Reservation] and quieting title thereto in the tribes * * * establishing such claims * * * as may be just and fair in law and equity." P.L. 85–547 was signed into law on July 22, 1958. On August 1, 1958, the Hopi Tribe sued the Navajo Nation Under the Authority of the Act.

In *Healing* v. *Jones,*[3] the court held that the Hopi Tribe had the exclusive right to lands in District Six and that both the Navajo and Hopi Tribes had equal rights to the surface and subsurface of the rest of the 1882 Reservation. Under this ruling, the area of the 1882 Reservation outside of District Six became known as the "Joint Use Area" (JUA). In the years after the *Healing* v. *Jones* case, the Hopi Tribe sought to obtain joint and equal use of the

[2] P.L. 85–547, 72 Stat. 403.
[3] 210 F. Supp. 125 (D. Az. 1962), aff'd 373 U.S. 758 (1963).

JUA through administrative action and through litigation. some of these cases include *Hamilton* v. *Nakai,*[4] where the Hopi Tribe sought a Federal court order compelling the Navajo Nation to reduce its livestock on the JUA in order to allow Hopi access to the JUA and to prevent further injury to the lands due to overgrazing; *United States* v. *Kabinto,*[5] where the United States brought suit against sixteen Navajos in order to evict them from District Six, where they were residing; and *Hamilton* v. *MacDonald,*[6] where the Hopi Tribe petitioned the Court for a writ of compliance to compel the Navajo Nation to jointly share with the Hopi Tribe the surface and subsurface interests of the areas of the 1882 Reservation outside of District Six.

In testimony before the Committee presented on March 28, 1996, Assistant U.S. Attorney General Lois J. Schiffer described the long and protracted litigation that the establishment of the 1882 and 1934 Reservations has engendered:

> "This controversy has generated more than 35 years of continuous legal battles involving the Tribes and the United States. The following, while not exhaustive, lists litigation spawned by disputes over the 1882 Reservation since 1958: *Peabody Coal Company* v. *Navajo Nation*, 75 F.3d 457 (9th Cir. 1996); *Hopi Tribe* v. *Navajo Tribe*, 46 F.3d 908 (9th Cir. 1995) (BIA's homesite and grazing rental determinations); *Attakai* v. *United States*, 21 F.3d 1111 (9th Cir. 1994); *Masayesva* v. *Zah*, 816 F. Supp. 1387 (D. Ariz. 1992); *Benally* v. *Hodel*, 940 F.2d 1994 (9th Cir. 1991); *Manygoats* v. *Office of Navajo and Hopi Indian Relocation*, 735 F. Supp. 949 (D. Ariz. 1990); *Bedoni* v. *Navajo-Hopi Relocation Commission*, 878 F.2d 1119 (9th Cir. 1989); *Begay* v. *United States*, 865 F.2d 230 (Fed. Cir. 1989); *Manybeads* v. *United States*, 730 F. Supp. 1515 (D. Ariz. 1989), 9th Cir. No. 90–15003 (appeal pending) (First Amendment suit by Navajo residents of HPL challenging the relocation requirement as unconstitutional); *Masayesva* v. *Zah*, No. 58–579 PCT ECH (D. Ariz. 1993), 9th Cir. No. 90–15304 (appeal pending) (contempt action for illegal construction by Navajo residents); *Secakuku* v. *Hale*, No. 76–934 (D. Ariz. 1993), 9th Cir. Nos. 94–17032, 95–15029 (damages to HPL range from overgrazing by Navajo livestock prior to partitioning); *Masayesva* v. *Hale*, No. 76–936 PCT ECH (D. Ariz. 1993), 9th Cir. No. 94–17022 (appeal pending) (damages for use of Hopi Tribe's share of the Joint Use Area by Navajo livestock from 1962–1979); *Secakuku* v. *Hale*, No. 58–579 (D. Ariz. 1993), 9th Cir. Nos. 94–17031, 95–15015, (appeal pending) (owelty for difference in value of the divided Joint Use Area); *Hopi Tribe* v. *Navajo Nation*, Nos. 85–801 PHX and 87–1966 PHX (D. Ariz.) (ongoing challenges to various annual BIA rental determinations); *Hopi Tribe* v. *United States*, Nos. 319–84–L, 320–84–L, 321–84–L, 651–89L (Ct. Fed. Cl., pending) (pen-

[4] 453 F.2d. 152 (9th Cir. 1971).
[5] 456 F.2d. 1087 (9th Cir. 1972).
[6] 503 F.2d. 1138 (9th Cir. 1974).

alties and damages for unpermitted Navajo livestock use of the HPL); *Zee* v. *Watt*, Civ. 83–200 PCT EHC (D. Ariz.) (dismissed March 29, 1985); *Walker* v. *Navajo-Hopi Indian Relocation Commission*, 728 F.2d 1276 (9th Cir. 1984), cert. denied, 469 U.S. 918 (1984); *Hopi* v. *Watt*, 719 F.2d 314 (9th Cir. 1983); *Sidney* v. *Zah*, 718 F.2d 1453 (9th Cir. 1983); *Zah* v. *Clark*, Civ. No. 83–1753 BB (D. N.M., filed Nov. 27, 1983); *Sekaquaptewa* v. *MacDonald*, 626 F.2d 113 (9th Cir. 1980); *Sekaquaptewa* v. *MacDonald*, 619 F.2d 801 (9th Cir.), cert. denied, 449 U.S. 1010 (1980); *Sekaquaptewa* v. *MacDonald*, 591 F.2d 1289 (9th Cir. 1979); *Sekaquaptewa* v. *MacDonald*, 575 F.2d 239 (9th Cir. 1978); *Sekaquaptewa* v. *MacDonald*, 544 F.2d 396 (9th Cir. 1976), cert. denied, 430 U.S. 931 (1977); *Hamilton* v. *MacDonald*, 503 F.2d 1138 (9th Cir. 1974); *United States* v. *Kabinto*, 456 F.2d 1087 (9th Cir.), cert. denied, 409 U.S. 842 (1972); *Hamilton* v. *Nakai*, 453 F.2d 152 (9th Cir.), cert. denied, 406 U.S. 945 (1972); *Sidney* v. *Navajo Tribe*, Nos. 76–934, 935, 936 PHX EHC (D. Ariz., filed Dec. 15, 1976); *Healing* v. *Jones (II)*, 210 F. Supp. 125 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963); *Healing* v. *Jones (I)*, 174 F. Supp. 211 (D. Ariz. 1959), aff'd, 373 U.S. 758 (1963)."[7]

THE NAVAJO AND HOPI INDIAN LAND SETTLEMENT ACT OF 1974

As a result of the growing litigation between the Hopi Tribe and the Navajo Nation concerning the 1882 Reservation, the Congress enacted the Navajo and Hopi Indian Land Settlement Act of 1974,[8] to promote a comprehensive settlement of the land dispute between the Navajo and Hopi Tribes regarding the 1882 Reservation and the 1934 Reservation. The 1974 Act provided for the establishment of Navajo and Hopi negotiating teams under the auspices of a Federal mediator to negotiate a settlement to the 1882 reservation land dispute. The timeframe for the mediation process was six months from the date of enactment. In the event that the mediation was unsuccessful, the Act authorized the court to partition the 1882 Reservation pursuant to the mediator's recommendations.

In addition, the 1974 Act authorized both the Navajo Nation and the Hopi Tribe to file suit in the Federal District Court for the District of Arizona to quiet title in the 1934 Reservation. Both tribes were authorized to file suit against each other and against the United States for any damages arising out of the land dispute. It also provided for the establishment of a three member Relocation Commission within the Department of the Interior to oversee the relocation of members of the Navajo Nation who were residing on lands partitioned to the Hopi Tribe and members of the Hopi Tribe who were residing on lands partitioned to the Navajo Nation. Finally, the Act authorized the purchase of 250,000 acres of Bureau of Land Management lands by the Navajo Nation for the resettlement of relocated Navajo families.

The relocation program established in the 1974 Act has proven to be an extremely difficult and contentious process. The 1974 Act

[7] Statement of the Honorable Lois J. Schiffer, Assistant Attorney General, U.S. Department of Justice, March 28, 1996 Hearing of the Senate Committee on Indian Affairs, page 6.
[8] P.L. 93–531, 25 U.S.C. §§ 640d.

was amended in 1980 and again in 1987 to try to resolve problems which arose in its implementation. Last year, the Congress enacted Public Law 104–15, which provided for a brief two-year extension (through fiscal year 1977) of authority to the Office of Navajo and Hopi Indian Relocation. The original estimate of the cost of the relocation program was roughly $40 million to provide relocation benefits for 6,000 Navajos estimated to be eligible for relocation. By 1977, when the tribal negotiations under the 1974 Act had failed, the mediator now estimated that the resulting partition of the 1882 Reservation would result in the relocation of about 3,495 Navajos. Since the program was established in 1974, the United States has spent more than $330 million to relocate a total of more than 11,000 Navajo and Hopi tribal members.

Status of relocation

As of July of 1996, 4,432 Navajo an Hopi families have applied for relocation benefits. Of those, 3,373 have been certified eligible and 2,730 have received relocation benefits. Approximately 643 eligible families continue to wait for relocation benefits. Many of those Navajo families waiting for benefits have long ago complied with the law and voluntarily left the homes they had on lands partitioned to the Hopi Tribe. The pace of the relocation housing program has been such that on average, fewer than 200 eligible families are served in any fiscal year. For example, thus far in fiscal year 1996, 98 families have received their relocation benefits. In addition to those eligible families awaiting relocation benefits, there are estimated to be between 50 and 100 Navajo families residing on lands partitioned to the Hopi Tribe who have never applied for relocation benefits under the law.

Recent settlement and accommodation agreements

Since May of 1991, the United States Court of Appeals for the Ninth Circuit has ordered ongoing, court-sponsored mediation efforts between the Hopi Tribe, the Navajo Nation, the Navajo family representatives, and others in an effort to resolve certain legal claims pending in the 9th Circuit. On December 14, 1995, a Settlement Agreement was signed by the Department of Justice and the Hopi Tribe which resolved several lawsuits and pending claims between the United States of America and the Hopi Tribe. A few weeks later, as part of the court-sponsored mediation efforts, an Accommodation Agreement was developed with the agreement of the Hopi Tribe, the Navajo Nation, the Navajo Family Mediation Team, and the United States.

December 14, 1995 Settlement Agreement

The Settlement Agreement finally settles four claims by the Hopi Tribe against the United States. The first claim resolved by the agreement ("the rental case") involves all Hopi damage claims against the United States for an alleged failure of the Federal government to make timely rental value determinations required under 25 U.S.C. 640d–15(a). This case *Hopi Tribe* v. *Navajo Tribe, et al.,* has been pending in the U.S. District Court in Phoenix, Arizona. The second claim resolved by the agreement ("the damage case") involves all Hopi damage claims against the United States

for an alleged Federal liability, joint and several with the Navajo Nation, for post-partition damage to the Hopi partitioned lands caused by pre-partition overgrazing. This case, *Secakuku* v. *Hale, et al.,* has been pending in the United States Court of Appeals for the Ninth Circuit. The third claim resolved by the agreement ("the claims cases") involves all Hopi damage claims against the United States for an alleged failure on the part of the Federal government to collect livestock trespass penalties, forage consumed fees, and property damage fees on behalf of the Hopi Tribe. This case, *Hopi Tribe* v. *United States,* has been pending in the United States Court of Federal Claims. The fourth claim resolved by the agreement ("the quiet possession claim") involves all Hopi damage and injunctive claims against the United States for an alleged failure of the Federal government to give the Hope Tribe quiet possession of Hope lands that are used and occupied by Navajo families. The Hopi Tribe has withheld from filing any of these claims during the course the 5-year, court-sponsored mediation efforts.

In exchange for the Hopi Tribe compromising its rental, damage and claims cases against the United States, for foregoing its quite possession claim, and for providing an accommodation agreement for the Navajo families currently residing on Hopi Partitioned Lands, the United States agreed to pay the Hopi Tribe $50.2 million under a structured settlement schedule which is keyed to the performance of certain activities under the Settlement Agreement.

The Settlement Agreement provides that funds shall be paid out in the following manner: (1) The Hopi Tribe will receive $2.4 million once the Tribe files a motion to dismiss its appeal in the Ninth Circuit in *Secakuku* v. *Hale;* (2) the Hopi Tribe will receive $22.7 million once legislation extending the Tribe's leasing authority to 75 years has been enacted and once the Tribe's claims in the Court of Claims for damages due to any Federal action which occurred before 1982 are dismissed; (3) the Hopi Tribe will receive $10 million once 65% of the Navajo families residing on the Hopi reservation have signed the Accommodation Agreement or request to be relocated and once the Hopi Tribe's claims in the Court of Claims for livestock trespass damages against the U.S. from 1983 through 1988 are dismissed; (4) the Hopi Tribe will receive $15.1 million once 75% of the Navajo families residing on the Hopi reservation have signed the Accommodation Agreements or request to be relocated and once the Hopi Tribe's claims in the Court of Federal Claims for livestock trespass damages against the U.S. from 1989 through and including 1996 are dismissed. The Agreement between the U.S. and the Hopi Tribe expressly provides that none of the releases provided in the agreement are intended to release the Navajo Nation from any liability it might have to the Hopi Tribe.

The Hopi Tribe may, in its discretion, use these settlement funds to purchase land in northern Arizona that is used substantially for ranching, agriculture, or other similar rural uses, and to the extent feasible, is in contiguous parcels. Should the Hopi Tribe choose to acquire such land, the agreement contemplates that the Secretary of the Interior will agree to accept into trust status under existing legal authority no more than 500,000 acres of such land. Even if the maximum acreage is brought into trust, the Committee has received estimates from the State of Arizona that the annual impact

on local property tax collections would be de minimis. Estimates of the property taxes which will be lost by all affected county governments are approximately $14,200 annually if the maximum of 500,000 acres of land are taken into trust pursuant to the agreement. The settlement funds are to be paid, as are most court-related settlements entered into by the United States, from the Judgment Fund administered by the U.S. Department of Justice and the General Accounting Office to satisfy judgments against the United States which are approved by the courts.

1996 Accommodation Agreement

The terms and conditions of an Accommodation Agreement for individual Navajo families have been finalized by representatives of the Hopi Tribe, the Navajo Nation, the Navajo Families Mediation Team, and the United States. These parties acknowledge that the Accommodation Agreement was reached in large part because of the efforts of the court-sponsored mediator, David Lombardi, who helped implement the directive of the 9th Circuit Court of Appeals that the parties reach by negotiation and voluntary agreement a final settlement of issues raised by the presence of Navajo families on the Hopi Partitioned Lands. The Accommodation Agreement is an integral part of the obligations incurred by the United States and the Hopi Tribe in the underlying Settlement Agreement.

During the calendar year 1996, the Accommodation Agreement obligates the Hopi Tribe to offer a 75-year leasehold interest to Navajo families currently residing in their existing homesites on Hopi Partitioned Lands. The agreement extends certain guarantees to Navajo families entering into these long-term leases, clarifying procedures by which certain grazing, firewood, structural, and religious exercise activities will be allowed.

The Hopi Tribe, like most other Indian tribes, has general authority under 25 U.S.C. 415(a) to lease land for a term of not to exceed 25 years. The Federal statute grants specific exceptions to this 25 year limit to more than three dozen tribes, including the Navajo Nation but not the Hopi Tribe. The exceptions permit these Tribes to lease their land for terms of up to 99 years for public, religious, educational, recreational, residential, or business purposes.

S. 1973, THE NAVAJO-HOPI LAND DISPUTE SETTLEMENT ACT OF 1996

On July 18, 1996, Chairman McCain introduced S. 1973, to ratify the Settlement and Accommodation Agreements between the Hopi Tribe, the U.S. Department of Justice, and the Navajo families residing on the Hopi Partitioned Lands. Consistent with section 7(a) of the Settlement Agreement, the bill as introduced authorizes the Hopi Tribe to select certain agricultural and range lands in northern Arizona to be brought into trust by the Secretary of the Interior. Under the terms of the Settlement Agreement, the Hopi Tribe must pay fair market value to willing sellers for such lands. Prior to placing any land into trust for the benefit of the Hopi Tribe, the Secretary is required to ensure that at least 75 percent of the eligible Navajo families have entered into accommodation leases with the Hopi Tribe or have elected to receive their relocation benefits. In addition, the bill requires the Secretary to ensure that the Hopi Tribe has consulted with the State of Arizona concerning the im-

pacts on the State and local governments of placing such land into trust prior to placing any land into trust for the Hopi Tribe pursuant to the Settlement Agreement.

Consistent with section 7(b) of the Settlement Agreement, the bill authorizes the Secretary of the Interior to acquire through condemnation interspersed State lands and place such lands into trust for the benefit of the Hopi Tribe. The bill requires several conditions to be met prior to placing such State lands in trust: (1) the acquisition must not exceed the 500,000 acre limitation in the Settlement Agreement, (2) the State of Arizona must concur with the selection of lands, and (3) the Hopi Tribe must pay fair market value of the State lands. The bill prohibits the Secretary from acquiring private lands through condemnation. Consistent with the terms of the Settlement Agreement, the bill also recognizes the right of the Hopi Tribe to pursue an action for quiet possession, after February 1, 2000, for Hopi Partitioned Lands occupied by Navajos who have not entered into an accommodation lease if the Federal government fails to discharge its obligations under section 9(c) or 9(d) of the Settlement Agreement.

The bill also authorizes payments in lieu of taxes for lands purchased by the Hopi Tribe which are taken into trust by the Secretary of the Interior pursuant to the Settlement Agreement. In addition, the bill provides the Hopi Tribe the authority to enter into 75-year lease agreements with Navajo families residing on the Hopi Partitioned Lands. Finally, the bill reauthorizes the Navajo-Hopi Relocation Housing Program through the year 2000 to carry out its responsibilities under the Settlement Agreement.

SUBSTITUTE AMENDMENT

The Committee Substitute proposes three major changes to S. 1973 as introduced. First, the Committee Amendment modifies the requirement that at least 75 percent of the eligible Navajo families residing on the HPL agree to receive relocation benefits or sign the accommodation agreement before any land can be taken into trust for the Hopi Tribe under the Act by increasing the requirement to 85 percent of the eligible families. The Committee recognizes that this requirement is higher than the percentage agreed to by the parties to the Settlement Agreement. The Committee adopted a higher percentage in the hope of achieving a greater degree of finality by this legislation. The Committee Amendment provides that the Secretary may not to place lands in trust for the Hopi Tribe, pursuant to the Settlement Agreement, until no more than 15 percent of the eligible Navajo heads of households (as determined by the Settlement Agreement) are remaining on the HPL and subject to forced eviction. To the extent that 15 percent or fewer of the eligible Navajo heads of household are on the HPL in trespass for failure to enter into an Accommodation Agreement, the conditions set out in Section 5 are met.

The second major change amends section 5 by adding a new paragraph (3) that would prohibit the Secretary of the Interior from placing land, located within or contiguous to a 5-mile radius of an incorporated town, into trust for the benefit of the Hopi Tribe without specific statutory authority. The Committee adopted this language in response to concerns raised by the State of Arizona

and certain communities in northern Arizona regarding the impact of placing lands into trust within close proximity to incorporated towns. In responding to concerns raised by these potentially impacted communities, the Committee Amendment ensures that lands acquired by the Hopi Tribe and taken into trust by the Secretary are rural in character and are lands that have been used substantially for ranching or agriculture. In addition, the Committee Admendment requires the Secretary to ensure that the Hopi Tribe has consulted with the State of Arizona regarding the lands to be placed in trust and the potential impacts on the State and local tax rolls. Such consultation shall be conducted consistent with the provisions of 25 C.F.R. part 151. The Committee recognizes the potential for a significant amount of land in northern Arizona to be placed in trust for the Hopi Tribe, up to 500,000 acres, and therefore has included language in the Amendment that will ensure that the potential impacts will be addressed through consultations with the State and local communities and through provisions limiting the selection of lands to rural and agricultural lands. Under the terms of the Settlement Agreement, the Hopi Tribe may use the settlement funds for many other purposes such as school construction, infrastructure development, or governmental programs rather than the acquisition of agriculture lands. However, if the Hopi Tribe so elects, they may use the settlement funds to acquire agricultural lands in Northern Arizona, subject to the conditions of the Act and the Settlement Agreement.

The Settlement Agreement and section 6 of the Committee Amendment authorize the Secretary of the Interior to acquire through condemnation interspersed State lands that may be located with the exterior boundaries of private lands acquired by the Hopi Tribe. In order to acquire such lands the Hopi Tribe must seek the concurrence of the State of Arizona and pay fair market value to the State for such lands. The Secretary of the Interior shall take such State lands into trust for the Hopi Tribe. The Committee Amendment prohibits the Secretary from acquiring any private lands through condemnation. In carrying out the provisions of section 5 and 6 of the Committee Amendment, it is clear that the Hopi Tribe will have to work cooperatively, in close consultation with State of Arizona, regarding the acquisition of lands within northern Arizona and the placement of such lands into trust. The Committee recognizes that in that part of the State the lands are highly checker-boarded with private and State lands interspersed throughout and has therefore authorized the Secretary to work with the Hopi Tribe and the State to identify lands to be placed into trust for the Hopi Tribe. Because these acquisitions may involve a substantial amount of State lands, there could be a significant impact on the State of Arizona. For that reason, the Committee Amendment deletes section 8 of the bill as introduced and inserts a new provision that would authorize to be appropriated to the Department of Interior $250,000 for fiscal year 1998 to be paid to the State of Arizona after the initial acquisition of interspersed State lands under section 6 of the bill. The Committee based this figure on a base amount that could capitalize a fund to compensate the State for the loss of interspersed State lands and any potential revenues the State may derive from such lands.

Finally, the Committee Amendment reauthorizes the Navajo-Hopi Relocation Housing Program through the year 2000. This reauthorization will allow the Navajo-Hopi Relocation Housing Program to meet its obligations under the Settlement Agreement in order to provide relocation benefits to Navajo families who elect to relocate from the HPL rather than sign the Accommodation Agreement. The Settlement Agreement also gives Navajo families a three year period to reconsider their decision to sign the Accommodation Agreement and still be eligible to elect to receive relocation benefits. It is the Committee's intent to develop legislation to phase out the Office of Navajo-Hopi Relocation and bring the relocation process to an orderly and certain conclusion.

DOMENICI AMENDMENT

The Committee adopted an amendment offered by Senator Domenici which would amend section 9 of the Committee Substitute. This amendment clarifies that the 75 year lease authority provided to the Hopi Tribe under the legislation includes the authority to renew these lease agreements for an additional term of 75 years. The Committee has long-viewed the express limitations on Indian tribal governments entering into lease agreements under 25 U.S.C. § 415 as antiquated and paternalistic. This limitation serves as an unnecessary barrier to tribal self-determination and true self-governance. The existence of express renewal authority in subsection 415(c) should not be read to imply that Indian tribal governments do not have renewal authority under subsection 415(a). The Committee has long-recognized the authority of Indian tribal governments to renew lease agreements under the authority of subsection 415(a). The purpose of the language in the Committee Amendment is simply to make clear to the parties that the Hopi Tribe possesses the authority to enter into subsequent 75 year lease agreements.

OTHER CONSIDERATIONS

There has been some question raised regarding the ratification provisions under section 4 of the bill and whether these provisions extend to the Accommodation Agreement. The Committee intends that this section effects not only an express ratification of the terms and conditions of the Settlement Agreement but also includes and express ratification of the terms and conditions of the Accommodation Agreement between the Hopi Tribe, the Navajo Families, the Department of Justice and the Navajo Nation. It is the Committee's view that because the Settlement Agreement incorporates the terms of the Accommodation Agreement both agreements are in fact ratified by the legislation. Further, the approval, ratification, and confirmation of the Settlement Agreement is not intended in any way to affect the state of existing law concerning offset of claims between the Navajo Nation and the Hopi Tribe or other issues regarding the effect of the Settlement Agreement on lawsuits between the Navajo Nation and the Hopi Tribe. The Committee intends that nothing in this Act shall be interpreted or deemed to preclude, limit or endorse in any manner, an action by the Navajo Nation that seeks in court an offset from judgments for payments received by the Hopi Tribe under the Settlement Agree-

ment. Further, by ratifying the Settlement Agreement, the Committee intends to take no position on issues relating to cases pending in the Federal courts between the Navajo Nation, the Hopi Tribe, or the United States. The Committee believes that such issues are best resolved in the Courts and are not part of this legislation.

The Committee recognizes that an area of particular concern to the Navajo families residing on the HPL is the protection of certain religious sites within the HPL and the ability to continue their traditional religious practices. The Accommodation Agreement, which is ratified by this legislation, represents a good faith agreement between the Hopi Tribe and representatives chosen by the Navajo families residing on the HPL to provide for an accommodation of the Navajo families residing on the HPL. It reflects the respect that members of the Hopi Tribe and the Navajo Nation have for each other and the acknowledgment by each party of the sincerity of their respective traditional beliefs, the importance of those beliefs, and the desire of both parties to preserve their respective cultures and ways of life in the future. The United States specifically acknowledges the sincerity and importance of the religious beliefs of members of both tribes and the significance of the Navajo and Hopi religions. In order to provide protection for the traditional religious practices of the Navajo families, the Accommodation agreement specifically provides that a Navajo individual who has signed a 75 year lease agreement with the Hopi Tribe shall be entitled to continue their traditional land uses and their religious practices including the collection of herbs for personal use or traditional use, access to religious shrines, the construction of temporary structures, and the gathering of dead wood for fire. These traditional uses shall be conducted consistent with the Hopi Tribe's ordinances and permit systems which apply to Hopi Tribal members and to the Navajo families residing on the HPL and are designed to protect the land and its resources.

The Committee remains concerned that the existing fences on and around Star Mountain on the HPL interfere with the ability of Navajo HPL residents to worship at certain sacred sites and shrines. There are several fence lines that run directly through certain sacred areas which prevent Navajo individuals from worshiping at such sites and have resulted in the desecration of one site. The Committee is aware of cooperative efforts between the Hopi Tribe, the Navajo Nation, and the Navajo residents of the HPL to identify such sacred sites and to realign the range management fences so as not to disturb or desecrate such sacred sites. The Committee urges the Hopi Tribe and the Bureau of Indian Affairs to directly consult with the affected Navajo residents to develop a plan to realign the fences and redesign the range units in question so as to protect the sacred sites around Star Mountain and not to interfere with Navajo religious practices. The Committee recognizes that such realignment is an important indication of good faith which is key to encouraging Navajo families on the HPL to sign the Accommodation Agreement.

Another issue of great importance to Navajo families residing on the HPL is the right to bury deceased family members on or near the family homesite within the HPL. The current Accommodation

Agreement does not afford Navajos signing the lease agreement the right to bury deceased relatives on the HPL. The Committee recognizes that this issue gives rise to great passion and it is critical to the continued viability of this settlement that the parties reach some resolution to this issue. The Committee urges the parties to continue their negotiations to develop an appropriate resolution to this issue. The Committee recognizes that the establishment of family or individual burial plots on the HPL will continue the traditional practices of the residents and is a key to encouraging Navajo families to sign the Accommodation Agreement.

The Committee recognizes that there remain many issues which will require ongoing negotiation and cooperation between the Hopi Tribe and the Navajo residents of the HPL. The Accommodation Agreement presents a framework for ongoing cooperation and consultation between the Hopi Tribe and the Navajo HPL residents, wherein the Hopi Tribe has agreed to work with the Navajo families to identify and protect existing sacred sites, burial sites, and other similar places to either the Navajo or Hopi Tribes. The Agreement also provides that in implementing the Hopi Tribe's Comprehensive Land Use Plan, the Hopi Tribe will consider any maps and other written input submitted by the Navajo families. Under the Agreement, both the Hopi Tribe and the United States agree to provide notice of proposed government fencing and construction projects on the HPL and to comply with Section 106 of the National Historic Preservation Act. The notice which the Hopi Tribe and the United States will provide to the Navajo families, through their legal representative, will continue to be the 30 day written notice that has been previously provided pursuant to the decision in *Attakai* v. *United States,* 746 F. Supp. 1395 (D. Ariz. 1990).

In the Accommodation Agreement the parties have also agreed to procedures under which disputes between the Navajo residents of the HPL and the Hopi Tribe can be resolved. The Agreement provides that the Hopi Tribe agrees to meet with the affected individuals to discuss the concerns that gave rise to the dispute prior to the commencement of any formal proceeding. This dispute resolution process includes, at a minimum, providing notice of the dispute and an opportunity to be heard prior to the initiation of any formal proceeding. Finally, the Agreement recognizes that both the Navajo residents and the Hopi Tribe are committed to improving relations on the HPL, improving communications between the parties, and developing a better understanding of their mutual concerns and interests. Further, the parties agree to continue their efforts to improve communications and understandings through the development of an informal alternative dispute resolution process during the one year period that eligible Navajo residents will have to sign the Accommodation Agreement.

LEGISLATIVE HISTORY

S. 1973 was introduced by Senator McCain on July 18, 1996, and was referred to the Committee on Indian Affairs. There was a committee hearing on the Settlement Agreement on March 28, 1996.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business session on July 30, 1996, the Committee on Indian Affairs ordered the bill reported with amendments, with the recommendation that the Senate pass the bill as reported.

SECTION-BY-SECTION ANALYSIS

Section 1—Short title

This section cites the short title of the Act as the "Navajo-Hopi Land Dispute Settlement Act of 1996".

Section 2—Findings

This section sets out the findings of the Congress.

Section 3—Definitions

This section sets out the definitions used in the Act.

Section 4—Ratification of the Settlement Agreement

This section provides that the United States approves, ratifies and confirms the Settlement Agreement between the Hopi Tribe and the United States executed on December 14, 1995.

Section 5—Conditions for lands taken into trust

This section provides that, in accordance with section 7(a) of the Settlement Agreement lands which may be taken into trust by the Secretary of the Interior for the Hopi Tribe shall be located in northern Arizona. It provides that lands selected by the Hopi Tribe shall be in contiguous parcels if feasible and shall be lands that were substantially used for ranching and agriculture. It further provides that the Secretary shall ensure that at least 85 percent of the heads of households, as determined by the Settlement Agreement, have entered into an accommodation agreement with the Hopi Tribe or have chosen to receive their relocation benefits, prior to placing land into trust for the Hopi Tribe pursuant to this settlement. The Secretary must also ensure that the Hopi Tribe has consulted with the State of Arizona regarding the lands to be placed in trust consistent with 25 C.F.R. part 151. Finally, the section prohibits the Secretary of the Interior from placing lands, any portion of which is located within or contiguous to a 5 mile radius of an incorporated town, into trust for the benefit of the Hopi Tribe without specific statutory authority.

Section 6—Acquisition by condemnation of certain interspersed lands

This section authorizes the Secretary of the Interior, at the request of the Hopi Tribe, to take such action as is necessary to acquire, through condemnation action, lands owned by the State of Arizona that are located within the exterior boundaries of lands owned by the Hopi Tribe. It also provides that the Secretary shall pay the State of Arizona, using funds provided by the Hopi Tribe, fair market value for such lands. It further provides that the Secretary may only acquire such lands if the State of Arizona concurs with the acquisition, the tribe pays for the lands acquired through the condemnation, and the Hopi Tribe has not exceeded the

500,000 acre limit in the settlement agreement. The section provides that the Secretary shall take lands acquired under the section into trust for the benefit of the Hopi Tribe in accordance with the Settlement Agreement.

Section 7—Action to quiet possession

This section provides that if the United States fails to discharge its obligations under section 9 of the settlement agreement, the Hopi Tribe is authorized to bring an action of quiet possession against the United States relating to the use of the Hopi Partitioned Land by a Navajo family after February 1, 2000 that has not entered into an accommodation agreement with the Hopi Tribe.

Section 8—Payment to the State of Arizona

This section authorizes to be appropriated $250,000 for fiscal year 1998 to be paid to the State of Arizona. The Secretary of the Interior shall make payment after the acquisition of interspersed state lands authorized under section 6 of the bill.

Section 9—75 year leasing authority

This section amends 25 U.S.C. 415 to provide authority to the Hopi Tribe to enter into 75 years leases with Navajo Indians residing on the Hopi Partitioned Lands, which can be extended at the conclusion of the term of the lease.

Section 10—Reauthorization of the Navajo-Hopi Relocation Housing Program

This section extends the authorization of appropriations for the Navajo-Hopi Relocation Housing Program through the year 2000.

COST AND BUDGETARY CONSIDERATIONS

The cost estimate for S. 1973, as calculated by the Congressional Budget Office is set forth below:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 6, 1996.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1973, the Navajo-Hopi Land Dispute Settlement Act of 1996.

Enacting S. 1973 would affect direct spending. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1973.

2. Bill title: Navajo-Hopi Land Dispute Settlement Act of 1996.

3. Bill status: As ordered reported by the Senate Committee on Indian Affairs on July 30, 1996.

4. Bill purpose: S. 1973 would ratify the Settlement Agreement executed on December 14, 1995, between the Navajo and Hopi Tribes of Arizona and would implement that agreement by providing the Hopis with the authority to lease certain lands to Navajo Indians for a term of 75 years. The Settlement Agreement provides for payments totaling $50.2 million to the Hopi Tribe to settle claims against the United States, and provides for either the relocation of certain Navajos or accommodation agreements with eligible Navajo families. The first payment of $2.4 million has already been made. Subsequent payments under the settlement are contingent upon the Hopi Tribe obtaining authority from the Congress to lease certain lands for 75 years, as provided in this bill.

S. 1973 would identify conditions for the transfer of lands into trust for the Hopi Tribe by the Secretary of the Interior. It would authorize appropriations for a payment of $250,000 to the State of Arizona. Finally, the bill would extend the authorization of appropriations for the Navajo-Hopi Relocation Housing Program.

5. Estimated cost to the Federal Government: CBO estimates that S. 1973 would increase discretionary spending by about $90 million over the 1998–2001 period, assuming the appropriation of amounts specified in the bill for the Navajo-Hopi Relocation Housing Program and the authorized payment to the State of Arizona.

In addition, we estimate that the bill would increase direct spending in fiscal year 1997 by granting 75-year leasing authority to the Hopi Tribe, thereby triggering payments to the tribe totaling $48 million. The $48 million in direct spending would most likely be offset by savings of future payments that might otherwise be made in the absence of S. 1973, but we cannot estimate the amount or timing of such payments.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000	2001	2002
SPENDING SUBJECT TO APPROPRIATION							
Spending under current law:							
Authorization level [1]	12	30	.....	.....	.....	.....	.....
Estimated outlays	15	24	10	.....	.....	.....	.....
Proposed changes:							
Authorization level	.....	.....	30	30	30	.....	.....
Estimated outlays	.....	.....	20	30	30	10	.....
Spending under S. 1973:							
Authorization level [1]	12	30	30	30	30	.....	.....
Estimated outlays	15	24	30	30	30	10	.....
CHANGES IN DIRECT SPENDING							
Estimated budget authority	.....	(2)	.....	.....	.....	.....	.....
Estimated outlays	.....	(2)	.....	.....	.....	.....	.....

[1] The 1996 level is the amount appropriated for that year.

[2] The legislation would trigger $48 million in direct spending in fiscal year 1997, but these outlays would probably be offset by savings in subsequent years from savings of payments that would otherwise be made in the absence of S. 1973 and the associated settlement. We cannot predict the amount or timing of the payments that would be required if S. 1973 is not enacted.

The costs of this bill fall within budget function 800.

6. Basis of estimate: For the purpose of this estimate, CBO assumes that the legislation will be enacted by the beginning of fiscal year 1997.

Spending Subject to Appropriation.—This estimate assumes that the amounts authorized for the Navajo-Hopi Housing Relocation Program will be appropriated by the beginning of each fiscal year. Estimated outlays are based on the program's historical spending rates.

Upon ratification of the Settlement Agreement, the Office of Navajo-Hopi Relocation expects housing relocation costs to be lower than the authorized level as some Navajos would choose to stay on the Hopi land under an accommodation agreement and thus forgo any relocation benefits. However, CBO cannot estimate the amount of these potential savings because of uncertainty as to how many Navajo families will remain on the Hopi land under an accommodation agreement.

Direct Spending.—Under the Settlement Agreement, payments totaling $48 million would occur only after the Congress grants 75-year leasing authority to the Hopi Tribe. The first payment of $23 million would be made when the leasing authority is obtained. The second and third payments totaling $25 million would occur when certain percentages of Navajos (as specified in the Settlement Agreement) have either relocated or entered into an accommodation agreement with the Hopis that includes a 75-year lease term.

It is possible that the Settlement Agreement would allow the United States to avoid potential future costs resulting from claims brought against the United States by the Hopi and Navajo Tribes. Enacting the legislation would settle claims pending against the United States in the Federal Court of Claims related to the matters in the Settlement Agreement. (The potential liability of the United States under pending claims totals about $280 million.) Therefore, the estimated $48 million in direct spending would probably be offset by savings that would result from having these claims dismissed. Though CBO cannot predict the outcome of court proceedings or future negotiations that might occur if the claims are not dropped, any further payments in the absence of enacting S. 1973 are likely to occur after fiscal year 1997.

7. Pay-as-you-go-considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. CBO estimates that enacting S. 1973 would affect direct spending as shown in the table below.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Change in outlays	0	(1)	0
Change in receipts		Not applicable	

[1]The legislation would trigger $48 million in direct spending in fiscal year 1997, but these outlays would probably be offset by savings in subsequent years from savings of payments that would otherwise be made in the absence of S. 1973 and the associated settlement. We cannot predict the amount or timing of the payments the would be required if S. 1973 is not enacted.

8. Estimated impact on State, local, and tribal governments: S. 1973 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) and would impose no costs on state, local, or tribal governments. Any costs resulting from the Settlement Agreement approved and implemented by this bill would be incurred voluntarily by the parties to that agreement.

This bill would authorize the Department of the Interior to acquire Arizona state lands through condemnation, but only if the tribe pays for the acquired land and the state concurs that the acquisition is consistent with its interests. Further, the bill would authorize appropriations of $250,000 for fiscal year 1998 for a payment to Arizona following such an acquisition.

9. Estimated impact on the private sector: The bill would impose no new private-sector mandates as defined in Public Law 104–4, but it could have some effects on individual Navajo families. If the United States fails to fulfill its obligations in sections 9(c) and 9(d) of the Settlement Agreement, the Hopi Tribe may bring an action to remove a Navajo family that is eligible for an accommodation, but fails to enter into an accommodation agreement and remains on Hopi Partitioned Lands after February 1, 2000.

10. Previous CBO estimate: None.

11. Estimate prepared by: Federal cost estimate: Lisa Daley; impact on State, local, and tribal governments: Majorie Miller; impact on the private sector: Elliot Schwartz.

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee believes that S. 1973 will create minimal regulatory or paperwork impacts.

EXECUTIVE COMMUNICATIONS

The Committee received written testimony from the Honorable Lois J. Schiffer, Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice for the hearing held on March 28, 1996. The written testimony from the Department of Justice is as follows:

TESTIMONY OF LOIS J. SCHIFFER

Mr. Chairman and Members of the Committee, my name is Lois Schiffer. I am the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice. I am pleased to appear before you on behalf of the United States Government to testify about the recently concluded Settlement between the United States and the Hopi Tribe, and the Accommodation offer by the Hopi Tribe to the Navajo families residing on lands partitioned to the Hopi. These historic Agreements pave-the-way for a resolution of the longstanding dispute over use of the 1882 Reservation lands.

The terms of the Accommodation Agreement really are the heart of the great progress achieved. I commend the tremendous achievement of the central parties to the Accommodation Agreement negotiations for their patience, tenacity and creativity in reaching a resolution. I thank the Committee for holding this hearing to receive testi-

mony about these historic Agreements and to consider a legislative provision required to implement this Settlement, and especially for holding it at this early time. The enactment this year, and most preferably before this summer, of legislation granting the Hopi Tribe 75-year leasing authority is necessary to the success of this Settlement. We will try to assist in whatever way possible to provide information that may be helpful.

I especially would like to thank the Chairman for his sustained efforts to resolve this dispute over many years. Without his long and steadfast leadership regarding this dispute, the recent achievements would not have been possible. I also wish to thank Senator Kyl for his devotion of attention to this matter. The Chairman and his staff and Senator Kyl and his staff have provided their valuable insights and assistance throughout our efforts to achieve a negotiated resolution.

A settlement of this magnitude has been possible only because of the work of many people. I take this opportunity to thank just a few others of these. I wish to thank Hopi Tribal Chairman Ferrell Secakuku and Navajo Nation President Albert Hale for their commitment to a resolution. I also wish to thank the members of the Hopi Tribe's and Navajo Nation's negotiating teams, the Council members of both Tribes and the attorneys representing each of the Tribes in the negotiations. It has been a long and difficult road, begun during the last administration of each of the three governmental entities (Federal, Hopi and Navajo) and continued, unhaltingly, throughout the current administrations. I also wish to thank Roger Attakai, President of the Dineh Dahyikah Ada Yaltii Committee (Voice of Dineh Families), the other Navajo residents of the Hopi Partitioned Lands who have dedicated so many hours to negotiation of an issue so dear and so difficult to discuss, and to their lawyer Lee Brooke Phillips.

I extend further thanks to Governor Symington and his staff, to representatives from the County Board of Supervisors for Coconino County, Navajo County and Apache County, to officials from the City of Flagstaff and to members of the citizen groups—all of whom have made important contributions to this Settlement.

I also wish to thank the two mediators who have worked with the parties, the Honorable United States Magistrate Judge Harry R. McCue (retired) and David Lombardi, Chief of the Settlement Program of the United States Court of Appeals for the Ninth Circuit.

The Environmental and Natural Resources Division of the Justice Department is responsible for litigation involving the United States' responsibility for lands held in trust for Indian Tribes. For that reason the Environment Division has taken the lead role for the Justice Department in these negotiations. Attorney General Janet Reno has taken a particular interest in the issue and has offered her unflagging support and guidance. In addition, we were fortu-

nate to have the assistance of other high level officials in the Department, including Deputy Attorney General Jamie Gorelick, Associate Attorney General John Schmidt and Assistant Attorney General for Policy Development Eleanor Acheson. I also wish to commend Deputy Assistant Attorney General Jim Simon, who has overseen this matter within the Environment Division, Peter Steenland, who initiated these efforts and carried the weight for the Division from 1991–1993, and Katherine Hazard, who is currently the lead federal negotiator. Many others in the Department have made important contributions over the long course of the litigation, including Environment Division attorneys Ellen Durkee and Steve Carroll.

The Department of the Interior, as the agency with broad responsibility for fulfilling the United States' trust responsibility, has served with the Justice Department, throughout the mediation, as part of the federal negotiating team. I wish to thank those at Interior, and those in the Office of Navajo Hopi Indian Relocation, who have provided important historical perspective on the dispute, vital technical information, and valuable insights—without which fruitful negotiations would have been even more difficult.

The principal credit for making peace, as well as the major responsibility for carrying out the Settlement, lies with the Hopi Tribe, with the Navajo families who now reside on the Hopi Partitioned Lands, and with the Navajo Nation, which has assisted the families throughout the mediation. They also are the ones who will benefit most from this advancement in their ability to live together in harmony.

My testimony is directed primarily to the terms of the Settlement Agreement between the Hopi Tribe and the United States, not because this component is more significant than others, but because it is the facet of the Settlement most directly involving the federal agencies.

A. OVERVIEW

For more than a century, members of the Hopi Tribe and the Navajo Nation have disputed the use of certain lands in northern Arizona. At root, the dispute involves competing historical, religious and cultural ties to the same lands. In some instances, the acrimony has led to threats and conflict, leaving members of both tribes, and representatives of the Bureau of Indian Affairs charged with enforcing grazing limits on the Hopi lands, in fear of further hostilities. Several thousand Navajo who formerly lived on lands partitioned to the Hopi Tribe in 1979 moved, as required by the 1974 Settlement Act. Several hundred members of the Navajo Nation, however, have continued to reside at their homesites on the Hopi Reservation, strenuously opposing relocation.

Absent of the recently achieved consensual resolution, the Hopi Tribe is deprived of jurisdiction over and use of

much of its already small, ancestral Reservation lands; and approximately 100 to 200 Navajo families, who reside on those lands, live under the threat of forced removal from their homesites. For approximately twenty-five years, these Navajo residents have been without authorization to repair their homes, many of which are in desperate need of maintenance and weatherization. In seeking to litigate a resolution and to give effect to the provisions of the 1974 Settlement Act, the resources of both tribes have been drained—diverting scarce funds from urgently needed educational, health and economic development programs.[1]

The centerpiece of the negotiations has been an effort to resolve the on-the-ground situation for the Navajo families and the Hopi Tribe regarding the use and occupation of the Hopi Partitioned Lands, to address the Hopi Tribe's sovereignty concerns and to accommodate the Navajo families' religious claims concerning their need to stay. Now, after four and a half years of mediation, the parties have reached agreement on the terms of a settlement that would restore jurisdiction to the Hopi Tribe and allow the approximately 100 to 200 Navajo families to remain on Hopi land. This historic achievement takes form in two Agreements: one between the Hopi Tribe and the Navajo residents of the Hopi Reservation; the other between the Hopi Tribe and the United States.

Under the first Agreement, called an Accommodation Agreement, Navajo residents of the Hopi Partitioned Lands may continue to live at their homesites on the Hopi Partitioned Lands for 75 years, with the possibility of re-

[1] This controversy has generated more than 35 years of continuous legal battles involving the Tribes and the United States. The following, while not exhaustive, lists litigation spawned by disputes over the 1882 Reservation since 1958: *Peabody Coal Company* v. *Navajo Nation,* 75 F.3d 457 (9th Cir. 1996); *Hopi Tribe* v. *Navajo Tribe,* 46 F.3d 908 (9th Cir. 1995) (BIA's homesite and grazing rental determinations); *Attakai* v. *United States,* 21 F.3d 1111 (9th Cir. 1994); *Masayesva* v. *Zah,* 816 F.Supp. 1387 (D. Ariz. 1992); *Benally* v. *Hodel,* 940 F.2d 1194 (9th Cir. 1991); *Manygoats* v. *Office of Navajo and Hopi Indian Relocation,* 735 F.Supp. 949 (D. Ariz. 1990); *Bedoni* v. *Navajo-Hopi Relocation Commission,* 878 F.2d 1119 (9th Cir. 1989); *Begay* v. *United States,* 865 F.2d 230 (Fed. Cir. 1989); *Manybeads* v. *United States,* 730 F.Supp. 1515 (D. Ariz. 1989), 9th Cir. No. 90–15003 (appeal pending) (First Amendment suit by Navajo residents of HPL challenging the relocation requirement as unconstitutional); *Masayesva* v. *Zah,* No. 58–579 PCT ECH (D. Ariz. 1993), 9th Cir. No. 90–15304 (appeal pending) (contempt action for illegal construction by Navajo residents); *Secakuku* v. *Hale,* No. 76–934 (D. Ariz. 1993), 9th Cir. Nos. 94–17032, 95–15029 (damages to HPL range from overgrazing by Navajo livestock prior to partitioning); *Masayesva* v. *Hale,* No. 76–936 PCT ECH (D. Ariz. 1993), 9th Cir. No. 94–17022 (appeal pending) (damages for use of Hopi Tribe's share of the Joint Use Area by Navajo livestock from 1962–1979); *Secakuku* v. *Hale,* No. 58–579 (D. Ariz. 1993), 9th Cir. Nos. 94–17031, 95–15015 (appeal pending) (owelty for difference in value of the divided Joint Use Area); *Hopi Tribe* v. *Navajo Nation,* Nos. 85–801 PHX and 87–1966 PHX (D. Ariz.) (ongoing challenges to various annual BIA rental determinations); *Hopi Tribe* v. *United States,* Nos. 319–84–L, 320–84–L, 321–84–L, 651–89L (Ct. Fed. Cl., pending) (penalties and damages for unpermitted Navajo livestock use of the HPL); *Zee* v. *Watt,* Civ. 83–200 PCT EHC (D. Ariz.) (dismissed March 29, 1985); *Walker* v. *Navajo-Hopi Indian Relocation Commission,* 728 F.2d 1276 (9th Cir. 1984), *Cert. denied,* 469 U.S. 918 (1984); *Hopi* v. *Watt,* 719 F.2d 314 (9th Cir. 1983); *Sidney* v. *Zah,* 718 F.2d 1453 (9th Cir. 1983); *Zah* v. *Clark,* Civ. No. 83–1753 BB (D.N.M., filed Nov. 27, 1983); *Sekaquaptewa* v. *MacDonald,* 626 F.2d 113 (9th Cir. 1980); *Sekaquaptewa* v. *MacDonald,* 619 F.2d 801 (9th Cir.), *cert denied,* 449 U.S. 1010 (1980); *Sekaquaptewa* v. *MacDonald,* 591 F.2d 1289 (9th Cir. 1979); *Sekaquaptewa* v. *MacDonald,* 575 F.2d 239 (9th Cir. 1978); *Sekaquaptewa* v. *MacDonald,* 544 F.2d 396 (9th Cir. 1976), *cert. denied,* 430 U.S. 931 (1977); *Hamilton* v. *MacDonald,* 503 F.2d 1138 (9th Cir. 1974); *United States* v. *Kabinto,* 456 F.2d 1087 (9th Cir.), *cert. denied,* 409 U.S. 842 (1972); *Hamilton* v. *Nakai,* 453 F.2d 152 (9th Cir.), *cert. denied,* 406 U.S. 945 (1972); *Sidney* v. *Navajo Tribe,* Nos. 76–934, 935, 936 PHX EHC (D. Ariz., filed Dec. 15, 1976); *Healing* v. *Jones (II),* 210 F. Supp. 125 (D. Ariz. 1962), *aff'd,* 373 U.S. 758 (1963); *Healing* v. *Jones (I),* 174 F.Supp. 211 (D. Ariz. 1959), *aff'd,* 373 U.S. 758 (1963).

newal. What currently exists is an agreement on the terms of individual Accommodation Agreements may be signed and become effective after the Hopi Tribe receives 75-year leasing authority. The individual Accommodation Agreements, when signed, will be principally an agreement between the Navajo residents of a homesite on the Hopi Reservation and the Hopi Tribe, although the Navajo Nation also will indicate its support of the Agreement and the document will be submitted for approval to the Office of the Assistant Secretary of the Interior for Indian Affairs or her designee.

The second Agreement is referred to as the Hopi Tribe-United States Settlement Agreement. Under this Agreement the Hopi Tribe promises to offer and abide by the terms of the Accommodation Agreement and commits to abandon prosecution of four lawsuits against the United States. In exchange for that consideration, the United States will pay the Hopi Tribe $50.2 million and has committed to take up to 500,000 acres of land into trust for the Hopi Tribe if certain conditions are met. In order to give effect to these Agreements, we seek an expansion of the Hopi Tribe's leasing authority so that it may offer the Navajo families an accommodation for a 75-year-period.

Several lawsuits among the Navajo Nation, the Hopi Tribe and the United States are not settled by either of these Agreements. During the early years of these negotiations, the parties strove for a settlement of those suits as part of a global settlement. But resolution of those lawsuits, which involve strictly money claims among the parties, was not forthcoming, The delay presented by inability to reach agreement on those issues was jeopardizing progress on the central focus of these negotiations. The two Agreements that are the focus of this Hearing resolve the central concern that was the genesis of the mediation. Other ancillary litigation need not impede the progress of these important achievements.

Before turning to the details of these Agreements, I would like to place them in their historical context. This context is necessary to appreciate the magnitude of what has been accomplished by the parties before you.

B. PRIOR EFFORTS TO RESOLVE THE DISPUTE OVER RIGHTS TO USE OF THE HOPI PARTITIONED LANDS

The dispute at issue dates back to 1882 when President Arthur, be Executive Order, established a Reservation with the Hopi villages at its center. Even at that time, there was tension between Navajo and Hopi use of these lands in northern Arizona. During the period from 1882 to 1958, twenty-one Secretaries of the Interior failed to act on requests from the Hopi Tribe to evict Navajo from the 1882 Reservation.

Since the 1950s, Congress, courts, and mediators have struggled to find solutions to the Navajo Nation's and Hopi

Tribe's competing claims to lands within the 1882 Reservation.

In 1958, Congress sought a litigated resolution of the land dispute by enacting a law authorizing the two Tribes to sue one another. Soon thereafter, the Hopi Tribe sued the Navajo Nation over ownership of the 1882 Reservation. In that lawsuit, commonly known as *Healing* v. *Jones*, the district court determined that the Navajo and Hopi had joint and undivided interests in all but 631,194 acres of the original 2.5 million acre 1882 reservation, an area thereafter referred to as the "Joint Use Area." *Healing* v. *Jones*, 210 F. Supp. 125 (D. Ariz. 1962), *aff'd*, 373 U.S. 758 (1963).

Creation of the Joint Use Area only fostered more litigation as the Hopi Tribe repeatedly sought enforcement of its rights to the area in the district court. In 1974, Congress again addressed the problem with enactment of the "Settlement Act," which authorized and directed partitioning of the Joint Use Area between the Navajo Nation and Hopi Tribe. Under the Settlement Act, the two tribes were required to undertake a six-month mediation effort designed to render an agreed upon land partition. That mediation failed and, in 1975, the partitioning was referred to the district court. The Joint Use Area was finally partitioned in 1979, with the court allocating approximately 900,000 acres known as the Hopi Partitioned Lands to the Hopi Tribe and approximately 900,000 acres known as the Navajo Partitioned Lands to the Navajo Nation.

Under the Settlement Act, members of each tribe are required to move from the lands partitioned to the other tribe. In drafting the 1974 Settlement Act, the House Committee on Interior and Insular Affairs concluded that "because of the Federal Government's repeated failure to resolve the land dispute, the major costs of resolution should be properly borne by the United States." The Senate Report embraced a similar conclusion. To that end, Congress created the Navajo and Hopi Indian Relocation Commission (now, the Office of Navajo Hopi Indian Relocation) to assist in the relocation process which was to be completed by July 1986.

To date, the United States has spent more than $330 million to relocate 2,700 households (more than 11,000 tribal members) from lands determined in 1979 to belong to the other Tribe. All of the few Hopi residing on the lands partitioned to the Navajo Nation moved and several thousand Navajo residing on lands partitioned to the Hopi Tribe moved in the years following the 1979 partitioning. By 1985, it was clear, however, that voluntary relocation would not lead to the departure of all the Navajo residents from lands partitioned to the Hopi Tribe by the July 7, 1986 deadline.

As the Settlement Act's 1986 relocation deadline approached, the specter of forced relocation of hundreds of Navajo families residing on Hopi Partitioned Lands loomed

large. At this juncture, President Reagan personally met with the Chairmen of the Hopi and Navajo Tribes to urge them to negotiate a resolution of their differences, including their disagreement over the fate of those Navajo families that had not yet relocated. In February 1985, President Reagan took the further step of commissioning Secretary of the Interior William Clark to explore avenues for a consensual resolution of the tribes' disagreements over implementation of the Settlement Act. (Secretary Clark, in turn, appointed Robert Morris to the task.)

In August 1985, Interior hosted a Washington meeting with the Chairmen of the two tribes to determine the prospects for a negotiated solution to the continued residence of Navajo families on Hopi Partitioned Lands. Although progress was made, and memoranda of understanding were discussed, no agreement was achieved. The Morris Report—issued after eight months of on-the-ground study and federally facilitated negotiations—concluded with regret that the tribes were not politically able to "embrace negotiation as a means of solving their complex differences."

That year also marked the failure of a court-sponsored mediation effort. In July 1985, federal district court Judge Earl Carroll, the presiding judge in much of the litigation between the tribes, hosted an informal meeting with the tribes and President Reagan's appointed representative to the task. At that meeting, Judge Carroll urged the tribes to embrace the President's negotiation initiative and candidly set forth his view that the lawsuits pending before him would take years to conclude, cost millions of dollars, and lead to unsatisfactory results for both tribes. Unfortunately, the tribes still were unable to reach agreement.

The following year, three separate Congressional attempts at addressing the problem of Navajo families who remained on Hopi land were initiated. These legislative initiatives included a bill by Congressmen Udall and then Congressman McCain aimed at comprehensive settlement (H.R. 4281), a bill by Senator Cranston that would have placed an 18 month moratorium on further relocations (S. 2545) and a bill by Senator DeConcini that would have provided for binding arbitration of a land exchange (S. 2651). Each of these bills was strongly opposed by one or both of the tribes and was withdrawn or abandoned.

As the foregoing illustrates, the recent consensual resolution comes out of a long history of unsuccessful efforts to settle this age-old dispute.

C. THE RECENT MEDIATION EFFORT

The mediation process that led to the two Agreements at issue here arose out of a lawsuit known as *Manybeads* v. *United States*. In 1988, the land dispute was again put before the federal district court when Navajo residents of the Hopi Partitioned Lands filed suit against the United States claiming that the 1974 Settlement Act's relocation

requirement violates their First Amendment right to practice their religion and that the Settlement Act, therefore, is unconstitutional and invalid. In this lawsuit, *Manybeads* v. *United States,* the district court ruled against the Navajo families and upheld the validity of the 1974 Settlement Act. The Navajo families appealed that determination to the United States Court of Appeals for the Ninth Circuit. Following briefing and argument on the case, the Appeals Court panel, in May 1991, ordered the parties into mediation before United States Magistrate Judge Harry McCue. Under the mediation order, the United States, the Navajo and Hopi Tribes, and the *Manybeads* plaintiffs were to negotiate for 90 days. The Court has granted continuing requests by the parties for extensions of the mediation process and a stay of the *Manybeads* case and one other related lawsuit.[2]

Eighteen months of mediation culminated in an October 1992 Agreement in Principle. In November of 1992, the Agreement in Principle was ratified by the Hopi Tribal Council, the Navajo Tribal Council, the Secretaries of the Interior and Agriculture and the Associate Attorney General of the United States under President Bush's administration. The Agreement in Principle contained the first commitment by the Hopi Tribe to permit Navajo families residing on Hopi Partitioned Lands to remain there, under a 75 year agreement. It also entailed a compensation package between the United States and the Hopi Tribe that would settle the Hopi Tribe's claims against the United States and provide lands that its members could use in light of continued occupancy by the Navajo of the Hopi Partitioned Lands.

The Agreement in Principle laid the groundwork for important accommodations to and commitments by each of the parties. During the last three years, the Navajo families and the Hopi Tribe have been meeting to define the final terms of an Accommodation Agreement that will be available to the Navajo full-time residents of the Hopi Partitioned Lands, as identified on a negotiated list called "List A." Those meetings concluded in December 1995.

In addition, over the last three years the United States has been working with the Hopi Tribe to try to restructure a component of the Settlement that, in 1992, caused serious concern to the public. The Departments of Justice and the Interior, under the Clinton Administration, have continued negotiation in order to carry through on the commitments and achievements of the prior Administration,

[2] The related case, *Masayesva* v. *Zah,* No 58–579 PCT ECH (D. Ariz. 1993), 9th Cir. No. 95–15304 (appeal pending), is an action by the Hopi Tribe against the Navajo Nation. The Hopi Tribe sought a contempt fine against the Navajo Nation and the removal of certain structures that it claimed were erected in violation of a court-ordered construction freeze. As part of the mediation process, the structures at issue have been disassembled. The district court assessed a fine of approximately $800,000 against the Navajo Nation. Consideration of the Navajo Nation's appeal of that fine is now stayed before the United States Court of Appeals for the Ninth Circuit.

while making necessary revisions to address concerns with the negotiated framework ratified by that Administration.

Under the Agreement in Principle, the federal government—in settlement of several lawsuits against it by the Hopi Tribe and in consideration of the Hopi Tribe's commitment to allow Navajo families to remain at their homesites on Hopi land—would have taken 500,000 acres of land into trust for the Hopi Tribe. A majority of the acreage involved was state or fee lands that would have been acquired for the Hopi Tribe. But approximately 200,000 acres of the lands involved were National Forest Lands. It was the National Forest lands component of that settlement framework that caused the grave public concern.

In restructuring the compensation, the Department of Justice tried to address the public concerns, while still adhering to the basic tenets of the 1992 Agreement in Principle upon which the Hopi Tribe's offer to the Navajo families was premised. In December 1995, the Departments of Justice and of the Interior signed an agreement with the Hopi Tribe that reflects such a restructuring and does not involve the transfer of any National Forest lands.

D. THE TWO AGREEMENTS

1. *The Accommodation Agreement.*—The Accommodation Agreement developed out of the issues raised by the Navajo residents of the Hopi Partitioned Lands in the *Manybeads* lawsuit and out of the countervailing concerns of the Hopi Tribe in its suits against the Navajo Nation and the United States. A representative of the Justice Department attended nearly every session of more than 40 full-day discussions of the Navajo families' concerns. We have learned a great deal from those discussions and have tried to assist where possible; but the true progress from those discussions was (and only could have been) made by the central parties to the Accommodation Agreement, the Hopi Tribe and the Navajo families residing on the Hopi Partitioned Lands. The Navajo Nation's efforts in support of mediation, too, have been essential to that achievement.

With regard to the *Manybeads* lawsuit itself, the United States and the Navajo families are discussing a process for dismissing the suit that will provide for court recognition of the Settlement and final resolution of the legal issues. Those technical points, however, are peripheral compared with the great achievement represented by the negotiation of an Accommodation Agreement that will allow the Navajo families to remain on the Hopi Partitioned Lands.

Very briefly, the individual Accommodation Agreements, which will be for a term of 75 years, assure Navajo residents who are on List A of: a three-acre homesite, ten acres of farmland, increased grazing, and traditional uses, such as herb gathering and visits to religious shrines, on areas of HPL beyond the bounds of their homesites.

We now seek the assistance of Congress in giving effect to this achievement, in the form of an extension of the

Hopi Tribe's leasing authority to enable the Hopi Tribe to offer the Navajo residents a 75-year Accommodation Agreement. The necessary legislation involves a simple technical amendment to 25 U.S.C. 415(a). Numerous other tribes motivated by economic interests and/or concerns for self-determination have received 99 year leasing authority, without any apparent contest. This is reflected in the Code's long list of approximately 35 Reservations for which the statutory 25-year leasing restriction has been amended.

2. *The United States' Agreement with the Hopi Tribe.*—From the Justice Department's perspective, our focus in negotiating the agreement with the Hopi Tribe was to engender circumstances under which the Hopi Tribe would allow the Navajo residents to remain on the Hopi Partitioned Lands, and so diminish the need for forced relocation. The Justice Department also pursued settlement in an effort to resolve the United States' potential exposure in three existing lawsuits and to stem further litigation on related issues.

Under the Settlement Agreement entered into by the Hopi Tribe and the United States Department of Justice and United States Department of the Interior on December 14, 1995, the Hopi Tribe commits to abandon prosecution of one threatened and three existing lawsuits against the United States and promises to offer and abide by the terms of the Accommodation Agreement it has negotiated with the Navajo families. In exchange for the compromise and settlement of these four legal actions, the United States has agreed to pay $50.2 million to the Hopi Tribe under certain conditions described below. In deciding to settle these suits for $50.2 million, we followed the procedures the Department's lawyers employ in settling any lawsuit. We evaluated the reasonable range of the United States' possible exposure and litigation risk in each of the lawsuits. The monetary settlement we reached with the Hopi Tribe is based on the Justice Department's assessment of the reasonable range of values for the multiple lawsuits. Payment of compensation to the Hopi Tribe, however, is tied to the percentage of Navajo families residing on the HPL who sign up for accommodation agreements.

In addition to resolution of the federal government's exposure in the lawsuits, to the extent that Navajo families choose to remain on the Hopi Partitioned Lands under an Accommodation Agreement, there could be a savings to the federal government in relocation benefits. A conservative estimate of this savings approximates $100,000 for each family that is eligible for benefits and decides to remain, or a potential aggregate savings of $5 to $13 million if most eligible families remain.

a. *The Lawsuits to be Settled Under the Hopi Tribe-United States Settlement Agreement.*—The four lawsuits resolved by the Settlement Agreement all involve claims by the Hopi Tribe concerning the United States' alleged fail-

ure to protect the Hopi Tribe's rights against use of their lands by members of the Navajo Nation. The lawsuits are:

(1) *Hopi Tribe* v. *United States,* Civ. Nos. 319–84L, 320–84L, 321–84L and 651–89L, which are pending in the United States Court of Federal Claims (the "Court of Federal Claims cases"). In these cases, the Hopi Tribe sued the United States for breach of its fiduciary duty arising from the United States' failure to collect (a) livestock trespass penalties, (b) forage consumed fees, and (c) property damage fees from the Navajo Nation and/or its members on behalf of the Hopi Tribe pursuant to regulations governing trespass on Indian trust lands. The Hopi Tribe originally claimed $281 million in damages for trespasses from 1973 through 1989.

For purposes of settlement, the Hopi Tribe and the United States have parsed these Court of Federal Claims cases into three parts by time period. As mentioned, this staggered settlement of the Court of Federal Claims cases allows the United States and the Hopi Tribe to coordinate the payment and resolution of these lawsuits with the achievement of other goals of the Settlement—such as accommodation of a majority of the Navajo residents of the Hopi Partitioned Lands.

(2) *Secakuku* v. *Hale et al.,* Nos. 94–17032, 95–15092, is pending in the United States Court of Appeals for the Ninth Circuit (the "Damages case"). In this case, the Hopi Tribe has brought an action against the United States pursuant to Section 18 of the Settlement Act, 25 U.S.C. 640d–17(a), alleging that the United States is jointly and severally liable with the Navajo Nation for any post-partition damage to the Hopi Partitioned Lands caused by pre-partition overgrazing. The damages amount found by the U.S. District Court is approximately $3.4 million.

(3) *Hopi Tribe* v. *Navajo Tribe, et al.,* Civ. 85–801 PHX–EHC, is pending in the United States District Court in Phoenix, Arizona. In this case (the "Rental Case"), the Hopi Tribe has, among other claims, alleged failure of the Department of the Interior to make the fair rental value determinations required by Section 16 of the Settlement Act, 25 U.S.C. 640d–15(a), on a timely basis. This delay has deprived the Hopi Tribe of rental funds for homesite, farming and grazing uses by members of the Navajo Nation that, pursuant to the statute, would be paid to the Hopi Tribe by the Navajo Nation pursuant to the Department of the Interior's determination of the appropriate amount.

(4) *Claim by the Hopi Tribe Against the United States for Failure to Give the Hopi Tribe Quiet Possession of its Lands.*—As part of the parties' efforts to bring about a consensual resolution of the longstanding problems concerning use of the Hopi Partitioned Lands, the Hopi Tribe has refrained from its stated intention of bringing litigation against the United States for the alleged failure of the United States, in the past and present, to give the Hopi

Tribe quiet possession of Hopi Lands that are used and occupied by Navajo families. Such potential litigation includes, for example, an injunctive action seeking to have all remaining Navajo families removed, an action alleging a temporary taking without compensation in violation of the Hopi Tribe's Constitutional rights, and an action for breach of trust.

b. *The Terms of Hopi Tribe-United States Settlement Agreement.*—The payments and other consideration from the United States and the dismissal of the lawsuits are phased.

The first phase has already been effected. In January 1996, the Hopi Tribe and the United States moved for dismissal of the Hopi Tribe's claims against the United States in the Damages Case. The United States Government Accounting Office on February 14, 1996, certified payment to the Hopi Tribe of $2.4 million in settlement and compromise of those claims.

In the second phase, the United States will pay the Hopi Tribe $22.7 million in settlement and compromise of a portion of the Court of Federal Claims Cases—after the Hopi Tribe obtains from Congress 75-year leasing authority—so that it may follow through on its offer to the Navajo families of an Accommodation Agreement. Under existing law, the Hopi Tribe may not lease its lands for longer than 25 years, with one 25-year renewal.

The third phase is triggered if or when sixty-five percent (65%) of the Navajo heads of household eligible for an Accommodation Agreement have entered into an Accommodation Agreement with the Hopi Tribe or have chosen to relocate. At such time, and upon dismissal of a second portion of the Court of Federal Claims Cases, the United States would pay the Hopi Tribe $10 million in settlement and compromise of those claims.

The fourth phase of the Settlement is triggered if or when seventy-five percent (75%) of the eligible Navajo heads of household have entered into an Accommodation Agreement or chosen to relocate. At such time, and upon dismissal of the third and final portion of the Court of Federal Claims Cases, the United States would pay the Hopi Tribe $15.1 million in settlement and compromise of those claims.

The Hopi Tribe has repeatedly stated that it would not agree to offer an accommodation to the Navajo families in exchange for money alone. The continued occupation of the Hopi Partitioned Lands by the Navajo families deprives the Hopi Tribe of certain uses of its lands. Because the Navajo families are widely dispersed throughout the Hopi Partitioned Lands and because the Navajo families herd livestock in the areas around their homesites, the acreage made effectively unavailable for Hopi use is greater than a simple calculation of the homesite and farmsite acreage would suggest. The Hopi Tribe's agreement to allow Navajo families to remain on the Hopi Partitioned Lands is

based on the understanding that additional lands would be taken into trust for the Hopi Tribe for use by Hopi Tribal members. Thus, the Department of the Interior, pursuant to its authority under 25 U.S.C. 465, has agreed to take land into trust for the Hopi Tribe as part of the fourth phase of the Settlement. Such land would be purchased by the Hopi Tribe with its own funds.[3]

In the fourth phase of Settlement, if, by the end of 1996, 75% or more of the Navajo heads of household eligible for an Accommodation Agreement have entered into an Accommodation Agreement or chosen to relocate, the Department of the Interior has agreed that it will take into trust for the Hopi Tribe up to 500,000 acres of rural fee lands or combined fee and State lands in northern Arizona. Such fee lands would need to have been acquired by the Hopi Tribe on a willing-seller willing-buyer basis. No private lands would be condemned as part of this Settlement.

As those familiar with land ownership in northern Arizona are well aware, most of the larger tracts of rural lands in northern Arizona in the vicinity of the Hopi Reservation are checker-boarded fee and State lands. Over the course of the negotiations, the State has repeatedly indicated its willingness to have the federal government acquire State lands at fair market value in order to help achieve a settlement of this longstanding dispute. Because of State constitutional and statutory restrictions on the sale of State lands, the Hopi Tribe could not acquire such lands without the assistance of the federal government.

Thus, in order to facilitate the taking into trust of a contiguous parcel of land, to avoid the jurisdictional and other complications of having State lands interspersed within tribal trust lands, and to facilitate the interests of both the Hopi Tribe and the State, the Settlement Agreement provides that the United States will acquire for the Hopi Tribe for fair market value (with funds provided by the Hopi Tribe) interspersed State lands within the exterior boundaries of private lands acquired by the Tribe, provided that the State concurs that such acquisition is consistent with the State's interests. Our commitment to condemn State lands under these circumstances is based on the authority provided by 40 U.S.C. 257, 25 U.S.C. 465, and 25 U.S.C. 451.

The Settlement Agreement further imposes time requirements on the Office of Navajo-Hopi Indian Relocation ("Relocation Office") for completing its responsibilities under the 1974 Settlement Act with respect to those Navajo families remaining on the Hopi Partitioned Lands who are eligible for relocation assistance. The Settlement Agreement requires the Relocation Office to complete all of the activities with regard to voluntary relocation of Navajo families residing on the Hopi Partitioned Lands (i.e., counsel the

[3] The Hopi Tribe may apply some, all, or none of the $50.2 million settlement with the United States to the purchase of land.

family, help the family select a homesite location off Hopi lands, construct or buy a house for the family and move the family) who, during 1996, affirmatively choose to relocate, rather than choosing to enter into an Accommodation Agreement.

The parties also have agreed on a transitional mechanism for Navajo families that enter into Accommodation Agreements during 1996. The passage of three years following the acceptance of a homesite accommodation waives any and all rights a Navajo resident of the Hopi Partitioned Lands has to relocation benefits. In other words, the Relocation Office—or other entity assigned to assume its responsibilities—would provide benefits for the three years following 1996, for any Navajo otherwise eligible for the benefits who has entered into an Accommodation Agreement, and subsequently decides that moving from the Hopi Partitioned Lands is preferable.

The Settlement Agreement with the Hopi Tribe also addresses the circumstance of Navajo residents who do not enter into an Accommodation Agreement in 1996. The Settlement Agreement requires the Relocation Office to begin, in January 1997, implementation of its regulations that will result in the provision of housing for Navajo residents who have not entered into an Accommodation Agreement and are eligible for relocation benefits—but have not affirmatively chosen to relocate. The Settlement Agreement further requires that provision of homes for such families will be completed by February 1, 2000. Such action is already directed by the 1974 Settlement Act and the Relocation Office's regulations. The Settlement Agreement simply establishes a timeframe.

Congressional appropriations enactments and court orders have forbidden the United States from moving Navajo residents of the Hopi Partitioned Lands who are eligible for relocation assistance unless a house first has been provided by the Relocation Office. Thus, the provision of housing removes an existing legal obstacle to moving families who decline to enter into an agreement with the Hopi Tribe and refuse to abide by the provisions of federal law that require them to move off the lands partitioned to the Hopi.

The parties have spent years negotiating these agreements in an effort to provide a tenable alternative to relocation. We hope that few will decline to follow either lawful course. But there may be some who will so decline. The Settlement Agreement is designed to address that eventuality in a manner consistent with the provisions of the 1974 Settlement Act, as enacted by Congress and interpreted by the courts.

E. MEETINGS WITH THE PUBLIC ON THIS ISSUE

In early 1993, representatives from the Department of the Interior and the Department of Justice devoted several months to meeting with public officials and citizen groups

in Arizona that had expressed interest in or concerns about the framework of a settlement which, at that time, involved the transfer of National Forest lands into trust for the Hopi Tribe. We met with representatives of the Governor's Office, the Arizona Land Commission, the Arizona Department of Game and Fish, with representatives of the City of Flagstaff, the County Board of Supervisors for Coconino County, and with members from the Arizona Coalition for Public Lands and with members of environmental groups in Arizona. Issues that emerged from these discussions included concern that: (1) no private land be taken by condemnation; (2) the water resources for the City of Flagstaff be preserved; (3) the National Forest lands treasured by the public for recreational use not be transferred out of the public domain; (4) the tax base for the Counties not be significantly reduced; and (5) a mechanism be developed for addressing game and fish management problems that arise where there are changes in management jurisdiction such as at boundaries between states or between state and tribal lands. In working with the Hopi Tribe to restructure the compensation provided in the Settlement, we tried to address these concerns.

The Settlement Agreement signed with the Hopi Tribe does not involve condemnation of any private lands. It does not jeopardize the water supply for the City of Flagstaff. It does not transfer any National Forest land. It appears that any effect on the local tax base will be minimal. Current tax rates on rural lands in Coconino, Navajo and Apache Counties are low. According to figures provided by the State, at current rates the lost property tax revenue from taking approximately 250,000 acres off the tax rolls (presuming that roughly half the lands would be already-tax-immune State lands interspersed with private lands) would be between $5,000 and $10,000 annually. In addition, any site specific concerns could be raised in public comment opportunities that would precede the taking into trust of a specific parcel, if the preconditions to Interior's commitments are met.

Similarly, the Settlement Agreement does not provide for the immediate transfer of any jurisdiction over game and fish management. When and if lands are taken into trust for the Hopi Tribe, the specific issues relating to wildlife concerns on a particular land parcel can be addressed. As noted, the Settlement Agreement provides that any action by the Department of the Interior to take land into trust for the Hopi Tribe will be subject to all existing applicable laws and regulations, including the National Environmental Policy Act and 25 C.F.R. Part 151, as amended by 60 Fed. Reg. 32,874 (June 23, 1995) (which sets forth public comment procedure for the taking of lands into trust for tribes). Thus, once the preconditions are met for taking land into trust—i.e., after the 75 percent threshold is achieved and if the Hopi Tribe acquires a rural parcel of land and, in turn, requests the Depart-

ment of the Interior to take the parcel into trust—then, Interior will be able to consider the actual impacts (if any) to localities. For example, hunters or wildlife managers might be concerned about elk or antelope populations in the region or a school board might be concerned about a diminution in the property tax base. Their concerns could be considered as part of the public comment process that would occur prior to the taking of any particular parcel into trust.

In addition to incorporation the information gathered from the meetings in 1993, and from subsequent conversations throughout the last three years of negotiations, the United States made an effort to further ensure our understanding of the public's concerns after we had developed with the Hopi Tribe a restructuring of the Settlement. In November or December 1995, prior to concluding our agreement with the Hopi Tribe, we discussed the general outlines of the proposed Settlement with representatives from the State assigned to deal with this issue, in order to gain their perspective in the hopes of ensuring that the restructure Settlement could enjoy the State's and public's support. In those discussions, and in discussions we have had with the State, County and City officials in December 1995 and early this year, after signing of the Settlement Agreement, comments have been generally favorable. There has been no strong opposition and many have commended our efforts and appreciated the restructuring embraced by the recent agreement.

F. CONCLUSION

The Settlement does not provide any of the parties all of what they would like. Like many important settlements, it represents a compromise for each of the parties, not a perfect solution for anyone. Its achievements, however, are momentous. In our judgment, this is the best deal that can be achieved. The central goal of the negotiations was to reach a consensual resolution to the dispute over use of the Hopi Partitioned Lands—one that both preserves Hopi jurisdiction and allows Navajo families to remain at their homesites. The 75 year term of the Accommodation is not for as long a term as the Navajo families would like, and it is for longer than many members of the Hopi Tribe would have preferred.

After devoting more than 11,000 hours during the last four and a half years to understanding both the broad scale and the detailed issues involved in resolution of this problem, the Justice Department is satisfied that this is a settlement that accomplishes what must be achieved to obtain a meaningful resolution of the conflict over use of the Hopi Partitioned Lands. By providing an alternative allowing Navajo residents to remain under Hopi jurisdiction, it removes the two most dire specters—that of the involuntary relocation of hundreds of Navajo residents of the Hopi Partitioned Lands and that of a forced reduction of the

Hopi Tribe's ancestral and already diminished reservation lands. We encourage this Committee, and the Congress as a whole, to promote the passage of a technical amendment to 25 U.S.C. 415. Such an amendment is necessary to give effect to this consensual resolution, so that this summer Navajo residents can begin to repair their homes, pursuant to the terms of the Accommodation Agreement.

As is true in many difficult negotiations, it is important to maintain momentum and progress. This is such an instance. We now have a Settlement that is extremely time sensitive. Navajo families have until the end of 1996 to enter into an Accommodation Agreement; they will need several months to accomplish this. Various persons or parties may have issues they would like Congress to take up at this time relating to the recent Settlement. In our judgment, it is important for Congress to act swiftly on this modest legislative proposal to grant the Hopi Tribe 75-year leasing authority so that this historic agreement will not be jeopardized.

This negotiation process imposed an enormous time burden on all the parties and required untiring patience and perseverance. We are deeply appreciative of the hospitality extended by members of both tribes during the many, many visits we have made to the Hopi Tribe's governmental seat in Kykotsmovi, to the Navajo Nation's governmental seat in Window Rock and to the homes of residents of the Hopi Partitioned Lands. We hope these agreements will foster a brighter and more peaceful future for the people of northern Arizona.

Thank you for the opportunity to present the views of the Department of Justice.

ADDITIONAL VIEWS OF PETE V. DOMENICI

For over 100 years since their joint use reservation was created by President Chester Arthur, the Navajo and Hopi Tribes have been struggling to find the solution to dividing up their lands. Agreement between the tribes has not been possible, so Congress and the courts have played a major role in trying to settle this long-standing dispute.

Today, with a Hopi Tribe of about 10,000 people and a Navajo Nation of about 200,000, the problem persists in its last and most difficult stages.

To date, over $330 million has been spent and over 2,700 households or 11,000 Navajo and Hopi Indians have been relocated. Navajos have moved off Hopi Partitioned Land (HPL) and Hopi have moved off Navajo Partitioned Land (NPL).

Of the 11,000 Indians involved, over 10,000 Navajos have moved and some 1,000 Hopi have relocated to their redesignated tribal lands. The 160 or so remaining Navajo families have refused to move, citing cultural and religious reasons. In recognizing their religious, economic, and other ties to the land, the Accommodation Agreement among the Navajo Nation, Hopi Tribe, the Navajo Families Mediation Team, and the United States, is an integral and critical component of any settlement. Without the Accommodation Agreement, the Navajos on Hopi land would remain out of compliance and the threat of pending relocation could easily lead to more bitterness and distrust, more litigation, and no resolution of this long-standing problem.

Of particular concern to the remaining Navajo families on the HPL and the Navajo Nation is the issue of how long the families may continue to occupy their homesites. The Accommodation Agreement provides for lease agreements between the Hopi Tribe and the Navajo families for a period of 75 years, with the right to apply for extensions at the end of that period of time. To reconfirm this agreement, I am pleased the committee agreed to accept my amendment to S. 1973 that states clearly that the leases between the families and the Hopi Tribe may be extended at the conclusion of the term of the 75-year lease. This language will help alleviate families' legitimate fears regarding the period of time they can continue their lifestyles on lands they have occupied for over a hundred years.

The second critical issue that remains to be addressed concerns the impact upon the Navajo Nation of the Hopi Tribe-United States Settlement Agreement. This agreement is a government-to-government settlement, to which the Navajo Nation is not a party, despite the fact that under the terms of the Accommodation Agreement the Navajo Nation is expected to pay full, fair, annual rent for the terms of the leases between the Navajo Families and the Hopi Tribe. Moreover, under the terms of the Settlement Agreement in

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Section 6(f), the Navajo Nation will continue to be liable for any claims the Hopi Tribe may have against it.

Section 4 of S. 1973 states that "The United States approves, ratifies, and confirms the Settlement Agreement." Under the terms of the agreement and if all conditions are met, the United States will pay the Hopi Tribe $50.2 million in exchange for settlement of four claims by the Hopi Tribe against the United States. The Navajo Nation contends certain claims for damages that will be released by the Hopi Tribe against the United States under the terms of the Settlement Agreement overlap with existing claims against the Navajo Nation. The Navajo Nation is concerned, therefore, that subsequent pursuit of these claims against the Nation will result in a double recovery for damages. Since the United States represents its position as one of neutrality on any claims between the Hopi Tribe and the Navajo Nation, the Navajo Nation requests that nothing in S. 1973 prejudice the rights of the Navajo Nation to pursue legal claims which they believe would prevent double recovery for claims of damage against it.

I believe it is imperative that S. 1983 contain language explicitly stating that the Navajo Nation was not a party to the Settlement Agreement, and that the Navajo Nation will not be limited in pursuing any legal remedies it deems necessary and legitimate. This is only fair. Consequently, it is my intention to offer language that will address these specific points, and I urge my colleagues to support such clarifying provisions.

The text of the Settlement Agreement between the United States and the Hopi Tribe dated December 14, 1995 and the Accommodation Agreement which has been approved by the Hopi Tribe, the Navajo Nation, representatives of the Navajo families, and the United States, is set forth below:

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into this 14th day of December, 1995, between the United States of America ("United States") and the Hopi Tribe ("Tribe"), acting by and through their designated representatives.

A. WHEREAS, it is in the public benefit for the Tribe, Navajos residing on the Hopi Partitioned Lands ("HPL"), and the United States to reach a peaceful resolution of a disagreement that has caused great acrimony and hardship and drained both the Hopi Tribe and the Navajo Nation of resources for many decades.

B. WHEREAS, the Tribe and the United States agree that it is in the best interest of the Tribe and the United States that a final settlement of certain issues remaining in connection with the Navajo—Hopi Settlement Act, Pub. L. 93–531, as amended, be reached by negotiation and voluntary agreement among the affected parties.

C. WHEREAS, the Tribe and Navajo families living on the HPL have reached by negotiation and voluntary accord an agreement on the terms pursuant to which certain Navajo families may continue to live on the HPL under a 75-year accommodation agreement. These negotiated terms

are set forth in the documents included here as Attachment A, when read together, and are hereinafter referred to as the "Accommodation Terms." An accommodation provided to an eligible Navajo family in accordance with the Accommodation Terms is referred to hereinafter as an "Accommodation." The Navajos eligible for an Accommodation are Navajos on List A (a copy of which is included here as Attachment B), and, in addition, (i) those Navajos domiciled on the HPL who were temporarily away for purposes of education, employment, military service or medical need at the time List A was prepared in 1992; (ii) those Navajo legal residents who resided full-time on the HPL in 1992 who are certified by the Office of Navajo Hopi Indian Relocation ("ONHIR") after October 30, 1992, as eligible for relocation assistance; and (iii) such other individuals, as agreed to by the Navajo and Hopi tribes. (In calculating the percentages discussed in Sections 3, 6 and 7 of this Agreement, the head of household (as defined in 25 C.F.R. 700.69(b) (1995)) included on List A, or his/her successor head of household, is counted but other family members are not included in the calculation.)

D. WHEREAS, the United States and the Tribe wish to encourage the circumstances under which the Tribe will allow those Navajo families currently residing on the HPL who enter into an Accommodation to remain on the HPL. A Navajo family that has entered into an Accommodation with the Hopi Tribe is referred to herein as an "Accommodation Signatory."

E. WHEREAS, the continued occupation of the HPL by the Navajo families deprives the Tribe of certain uses of its land. The Tribe's agreement to allow Navajo families to remain on the HPL is based on the understanding that additional lands will be taken into trust for the Tribe for use by Hopi Tribal members. The Tribe and the Secretary of the Department of the Interior ("Secretary") agree that, under the unusual circumstances of this long, historical disagreement over the Hopi Lands, the taking of additional lands into trust for the Tribe, as specified in Section 7, is necessary to bring about a resolution of the litigation and the problems that underlie it and is consonant with the goals identified in 25 U.S.C. § 465 and the corresponding regulations.

F. WHEREAS, to the extent the Tribe accommodates Navajo families who would otherwise have to be relocated from the HPL, the United States will save some of the expense of completing the relocation program, which has already cost over $330 million.

G. WHEREAS, the Tribe currently has three actions pending against the United States and, as part of this settlement, is foregoing a fourth action against the United States. These are:

i. *Hopi Tribe* v. *Navajo Tribe, et al.,* CIV 85–801 PHX–EHC, which is pending in the United States District Court in Phoenix, Arizona, In this case ("the Rental case"), the

Tribe has brought an action against the United States, among other things, for the alleged failure of the Secretary of the Interior ("Secretary") to make on a timely basis the fair rental value determinations required by 25 U.S.C. § 640d–15(a). On July 5, 1985, the Tribe filed a motion for partial summary judgment on this ground against the United States. On April 2, 1990, the District Court denied as moot, without prejudice, the portion of the motion dealing with the United States.

The Tribe has indicated to the United States its desire formally to renew its motion and to seek, either in the District Court or in the Court of Federal Claims, damages on a claim alleging a breach of the Secretary's duty to issue certain rental determinations in a timely manner.

ii. *Secakuku* v. *Hale, et al.,* Nos. 94–17032, 95–15029, which is pending in the United States Court of Appeals for the Ninth Circuit. In this case ("the Damage case"), the Tribe has brought an action against the United States pursuant to 25 U.S.C. § 640d–17(a)(3), alleging, among other things, that the United States is jointly and severally liable with the Navajo Nation for any post-partition damage to the HPL caused by pre-partition overgrazing.

On January 15, 1993, the United States District Court in Phoenix entered judgment for the United States, holding that the United States in not liable to the Tribe for any portion of the post-partition damage. The Tribe has appealed this issue and is awaiting a decision by the Ninth Circuit Court of Appeals.

iii. *Hopi Tribe* v. *United States of America,* CIV Nos. 319–84L, 320–84L, 321–84L, and 651–89L, which are pending in the United States Court of Federal Claims. In these cases (referred to collectively as "the Court of Federal Claims cases"), the Tribe is suing the United States, *inter alia,* for breach of its fiduciary duty arising from its failure to collect (a) livestock trespass penalties (No. 319–84L), (b) forage consumed fees (No. 320–84L), and (c) property damage fees on behalf of the Tribe (No. 321–84L). All three claims are asserted in No. 651–89L. In these actions, the United States argued that some of the Tribe's claims were barred by the statute of limitations. The Tribe concedes that the six-year statute of limitations, 25 U.S.C. 2501, governing claims against the United States bars the Tribe's claims arising prior to June 22, 1978.

For purposes of settlement, the Tribe and the United States have parsed the Court of Federal Claims cases into three parts: (1) all livestock trespass penalty claims for the period prior to and through 1982 and all other non-livestock-trespass-penalty claims alleged in the Court of Federal Claims cases for all periods through and including 1996; (2) all livestock trespass penalty claims for the period 1983 through and including 1988; and (3) all livestock trespass penalty claims for the period 1989 through and including 1996. The Court of Federal Claims cases are currently stayed.

iv. *Claim by the Hopi Tribe Against the United States for Failure to Give the Tribe Quiet Possession of Its Lands.* During the course of the Ninth Circuit ordered mediation, which commenced in May 1991, and as part of the parties' efforts to bring about a consensual resolution of the long-standing problems concerning use of the Hopi Lands, the Tribe has refrained from bringing litigation against the United States for the alleged failure of the United States, in the past and currently, to give it quiet possession of Hopi Lands that are used and occupied by Navajo families. Such potential litigation includes, *inter alia,* an injunctive action seeking to have the Navajo families removed, an action for a temporary taking without compensation, and an action for breach of trust. Any such potential actions are referred to herein as the "Quiet Possession Claim."

H. WHEREAS, the United States has denied that it has any liability to the Tribe in the Rental, Damage, or Court of Federal Claims cases and denies it has any liability in the Quiet Possession Claim.

I. WHEREAS, the United States and the Tribe wish to improve their relationship and to compromise their differences in the Rental, Damage and Court of Federal Claims cases and in a Quite Possession Claim.

J. WHEREAS, the Tribe and the United States benefit from these voluntary settlements and, to that end, the Tribe, the Secretary and the United States Attorney General will fully support this settlement.

K. NOW, THEREFORE, it is hereby agreed by the Tribe and the United States that the Rental, Damage, and Court of Federal Claims cases, and the Quiet Possession Claim be settled and compromised on the following terms and conditions.

TERMS OF THE AGREEMENT

1. *Compromise and Settlement by the Tribe of Certain Claims Against the United States in the Rental Case Regarding Certain Fair Rental Value Determinations:* The Tribe agrees to refrain forever from instituting, maintaining, prosecuting or continuing to maintain or prosecute any suit or action against the United States based upon any claim, demand, action, cause of action, or liability of any nature whatsoever (including any claim for damages or compensatory interest for delay in issuance of the rental determinations), whether known or unknown, which claim, demand, action, cause of action, or liability arises from the Secretary's failure, prior to January 1, 1997, to issue initial final rental determinations on the merits for Navajo homesite, farming and grazing use of the HPL for the years 1979 through 1995. (This bar to the Tribe's claim applies even if the Secretary's initial final rental determination on the merits is subsequently set aside or remanded by a court which reviews the administrative decision.) Claims, if any, concerning a failure by the Secretary (a) after January 1, 1997, to have entered initial final rental

determinations on the merits for the above-described rental periods and (b) to enter rental determinations for any rental period after 1995, are not covered by this Agreement.

2. *Compromise and Settlement by the Tribe of all Claims Against the United States in the Damage Case:* The Tribe agrees to refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action against the United States based upon any claim, demand, action, cause of action, or liability that was alleged, or could have been alleged, in the Damage case. The Tribe and the United States agree, pursuant to FRAP 42(b), to file a motion to dismiss the Tribe's appeal against the United States in the Damage case within one week of the date of the signing of this Agreement. If the motion is not granted and the Tribe is ultimately awarded at judgment in damages against the United States, the Tribe agrees that the obligations of the United States in the Damage case will be met by the United States' payment of $2,400,000.00 pursuant to Section 6(a) of this Agreement. If, prior to a joint filing of the United States' and Tribe's motion to dismiss the Tribe's claims against the United States, the Ninth Circuit issues a decision or enters judgment in the United States' favor, the United States shall pay nothing to the Tribe for compromise of the Damage case.

3. *Compromise and Settlement by the Tribe of all Claims Against the United States in the Court of Federal Claims Cases:* (a). The Tribe and the United States agree to file stipulations for dismissal with prejudice of all claims in the Court of Federal Claims cases, except those identified in Subsections 3(b) and 3(c). That stipulation shall be made within two weeks after the United States Congress enacts and the President signs the amendment to 25 U.S.C. § 415(a) or § 635 described in Section 5 below. The Tribe further agrees that after so moving for dismissal it must and will refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action against the United States based upon any claim, demand, actions, cause of action, or liability that was alleged or could have been alleged in any pleading in the Court of Federal Claims cases for any year prior to and through 1982.

(b). The Tribe and the United States further agree to file stipulations for dismissal with prejudice, pursuant to Rule 41 of the Court of Federal Claims Rules, of any livestock trespass penalty claims for the period 1983 through and including 1988 after 65 percent of the Navajo heads of household eligible for an Accommodation (as defined in paragraph C on pages 1–2 of this Agreement) have entered into an Accommodation or have chosen to relocate and are eligible for relocation assistance. The Tribe further agrees that after so moving for dismissal it must and will refrain forever from instituting, maintaining, prosecuting, or con-

tinuing to maintain or prosecute any suit or action against the United States based upon any claim, demand, actions, cause of action, or liability that was alleged or could have been alleged in any pleading in the Court of Federal Claims cases for any year prior to and through 1988.

(c). The Tribe and the United States further agree to file stipulations for dismissal with prejudice, pursuant to Rule 41 of the Court of Federal Claims Rules, of any livestock trespass penalty claims for the period 1989 through and including 1996 after 75 percent of the Navajo heads of household eligible for an Accommodation (as defined in paragraph C on pages 1–2 of this Agreement) have entered into an Accommodation or have chosen to relocate and are eligible for relocation assistance. The Tribe further agrees that after so moving for dismissal it must and will refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action against the United States based upon any claim, demand, actions, cause of action, or liability that was alleged or could have been alleged in any pleading in the Court of Federal Claims cases for any year prior to and through 1996.

(d). With each dismissal with prejudice of the claims described in subsection (a), (b) or (c) above, the Tribe may obtain funds from the trust account as provided in Section 6 below.

4. *Compromise and Settlement of the Quiet Possession Claim and Agreement by the Tribe to Provide an Accommodation for Certain Navajo Families Pursuant to the Accommodation Terms:* (a). The Tribe agrees to accommodate Navajo residents of the HPL who, pursuant to the Accommodation Terms, are eligible to enter into an Accommodation, in the manner and according to the terms as set forth in Attachment A.

(b). The Tribe agrees to refrain forever from instituting, maintaining, prosecuting, or continuing to maintain or prosecute any suit or action in law or equity against the United States based on any claim, demand, cause of action, or liability regarding quiet possession of Hopi Partitioned Lands which action arises out of: (i) any Navajo use or occupancy that occurred prior to the date of the signing of this Agreement; and (ii) any use or occupancy of Hopi Partitioned Lands that occurs prior to February 1, 2000, by Navajos who are eligible for an Accommodation; and (iii) any use or occupancy of Hopi Partitioned Lands by Navajo Accommodation Signatories in accordance with the Accommodation Terms during the term of the Accommodation.

(c). *Contingencies and Remedies.*—However, in the event that the United States does not provide consideration pursuant to the terms of Section 7, the Tribe preserves pursuant to Section 7(d) any Quiet Possession Claim it may have under 28 U.S.C. §§ 1491 and 1505 arising out of the use of the HPL after January 1, 1997, by any Navajo family who has entered into an Accommodation. In the event

that the United States does not discharge the obligations set forth in Sections 9(c) and 9(d), the Tribe preserves pursuant to Section 9(e) any Quiet Possession Claim it may have arising out of the use of the HPL after February 1, 2000, by any Navajo family eligible for an Accommodation who does not enter into one.

5. *Agreement by the Tribe to Seek Legislation:* The Tribe agrees to seek enactment prior to December 31, 1996, by the United States Congress, of an amendment to 25 U.S.C. § 415(a) or § 635 that would authorize the Tribe to lease land to the Navajo families for a term of seventy-five (75) years. If such legislation is not enacted, the Tribe shall in good faith attempt to negotiate an alternative leasing arrangement, and the terms of this Agreement could be amended to meet that circumstance.

6. *Agreement by the United States to Pay the Tribe:* In consideration for the compromise of the Rental, Damage and Court of Federal Claims cases and for foregoing a Quiet Possession Claim as specified in Section 4(b), and for the Hopi Tribe's promise and commitment to provide an accommodation, as set forth in the Accommodation Terms, the United States agrees to pay in settlement and compromise to the Tribe a sum of $50,200,000.00, plus interest, to the extent provided below, in the following manner:

(a). Upon filing in the Ninth Circuit Court of Appeals of a joint motion to dismiss with prejudice the Tribe's appeal of the United States' liability in the Damage case as specified in Section 2, the United States shall pay the Tribe $2,400,000.00 in settlement and compromise of those claims.

(b). After the Tribe has obtained the enactment of legislation as described in Section 5 and upon dismissal with prejudice of the claims describe in Section 3(a), the United States shall pay $22,700,000.00 in settlement and compromise of those claims into an interest-bearing trust account in the United States Treasury for the benefit of the Tribe. Thereafter, and subject to otherwise applicable law, the Tribe may obtain from the trust account $22,700,000.00 of the funds plus any interest accrued, even if fewer than 65% of the Navajo heads of household eligible for an Accommodation have entered into an Accommodation or have chosen to relocate and are eligible for relocation assistance.

(c). After sixty-five percent (65%) of the eligible Navajo heads of household have entered into an Accommodation or have chosen to relocate (and are eligible for relocation assistance) and upon dismissal with prejudice of the Tribe's livestock trespass penalty claim against the United States for the period 1983 through and including 1988, the United States shall pay $10,000,000 in settlement and compromise of those claims into an interest-bearing trust account in the United States Treasury for the benefit of the Tribe. Thereafter, and subject to otherwise applicable

law, the Tribe may obtain from the trust account $10,000,000.00 of the funds plus any interest accrued.

(d). After seventy-five (75%) percent of the eligible Navajo heads of household have entered into an Accommodation or have chosen to relocate (and are eligible for relocation assistance) and upon dismissal with prejudice of the Tribe's livestock trespass penalty claims for the period 1989 through and including 1996, the United States shall pay $15,100,000.00 in settlement and compromise of those claims into an interest-bearing trust account in the United States for the benefit of the Tribe. Thereafter, and subject to otherwise applicable law, the Tribe may obtain from the trust account $15,100,000.00 of the funds plus any interest accrued.

(e). It is a form of this Agreement that the Tribe fulfill its obligations to the Navajo families pursuant to the Accommodation Terms, as specified in Section 4(a). If the Tribe is not in compliance with the undertakings specified in Section 4(a), it shall not be entitled to receive distribution of compensation under this Agreement, including the funds described in subsections (a) through (d) of this Section or the federal government's action with respect to lands, described in Section 7.

(f). None of the releases describes in Section 1 through 4 which are being given to the United States by the Tribe are intended to release the Navajo Nation from any liability it might have to the Tribe. Nor is any of the consideration provided under this Agreement from the United States to the Tribe intended to release the Navajo Nation from any liability it might have to the Tribe. The United States does not take a position on the effect of this Agreement, if any, on satisfaction of claims between the Hopi Tribe and the Navajo Nation; that issue is one to be resolved between the tribes.

7. *Agreement by the United States to Take Land Into Trust for the Tribe and to Acquire State Lands with the State's Concurrence:* (a). As partial consideration for this settlement, the Secretary agrees that, if seventy-five percent (75%) or more of the Navajo heads of household eligible for an Accommodation either have entered into an Accommodation or have chosen to relocate and are eligible for relocation assistance, the Department of the Interior will take in trust up to five hundred thousand (500,000) acres of land for the benefit of the Tribe under the terms set forth in this Section.

(i). It is contemplated that the Tribe will acquire lands. With respect to any specific parcel of land acquired by the Tribe, the Secretary, at the request of the Tribe and subject to all existing applicable laws and regulations (including the National Environmental Policy Act ("NEPA") and 25 CFR Part 151, and provided that any environmental problems identified as a result of NEPA compliance are mitigated to the satisfaction of the Secretary), will take the parcel into trust for the Tribe. Although no specific

land parcels have been identified at the time of this Agreement, it is understood that land the Secretary agrees to take into trust is land in northern Arizona that is used substantially for ranching, agriculture, or other similar rural uses and, to the extent feasible, is in contiguous parcels.

(ii). Although the Secretary may, in his/her absolute discretion, take some of this land into trust prior to seventy-five percent (75%) of the eligible Navajo heads of household entering into an Accommodation or choosing to relocate, he/she is not committing to take any land into trust unless the 75% condition is met. Once the 75% condition is met, however, the Secretary shall take land into trust, in accordance with the provisions of paragraph (i).

(b). To the extent that the Tribe acquires private lands and would like to acquire the interspersed State of Arizona lands, so that both the private and interspersed state lands may be taken into trust, and because of the State's legal restrictions on the sale and exchange of state lands, the United States agrees to acquire for the Tribe (consistent with existing law and provided the further terms set forth in this subsection are also met) for fair market value the interspersed state lands within the exterior boundaries of private lands acquired by the Tribe, under the following conditions: (i) seventy-five percent (75%) of the eligible Navajo heads of household have entered into an Accommodation or have chosen to relocate and are eligible for relocation assistance; and (ii) the United States has the State's concurrence that such acquisition is consistent with the State's interests; and (iii) the Tribe, not the United States, will pay the value of any state lands so acquired; and (iv) acquisition of the interspersed state land is consistent with the purpose of obtaining up to 500,000 acres of land in trust for the Tribe. Once the United States has acquired state lands pursuant to these conditions, the Secretary will take the land into trust pursuant to and in accordance with the provisions of subsection (a).

If the State does not concur in the United States' acquisition of state lands interspersed with the private lands acquired by the Tribe, the Secretary, instead, at the Tribe's request, will take into trust for the Tribe other private lands (as set forth in subsection (a)), to meet its commitment to take up to 500,000 acres into trust.

CONTINGENCIES AND REMEDIES

(c). In the extraordinary event that, by a ruling of the United States Court of Appeals for the Ninth Circuit or the United States Supreme Court or other change of legal authority, the Secretary is not authorized to take land into trust or to acquire state lands at the time he/she is requested to do so by the Tribe, the Secretary and the Tribe will seek federal legislation to give effect to the Secretary's commitment pursuant to this Agreement to take land into trust and to acquire state lands.

(d). The Tribe promises to forego a claim against the United States for quiet possession of the Tribe's property occupied by Navajo families that enter into an Accommodation (as provided in Section 4), except as provided in this subsection. Without acknowledging the validity of any such claim, the Tribe and the United States agree that the Tribe will be released from its commitment to forego the portion of the Quiet Possession Claim identified in Section 4(b)(iii) in the circumstances and to the extent provided in paragraphs (i) and (ii) of this subsection. In any such claim for damages, the benefits already received by the Tribe from the United States pursuant to this Agreement will be considered in measuring damages.

(i). If, when the Tribe asks the Secretary to take land into trust: (A) the Secretary is unauthorized to take the subject lands into trust as set forth in subsection (c) of this Section; and (B) federal legislation is not enacted within two years of submission of a legislative proposal to provide the Tribe with the lands in trust described above, the Tribe will be released from its commitment to forego an action under 28 U.S.C. 1491 and 1505 based on use and occupancy by Navajo families that enter into an Accommodation, as provided in Section 4(b)(iii). This provision rests on the Tribe's assertions that it would not have chosen to allow Navajo families to remain on the HPL except for the Secretary's promise to take 500,000 acres of land into trust and that the rent provided by the Navajo Nation does not fully compensate the Tribe for its lost use of Hopi Lands occupied by Navajo families.

(ii). If, when the Tribe asks the Secretary to acquire interspersed state lands: (A) the State does not concur in the sale of state lands interspersed within the exterior boundaries of private lands acquired by the Hopi for a period of at least 5 years after the Tribe's request to acquire specific interspersed state lands; and (B) the Tribe has acquired significantly less than 500,000 acres of land into trust and does not wish to have additional private lands taken into trust, the Tribe will be released from its commitment to forego an action under 28 U.S.C. 1491 and 1505 based on use and occupancy of the HPL by Navajo families who have entered into an Accommodation, as provided in Section 4(b)(iii). The measure of damages, if any, should consider, *inter alia,* the consideration already received by the Tribe, such as the value of lands taken into trust and the value of rent received from the Navajo Nation for use of the HPL. This provision rests on the Tribe's assertions that (1) it would not have chosen to allow Navajo families to remain on the HPL except for the Secretary's promise to take 500,000 acres of land into trust, (2) that the rent provided by the Navajo Nation does not fully compensate the Tribe for its lost use of Hopi Lands occupied by Navajo families, and (3) that it may not be practicable for the Tribe to acquire or manage 500,000

acres of land in trust if interspersed state lands cannot be acquired.

8. *Agreement as to the Precedential Effect of the Ruling in the Damage Case:* As partial consideration for this Agreement, the United States and the Tribe agree that, absent a specific request by a court, neither the United States nor the Tribe will cite or rely on the United States District Court's ruling in the Damage case for principles concerning the trust responsibility and liability of the United States in any subsequent administrative or legal proceedings between the United States and the Tribe involving the Hopi Reservation.

9. *Assistance with Management of Resources and Enforcement:* (a). The Secretary hereby agrees that, commencing within one year of the signing of this Agreement, the HPL will be included and considered in Interior's future resource allocations to the Tribe. The Secretary also agrees that, as of one year from the signing of this Agreement, to the extent enforcement program resources provided to tribes by the Department of the Interior are linked to reservation acreage and/or population, the acreage of the HPL and number of residents at the homesites of the Navajo Accommodation Signatories will be included in determining future allocations for the Tribe.

(b). The United States agrees that it will assist the Tribe with its management of the lands taken into trust pursuant to this Agreement by providing advice on management for those lands, subject to the availability of Phoenix Area Office, Bureau of Indian Affairs, personnel (or its successor or other appropriately situated personnel, if any) to perform this function.

(c). By January 1, 2000, the Office of Navajo Hopi Indian Relocation ("ONHIR") shall have completed all of the activities with regard to voluntary relocation of Navajos residing on the HPL.

(d). By February 1, 1997, the ONHIR will begin implementing 25 C.F.R. 700.137, 700.138 and 700.139 (1992 ed.) on the New Lands for all Navajos residing on the HPL who are eligible for a replacement home from the ONHIR but who have not made timely application for relocation benefits, and have not made timely arrangements for an Accommodation on the HPL. These provisions shall be fully implemented by February 1, 2000.

(e). *Assurance.*—If the United States fails to discharge the obligations set forth in subsections (c) or (d), including for reason of inadequate congressional appropriations, without acknowledging the validity of any such claim the Tribe preserves any action regarding quiet possession against the United States arising out of the use of the HPL after February 1, 2000, by any Navajo family eligible for an Accommodation who does not enter into an Accommodation.

(f). The transfer of jurisdiction from the BIA to the Hopi Tribe concerning grazing on the Hopi Partitioned Lands

will be effected through proceedings in *Hopi* v. *Watt,* Civ. No. 81–272 PCT–EHC (D. Ariz.). The BIA does not contemplate that grazing permits issued by the BIA when considered in conjunction with permits issued by the Tribe to Navajo residents of the HPL will exceed the total number of sheep units made available to HPL Navajos under the Accommodation Terms.

10. *Enforcement of Settlement Agreement and Costs and Attorneys' Fees:* The United States and the Tribe hereby agree that the provisions of this Settlement Agreement shall be enforceable in either the United States Court of Federal Claims in Washington, D.C., or in the United States District Court in Phoenix, Arizona, as appropriate. Both parties also agree that as to the cases settled by this Agreement each party will bear its own costs and attorneys' fees for these cases (except as otherwise provided in 25 U.S.C. §§ 640d–7(e), 640d–27).

11. *Settlement Agreement Not Evidence:* The parties hereto agree that this is a settlement of disputed claims, that the execution of this Agreement and the passage of consideration hereunder shall not be construed as an admission of liability on the part of any party, and that no party shall assert that any party has admitted liability to any other, and that such liability is expressly denied. This Agreement shall neither be used as evidence nor construed in any way whatsoever as an admission by the United States or the Tribes as to any issue related to liability or damages, but may be used to show, *inter alia,* breach, or settlement or release in the Rental, Damage, Court of Federal Claims case or Quiet Possession claims.

12. *Anti-Deficiency Act:* Any section requiring the United States to provide government services and/or funds is subject to the limitations of the Anti-Deficiency Act, 31 U.S.C. 1341(a)(1).

13. *Authority to Enter Agreement:* Each of the signatories hereto hereby warrants that he/she is authorized to enter into this Agreement on behalf of the party on whose behalf he/she has executed the Agreement.

14. *Counterparts:* This Agreement can be executed in counterpart originals and each copy will have the same force and effect as if signed by all parties.

15. *Entire Agreement:* This Agreement discharges the obligations of the United States and the Tribe to each other in the Damage and Court of Federal Claims cases and the parts of the Rental case that are being compromised and settled and it bars suit by the Tribe against the United States for a Quiet Possession Claim, pursuant to the terms of Sections 4, 7 and 9. This Agreement supersedes any prior written or oral agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

For the United States of America:

John R. Schmidt, *Associate Attorney General, U.S. Department of Justice, Washington, DC.*

Lois J. Schiffer, *Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC.*

Dated: December 14, 1995.

Katherine W. Hazard, *Attorney, Appellate Section, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC.*

Dated: December 14, 1995.

Robert L. Armstrong, *Acting Secretary of the Interior, U.S. Department of the Interior, Washington, DC.*

For The Hopi Indian Tribe:

Farrell K. Secakuku, *Chairman of the Hopi Tribe, Xykotsmovi, AR.*

Dated: December 14, 1995.

Tim Atkeson, *Counsel for the Hopi Tribe, Arnold & Porter, Denver, CO.*

Dated: December 14, 1995.

ACCOMMODATION AGREEMENT

THIS AGREEMENT is made this ____ day of _____, 1996, by and between The Hopi Tribe ("the Tribe"), acting by and through the Hopi Tribal Council, and _____ ("the Resident(s)").

THE TRIBE HEREBY AGREES to accommodate the Resident(s) in the manner and according to the terms set forth on this page and in the attached Exhibits A through __, consisting of __ pages consecutively numbered as 1 through __, all of which are incorporated herein and made a part hereof as if again set forth in full and all of which shall be read together as a single, fully integrated agreement (collectively, "the Accommodation Agreement"). In the event of any inconsistency between or among any of the attached Exhibits, the later documents shall control the earlier documents.

THE RESIDENT(S) HEREBY AGREE(S) to abide by the terms of the Accommodation Agreement. This Accommodation Agreement is the entire agreement between the Resident(s) and the Tribe.

THE UNITED STATES HEREBY AGREES to support this Accommodation Agreement and to perform its duties as set forth in the attached Exhibits.

THE NAVAJO NATION HEREBY AGREES to support this Accommodation Agreement.

IN WITNESS WHEREOF, the parties have executed this Accommodation Agreement, which shall become effective as of the foregoing date when all four parties have signed.

THE HOPI TRIBE

By:
Its:
Date signed:

THE RESIDENT(S)
Witness by:
Date signed:

THE NAVAJO NATION

By:
Its:
Date signed:

THE UNITED STATES
(Approved pursuant to 25 U.S.C. § 415)

By:
Its:
Date signed:

AGREEMENT

This agreement ("Agreement") is made this ____ day of _____, 199__, by and between the Hopi Tribe, acting by and through the Hopi Tribal Council, _____ (HPL Navajo signing this Agreement), the Navajo Nation ("Nation"), and the United States.

The purpose of this agreement is to provide for the accommodation of elderly and traditional Navajo residents of the Hopi Partitioned Lands ("HPL") who wish to remain there and to set forth in terms and conditions of that accommodation. It is being offered pursuant to the direction of the United States Court of Appeals for the Ninth Circuit that the parties to the Manybeads and New Construction cases reach by negotiation and voluntary agreement a final settlement of certain issues relating to the 1974 Navajo-Hopi Land Settlement Act and because the Hopi Tribe is desirous of ending the dispute among the parties over relocation. This agreement is premised upon the request of the HPL Navajos that they allowed to stay on the HPL. All of the parties to this Agreement want to enter into an era of friendship and believe that the accommodation detailed to herein will lead to that goal.

Who is eligible: The persons eligible to enter into this Agreement include all adult eligible Navajos, as defined in Section III.A of the October 30, 1992 Agreement in Principle, who currently reside on the HPL. In addition, those persons' children and descendants who reside on the HPL, as well as the spouses of those children and descendants, are eligible to enter into this Agreement. The children and descendants become eligible upon attaining majority. At that point, if they desire to remain on the HPL they must agree to do so under the terms and conditions of this Agreement and become a signatory to it. In so doing, they

will be entitled to all of the protections and benefits of the Agreement.

Pursuant to Section II.I. of the October 30, 1992 Agreement in Principle, if the HPL Navajo signing this Agreement desires to voluntarily leave the HPL and to transfer his/her rights under this Agreement to another eligible person who resides at the same location, he/she is free to do so. For purposes of determining whether a person resides at the same location, a temporary absence from the HPL to attend school, work, illness, military service, or the like will not be taken into account. The only condition on the transfer is that, if the person to whom the rights are to be transferred is not a current signatory to the Agreement, the transfer would not become effective until the person agreed to abide by and signed the Agreement. Should the HPL Navajo signing this Agreement attempt to assign, sublet, or transfer in any fashion his/her rights under this Agreement to an ineligible person or to an eligible person who does not reside at the same location, this Agreement will automatically terminate as to that person.

Accommodation

The accommodation being made available to the HPL Navajo signing this agreement consists of four parts. These are (a) homesite, (b) farmland, (c) grazing, and (d) use of the HPL. Each of these is discussed below.

A. *Homesite:* As part of the accommodation, a homesite ("homesite") is being made available to the HPL Navajo signing this Agreement and the members of his/her immediate family who reside on the HPL to be used as their principal residence. It is available for their use and the use of their guests. The homesite is comprised of a three-acre area on the HPL and is designated more specifically in Attachment A. This is the same amount of land that is made available to the Hopi tribal members who move to the HPL. The homesite can be enlarged, where necessary, to ensure that all family members at a particular site are included within it. Such enlargement is subject to approval by the Hopi Tribe.

Within the homesite, the HPL Navajo signing this Agreement is fee to repair, restore and enlarge any existing structure. He/she is also free to reconstruct any existing structure that is destroyed. In addition, he/she is free to construct additional structures that are related to his/her residential, farming, grazing, or traditional use of the homesite. In order to construct additional structures for these uses, the HPL Navajo signing this Agreement need only submit an application to the Hopi Tribe, which the Hopi Tribe agrees to process and grant within seven (7) days. The HPL Navajo signing this Agreement is not required to fence off the homesite area, but is responsible for protecting his/her property from livestock.

In addition to being able to repair and construct structures, the HPL Navajo signing this Agreement is free to

continue any use he/she is currently making of the homesite, with the one exception that it may not be used for burial of human remains. The HPL Navajo signing this Agreement shall also be allowed to engage in any additional use subject to the following limited exceptions: (1) all uses of the homesite must be in compliance with federal, state and Hopi tribal laws and ordinances; (2) mining and commercial business activity is not allowed; (3) any well must be authorized by the Hopi Tribe before it is drilled; (4) the homesite must be kept in a healthful and sanitary manner and in good condition; and (5) no toxic or hazardous materials may be kept on, or disposed of in, the homesite.

B. *Farming:* As part of the accommodation, the HPL Navajo signing this Agreement and the members of his/her immediate family who reside on the HPL are free to use up to ten acres of farmland for their personal use. This is the same amount of farmland that is available to Hopi tribal members who wish to farm on the HPL. To the extent possible, the farmland made available to the HPL Navajo signing this Agreement will be located at or near that person's homesite. As with the homesite, the HPL Navajo signing this Agreement is not required to fence this area, but is responsible for protecting it from livestock. This farmland is to be used for agricultural purposes only. It shall not be used for grazing, corrals, mining, residential or other purposes.

C. *Grazing:* As part of the accommodation, grazing on the HPL is being made available to HPL Navajos who sign Agreements and the members of their immediate families who reside on the HPL. This grazing is to occur on land outside the homesite and farmland and is dependent on the HPL Navajo obtaining a validly issued current grazing permit from the Hopi Tribe. Just as with Hopi tribal members who have valid grazing permits, the grazing of the HPL Navajos will be regulated pursuant to Hopi Ordinance 43.

As an initial matter, the Hopi Tribe is making a total of 2,800 sheep units year long ("SUYL") available for use by all of the HPL Navajos entering into Agreements. Each HPL Navajo is entitled to be allocated a portion of the 2,800 SUYL. To the extent that an HPL Navajo wishes to use his/her allocated SUYL to graze animals other than sheep, he/she can apply to the Hopi Tribe for permission to do so. That allocation is to be done by the Nation or its designee on or before November 1 of each year. Once the allocation is done, the Hopi Tribe will issue an annual grazing permit to each allocatee by December 1 of each year which will become effective on January 1. To the extent possible, the SUYL permitted to an HPL Navajo will be in a range unit or portion thereof near that person's homesite.

To the extent that an HPL Navajo desires to obtain more SUYL than he/she has been allocated, he/she is free

to apply to the Nation for a permit off the HPL or to the Hopi Tribe for further SUYL on the HPL. In evaluating a request for additional SUYL, the Hopi Tribe will look to the grazing capacity of the land, its condition, and any other requests or land use needs. In addition, the parties to this Agreement will work cooperatively to increase the amount of grazing capacity on the HPL.

D. *Use of the HPL*: As part of the accommodation, and in addition to the homesite, farmland, and grazing discussed above, the HPL Navajo signing this Agreement and the members of his/her immediate family who reside on the HPL may continue the traditional uses they are currently making of the HPL. This would include, for instance, the collection of herbs for personal or traditional use, access to religious shrines, the construction of temporary structures, and the gathering of dead wood for fire. The only limits placed on these uses are the ones set forth by the Hopi Tribe in its ordinances and permit systems, which apply to HPL Navajos and Hopi tribal members alike and are designed to protect the land and its resources. For instance, persons wishing to construct temporary structures may do so after applying to the Hopi Tribe and receiving a permit. These permits, which have been regularly granted in the past, will require, as they have in the past, that the structure be dismantled within a set period of time. Similarly, the collection of firewood is subject to Hopi Ordinance 47, which requires that the wood not be green and that a permit be obtained. HPL Navajos should consult the Hopi Tribe to determine if a particular use requires a permit or is otherwise regulated.

In addition to making use of the HPL, the HPL Navajo signing this Agreement and the members of his/her immediate family who reside on the HPL are entitled, consistent with the Hopi Tribe's Constitution and laws, to the same access to infrastructure and resources as members of the Hopi Tribe residing on the HPL. This would include any future utility service provided on the HPL. To the extent that all applicable laws and regulations have been complied with, including the Hopi Comprehensive Land Use Plan, the HPL Navajo signing this Agreement is free to contract with a third party to provide utility services or other infrastructure related to any allowable use of the homesite, farmland, or grazing privileges.

E. *Terms and Conditions:*

1. *Jurisdiction:* The HPL Navajo signing this Agreement and all other persons (minors and guests) occupying his/her homesite are subject to the jurisdiction of the Nation and its courts with regard to issues which are entirely Navajo-related, which would include probate, domestic relations, child custody and adoption, tribal benefits and services. Otherwise, they are subject to the civil and criminal jurisdiction of the Hopi Tribe and the Hopi Tribal Court while they reside on the HPL.

Issues regarding the interpretation of this Agreement are subject to the Hopi Tribe's jurisdiction and will be resolved in the Hopi Tribal Courts. In any case in Hopi Tribal Court involving the HPL Navajo signing this Agreement, regardless of whether it involves this Agreement, that person shall be entitled to the same due process Hopi Tribal members receive under Hopi law and shall be treated fairly and equitably.

The Hopi Tribe's jurisdiction shall extend to all present and future laws, regulations, ordinances, guidelines and restrictions adopted, enacted, or imposed by the Hopi Tribal government. The Hopi Tribe agrees that any changes to the Comprehensive Land Use Plan which become effective after the date of this Agreement shall not reduce or change to the detriment of the HPL Navajo signing this Agreement the terms of this Agreement unless the change is agreed to by the Hopi Tribe and the person.

2. *Term:* In the past, the Hopi Tribe has welcomed people from other tribes to its land, if those people were willing to abide by the Hopi Tribe's laws. Those people have stayed a long time. If the HPL Navajo living on the HPL abide by the Hopi Tribe's laws, this Agreement could bring peace and provide a way to live together on this land for a long time. With this in mind, the provisions of this Agreement shall run from the ____ day of _____, 199__, to midnight seventy-five years from that date unless the Agreement is terminated earlier for a reason described in the section entitled "Termination and Surrender." At any time after 204__, _____ is free to apply to the Hopi Tribe to extend the term of the Agreement. In evaluating whether to extend the Agreement, the Hopi Tribe may consider the relationship among the parties, their needs, and whether the Agreement has worked. There is nothing to stop the Agreement from being extended assuming all parties are desirous of doing so.

3. *Compensation:* The Hopi Tribe is entitled to compensation for its loss of use of part of the HPL. Provision of that compensation by the Navajo Nation is a necessary part of this Agreement. Unless and until the compensation for this accommodation is agreed to separately with the Nation, its payment will be guaranteed pursuant to 25 U.S.C. § 640d–15(a). That compensation is part of the consideration for this Agreement. If the Nation fails to make payment when due of the agreed to compensation, which failure continues for thirty (30) days after demand in writing has been made by the Hopi Tribe upon the Nation for payment, this Agreement is terminated without recourse effective immediately.

4. *Termination and Surrender:* All of the parties to this Agreement are committed to making it work. This section deals with the possibility that there may be problems and spells out the situations in which the Agreement can be terminated as to one or more of the signatories to it. Other than (1) the failure of the parties to reach an agreement

on an extension of the term, (2) an attempt to transfer rights under this Agreement to an ineligible person or to an eligible person who does not reside at the same location, or (3) the failure of the Nation to pay the agreed to compensation in a timely manner, which are each described above, this Agreement can be terminated in only four circumstances. These are listed below. In each of those circumstances the affected HPL Navajos will be given notice of the proposed termination and an opportunity to challenge the validity of the termination in the Hopi Tribal Courts. The notice must be in writing and must specify the reasons for the termination. It must be sent by certified mail to the NPL Navajo signing this Agreement at his/her last known mailing address or, if the mailing address is not known, by posting the notice in a prominent place at the homesite. The termination becomes effective 90 days after the date of delivery of the notice unless the HPL Navajo signing this Agreement files an action within that 90-day period in the Hopi Tribal Courts contesting the termination. In such a case, the judge of the Hopi Tribal Court who heard the challenge would determine the date on which the termination, if upheld, would become effective.

The four ways in which this Agreement can be terminated are: (1) upon the HPL Navajo signing this Agreement no longer using the homesite as his principal residence for a continuous period of more than two years; (2) upon conviction, and, if it occurs, an appeal, of the HPL Navajo signing this Agreement in a court of competent jurisdiction for the violation of any crime reference in 18 U.S.C. § 1153 (or its counterpart in Hopi Ordinance No. 21) or section 3.3.13 of Hopi Ordinance No. 21 (child molesting); (3) upon three convictions, and, if they occur, appeals, within a fifteen-year period of the HPL Navajo signing this Agreement in a court of competent jurisdiction for the violation of any combination of the following sections of Hopi Ordiance No. 21: section 3.3.17 (cutting green timber), section 3.3.44 (impersonation of a public officer), section 3.3.46 (injuring fences), section 3.3.47 (injury to public property), section 3.3.52 (maintaining a public nuisance), section 3.3.54 (malicious mischief), section 3.3.56 (misbranding), section 3.3.63 (polluting streams), and section 3.3.73 (tampering with communications); section 108.C.1.a of Hopi Ordinance 43; or the Hopi Woodland and Wildlife Ordinances; or (4) upon the HPL Navajo signing this Agreement using the homesite or his/her farmland for a commercial business or mining activity. No termination shall occur subparagraph (1) above unless all HPL Navajos who reside at the homesite it up, but the Agreement shall be terminated with respect to the HPL. Navajo who no longer principally resides at the homesite, and similarly under subparagraphs (2) and (3) a conviction or convictions against one HPL Navajo shall terminate only that resident's rights under this Agreement.

This agreement will not be terminate for a violation by the HPL Navajo signing this Agreement of Section 3.3.82 (wrecked, junked, or unserviceable vehicles) of Hopi Ordinance 21. To ensure that this section is complied with, the Nation agrees that, if the HPL Navajo signing this Agreement is convicted of a violation of this section, it will assist that person in removing, and if necessary guarantee the removal of, the offending property within thirty (30) days of entry of judgment on the conviction.

The HPL Navajo signing this Agreement will, upon sixty (60) days after termination of this Agreement, immediately surrender the homesite to the Hopi Tribe and vacate the HPL. The HPL Navajo signing this Agreement is entitled to remove all of his/her property within those sixty (60) days. To the extent that it has not been removed prior to the expiration of those sixty days, the property will be deemed forfeited and abandoned. The HPL Navajo signing this Agreement may surrender this Agreement at any time by means of a written instrument verified before a notary public or before a judge of the Hopi Tribal Courts. Any person residing at the homesite who does not vacate the HPL within sixty days after termination of this Agreement is subject to eviction which will be effected by the United States and the Hopi Tribe.

5. *Relocation Benefits Waived:* By signing this Agreement, the HPL Navajo signing this Agreement agrees and acknowledges that, after three (3) years from the date of this Agreement, with the exception of temporary emergency relocation assistance (as set forth in 25 C.F.R. § 700.175), any and all rights he/she would have to relocation benefits as more fully defined in 25 U.S.C. § 640d are waived. If the HPL Navajo signing this Agreement decides to exercise his/her relocation benefits after signing this Agreement, he/she must vacate the homesite as soon as a relocation dwelling is made available or within three years from the date of the Agreement, whichever is sooner.

THE HOPI TRIBE,
Kykotsmovi, AZ, September 6, 1995.

LEE PHILLIPS, Esq.,
Big Mountain Legal Office,
Flagstaff, AZ.

DEAR LEE: On behalf of the Hopi Tutsqua Team and the Hopi Tribal Council, I am writing you in your capacity as legal representative for the Navajo families seeking an accommodation from the Hopi Tribe. The purpose of this letter is to clarify several issues that have been discussed between members of the Hopi Tutsqua Team and the Navajo families concerning the Accommodation Agreement ("Agreement") offered by the Hopi Tribal Council to the families last year. It is the Hopi Tribe's intention that this letter be read in conjunction with the Agreement, which is attached hereto, and that the clarifications are binding on the Hopi Tribe during the one-year period from the date of the enactment of the authoriz-

ing legalization or until October 2, 1996, whichever is earlier, and also with respect to any Agreement that is signed.

1. In the section on eligibility, the Agreement states that persons who enter into the Agreement "will be entitled to all of the protection and benefits of the Agreement. To the extent that there are additional protections and benefits in the October 30, 1992 Agreement in Principle ("AIP), persons who enter into the Agreement are entitled to them as well, as long as they do not conflict with the provisions of the Agreement.

2. In the section on use of the homesite, there are several issues:

A. With regard to the three-acre area to be assigned to HPL Navajos signing the Agreement, the area will be drawn in such a manner so as to include the eligible families residing at the homesite and will not be an arbitrary square or rectangle.

B. Although it is not specifically stated in the Agreement, all structures related to residential, farming, grazing or Navajo ceremonial use which are currently at the homesite shall remain permitted, as set forth in the AIP.

C. In addition to constructing new permanent structures at a homesite, any HPL Navajo signing an Agreement will be allowed to construct temporary structures at the homesite as long as they are related to the residential, farming, grazing, or traditional use of the homesite.

D. The Agreement states that HPL Navajos signing the Agreement will be "free to continue any use he/she is currently making of the homesite." As such current uses of the HPL by HPL Navajos are not considered to be commercial business activities. Thus, to the extent that HPL Navajos are currently engaged in grazing, farming, weaving, jewelry making, and the like, those uses are protected and are not subject to the prohibition of commercial business activities.

E. The Agreement prohibits the keeping of toxic or hazardous materials at the homesite. This prohibition does not include keeping fuel that is to be used at the homesite and that is stored and used in a safe manner.

3. In the section on farming use, the Agreement contemplates that orchards will be counted as part of the allowable farmland acreage.

4. In the section on grazing use, there are several issues.

A. With regard to substituting horses and cattle for sheep, the Agreement states that an individual can apply to the Hopi Tribe for permission to do so. This application should occur after the individual's allocation has been made so the appropriate mix of animals can be determined. For the purpose of substitution, the Hopi Tribe will use a 4–1 ratio for cattle and a 5–1 ratio for horses.

B. To assist the Hopi Tribe in evaluating the grazing capacity of the land, the Tribe is planning a grazing study with the BIA to be conducted this fall. In addition, the Tribe will continue to request that grazing studies be done on a periodic basis in the future.

C. The grazing permits are annual permits which must be reallocated and reissued each year to take account of any changes in allocation. As such, the permits are not transferable between years. To the extent that a permit holder becomes unable during a given year to continue using his/her permit, the Hopi Tribe will work

with the individual and his/her family to assure continuity of grazing for the remainder of that year.

5. In the use of the HPL section, there are several issues:

A. To the extent that there is confusion about the purpose of permits and fees generally, the Hopi Tribe does not regulate religion and does not charge religious fees or require religious permits. What the Hopi Tribe regulates, however, is activities on its Reservation, such as grazing, hunting, and collection of firewood. These regulations are general, apply to everyone on the Reservation, Hopi and Navajo, and are not based on any religious precepts.

B. With regard to dismantling permitted temporary structures which are located away from the homesite the Hopi Tribe will consider requests to leave certain structures to be dismantled by nature. Such requests must be made at the time the permit is requested, and the permit will contain the applicable conditions concerning cleanup and removal.

C. With regard to the collection of green boughs, access will be on the same basis for HPL Navajos as it is for Hopi Tribal members. Currently, a permit is required pursuant to Ordinance 47. The Tribal Council is reconsidering whether to make green boughs accessible for ceremonial use without a permit and also what methods should be established for collection.

D. As regards herbs and plants, the Agreement already states that the collection of herbs and plants for personal or traditional use does not require a permit. The herbs and plants may not be collected for sale or commercial use. The Hopi Tribe expects this situation to continue for as long as the gathering does not create problems in terms of erosion or supply. If such a situation arises, limitations may have to be imposed. The Hopi Tribe hopes that the families will work with it to ensure that this situation is avoided. Assuming that the people collecting the herbs and plants give each other common courtesy and respect, collection for personal or traditional use will continue to be unregulated.

E. With regard to collection of firewood, a permit is required. These permits will be available to HPL Navajos on the same basis as they are for Hopi Tribal members. These permits will be limited to available resources, which should be sufficient if everyone is respectful of each others needs.

F. With regard to implementing the current Hopi Comprehensive Land Use Plan, the Hopi Tribe will consider whatever input, including maps, the HPL Navajos signing this Agreement are interested in providing.

G. Pursuant to the AIP, the United States is to provide the *Manybeads* plaintiffs with notice of proposed government fencing and construction projects on the HPL and to otherwise comply with Section 106 of the NHPA. In addition, the Hopi Tribe will provide to you, as the legal representative of the HPL Navajo families, copies of any notice it sends to the Navajo Nation regarding projects involving federal funds.

6. With regard to the term of the Agreement, the Hopi Tribe does not currently have the authority to lease for more than two twenty-five-year periods. The Hopi Tribe intends to obtain that authority from the United States Congress. The HPL Navajos will have until one year from the date of the enactment of that authorizing legisla-

tion or until October 2, 1996, whichever is earlier, to sign the Agreement.

7. In terms of a dispute resolution mechanism, the Hopi Tribe believes that the current mechanisms it has in place will provide the necessary due process and will ensure fair results. Moreover, in the interest of better communications and understanding, the Hopi Tribe will, prior to beginning any formal proceeding to enforce the Agreement or permits issued to the HPL Navajos, meet with the affected individuals to discuss concerns.

Please let me know if you have any questions.

Sincerely,

FERRELL SECAKUKU,
Chairman, Hopi Tribal Council.

THE HOPI TRIBE,
Kykotsmovi, September 8, 1995.

ALBERT HALE, President,
HERB YAZZIE, Attorney General,
CLAUDEEN BATES ARTHUR, Chief Legislative Counsel,
The Legislative Branch, The Navajo Nation, Window Rock, AZ.

DEAR PRESIDENT HALE, ATTORNEY GENERAL YAZZIE, AND CHIEF LEGISLATIVE COUNSEL ARTHUR: At the request of David Lombardi and yourselves, the Hopi Tribe has reviewed the maps you sent us of the two homesites and the customary land use areas and has the following comments.

First, with regard to the homesite maps, as the Hopi Tutsqua Team has indicated on several occasions, each three-acre area will be drawn so as to include the eligible families residing at the homesite and will not be an arbitrary square or rectangle, such as the areas currently drawn on the maps. The Office of Hopi Lands has not visited either of the mapped sites for the purpose of determining whether the maps accurately depict the location of the various structures at the site. Such visits, among other things, would be necessary before a final decision on location could be made. Assuming that the map is correct, however, it appears that it is possible to design a three-acre homesite for the existing structures at both locations. We have taken the liberty of making a suggested boundary for each site on the maps and are returning those to you.

With regard to the customary use areas, it is worth noting that under the Accommodation Agreement the three-acre homesite, the farming area, and whatever grazing is allocated and permitted to the homesite resident will be for the exclusive use of the homesite resident. Thus, the residents at a particular site will be able to prevent others from engaging in activities on their homesite or their farmland, and will be able to graze in their designated area without competition from other grazers.

The Accommodation Agreement allows the homesite residents to continue their traditional uses of the HPL, such as, for example, the collection of herbs and plants for personal use. Similarly, the Accommodation Agreement does not prevent the homesite residents from visiting shrines or sacred sites at locations on the HPL other than their homesite or farming area. These uses of the HPL are not exclusive, however, and are subject to Hopi Ordinances. To avoid

conflicts, the Hopi Tribe has agreed to consider whatever input, including maps such as these, the homesite residents care to provide as it implements its current Comprehensive Land Use Plan.

I hope this allays the concerns of the families.

Sincerely,

FERRELL SECAKUKU,
Chairman, Hopi Tribal Council.

FLAGSTAFF, AZ,
October 2, 1995.

Re Navajo families response to Hopi Tribes' September 6, 1995 proposal.

Hon. FERREL H. SECAKUKU,
Chairman of the Hopi Tribe,
Kykotsmovi, AZ.

DEAR CHAIRMAN SECAKUKU: I am writing as the legal representative of the Navajo families living on the HPL. The purpose of this letter is to respond to your letters of September 6, 1995 and September 8, 1995 which contain the Hopi Tribe's offer to accommodate the religious concerns raised by my clients and discussed with your Hopi Tutsqua Team during several meetings this past summer. The Navajo Families Mediation Team has voted to accept the Hopi Tribe's proposed accommodation and to go forward at this time and begin the one year trial period. The Navajo families agree to do this with the understanding that the clarifications to the Accommodation Agreement in your letters and in this letter form the basis for the parties proceeding with this process.

It is the intention of the Navajo families that this letter be read in conjunction with the proposed Accommodation Agreement and your letters and that the clarifications contained in all three letters be binding during both the one year period that my clients will have to accept and sign the Accommodation Agreement and also with respect to any final agreement that is signed by the parties.

There are several specific clarifications which my clients ask that I communicate to you and the Hopi Tribe. These clarifications are based on the discussions and agreements that occurred during our meetings with your Tutsqua Team this past summer.

1. It must be clear that this Agreement is made in good faith and in order to provide for the accommodation of traditional Navajo families living on the HPL. The Agreement is made because the parties do not want to continue to be in conflict. Rather, they wish for a relationship that is respectful and helpful. The Agreement offers an opportunity to bring peace to this troubled land for the benefit of both Tribes. This Agreement has been made pursuant to the direction of the United States Court of Appeals for the Ninth Circuit, in the *Manybeads* v. *United States of America* case, that the parties reach by negotiation and voluntary agreement a final settlement of certain issues relating to the 1974 Navajo-Hopi Land Settlement Act.

The agreement reflects the respect that members of the Hopi Tribe and Navajo Nation have for each other and the acknowledgment by each of the sincerity of the traditional beliefs of the other,

the importance of those beliefs in defining each Tribe's way of life, and the desire of both peoples to preserve their respective cultures and ways of life in the future. It is understood that the United States will specifically acknowledge the sincerity and importance of the religious beliefs of members of the Hopi Tribe and the Navajo Nation and the significance of the Navajo and Hopi religions.

2. Children and descendants of the eligible adult Navajos are also eligible for the accommodation. In addition, final decisions regarding eligibility for the accommodation, homesites, farming and grazing will be made during the one year period and prior to the final acceptance and signing of the individual Accommodation Agreements by the Navajo families.

3. All existing structures which belong to eligible Navajo families and are related to residential farming, grazing or Navajo ceremonial use shall remain permitted as part of the Accommodation Agreement.

4. The Agreement states that each Navajo family signing the Agreement will be "free to continue any use he/she is currently making of the homesite." Your letter of September 6, 1995 further states that "thus to the extent that HPL Navajos are currently engaged in grazing, farming, weaving, jewelry making and the like, these areas are protected and are not subject to the prohibition of commercial business activities." We want to clarify that other traditional uses such as non-commercial child care or the provision of traditional medical services shall not be considered commercial uses as well.

5. The prohibition is keeping toxic or hazardous materials on the homesite would not include fuel and other materials which are used for general residential purposes and that are stored and used in a safe manner.

6. The Accommodation Agreement provides that my clients who accept and sign the Agreement would have the right to use up to ten acres of land for farming. The September 6, 1995 letter further provides that "the Agreement comtemplates that orchards will be counted as part of the allowable farmland acreage." We want to clarify that all existing traditional Navajo farming including cultivated fruit trees and vines are included as part of the farmland acreage.

7. It is my clients' understanding that grazing shall be made available to each eligible families' homesite. With regard to the issue of substituting horses and cattle for sheep, we want to be clear that to the extent that Navajo families wish to use his/her allocated SUYL to graze animals other than sheep, that he/she may do so using the conversion factors of one goat-to one sheep, four sheep-to one cow, and five sheep-to one horse. It is understood that the Navajo families would make this request as part of their application so that the appropriate mix of animals can be determined.

8. The first grazing study will be conducted and completed prior to the expiration of the one year period so that the parties will be aware of the actual current grazing capacity of the land. Further that the Hopi Tribe and the United States will agree to conduct periodic grazing studies so as to provide reasonably current information for use by the parties in the development and application of the grazing program. Finally, that the parties will all agree to

work cooperatively to increase the amount of grazing capacity on the HPL.

9. Concerning the transferability of grazing permits it is understood that the grazing permits are annual permits which must be reallocated and re-issued each year to take account of any changes in allocation. It is also understood that a process will be established to assure continuity of grazing by the immediate families of permitees who may die or become disabled during a particular grazing year by allowing for the transfer of the grazing permit from the head of household to their eligible family members who continue to live under the terms of the Accommodation Agreement.

10. To the extent that the Hopi Tribe requires hunting permits or other similar permits, it must be clear that neither the application for the permit nor payment of any related fees would be deemed a waiver by the Navajo families or the Navajo Nation of any treaty rights which may exist as to the United States.

11. With regard to dismantling permitted temporary structures which are located away from the homesite, it must be clear that certain structures will be allowed to be dismantled by nature such as the "Yei Bi Ghan" in the "Yei Bi Chai" ceremony, the "Itnashjinii" in the Fire Dance ceremony, the Host Hogan of the "Enemy Way" ceremony, structures blessed with white corn and partially dismantled or burnt burial hogans, and that the permit will indicate this exception.

12. With regard to the collection of green boughs, your letter of September 6, 1995 provides that the Navajo families will be given the same right to collect green boughs as is given to Hop Tribal members. We understand that a permit is currently required pursuant to Ordinance #47, but may not be required in the future. It should be clear that because of the religious exception involved in the collection of green boughs, that a special permit would be provided to the Navajo families without fee and on the same basis as it is for Hopi Tribal members until the permit issue can be reconsidered by the Hopi Tribal Council.

13. It is our understanding that each homesite will be provided a firewood permit, that no fee is required and that the permits shall be granted on the same basis as for Hopi Tribal members.

14. Navajo families will be guaranteed the same access to infrastructure and other resources as are members of the Hopi Tribe on the HPL. Further, that to the extent that all applicable laws and regulations have been complied with, the Navajo families will be free to contract with third parties to provide utility services or other infrastructure, including social service, educational and community facilities, related to any allowable use of their homesite, farmland or grazing privileges.

15. The Hopi Tribe has agreed to provide notice of proposed government fencing and construction projects on the HPL and otherwise comply with Section 106 of the NHPA. It is our understanding that the notice which the Hopi Tribe will provide to the Navajo families, through their legal representative, will continue to be the 30 day written notice that has previously been provided pursuant to the *Attakai* v. *United States* decision, 746 F Supp. 1395 (D. Ariz. 1990).

With regard to the implementation of the Hopi Tribe's Comprehensive Land Use Plan, it is our understanding the Hopi Tribe will cooperate with the Navajo families in preserving access to Navajo sacred places on the HPL. It is also our understanding that the Hopi Tribe agrees to work with us to identify and protect existing sacred sites, burial sites and other similar places significant to either the Hopi or Navajo. In addition that the Hopi Tribe will consider any maps and other written input submitted by the Navajo families as the Hopi Tribe implements its land use plan or engages in future construction or demolition that may affect the sacred areas.

16. The Hopi Tribe has previously agreed in the Agreement In Principle that any eligible Navajo would be entitled to enter into the Accommodation Agreement with the Hopi Tribe "within one year after congressional enactment effectuating the Agreement." AIP Section III (L). In your letter of September 6, 1995 you now state that "the HPL Navajo will have until one year from the date of the enactment of that authorizing legislation or until October 2, 1996, whichever is earlier to sign the agreement." Under these new terms it appears that the one year period could end as early as October 2, 1996. To avoid any confusion among my clients, I request that the Hopi Tribe agree that the Navajo families will have until one year from the date from the enactment of the congressional legislation but no later than December 31, 1996, unless otherwise agreed to by the parties.

This would allow the Navajo Family Representatives and me to have from October 2, 1995 to December 31, 1995 to return to the HPL communities and to make all of the HPL families aware of these final clarifications. The Hopi Tribe could also seek the necessary congressional authorization during this period. The one year period would then run from January 1, 1996 to December 31, 1996. If families wanted to sign an agreement prior to December 31, 1995, they would of course be free to do so. At the same time, we could work with the Office of Hopi Lands to finalize the details of the homesites, farming and grazing. Maps/documents will need to be developed and approved by the parties which will identify and demonstrate each Navajo families' homesite, farming and grazing areas. These maps/documents will be incorporated with the individual agreements that are signed by the parties.

17. It is our understanding that the United States Congress will have to pass legislation authorizing this Agreement and that this will occur as soon as possible. In the event Congress does not or will not pass such legislation it is our understanding that the Agreement as written cannot take effect.

18. We appreciate your agreement to meet with the affected individuals and to discuss the concerns involved in a dispute prior to beginning any formal proceeding. We understand this agreement to include at a minimum, notice of the dispute and an opportunity to be heard prior to initiation of any formal proceedings. We also share your commitment to improve communications and understandings between the Hopi Tribe and the Navajo families. We hope that the details of other methods to resolve disputes informally can also be worked out during the one year period as previously agreed in Section III, (G)(3) of the A.I.P.

My clients and I hope that this Accommodation Agreement can be the first step in ending this long and difficult issue and that it signals the beginning of a new and historic relationship between members of the Navajo Nation and the Hopi Tribe. It is now time for us to go together to the Court and seek a formal order recognizing our agreement. We also believe it will be necessary to include or incorporate the positions of the United States and Navajo Nation in the final settlement process since they both have important responsibilities under the terms of the Agreement.

Sincerely,

LEE BROOKE PHILLIPS, P.C.

U.S. DEPARTMENT OF JUSTICE,
Washington, DC, October 2, 1995.

DAVID E. LOMBARDI, Jr.,
Chief Court Mediator, Settlement Program, U.S. Court of Appeals for the Ninth Circuit, San Francisco, CA.

DEAR DAVID: In your letters of August 24, 1995, and September 11, 1995, you asked the United States to respond in writing by October 2, 1995, to the terms of an accommodation agreement. We address, here, the three provisions that pertain specifically to the federal government. It is the intention of the United States that this letter be read in conjunction with the Accommodation Agreement.

First, this settlement agreement reflects the respect and acknowledgment of the United States for the sincerity of the traditional beliefs of members of the Hopi Tribe and Navajo Nation and the importance of those beliefs in defining each Tribe's ways of life, and the desire of both peoples to preserve their respective cultures and ways of life in the future. The United States specifically acknowledges the sincerity and importance of the religious beliefs of members of the Hopi Tribe and the Navajo Nation and the significance of the Navajo and Hopi religions.

The second provision concerns the undertaking of a grazing inventory by the Bureau of Indian Affairs (BIA). Regrettably, for funding and planning reasons the BIA has not begun a grazing inventory yet this season and it is now too late to contract the work this year. However, the Department of Justice and the Department of the Interior understand the necessity of undertaking the work and Interior has made this a high priority and intends to commit resources for a study to be completed by the end of 1996, subject to the availability of appropriations. Because it is necessary to conduct the work while the vegetation is in an appropriate seasonal stage, the summer and fall of next year is the earliest time at which a study could be conducted. Accordingly, the Department of the Interior will cooperate in obtaining periodic grazing studies, commencing in 1996, in order to provide reasonably current information for the Hopis' use in acting on applications for grazing permits. The BIA probably will not be able to complete the grazing inventory by October 2, 1996, but Interior is confident that it will be completed by the end of the year.

The third provision concerns the United States' commitment to provide the *Manybeads* plaintiffs with notice of proposed government fencing and construction projects on the Hopi Partitioned

Lands and to otherwise comply with Section 106 of the National Historic Preservation Act. The United States' obligations are set forth in the statute and regulations, as interpreted in *Attakai* v. *United States,* 746 F. Supp. 1395 (D. Ariz. 1990). In addition, in the Agreement in Principle the United States agrees to provide the *Manybeads* plaintiffs notice of proposed government fencing and construction projects. We reaffirm, here, that the United States will provide written notice to a representative of the *Manybeads* plaintiffs. The *Manybeads* plaintiffs' representative to whom the United States will provide notice shall be Lee Brooke Phillips, until we are notified in writing otherwise.

We hope these assurances, the action of the Hopi Tribe, and the responses of the Navajo families and the Navajo Nation will allow the parties now to move forward with entry of a formal agreement by the court and implementation.

Sincerely,

KATHERINE W. HAZARD.

THE NAVAJO NATION,
Window Rock, AZ, October 4, 1995.

Hon. HARRY R. MCCUE,
Mediator, U.S. Magistrate Judge (Retired),
San Diego, CA.

DAVID LOMBARDI,
Chief Circuit Court Mediator, Settlement Program, U.S. Court of Appeals for the Ninth Circuit, San Francisco, CA.

DEAR JUDGE MCCUE and MR. LOMBARDI: The Navajo Nation hereby responds to David Lomardi's Clarified Accommodation Agreement of August 24, 1995 and the Hopi proposal to Lee Phillips dated September 6, 1995. The negotiators for the Navajo Nation fully support the Clarified Accommodation Agreement. To the extent the Hopi proposal incorporates clarifications in the Accommodation Agreement, the negotiators for the Navajo Nation accept the changes reflected in the Hopi letter to Mr. Phillips dated September 6, 1995. In addition, the negotiators for the Navajo Nation are aware that the family representatives voted unanimously on September 26, 1995 to accept the Hopi proposal of September 6, 1995 as set forth in the letter from Lee Phillips to Ferrell Secakuku dated October 2, 1995. As expressed in Navajo Nation Council Resolution CD–107–94, the Navajo Nation fully supports the families in their decision.

The most important issue to the Navajo Nation is recognition and protection of Navajo religion and the importance of those beliefs and the desire of the Navajo People and the Navajo Nation to preserve their culture and traditional way of life. As negotiators for the Navajo Nation we are charged with the responsibility of negotiating a settlement of these difficult issues with "a special obligation to promote and protect the religious rights of the affected Navajo families." (Resolved Clause #6, CD–107–94) Because of this charge from the governing body of the Navajo Nation, the Navajo Nation Council, it would be irresponsible for us to take an agreement to the Navajo Nation Council for approval which fails to ac-

knowledge and protect the traditional religious rights of the Navajo families living on the Hopi Partitioned Lands or fails to recognize and protect traditional Navajo religion. Therefore it is imperative that the language recognizing and protecting Navajo religion be included in the final agreement. We understand the families have also made this request. While there are other specific items not included in the Hopi proposal which the families have requested be included in the agreement, for the Navajo Nation, the essential issue is the acknowledgement and recognition of traditional Navajo religion without which the Nation's approval will not be forthcoming. With the language recognizing and protecting Navajo religion included and the families consent to going forward with the process, the Navajo Nation negotiators will present the agreement to the Navajo Nation Council for their formal approval. We envision entry of a consent decree by the court including the Hopi proposal dated September 6, 1995, the Lee Phillips letter clarifying and responding to the Hopi proposal, this letter and the United States letter from Katherine Hazard to David Lombardi of October 2, 1995.

Be advised that assuming all goes well, the Navajo Nation will work to provide whatever technical support and staff resources are necessary during the one year trial period to successfully implement the agreement. Once an agreement is reached, we anticipate initiating discussions with the Hopi Tribe and the United States regarding compensation to the Hopi Tribe and a phasing out of the Federal Relocation Program. We expect that the United States support for this process continues to include a commitment of federal funds to assure the implementation and thereby the success of the Agreement.

We want to express our deep appreciation to both of you for your time, effort and expertise in bringing these difficult matters to the present state.

Sincerely,

ALBERT HALE, *President.*
CLAUDEEN BATES ARTHUR,
Legislative Counsel.
HERB YAZZIE, *Attorney General.*

THE HOPI TRIBE,
Kykotsmovi, AZ, November 27, 1995.

LEE PHILLIPS, Esq.,
Big Mountain Legal Office,
Flagstaff, AZ.

DEAR LEE: On behalf of the Hopi Tutsqua Team and the Hopi Tribal Council, I am writing you in your capacity as legal representative for the Navajo families seeking an accommodation from the Hopi Tribe. I am writing in response to your letter of October 2, 1995, for three reasons.

First, the Hopi Tribe is pleased that the Navajo families have voted to accept the Hopi Tribe's accommodation and to go forward with the one-year period at this time. I encourage you to prepare your maps and to meet with the Office of Hopi Lands quickly so that we can identify the homesites and farming areas and begin to

get the individual agreements signed. Please let me know if you encounter any difficulties in this so that I can facilitate any necessary resolutions.

Second, in your letter you describe several clarifications. All but three of these are points the Hopi Tribe has already agreed to. The three issues which had not previously been agreed to are addressed here:

1. Dismantling of permitted temporary structures away from the homesite: With regard to permitted temporary structures which are located away from the homesite, the Hopi Tribe will allow temporary structures which are nonresidential to be dismantled by nature if the Navajo family complies with the other conditions of the permit. If the permitted temporary structure is residential, it will have to be dismantled within the time period set in the permit following the ceremony.

2. Date for signing individual agreements: You request that the one-year period for individual families to sign the agreements extend beyond October 2, 1996, through December 31, 1996. That extension is acceptable to the Hopi Tribe.

3. Congressional legislation: You state that Congress will have to pass legislation authorizing the Accommodation Agreement. To accomplish this, the Hopi Tribe will be asking Congress to amend the law so that it may enter into agreements of 75 years. The Hopi Tribe does not believe it is necessary to bring other pieces of the Agreement before Congress for legislation.

Finally, you reference in your letter going to court and seeking a formal order authorizing the agreement. The Hopi Tribe recognizes that the New Construction orders and the grazing injunction must be lifted. We would like to discuss further with you how best to accomplish this and what the appropriate time frame should be. We hope and trust that the families will want to join in this process so that we can remove two rulings that have created tension between us.

Sincerely,

FERRELL SECAKUKU,
Chairman of the Hopi Tribe.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the enactment of S. 1973 will result in the following changes in 25 U.S.C. § 415 and 25 U.S.C. § 640d–24(a)(8), with existing language which is to be deleted in black brackets and the new language to be added in italics:

* * * * * * *

25 U.S.C. § 415(c)

(c) LEASES INVOLVING THE HOPI TRIBE AND THE HOPI PARTITIONED LANDS ACCOMMODATION AGREEMENT.—Leases of land by the Hopi Tribe to Navajo Indians on the Hopi Partitioned Lands may be for a term of 75 years, and may be extended at the conclusion of the term of the lease; and

(d) For purposes of this section—

(1) the term "Hopi Partitioned Lands" means lands located in the Hopi Partitioned Area, as defined in section 168.1 (g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this subsection); and

(2) the term "Navajo Indians" means members of the Navajo Tribe.

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25 U.S.C. § 640d–24(a)(8)

(8) For the purpose of carrying out the provisions of section 640d–14 of this title, there is authorized to be appropriated not to exceed $30,000,000 annually for fiscal years 1995, [1996, and 1997] *1996, 1997, 1998, 1999, and 2000.*

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