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PARTITION OF NAVAJO AND HOPI 1882 RESERVATION

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GOVERNMENT DOCUMENTS HEARINGS BEFORE THE SUBCOMMITTEE ON INDIAN AFFAIRS OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS HOUSE OF REPRESENTATIVES

NINETY-THIRD CONGRESS
FIRST SESSION
ON

H.R. 5647, H.R. 7679, and H.R. 7716
(Navajo-Hopi Dispute)

HEARINGS HELD IN WASHINGTON, D.C.
MAY 14 AND 15, 1973

Serial No. 93-18

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Committee on Interior and Insular Affairs



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WASHINGTON : 1974

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NOTE.—The chairman of the full committee is an ex officio voting member of this subcommittee. The first listed minority member is counterpart to the subcommittee chairman.

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APPENDIX

THE FOLLOWING TABLES CONTAIN THE RESULTS OF THE ANALYSES OF THE

SAMPLES OF THE SUBSTANCE ANALYZED IN THE PREVIOUS PART OF THE

REPORT, AND ARE INTENDED TO SHOW THE VARIATIONS IN THE

COMPOSITION OF THE SUBSTANCE DURING THE COURSE OF THE

EXPERIMENTS, AND TO INDICATE THE CAUSES OF THE VARIATIONS.

THE ANALYSES WERE MADE BY THE FOLLOWING METHODS:

1. THE PERCENTAGE OF CARBON WAS DETERMINED BY

(10)

PARTITION OF NAVAJO AND HOPI 1882 RESERVATION

MONDAY, MAY 14, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1324, Longworth House Office Building, Hon. Lloyd Meeds, chairman of the subcommittee, presiding.

Mr. MEEDS. The Subcommittee on Indian Affairs of the full Committee of the House Interior and Insular Affairs will be in order for the taking of testimony on H.R. 5647, H.R. 7679, H.R. 7716.

Without objection, H.R. 5647, H.R. 7679, and H.R. 7716 and the Report of the Department of Interior will be made a part of the record at this point.

[The material referred to follows:]

[H.R. 5647, 93d Con., 1st Sess.]

A BILL To authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the surface rights in and to that portion of the Hopi Indian Reservation created by the Executive Order of December 16, 1882, in which the United States district court found the Hopi and Navajo Indian Tribes to have joint, undivided, and equal interests in the case entitled *Healing against Jones* (210 Fed. Supp. 125 (1962), affirmed 373 U.S. 758) shall be partitioned in kind as provided in this Act.

SEC. 2. Hereafter the United States shall hold in trust exclusively for the Hopi Indian Tribe and as a part of the Hopi Indian Reservation, the surface interests in and to the following described lands:

Commencing at the northeast corner of the Executive Order Reservation of December 16, 1882, 110 degrees 00 minutes west longitude by 36 degrees 30 minutes north latitude;

thence due south, 40.6 miles to mile 209 on the east boundary of the Executive Order Reservation of 1882, as surveyed by United States Bureau of Land Management in 1963 and 1964, to the true point of beginning;

thence due south, 9.9 miles, following the east boundary of the Executive Order Reservation of 1882 to the centerline of State Route 264;

thence southwesterly, 33,900 feet, following the centerline of State Route 264, to the center of its junction with State Route 77;

thence southerly, 8.0 miles, following the centerline of State Route 77;

thence west, 33 degrees 30 minutes south, 29,300 feet, to the southwest corner of section 6, township 25 north, range 21 east;

thence west, 11.5 miles, following the section lines to the northwest quarter corner of section 7, township 25 north, range 19 east;

thence southwesterly 16,500 feet, to the intersection of the section line between sections 14 and 23, township 25 north, range 18 east, and the Old Polacca-Winslow Road;

thence southerly $4\frac{1}{4}$ miles, following the centerline of the Old Polacca-Winslow Road, to the south boundary of the Executive Order Reservation of 1882;

thence due west, 26 miles, following the south boundary of the Executive Order Reservation of 1882, to a point due south of Monument Point, also known as Finger Point and Katchina Point;

thence due north, 18,250 feet, to Monument Point;

thence northwesterly, following the rim of Garces Mesa, to the western extremity thereof, located in the southwest quarter of section 1, township 25 north, range 13 east;

thence northwesterly, 2.4 miles, following a fence line, to the end of the fence line and the southern extremity of Garces Mesa, located in the southeast quarter of section 27, township 26 north, range 13 east;

thence northerly, following the rim of Garces Mesa to a point where said rim intersects the line common to the northeast quarter and the northwest quarter of section 22, township 26 north, range 13 east;

thence north, 1,500 feet, to the north quarter corner of section 22, township 26 north, range 13 east;

thence north northeasterly, 6,000 feet, to the northeast corner of section 15, township 26 north, range 13 east;

thence north, 3,500 feet, along the section line;

thence west 16 degrees 30 minutes north, 4,800 feet, to the end of a fence adjoining Dinnebito Wash;

thence west 16 degrees 30 minutes north, 4,000 feet, following the fence, to the top of a rim;

thence north 53 degrees west, 5,900 feet, following a fence, to the top of Moencopi Plateau;

thence northwesterly, 9,300 feet, following the rim of the plateau to its junction with the west boundary of the Executive Order Reservation of 1882, 4,650 feet south of mile 110;

thence due north, 41 miles to the centerline of United States Route 160;

thence northeasterly, 5.8 miles, following the centerline of Route 160 to the junction of a road to the east; 1.2 miles northeast of Red Lake Trading Post;

thence south 30 degrees east 4.8 miles, to the top of the rim;

thence southerly, 1.1 miles, following the rim;

thence east 11 degrees south, 3.3 miles, to a point where the Black Mesa Slurry Pipeline intersects the 36 degree 15 minute parallel;

thence northeasterly, 7.6 miles, following the north boundary of the pipeline right-of-way;

thence north 54 degrees 30 minutes east, 3.4 miles, to the junction of Coalmine Wash and Black Mesa Wash;

thence north 44 degrees east, 2.7 miles, to the easterly bend in a pickup road;

thence northeasterly, 3.6 miles, following the said road, to a point where the road bears abruptly to the southeast;

thence northeasterly 21,700 feet following the divide east of Black Mesa Wash to a point on a road 1,300 feet southwest of station VCAB 1-75;

thence southeasterly following the divide through station 7037 T, 6895 T, and 6804 T to station 6047 A;

thence easterly following the divide and southerly through station 4-236 A to the Second Mesa-Kayenta road right-of-way;

thence southerly, 21.9 miles, following the east boundary of the proposed road right-of-way to a point east of Big Mountain Dam where a line from Gum Point bearing north 54 degrees 02 minutes west will intersect the east boundary of the right-of-way;

thence south 54 degrees 02 minutes east, 21.8 miles to Gum point;

thence southeasterly, $8\frac{1}{2}$ miles, following the northern rim of the mesa to mile 209 on the east boundary of the Executive Order Reservation of 1882, to the point of beginning; excepting the Hopi Reservation as established by the decree of the United States District Court on September 28, 1962, in said case of Healing against Jones; containing nine hundred and five thousand one hundred acres, more or less.

SEC. 3. Hereafter, the United States shall hold in trust exclusively for the Navajo Indian Tribe and as a part of the Navajo Indian Reservation the surface interests in and to the following described lands:

All the lands within the Hopi Executive Order Reservation of December 16, 1882, except the lands described in section 2 of this Act and the exclusive Hopi Reservation as established by the decree of the United States District Court on September 28, 1962, in said case of Healing against Jones; containing nine hundred and sixteen thousand nine hundred and eighty acres, more or less.

SEC. 4. Partition of the surface of the lands described in sections 2 and 3 hereof shall not affect the existing status of the coal, oil, gas and all other minerals within or underlying said lands.

All such coal, oil, gas and all other minerals within or underlying said land shall be managed jointly by the Hopi and Navajo Tribes, subject to supervision and approval by the Secretary of the Interior as otherwise required by law, and the proceeds therefrom shall be divided between the said tribes, share and share alike.

SEC. 5. Hereafter the United States shall hold in trust exclusively for the Hopi Indian Tribe and as a part of the Hopi Indian Reservation all right, title, and interest in and to the following described land which is a portion of the land described in the Act of June 14, 1934 (48 Stat. 960), on which the Hopi Tribe was located on the date of said Act and outside of the Hopi Executive Order Reservation:

Beginning at a point on west boundary of Executive Order Reservation of 1882 where said boundary is intersected by R/W of United States Route 160;

thence south southwest along the centerline of said Route 160, a distance of approximately 8 miles to a point where said centerline intersects the township line between townships 32 and 33 north, range 12 east;

thence west, a distance of approximately 9 miles to the north quarter corner of section 4, township 32 north, range 11 east;

thence south, a distance of approximately 4 $\frac{1}{4}$ miles, following the centerlines of sections 4, 9, 16, 21, and 28 to a point where said centerlines intersect the right-of-way of United States Route 160;

thence southwesterly, following the centerline of United States Route 160, a distance of approximately 11 miles, to a point where said centerline intersects the right-of-way of United States Route 89;

thence southerly, following the centerline of United States Route 89, a distance of approximately 11 miles, to the south boundary of section 2, township 29 north, range 9 east (unsurveyed);

thence east following the south boundaries of sections 2, and 1, township 29 north, range 9 east, sections 6, 5, 4, and so forth, township 29 north, range 10 east, and continuing along the same bearing to the northwest corner of section 12, township 29 north, range 11 east (unsurveyed);

thence south, a distance of 1 mile to the southwest corner of section 12, township 29 north, range 11 east (unsurveyed);

thence east, a distance of 1 mile to the northwest corner of section 18, township 29 north, range 12 east (unsurveyed);

thence south, a distance of 1 mile to the southwest corner of section 18, township 29 north, range 12 east (unsurveyed);

thence east, a distance of approximately 9 miles following the section lines, unsurveyed, on the north boundaries of sections 18, 17, 16, and so forth in township 29 north, range 12 east and continuing to a point where said section lines intersect the west boundary of Executive Order Reservation of 1882;

thence due north along the west boundary of the Executive Order Reservation of 1882, a distance of approximately 27 $\frac{1}{2}$ miles to the point of beginning; containing 243,400 acres, more or less.

SEC. 6. The Secretary of the Interior, hereinafter called the "Secretary", is hereby authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Indian Tribe, who are located within the area described in the said Act of June 14, 1934, and who were located within said area or are direct descendants of Paiute Indians who were located within said area on the date of said Act, land in quantities as specified in the Act of February 8, 1887 (24 Stat. 388), as amended, and patents shall be issued to them for such lands in the manner and with the restrictions as provided in sections 1, 5, and 6 of that Act, as amended.

SEC. 7. Hereafter the United States shall hold in trust exclusively for the Navajo Indian Tribe and as a part of the Navajo Indian Reservation the lands

described in the said Act of June 14, 1934, except the lands described in sections 2 and 5 hereof and the lands in the exclusive Hopi Indian Reservation commonly known as Land Management District 6, and further excepting those lands allotted pursuant to section 6 hereof, subject, however, to the provisions of section 20 hereof.

SEC. 8. The Secretary is authorized and directed to remove all Navajo Indians and their personal property, including livestock, from the lands described in sections 2 and 5 of this Act. Such removal shall take place over a period of five years with approximately 20 per centum of the Navajo occupants to be removed each year. No further settlement of Navajo Indians on the lands described in sections 2 and 5 of this Act or Land Management District 6 shall be permitted unless advance written approval of the Hopi Tribe is obtained. No Navajo Indian shall hereafter be allowed to increase the number of livestock he grazes on the acres described in sections 2 and 5 of this Act, nor shall he retain any grazing rights subsequent to his removal therefrom.

SEC. 9. The Secretary is authorized and directed to remove all Hopi Indians and their personal property, including livestock, from the lands described in sections 3 and 7 of this Act. Such removal shall take place over a period of two years with approximately 50 per centum of the Hopi occupants to be removed each year. No further settlement of Hopi Indians on the lands described in sections 3 and 7 of this Act shall be permitted unless advance written approval of the Navajo Tribe is obtained. No Hopi Indian shall hereafter be allowed to increase the number of livestock he grazes on the areas described in sections 3 and 7 of this Act, nor shall he retain any grazing rights subsequent to his removal therefrom.

SEC. 10. Hopi Indians moved pursuant to section 9 of this Act shall be given priority to assignments of land within the areas vacated by Navajo Indians. The Secretary in cooperation with the Hopi Tribe Council shall determine the size of parcels necessary to provide resettled Hopi Indians with an economic base.

SEC. 11. There is authorized to be appropriated to remain available until expended the sum of \$16,000,000, which the Secretary of the Interior shall expend as follows:

(a) If a majority of the Navajo heads of household being moved pursuant to this Act, who vote in a referendum conducted by the Secretary of the Interior, vote to use a part of the money appropriated to acquire land upon which all of the Navajo families being moved may be relocated if they so desire, the Secretary shall use for that purpose as much of the money as may be necessary. Title to the land acquired shall be taken by the United States in trust for the Navajo Tribe. The remainder of the money appropriated shall be used, under regulations of the Secretary:

(1) to pay actual reasonable moving expenses of both Navajo and Hopi families who are being moved, and

(2) to pay the fair market value of any improvement left on the land from which a family is moved, and

(3) to pay the cost of a comparable replacement dwelling for each displaced family, reduced by the amount of any payment under paragraph (2).

(b) If the funds appropriated are not sufficient to pay all of the costs and expenses referred to in subsection (a), they shall be apportioned on an equitable basis pursuant to regulations of the Secretary. Appropriated funds in excess of the amount needed for such purposes shall be returned to the general fund of the Treasury.

(c) If a majority of those voting in the referendum provided for in subsection (a) do not favor the acquisition of Navajo tribal land for the relocation of all Navajo families being moved, the entire amount appropriated may be used for the purposes specified in subsections (a) (1), (2), and (3).

(d) No payment to or for the benefit of any one household under subsection (a) (1), (2), and (3) shall exceed \$15,000.

(e) Improvements left on the land from which a family is moved may be sold by the Secretary of the Interior to the tribe that owns the land on which the improvements are located, or to any member thereof, at not less than their fair market value.

SEC. 12. The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary for all Navajo Indian use of the lands described in sections 2 and 5 of this Act subsequent to the date of this Act.

SEC. 13. The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all Hopi Indian use of the land described in sections 3 and 7 of this Act subsequent to the date of this Act.

SEC. 14. Nothing herein contained shall affect the title, possession, and enjoyment of lands heretofore allotted to individual Hopi and Navajo Indians for which patents have been issued. Hopi Indians living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and Navajo Indians living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Indian Tribe.

SEC. 15. The Hopi Tribe may commence an action or actions against the Navajo Tribe in the United States District Court for the District of Arizona for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, as trader license fees or commissions, lease rentals or proceeds or other similar charges for the doing of business or the use of lands within the Executive Order Reservation of December 16, 1882. The Hopi Indian Tribe shall be entitled to judgment for one-half of all sums so collected, together with interest at the rate of 6 per centum per annum.

SEC. 16. The Navajo or the Hopi Tribe may institute such further original, ancillary, or supplementary actions against the other tribe as may be necessary or desirable to insure the quiet and peaceful enjoyment of the reservation lands of said Hopi and Navajo Indians by said tribes and the members thereof, and to fully accomplish all objects and purposes of this Act. Such actions may be commenced in the United States District Court for the District of Arizona by either of said tribes against the other, acting through the chairman of the respective tribal councils, for and on behalf of said tribes, including all villages, clans, and individual members thereof.

SEC. 17. The United States shall not be an indispensable party to any action or actions commenced pursuant to this Act. Any judgment or judgments by the court shall not be regarded as a claim or claims against the United States.

SEC. 18. All applicable provisional and final remedies and special proceedings provided for by the Federal Rules of Civil Procedure and all other remedies and processes available for the enforcement and collection of judgments in the district courts of the United States may be used in the enforcement and collection of judgments obtained pursuant to the provisions of this Act.

SEC. 19. The Secretary is hereby authorized and directed to survey and monument boundaries of the Hopi Reservation as defined in sections 2 and 5 of this Act.

SEC. 20. The members of the Hopi Tribe shall have perpetual use of Cliff Spring as shown in USGS 7½ minute Quad named Toh Ne Zhonnie Spring, Arizona, Navajo County dated 1968; and located 1,250 feet west and 200 feet south of the intersection of 36 degrees, 17 minutes and 30 seconds north latitude and 110 degrees, 9 minutes west longitude, as a shrine for religious ceremonial purposes, together with the right to gather branches of fir trees growing within a 2-mile radius of said spring for use in such religious ceremonies, and the further right of ingress, egress, and regress between the Hopi Reservation and said spring. The Hopi Tribe is hereby authorized to fence said spring upon the boundary line as follows:

Beginning at a point on the 36 degrees, 17 minutes 30 seconds north latitude line 500 feet west of its intersection with 110 degrees, 9 minutes west longitude line, the point of beginning;

thence, north 46 degrees west 500 feet to a point on the rim top at elevation 6,900 feet;

thence southwesterly 1,200 feet (in a straight line) following the 6,900 feet contour;

thence south 46 degrees east 600 feet;

thence north 38 degrees east, 1,300 feet to the point of beginning, 23.8 acres more or less: *Provided*, That if and when said spring is fenced the Hopi Tribe shall pipe the water therefrom to the edge of the boundary as hereinabove described for the use of residents of the area. The natural stand of fir trees within said 2-mile radius shall be conserved for such religious purposes.

SEC. 21. There is hereby authorized to be appropriated not to exceed \$16,000,000 to carry out the provisions of this Act.

A BILL To provide for the mediation and arbitration of the conflicting interests of the Navajo and Hopi Indian Tribes in and to lands lying within the joint use area of the Hopi Reservation established by the Executive order of December 16, 1882, and to lands lying within the Navajo Reservation created by the Act of June 14, 1934, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, (a) within thirty days after the date of enactment of this Act, the chief judge of the United States District Court for the District of Columbia shall appoint a Navajo-Hopi Board of Arbitration (hereinafter referred to as the "Board") which shall provide for the settlement and determination of the relative rights and interests of the Navajo and Hopi Indian Tribes (hereinafter referred to as the "parties") in and to lands, including surface and subsurface rights lying within the joint use area of the Hopi Reservation established by the Executive order of December 16, 1882, as determined in the case of *Healing v. Jones* (210 F. Supp. 125, D. Ariz. 1962; *aff'd* 363 U.S. 758, 1963), and the rights and interests of the Hopi Tribe or Hopi individuals in and to lands, including surface and subsurface rights lying within the Navajo Reservation created by the Act entitled "An Act to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes", approved June 14, 1934 (48 Stat. 960). The Board shall be composed of three members, one of whom the chief judge shall designate as Chairman. No member appointed to such Board shall have any interest, direct or indirect, in the settlement of the interests and rights set out in the first section of this Act.

(b) Members of the Board shall receive compensation in the daily equivalent of the rate provided for grade GS-18 of the General Schedule in section 5332 of title 5 of the United States Code, for each day they are engaged in the business of the Board and shall be allowed travel expenses, including per diem allowance, as authorized by section 5703 of title 5 of the United States Code, in connection with their services for the Board.

(c) In carrying out its responsibilities under the provisions of this Act, the Board is authorized to—

(1) make such rules and regulations as it deems necessary not inconsistent with this Act, and

(2) request from any department, agency, or independent instrumentality of the Federal Government any information, personnel, services, or materials it deems necessary to carry out its functions; and each such department, agency, or instrumentality is authorized to cooperate with the Board and to comply with such request to the extent permitted by law, on a reimbursable basis.

(d) At least one member of the Board shall be present during any of the negotiation sessions provided for in section 2(c), but any formal action or determination of the Board shall require agreement of at least two of the members.

(e) The existence of the Board shall terminate when it has filed a final report with the Secretary of the Interior (hereinafter referred to as the "Secretary") as provided in section 3 or 4, but, in no event, later than the end of the one-year period beginning on the date of enactment of this Act.

(f) There is authorized to be appropriated not to exceed \$500,000 for the expenses of the Board.

SEC. 2. (a) Within twenty days after the appointment of the Board, the Board shall, in writing, contact the tribal council of the Hopi and Navajo Tribe requesting appointment of a negotiation team from each tribe to be composed of not more than six members to be certified by appropriate resolution of the respective tribal council.

(b) In the event either or both of the parties fail to select and certify such team within thirty days after formal notice by the Board, the provisions of section 4(c) shall become operative.

(c) Within fifteen days after formal certification of both teams to the Board, the Board shall schedule the first session of the negotiations at a place convenient to the parties. Thereafter, negotiation sessions, conducted under the guidelines established by this Act, shall be scheduled by agreement of the Board and the parties so long as at least one such session shall be held biweekly.

(d) In the event either or both parties fail to attend two consecutive sessions or, in the opinion of the Board, fail to bargain in good faith, the provisions of section 4(c) shall become operative.

SEC. 3. (a) If, within one hundred and eighty days after the first session scheduled by the Board under section 2(c) of this Act, the parties reach agree-

ment on the settlement of the rights and interests of the parties, such agreement shall be reduced to writing; signed by the parties and the members of the Board and notarized. The Board shall submit such agreement to the Attorney General of the United States who shall, forthwith, advise the Board only on the constitutionality and legality of any or all provisions of such agreement. The Board shall have limited discretion to modify such offer to conform to the advice of the Attorney General and to make technical changes. The Board shall transmit such modified agreement, together with a report thereon, to the Secretary. The Secretary shall submit such agreement and report to the Congress.

(b) If, within sixty calendar days (excluding Saturdays, Sundays, holidays, or days on which either House is not in session) after the submission of such agreement and report to the Congress, neither the Senate nor House of Representatives passes a resolution disapproving such agreement, it shall have the force and effect of law and shall be conclusive and binding upon the Navajo and Hopi Tribes and upon all other parties as to the rights and interests of the respective tribes or Indians in any lands or interest in lands which are determined and settled by said agreement.

SEC. 4. (a) If the parties fail to reach agreement on settlement within one hundred and eighty days after the date of the first session scheduled by the Board under section 2(c), the Board shall schedule a final session within fifteen days at which time the parties shall be required to submit their last best offer in final form. After such submission, the teams shall be dissolved.

(b) The Board shall select, in its discretion, that offer of the parties which it deems to be most reasonable and equitable in light of the law and circumstances. The Board shall submit such offer to the Attorney General of the United States who shall, forthwith, advise the Board only on the constitutionality or legality of any or all provisions of such offer. The Board shall have limited discretion to modify the offer to conform to the advice of the Attorney General and to make technical changes. The Board shall reduce such offer to writing and transmit such offer, signed by the members of the Board, together with a report thereon to the Secretary. The Secretary shall transmit such offer and report to the Congress. Thereupon, the provisions of section 3(b) shall apply.

(c) In the event one of the parties is in default, under section 2(b) or 2(d), the Board shall, working with the negotiating team of the performing party, or, if both parties are in default under section 2(b) or 2(d), the Board shall, independently, devise a plan of settlement which shall be most reasonable and equitable in light of the law and circumstances and consistent with the provisions of this Act. Thereupon, the Board shall proceed in accordance with subsection (b) of this section.

SEC. 5. For the purposes of section 3, the parties may make any provision in such agreement which is not inconsistent with existing law. No such agreement nor any provision in it shall be deemed to be a taking by the United States of private property compensable under the fifth amendment to the Constitution of the United States.

SEC. 6. For the purposes of a settlement under section 4 of this Act, the Board and the Attorney General shall be guided by the following:

(a) The Hopi Tribe and the Navajo Tribe, under the decision of Healing against Jones, have joint, undivided, and equal interests in and to all of the 1882 joint use area.

(b) Any division of the joint use area which results in an unequal share to one party shall be fully and finally compensable to such party by the other party or out of the appropriations hereinafter provided or both, except any such compensation from the appropriation provided shall not prejudice the right of the compensated party to share equitably in the remaining portion of such appropriation.

(c) The rights and interest of the Hopi Tribe in and to the exclusive Hopi Reservation defined in Healing against Jones shall not be reduced or limited in any manner.

(d) In any division of the surface rights to the 1882 joint use area, reasonable provision shall be made for the use and right of access to identified religious shrines of either party on the portion allocated to the other party and reasonable availability of and access to water, firewood, and grazing resources such as to render the surface use of both parties viable.

(e) Any claim the Hopi Tribe may have against the Navajo Tribe for an accounting of all sums collected by the Navajo Tribe since September 17, 1967, as trader license fees or commissions, lease rental or proceeds, or other similar charges for doing business or the use of lands within the Executive Order Res-

ervation of December 16, 1882, and for a one-half share in such sums. The settlement may provide for satisfaction of such claim or for the adjudication of such claim, in which case the Hopi Tribe is authorized to commence an action against the Navajo Tribe in the United States District Court for the District of Arizona with any interest on an award by such court to be at the rate of 6 per centum per annum.

(f) Pursuant to the first section of the Act of June 14, 1934, provision shall be made for the partition and allocation of lands and interests in lands to the Hopi Tribe or Hopi individuals in the so-called Moencopi area of the 1934 Navajo Reservation which such provision shall take into consideration the—

- (1) number of Hopi residing within such area on June 14, 1934;
- (2) number of direct descendants of such Hopi residing in such area on the effective date of such Act;
- (3) existing Hopi-Navajo dwelling patterns in such area;
- (4) access to and availability of firewood, water, and grazing resources;
- (5) necessity of a corridor to the major portion of the Hopi Reservation;
- (6) contiguity and unity of lands partitioned to the Hopi Tribe or individuals.

Any lands apportioned to the Hopi Tribe or individuals shall be considered a part of the Hopi Reservation and administered by them.

SEC. 7. Any settlement accomplished under section 3 or 4 of this Act which necessitates the resettlement of members of one party from lands apportioned to the other party shall provide for—

- (a) availability of in lieu lands for resettlement or priority of assignment on lands of the tribe of such member;
- (b) reasonable period of time for settlement to avoid undue social, economic, and cultural disruption;
- (c) funds for the rehabilitation of individuals or family units subject to resettlement;
- (d) expenses of resettlement; and
- (e) purchase of nonmovable improvement of individuals subject to resettlement.

The Secretary is authorized and directed to take such steps as are necessary to implement the resettlement provision of any settlement.

SEC. 8. Any lands or interest in lands partitioned or purchased as in-lieu lands hereunder shall be taken by the United States in trust for the tribe to which such lands were partitioned or for which such lands were purchased and shall become a part of the reservation of such tribe.

SEC. 9. In the event the subsurface rights to any lands partitioned under the provisions of this Act are left in joint ownership, such interests shall be administered by the Secretary on a joint-use basis with any development thereof being subject to the consent of both parties. Costs of such development shall be shared by both parties and the net income derived from such development shall be distributed by the Secretary to the parties on the basis of any percentage formula agreed upon or set in the settlement.

SEC. 10. Notwithstanding any other provision of this Act, the Secretary is authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Indian Tribe, who are located within the area described in the Act of June 14, 1934, and who were located within said area or are direct descendants of Paiute Indians who were located within said area on the date of such Act, land in quantities as specified in the Act of February 8, 1887 (24 Stat. 388), and patents shall be issued to them for such lands in the manner and with the restrictions as provided in sections 1, 5, and 6 of that Act.

SEC. 11. Notwithstanding any provision of this Act, or any agreement or settlement reached under authority of this Act, the Secretary is authorized and directed to immediately commence reduction of the numbers of all the livestock now being grazed upon the lands within the Joint Use Area of the 1882 Executive Order Reservation and complete such reductions to carrying capacity of such lands, as determined by the usual range capacity standards employed under title 25, section 151.6 of the Code of Federal Regulations, within one year after the date of enactment of this Act. The Secretary is directed to institute such conservation practices and methods within such area as are necessary to restore the grazing potential of such area to the maximum extent feasible. He shall, in addition, upon determination of any settlement under authority of this Act, provide for the survey, location of monuments, and fencing of boundaries of any lands partitioned under such settlement. There is authorized

to be appropriated not to exceed \$10,000,000 to carry out the provision of this section.

SEC. 12. Subsequent to the partition of the surface of any land by a settlement reached or determined under authority of section 3 or 4 of this Act, the Navajo Tribe shall pay to the Hopi Tribe fair rental value as determined by the Secretary for all Navajo Indian use of lands partitioned to the Hopi Tribe and the Hopi Tribe shall pay to the Navajo Tribe fair rental value as determined by the Secretary for all Hopi use of lands partitioned to the Navajo Tribe.

SEC. 13. Either party may institute any original, ancillary, or supplementary actions against the other party as may be necessary or desirable to insure quiet and peaceful enjoyment of the reservation lands of said party and the members thereof and to fully accomplish the objects and purposes of any settlement reached under section 3 or 4 of this Act. Such actions may be commenced in the United States District Court for the District of Arizona by either of said parties against the other, acting through the chairman of the respective tribal councils, for and on behalf of the tribes, including all villages, clans, and individual members thereof.

SEC. 14. The United States shall not be an indispensable party to any action or actions commenced under authority of this Act and any judgment or judgments shall not be regarded as a claim or claims against the United States.

SEC. 15. All applicable provisional and final remedies and special proceedings provided for by the Federal Rules of Civil Procedure and all other remedies and processes available for the enforcement and collection of judgments in the district courts of the United States may be used in the enforcement and collection of judgments obtained pursuant to the provisions of this Act.

SEC. 16. For the purpose of carrying out the provisions of any settlement reached under authority of section 3 or 4 of this Act including, but not limited to, (a) resettlement and rehabilitation of individuals or family units of the parties, (b) purchase of improvements of individuals or family units subject to resettlement, (c) purchase of in-lieu lands, and (d) any compensation which may become payable under provision of section 6 of this Act, there is authorized to be appropriated not to exceed \$16,000,000.

[H.R. 7716, 93d Cong., 1st Sess.]

A BILL To authorize the separation of the interests of the Hopi and Navajo Tribes in certain lands set aside by the Executive Order of December 16, 1882, and to confirm to the Hopi Tribe exclusive rights in certain lands located within the exterior boundaries of the Navajo Reservation in Arizona as defined by Congress in 1934, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Navajo-Hopi Settlement Act".

TITLE I—CONGRESSIONAL FINDINGS AND PURPOSES

SEC. 101. The Congress, after review of the decision of the United States District Court for the District of Arizona, Civ. No. 579, entered on September 28, 1962, in the suit captioned *Healing v. Jones*, reported at 210 F. Supp. 125, finds in conformity with that decision as follows:

(1) that 2,453,294 acres were withdrawn from the public domain under an Executive order signed by President Chester A. Arthur on December 16, 1882, and were set apart "for the use and occupancy of the Moqui, and such other Indians as the Secretary of the Interior may see fit to settle thereon";

(2) that the Executive order of December 16, 1882, gave the Moqui, now known as the Hopi Indian Tribe, a nonexclusive right to use and occupy the reservation;

(3) that, pursuant to the terms of the Executive order of December 16, 1882, the Navajo Indian Tribe was impliedly settled on the reservation as of February 7, 1931, and thus also acquired a nonexclusive right to use and occupy the reservation;

(4) that Navajos have lived on a substantial portion of the land located in the Executive order reservation both prior to and since December 16, 1882;

(5) that under the provisions of the Act of July 22, 1958, Public Law 85-547, the Hopi Tribe has an exclusive interest in that portion of the Executive order reservation known as land management district 6, containing

631,194 acres, and the Hopi and Navajo tribes have joint, equal, and undivided interests in the remaining 1,822,800 acres contained within said Executive order reservation (such 1,822,800 acres referred to hereinafter as the joint-interest area);

(6) that Hopis have traditionally lived within the area of land management district 6 and that Hopi use and occupancy of the joint-interest area has been "de minimis".

(7) that on April 24, 1943, the Office of Indian Affairs divided the Executive order reservation between an area of use and occupancy set aside for the Hopis (land management district 6) and an area of use and occupancy set aside for the Navajos (the remainder of the reservation, now the joint-interest area); and that, when this division was made, according to the Court, "[m]any Navajo families, probably more than one hundred, then living within the extended part of district 6, were required to move outside the new boundaries and severe personal hardships were undoubtedly experienced by some."

SEC. 102. The Congress further finds—

(1) that the question of the disposition of areas in which the tribes have a joint interest was left by the Act of July 22, 1958, Public Law 85-547, for future determination by the Congress;

(2) that expulsion of Navajos from the joint-interest area would create serious hardships for the Navajo people, would do permanent and irreparable harm to the families affected, and would result in substantial costs to the United States;

(3) that the subsurface rights in the joint-interest area have substantial value, and that separate treatment of the surface and subsurface rights and estates in said area is feasible and practical;

(4) that there is an immediate need for a fair and just settlement of the respective interests of the Hopi and Navajo Tribes in the joint-interest area, and that any such settlement, while not sanctioning the removal of Hopi or Navajo families from the lands on which they now reside, should not deprive either tribe of an equal share of the value of the joint-interest area;

(5) that it is the purpose of this Act to provide for the settlement of the conflicting land interests of the Hopi and Navajo Tribes and to confirm the rights conferred upon the Hopi Tribe by the 1934 Act in the lands outside the 1882 Executive order area.

TITLE II—NAVAJO-HOPI SETTLEMENT COMMISSION

SEC. 201. There is hereby established the Navajo-Hopi Settlement Commission (hereinafter referred to as the "Commission"), which shall be composed of seven members; namely, three persons to be appointed by the Navajo Tribal Council, three persons to be appointed by the Hopi Tribal Council, and one person to be selected by the persons so appointed: *Provided*, That if agreement cannot be reached concerning the selection of the seventh member of the Commission within ninety days after a vacancy occurs, such member shall be selected by the President of the United States. The Commission shall elect a chairman or cochairmen from its membership.

SEC. 202. It shall be the purpose of the Commission to carry out the functions with which it is charged under the provisions of this Act.

SEC. 203. Members of the Commission shall hold office at the discretion of the appointing authority. Vacancies shall be filled in the same manner as the original appointments.

SEC. 204. Members of the Commission shall receive compensation in the daily equivalent of the rate provided for grade GS-18 in section 5332 of title 5, United States Code, for each day they are engaged in the business of the Commission, and shall be allowed travel expenses, including per diem allowance, as authorized by section 5703 of title 5, United States Code, in connection with their services for the Commission.

SEC. 205. The Commission shall convene at the call of the chairman or cochairmen, but must convene at least biweekly, to review activities and prescribe tasks for each member of the Commission and the staff thereof. The Commission shall report annually to the President and the Congress on the progress of the work of the Commission in fulfilling the purposes of this Act. The Commission, by majority vote, shall appoint, fix the pay of, and prescribe the duties of such staff as is necessary to carry out the purposes of this Act.

SEC. 206. The Commission shall have the power to call upon any of the departments or agencies of the United States for any information it may deem necessary in carrying out its functions under this Act.

TITLE III—SEPARATION OF INTERESTS IN THE JOINT-INTEREST AREA

SEC. 301. Immediately following its organizational meeting the Commission shall commence an investigation to determine—

(a) which lands within the joint-interest area were on July 22, 1958, used by Hopi Indians for residential or agricultural (including grazing) purposes and which lands were on that date used by the Navajo Indians for such purpose;

(b) which lands within the portion of the joint-interest area which on July 22, 1958, were used and occupied for residential or agricultural (including grazing) purposes by Navajo Indians were on or about July 22, 1958, used by Hopi Indians for the purposes of wood cutting and gathering, obtaining coal, gathering plants and plant products, visiting ceremonial shrines, and hunting.

SEC. 302. The investigation of the issues set forth in section 301 shall be completed within six months from the date of the organizational meeting, at which time the Commission shall file a report with the Secretary of the Interior and the chairmen of the Navajo and Hopi Tribal Councils, respectively, describing the lands at issue by metes and bounds, and illustrating their findings where necessary by field notes and plats. As to areas found to have been used by Hopi Indians pursuant to clause (b) of section 301 the report shall describe such uses.

SEC. 303. Within ninety days following the filing of the report under section 302, the Commission shall appraise the value of the respective interests described in said report and shall make public the results of such appraisal. In making such appraisal it shall consider such reductions in the value of the surface as can be expected to occur as the result of mineral exploitation under the provisions of leases in effect on the date of enactment of this Act.

SEC. 304. Immediately following the issuance of the appraisal report, the Secretary of the Interior shall cause to be served on the Navajo Tribal Council and the Hopi Tribal Council the form of an order which shall—

(a) provide that all lands identified by the report under section 302 to have been used and occupied by Navajo Indians on July 22, 1958, in accordance with clause (a) of section 301 shall be held by the United States in trust for the Navajo Tribe of Indians;

(b) provide that all lands identified by the report under section 302 to have been used and occupied by Hopi Indians on July 22, 1958, in accordance with clause (a) of section 301 shall be held by the United States in trust for the Hopi Indian Tribe;

(c) provide that all lands identified by the report under section 302 to have been used and occupied by Hopi Indians on July 22, 1958, in accordance with clause (b) of section 301 shall be subject to easements in favor of the United States in trust for the Hopi Indian Tribe, which shall be defined as to the area, nature, and extent of use according to the uses made on or about July 22, 1958;

(d) fix the amount of compensation to which the Hopi Tribe shall be entitled if it receives under this section surface interests in land whose total appraised value is less than one-half of the surface interests in the joint-interest area, the amount payable being the appraised value of such one-half interest less the appraised value of the surface interests conveyed.

SEC. 305. The order provided for in section 304 shall be final, except that any part aggrieved by the Commission's determination of value under subsection (d) of section 304 shall be entitled to review thereof by filing a petition with the clerk of the United States District Court for the District of Arizona within sixty days from service of the order. The district court thereupon shall have jurisdiction to review said determination which shall constitute prima facie evidence of the facts and values established thereby, and the court shall, as soon as practicable after hearing the parties, enter a decree confirming, modifying, or rejecting the Commission's determination. The decree so entered shall be appealable in the same manner and within the same time period as any other final judgment of the district court. Petition for review or other proceedings hereunder shall not affect the finality of the Commission's findings pursuant to subsections (a), (b), and (c) of section 304.

Sec. 306. Upon determination of the amount of compensation due the Hopi Tribe under the provisions of section 304 or 305 of this Act, the Secretary of the Interior shall loan an amount not to exceed \$18,000,000, without interest, to the Navajo Tribe subject to the following conditions:

(a) that within six months following a final determination of the compensation due the Hopi Tribe under the provisions of sections 304 and 305 of this Act, the Navajo Tribe shall pay the full amount of said compensation to the Hopi Tribe; and

(b) that the Navajo Tribe shall repay the loan by paying to the United States the proceeds derived by the tribe by the exploitation of the mineral resources described in section 308, but not less than \$500,000 annually.

Sec. 307. Upon execution of the agreement provided for in section 306, the order of the Secretary of the Interior issued under the provisions of section 304 shall take effect.

Sec. 308. The United States shall hold in trust for the joint use and benefit of the Navajo and Hopi Indian Tribes all of the subsurface rights, interests, and estates in the joint-interest area, including all coal, oil, gas, and other minerals within or underlying said land, and such rights, interests and estates shall be managed jointly by the Hopi and Navajo Tribes, subject to supervision and approval by the Secretary of the Interior as otherwise required by law, and the proceeds therefrom shall be divided between the said tribes, share and share alike.

TITLE IV—SEGREGATION OF HOPI INTEREST IN NAVAJO RESERVATION

Sec. 401. Hereafter the United States shall hold in trust exclusively for the Hopi Indian Tribe and as a part of the Hopi Indian Reservation all surface and subsurface rights, interests, and estates in and to the following described lands which comprise those portions of the lands described in the Act of June 14, 1934 (48 Stat. 960), outside of the 1882 Executive order reservation, on which the Hopi Tribe was located on the date of said Act:

Beginning at the northwest corner of township 31 north, range 11 east, Gila and Salt River meridian; thence west 1 mile; thence south 8 miles; thence east 4 miles; thence north 2 miles; thence east 4 miles; thence north 6 miles; thence west 7 miles to place of beginning containing approximately 35,200 acres, and which will be when surveyed sections 1 and 12 of township 30 north, range 10 east; sections 4, 5, 6, 7, 8, and 9 of township 30 north, range 11 east; all of township 31 north, range 11 east; and sections 6, 7, 18, 19, 31, and 36 of township 31 north, range 12 east.

The conveyance of exclusive rights in the Hopi Tribe to the above-described lands shall constitute a full and complete settlement of any right of the Hopi Tribe to any of the lands described in the Act of June 14, 1934 (48 Stat. 960).

TITLE V—AUTHORIZATION OF APPROPRIATION

Sec. 601. There is authorized to be appropriated \$18,000,000 for the loan as provided in section 306 of this Act, and \$250,000 to cover the cost of appraisals and the administrative expenses of the Navajo-Hopi Settlement Commission.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., May 14, 1973.

HON. JAMES A. HALEY,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on H.R. 5647, a bill "To authorize the partition of the surface rights in the joint use area of the 1882 Executive Order Hopi Reservation and the surface and subsurface rights in the 1934 Navajo Reservation between the Hopi and Navajo Tribes, to provide for allotments to certain Paiute Indians, and for other purposes," and H.R. 7679, a bill "To provide for the mediation and arbitration of the conflicting interests of the Navajo and Hopi Indian tribes in and to lands lying within the Joint Use Area of the Hopi reservation established by the Executive Order of December 16, 1882, and to lands lying within the Navajo reservation created by the Act of June 14, 1934, and for other purposes."

Last year we supported H.R. 11128 as one possible solution to this dispute, while at the same time noting that there might be other equally viable solutions, because we felt that we had an emergency situation. At that time we did not foresee a court decision implementing the Hopis' rights for some time. Since then, as you know, the Arizona District Court has ruled that the United States plan for giving the Hopis true joint use of the disputed area should be put into effect, and actions to that end are under way. Under these circumstances, we believe that no bill should be enacted. As the court's order unfolds, the Navajos will be required to reduce their livestock in the joint-use area to one-half of its carrying capacity. We believe that this action will go a long way toward solving the tribes' dispute and that the rest should be left to the tribes themselves. It would certainly be appropriate for Congress to monitor the progress obtained pursuant to this order. We plan to do the same.

We recognize, however, that there is a good deal of sentiment in favor of settling the dispute by means of a partition into two or more parcels. If that is the route which the Congress adopts, we recommend that it be done by giving jurisdiction to partition to the District Court in Arizona. This court has years of experience and expertise to draw upon in this matter, and we believe it is the logical entity to decide upon and carry out a partition.

In addition to the outright partition of the joint-use area which we recommended last year, we suggested that the possibility of arbitration be considered. H.R. 7679 does establish and arbitration procedures. As we stated above, however, contrary to our expectations of last year the court has rather speedily taken this matter in hand, and we would prefer to let the court's present order prevail or in the alternative to give the court jurisdiction to partition. However, should the Congress prefer the arbitration procedure, we offer several amendments which we believe would improve H.R. 7679.

We believe that H.R. 5647 is the least preferable alternative. However, in the event that it becomes the choice of Congress we recommend several amendments.

I. HISTORICAL BACKGROUND

On December 16, 1882, President Chester A. Arthur signed an Executive Order establishing a reservation in the Territory of Arizona for the use and occupancy of the Hopi and such other Indians as the Secretary of the Interior saw fit to settle thereon. Even as early as this date, approximately 300 Navajos were living on this land. The number grew steadily over the years; by 1930 there were 3,300 Navajos and by 1958, 8,800. Relations between the two tribes were often hostile. In 1891, officials of the Department of the Interior drew a boundary line, reflecting the location of most of the Hopis, which the Navajos were forbidden to cross. The Navajos have conceded that the Hopis have exclusive rights to the land within this boundary, and it is not involved in either bill.

Although several Administrations contemplated removal of all Navajos from the reservation, this action was never taken. By the 1920's it was assumed that all Navajos living on the reservation had been settled thereon by an implied exercise of the Secretary's discretion to settle other Indians on the reservation. On February 7, 1931, a joint letter from the Secretary of the Interior and the Commissioner of Indian Affairs to a special Indian commissioner who had been asked to make a recommendation on the Hopi-Navajo problem effected an implicit legal settlement of all Navajos then residing on the portion of the reservation which lies outside the exclusive Hopi section.

By the Act of July 22, 1958 (72 Stat. 403), Congress authorized each tribe to institute or defend an action against the other "for the purpose of determining the rights and interests of such parties in and to said lands and quieting title in the tribes or Indians establishing such claims pursuant to such Executive order as may be just and fair in law and equity. . .". The result of this authorization was *Healing v. Jones*, 210 F. Supp. 125 (D. Ariz. 1962), *aff'd* 373 U.S. 758 (1963), in which a three-judge court held, *inter alia*: (1) that the Navajo and Hopi Tribes have joint, undivided and equal rights and interests in that portion of the reservation which lies outside the exclusive Hopi area; and (2) the court was without jurisdiction to partition the area held jointly.

The Navajo Tribe has exercised exclusive control of the joint-use area for all practical purposes, however—including surface leasing and granting rights-of-way without consulting the Hopi Tribe—since the 1962 decision. In March 1970, the Hopi Tribe petitioned the district Court to issue a writ of assistance enforcing the Hopi rights to the joint-use area. The Court dismissed this petition

in August 1970, on the ground that it had no jurisdiction over the question of tribal control of the disputed area. On December 3, 1971, the Court of Appeals for the Ninth Circuit reversed this decision, holding that the District Court has authority to issue a writ of assistance and remanded the matter for further proceedings. On May 22, 1972, the U.S. Supreme Court denied the Navajos' petition for a writ of certiorari.

On October 14, 1972, the District Court issued an order directing the Navajo Tribe, *inter alia*, to: afford the Hopi Tribe its proper joint use of the disputed area; reduce its livestock in the joint-use area to the point where the Navajo Tribe is using no more than one-half the carrying capacity of the area; and administer the area jointly with the Hopi Tribe. The United States was ordered, *inter alia*, to submit plans for effectuating this order. On the same day the court issued a writ of assistance commanding its United States Marshal to serve a copy of the foregoing order upon the Navajo Tribe. The Navajo Tribe appealed from the court's order and then, at the court's request, submitted an alternative plan to implement that order. On April 23, 1973, the court reject the Navajo plan and adopted the United States' plan for achieving true joint-use of the disputed area. *Inter alia*, the plan adopted provides for removal of all livestock from the joint-use area save that essential for daily livelihood and for platting of new management units for use in future land recovery programs. It is important to note, however, that this plan does not effect a partition of the joint-use area, and the District Court's holding that it lacks the power to partition still controls its disposition of the case.

These bills involve two other matters. First, when the boundaries of the Navajo Reservation in Arizona were established, by the Act of June 14, 1934 (48 Stat. 960), vacant land within the boundaries was permanently withdrawn for the benefit of the Navajos and such other Indians as were already located thereon. (Thus, unlike the executive order creating the 1882 reservation, this legislation granted contemporaneous rights in the reservation area to more than one tribe.) Several Hopi Indians were then located in an area, known by the village names of Moencopi and Tuba City, which lies between these villages and the reservation. The coexistence of the two tribes in this area has also been a source of controversy and quarrels.

Second, also within the 1934 reservation are located certain Paiute Indians whose use dates back to antiquity. Virtually identical sections in the two bills—10 in H.R. 7679 and 6 in H.R. 5647—would provide for allotments to the Paiute Indians in accordance with the General Allotment Act of February 8, 1887.

II. SOLUTION BY JUDICIAL PARTITION

As stated above, we would prefer that as to all three controversies—1882 Reservation, 1934 Reservation, and Paiute residence—no bill be enacted. We recognize that the court's order covers only the first of these disputes, but we do not believe that either of the other problems is grave enough to warrant a legislative remedy at this time.

If the Committee should decide, however, not to accept our recommendation that the present court order be allowed to operate without legislative interference, we would recommend that the Court be given authority to partition the 1882 Joint-Use Area. This could be accomplished by amending the Act of July 22, 1958 (72 Stat. 403) by adding the following section thereto:

"Sec. 4. Any area in which it is determined that the Navajo Indian Tribe and the Hopi Indian Tribe have a joint or undivided interest may be partitioned between such Tribes by the United States District Court for Arizona according to the Court's determination of fairness and equity and the interest apportioned to each tribe shall become part of its reservation: *Provided, however*, that the last sentence of section 1, *supra*, shall not apply to the partition authorized under this section."

III. SOLUTION BY ARBITRATION

Should the Congress decide that arbitration is the most desirable means of settling the Hopi-Navajo dispute, we offer the following recommendations concerning H.R. 7679.

H.R. 7679 would solve the dispute by directing the Chief Judge of the United States District Court for the District of Columbia to appoint a Navajo-Hopi Board of Arbitration. The Board would be composed of three members, none of whom could have any interest in the outcome of the dispute. Up to \$500,000 could be appropriated for the Board's expenses. The Board would contact the

Hopi and Navajo tribal councils, requesting them each to appoint within 30 days a negotiating team of up to six members. If within 180 days after the first negotiating session held by the Board the parties reached an agreement on the settlement of the dispute, such agreement would be reduced to writing, referred to the Attorney General for legal scrutiny, modified by the Board if necessary to conform to the Attorney General's advice, forwarded to the Secretary of the Interior, and in turn submitted to the Congress. If within 60 days neither House of Congress passed a resolution disapproving such an agreement, it would attain the force of law and become a binding and conclusive settlement of the dispute.

Should the parties fail to reach agreement within 180 days, the Board would compel each to submit its last best offer. The Board would select the most equitable of the two offers and handle it as it would an agreement made within 180 days (see *supra*). Should either or both of the parties fail to comply with the Board's mandated procedures, the Board would devise its own settlement, one which it viewed as the most equitable that could be obtained. Thereupon the Board would handle this settlement as outlined *supra*. The bill provides that no agreement or provision therein agreed to by both tribes shall be deemed to be a taking of property by the United States and thus compensable under the due process clause of the Fifth Amendment.

H.R. 7679 sets several guidelines for the use of the Board and the Attorney General in arriving at and reviewing a settlement. *Inter alia*, any division of the joint-use area which results in an unequal share to one party shall be compensable out of the subsurface income of the other party, appropriations under the Act, or both.

Any settlement which resulted in relocation of members of either party to lands apportioned to the other party would provide funds for resettlement of such members, including reimbursement of resettlement costs and purchase of non-movable improvements left by resettled persons. For purposes of resettlement and related compensation, the bill would authorize \$16,000,000 to be appropriated.

Regardless of any settlement, the Secretary would be authorized and directed to reduce livestock grazing in the joint-use area to the carrying capacity of the lands within one year of enactment and to institute such conservation methods as will rehabilitate the land. He would also be authorized to engage in the survey, location of monuments, and fencing of boundaries of any lands partitioned pursuant to the settlement. The bill would authorize \$10,000,000 to carry out the purposes mentioned in this paragraph.

We recommend the following amendments to H.R. 7679.

In section 1(a), we see no reason for having the Board members appointed by the Chief Judge of the United States District Court for the District of Columbia rather than by the Chief Judge of the District Court of Arizona which has jurisdiction over the area.

The Arizona Court has had considerable experience with the dispute and should be in a better position to choose appropriate Board members. Therefore, we suggest that in the first sentence of section 1(a), "Arizona" be substituted for "Columbia".

To provide for the filling of any vacancies which may occur in the Board's membership due to death, illness, or otherwise, we suggest that a sentence such as the following be added at the end of section 1(a):

"The Chief Judge shall promptly appoint Board members to fill any vacancies which may occur in the Board's membership."

Section 1(d) requires that at least one Board member shall be present during the negotiating sessions. Since the Board members are responsible for determinations as to the progress of the negotiation as provided in section 2(d) and for the selection or development of a settlement plan under section 4, we believe that all the Board members should be present at the negotiating sessions scheduled by the Board. Therefore, we recommend that section 1(d) be rewritten in a manner such as follows:

"(d) All Board members shall attend the negotiation sessions provided for in section 2(c) except in the case of illness or other extenuating circumstance. Any formal action or determination of the Board shall require the agreement of a majority of the Board members."

In order to assure the existence of the negotiating teams until such time as the Board completes its tasks, we recommend that in section 1(e) the words "and the negotiating teams" be inserted after "Board".

To remove unnecessary language and in line with our comment below concerning section 3(a) and the Board's submitting its report to the Congress, we

suggest deleting from section 1(e) the words "with the Secretary of the Interior (hereinafter referred to as the 'Secretary')".

We suggest that the appropriation authorization in section 1(f) be rewritten as set out below to take into account the fact that although the Board will have a life of a year or less, its life may start in one fiscal year and end in the next. In addition, the amount authorized should be changed to "such amounts as may be necessary" to assure adequate funds for reimbursable services from Federal agencies. It should be noted that the Interior Department may be called upon to provide administrative and technical assistance to the Board and much of this would have to be on a reimbursable basis. The rewritten section would be as follows:

"There is authorized to be appropriated such sums as may be necessary for the expenses of the Board, such amount to be available in the fiscal year in which it is appropriated and in the following fiscal year."

To provide a liaison between the Board and the Secretary of the Interior which would facilitate the provisions of assistance and advice to the Board, the bill should provide for the designation of a representative of the Secretary of the Interior to the Board. This could be accomplished by adding a new section 1(g) such as the following:

"(g) The Secretary of the Interior (hereinafter referred to as the 'Secretary') shall appoint a liaison representative to the Board who shall attend negotiating sessions and facilitate the provision of information, advice and assistance requested by the Board from the Interior Department."

To set out more clearly the role of the negotiating teams as representing their tribes and to provide for the possible selection by a tribe of a nontribal member (such as its legal counsel) as a member of their negotiating team, we recommend that in section 2(a) the phrase "team from each tribe" be changed to "team representing each tribe".

To provide for the filling of vacancies on the negotiating teams, a sentence such as the following should be added at the end of section 2(a):

"Each tribal council shall promptly fill any vacancies occurring on its negotiating team".

In line with the preceding change, section 2(b) should be revised by inserting after "select and certify such team" the words ", or to select and certify a replacement member in the case of a vacancy."

We suggest that section 2(c) be changed to indicate that Flagstaff, Arizona, will be the site of the negotiation sessions unless otherwise agreed to by the Board and the teams. This is consistent with the fact that the principal source of records and information regarding the disputed area will be the Flagstaff Office of the Bureau of Indian Affairs which has been established to administer the disputed area. In addition, such a provision solves any problem resulting from the teams' disagreeing as to what is a "convenient" place for the sessions. To accomplish this, section 2(c) could be rewritten as follows:

"(c) Within fifteen (15) days after formal certification of both teams to the Board, the Board shall schedule the first session of the negotiations at Flagstaff, Arizona. Thereafter, negotiation sessions, conducted under the guidelines established by this Act, shall be scheduled at Flagstaff or at any other place by agreement of the Board and the teams as long as at least one such session is held biweekly."

To preclude the Board's having to wait the full 180 days in the event that the parties reach an impasse without clearly failing "to bargain in good faith" we suggest that section 2(d) be rewritten as follows:

"(d) In the event that either or both negotiation teams fail to attend two consecutive sessions or, in the opinion of the Board, either fails to bargain in good faith, or an impasse is reached, the provisions of section 4(c) shall become operative."

To provide for the possibility of a disagreement within a negotiation team, we suggest the addition of a section 2(e) such as follows:

"(e) In the event of a disagreement within a negotiation team, the majority of the team shall prevail and act on behalf of the team unless the resolution of the tribal council certifying the team specifically provides otherwise."

For purposes of clarification, in the first sentence of section 3(a) the phrase "signed by the parties" should be changed to "signed by the members of the negotiation teams" because section 1(a) states that "parties" refers to the Navajo and Hopi Tribes.

We believe that the Board should receive the views of the Secretary of the Interior on the proposed agreement under section 3(a) since he may be involved in carrying out the agreement. In addition, the expertise of his staff may enable him to provide the Board with significantly helpful information or views. Therefore, we suggest that in the second sentence of section 3(a) there be inserted "(1)" following "agreement to" and before the period there be inserted "and (2) the Secretary who shall advise the Board on the aspects of the agreement involving him and such other aspects as he deems appropriate."

In the third sentence of section 3(a), the word "offer" should be changed to "agreement" and following "Attorney General" there should be inserted the words "and the Secretary".

We believe that the negotiation teams should have an opportunity to review and approve their agreement as modified by the Board to conform to the advice of the Attorney General and the Secretary. Such a review is only fair as the modifications could conceivably alter the basis of agreement. In addition we believe that the report of the Board should be submitted directly to the Congress with copies provided to the Attorney General and the Secretary. Further the Attorney General and the Secretary should provide the Congress with their views on the Board's report. In line with the foregoing, we recommend that the last two sentences of section 3(a) be deleted and that the following be added in place thereof:

"The Board shall provide the negotiation teams with copies of such modified agreement for their approval and signatures as above. If the teams approve and sign the modified agreement, the Board shall transmit it, together with a report thereon, to the Speaker of the House of Representatives and to the President of the Senate. The Board shall provide copies to the Attorney General and the Secretary, each of whom shall provide a report thereon to the Interior and Insular Affairs Committees of the Senate and House of Representatives."

Rather than an action by just one house of Congress, we believe that an enactment should be required to overturn the Board's action.

Therefore, in section 3(b) the words "neither the Senate nor House of Representatives passes a resolution" should be deleted and replaced with the words "a resolution is not enacted".

In section 4(a) the words "the parties" should be changed to "the negotiation teams", and in the first sentence of section 4(b) the word "parties" should be changed to "negotiation teams" in line with our comments on section 3(a) above.

In line with our recommended change in section 1(e), we suggest deletion of the last sentence of section 4(a).

For purposes of simplification and to eliminate unnecessary language we recommend deletion of all of section 4(a) after the first sentence and substitution of the following sentence:

"Thereafter, the Board shall follow the procedure set out for agreements in section 3(a) except that the modified offer need only be submitted for approval and signature to the negotiation team which made the offer. The provisions of section 3(b) shall also supply to the decision and report of the Board under this section".

In line with the above changes to section 4(b), the last sentence of section 4(c) should be changed by adding the following at the end thereof: "except that the modified plan need not be submitted to either party for approval if they were both in default under section 2(b) or 2(d)".

We believe that the provision in section 5 which declares an agreement reached by the parties not to constitute a taking under the Fifth Amendment is acceptable and constitutional. If such an agreement resulted in one party's receiving less than an equal share of the disputed area, nonetheless that party would have acquiesced in the agreement and could not be heard to claim that its property was taken. On the other hand, in the case of the imposition of a plan on a party by the Board under section 4, it is our understanding that an aggrieved party could sue the United States.

The date "September 17, 1967" in section 6(e) apparently should be "September 28, 1962" which is the date of the District Court decision in *Healing v. Jones*. In addition, we believe that the word "and" following "1882" should be the word "is".

In section 6(f) (2) the word "Hopi" should be "Hopis" and "such Act" should be "this Act".

The word "considered" should be deleted from the last sentence of section 6(f).

In section 7 the word "the" should be inserted following "(a)" and the word "a" should be inserted following "(b)".

Section 11, which directs the Secretary to reduce livestock in the joint use area to its carrying capacity and to restore grazing potential of the area to the maximum extent feasible, is a new provision which did not appear in H.R. 11128 as introduced. The Secretary has already been ordered by the Arizona District Court to carry out the goals of section 11. By order of the court we have submitted a plan for livestock reduction which has been adopted by the court and incorporated into its mandate. Essentially, this plan involves the management of livestock in a dry-lot operation by a joint Hopi-Navajo corporation. We believe that the funds needed for rehabilitation of the joint-use area can be obtained by the normal annual appropriation procedure. Section 11 also includes among its purposes—for which part of the \$10 million to be appropriated under that section would be used—the survey, location of monuments, and fencing of boundaries of any lands partitioned under the settlement provided by the arbitration procedure of this bill. We believe that these are matters which can be deferred until such a participation may be effected and that there is no need to appropriate funds for such purposes at this time. Therefore, we believe that the funds authorized to be appropriated under this section should not be set at a fixed amount. We recommend that the last sentence of section 11 be rewritten to read as follows: "There is authorized to be appropriated such sums as may be necessary to carry out the provisions of this section."

We recommend that section 16 be amended to include more specific provisions designed to ease the hardship of any relocation of Hopis and Navajos which may be required under a plan adopted pursuant to section 3 or 4. Such a relocation of Hopis and Navajos would be analogous to a Federal taking of real property, and, as we have indicated in the history of the dispute set out above, the United States bears some of the responsibility for the current status of the 1882 Reservation. Therefore, we recommend that the kind of benefits provided by the Uniform Relocation Assistance and Land Acquisition Policies Act be applied to this case, if modified to provide for incentive to encourage resettled persons to move, as set out in a new section 16, which would read as follows:

"Sec. 16. (a) If the plan adopted pursuant to Section 3 or Section 4 requires the relocation of any Navajos or Hopis, the United States shall purchase from each head of a household his habitation and other improvements owned by him on the area from which he is being required to move. The purchase price shall be the fair market value of such improvements.

(b) In addition to the payments made pursuant to subsection (a), the Secretary shall—

(1) Reimburse each head of a household and his family moved pursuant to this Act for their actual reasonable moving expenses as if they were displaced persons under section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894).

(2) Pay to each head of a household and his family moved pursuant to this Act the amount, if any, not in excess of \$15,000 which when added to the fair market value of the dwelling which is a decent, safe, and sanitary dwelling adequate to accommodate such displaced household, provided, however, that the additional payment authorized by this subsection shall be made only to such a displaced person who purchases and occupies a replacement dwelling which is decent, safe and sanitary not later than the end of the 1 year period beginning on the date on which he receives from the Secretary final payment of all costs of the acquired dwelling, or on the date on which he moves from the acquired dwelling, whichever is the later date.

(c) In implementing subsections (b) (1) and (b) (2) of this section, the Secretary shall establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Act of 1970.

(d) The Secretary is authorized to dispose of dwellings and other improvements acquired pursuant to this Act, in such manner as he sees fit including resale of such improvements to persons moved pursuant to this Act at prices no higher than their acquisition costs.

(e) In addition to the above payments, the Secretary shall make additional payments according to the following schedule:

(1) The sum of \$5,000 to each head of a household who prior to January 1, 1975, contracts with the Secretary to relocate. Such payment shall be made upon the date of such relocation as determined by the Secretary.

(2) The sum of \$4,000 to each head of a household who between January 1, 1975, and July 1, 1975, contracts with the Secretary to relocate. Such payment shall be made upon the date of such relocation as determined by the Secretary.

(3) The sum of \$3,000 to each head of a household who between July 1, 1975, and July 1, 1976, contracts with the Secretary to relocate. Such payment shall be made upon the date of such relocation as determined by the Secretary.

While adhering to the view that arbitration is the best method of resolving the controversy over the joint-use area, we offer the following recommendations concerning H.R. 5647, should that be the solution adopted by the Congress.

Section 5 of H.R. 5647 deals with the amount of land from the 1934 Navajo Reservation to be granted to the Hopi Tribe and included within their reservation. The amount of land granted the Hopi Tribe under the section is significantly greater (by 73,600 acres) than that provided in section 5 of H.R. 11128 as introduced in the 92nd Congress. We believe that the latter original provision is an equitable division and we would recommend its use instead of the current provisions of section 5 of H.R. 5647.

Section 8 of H.R. 5647 also differs from section 8 of H.R. 11128 as introduced in the 92nd Congress in reducing from ten to five years the time allowed for removing the families to be dislocated by the legislation. We would recommend the ten year period as being more feasible. However, we do not recommend that the Act require removal of approximately ten percent of the Navajo families per year as provided in H.R. 11128 as introduced. Rather, we recommend that no rate of removal be specified.

Finally, we reiterate the recommendation made *supra* in connection with H.R. 7679 that the kind of benefits provided by the Uniform Relocation Act be applied to movement of resettled Indians. See the new section which we provided *supra*, which would replace section 11 in H.R. 5647.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

JOHN KYL,
Assistant Secretary of the Interior.

Mr. MEEDS. Each of the bills before us seeks a different approach to resolve the longstanding dispute between the two tribes. At issue here is what has been called the greatest title problem of the West, involving over 2 million acres of land in northern Arizona.

Over the years, other issues have sprung up around the primary issue, which we must also consider and attempt to resolve. The dispute has grown with the years giving rise to increasing conflict, frustration, and animosity.

I think it is safe to say that the Federal Government has an obligation to take steps to resolve the dispute once and for all. The record is replete with admissions of the administration witnesses that the Federal agencies and officials responsible for administration of Indian affairs have, throughout the dispute, failed to act forthrightly to prevent the dispute or ameliorate the problems growing out of it.

I will not go into the history or details of the dispute. The magnitude, complexity, and seriousness of the problem will become apparent to us as we take testimony from the two parties and from the administration.

In the last Congress, the committee considered and the House passed a bill providing for a solution to the problem. The Senate failed to act on the bill and it is here before us again.

At that time, a voluminous record was made both in the House and the Senate. Printed hearings by both committees are available which contained detailed statements and documents on the history of the problem and its ramifications. The subcommittee feels that neither is it necessary nor would it be productive to cover the ground in such detail again.

As a consequence, we have requested the parties to make a limited presentation with 2 hours allotted to each. We do not want to prevent the parties from having an ample opportunity to comment on the pending legislation or stating their position on the dispute. However, we feel that, in view of the record made and available, the time allotted is sufficient.

I'm sure the witnesses will be addressing themselves to the provisions of all the bills; what we on the committee and everybody are seeking is a solution that would be offering the greatest equity under extremely difficult circumstances.

We are delighted to be joined this morning by our colleague and member of the full committee, Mr. Runnels from New Mexico. It's my understanding that Senator Goldwater will be testifying briefly, and that he will interrupt the testimony of the first witness. We will be happy to hear his testimony when he arrives.

The gentleman from New Mexico will be recognized for any opening statement that he wishes to make.

Mr. LUJAN. Thank you, Mr. Chairman.

I think you have described the situation as it is. I do hope we won't go into just a rehashing of the whole problem, the whole historical problem. We certainly need to get to the facts. The 2 hours is ample time.

I might say, Mr. Chairman, that in introducing the legislation, which I have, the main concern that I have, which I will attempt to clear up in any legislation that might come out of this committee is simply that we don't have a wholesale move of people. I realize that's going to be a difficult thing to do, but that is my prime concern.

I hope that with whatever bill we come out with, or a combination of bills, that this point be kept in mind; that we just don't go in and move people who have settled for a long, long time. It is a difficult thing to move people from their homes.

That is the sum of my concern. Other solutions should be considered, other than moving people from their homes.

Mr. MEEDS. Thank you, the gentleman from New Mexico.

The Chairman, who is not here yet, has a statement that I would like to have read in the record by the Counsel.

Mr. SIGLER. Mr. Haley, who said he would be here later, asked me to read this statement of his for the record.

STATEMENT OF HON. JAMES A. HALEY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. Chairman, as this hearing opens I want to say just a few words to indicate exactly what the issue is, and to put that issue in its proper perspective.

The issue is very narrow. The issue is whether Congress should take away from the Hopis, over their strenuous objection, land that is owned by them and give the land to the Navajos. I, for one, am opposed to such action, no matter how it may be disguised.

The two tribes have for over 90 years been in a dispute over the ownership of the land. In 1958 Congress enacted a statute to permit the ownership issue to be litigated in a special three-man district court with the right of a direct appeal to the Supreme Court. The issue

was litigated, and the decision in 1962, which was affirmed by the Supreme Court, held that the two tribes have undivided but equal rights in about 1,822,000 acres.

Although the two tribes have equal rights in the land, the Navajos are in actual possession and they have refused to permit the Hopis to use any part of the land. Their action has been accompanied by violence and bloodshed.

All efforts during the last 11 years to negotiate a joint-use agreement have failed because the Navajos refuse to give up any part of their possession, and insist that the Hopis sell their interest in the land.

The Hopis are just as adamant that they will not sell.

Last year this committee held extended hearings and concluded that there was no reasonable basis for believing that further negotiations would be fruitful, and that a partition of the land was the only practical alternative. A bill for that purpose was reported by our committee and passed by the House.

Nothing has happened since then, so far as I know, to warrant any change in the conclusions reached a few months ago.

Three bills are before the subcommittee this morning.

The Steiger bill is substantially the same as the bill that was passed by the House last year.

The Lujan bill, in essence, requires the Hopis to sell their interest in the land to the Navajos. It does this by giving the land to the tribe that occupied it in 1958. The court has already decided that the Navajos occupied it and that the occupancy was by force. The rest of the proposal is, in my opinion, window dressing.

The Meeds bill would also make it possible to have a forced sale of the Hopi interest, but would leave the actual decision up to three men appointed by the chief judge of the U.S. District Court for the District of Columbia, rather than to Congress which is the body that should make the decision.

Any forced sale of the Hopi interest to the Navajo Tribe would, in my opinion, be unfair.

A copy of this committee's report on last year's bill—H.R. 11128, 92d Congress—is attached to this statement of mine, and I ask that pages 5 to 8 be included in the record at this point.

I also recommend that each Member read the explanation on pages 5 to 8.

Mr. Chairman, I hope that this hearing will not be a rehash of last year's hearing, but will be confined to new matter, as far as practical. I also hope that a bill can be reported by the subcommittee promptly.

Mr. MEEDS. Without objection, the request of the chairman that he made on page 3 of his statement, is so ordered.

[The material referred to follows:]

REPORT NO. 92-1221—TO ACCOMPANY H.R. 11128 (PAGES 5 TO 8)

PURPOSE

The purpose of H.R. 11128, introduced by Mr. Steiger of Arizona, is to partition land in which the Navajo and Hopi Tribes have an undivided joint and equal interest.

BACKGROUND

I. The 1882 Hopi Reservation

In 1882, an Executive Order was issued setting aside a Reservation of approximately 2,472,095 acres for the Hopi Indians and such other Indians as the Secretary of the Interior may see fit to settle thereon. The purpose of the 1882 Reserva-

tion was to protect the Hopis from encroachment by both the Navajos and the non-Indians.

In 1882, the Navajo Reservation was entirely east of the Hopi Reservation, and the two Reservations did not adjoin each other. During the years following 1882, however, the Navajo Reservation was expanded by a series of actions, and today the Navajo Reservation completely surrounds the 1882 Reservation for the Hopis. The Navajo Reservation now contains 12,449,000 acres and the Tribe owns an additional 921,000 acres located outside the Reservation boundaries.

The Navajos were a semi-nomadic people who did not stay within their Reservation boundaries. They were constantly moving into new areas. In 1882, about 300 Navajos resided within the 1882 Reservation established for the Hopis. The number steadily increased, and by 1958 the number was 8,800.

The friction between the Navajos and the Hopis was great. The Hopis claimed that the Navajos had no right to be in the 1882 Reservation at all, and the Navajos claimed that they were there by permission of the Secretary of the Interior. In 1958, Congress enacted a statute authorizing a three-Judge United States District Court to adjudicate these conflicting claims and to determine the property rights of each Tribe.

The Court found as fact that no Secretary of the Interior had ever specifically "settled" any Navajos on the 1882 Reservation, that the Navajos had moved there without any official authorization, but that since 1931 the Secretary of the Interior had acquiesced in their presence and had impliedly exercised his authority to settle them there. The Court held that the Hopis had an exclusive right and interest in about 650,000 acres of the Reservation known for administrative purposes as Grazing District No. 6, and that the Hopi Tribe and the Navajo Tribe had joint, undivided, and equal rights and interests in the remainder of the Reservation, consisting of about 1,822,000 acres.

Notwithstanding the fact that the court determined that the two Tribes have equal rights and interests in the 1,822,000 acres, the Navajos were then and are now in actual possession, and they have refused for the ten years since the court's decision to permit the Hopis to use any part of the joint-use area. Moreover, the Secretary of the Interior has failed to do anything to permit the Hopis to exercise their joint-use rights. He has in fact refused to permit them to do so.

The point-use area is badly overgrazed by the Navajos, perhaps to the extent of 400%, and the Secretary has been unable to persuade the Navajos to reduce grazing to the carrying capacity of the land. The Secretary has also been unwilling to cancel any of the Navajo grazing permits and issue new permits to the Hopis.

Because of the severe overgrazing of the joint-use area, the Navajo livestock are constantly trespassing on the Hopi exclusive area, where the forage is better, and the Hopis are impounding those trespassing livestock. Violence and bloodshed have resulted. The Hopis are not only denied their joint-use rights, but their exclusive Hopi area is also threatened.

During the past ten years the two Tribes have attempted to negotiate a joint-use agreement, but the negotiations have failed. The Navajo position was, and still is, that they are in possession and will not relinquish any part of their possession unless the United States provides lieu land to which the Navajo can be moved. The Navajos would prefer that the United States purchase the Hopi interest in the joint-use area and give it to the Navajo Tribe. The Hopi position was, and still is, that they have been pushed back and encircled by the Navajos, that the Navajos have invaded and taken large parts of the 1882 Reservation which was intended to be for the benefit of the Hopis, that the Hopis will give up no more land, and that the Navajos must vacate one-half of the joint-use area in order to give effect to the court decree.

II. The 1934 Navajo Reservation

When the boundaries of the Navajo Reservation were enlarged by the Act of June 14, 1934 (48 Stat. 960), the vacant lands within the Reservation boundaries were withdrawn for the benefit of the Navajos and such other Indians as were already located thereon. Hopi Indians were then living in the villages of Moencopi and Tuba City, which lie west of the 1882 Reservation, and Hopi Indians were living on the land between these villages and the 1882 Reservation. The Hopi Indians have by statute the same type of joint interest in this land that the court determined they have in the joint-use area of the 1882 Reservation.

The problems in the two areas are the same. The Navajo population pressures are compressing the Hopis into smaller and smaller areas, and the two Tribes are

unable to use the land jointly in harmony. There is a need to delineate the lands each Tribe is entitled to use.

Committee conclusion

The Subcommittee on Indian Affairs held extensive hearings on H.R. 11128. Representatives of the Hopi Tribe and the Navajo Tribe presented their views in great detail. The Assistant Secretary for Public Land Management and the Commissioner of Indian Affairs also testified in detail.

The Navajo representatives opposed the bill on the ground that the two Tribes should be allowed to settle their dispute by negotiation. The Hopi representatives urged the enactment of the bill on the ground that negotiations had been attempted for ten years and had failed because the Navajos refused to consider any agreement that allowed the Hopis to exercise their judicially decreed right to an equal use of the land.

The Department of the Interior recommended the enactment of the bill if the alternatives were considered and found to be impractical. The Assistant Secretary testified that he saw no solution other than partition of the land as provided in the bill.

The Committee concluded that the Navajo Tribe had refused to allow the Hopi Tribe to exercise its joint and equal right to use the land, as decreed by the court, and that there was no reasonable basis for believing that the Navajo Tribe would change its position on this basic issue as the result of further negotiation. The Navajo Tribe is in possession, and it has adamantly refused to discuss any plan that called for a relinquishment of its possession. The Committee also concluded that the Hopi Tribe was unwilling to sell its undivided but equal interest in the land, either for money or for other land, and that there is no practical alternative to a partition of the joint-use area as provided in the bill.

The bill provides that the surface estate in approximately half of the joint-use area is added to the Hopi Reservation and the other half is added to the Navajo Reservation. About 775 Navajo families will need to move from the Hopi land, and two Hopi families will need to move from the Navajo land. The bill authorizes the appropriation of \$16,000,000 to relocate these families. Joint ownership of the subsurface estate is not changed by the bill.

With respect to the 1934 Reservation, the bill adds to the Hopi Reservation both the surface and subsurface estates in 208,600 acres, and extinguishes all Hopi and other Indian claims to the remainder of the area. The few Paiute families living there will receive allotments to the land they occupy.

Mr. MEEDS. Are there any further opening statements?

The gentleman from Arizona?

Mr. STEIGER. Thank you, Mr. Chairman.

Just briefly, I would only like to underscore the fact that I think the chairman of the subcommittee has defined the problem. It is indeed a problem that doubtlessly cannot be resolved to anybody's full satisfaction.

I think the record ought to reflect that the chairman's position, the chairman of the subcommittee's position, that the Federal Government is responsible for the state of this dilemma and the extent of it is not only entirely valid but cries to be remedied, since the Federal Establishment, both the bureaucracy, the judicial, and the Congress, is the responsible agent; therefore, it would only seem intimately responsible that they find a solution.

I would also like the record to reflect that I have spent a lot of time with this problem, and I would like the record to reflect the sum total of the problem becomes one of mathematics when all else is laid aside. There are in excess of 120,000 Navajos, and there are something in the neighborhood of 6,000 Hopis.

The Navajos have learned the best use of political muscle; and they have used it, if not wisely, they have certainly used it well.

I would just ask that those on the subcommittee who may not have been around for last year's hearings recognize that fact. This is not

to say that there are not inequities on the side of the Navajos. I would point out again that the Federal Government, by ignoring the law and ignoring their own regulation, have made it appear that the Navajo was doing the appropriate thing, because the Federal Government failed to enforce court orders, failed to enforce administrative orders; and therefore, by their absence of activity sanctioned that which has now become impossible to endure any longer.

With that, Mr. Chairman, I will yield.

Mr. MEEDS. The gentleman from North Carolina?

Mr. TAYLOR. No comments.

Mr. MEEDS. The gentleman from Alaska?

Mr. YOUNG. No comments.

Mr. MEEDS. Mr. Runnels?

Mr. RUNNELS. Nothing, Mr. Chairman.

Mr. MEEDS. The gentleman from New Mexico is recognized to ask a question of counsel.

Mr. LUJAN. Yes, Mr. Chairman, before we begin the hearings, I would like to establish something in my mind, and I would like to ask counsel, if we as a legislative body are bound by the court's decision, in which they say that the land, that both tribes are entitled to it on a 50-50 basis, do we have to be bound by that decision, or can we determine in the legislation that equitable use does not necessarily have to be 50-50, and perhaps it could be 120 to 6, by virtue of the population of the two tribes?

Mr. SIGLER. Mr. Lujan, when the jurisdictional act on which the litigation is based was passed, Congress vested the rights of the two tribes in this area. It did that for the purpose of being sure that the court has jurisdiction to litigate the issue, so that the court's decision that the tribes have joint and equal interests is a vested right at the present time.

That does not mean that Congress cannot change those rights if it would choose to do so, but if it does, it must pay; that is the right of the Navajo Tribe, and the right of the Hopi Tribe is a vested property interest. The right is a joint and equal one.

If Congress takes either of those rights, it would be the same as if it took my land. It would have to pay for the right which it takes.

Mr. LUJAN. Is the committee at liberty to interpret the word "equal," or must we interpret it as 50-50?

Mr. MEEDS. The Chair is going to rule. That's an issue that will have to be settled by these hearings. Counsel's statement on that will not be binding on this committee, nor will any of the witness' statements be binding on that issue. That is really the issue that this committee is going to have to solve.

The Chair will announce the first witness at this time. We have already taken a half hour, I understand, of the Hopis' time, and please let me allay your fears. The first witness to come before the committee is Mr. Abbott Sekaquaptewa, who is the chairman of the Hopi Negotiating Committee.

Mr. Sekaquaptewa, would you please come forward? Would you like anyone to accompany you, sir?

Mr. SEKAQUAPTEWA. Mr. Boyden, Mr. Chairman.

Mr. MEEDS. For the purpose of the record, you're accompanied by Mr. John Boyden, who is an attorney for the Hopis.

Is there anyone else, sir?

Mr. SEKAQUAPTEWA. Mr. Clarence Hamilton, chairman of the tribal council.

Mr. MEEDS. And Mr. Clarence Hamilton, chairman of the tribal council. Would you please come forward, sir?

Welcome before the committee, Mr. Sekaquaptewa, Mr. Boyden, and Mr. Hamilton. We would like to have your testimony. I see you have a prepared statement, sir. We can admit it for the record, or you can read it in.

STATEMENT OF ABBOTT SEKAQUAPTEWA, CHAIRMAN, HOPI NEGOTIATING COMMITTEE, ACCOMPANIED BY JOHN BOYDEN, GENERAL COUNSEL FOR HOPI TRIBE; AND CLARENCE HAMILTON, CHAIRMAN, HOPI TRIBAL COUNCIL

Mr. SEKAQUAPTEWA. My name is Abbott Sekaquaptewa. I am the chairman of the Hopi Negotiating Committee. That committee was appointed by the Hopi Tribe in 1963 to negotiate with the Navajo Negotiating Committee in an effort to resolve the land dispute between the Navajo and Hopi Tribes. I am also a former chairman of the Hopi Tribal Council. I reside in Oraibi, Ariz., on the Hopi Indian Reservation.

Mr. Chairman, it is with my earnest hope that this will be the last time that we will appear before this committee for the purpose that we are here this morning. I have a prepared statement; however, I will deviate from it somewhat, and would like all of it to be put in the record.

The transcript of the hearing before this subcommittee last year graphically illustrates the lingering history of Navajo-Hopi conflicts from their very first encounter little over 100 years ago to the present day.

You are aware, and I am sure you appreciate, that this has been a continuing problem which existed long before the Hopi Reservation was created in 1882 for the express purpose of protecting Hopi lands from marauding Navajo tribesmen, which has always been a time of trial and tribulation for my people. Particularly during my own lifetime, the relentless Navajo dominance and forcible occupation of Hopi land has become a creature of the night, a living nightmare.

I need not remind this committee of the constant protestations and objections of the Hopi people for over 100 years to the onslaught of Navajo trespasses and other excesses in the destruction of life and property that have become a way of life with them since their arrival on this land.

Recognizing the continuing nature of this problem, Congress in 1958 enacted legislation intended to solve the land use problems between the Hopi and the Navajo Tribes once and for all. A special, Federal, three-judge court was empowered to determine the rights, title, and interests of the Navajo and Hopi Tribes to the 1882 Hopi Executive Order Reservation.

The decision in this case, commonly known as *Healing v. Jones*, was handed down by the three-judge court in 1962. Both tribes appealed the decision to the Supreme Court of the United States, and the district court decision was affirmed by the Supreme Court in 1963.

We do not propose here to discuss a redetermination of the issues already settled by that court in *Healing v. Jones*. We believe Congress meant that the court decision should be final, and it is wrong for the Navajo Tribe to attempt to reopen the case time and again just because they are the biggest and most powerful tribe in the country and are therefore entitled to more than their fair share, in spite of the decision of the highest court in the land. One hundred years of Federal oversight of Navajo excesses has led that tribe to believe that they can ignore the decrees of the courts with impunity and dictate their will to the Congress and the Government.

The Navajo Tribe has systematically by use of force, threat, coercion, and intimidation excluded the Hopi people from the lands secured to them by the Federal court in *Healing v. Jones*. We cannot understand how this state of affairs can be condoned by the Federal Government in the face of court orders to the contrary.

Violence and destruction are common today as they have been historically in this conflict. It is not beyond imagination that open warfare will once again become the order of the day.

Hopi people are peaceful by nature, but our patience is not inexhaustible. Because of our long history of nonaggression we are penalized and forced to endure intolerable conditions under the heel of the mighty Navajo Tribe which could be avoided if Congress would promptly take action.

No other minority people on the face of this land have been required to negotiate for the implementation of their rights as decreed to them by the Federal courts. It seems to us that the Navajos are not subject to the same laws as the rest of the people in this country and can move at will in open defiance of Federal court decrees.

Negotiations following the decision in *Healing v. Jones* between the Navajo and Hopi Tribes have been unproductive from their inception and have deteriorated to the point where we are embarrassed to receive Navajo proposals which seem to regard us as if we are gullible children ready to believe anything.

The nearly 10-year history of those negotiations makes it perfectly clear that there is no prospect or an agreement between the Hopi and Navajo Tribes. The Hopi Tribe wants the use and possession of the land decreed to be theirs by the court in *Healing v. Jones*. The Navajo Tribe is not satisfied with Hopi land compromised to them in *Healing v. Jones*, but it greedily wants the lands owned by the Hopi Tribe.

Consider this in light of the fact that the Navajo is the only tribe in the United States to our knowledge that has gained five times more land than they had at the time of signing their treaty with the Government. Most of this has been at the expense of the Hopi Tribe.

Throughout the negotiations the Navajo Tribe has persisted in its proven strategy of forceful occupation which will ultimately result in the complete takeover of all the lands of the weaker Hopi Tribe.

Mr. STEIGER. I wonder if the gentleman might yield at that point just for one question?

Mr. MEEDS. The gentleman is recognized.

Mr. STEIGER. I don't mean to interrupt. It does seem to me that right here we have what I consider the great myth of this entire situation. I know from your own experience, you have witnessed, in your lifetime, the encroachment of Navajos, both livestock and people, on the Hopi lands.

Why is it so difficult for the Navajo to move away from the Hopi reservation, but it's very easy for them to move toward it? Have you any suggestion as to why the movement is not difficult as long as it occupies the lands that you mentioned?

Mr. SEKAQUAPTEWA. Mr. Steiger, I will refer to that in a later part of my statement. It's something that's very difficult for us to understand.

Mr. STEIGER. Thank you.

Mr. SEKAQUAPTEWA. The Navajo proposals have been and always will be to have the Federal Government buy out the birthright of the Hopi people by giving money to the Hopi Tribe for its land interests whether it be through arbitration, Presidential appointment, or otherwise. The bills that have been introduced in Congress on behalf of the Navajo or that are sponsored by the Navajo Tribe lead to one inescapable conclusion: that the Navajos will not respect the decision in *Healing v. Jones* but will continue to use their influence, power, and force to overrule the district court decree and take from us what little lands the Hopis have left.

No amount of money can purchase our priceless birthright; if the Congress passes legislation to take our land and give it to the Navajo, then they must take it by force as the Navajo has done. We do not intend and we will not accept money for our land so it can be given to others.

The only possible solution to such unscrupulous behavior of the Navajo, and one that has been made clear by the history of this conflict, is to partition the land between the two tribes and protect the Hopi Tribe from further tragedy and violation of their human dignity.

The essential key to the solution of this problem requires that all Navajo people be relocated from the area designated for the Hopi. The question of relocation is not one open to arbitration or one that needs to be resubmitted to the courts. The law is clear. The Hopis are entitled to one-half and have the right to the use and enjoyment of that one-half free from interference and encroachment by the Navajos.

There's a great publicity effort to get public sympathy because some Navajos will need to be relocated. It is said that a great psychological harm will be done and great suffering will come about. The fact of the matter is that Navajos are already on the move into the area to be designated Hopi under H.R. 5647. The Navajo Tribe has yet to explain why great psychological harm will be done if they move off Hopi lands, and similar harm is not done to them when they uproot their homes and families to move in on Hopi territories.

The fact of history shows that the Navajo is a squatter on this land. Even today, they are moving about. For a Navajo family to move and change their place of residence is not the tragedy that some would have us believe.

It is inconceivable to us that the Navajo Indians cannot find a place to reside, in light of their 15 million acre reservation, without appropriating more Hopi lands. The question is not whether there is room to build a home; the real question is the surface use of the land for grazing purposes, which the tribes are equally entitled to use in their own way and according to their own desires. We do not want the Navajo to continue to damage our share through overgrazing and misuse as they are doing now, and which they will continue to do as

long as there is a joint use concept, because of their disregard for law and regulations and of their domination through numbers.

The boundary line which has been drawn by the Bureau of Indian Affairs and the Department of the Interior as the partition boundary in H.R. 5647 is acceptable to the Hopi Tribe to the extent that we believe it to be a fair attempt and the only one ever made to give the Hopi Tribe and the Navajo Tribe an equal share of all types of land which they now hold jointly.

We are aware that there are areas of Navajo population concentration. We believe that the proposed partition boundary puts such areas of Navajo population concentrations in the area designated for the Navajo Tribe. We have no objection to drawing a line which will exclude these Navajo population concentrations from the area designated for the Hopis so long as the division is equitable as to land area, quality of land, one that is adequately defensible and that will necessitate the relocation of the least number of people.

There can be no more compromise of the human rights and dignity of a small and politically insignificant people, that the Hopis are, in order to satisfy the territorial ambitions of the powerful Navajo tribe. There is only one solution to this problem. That solution is the partitioning of Hopi land interests from the Navajo.

We come here seeking only that just solution, so that our people will have the right as other free men to determine destiny and live their own way of life. We call upon the Congress to do that which we all know is right.

Thank you, Mr. Chairman.

Mr. MEEDS. Thank you, sir.

Without objection, your full statement will be made a part of the record. I think you read it almost in its entirety.

[The material referred to follows:]

STATEMENT OF ABBOTT SEKAQUAPTEWA, CHAIRMAN OF THE HOPI
NEGOTIATING COMMITTEE

My name is Abbott Sekaquaptewa. I am the Chairman of the Hopi Negotiating Committee that was appointed by the Hopi Tribe in 1963 to negotiate with the Navajo Negotiating Committee in an effort to resolve the land dispute between the Navajo and Hopi Tribes. I am also a former chairman of the Hopi Tribal Council. I reside in Oraibi, Arizona, on the Hopi Reservation.

The transcript of the hearing before this Subcommittee last year graphically illustrates the lingering history of Navajo-Hopi conflicts from their very first encounter little over 100 years ago to the present day. You are aware, and I am sure you appreciate, that this has been a continuing problem which existed long before the Hopi Reservation was created in 1882 for the express purpose of protecting Hopi lands from marauding Navajo tribesmen, which has always been a time of trial and tribulation for my people. Particularly during my own lifetime, the relentless Navajo dominance and forcible occupation of Hopi land has become a creature of the night, a living nightmare. I need not remind this Committee of the constant protestations and objections of the Hopi people for over 100 years to the onslaught of Navajo trespasses and other excesses in the destruction of life and property that have been a way of life with them since their arrival on this land. Recognizing the continuing nature of this problem, Congress in 1958 enacted legislation intended to solve the land use problems between the Hopi and the Navajo Tribes once and for all. A special, federal Three Judge Court was empowered to determine the rights, title and

interests of the Navajo and Hopi Tribes to the 1882 Hopi Executive Order Reservation. The decision in this case, commonly known as *Healing v. Jones*, was handed down by the Three Judge Court in 1962. Both Tribes appealed the decision to the Supreme Court of the United States and the District Court decision was affirmed by the Supreme Court in 1963.

We do not propose here to discuss a redetermination of the issues already settled by that Court in *Healing v. Jones*. We believe Congress meant that that Court decision should be final, and it is wrong for the Navajo Tribe to attempt to reopen the case time and again just because they are the biggest and most powerful tribe in the Country and are therefore entitled to more than their fair share, in spite of the decision of the highest court in the land. One hundred years of federal oversight of Navajo excesses has led that tribe to believe that they can ignore the decrees of the courts with impunity and dictate their will to the Congress and the Government.

The Navajo Tribe has systematically by use of force, threat, coercion, and intimidation excluded the Hopi people from the lands secured to them by the Federal Court in *Healing v. Jones*. We cannot understand how this state of affairs can be condoned by the federal government in the face of court orders to the contrary. Violence and destruction are common today as they have been historically in this conflict. It is not beyond imagination that open warfare will once again become the order of the day.

Hopi people are peaceful by nature, but our patience is not inexhaustible. Because of our long history of non-aggression we are penalized and forced to endure conditions under the heel of the mighty Navajo Tribe which could be avoided if Congress would promptly take action. No other people on the face of this land have been required to negotiate for the implementation of a decree handed down by the federal courts. It seems to us that the Navajos are not subject to the same laws as the rest of the people in this Country and can move at will in open defiance of Federal Court decrees.

Negotiations following the decision in *Healing v. Jones* between the Navajo and Hopi Tribes have been unproductive from their inception and have deteriorated to the point where we are embarrassed to receive Navajo proposals which seem to regard us as if we are gullible children ready to believe anything. The nearly ten-year history of those negotiations makes it perfectly clear that there is no prospect of an agreement between the Hopi and Navajo Tribes. The Hopi Tribe wants the use and possession of the land decreed to be theirs by the Court in *Healing v. Jones*. The Navajo Tribe is not satisfied with Hopi land compromised to them in *Healing v. Jones*, but it greedily wants the lands owned by the Hopi Tribe. Consider this in light of the fact that the Navajo is the only tribe in the United States to our knowledge that has gained five times more land than they had at the time of signing their treaty with the Government. Most of this has been at the expense of the Hopi Tribe. Throughout the negotiations the Navajo Tribe has persisted in its proven strategy of forceful occupation which will ultimately result in the complete take over of all the lands of the weaker Hopi Tribe. The Navajo proposals have been and always will be to have the federal government buy out the birthright of the Hopi people by giving money to the Hopi Tribe for its land interests whether it be through arbitration, presidential appointment or otherwise. The bills that have been introduced in Congress on behalf of the Navajo or that are sponsored by the Navajo Tribe lead to one inescapable conclusion: that the Navajos will not respect the decision in *Healing v. Jones* but will continue to use their influence, power and force to overrule the District Court decree and take from us, what little lands the Hopis have left. The only possible solution to such unscrupulous behavior, and one that has been made clear by the history of this conflict, is to partition the land between the two tribes and protect the Hopi Tribe from further tragedy and violation of their human dignity.

The essential key to the solution of this problem requires that all Navajo people be relocated from the area designated for the Hopi. The question of relocation is not one open to arbitration or one that needs to be resubmitted to the courts. The law is clear. The Hopis are entitled to one-half and have the right to the use and enjoyment of that one-half free from interference and encroachment by the Navajos.

A great issue is raised about the fact that some Navajos will need to be relocated to other areas. It should be remembered that the Navajos are a nomadic people and are not settled in any one particular place. Even today, they are moving about. For a Navajo family to move and change their place of residence is not the tragedy that some would have us believe. It is inconceivable that the Navajo Indians cannot find a place to reside, in light of their 15 million acre reservation, without appropriating more Hopi lands. The question is not whether there is room to build a home; the real question is the surface use of the land for grazing purposes, which the tribes are equally entitled to use in their own way and according to their own desires. We do not want the Navajo to continue to damage our share through overgrazing and misuse as they are doing now, and which they will continue to do as long as there is a joint use concept, because of their domination through numbers.

The boundary line which has been drawn by the Bureau of Indian Affairs and the Department of the Interior as the partition boundary in H.R. 5647 is acceptable to the Hopi Tribe to the extent that we believe it to be a fair attempt and the only one ever made to give the Hopi Tribe and the Navajo Tribe an equal share of all types of land which they now hold jointly. We are aware that there are areas of Navajo population concentration. We believe that the proposed partition boundary puts such areas of Navajo population concentrations in the area designated for the Navajo Tribe. We have no objection to drawing a line which will exclude these Navajo population concentrations from the area designated for the Hopis so long as the division is equitable as to land area, quality of land, adequately defensible and that will necessitate the relocation of the least number of people.

Mr. MEEDS. Do you mind if I call you Abbott?

Mr. SEKAQUAPTEWA. No, sir.

Mr. MEEDS. Do any of the gentlemen accompanying you have a statement to make?

Mr. SEKAQUAPTEWA. I would like to have Mr. Hamilton introduce the next witness, Mr. Chairman. That next witness is Mr. John Boyden, general counsel for the Hopi Tribe.

Mr. HAMILTON. Mr. Chairman?

Mr. MEEDS. Pardon me just one moment, sir. [Pause.]

We will proceed to hear all of the witnesses for the Hopis, and then ask questions. Please proceed.

Mr. HAMILTON. Mr. Chairman and members of the committee, my name is Clarence Hamilton. I'm chairman of the Hopi Tribe. At this point, I would like to introduce the Hopi tribal attorney, Mr. John Boyden.

Mr. MEEDS. Mr. Boyden, do you have a prepared statement?

Mr. BOYDEN. I do not.

Mr. MEEDS. Very well. Please proceed, sir.

Mr. BOYDEN. We were instructed that we would have one witness, and that the counsel would be here to argue the case. That was the way that we had prepared it.

Mr. MEEDS. Fine.

Mr. BOYDEN. I would like first of all for the new members of the committee, without in any way intending to rehash what has been done, just in a few short sentences pose the question the way it is at the present time.

I show you here an enlarged page from the Smithsonian Miscellaneous Collection, volume 100, page 514.

Mr. MEEDS. Would you mind coming forward a little bit, Mr. Boyden, in front of the witness table and bring the map in front also, please?

Mr. BOYDEN. This was prepared long before any lawsuit, or any of the matters were before Congress, except maybe in an indirect way. This indicates the Navajo limits at different dates as far as they had reached out.

And so in 1600, they were way over here in Mexico [indicating]. By 1700, they moved slightly toward the west but weren't very much larger. By 1800, they had extended their area, extending east of the area we're talking about now, but that's where they were [indicating]. They were all east of Keams Canyon, as you can see, perhaps extending just a little bit into what is now the Executive Order Reservation.

By 1870, they were then extending, as indicated here [indicating]. Then by 1939, they had completely surrounded the Hopi Indians. That gives you a rough idea of what the situation has been.

This is not what the Hopis are arguing. This is what the Smithsonian Institution has recorded long ago.

Mr. MEEDS. Do you have a smaller map of that, sir?

Mr. BOYDEN. I do not, but one can certainly be prepared, and we would be glad to leave this one with the committee.

Mr. MEEDS. Let us attempt to get one of those.

Counsel, would you please see if you could find one.

Mr. SIGLER. If they will leave that map, Mr. Chairman, I will have it reduced. Reduction might not be very clear, but we'll do the best we can.

Mr. BOYDEN. We'll take that responsibility.

Mr. MEEDS. We'll try to get Smithsonian to reduce it.

Would you please be responsible, Counsel?

Mr. SIGLER. Yes.

[The map referred to follows:]

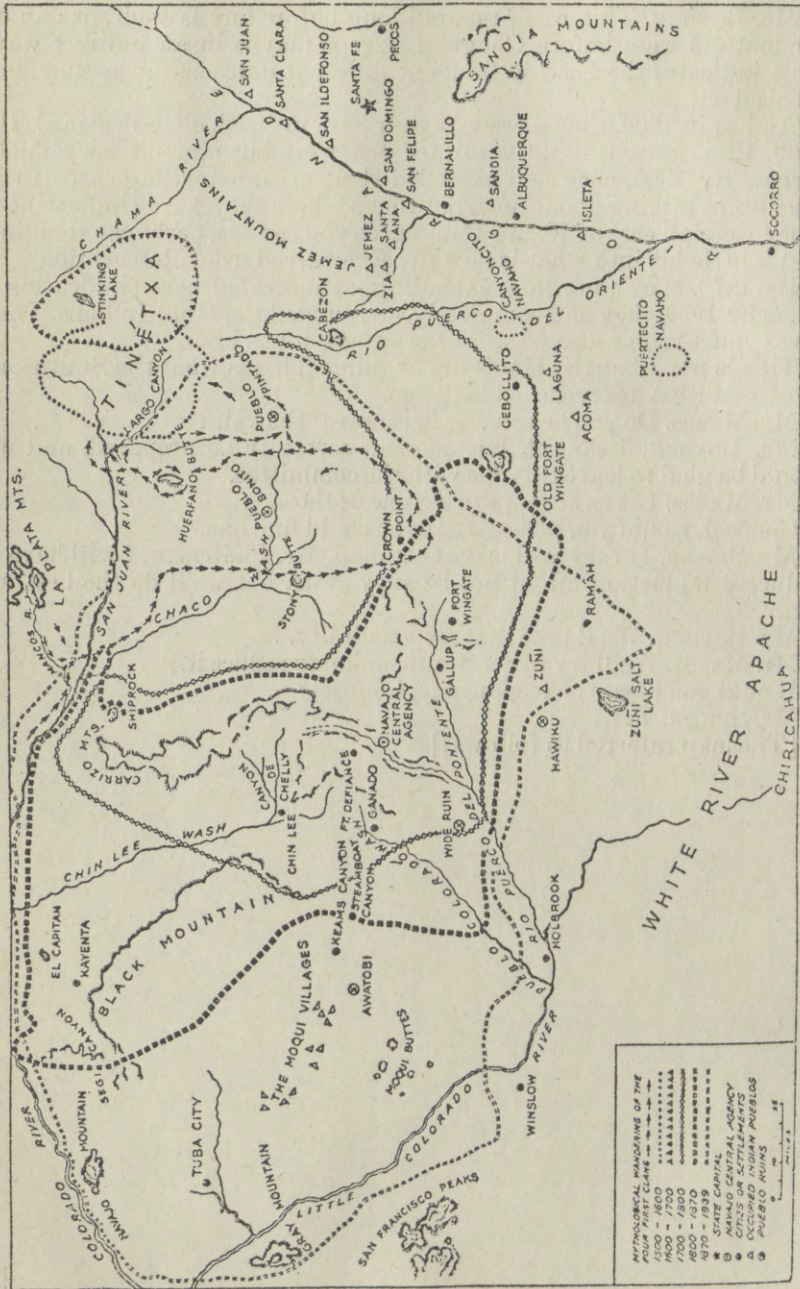


FIG. 12.—Navaho limits at different dates.

Mr. MEEDS. Please proceed.

Mr. BOYDEN. Just one more situation so the committee might understand. In 1882, this reservation here, which I have indicated the square block, that is the Executive Order Reservation that was established by the executive department of the U.S. Government. And this was established specifically for the purpose of protecting the Hopi against the oncoming Navajo, and to protect them against the aggression and the degradations of the Navajo people.

This seems to be an appropriate place to suspend.

Mr. MEEDS. Very well.

We've just been joined by our distinguished witness from the other body. He prefers to sit and listen for a while, so please proceed.

Mr. BOYDEN. Although that area was selected to protect the Indians that were being encroached upon at that time—to wit, the Hopi Tribe—the Government did something about 6 years later; they called out the U.S. Army and told them to take every Navajo off that reservation. They had no business being there. They were trespassers, and to take their flocks off.

This was done by direction of Secretary of the Interior Vilas to the Secretary of War at that time. He ordered the Army out there. They went out, and who did they get as their interpreter? Chee Dodge, who was probably the outstanding chief of the Navajo Tribe, or headman as he was called at that time. So he said, these poor people here can't be moved in the wintertime, wait until spring.

So on account of the rain, they called the war off, and that was as far as we ever got to taking the Navajos off of this area.

Now, after three pretrials and a month-long trial with the introduction of hundreds of exhibits, the court did legally conclude—and this is finding No. 12—"that the virtual exclusion of Hopi Indians accomplished by administrative action extending from 1937 to 1938, from the use and occupancy for purposes of residences or grazing of that part of the 1882 reservation lying outside of District 6, as defined on April 24, 1943, has at all times been illegal."

So that when the United States set up the grazing districts and kept the Hopis off of that part, it was illegal for them to do so.

They also found in 13 that "neither the Navajo Tribe or any individual Navajo Indian have any exclusive interest in any part of the 1882 reservation." This is not the Hopi contention; this is the finding of the court.

Now, the court in its opinion concluded, among other things, "that even as to the remaining part of the reservation in which the two tribes are herein held to have joint, undivided, and equal interest and rights, the judgment will have the effect of narrowing the controversy.

"At least three crucial questions, which heretofore have hampered the fair administration of this part; as a joint reservation or as a division thereof by agreement, or congressional enactment, have now been settled. No longer will it be tenable for the Hopis to take the position that no Navajo has been validly settled in the reservation, no longer will it be tenable for the Navajo to take the position that they gained exclusive rights and interest in any part of the reservation, no longer will there be uncertainty as to the boundaries of the area of the exclusive Hopi use and occupancy."

That's district 6, the smallest, irregular part of the map that you now have before you. It will now be for the two tribes and Government officials to determine whether with the basic issues resolved, the area lying outside of district 6 can and should be fairly administered as a joint reservation.

"If this proves impractical or undesirable, any future effort to partition the jointly held area by agreement, subsequent authorized suit or otherwise, will be aided by the determination of this action of the present legal rights and interests of the respective tribes."

That is the end of the quote from the court.

There is little need for Navajo counsel to haul coals to Newcastle to illustrate the power of Congress to take land away from the Indians. No tribe in this Nation is better schooled through practical experience and the hard fact that Executive fiat with congressional approval can take from the weak to give to the strong. That is exactly how the Hopi people lost the one-half interest in the now joint land use area of the Executive order reservation, which was in 1882 established for the Hopi Tribe for the purpose among others of reserving for the Hopis sufficient living space as against advancing Navajos, and to minimize Navajo degradations against the Hopi.

The power of Congress must be clearly distinguished from the moral, equitable and impelling obligation of that body to deal fairly with both tribes.

At the hearing of the bill authorizing the suit of *Healing v. Jones* that was held before the Subcommittee on Indian Affairs of the Committee of the Interior of the House of Representatives in 1958, Judge Shuford raised a serious question as to whether the Congress would not subject itself to serious criticism by, as he described it, putting in the arena opponents that would be greatly unequal in the resources that they had. The display of wealth of the Navajo at the time of the trial at Prescott, Ariz. was amazing. They used a helicopter to transport information back and forth from the reservation, a battery of stenographers and clerks occupied a whole floor in the leading hotel in Prescott to assist the Navajo Tribe with its presentation to the three-judge court.

Hopi witnesses slept on the floor of a friendly church to live within their available means.

The apprehension of Judge Shuford was not strained. Nevertheless, the trial proceeded with the approval of the Hopi Tribe because it was so anxious to have a forum for its grievance.

In that action, the Hopi Tribe claimed that the lands described in the 1882 Executive Order Reservation were held in trust for the United States exclusively for the Hopi Indians. The Navajo Tribe conceded that the United States held in trust for the Hopi Tribe a portion of the Executive order lands amounting to only 488,000 acres including the Hopi villages, but claimed that the balance of the 1882 Reservation was held by the United States exclusively for the Navajo Indians.

The court held that none of the 21 secretaries of the Interior who served from December 16, 1882, to the passage of the authorization act, or any official authorized to so act on behalf of any of the secretaries, expressly ordered, ruled, or denounced, orally or in writing, personally or through any other official, that pursuant to the discretionary power invested in him under the Executive order, that he had

settled any Navajos in the 1882 Executive order reservation, or had authorized any Navajos to begin or to continue to use and occupy the reservation for residential purposes.

That is finding No. 21 in *Healing v. Jones*.

The court stated that the settlement was by implication from acts or failure to act by the Bureau of Indian Affairs. A reading of the evidence clearly illustrates that it was through the neglect of the U.S. Government to protect the Hopi Tribe, in its use of the lands that were set apart for them, that gave rise to the implication.

In other words, the failure of the Government to exercise its trust responsibilities for the weaker tribes against the trespass of the Navajos resulted in the loss of one-half of the Hopi Tribe in the larger part of the Executive order reservation.

As shameful as this may be, the United States sanctioned the physical conquest of Hopi territory rather than exert any consistent effort to keep the Navajos within the bounds of their own agreed territory.

The *Healing v. Jones* decision was entered on December 28, 1962. On June 3, 1963, the case was affirmed by the Supreme Court of the United States. Nearly 10 years later on September 7, 1972, a supplemental proceeding in the case, the court held that the Navajo Tribe since December 28, 1962—the date of *Healing v. Jones*—had damaged and misused the joint use area by overgrazing, and that the defendant the United States of America, failed and neglected to take action to control that misuse.

That's since *Healing v. Jones*. We wonder where the Sierra Club is now, and where they were during these hearings when the Navajos had overgrazed at 400 percent of grazing capacity according to an outdated survey. When the new survey is taken, I predict it will be over 600 percent overgrazing. These are the findings that the court has found.

This is again not what I am saying. This is what the court has found recently in supplemental proceedings, when both sides have had a chance to respond.

The court held, as of 1968 the range in the joint use area was overstocked to the extent of 400 percent of its carrying capacity, and it is in a poor condition now. That is finding 25.

Finding 26. Since September 28, 1962, the Navajo Tribe has damaged and misused the joint use area by overgrazing, and the defendant, the United States of America, has failed and neglected to take any action to control the misuse.

Finding 28; on September 28, 1962, the defendant, the Navajo Tribe and individual members thereof, have and do now continue to resist any effort of the Hopi Tribe and its members to gain possession or use of any portion of the surface of said lands outside of district 6; and continue to overgraze and misuse and damage the lawful interests of the Hopi Tribe awarded by this court.

And finding 29; the defendant, United States, by and through its officers, the Department of Interior, the Bureau of Indian Affairs, employees and agents, since September 28, 1962, to the present time has vacillated, equivocated, delayed and denied the Hopi Tribe and its members any substantial possession of any of the surface of the said joint use area.

Then in finding 30, the defendant, the United States, still continues to procrastinate, vacillate and refuse to deliver to the Hopi Tribe or to assist the Hopi Tribe in obtaining their one-half interest in the surface of the joint use area outside of district 6 or the resources thereof, notwithstanding requests, applications and demands of the Hopi Tribe for such use and possession.

And finding 31, the acts and conduct of the defendant set forth in findings 28 to 30 in the above, have amounted to an ouster of the plaintiff from any use, possession or enjoyment of the joint use area of district 6 on the reservation.

Now, we have legislation introduced to recognize the possessor; after the United States and the Navajo Tribe have excluded the Hopi by force and by violence.

Well, the court also found the defendant, the United States, is a party to this just the same as the Navajo Tribe. Now, the court issued an order, a writ of assistance, and I want to file with this committee these findings, from which I have read, together with the order of compliance, which says that they shall deliver, not a monetary consideration, shall deliver the possession to the Hopi Tribe and the writ of assistance, which has been served on the United States and upon the chairman of the Navajo Tribe, who by statute, represents every individual Navajo on that reservation as provided by the 1958 act.

Mr. MEEDS. Is there an objection?

Mr. STEIGER. Reserving the right to objection, I will not object. I wonder if we could have the dates of both the writ and the order.

Mr. BOYDAN. The findings of fact that I have read were entered on September 7, 1972. Judge Walsh signed the order of compliance on October 14, 1972, and then service was had of a writ of assistance signed by Judge Walsh on October 31, 1972.

Mr. STEIGER. I withdraw my reservation.

Mr. MEEDS. Without objection, those will be received as part of the record.

[The material referred to follows:]

In the United States District Court for the District of Arizona

(No. Civil 579)

CLARENCE HAMILTON, CHAIRMAN OF THE HOPI TRIBAL COUNCIL OF THE HOPI INDIAN TRIBE, FOR AND ON BEHALF OF THE HOPI INDIAN TRIBE, INCLUDING ALL VILLAGES AND CLANS THEREOF, AND ON BEHALF OF ANY AND ALL HOPI INDIANS CLAIMING ANY INTEREST IN THE LANDS DESCRIBED IN THE EXECUTIVE ORDER DATED DECEMBER 16, 1882, PLAINTIFF

v.

PETER MACDONALD, CHAIRMAN OF THE NAVAJO TRIBAL COUNCIL OF THE NAVAJO INDIAN TRIBE FOR AND ON BEHALF OF THE NAVAJO INDIAN TRIBE, INCLUDING ALL VILLAGES AND CLANS THEREOF, AND ON BEHALF OF ANY AND ALL NAVAJO INDIANS CLAIMING ANY INTEREST IN THE LANDS DESCRIBED IN THE EXECUTIVE ORDER DATED DECEMBER 16, 1882; RICHARD G. KLEINDIENST, ATTORNEY GENERAL OF THE UNITED STATES, ON BEHALF OF THE UNITED STATES, DEFENDANTS

PRESCOTT WRIT OF ASSISTANCE

To the United States Marshal of the United States District Court for the District of Arizona, greetings:

The Defendants, Peter MacDonald, Chairman of the Navajo Tribal Council of the Navajo Indian Tribe for and on behalf of the Navajo Indian Tribe,

including all villages and clans thereof and on behalf of any and all Navajo Indians claiming any interest in the lands described in the Executive Order dated December 16, 1882, and Richard L. Kleindienst, Attorney General of the United States on behalf of the United States, by order of the Court herein dated the 14th day of October, 1972, having been commanded to compel performance of the judgment of this Court theretofore entered on the 28th day of September, 1962, and to allow the Hopi Indian Tribe for and on behalf of its members the joint use and possession of the surface, including all resources, in and to all of the Executive Order Reservation of December 16, 1882, lying outside of the boundaries of Land Management District 6 as defined on April 24, 1943, with the Navajo Indian Tribe, share and share alike, strictly in accordance with the terms of said Order, a copy of which is attached hereto and by reference made a part hereof,

Now, therefore, you are hereby commanded that immediately after the reception of this Writ, you serve the same upon the defendants, together with a copy of the Order of this Court, dated the 14th day of October, 1972, wherein said defendants are directed to grant and permit the joint use and possession of the surface, including all resources, in and to all of the Executive Order Reservation of December 16, 1882, lying outside of the boundaries of Land Management District 6 as defined on April 24, 1943, to the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike, all according to the true intent and meaning of said judgment and order of compliance.

Witness, the Honorable James A. Walsh, United States District Judge, this 31st day of October, 1972.

JAMES A. WALSH,
U.S. District Judge.

[SEAL]

In the United States District Court for the District of Arizona

(No. Civil 579)

CLARENCE HAMILTON, CHAIRMAN OF THE HOPI TRIBAL COUNCIL OF THE HOPI INDIAN TRIBE, FOR AND ON BEHALF OF THE HOPI INDIAN TRIBE, INCLUDING ALL VILLAGES AND CLANS THEREOF, AND ON BEHALF OF ANY AND ALL HOPI INDIANS CLAIMING ANY INTEREST IN THE LANDS DESCRIBED IN THE EXECUTIVE ORDER DATED DECEMBER 16, 1882, PLAINTIFF

v.

PETER MACDONALD, CHAIRMAN OF THE NAVAJO TRIBAL COUNCIL OF THE NAVAJO INDIAN TRIBE FOR AND ON BEHALF OF THE NAVAJO INDIAN TRIBE, INCLUDING ALL VILLAGES AND CLANS THEREOF, AND ON BEHALF OF ANY AND ALL NAVAJO INDIANS CLAIMING ANY INTEREST IN THE LANDS DESCRIBED IN THE EXECUTIVE ORDER DATED DECEMBER 16, 1882; RICHARD G. KLEINDIENST, ATTORNEY GENERAL OF THE UNITED STATES, ON BEHALF OF THE UNITED STATES; DEFENDANTS

PRESCOTT ORDER OF COMPLIANCE

The Plaintiff in the above-entitled action having filed his Petition for an Order and Writ of Assistance on March 13, 1970; and following an appeal and decision by the United States Court of Appeals for the Ninth Circuit and denial of a Petition for Writ of Certiorari by the Supreme Court of the United States on May 22, 1972, this Court heard and received evidence adduced by the parties hereto, and having adopted its Findings of Facts and Conclusions of Law herein on September 7, 1972, and having heard the arguments of the parties as to the proposed relief on September 30, 1972; and good cause appearing therefor,

It is ordered, adjudged, and decreed:

That the Defendants be and they are hereby ordered and directed to grant and permit the joint use and possession

Of the surface, including all resources, in and to all of the Executive Order Reservation of December 16, 1882, lying outside of the boundaries of Land Management District 6 as defined on April 24, 1943, to the Hopi Indian Tribe and the Navajo Indian Tribe, share and share alike.

It is further ordered, adjudged, and decreed as follows:

1. Defendants shall forthwith commence reduction of livestock in the Joint-Use Area of the 1882 Executive Order Reservation, and within on (1) year from the

date of this Order complete reduction of Navajo livestock to one-half ($\frac{1}{2}$) of the carrying capacity as determined by the Soil and Range Inventory of the 1882 Executive Order Reservation (exclusive of District 6) dated 1964.

2. Within 1 year from the date of this Order a new Range Reconnaissance to determine the present carrying capacity of said area shall be completed by the United States, and immediately thereafter a further reduction of livestock to the actual carrying capacity shall be commenced by Defendants and be completed within six (6) months from such commencement.

3. Commencing 1 year from the date of this Order, livestock may be grazed upon the Joint-Use Area of the 1882 Executive Order Reservation, only after new permits therefor have been issued by the Bureau of Indian Affairs, and all prior existing permits shall be deemed cancelled as of that date. Thereafter, permits may be issued to either or both tribes or individual tribal members of said tribes as the respective tribal councils of said tribes shall direct.

4. Commencing one (1) year from the date of this Order, permits covering not more than one-half ($\frac{1}{2}$) of the carrying capacity shall be issued to the Navajo Tribe or members thereof, and permits covering not more than one-half of such carrying capacity shall be issued to the Hopi Tribe or members thereof. Neither tribe, including the members thereof, shall at any one time hold permits which in total cover more than one-half ($\frac{1}{2}$) of the carrying capacity.

5. From the date of this Order all income from said Joint-Use Area to the Navajo and Hopi Tribes, including but not limited to income from mineral production and sales, leases, trader license fees, rights-of-way grants, and licenses shall be divided equally between said tribes. However, profits and gains from livestock use permitted as hereinbefore provided shall be the sole property of the permittee. Grazing fees may be assessed and collected in the future by either tribe from individual permittees of the assessing tribe and shall inure to the benefit of said tribe without accounting to the other tribe.

6. The tribes shall exchange copies of all existing leases, easements, contracts, or other documents together with written descriptions of all oral agreements, which relate to the Joint-Use Area or businesses or improvements located thereon.

7. No new construction shall be permitted on the Joint-Use Area without a permit issued jointly by the two tribes, except that the Hopi Tribe shall be permitted to construct that number of dwellings or other improvements equal to those Navajo dwellings and other improvements which are presently existing or are now under construction in the Joint-Use Area.

8. Within sixty (60) days from the date of this Order the United States of America shall present to this Court for its approval a plan to facilitate and implement this Order with relation to prevention of damage to, and misuse of, the rangeland as specified in Paragraphs 1 and 2, above.

9. Within ninety (90) days from the date of this Order the United States of America shall present to this Court for its approval a plan to facilitate and implement this Order, except with relation to prevention of damage to, and misuse of, the rangeland.

10. The plans required by this Order shall take effect upon approval of such plans by this Court.

11. Should Congressional legislation be enacted expressly conflicting with any of the specific provisions of this Order, this Court retains jurisdiction to make such changes and further orders as may be required to correlate this Order with any conflicting statutory provisions. All other provisions of this Order not in conflict with statutory provisions shall remain in full force and effect.

12. The Clerk of this Court shall issue a Writ of Assistance directing the Defendants herein to comply with the foregoing Order.

It is further ordered, adjudged, and decreed:

That matters and issues concerning accounting and restitution and as to liability of the United States in respect thereto, if any, to the extent this Court has jurisdiction, are expressly reserved for later consideration and hearing.

DATED this 14 day of October, 1972.

JAMES A. WALSH,
U.S. District Judge.

Mr. BOYDEN. If the Congress of the United States were now to approve the defiance of law and order of the Navajo Tribe and the neglect of the Government to protect its ward, by taking from the Hopi Tribe the land that the court has said belongs to it and to which it is entitled to possession, it would constitute one of the most unfair and

unconscionable acts ever perpetrated by the United States upon its Indian wards.

The acts of Congress have the power to redefine rape as an honorable act, and leave the Washington Bureau of Indian Affairs in its lethargic state, retroactively excused and congressionally applauded for its cowardness; thus the Hopi people would not only be once more deserted by the Government of this great country, but this defenseless tribe would be insulted for its trust in the judicial system of the United States.

We refuse to allow ourselves to believe that such an invitation to public protest and violence would be offered by the representatives of our Congress. The Navajo Tribe would be delighted to have their aggressive seizure of Hopi property excused and approved by the Congress, and with equal generosity have the United States pay the Hopi Tribe in money to satisfy constitutional requirements.

Healing vs. Jones says nothing of compensable interests. The court has determined that the Hopi Tribe is entitled to the use and possession of the undivided one-half interest of the land.

Does Congress need to be reminded that this land is traditionally just as dear to the Hopi Indians as it is to any Navaho no matter how long he claims to have been there?

To exercise the right of eminent domain to acquire land for public purpose for the good of all is an entirely different proposition than taking from one citizen and giving to another because a spineless Washington Bureau of Indian Affairs finds it uncomfortable to enforce the law. This is not a question now of just moving Navajos as we have pleaded above. They are continually on the move.

At our hearing in the Senate that was held here in Washington, we had pictures of 26 new homes that were being built. They are coming toward us all the time like mosquitoes in a swamp. And I'll tell you this, that we, last Friday, we went out and notwithstanding the fact that the court order tells them not to build another thing without the consent of the Hopi Tribe, we will introduce here pictures of four new places that are being built right now, in the process of construction. We took them last Friday.

So they will tell you that they can't back up. They keep on coming. They remind me of the bighorn sheep that went around the hill one way so many times that his outside legs were a foot and a half longer than the other. He could keep going that way, but the moment you turn him the other way, it's a catastrophe and he rolls down the hill. That's the way it is with the Navajo at this time.

They are not afraid to move. They have been moving all the time. They are on the move, but they are toward us, not against us.

We are not asking you to take them to Siberia or anything else. We are saying draw the line where the court says it ought to be. Give us a chance to protect what we have got. Keep them from coming. There is plenty of room for them to stay right within the joint use area.

Why, here's another picture showing a building—and I just happen to know that you can't find—this was taken from an airplane—you can't find any Navajos within several miles of some of these places.

There's plenty of room for the people. This is purely a question of grazing, but they know that if they keep moving and they keep building, and they keep taking over, they can say, we will use all

the Hopi grazing land as well as the other. That's exactly what they are doing in defiance of everybody. And we cannot get any judicial system in this country around to this point to do something about it.

Why have we been in litigation 10 years? It is because the Navajo Tribe has untold resources to appeal every single act, and because the DNA and the Ford Foundation come to defend everybody when you're doing something of this kind. And the Hopi Tribe stands alone trying to protect its own interest.

We are not asking you to move them anywhere; we are asking you to draw the line where it ought to be, and stop them from coming any closer to us.

Congressman Lujan, when they were down in your country before the Treaty of Guadalupe and after, they were massacring the citizens in New Mexico, so we called out the U.S. Army in a hurry and drove them into the Hopi territory. It seems to me, we ought to have a little reciprocity here now, and protect the Hopi as his back is against the wall in the last bastion of his land that everybody knows was his.

One more thing might be said; how many are living there? The Hopis don't live the way the Navajos live, and the Navajos don't live the way the Hopis live. Navajos have several hogans summer and winter. Sometimes they are moving with their flocks. The Hopis live in villages and towns because they think it's better, and they put their livestock out.

But it's a livestock question just the same, whether you follow your herd or whether you go out. So it seems to me that the Hopi people in all fairness now, it's easy for us to become excited about this sort of a situation because it is hard for us to conceive how our Government would do this to us. But gentlemen, in the soberness in all of this, we say that the responsibility is on the Congress of the United States, I have another portion that I would like to talk about, the 1934 area, just briefly.

If you want me to proceed, I'll do that at this moment.

Mr. MEEDS. Why don't you go ahead and conclude.

Mr. BOYDEN. The Navajos in discussing this matter and in filing their brief with the U.S. Senate, has indicated that there were some 32,000 acres that the Hopis were entitled to over in this area (indicating).

Mr. Chairman, that was the statement of Jim Stuart, who made the statement satisfactorily enough that they made him superintendent of the Navajo Reservation right after. The man who was nearest to the 1934 reservation, the Walker-Dalton line, gave them more than this House has given, more in acreage.

And let me say, that the Congress of the United States was meticulous in protecting the rights of the Hopi. And when you give the Hopi whatever you give over in this area (indicating), you quit claim all of the rights of the Hopi that Congress has preserved, and everything that is shown on this map in green, even the Executive Order Reservation over here are not withdrawn for the Navajo. They were withdrawn for Indian purposes.

This was drawn, this strip between the Navajo Reservation, and the Hopi Reservation, was withdrawn for the Navajo Reservation by the Executive order, but it was not confirmed by Congress. Congress said we preserve the rights of the Hopi Indians.

Now, Mr. Chairman, in all fairness to your summary of this case, that it was for a few that were around Moencopi, I have filed a detailed brief whether Congress wants to believe it or not, we filed saying the Hopis had an interest in all this part and it was so preserved by Congress.

Whether Congress wants to believe it or not, we were successful in converting the utilities that wanted lines over here, and we told them if they started to build those lines, we would sue them until they got permission from us. And they paid us over \$130,000 for our interest.

So it is up to you. No Congress yet has taken any of this land in green away from the Hopis. They have said it is preserved for the Hopi Indians. It didn't say for a few people around Moencopi. The people in Hottevilla were herding all over in this area. If it had said, we give this land to the people who are situated in this, excepting this it would have been one thing. But Congress very carefully said we will give it to them for everybody who is within this entire area. That is what they said, which includes all the Hopi people.

But they said, the status of the Executive Order Reservation shall not be changed by the 1934 act. Now, in 1958, when the act authorizing the suit was enacted into law, Mr. Littell on the behalf of the Navajo Tribe suggested this; this was in the bill that he proposed. "The Court shall find, fix and determine the said boundary between these lands, which were used, occupied and controlled by the Hopi and the Navajo respectively on or about on the date of approval of the Secretary of the Interior, the Hopi Tribal Constitution; namely December 1936."

So at that time, they were willing to take the possession the way it was in 1936.

Now, the bill that is introduced on behalf of the Hopi says that we will do it as of 1958. They are always moving forward. The Congress wouldn't buy this one before, and I hope Congress won't buy the new one again.

Now, whether it is done by direct taking, or whether you pass it off to a Commission—like Pilate, Congress cannot wash its hands of this. A little water will not rid Congress of this deed, whether it's the bill introduced by Mr. Meeds or not.

When you allow them to take it away from the Hopis and give it to the Navajos, you are taking it away from them, and they don't want to sell it. And they will not take your money, your beads, nor your whiskey. They will take only the land that belongs to them, or they will live in righteous indignation to what their Government has done to them.

Thank you.

Mr. STEIGER. Mr. Chairman?

Mr. MEEDS. Yes?

Mr. STEIGER. Mr. Chairman, while the Senator is taking his place, I would just like the record to reflect that this Senator's appearance here is not the ritual kind of political appearance that many of us do because of interest in our State or our district.

Senator Goldwater is uniquely qualified to air his views on this matter. I don't know how many of you are aware of it, but not only is he a longtime friend of Arizona Indians, indeed, Indians all over the country, but he spent a good many years at the Navajo Mountain operating a trading post.

So his knowledge and his photography is well known, and his works vis-a-vis the Indians are well known.

He has for, I don't know over how many years—he can recite that, if he so chooses; not only did he operate the trading post, but I know for example he built his home of stone that was quarried up on the reservation. He is a man that not only knows the people, he knows the land. He knows it in a way that, I think, very few non-Indians know it.

So, Mr. Chairman, as I say, this is not a ritual testimony, but I think one of great significance. I, for one, am very grateful to the Senator for appearing.

Mr. MEEDS. Thank you.

I would just like to say to the Senator that I had the privilege of being in Phoenix the weekend before last. And I saw, at the museum, your very fine collection of Kachina dolls. You've obviously had an abiding interest in Indian affairs.

We're delighted and privileged to have you here, sir.

STATEMENT OF HON. BARRY GOLDWATER, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator GOLDWATER. Thank you very much, Mr. Chairman, and my colleague from Arizona. I hope you will continue to have that interest in me. It might come in handy next year.

Now, Mr. Chairman, following the testimony I have just heard, it makes me feel rather inadequate and humble, but I want to explain at the outset that my interest does not stem from any knowledge of law. I am not a lawyer. My interest in this matter has gone back, I guess, all the years of my life that I have known about it, and I remember the first time that I visited the reservation. I was 7 years old. And I was up there just a few weeks ago.

I am just an Arizona citizen that has lived with this problem. I have lived with both the Navajo and the Hopi, as Sam explained. I operated a trading post at Navajo Mountain for many years, and got to know those people well, as I feel I know the Hopis. In fact, we have 15 tribes in Arizona. They occupy 19 reservations, which constitute almost 30 percent of the total land area of my State, and we have in fact, more Indians in Arizona than any other State when you think of full-blooded Indians retaining their language, their customs, and most important of all, their religion and their culture.

I have no text. I am just going to probably ramble along. I had hoped, Mr. Chairman, that this matter could have reached a mutual settlement long, long ago. But it became obvious to me back in the 1950's that this was not going to happen, and I was instrumental in getting the special court set up which first heard this problem, and this court, as have two since that time, ruled that the Navajo were in error, and they should get off.

Now, this statement is pro-Indian. I want to see this thing settled. I had hoped that they would get together, but in absence of a willingness to get together, I think that legislation is going to be required. The exact type of legislation, I am not sure. I have not supported the Steiger approach mostly because it involved money, and I do not think that we have to pay money to relocate Indians when in the case of the

Navajo they have 16 million acres, and when I think of the area that I had my trading operation in, the Paiute Mesa, which only supported about 1,500 Navajos who had their summer hogans on top of the mesa and their winter hogans in the canyon, literally tens of thousands of acres that are not being used; when I think of the extension of the reservation, the last extension that took the Navajos right out to the Colorado River, down through the entire length of Marble Canyon, and while there may have been some people moved out in that general area lately, the last time that I was over in my airplane, over that particular area, I did not see more than five or six hogans.

I have often wondered why the Navajos did not use that land. I will have to admit it is not the most productive land in the world, but I will say this—none of this land that we are talking about will make a fat cow. Where in Arizona we average a section to graze an animal, I have a hunch up there it is going to take maybe three sections to produce any kind of meat at all.

These people have been pastoral people for many, many years. When the Spaniards first came, in 1540, and thereafter, they introduced the sheep, and prior to 1900 or just after 1900 I should say, about 1904, a census was taken that showed the Hopi at that time with over 16,000 sheep. Of course, the Navajo acquired sheep at the same time, and have become very skillful in raising sheep, and the wool provided by these animals gives them the material to make rugs. It also gives them the material for blankets and other bedding that they might need, and provides them with a part of their income.

The cattle part of it is rather late. I think that when the young men of both tribes returned from World War II and returned from schools thereafter, they realized that there might be money to be made in cattle. Since that time both the tribes have been engaged in it. Again, it is no business in Arizona to try to make money out of. I do not think I could name you six cattlemen in the State that even break even. We would not have any ranchers if it were not for the nice tax dodges that are provided for the fat cat easterners that want to come out there and ride horses, and we are all for them. I would say that instead of trying to relocate Navajos on land that might be 50 or 100 miles away that I have heard suggested, that we might urge the Navajo to use the lands that I have described. There is a lot of it.

I think one of the reasons they are showing a great desire to stay runs contrary to the arguments that we hear from some of our conservation groups in the East—and I might add, the West—that we are destroying Black Mesa.

Black Mesa is a mesa about 250 miles in diameter that reaches an elevation of about 8,000 feet. It has never been very good land, even to live on, and very few families have lived up there. I am referring to the lands up past Pinon and they would extend to just above Quienta, and over to Yale Point on the east.

But as the coal company is taking the coal out and is refurbishing the land, it is going to make eventually very, very valuable land on Black Mesa.

As far back as 1849, the Navajo recognized the sovereignty of the United States and after the Long Walk of 1868 where they wound up in Fort Sumner, N. Mex., a treaty was signed with the Navajo which gave them their original land around Canyon De Shay. Now, it has

since been enlarged. The dates go back to 1878, 1880, and on up to the most recent one, which is around 1924, which consisted of Presidential proclamations of additional land for the Navajo, who, as we all know, are the largest tribe that we have in the United States, and I must say, a very well-governed tribe. They have their own guards, their own trained policemen, and they do a better job, I think, in most respects in government and law and order than we non-Indians do.

But the Hopi, too, I might say, are well governed. They are a two-party form of government. They have their tribal government so democratically elected, meeting with representatives from around the reservation. They also retain their chieftain form of government which while not in complete agreement with the tribal council, nevertheless, these chiefs are a real power in the Hopi tribe.

The difference continues. The Hopi is a pueblo dweller. He lives in villages on top of the three mesas. There have been as many as 18 of these villages. I think we could count six active ones now. The Navajo, with its expanding ground or expanding land, has literally wrapped itself around the Hopi Reservation.

Now, Mr. Chairman, my argument on behalf of the Hopi, I think is a very simple one, and in fact, I think most people think that most of my arguments are simple. I guess if you live in the west too long you get that way.

I do not think that the Navajos have any right encroaching upon the Hopi Reservation. I do not think that they have any right to more than 50 percent of the joint use land that has been set aside. I think that, as I say, this should have been settled a long time ago. There is no question who is the strongest tribe, politically, money-wise, manpower, any way you want to look at it, but there is no question in my mind either that a reservation set aside by the U.S. Government in 1882 for the exclusive use of a band of Indians who were then known as Nokis, and are now known as Hopis, still has validity.

I do not know what the Navajos would say if the Hopis started moving around Window Rock, and setting up their nice little pueblos over there, or what would happen if some of the Hopis showed up at Quienta, which they would not do, of course, and put on one of their ceremonials. In other words, if you move on to my land, I would raise hell with you and I would get you off unless you wanted to buy, which does not happen in this case.

So I am hopeful, Mr. Chairman, that some way legislation can be passed in this body that will pass in the Senate that can work to the answer of this problem.

Again, I wish that the leaders of these two tribes could get together. I have offered to spend all the time necessary living with them, working with them to try to bring this about. I have given up. These men are normally very reasonable men, and I might add, both of these tribes are very peaceful tribes. In fact, the Hopis used to bring the Tewas in to do their fighting when they had to do it. They did not like fighting. The Navajo have never been a warlike people. The Apaches, their brother, broke away because the two could not live together with one being warlike and the other one not. So these are peaceful people. They are well-intentioned people, and they are people that can get into trouble if we do not exercise our responsibilities and get them out of it.

I do not have anything else to say, Mr. Chairman.

If you have any questions, I would be happy to try to answer them.

Mr. MEEDS. Senator, with the admission from the gentleman from Arizona that the arguments become more simple as you get further west, I would just like to remind him that the chairman has the furthest west district in the entire United States—continuous in the lower 48 States.

Does anybody have a question of the Senator?

I am going to ask one question, if I may.

I take it to be your feeling that there is no possibility that these two groups could get together and settle this matter themselves.

Senator GOLDWATER. I have come to that conclusion, Mr. Chairman. I think it is sort of a matter of a curse on both your houses. I do not see why they cannot reach an agreement, but it is plain that they cannot. Maybe they will not.

The Hopi takes the attitude that their land is being infringed upon and they do not care to sell it. The Navajo takes the position that they have rightful use to this land because they moved and used it and a large number of Navajo families are living on it.

There is no objection to them living on the joint use land. There is objection their using area 6 land, which is Hopi land, and I think that if they could ever just decide on the 50-50 use, that they could reach it, but they have not been able to.

In visiting with members of both tribes, it leads me to believe that there is not going to be a settlement that way.

Mr. MEEDS. The gentleman from New Mexico?

Mr. LUJAN. Thank you, Mr. Chairman.

Senator, in my opening statement I said that the main concern that I had was the moving of people where they might be living. It is still my greatest concern.

Do you see any possible way that we could resolve this whole dispute without having to do that and without buying land or without leaving it up to a Commission?

Senator GOLDWATER. As of now, I do not see any way.

Now, you have to keep this in mind, the type of house that the Navajo has been building is out of cement blocks, an A-frame type houses, which I am very happy that they are getting into. It is not their old hogan that could be abandoned for a year, or next year. They are now building non-Indian type houses, and to move that house is going to be impossible.

But, on the other hand, if I had built my house on somebody else's property, I would have to get off. I do not think that we need to buy—as of this moment I do not think we need to buy lands a great distance from either reservation because there are lands that are not being used on the Navajo reservation, lands that I say is not the best land in the world, but neither is land where they are now.

So, it gets down to the question of right and wrong. If somebody is wrong, we have to make it right, and in this case, I think where the Navajo has infringed on the Hopi rights in the joint use land, and actually infringed on his reservation, that he is wrong. I do not think as of this moment it will take money. I would hope that it would not because money is going to make it hard to get through the other House.

Mr. LUJAN. Thank you.

Mr. MEEDS. The gentleman from North Carolina.

Mr. TAYLOR. Mr. Chairman, I would like to commend Senator Goldwater on a very constructive, courageous, and forthright presentation.

Senator, as has been pointed out, there are three bills, or as someone says three approaches for us. Are you supporting either bill as written?

Senator GOLDWATER. Frankly, I am not. I did not appear here this morning in support of a bill. I would lean toward Congressman Steiger's bill. It is a much better bill this year than it was last year, in my opinion. Again, it is the bill that the Hopis want, and the Navajos do not. This again gets to be a tough question.

I have not been able to talk to my colleague, Senator Fannin yet about his attitude. I would hope that he would have the approach that I have taken, namely, let us keep the options because it is a problem that has to be settled. I do not think it is going to wind up in a Wounded Knee or anything like that, but I do think it would cause additional troubles, if a reservation can be violated by either other Indians or non-Indians.

Mr. TAYLOR. You have made specific suggestions. If you have any amendments to Mr. Steiger's bill or the other bill, we would be glad to have them.

Senator GOLDWATER. I would be glad to talk to you about it if I come up with any. I have not. I want to see what you fellows finally wind up with.

There is not a great deal of difference in the three bills, but there are fundamental little differences that I know in the process will be ironed out.

Mr. TAYLOR. Thank you, Mr. Chairman.

Mr. MEEDS. The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

I would like to again point out for the committee that the Senator, in the fashion that is typical of him, has made—has taken a very courageous position politically here, as the gentleman has pointed out. Senator Goldwater is running for reelection next year. He is, by opting—by pointing out that the inequities are on the side of the Hopis, has violated a political principle of not antagonizing a large body in support for a small body. That was not his intention at all.

He has taken a very simple position in which he is aware of the inequities and has simply stated the inequities as he sees them. If that is not all to our eternal credit, I do not know what is.

I cannot tell the gentleman how delighted I am, because it does restore faith in the politician as an individual at a time that perhaps that faith needs some restoring. Again, my sincere congratulations to him.

Senator GOLDWATER. Thank you, Sam.

If I might in closing say, I do not fear any reprisals of anyone. I believe, knowing the Navajo as I do, that many, many Navajos feel the same way that I do. You might even find some Hopi that would agree with the Navajo.

I think that Indians in my State know that if they get in trouble they can call on me and we will see what we can do about it.

So, the one thing nice about it is, you can sleep at night.

Mr. MEEDS. Senator, we all appreciate your very forthright and courageous statement, as the gentleman from North Carolina has pointed out. Thank you.

Senator GOLDWATER. Thank you very much.

Mr. MEEDS. Would Mr. Hamilton, Mr. Boyden, and Mr. Sekaquapewa please come forward?

I would just direct my attention to all of you as a panel and any one of you who desires may answer the question unless I specify that it is a direct question to an individual.

Abbott, you suggested on page 3 of your statement that it is "perfectly clear that there is no prospect of an agreement between the Hopi and the Navajo tribes."

With that in mind, I would like to ask if under the circumstances which are set forth in the bill that I sponsored, i.e., that the tribes negotiate for a 6-month period. If they then cannot reach an agreement, they are required to submit their last best offer, one of which will be accepted. This then is a total Indian solution; either one that they arrive at themselves, or one of the parties has suggested.

Do you think with that kind of machinery set up, it is possible for them to reach an agreement?

Mr. SEKAQUAPTEWA. Mr. Chairman, I think that it has been adequately proven by now that with the position that has been taken by the Navajo Tribe, we cannot possibly get together on any kind of an agreement.

Mr. MEEDS. I am sure they will say the same thing about the Hopis when they testify. I am aware of the animosity here, and I am aware of the difficulty that you have been in a weak position. You have been one of the negotiating teams, and aside from what the Navajos are going to demand or accept, do you think that there is any possibility under these new circumstances of the agreement?

Mr. SEKAQUAPTEWA. There is always a possibility if the Navajo tribe would propose a partition boundary of the joint and equal interests of Hopi Tribe in the 1882 Reservation. It seems to me that it wouldn't take 6 months to find that out. I think that is too long of a period of time, and it is simply a matter for them simply to decide to honor the decree of the court, and allow and honor the law.

Mr. MEEDS. You know, sir, that there is some ambiguity—pardon me, I will not say you know. There is some question among legal scholars as to whether or not the decree is that simple and crystal clear.

You are aware of that, are you not?

Mr. SEKAQUAPTEWA. The court never said that there has to be a negotiation. From my interpretation of the decree, there is even a question as to whether the area should even be jointly administered.

Mr. MEEDS. Am I to interpret your answer then, to be that you do not feel there is any chance for negotiating, even under these new circumstances?

Mr. SEKAQUAPTEWA. I doubt it very much, sir.

Mr. MEEDS. I was interested in your conclusion also that you would have no objection to the kind of partition or drawing a line that would exclude some of the populated areas.

As I understand it, those would be just above the middle red line in that map there.

Are those the areas heavily populated by the Navajo, just outside of the joint use area No. 6, or district 6?

Mr. SEKAQUAPTEWA. Some of the most populated areas, like Pinon and the White Cone areas, are all located outside of the outside red line, the boundary that is proposed in H.R. 5647.

Mr. MEEDS. The chairman of the full committee, the gentleman from Florida?

Mr. HALEY. I have no questions.

Mr. MEEDS. The gentleman from New Mexico?

Mr. LUJAN. Thank you, Mr. Chairman.

There is no disagreement, as I understand, then, as to the joint ownership and development of the subsurface acres.

Is that right?

Mr. BOYDEN. That is correct.

Mr. LUJAN. On that point everybody agrees.

Mr. BOYDEN. Correct.

Mr. LUJAN. Getting on over to the map, when was district 6 established?

Mr. BOYDEN. 1947 was—it was established and two changes were made. The decree refers to it. I have it right here.

Mr. LUJAN. While you are looking for it, Mr. Boyden, may I point out for the benefit of the new members of the committee that there are three areas that we are concerned with, the middle block in red, which is district 6, exclusively occupied by Hopis; the square which is the joint use area, and then over on to the left, the 1934 area, and my questions will be directed to those three areas.

So, roughly 1947 was when district 6 was created.

Mr. BOYDEN. I am mistaken. The final definition was made on April 24, 1943.

Mr. LUJAN. That at one time was considered part of the 1882 joint use area, part of that big block there.

Mr. BOYDEN. It always has been and still is.

Mr. LUJAN. Except that when it was determined that that would be exclusive Hopi area.

Mr. BOYDEN. That is correct.

Mr. LUJAN. The 1934 area, is that considered joint use area?

Mr. BOYDEN. The 1934 reservation was never involved in this lawsuit, so it is a matter of determining what you want to determine. However, they preserve the Hopi interest, which makes it a joint interest.

Mr. LUJAN. For the purposes of the legislation and our discussion here, all of the 1934 area and all of the 1882 area, including district 6, should be considered as joint Hopi-Navajo area.

Mr. BOYDEN. Yes.

May I just illustrate here for a second? This little square, little piece here in the middle, the rectangular piece [indicating] is the exclusive Hopi area, and the balance of this square outside of that little on [indicating] is called the joint use area, and that is called so by decree of the court.

Now, the Steiger bill proposed to divide it on this kind of basis [indicating] and it left out White Cone and Pinon and Coal Mountain that we are talking about in making that division.

Now, the 1934 reservation described over here on the Utah line, along this way, and clear down around, and back over and up this way

[indicating]. That was 1934 in which it was set aside for the Navajos and those residing within that area, which included all the Hopis.

We do have a difference of counsel with respect to that, but the brief that we have filed is before the Senate, and certainly if it is any assistance here, we would be glad to file it here.

Mr. LUJAN. Let me continue my questioning.

When the district 6 area was designated for exclusive Hopi use, were the Navajos, in being denied access to that land, compensated in some way?

Mr. BOYDEN. No. They were not supposed to be there, and the court held that they had no right, title or interest in that.

Mr. LUJAN. But that was part of the joint use area.

Mr. BOYDEN. But they kept it for 10 years until we finally got the Supreme Court on the second decision to oust them, and they did not move until last year.

Mr. MEEDS. Mr. de Lugo, the gentleman from the Virgin Islands?

Mr. DE LUGO. No questions.

Mr. MEEDS. Mr. Runnels?

Mr. RUNNELS. Mr. Chairman, may I just ask a question of Mr. Sekaquaptewa on his statement on page 4 where he says the only possible solution to such unscrupulous behavior is one that has been made clear by the history of this conflict, is to partition the land between the two tribes.

What are you suggesting when you say partition?

Do you mean a fence?

Mr. SEKAQUAPTEWA. The establishment of a political boundary that would return to the Hopi Tribe their half interest in the 1882 reservation that can be controlled and governed by them, and a boundary that can follow some kind of natural boundaries that will be fenced, yes, and it will also include the Hopi interests in the 1934 boundary area, the area that Mr. Boyden just concluded discussing.

Mr. RUNNELS. When you say to partition the land, you have nothing against a fence partitioning the land?

Mr. SEKAQUAPTEWA. I think that a fence along the partition boundary is a necessary thing.

Mr. RUNNELS. May I then turn to page 5 where you say, and which they will continue to do as long as there is a joint use concept.

Are you saying that there should be no land on the joint use, that it should be split up one way or the other?

Mr. SEKAQUAPTEWA. That is correct, sir.

Mr. RUNNELS. May I ask Mr. Boyden a question?

You showed on the map where the Navajo started out over New Mexico and have progressively moved eastward, and I think Senator Goldwater pointed out—he referred back to 1868, and I think he is sure in that he knows that they were way east of there in 1868, because they were in Fort Sumner, N. Mex., some 400 or 500 miles away.

But I would like to ask further, have you sat in as counsel of the Hopis in any of their get togethers to try to settle the differences?

Mr. BOYDEN. All of them, except where they excluded counsel.

Mr. RUNNELS. Is it your opinion that there can be no compromise between the two?

Mr. BOYDEN. I do not just want to say that categorically. I want to say that this is the position that was explained at Scottsdale by the

Hopi Tribe to the Navajo Tribe, and reiterated by Commissioner Nash, who says it is the Hopi position that they want their one-half in the joint use area. They do not want to sell it. They do not want to lose it except maybe on a temporary basis for convenience of the Navajo people. That has been their position and still is their position.

The Navajos have always taken the position that they want all of the joint use area for themselves, and they make various proposals to put the Hopis someplace else, none of which are satisfactory. I do not see how you can bring those people together because at the last negotiating meeting held in Phoenix, Ariz., this month, the Hopis repeated exactly the same thing that they said before Commissioner Nash in Scottsdale in 1956.

Mr. RUNNELS. May I ask another question.

Sir, where you originally showed on your map where the Navajos had changed and moved westward, have the Hopis ever moved theirs from their original place?

Mr. BOYDEN. Yes.

Mr. RUNNELS. Which way did they move, sir?

Mr. BOYDEN. They have moved to various villages. Since I have been representing them in the last 25 years, there have been quite a few people that have moved off the tops of the mesas and are along the road that runs through the reservation.

Mr. RUNNELS. Is there any mingling or intermarriage between the Hopis and the Navajos in this area that we are talking about?

Mr. BOYDEN. There are some intermarriages, not as much as you would think, the tribes being so close together.

Mr. STEIGER. If the gentleman would yield.

Perhaps the chairman of the Hopi people could answer that question.

Would you answer the gentleman, Mr. Chairman?

Mr. HAMILTON. Yes, sir.

I am married to a Navajo lady.

Mr. RUNNELS. Thank you, Mr. Chairman.

I would like to ask one more question.

Mr. Boyden, you referred to where the Army was moved in to move the Navajos off the land.

Could you tell me what year that was, and what major they talked to?

Mr. BOYDEN. That is all in detail in the printed record of the testimony before. The letter of the Secretary of Interior Vilas to the Secretary of War is part of the printed record in which he said exactly what I said in my testimony. That is ready and available.

Mr. RUNNELS. Thank you.

That was last year's hearing on the same bill?

Mr. BOYDEN. Yes; same bill, last year.

Mr. MEEDS. The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

I would like to have counsel establish, if you would, Mr. Boyden, if you would, tell us what the writ of October says in effect.

Mr. BOYDEN. It says that both the Navajo Tribe and the U.S. Government shall—a significant part addresses it to "Peter MacDonald, Chairman of the Navajo Tribal Council, for and on behalf of the Navajo Indian Tribe, including all villages and clans thereof, and on

behalf of any or all Navajo Indians claiming interest in the lands described in the Executive Order of 1882." That is taken from the original jurisdictional act.

Then it says:

You are therefore commanded that immediately after the reception of this writ—

This is to the clerk—

To serve upon the defendants together with a copy of the Order of the 14th of October, 1972, wherein said defendants are directed to grant and permit the joint use and possession of the surface including all resources in and to all Executive Order Reservation of September 16, 1882 lying outside the boundaries of District 6.

Mr. STEIGER. Has that order been appealed?

Mr. BOYDEN. That order—there is an appeal from that order, but there is no stay of execution.

Mr. STEIGER. What actions, if any, have been taken by the Hopi people, the Navajo people, or the Federal Establishment to implement that order?

Mr. BOYDEN. The Federal Government has proposed a plan whereby they would take all the livestock off the reservation and put them in feedlots, then put them back on, according to carrying capacity, one-half to each tribe, to which we had no objections.

Mr. STEIGER. What has happened to that plan?

Mr. BOYDEN. I do not know. It has been proposed and the Court has said, all right, it is approved, but it shall not contradict this order.

Mr. STEIGER. Is there any time length in that order as to when the parties would have to comply?

Mr. BOYDEN. There is a time length in the order of compliance in which it says:

The defendants shall forthwith commence the reduction of livestock in the joint use area of the 1882 reservation, and within one year from the date of this order, complete reduction of the Navajo livestock to one half of the carrying capacity.

That 1 year will be up on the 14th of October of this year.

Mr. STEIGER. I would like to establish one more thing for the record.

There has been a great deal of romance about who wrote what bill. There is no question that you and I have worked very closely on this matter, and that I have consulted with you very frequently. I have taken a lot of your language.

The one thing I would like to establish is, as to the facts of who drew the line. This has become a monumental issue. I did not draw the line. To the best of my knowledge, you did not draw the line. If you could tell us who you believe drew the line—

Mr. BOYDEN. I have a letter from the area office in response to a question that was just written with respect to that, and the line was drawn in the reservation by the Bureau of Indian Affairs, and particularly it was Mr. Al Purchase who did most of the work, who is now in the Joint Use Administration area, and that was drawn, and during the course of that—this is what the letter says. I have a copy in my briefcase.

He did talk with some of the leaders and some changes were made at the suggestion of the negotiating committee of the Hopi. They contacted the Bureau of Indian Affairs at Window Rock, who refused

to have anything to do with it, so they had no part in drawing that line.

Mr. STEIGER. Rather than introducing that letter at this time, I think we will wait until it becomes more appropriate and introduce the letter.

I have one question of Mr. Sekaquaptewa.

In your opinion, how long would it take to gather, as a cowman, how long do you think it would take to gather completely from what has been designated as the Hopi portion of the joint-use land by the court—from that area that the court has ordered to be cleared of the livestock?

How long would it take in terms of time and available people to gather that area and ship those cattle and sheep?

Mr. SEKAQUAPTEWA. I do not think it would take a very extended period of time. Of course, it depends on the manpower and equipment that they have. I don't think it should have been taking the year that has been given them. I think a concerted effort could probably bring that about within a period of a month.

Mr. STEIGER. You think 30 days if they apply themselves?

Mr. SEKAQUAPTEWA. Yes.

Mr. STEIGER. In other words, there is time for them to reach the October 1973 deadline of compliance.

Mr. SEKAQUAPTEWA. That is right.

Mr. STEIGER. In your opinion, Counsel, in the event of failure to comply, what do you see is the Federal alternative, failure on the part of the Navajo to comply based on past performance and law? What would you say would be the Federal alternative at that point?

Mr. BOYDEN. Contempt proceedings.

Mr. STEIGER. Which would take how long?

Mr. MEEDS. The time of the gentleman has expired.

Could you get a quick answer to that?

Mr. STEIGER. That is fine. If we are on a 5-minute rule, we can develop that later.

Mr. MEEDS. The gentleman from Oklahoma.

Mr. JONES. No questions.

Mr. MEEDS. Mr. Steiger?

Mr. STEIGER. My whole point, my whole point, Counsel, in the event of contempt proceedings, I assume that we could go through another judicial process.

Mr. BOYDEN. That is right.

Mr. STEIGER. It has been my whole experience with this entire matter that procrastination and delay seem to be the name of the game.

Assuming a contempt proceeding, and assuming a favorable finding on the part of the plaintiff, that would then be the Hopi Tribe, I assume, what then are the remedies available to the Federal Establishment after the contempt findings are appealed and so forth?

Mr. BOYDEN. We are almost in an impossible situation because they are saying, administer this as a joint-use area because the court has no authority to partition, and as a practical matter, to let the Navajos and Hopis live together, when they are having all the troubles they are having, it is an impossibility, and I just do not see how it can be done without a partition as a practical matter.

Mr. STEIGER. Thank you.

I thank you, Mr. Chairman.

Mr. BOYDEN. Could I finish answering one question that you asked about whether the Steiger bill was my bill?

Just one thing, that is the bill that you cooperated with us on. The Hopis have claimed more area. They claim this black line out here in 1934. This is what the House came up with in its bill here. There were two very important items that the Hopis wanted that did not get in the bill that were compromised out.

One was, we thought we were entitled to rental of our one-half interest that they have been using, but that was stricken from the bill. We thought we were entitled to the damage that they have done, and we asked Congress to authorize us to bring a suit for the damage, and that was taken out of the bill. So the Steiger bill, in its present form is certainly not the Hopi bill but is a compromise of what the Hopis wanted.

Mr. MEEDS. Mr. Boyden, I am going to ask a couple questions.

You say that you saw a very good likelihood or prospect of agreement between the two parties.

You know we are considering legislation to arbitrate this dispute. Have the parties ever been in the kind of position before during their negotiations wherein at a certain time, they would make a last best offer, and one of those offers would be acceptable?

Have they ever been in this position before?

Mr. BOYDEN. No.

Mr. MEEDS. Do you think that might provide some impetus to let them settle it themselves?

Mr. BOYDEN. The thing that frightens me about that is I know what both tribes are going to do before we start, and when we got through you have somebody else besides the Congress determine that they can do this unevenly and pay the Hopis for their interest.

Mr. MEEDS. Indeed. I do not think any of us can predetermine what the results would be.

Mr. BOYDEN. Anyone that is acquainted with the facts and circumstances can. I do not have any hesitancy in giving that as my opinion.

Mr. MEEDS. Is that what the equity should be, sir? What makes you fearful that some decision will go against you?

Mr. BOYDEN. All of the equities have been determined. After you win a lawsuit, you do not compromise.

Mr. MEEDS. You are not answering my question, sir. My question is, what makes you so fearful that a further determination would go against you?

Mr. BOYDEN. The authorization of Congress to put in act they shall take into consideration the law and the circumstances and then provide that they can give more to one side than to the other, and we know who has got possession because they took it away from us. That is easy. That is the way to sneak out.

Mr. MEEDS. You sound to me, sir, if you do not mind my saying so, like an attorney who has gotten a pretty good decision and does not want any further action.

Mr. BOYDEN. In every other case, I have always determined that was final, except in this one.

Mr. MEEDS. I am sure you agree with me that this is not changing *Healing v. Jones*.

Mr. BOYDEN. This is definitely undoing it and allowing the interests of the Hopi Indians to be taken away by a board. That is what you are saying; whether you do it by subterfuge or whether you do it openly, it is just as vicious.

Mr. MEEDS. The second thing, Mr. Hamilton, is this. Are there areas within the joint use area presently described as the joint use area, which have religious significance to the Hopis?

Mr. HAMILTON. Yes, sir.

Mr. MEEDS. About how many are there?

Mr. HAMILTON. There are a number of them. The one that is outside of the Steiger bill is one that we are asking for also. It is not in the bill at the present time.

Mr. MEEDS. Aside from those specific areas, and aside from the general religious reverence that the Hopi people have for land and also the Navajos and most any other Indians—in fact, any other Indians—is there any religious significance in the joint use area for the Hopis?

Mr. HAMILTON. Oh, yes. In fact, all that 1882 reservation, we have a shrine there in that area.

Mr. MEEDS. About how many of those, sir?

Mr. HAMILTON. It is pretty hard to tell, but there is a number of them anyway.

Mr. MEEDS. A number of them? Can you give us some kind of guess, sir? Ten, twenty, fifty, five hundred?

Mr. HAMILTON. It all depends on what clan you belong to and where you emigrate from?

Mr. MEEDS. Have they been used? It is my understanding that there are not very many Hopis outside of district 6 in that joint use area. Have they migrated from the areas of district 6 to practice religion clear up in the corner there or what?

Mr. HAMILTON. That is right.

Mr. MEEDS. They have?

Mr. HAMILTON. Yes.

Mr. MEEDS. Have they ever been hindered in any way by the Navajos?

Mr. HAMILTON. Oh, yes. Just last wintertime, in February, when they have what we call mid ceremony, this was reported to me by the people there. They went after an evergreen tree for their ceremony. The people, the Navajos in that area, have driven them back because they were told that they were trespassing in that area, which we know is our half interest in the 1882 reservation, and they were denied of getting what we use for our ceremony. That was last February.

Mr. MEEDS. If those areas were resecured and the right of access to those areas secured by legislation, would it be possible to describe those areas that a bill could describe, what areas and what rights were being taken?

Mr. HAMILTON. That is right.

Mr. MEEDS. That could be described?

Mr. HAMILTON. Yes.

Mr. MEEDS. Would you mind providing for the committee, sir, a list of areas which you feel to have religious significance within the joint use area?

Mr. HAMILTON. Yes, sir. We can do that later.

Mr. MEEDS. If there is no objection——

Mr. STEIGER. I will not object because it is the chairman's desire, but I reserve the right to object so the record may reflect that I do not think the chairman of the Hopi Tribe understands the chairman of the subcommittee's significance of his question. The chairman of the Hopi Tribe, as I understand him, is not saying that he is willing to accept the protected religious area clearly in lieu of possession of half of the joint use lands.

Mr. MEEDS. The chairman is not asking him that question, now, with all respect to the gentleman from Arizona. The chairman is trying to get for this committee information with regard to what areas within the joint use area have particular religious significance to the Hopi Indians, whether or not those areas can be sufficiently described so in legislation they can be protected.

Mr. STEIGER. That is exactly what I do not think the chairman of the Hopi Tribe understands, that the protection—that they do not need any protection if they are in Hopi lands. In fact, Mr. Chairman, I will object.

Mr. MEEDS. The objection is heard.

The gentleman from New Mexico?

Mr. LUJAN. I cannot quite understand the gentleman from Arizona's objection. From what I would gather, what the chairman wants to know is where these religious shrines are in case that line has to be redrawn.

Mr. STEIGER. If the gentleman is asking me a question—if the gentleman will yield.

Mr. LUJAN. Yes.

Mr. STEIGER. In that context, I think it would be very valuable. It was my understanding that the chairman of the subcommittee asked that these shrines could be properly protected and remain the Hopi's use of them, no matter where they were on the joint land use plan.

Mr. LUJAN. Mr. Boyden, you and the gentleman from Arizona were discussing the plan of the Bureau of Indian Affairs as to getting the cattle and sheep off and put them into a feedlot and then bring them back up in whatever proportion, 50-50, if that is the proper proportion. Do you oppose that? Do the Hopis oppose that plan?

Mr. BOYDEN. We do not.

Mr. LUJAN. So you would then say that if we did nothing as far as legislation is concerned, that the plan the Bureau of Indian Affairs has would adequately take care of the problem?

Mr. BOYDEN. No, Mr. Lujan. That is better than nothing, of course, but as a practical matter, we know that the Navajos have stolen the cattle and the calves and so forth and that there will be continued trouble if they are not separate. That is why we say the partition is a practical thing to accomplish that.

Mr. LUJAN. Just looking at the map, Mr. Boyden, of the three areas that we are talking about, it seems to me like the area within the red line, which signifies the partition under the Steiger bill, it seems like there is more within the red area than there is outside of it, as it respects the 1882 in the 1934 area.

Does it not look like that to you?

Mr. BOYDEN. That is not correct, because the calculation of it gives you just a few more acres on the Navajo side.

Mr. LUJAN. Maybe I need to change my glasses.

Let's approach it from another side, then.

How many acres within district 6?

Mr. BOYDEN. 650,013 acres.

Mr. LUJAN. Let's say 600,000 as a round figure.

How many acres within the 1882 area?

Mr. BOYDEN. Joint use?

Mr. LUJAN. Yes.

Mr. BOYDEN. About 1,900,000.

Mr. LUJAN. I am calling it 2 million.

That is excluding district 6.

Mr. BOYDEN. Yes.

Mr. LUJAN. How many acres—I assume that black line is the entire 1936 area, is that correct—the 1934 area. Excuse me.

Mr. BOYDEN. Oh, no. The 1934 area comes way over here, clear down like this [indicating] and clear back over to this line to the Navajo Reservation.

Mr. LUJAN. What is that black line there?

Mr. BOYDEN. This is what the Hopis asked for.

They thought that if you took this away from them then they ought to have an equal amount out there. The House, after considering this, said no, we will not give you that, and they put it down to this area here.

Mr. LUJAN. How much is that black line area then?

Mr. BOYDEN. Out here?

Mr. LUJAN. Yes.

Mr. BOYDEN. About approximately half of that [indicating], almost 1 million acres. It is less than that, just a little.

Mr. LUJAN. So in talking about a total, there are 3,600,000?

How much land—

Mr. BOYDEN. Let's wait a minute. I do not follow you on the 3,600,000.

Mr. LUJAN. It is 2 million in the 1882 area, minus the 600,000.

Mr. BOYDEN. No. It is nearly 2 million plus 600,000.

Mr. LUJAN. All right, then, that is 2,600,000.

Then that black line area, there is another million.

Mr. BOYDEN. This line out here [indicating] is approximately equal to what the Navajos get in here [indicating]. That is what they asked for. That is just what he asked for and did not get.

Mr. LUJAN. Why did you draw the line there, or did you draw that line?

Mr. BOYDEN. Sure. They did this to illustrate to the Congress what we thought was fair, but the House, after considering everything, said no, that this is fair down here.

Mr. LUJAN. I am still totaling 3,600,000.

Mr. BOYDEN. You are totaling what we asked for, not what we get.

Mr. LUJAN. What you get undoubtedly is what you consider what you have 50 percent interest in.

Mr. BOYDEN. No.

We said that we have 50 percent interest in this over here, but we lost that 50 percent interest because of what the Government did to us.

Now, Congress has always presided. Here is our interest in the rest of this. So, in settling out here, it seemed only fair to us to give us the same acreage that you took away from us here.

Mr. STEIGER. Will the gentleman yield at that point?

Mr. LUJAN. Yes.

Mr. STEIGER. I think it is important to make this point because I know there are some that do not understand the reason for the inclusion of that area that the gentleman is now discussing, that 1934 was an arbitrary decision on my part. It was done to avoid further *Healing v. Jones* type litigation over the entire rest of the Navajo Reservation because the same language that invited adjudication in a joint use area is the same vagaries that is in the language of the Executive order that established the 1934 reservation.

I felt, to be honest with you gentlemen, I felt that was a great victory for eliminating any further conflict, assuming this to be resolved. You are turning right around and facing the same kind of conflict in virtually the whole rest of the Navajo Reservation. I felt that this was a good way that could resolve it at the same time. That was my motivation.

And counsel is absolutely right. They said they ought to have *x* number of acres, and when you look at it and the Hopis were not living in the other areas and not using it at the time so I arbitrarily suggested that. So that is the purpose of including the 1934 lands in this bill at all, was to further—avoid further litigation.

Mr. BOYDEN. The Hopi would not claim the interest in all this out here, and the Navajos, of course, would quit claim on this piece here, and this has nothing to do with the 1882.

Mr. LUJAN. My time has expired, but I do want to ask one question that might be very significant.

Are you particularly attached to the Steiger line or some other line so long as it was 50 percent of the land that would be acceptable to you?

Mr. BOYDEN. No; we are not particularly attached to this line in here, as long as it would give up 50 percent of the quality and acreage of land that we are not wedded to that at all. This is the only attempt that anybody has ever made to divide it. That is the only reason it get our support. We only want what is fair.

Mr. MEEDS. The gentleman from Arizona?

Mr. STEIGER. No further questions.

Mr. MEEDS. The gentleman from New Mexico?

Mr. RUNNELS. May I just ask—we are talking about who drew the lines and so forth.

Has it ever been thought that maybe flip a coin between the Hopis and the Navajo and which ever one calls it right, he either wins or does not, and he sits down and draws the line? That tribe draws the line, and the one that draws the line, the other has a choice.

Mr. BOYDEN. We would rather have it done on reason than luck.

Mr. RUNNELS. No, it would not be luck. You take a partnership in a business. When they reach a stalemate, that the two partners cannot—I have seen it done numerous times—where one partner says we will split this partnership up and one will get this, this and this, and then you say the other one will get this, this and this, so that one does the dividing in his mind what he thinks is fair. He does not put too much on this side, and he does not put too much on that side, because he knows he may end up with one. He is doing the splitting, but the other one gets the choice.

Mr. STEIGER. Will the gentleman yield?

I might even have more information on it than this counsel does.

We attempted that kind of approach in that we suggested that there be some device whereby both the tribes, in the absense of anyone, you draw the line, so the gentleman's approach is a vailid one.

The problem is, the Navajo do not want to draw a line because they do not want to move off of half the land. So they have not been willing to accept any kind of a situation in which both tribes would participate in the decision on the boundary.

I agree with the gentleman. I believe that would be some device whereby both the tribes making judgment would be fine, but we have to get to the point where the Navajo accepts the fact that only half of that 1882 land is his.

Mr. RUNNELS. Thank you.

Mr. MEEDS. Mr. Boyden, there were references in your testimony and also, I think, in one of the other gentlemen's testimony about the Navajos moving in.

Is there any hard evidence, and could you furnish such evidence, of increases in Navajos who are not part of families that have moved into the area since the Steiger bill has been proposed?

Mr. BOYDEN. We cannot even, when we confront—

Mr. MEEDS. That would be in the top part.

Mr. BOYDEN. The 26 houses that are being built were just built there—20-some-odd, I forgot what it was—it is in the record in the Senate hearings—that were being built right around this line [indicating] those houses. To us, that is deliberate. That is not family relationship or anything else.

Mr. MEEDS. Is there any way that this committee could find out if new families have moved into that area either since the Steiger bill or indeed, since *Healing v. Jones*?

Mr. BOYDEN. All we know is that we have all these new houses and there is more people. When you start on the basis of saying how long have you lived here, everybody that we talked to, even if they built their house yesterday, say it is their ancestral home and it is difficult for us to get the answers.

The same is true with this in our examination in the proceedings down at Tucson. We even had the picture of the truck. We had the license on the truck and looked it up, and the man denied that he was there, and we had his picture in the truck. That is the kind of testimony we came up with. Nobody prosecutes anybody for perjury, and we just have not the slightest idea how to find those facts out. All we know is that we are being hemmed in all the time and these houses are going up.

Last Friday we photographed those and there are still more that we are photographing now.

Mr. STEIGER. Will the chairman yield on that?

I have a valid observation at this point.

Mr. MEEDS. Go ahead.

Mr. STEIGER. Three weeks ago, now, I think it was, I was on the reservation, at the line that counsel is talking about, in the presence of mostly Hopis, who were my hosts, but there were some Navajo observers. At that time, within a space of about 2 hours, I visited on

the grounds five new dwellings, two of which are cinderblock, which in that country is unique.

I was unable to determine from the occupants, since they did not want to talk to me, as to how long—I had the chairman's desire to find out if they had moved from within the joint use or from outside of it, but there is no question in my mind, and I'll tell the chairman, that there is a great deal of new residential activity immediately adjacent to the grazing District No. 6 line. There is no question about that, Mr. Chairman, and it has happened within the last 12 months, and that I will tell the gentleman. I have not seen it from pictures, I have not heard it from talking to people, I have personally seen the buildings.

Mr. MEEDS. Thank you.

Mr. Boyden, the line which is now over in the Moencopi area and the one which you originally hold, that goes out completely to the edge of the Navajo Reservation, does it not?

Mr. BOYDEN. No. There is quite a bit of territory in between.

Mr. MEEDS. In other words, there are places where that line is adjacent to the complete edge of the Navajo Reservation.

Mr. BOYDEN. There is a point where it strikes the reservation, this point where I have my finger.

Mr. MEEDS. Why was the line not drawn contiguous to the reservation?

Mr. BOYDEN. It was following the contour lines rather than following the natural boundaries.

Mr. MEEDS. What lies to the west of that place there?

Mr. BOYDEN. More of the same thing.

Mr. STEIGER. If I could respond to that.

Physically there is a road that goes down Pedro through Marble Canyon. It is a two-lane highway. As far as the nature of the terrain, counsel is absolutely right. It is the same kind of country, not exactly lush. That would be a fair description.

Mr. Sekaquaptewa—and I think your observation would be valid here as to the nature of the feeling of ill-will that is generated on both sides of this issue—and I am sure you feel it is only ill-will on the part of the Navajo, but I am sure you must recognize the Navajo view your position as one of ill-will, in spite of a basically peaceful nature of the Hopi, I know you have described to me the attitude of some of the younger people in particular, and I think it would be worthwhile if you describe the potential for danger to the committee.

It does not do any good for me to tell them. It is not nearly as effective as if you would tell them.

Would you feel there is a potential for danger at this time, with regard to violence and ill will?

Mr. SEKAQUAPTEWA. Mr. Steiger, last year when we were here to testify before the subcommittee, there was an incident that happened just a week or two before we came here, in which two Hopi young men were physically assaulted by Navajo Indians. It was because of the strong feeling between the two tribes.

I think that we would have to be willing at this point to assume the responsibility for any unfortunate incidents that might arise and probably will arise if this matter is not resolved immediately in the very near future. We have no control over our young people any more than

anybody else has. It is my honest opinion that this situation is getting out of hand. I can honestly say that there will be more incidents of that nature as they are occurring now until we define the boundary that will separate the interests of the two tribes, and make two legal jurisdictions that will enable each tribe to be able to govern its own area in the manner that they see fit, in the way that they see is right for their people, so we can get this problem behind us once and for all.

Mr. STEIGER. What about the likelihood that there will be real bitterness, if some such bill, or the Steiger bill is accomplished, that there would be real bitterness on the part of those occupants of new homes that would have to move?

What is your response to that problem?

I think what the committee is entitled to is the view, do we face more danger of injustice and physical violence if we leave things alone, which seems to be the congressional attitude about a lot of things, or do we compound it by requiring these families to move and so forth?

Could you give us your view on that?

Mr. SEKAQUAPTEWA. I do not know how you can compound a situation that has existed for over 100 years; to leave the situation as it is only perpetuates the problem that now necessitates this type of action in the first place, and maintaining the status quo is no answer at all.

I think that once we know where we stand and we can definitely say on each side what is the other's property, then that forms a basis on which the tribes in the future can be able to deal with each other on a businesslike basis with all the questions having been defined and clarified, and I think there is a better chance of respecting each other than there is now in this state of affairs where we are forced to live together when there is a cultural conflict, and a conflict over the uses, surface uses of the land and one dominates the other.

So I do not think there is any other answer than what we propose, that is, the partition of the joint interests in the 1882 Executive Order.

Mr. STEIGER. Thank you.

Mr. MEEDS. Are there any further questions?

Mr. LUJAN. The only thought that occurred to me, if there are new houses that are built on that joint use area by the Navajos, is there any provision for the Hopis to pay for them?

Mr. MEEDS. If there are no further serious questions—

Mr. LUJAN. That was very serious.

Mr. MEEDS. The committee will be in recess until 1:15 this afternoon.

[Whereupon, at 12:20 p.m., the subcommittee was recessed, to reconvene at 1:15 p.m. the same day.]

AFTERNOON SESSION

Mr. MEEDS. The Subcommittee on Indian Affairs of the full Committee on the Interior and Insular Affairs, will be in session for further hearing on the matter of the Hopi-Navajo land matter, H.R. 5647, H.R. 7679, and H.R. 7716.

The first witness of the afternoon will be Peter MacDonald, who is chairman of the Navajo Tribe.

Mr. MacDonald, we are pleased to have you here this afternoon. Do you have somebody accompanying you?

Mr. MACDONALD. Yes, I have the other witnesses here with me, but they will come up as they testify.

Mr. MEEDS. Let me advise you as you have been previously advised that you will have 2 hours for your presentation, as the Hopis had 2 hours. We would prefer and envision somewhere along an hour for the formal presentation with questions and answers for an hour. But there are only two or three members here now, so I don't know if it will take that long. If you want to divide it into an hour and 15 minutes and 45 minutes for questioning, that will be all right too.

But I see you have five witnesses. If everybody reads their statement, you may have exhausted your time. It is up to you, however; you may utilize your time however you wish.

Mr. MACDONALD. We will sort of play it by ear. If we get short on time, we will adjust our testimony.

Mr. MEEDS. Please proceed.

STATEMENT OF PETER MacDONALD, CHAIRMAN, NAVAJO TRIBAL COUNCIL, ACCOMPANIED BY DAVID F. ABERLE, ANTHROPOLOGIST; MARY LOU WHITE, RESIDENT OF THE 1882 EXECUTIVE ORDER AREA; GLENN C. GEORGE, COUNCILMAN; HOWARD W. GORMAN, COUNCILMAN; WILBUR ATCITTY, DIRECTOR OF TRIBAL ADMINISTRATION; AND GEORGE VLASSIS, COUNSEL

Mr. MACDONALD. Mr. Chairman, members of the committee, first let me say that we Navajos would prefer to present our own case in our own way.

Our general counsel is here and available for questioning if time permits.

As you can see, our map here deals with people, not real estate. Mr. Boyden's map, which you saw this morning, looked more like subdivision plans.

This is not a part of the prepared statement that I am speaking from; this is more or less an add-on to how my statement would read.

We deal with lives and values, not reality.

Before I read my prepared statement, let me just make a few comments on this morning's testimony. One, it is simply not true that our people came into this area, the area that is in question up there, and pushed out the Hopis. Our people settled in a largely unused area, long before the arrival of the white man. Two, after we were settled there the Government came along with the 1882 Executive Order Area with Executive order and later with a 1958 act and the decision in *Healing vs. Jones*. In other words, we did not build our hogans on the land of other people. We built our hogans on land that we had occupied and then later the Government came along and gave the Hopis an interest in the land that we were already using. It was the Government's mistake and we ask you now to correct it.

Three, if you had listened to Mr. Boyden this morning, you would think that Navajos and Hopis hate each other and always hated each other. That just is not true. We usually get along well with each other. Mr. Boyden has introduced hatred and harshness into a situation in which Indian people in most cases get along with each other. In fact, there is a great deal of intermarriage between Navajos and Hopis, as was confirmed by the Hopi witnesses this morning.

Mr. Boyden might care to see Navajos expelled from their land, but I believe a lot of rank and file Hopis do not really want to see their friends and in-laws driven off their land

Four, there have been comments to the effect that there is plenty of room on the Navajo reservation for the relocation of sheepherders. That is another fact that is simply not true. Inspection of the land has indicated—by even Senator Goldwater this morning—shows that while we have what is known here as the wide open spaces, those wide open spaces are not suitable for feeding livestock.

Five, every time we come to Washington we find the issue of a housing development being created in an Executive order area. The fact of the matter is that our people do not move into what is probably the poorest area of the reservation. These are people that are part of the original family groups in that area. It is the first time that I know of that an Indian tribe has been condemned for trying to improve its living conditions; the transfer from the hogan to a cement block house is apparently something that we are not entitled to.

Once again, I appear before a committee of the Congress of the United States on the most important problem which has faced my people since I took office as chairman of the Navajo Tribal Council in 1971. Many anguished hours have been spent by us as we have come to realize what an expulsion order delivered against 8,500 of our people would mean to them and to our entire tribe.

In the 2 years in which I have been chairman of the largest Indian Tribe in the United States, I have had to wrestle with many problems besides the one before you today. Our people are poor. Our agricultural resources are very limited. Our mineral resources have barely been tapped—yet our population rate doubles that of the rest of the country. Here we are, the poorest people in the wealthiest Nation in the world. Our problems, unlike the rest of this great country's, are very similar to those of the underdeveloped nations—problems of poverty, poor health and poor education.

But instead of working on these problems with programs to move 135,000 Navajos forward to a better day and a decent life, we have had to spend our time, energies, and resources to prevent a disaster from again befalling 8,500 of our people—8,500 of the poorest of our people.

H.R. 5647 requires the automatic expulsion of approximately 8,500 Navajos from their homes. Having seen what enormous problems have been created by the recent forced movement of only 92 Navajos from the Hopi Reservation, I can only anticipate with bewilderment and anxiety what an expulsion of 8,500 Navajos would create. If only you could see the desolate faces of the Kabinto and George families huddled in and around the Window Rock fairgrounds in house trailers, you would not be anxious to consider relocation as a solution to anything. These people have been removed from their ancestry, their traditions, their livestock, and their way of life. The Federal Government has provided little or no assistance, and even the Navajo Government, which is more attuned to the plight of its brothers, has been relatively helpless in trying to give these people a new life. Life cannot be given by dole, Federal subsidy, or some other kind of handout.

An environment must be created in which a life must grow. This, even the Congress of the United States cannot do successfully. Thus, I tell you now that you visit disaster upon us by continuing to even

imply that relocation would be a suitable solution to the 1882 dispute. Even beyond that, it would be a tragedy of international proportions for the Government of the United States.

As you may know, my predecessor, as chairman of the Navajo Tribal Council, for the most part simply ignored the complex issue which is before you today. I, on the other hand, attempted to face the issues squarely, to tell our people what they did not know before—that a decision was rendered by a court 10 years ago which jeopardized their interest in about 900,000 acres of land, on which they had lived for generations. In facing this issue, I have told my people time and again that we must strive for a solution which was workable, which could be acceptable to the Congress, even though we might be called upon to make some sacrifices. But the sacrifices which I had in mind were financial sacrifices. What I cannot in good conscience do is to commit my people to agree to a settlement under which thousands of Navajos would lose not only their homes, but their identities as human beings. I will not and cannot countenance a wholesale destruction of the values and lives of over 5 percent of all Navajos in order to afford a pasture for the Hopis.

What a great many people will ask is this: if the Government of the United States wants to make it possible for the Hopis to have more land on which they can graze cattle, why does it have to be land on which the Navajos live? Why can't this land be provided elsewhere, where it won't be necessary to expel people. There is plenty of grazing land in northern Arizona. There are always ranches up for sale. Why can't some such ranches be bought for the Hopis so that they can put cattle on it without having to displace anyone?

I have heard it said that if Chairman Macdonald would tell the residents of the Executive order reservation to move, they would move. Mr. Chairman, I cannot work miracles. I am not a magician. I hold elective office as the representative of my people. If I advise the residents of the Executive order reservation to move, this advice would be about as believable as if the President of the United States would advise the residents of the Second Congressional District of Washington to give up their homes because the land upon which they live was going to be given to Canada.

The 8,500 Navajo people that I refer to are traditional people. Most of them do not speak the English language. Many of them cannot read or write. They are shepherders familiar only with the life and the skills of shepherding. We cannot program them by legislation, by computer, by military compulsion, or by death to make them something other than what they have been for generations. If they were transferred by legislative fiat into a foreign environment where they can no longer herd sheep, they would be destroyed and would wither and die—perhaps not physically, but as people they would no longer lead a life of any meaning whatsoever.

If they were to be ordered to leave, either by the Bureau of Indian Affairs, or by court order, or if I were to advise them to leave, they simply would not understand. It is their land—not my land, not the Hopis' land, and least of all, your land. They have used the land for generations. When they came here they did not expel anyone, for there was no one to expel. They did not understand the white man's ways, and, from reading the local newspapers, I sometimes wonder

if I understand the white man's ways. They will not understand why they should move and their reaction is very predictable—they won't move.

I do not want to be misunderstood. I am not here to defy the law. I do not believe the Navajo will view themselves as defying the law if they merely stay in their homes. They will view the order to leave as defying the principles of order that are the essence of their own lives and beings.

What all of this means is that if H.R. 5647 is enacted into law, it will be necessary to use force to move the people who now occupy the land. Even if the entire Navajo Tribal Council called upon the residents of the Executive order reservation to leave, the result would be the same—you will have to send the Blue Coats again. Never again do we want to make rugs from red long underwear. Until recently, I thought we had seen the last of the Blue Coats, except on television. Now, I am not so sure. It is for that reason that I said earlier that this bill could result in a tragedy of international proportions. It is conceivable that in the second half of the 20th century the tragedies of frontier times could be knowingly repeated—the forcible eviction of Indian people, the long marches, the trail of tears.

It is for these reasons that we proposed to the Hopi Negotiating Committee in Salt Lake City, Utah, in April of this year that a third reservation be created under the joint and equal administration of the Navajo and Hopi Tribes—that we proposed to the Hopi Negotiating Committee in Phoenix, Ariz., just 10 days ago, joining together in an attempt to obtain land to the south or the west of the Navajo Reservation for the use and benefit of the Hopis—land of equivalent or better livestock carrying capacity than that about which we now dispute. We also proposed the substance of H.R. 7716 to the Hopis at our last negotiating session. All of these proposals were flatly refused within the space of an afternoon, apparently in the blind hope that H.R. 5647 would not be carefully examined by the Congress and would be quickly passed.

We have no dispute about the fact that the Hopis are entitled to what is theirs. We do dispute giving them their just due by carving the spiritual and economic heart out of the Navajos who live in the area.

It is for these reasons that the Navajo Tribal Council, in special emergency session, called on May 8, voted 40 to 1 to pay for the Government's mistakes with what little money that we can muster. This was a hard decision on our part. It was made even harder when Navajo representatives visited people in Washington before this hearing, only to be met with comments like, "Why should we give you an interest-free loan?" when the only reason that we structured the bill in this fashion was to provide the Hopis with immediate funds, rather than waiting until we could assemble the amount necessary to purchase the surface of this land. Or to be met with the question, as if we were talking with a bank, of "Who's going to take care of the interest on this obligation?"

In our hearts we do not believe that this is our obligation, but the situation which has been created out of both good intentions and ignorance has such serious and far-reaching consequences for our people that we must literally take the bread from the mouths of our children in order to feed demands which are almost beyond our comprehension.

The vehicle for a fair and equitable solution of this long-standing problem is H.R. 7716, which has been introduced by Congressmen Lujan, Conlan, and Runnels. It is a bill which would deal fairly and humanely with the Navajo people as well as the Hopi people. It would also deal fairly with the American taxpayer because it is a far less expensive proposal than H.R. 5647. I am advised by our tribal attorneys, who will file a memorandum of law with the committee, that this bill does not violate the Constitution nor is it inconsistent in any way with the holding of *Healing v. Jones*.

Under H.R. 7716, just as under H.R. 5647, the surface and the subsurface rights in the joint-interest area would be dealt with differently. Both bills make the same disposition of the subsurface rights: they would continue to be held jointly and equally by the two tribes. It is the surface rights which would be disposed of differently under the two approaches.

Under H.R. 7716, a determination would be made as to the uses which the two tribes have made of the joint-interest area; and these uses would be allowed to continue without change. No one would be expelled from his home. No one would be deprived of any use which he or his forebears have made of the land for the last century.

In practical terms, this means that most, if not all, of the surface rights in the joint-interest area would be awarded to the Navajo Tribe for agricultural and residential use, but perpetual easements would be granted to the Hopis to secure their traditional ceremonial, wood gathering, and other uses of lands occupied by Navajos.

Since *Healing v. Jones* entitles the Hopis to a one-half interest in the value of the area, H.R. 7716 calls for an appraisal of that value and for the payment by the Navajos of the amount so determined.

On the basis of the information available to us, the value of the Hopi interest in the surface will not exceed \$18 million. H.R. 7716 provides for an amount up to \$18 million to be advanced by the Government to the Navajo Tribe in an interest-free loan to be paid over to the Hopis.

The bill provides further that the loan will be repaid by the Navajo Tribe to the Government out of the Navajo mineral income from the joint-interest area. That income is now approximately \$500,000 a year, and a minimum payment of \$500,000 a year is being guaranteed. The information which we have indicates that the total amount which we can expect in one-half of the royalties from proven reserves under the present lease is approximately \$28 million. We believe to have there beyond the proven reserves one of the largest coal deposits in the country as well as uranium and oil. With the energy problem of the United States developing as it does, we have good reason to expect that our royalty income will continue to increase at a rapid pace, enabling us to repay the Government loan over a much shorter period than the 36-year maximum.

Some people have said that under this proposal we would be paying the Hopis for the value of land which has been greatly overgrazed and which is therefore worth less than it would be if it were land of good quality. My answer to this argument is the following: let us keep in mind that when the Hopis acquired their right in this land, it was already overgrazed. It isn't that we Navajos have taken a Hopi asset and reduced it in value. We have used land on which we have lived for many generations and on which the Government of the United States

has legally settled us. As our population grew and as our herds grew, we used that land because we had no other ways of earning a living. The land certainly was not land of high quality when the Government chose, in 1958 or 1962, to give the Hopis a vested interest in it. That is why, as we see it, *Healing v. Jones* does not require the payment to the Hopis of more than H.R. 7716 provides.

There is one other point to remember. Under H.R. 7716 the Hopis do not get land of poor quality, which may have been overgrazed. They are getting money to buy good land. If they are anxious to increase their herds, they will not have to wait until the land taken from the Navajos is upgraded. They can buy good land immediately.

That is why I say that H.R. 7716 is fair to the Hopis. For the traditional Hopis it guarantees all the traditional uses of the land occupied by the Navajos. For the so-called progressive Hopis, it provides the financial resources to improve their economic conditions substantially. After our proposal has become law, the average Hopi family would surely no longer face the problems of poverty which, I regret to say, my own people will continue to face for a long, long time.

So far I have spoken only of the Executive Order Reservation of 1882. But that is not the only land which is in issue here. H.R. 5647 also deals with another area, known as the Moencopi area. So does H.R. 7716. Under H.R. 5647, 243,400 acres of land are to be taken out of the Navajo Reservation and given to the Hopis. Here again thousands of Navajos would be expelled from their homes, again to make room for Hopi livestock.

In the case of Moencopi, the Hopi don't even have a court decision to fall back on. There is no court, no Attorney General's opinion, nor even a solicitor's opinion which could justify the taking of 243,400 acres of Navajo land. Our own attorneys have researched this question and have shown that in the congressional hearings held in 1932, there were introduced into the record the minutes of meetings at which the proposed law was explained to the Hopis. That explanation was to the effect that the Hopis would be guaranteed the lands which they then used and occupied, which was about 32,000 to 36,000 acres. That is the land to which they are entitled now, and that is the land which H.R. 7716 would give them.

I have heard some discussion about the need for a corridor from the main Hopi Reservation to Moencopi. I cannot understand that. We are not dealing with a foreign country here, where you would need a passport to travel from one Hopi Reservation to the other, or where you would have to pass inspection by customs officials. There is a highway leading from one place to the other, and that highway is available to everyone; Hopi, Navajo, or whatever he may be. If the Hopis have two reservations, that fact would be by no means unique. Some of my people live in reservations which are not directly connected to the Navajo Reservation. The Canoncito Navajo Reservation is one such example. We certainly have never asked the State of New Mexico to give us a corridor to connect that reservation to our main reservation and take other people's land away in the process.

We believe that if H.R. 5647 were to become law in its present form, we would have a claim against the Government of the United States for a taking of our land in violation of the Constitution. That claim would be based on two argument: (a) Section 2 gives the Hopis by

far the more valuable half of the 1882 Executive Order Reservation, and (b) section 5 gives the Hopis more than 200,000 acres of land in which Navajos have a vested right.

The case which the Hopis make for H.R. 5647 is basically this: There was a time when the Hopis, as they looked out from their mesa, saw only very few people in the surrounding area. They looked to the horizon and said, "All this land is ours." Then other people came along, Navajo people in some areas, white people in other areas, and settled on land which the Hopis had considered their traditional lands. The white people, wise in the white man's ways, got themselves pieces of paper which made it impossible for their right to be on the land to be challenged. The Navajos, who came there earlier than the white man did and who didn't drive the Hopis out, did not know about how to get title by adverse possession.

So here we are now, having lived on land for more than 100 years, and the Congress of the United States is considering legislation to drive us out. You have recently considered the Alaska Native Claims Act. There you did not suggest that Alaska be all turned over to the Natives. You allowed them to select land where no settlers had established themselves, and you gave them money for the rest. We appeal to you to follow the same principle where the settlers are Indians that you have established with the white settlers of Alaska.

In summary, let me plead with you once more to let my people stay on the land which has been theirs for generations. Do not create the human problems which H.R. 5647 would cause, and do not incur the huge costs which would be the result of that bill. We ask you to pass H.R. 7716, which would not create problems of human misery, and which, as I have said, would present by far the least cost to the American taxpayer.

Mr. MEEDS. Thank you very much, Mr. MacDonald.

Would you have your next witness come forward then?

Mr. MACDONALD. I would like to ask at this time for Prof. David Aberle to testify.

Mr. MEEDS. Do you have a written statement?

Mr. ABERLE. I will have a more extensive written statement later in the week, which I would like to submit.¹

Mr. MEEDS. What are you going to testify from today?

Dr. ABERLE. When I am asked to speak under these conditions, I have a text, but it is a condensation of my more extensive remarks.

Mr. MEEDS. Please proceed.

STATEMENT OF PROF. DAVID F. ABERLE, ANTHROPOLOGIST

Dr. ABERLE. Mr. Chairman and Members of Congress, my name is David Aberle. I am a U.S. citizen, an anthropologist with a Ph. D. from Columbia University, and a professor at the University of British Columbia, who has done fieldwork off and on since 1940 among the Navajo Indians, including many months in the disputed territory of the 1882 Executive Order Reservation. I have known Navajos of Pinon and Black Mountain, in District 4, a part of that area, for more than 20 years. I am the author of a book on the Navajo, and of several articles dealing with their culture, including one on Navajo economic development prepared for and printed by the Joint Economic Com-

¹ The statement was received and was placed in the subcommittee file.

mittee of Congress. I have not done fieldwork among the Hopi, but my Ph. D. thesis was devoted to them, and I am familiar with the anthropological literature on that tribe.

Before I get into the body of my comments, I would like to comment that it has been said this morning that there is lots of unused land on the Navajo Reservation. I think that it is important to keep that in mind, that the Navajo Reservation is a paradox. It is in an area of low population density which is severely overcrowded and has been for decades. The kind of free land that is being talked about simply does not exist.

I have over the years followed the legal and legislative developments concerning the lands in the Executive Order Reservation. My purpose in coming before you today is to present to you those conclusions which I have reached on the basis of my research and which may be relevant to your inquiry. I am obviously not here to discuss purely legal questions, but I believe that I may be able to shed light on those questions which you might pose, out of a concern for fairness and equity, and also out of a concern for the human consequences of any decision that you might make.

To begin with, let me emphasize that it is a mistake to think of the Navajos as having drifted into the area in controversy in the main after the formation of the Executive order territory in 1882. On the contrary, the historical record shows the presence of Navajos near the Hopi towns from 1691 on, and in all likelihood they were there continuously from at least as early as the date of the earliest Spanish records of the area—1540.

Tree ring dates from Navajo dwellings and other structures show that Navajos were living in the disputed territory from 1701 on. On the other hand, no Hopi archeological sites in the disputed territory can be dated after 1700. Thus Navajos, unlike Hopis, were living as well as herding sheep, farming, and hunting in the disputed territory nearly 150 years before the United States acquired control of the Southwest.

This occupancy continued up to the time the Navajos were taken to Fort Sumner in 1864, and may have continued to some degree during the 4 years of Navajo captivity from 1864 to 1868, since the upper slopes of Black Mesa afforded a convenient refuge area. On the return from Fort Sumner, Navajos who had lived there before returned to the area.

My genealogies were collected from people in the area without thought of a land dispute or in connection with the pending legislation or litigation. In all cases, the ancestors of my oldest living informants either were living in the area prior to Fort Sumner or immediately thereafter; and as for the latter group, their ancestors may have been living there before. I may not have asked or they may not have known.

It is sometimes stated or implied that Navajos moved into the disputed territory in great numbers after 1882. I have prepared a graph that shows overall Navajo population growth. That graph is attached to my statement, and I hope you all have copies. If you do not, I can circulate them.

I have prepared a graph that shows overall Navajo population growth. Paralleling the line that shows that growth is another line

that shows a hypothetical growth curve for the disputed territory, on the assumption that Navajos in the area reproduced at the same rate as the general population. Scattered on the graph are black dots representing the rough estimates and counts of Navajo population in the disputed territory from 1882 to 1970. You can see that the black dots come quite close to the hypothetical growth curve.

It is evident that no count of Navajos was undertaken in 1882, and that the estimate in 1888 was just that. If one were to assume that the Navajo population in the disputed territory in 1882 was 1,000, and if it was about 1,200 in 1888, the entire growth can be accounted for by natural reproduction, with immigration and emigration approximately balanced. Estimates from the year 1900 on make it clear that there was no rush into the territory—otherwise, the dots should be well above the line, rather than close to it.

Even after the area had been settled by the Navajos, the Hopis continued to visit shrines in the area and probably used parts of it for hunting, farming, and herding. But the lack of dwellings indicates that from 1700 on, they made less intensive use of the area than the Navajo.

The Navajos are often depicted as nomadic wanderers. They are not. In the past a family usually maintained two or more dwellings, hogans, ordinarily one for summer range and one for winter, but some maintained others for other seasons or to be able to use one pasture area when there was no water at another site. These hogans are rebuilt and often moved in the process every few years, and are also abandoned when someone dies in the house. A kin-group makes claim on a range area by pointing to the places within it where one or another member has dwelt at various times in the past. Abandonment of a house and of an area are quite different matters.

In the past, water shortages led to movements of as much as 100 miles, and sometimes to resettlement. But this is a far cry from nomadism. The families I know in the disputed territory are living in the same area where the ancestors of some of them dwelt in the 1870's. A family does not so much "own" its territory as control hereditary use rights in the area, which are transmitted within the kin-group unless the entire group abandons the region.

It has been said that there are new houses in the disputed territory. This does not give any evidence that there has been movement in the area. It gives evidence only that families in the area are upgrading their housing.

Navajos should not be viewed as intruders in the area. They have been there for a long time. There is no evidence of immigration during the period since 1882. Navajo continuous occupancy, as well as *de jure* and *de facto* Secretarial settlement, made the Navajos believe that they belonged there, while the 1882 order made some Hopis believe that the entire area was theirs. The result is an unhappy situation where two desperately poor groups of people are contending over a stretch of land of relatively poor quality—one group, the Navajos, striving to maintain their homes, their lands, and their farms where they have lived for centuries, the other, the Hopi, seeking to use the area to expand their livestock industry.

A picture has been presented of a David and Goliath situation, where the Hopi Tribe confronts the Navajo Tribe. What we have is a

confrontation between the 6,000 Hopi and the approximately 8,500 Navajos in that area, equally poor people that are the ones on whom the entire brunt of this bill would fall.

Parts of the disputed territory are among the most inaccessible portions of the Navajo country. The dispute is in some measure responsible for this. As a result of a freeze on improvements in this area, there has been little construction of roads, schools, hospitals, clinics, commercial facilities, gas lines, or power lines. An undereducated population, far from the job market, with a per capita income of around \$600 per annum, compared to \$831 for the entire Navajo population and \$3,484 for the entire United States, has not even the facilities normal to other parts of the reservation, and must rely to an unusual degree on livestock for a living—this is an area where no range improvement programs are undertaken because of the freeze of the entire disputed territory. The Navajos in the area have thus suffered from the dispute.

H.R. 5647 proposes to deal with a problem that results from Federal action and inaction by imposing enormous hardship on Navajos. In 1970, there were about 10,500 Navajos in the disputed territory. The bill requires the relocation of 60 percent of these. One may suspect that a bill that divides the area in half but splits the population 60-40 is awarding the better land to the Hopis.

In addition, the bill establishes a corridor from Moencopi to the Hopi reservation, to be awarded to the Hopis. This requires the relocation of an additional 2,000 Navajos, which, added to the 6,300 to be moved within the disputed territory, provides a 1970 total of about 8,300, or more Navajos than were moved to Fort Sumner in 1864. By 1973, the total is perhaps 9,000 and will grow by $2\frac{1}{2}$ to 3 percent per annum thereafter.

Hopi rights in Moencopi are not disputed, but there is no evident equity in the assignment of a large area west of the Hopi reservation to that tribe. Interestingly, the corridor is deemed necessary because of the reaction the proponents of the bill assume the Navajos will have to relocation—so even more Navajos must be relocated to deal with the effects of the mass relocation within the disputed territory. The bill creates problems that it then attempts to solve. If enacted, it may come to be called the bill for a second Fort Sumner.

U.S. Government experience with planned relocation in other areas has been disastrous. With small populations of a few hundred in Micronesia, it has created demoralization, poverty, dependency on the government, and discontent in every instance known to me. When the government of Northern Rhodesia relocated more than 30,000 members of the Gwembe Tonga Tribe because of the Kariba Dam, eight Tonga were shot by the police when the Tonga resisted relocation.

I see no kind of relocation plan that can result in a satisfactory life for these 8,300 or more Navajos, because no government can plan a successful substitute for the social arrangements that now exist among them. One cannot relocate the young first and leave the old behind, because the Navajos live not in independent elementary families of husband, wife, and immature children, but in extended family clusters. Older people take care of herds. Younger people scratch for a living with part-time or full-time jobs on and off the reservation. The incomes are shared. Neither generation can do without the other.

Family clusters of this kind are aggregated in larger kin-groups that jointly utilize a region for farming, herding, gathering wood, hauling water, and providing water for stock. The families within a kin-group are interdependent for equipment and many emergencies. Although sometimes disputes arise over land and water between such kin-groups, there are marriages between most adjacent groups that reduce the possibility of conflict.

A successful planned move seems to me to be beyond the power of range experts, farm experts, economists, anthropologists, sociologists, and administrators, combined. It involves finding a territory large enough to accommodate this entire group of 8,300 and upward people, having the wisdom to slice up the area into finite pieces each of which contains the right combination of pasture, farm area, wood and water, and assigning it to kin groups. When that is done, these kin-groups must work out their mutual adjustments to one another, all at once, and from scratch.

One cannot by planning rebuild what will be destroyed. While all this is going on, housing must be built. Furthermore, the amenities so long lacking in the area, and nowhere mentioned in the bill, must be provided: roads, electrification, gaslines, schools, hospitals, commercial establishments, administrative headquarters—the lot.

I cannot see any outcome of the planned relocation but a mess, in which "Murphy's law" operates: anything that can go wrong, will go wrong. Navajos in the disputed territory and outside are partially dependent on welfare. But they are not demoralized, and they try to make a living. I think that the result of this move may be generations of indigence, instead of a population of remarkable people, whom I have come to admire.

Let me explain exactly what I mean. To the typical Navajo livestock owner's family, the herd and the income derived from it are major economic assets. The herd is at once a savings account, a source of income, and a source of food for the family. But it is more than that. It provides the herder with a significant economic role in the family, with an opportunity for valuable work, and with a corresponding feeling of pride, worth, and independence. For that reason, the Navajos are, on the whole, far less demoralized and socially disorganized than many other Indian groups in the country.

The herd may not be the sole source of family income. It may be supplemented by some wage income of a younger family member and some welfare payments. But the herd remains the family's mainstay, both economically and psychologically. It gives the family the stability on which it rests and which enables it to raise a generation of reasonably well-adjusted people who, with the benefit of the security of their home life and with adequate education, may be able to make an adjustment to the complex prevailing culture.

Remove the shepherd to a place where he cannot manage stock, remove the herd, and you have removed the foundation and security on which the family rested. Demoralization and social disorganization are the inevitable consequences, and the younger people, no longer the beneficiaries of a stable home life, become just another addition to the problems of maladjustment and alienation in our society.

There is a risk that legislators may regard the \$16 million allotted by H.R. 5647 as the final cost of relocation. Not only is it insufficient

to purchase an adequate amount of land and pay for the cost of relocation and the construction of new homes, but also it fails to take into account the funds needed for roads, schools, administrative centers, range management and improvement, and so on, while the costs of increased Navajo indigence and social disorganization, which will be borne by the Treasury for decades and decades, are left completely out of account.

Let me now conclude. (1) Navajos have lived in the area in dispute for many generations. While Hopis made some use of the land, Navajos were the only group to reside on it.

(2) The U.S. Government entered the picture long after the Navajos had established themselves on the land by promulgating an ambiguous Executive order in 1882, dividing the area in accordance with actual residence patterns in 1891 and 1936, altering these patterns in 1943 by taking 150,000 acres from the Navajos and giving them to the Hopis, and laying the foundation for a 1962 court order under which another 1,100,000 acres can be taken from the Navajos.

(3) No relocation plan I can imagine will succeed. Relocation will cause economic hardship, severe conflict, social disorganization and probably the creation of a dependent population of relocatees.

(4) If the traditional rights of the Hopis within the disputed area are safeguarded, land to expand their cattle industry can be purchased even though it lies at some distance. After all, this land will not be needed for intensive residential use, but primarily for grazing.

The problem of the Navajo-Hopi dispute must be solved by this committee. I strongly urge you to solve it without resorting to relocation of people, since I believe that that will lead in the first instance to resistance, and subsequently to demoralization, disorganization, and despair. Alternatives to H.R. 5647 are before you. I ask you to adopt a solution in a spirit of generosity toward both tribes, and to consider the needs for economic improvement of two impoverished groups.

Mr. MEEDS. Thank you.

Mr. MACDONALD. The next witness will be Mary Lou White.

STATEMENT OF MRS. MARY LOU WHITE, RESIDENT OF THE 1882 EXECUTIVE ORDER AREA, WHITECONE, ARIZ.

Mrs. WHITE. Mr. Chairman and Members of the Congress, my name is Mary Lou White. I live at Whitecone, Ariz., located on the 1882 Executive order area. I have seven children—two boys and five girls. I have a father, mother, one brother, and four sisters; all have families and other relatives.

I have very little education, but I will try to express the feelings of my people.

Today one goes to various gathering places, such as trading posts or in homes, and people talk about the land dispute problem. They talk about such things as how it would affect us if the Steiger bill went through and wonder if the Hopis would really make use of the land, who would have the most advantage to it, and whether it would be the Hopis or Mr. Steiger.

Nevertheless, we Navajos have one prayer and thought—that we will continue to live on the land we were raised on. We have made improvements on this land, such as homes, cornfields, and have built

corrals for what livestock we have. These improvements that I am speaking of didn't happen overnight. It started with our elders. They planted a root for us with a prayer, saying that someday our children will live on this land and light a fire in these homes. We Navajos believe that a fire glowing within a home is an emblem of love and everlasting life.

The homes we have, livestock we own, cornfields, and other improvements may not seem like much to others, but they are our life. It took a long time to build what we have. For this reason, we have no interest in moving to any other place. We pray that we may continue to live where our elders settled some years back and for our fires to keep burning in our homes and for our children to keep growing on this land. This is our prayer. This land is priceless to us.

Today we have young and old, female and male, that are veterans and some are still serving in the Armed Forces. Some of these veterans have land on this 1882 Executive order area. They have families. Some are handicapped. Some never returned to their loved ones. We respect these people. We feel they have done their part and served our country in our behalf. For this, we respect the word "peace."

Our elders lived at peace with the Hopis at one time. They helped one another with food, firewood, greeted each other as brothers and sisters and went to each others homes on horseback, wagons, or whatever transportation was available. The peaceful way was our elders' way. We pray this will come back to reality.

I pray that this land problem will be solved in such a way that it will be an advantage to both tribes and not to anyone else, and in such a way that no one will be hurt by it.

We were taught by my grandparents to respect the fire burning within the homes, for this is love and the root of life. We learned to respect the land by taking care of what was put there for every day living—livestock and cornfields.

Today we are told we are overgrazing the land, we have ruined it, but if you were to go around to each individual person, you would find there is just enough livestock, sheep or cattle, whichever the case, to provide for their needs. My people have little or no education. These days jobs are hard to find for people with little or no education. The living cost is very high. If you consider all of this, we barely have enough livestock to get by. But we are thankful for what we have and take care of them from sunup to sundown.

What I am saying is that we oppose the Steiger bill.

We pray that we may stay where our present homes are with all of our livestock and continue to make more improvements on the land.

On behalf of my people, young and old, speaking from our minds and hearts, I pray this presentation I make will be considered.

Thank you.

Mr. MEEDS. Mrs. White, if having very little education means that one could write or read as well as you do, I wish I had less.

Mr. MACDONALD. Mr. Glenn George.

STATEMENT OF GLENN C. GEORGE, COUNCILMAN, TUBA CITY CHAPTER

Mr. GEORGE. Mr. Chairman and Members of the Congress, my name is Glenn C. George. I am 46 years old and am the councilman

from the Tuba City chapter and president of the 18 chapters comprising the Tuba City agency.

My parents moved to the Tuba City area prior to 1934 and that has been my home ever since. I served in the Air Force for 20 years and returned to Tuba City permanently in 1966. My parents live south of Tuba City in the area that Congressman Steiger would give to the Hopis. My sisters also live in this area close to my parents, and the small number of sheep that they have provides food for the entire family group.

In my statement I want to talk most about section 5 of the Steiger bill, the section which would create the so-called Moencopi Corridor and attach it to the Hopi Reservation. Section 5 provides that about 243,400 acres of land in the 1934 Navajo Reservation should be taken from the Navajos and given to the Hopis.

This area has never been a part of the 1882 Executive order area. While the Hopis would like to confuse the matter, the decision in *Healing v. Jones* and the laws that were passed before it had nothing to do with the 1934 Navajo Reservation.

Almost all of the 243,400 acres of land which Congressman Steiger would cut off from the Navajo Reservation and give to the Hopis as a part of this so-called Moencopi Corridor has been occupied and used continuously and exclusively by Navajos for over 100 years. It is true that at the present time about 900 Hopis live in the village of Moencopi and the area around it, less than 20,000 acres, just south of Tuba City. Hopis have lived there for many years. I personally do not understand why it is necessary to take Moencopi village out of the Navajo Reservation, but I know that some Hopis want that. What I do not understand at all is why this justifies a land grab of 220,000 acres more, on which there are only Navajos.

Unfortunately, every time a new Steiger bill is introduced, the land grab gets bigger. The bill that passed the House of Representatives last year, H.R. 11128, would have given 208,600 acres of land in the 1934 Navajo Reservation to the Hopis. Now, the figures has been increased to 243,000 acres.

What section 5 would do is uproot at least 2,000 Navajos. Harrison Loesch, the former Assistant Secretary of the Interior for Public Land Management, testified at the hearings before the Senate in September of 1972 that the boundary line was designed to follow contour lines on maps. That is what is the problem with the Steiger bill—both in the 1934 Navajo Reservation and the 1882 Executive order area. Boundary lines should be drawn around people, not around mountains.

It is bad enough that the proposed boundary was drawn without regard to where the people are located and have been located for generations, but to give the best lands to the Hopis makes a bad bill even worse. The land which would be given to the Navajos is the land which is not good for raising livestock. Section 5 of the Steiger bill would not only throw 2,000 Navajos off their land, but would also take the best grazing land.

But the Steiger bill is not the only alternative. H.R. 7716, the bill introduced by Representatives Lujan, Conlan, and Runnels several days ago, provides a fair and reasonable alternative to the Steiger bill generally, and to section 5 in particular. Section 401 of the Lujan

bill would give approximately 36,000 acres to the Hopis—much more than the area now occupied by the Hopis and slightly more than that occupied by Hopis in 1934, when Navajo and Hopi rights in the area were fixed. The Lujan bill takes into account the historical use by both tribes as well as present occupancy. But it does not provide for throwing a lot of people off their land.

I know that you Congressmen must deal with many difficult and important matters. I hope, however, that you will be able to spend the same amount of time on our problem as you do on others. The Lujan bill was introduced only a few days ago. If you have not done it yet, please take the time to study it carefully. I am sure you will see it offers a fair and just resolution of the problem.

Mr. MEEDS. Thank you very much, Mr. George.

It is my understanding that you prefer to go for another 15 minutes then, and then take questions? Then we will take the next witness.

Thank you, Mr. George.

Mr. MACDONALD. The next witness is Howard Gorman.

Mr. MEEDS. I am looking forward to your testimony, sir.

STATEMENT OF HOWARD W. GORMAN, COUNCILMAN

Mr. GORMAN. My name is Howard W. Gorman. I am currently a member of the Navajo Tribal Council.

My ancestors lived in the Upper Polacca Valley near Waterless Mountain, which is referred to as district 4, which is located in the disputed area. We were living in the disputed area long prior to the time of the falling stars.

According to Agnes M. Clarke in History of Astronomy in the Nineteenth Century, at page 328, the following account of falling stars is recorded:

On the night of November 12-13, 1833, a tempest of falling stars broke over the earth. North America bore the brunt of its pelting. From the Gulf of Mexico to Halifax, until daylight, with some difficulty, put an end to the display, the sky was scored in every direction with shining tracks and illuminated with majestic fireballs.

Thus it can be seen that my Navajo ancestors lived in the disputed area before 1833. For many years the Hopis and Navajos lived side by side in the disputed area. Difficulties between our peoples came with the arrival of various white concerns. It is my belief that action taken by these white interests is what created most of the trouble. There was very little trouble until Negro soldiers came thorough our country and began drawing lines.

After that came action by the Bureau of Indian Affairs, introduction of Congressmen's bills and court cases. It seems to me that non-Indians created the problem and have proceeded to thoroughly confuse and further complicate the problem that they created. It brings to the situation and the management of district 4 is not right that the carrying capacity in that area is 72 sheep units per year, which is below the subsistence level.

These sheep units include one horse per five sheep units and one cow equals four sheep units. This 72 sheep unit figure for the Navajo in the 1882 area was arrived at in the 1930's when drastic stock reduction was forced on them. But today the Navajo own, in the area, only

five horses. The area is now eroded to an extreme. Water is available through windmills and through natural lakes.

Although manpower is available in the area, unemployment is extremely high. Our situation could be improved. Herds could be consolidated and placed in feedlots located near the source of water. This consolidation and placement would then relieve the balance of man of his burden and would allow for a reseeding project similar to the successful program being carried out near district 18. Livestock would not be allowed in the area being reseeded and revitalized.

The reseeding of the area should be accomplished by hand, not from airplanes. In that matter, the reseeding would be more likely to be successful. The reseeding program could also help relieve the unemployment and economic difficulty in the area. A Navajo-Hopi Conservation Corps could be created, utilizing the available manpower. This Navajo Conservation Corps could be put to work reseeding the area and combating the erosion. The corps would eat and live in the area, in the same manner that was done with the old Conservation Corps in the 1930's.

Using this approach a number of serious problems would be alleviated with one program. Government programs have been tried in the past and have failed. The stock reduction program of the 1930's is a prime example of a program of which the impact hardly could have been calculated. The program was based on the premises that limited reservation lands could only graze a limited number of sheep and livestock without causing extensive erosion.

The order issued from the Office of the Secretary of Interior, the herd must be reduced; the land and sheep are an integral part of the Navajo way of life. Sheep are worth more than money in the Navajo barter economy where they provide food and clothing. The older Navajo people still talk about the drastic stock reduction and recall seeing herds of thousands reduced to 62 sheep units, or 72 sheep units, or 89 sheep units, and so on. But the livestock were rounded up, shot, burned in great heaps and buried in long trenches.

This program has left very bitter memories in the minds of the Navajo people. With a better understanding of the Navajo people, the program could have been successful. But, characterized as it was by paternalism and misunderstanding, it amounted to a disaster for the Navajos.

Today, statistics on the Navajo nation are grim. Unemployment rate is from 60 to 70 percent on the reservation. Most Navajo people still reside in substandard housing, such as the one-room hogan. It was once thought that unemployment and its resulting difficulty could be solved by relocating the Indian people from off Indian reservation lands, but that approach has proved to be a dismal failure.

As I mentioned earlier, solutions are possible. Feedlots and conservation corps could go a long way to resolve these basic and very serious problems. Today the Navajo and Hopi peoples still find strength in their worship of the Holy People while they struggle to adopt that which is meaningful and useful to them in the Anglo world.

Our two tribes can negotiate our differences without encountering the Anglo culture and its force-feeding ways. It is through such an encounter that we have become injured and impoverished. We, the

Navajo and the Hopi people, must be left alone and allowed to settle our trouble without any more interference.

Thank you.

Mr. MEEDS. Thank you very much, Mr. Gorman.

Now, if all the people who have testified will get your chairs up to the witness table—

Mr. MacDONALD. Mr. Chairman, I would like to submit Mr. Wilbur Atcitty's testimony for the record.

Mr. MEEDS. Without objection, so ordered.

[The statement of Mr. Atcitty follows:]

STATEMENT OF WILBUR ATCITTY, DIRECTOR OF TRIBAL ADMINISTRATION

Mr. Chairman and Members of Congress, my name is Wilbur Atcitty. I am Director of Tribal Administration, a position I have held for over two years. In the few minutes that I have been allotted, I would like to discuss the economic implications of the Steiger Bill.

You have already heard Professor Aberle discuss the social and cultural costs of relocation. Without in any way minimizing the personal tragedy that would result from the Steiger Bill, it is important to understand that the massive relocation which is the very heart of the Steiger Bill would require the expenditure of a substantial sum of money.

To be sure, the current version of the Steiger Bill calls for an appropriation of only \$16,000,000. But anyone who has made an economic analysis of the Steiger Bill knows that the direct and indirect costs will be far greater than \$16,000,000. Economists working for the Navajo Tribe have estimated that the cost will be not less than \$80,000,000. I am told that the Department of the Interior has estimated the costs of the Steiger Bill at almost \$90,000,000. I do not know whose figures are correct, but I do know that the real costs are substantially greater than the \$16,000,000 appropriated by the Bill.

Before attempting an economic analysis of the Steiger bill, one should understand what is and is not involved in the relocation. First, the relocation is not simply the movement of 8,500 people, but rather the relocation of 8,500 people who are dependent to a greater or lesser extent upon a livestock economy. Second, these are people who have been long-time residents of the area and, consequently, people who have ties and attachments and other relationships which are far stronger than would be, for example, the ties and attachments of some 8,500 residents of the Los Angeles area who may, on the average, have only lived in the area for three or four years. Third, you should understand that the Navajo Tribe has but a limited income, most of it from mineral royalties, which is presently fully committed in maintaining the day-to-day operations of the Tribe and in providing services to its members. The Navajo Tribe does not have the financial resources to bear the direct and indirect costs associated with the Steiger Bill which would cause the relocation of over 5% of its population and the loss of almost 7% of its land base.

To put this in proper perspective, the relocation of 5% of the population of the United States would be the equivalent of moving a population the size of the New York metropolitan area or the size of the combined populations of the States of Washington, Oregon, Idaho, Montana, Wyoming, Utah, Nevada, Arizona and New Mexico. The loss of 7% of the land area of the United States would mean the loss of an area the size of the State of Texas. Consequently, this is hardly an insignificant problem to the Navajo Tribe, both in terms of population and geographical area.

At the outset it should be noted that the cost of moving is extremely difficult to calculate because from the legislation which has been introduced so far, there is no way to determine where the people would be moving. Furthermore, since the relocation is to take place over a period of years and we are in a period of inflation, it is quite likely that expenses will rise dramatically within the five-year period provided in the current Steiger Bill. Let me outline what I consider the basic costs.

1. *Moving Costs.*—If we use as a guide Public Law 91-646 (1971), the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act, as some guide, we do know that the minimal moving costs per person under this Act are \$300, coupled with a dis-

location allowance of \$200. Thus, using the \$500 figure as a minimum, the minimum cost of moving 8,500 people and their livestock would be \$4,250,000.

2. *Cost of Alternative Land.*—Whatever Congressman Steiger may say to the contrary, the 8,500 people who would be uprooted by the Steiger Bill cannot be relocated elsewhere on the Navajo Reservation. There simply is not enough room or physical resources to absorb such a massive relocation. Accordingly, the Navajo Tribe would be required to buy sufficient additional land with adequate grazing capacity. Given the fact that Sections 2 and 5 of the Steiger Bill would take away from the Navajos approximately 1,200,000 acres, at \$20 an acre (the figure we have used for surface interest alone), it would cost \$24,000,000 to purchase as many acres as the Navajos now occupy.

3. *Cost of Improvements Paid for by The Tribe.*—The Navajo Tribe has made many improvements within the Executive Order Reservation outside of District 6. For example, the Navajo Tribe currently maintains 108 deep-drilled wells and 190 dug wells or shallow spring development. The historical cost of the drilled wells is approximately \$1,400,000, and the cost of the dug well and shallow spring development is over \$300,000.¹ Since many of these were drilled at a time when labor was far less expensive than it is now, the costs of replacement are probably at least double this figure. This does not take into account the costs of replacement of wells or other water development in the Moencopi area.

4. *Cost of Improvements Paid for by Individuals.*—It is extremely difficult to calculate the value of improvements owned by individual families and kin groups, since, as a matter of course, these improvements consisting of hogans, corrals, sweathouses and frame houses are not bought and sold. Outside the major urban areas of the Reservation, there does not exist a ready market to which one can turn to determine value. Nonetheless, estimates of value have been made and the average hogan is worth approximately \$500; the average corral, \$350; the average sweathouse, \$50; and the average frame house, \$4,000.² Assuming there are approximately 750 hogans, 750 frame houses, 1,000 corrals, and 1,000 sweathouses in the area, the total cost of these improvements would be approximately \$3,775,000. This figure may be low and replacement costs may be considerably higher, almost twice as high in some instances because of the increased cost of building materials, such as the cost of lumber, which has doubled within the last two years.

5. *Cost of Schools, Roads and Water Facilities in The New Area.*—In addition to costs due to loss of individual and tribal improvements within the Steiger Bill area, there will be the cost of duplicating or in some instances, creating social overhead items in the area to which the relocated people will move. For example, there will be a necessity for schools and pre-schools, roads, water facilities, sewer facilities, utility lines and the like. It is very difficult to estimate what the cost would be for new schools, but, for example, if we assume that there are approximately 2,500 school-age children within the area and we assume that the average cost of the facilities for a school-age child is approximately \$2,000, this item alone would amount to \$5,000,000. Water and sewer facility costs will depend very greatly on where the people are located because water and sewer costs vary greatly with the terrain and topography of the land. One estimate that has been given by the Navajo Housing Authority for water and sewer facilities for 1,200 families is approximately \$3,300,000.³ Consequently, if we are talking about 1,500 families being relocated, this estimate would increase to approximately \$4,000,000.

None of these estimates can be considered to be fixed because there simply is no basis for determining where the people are going to be relocated. For example, a dirt road costs the BIA approximately \$35,000 a mile to build and bridges cost approximately \$200,000, but of course these costs vary with the type and length of bridge and the type of road. Assuming that one would have to build an entire new set of roads to serve the relocated Navajo community, the dollar cost would be staggering, and could be many millions of dollars.

6. *Cost of New Housing.*—Another important item is the cost of construction of new homes in whatever area the people are eventually relocated. The Bureau of Indian Affairs currently estimates that the cost of decent, safe and sanitary dwellings with provision for utilities is approximately \$25,000 for a typical Navajo family. Unless we are to assume that it is the intent of Congress to

¹ Report of February 16, 1973 of Vincent Shirley, Water Works Department, Navajo Tribe.

² Estimate: Martin Wener, Navajo Prevocational Training Project cited in Memorandum of E. Natwiz, Economist, to Chairman MacDonald, March 1973, P. 5.

³ Navajo Housing Authority, Pat Chee Miller, Executive Director, Report of March 2, 1973 to Chairman MacDonald, P. 3.

require the relocated Navajos to live in substandard dwellings (as many do now), this would require a net cost of \$25,000 per family for 1,500 families. This alone would come to \$37,500,000. Under the Relocation Act described above, a maximum payment of \$15,000 per family is provided and this would only cover 60 percent of the necessary costs. One might ask who is going to pay the bill for the \$15,000,000 not covered by the Relocation Act. Furthermore, these Bureau figures are based upon urban housing or semi-urban housing; it is reasonable to assume that the costs related to building of homes to service a livestock-oriented community would be substantially greater.

7. *Welfare Costs.*—Welfare and retraining would be additional costs that would be imposed as the result of the dislocation of the Navajos. It should be recognized now that approximately 54 percent⁴ of the Reservation population receives some form of welfare. While we do not know the exact figures, we would estimate that because of its remote location and the lack of economic development, the area encompassed by the Executive Order Area would have an even higher percentage of its people on welfare. If these people were relocated, they would either have to be given an economic base so they could continue their traditional way of life, or the cost of loss of livestock would have to be borne by some government (Federal or State) in the form of increased welfare costs. Alternatively, the people would have to be retrained so that they would have marketable skills. (Navajo Community College estimates that it costs approximately \$3,000 per year per person for vocational retraining.)⁵

Again, it should be emphasized that because of the lack of development of this area, the people, though capable of living a good and full life under present conditions, do not have marketable skills for the most part and would be unable to support themselves if they were thrust into a semi-urban area without livestock. This is especially important to note in that some of the proposals for alleviation of the problem have involved the Navajo Indian Irrigation Project or turning the relocated Navajos into feedlot operators. Both of these agricultural professions require a degree of skill that unfortunately most of the people in this area lack. Consequently, there would be at a minimum a great deal of retraining costs. In addition, the area of the Reservation and in and around the Reservation has an extremely high unemployment rate. This rate is only partially shown in the official unemployment figures. (The Navajo, after months of being unable to find work through the employment programs, finally simply stops seeking and then is dropped from the official rolls which only include those "actively seeking work.") In any case, it is likely that the people who will be relocated may lose the wage work that they presently have or will be forced to be separated from their families.

I must apologize that many of my figures are merely "approximations" and "estimates." Unfortunately, I don't think anyone can accurately predict what the real direct and indirect costs of partition and relocation will be. What is most alarming, however, is that those who have advocated adoption of the Steiger Bill have done so without undertaking any investigation of the economic feasibility of the scheme. There may be disagreement about who occupied what lands in years gone by, but I don't think there can be any disagreement that the \$16,000,000 appropriated in the Steiger Bill is merely the down payment on an enormous obligation which will be borne not only by the Navajo Tribe and its members, but also by the United States and even the States surrounding the Reservation for many years to come.

Mr. MEEDS. First of all, probably this is a question for both Mr. Gorman and Mr. MacDonald. With the type of land restoration program you have proposed, the lots and the Navajo-Hopi conservation-type program, Mr. Gorman, how long do you think it would take to bring the Navajo and those portions of the Hopi Reservation here involved back to a place where it was not overgrazed? How many years?

Mr. GORMAN. I believe it would take about 3 years after a reseeded program has been carried out, that the range would come back to normal, so that consideration could be given to allow livestock to go back on while the tribes are in operation around the waterholes or the lakes that we have.

⁴ Memorandum of Eric Natwig, *supra*, P. 6.

⁵ Memorandum of Eric Natwig, *supra*, P. 7.

Mr. MEEDS. If that were done, Mr. MacDonald, would your statement that there was not room for these people to be relocated in other places on the reservation because of the overgrazing still hold up?

Mr. MACDONALD. Yes, because the livestock situation can be taken care of by putting them into feedlots, but the people that have chosen to live in those dotted areas—to move them from one dotted area to another area is simply a move. And any kind of a move is to them very drastic; and especially if we are going to bring back livestock into the area where they are going to be herding sheep again, they will continue to try to maintain their grazing rights in the area by living where they were before, even without livestock.

Mr. MEEDS. Is there not a court order that you are going to have to vacate by October?

Mr. MACDONALD. Yes; as far as livestock is concerned. The court order does not say the people must move out.

Mr. MEEDS. What is going to happen if the livestock is moved and the people are not? Is that not going to be like the stock reduction program in the 1930's?

Mr. MACDONALD. I imagine that most of the people will take it that way. They will take it as a livestock reduction. Not only that, there will be a period of adjustment, because their very way of life today centers around a 24-hour day watch and activity of their livestock. Once you take that away, just having a hogan there, it interrupts the way of life that they had their before.

Mr. MEEDS. Are there areas within the joint use area, not district 6, but in the other part of the land-use area, including that portion which under the Steiger bill went totally to the Hopis, which have special religious significance to the Navajos.

Mr. MACDONALD. Yes; in the area where the Steiger line would cede to the Hopis, there are areas in there where the Navajos have been using the various waterholes or various mounds as a shrine, and also a place where they make sacrifices for their ceremonies all in that area.

Mr. MEEDS. Assuming for the moment that they were required to move out of those areas, would you think that there should be some kind of provision in the legislation or in the legislative act that accomplishes this protecting and giving them a right to return to those areas?

Mr. MACDONALD. Mr. Chairman, that is exactly what we are suggesting, that kind of a right be given to the Hopis and let the Navajos stay there.

Mr. MEEDS. Pardon me. I am sorry, sir.

Mr. MACDONALD. We are suggesting in the bill 7716, we actually said that, that we will let the Hopis use the areas—

Mr. MEEDS. You are not answering my question. You are answering your own. Let us reverse that, and say the Navajos were required to move. Should their special religious shrines or areas be preserved?

Mr. MACDONALD. Yes.

Mr. MEEDS. So they would have a right to reenter?

Mr. MACDONALD. The Navajos would be moved out there, and we hope this does not happen. It would certainly be right to have continued access to the ceremonial sites.

Mr. MEEDS. The gentleman from New Mexico?

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. MacDonald, to quickly put a matter to rest, you are pleased with the subsurface rights on all areas of legislation we are considering now, is that correct? Do you think they should be in joint ownership, the subsurface rights?

Mr. MacDonald. Yes.

Mr. LUJAN. So the Hopis and the Navajos are in agreement on that.

What about the BIA plan which has been proposed putting the animals in feedlots and then returning them in a proportion which might be suitable?

Do you think that is a good plan? Do you approve of that plan?

Mr. MacDonald. No, we do not approve of the plan, because first of all, the plan involves a lot of planning that deals with the money that they must get in order to accomplish the plan that they have set out, although the plan itself, the feedlot plan, is something that we would like to see, but the implementation, the realization of the plan is something doubtful.

Mr. LUJAN. The very basis of the plan excluding the money parts, and all of that, the very basis of the plan when you move all the animals into a feedlot let the grass grow, and then bring the animals back on a 50-50 basis, 50 percent Hopi and 50 percent Navajo, that generally fits in with your thinking, does it not?

Mr. MacDonald. It fits in with what might considered as an alternative. It does not fit in with the bill that we are forwarding, no.

Mr. LUJAN. What about all of these new houses that are being built there that we have been hearing so much about?

Mr. MacDonald. Mr. Chairman, members of the Congress, I would like to answer Mr. Lujan's question this way. There are new hogans and new houses being built on that area, not only in that area, but the whole reservation, but these new homes and houses so-called being built are not people moving in from Ship Rock or Tuba City or other areas. These new homes are being built because the old hogan has deteriorated to the point where people need a decent shelter. So the new homes that people are saying are being built are not Navajos migrating into the area, but the people that have lived there for years are improving their homes. Certainly there are new homes being built in there; it is because the people are improving their homes.

Mr. LUJAN. As you heard this morning, since you were in the room, my main concern is about moving people. Looking at the problem in that respect, is there any line that might be drawn where hardly anybody would be moved?

Mr. MacDonald. Yes, we drew such a line right at the time when we were negotiating with the Hopis, and the line we drew is a line along the highway coming out of the district 6, south all the way down past Winslow; then we had another chunk of land which is south of Winslow with nobody living there; that is a new line.

Mr. LUJAN. Is that a Navajo Reservation line?

Mr. MacDonald. No, it is private land, Government land, State land, that could be purchased in lieu of that land up there.

Mr. LUJAN. Would that give almost as much acreage as the partition under this legislation?

Mr. MACDONALD. Almost as much, yes; and in many cases, the land would be 50 percent or 100 percent better than the land that the Hopis would like to have up in there and dislocate 8,000 Navajos.

Mr. LUJAN. What you are saying, buy land south of district 6 and give that to the Hopis because there you would have no real relocation problem, and dollar for dollar it would be at least equal to the division under the bill under consideration?

Mr. MACDONALD. Yes, and in many cases, it would be more, because the pasture land down south of Winslow is much better than the one up there.

Mr. LUJAN. Do you remember those figures, by any chance? I do not even know how much out of district 6 the Steiger bill would turn over to the Hopis.

Mr. MACDONALD. It is over 900,000, the red area is over 900,000 acres.

Mr. LUJAN. That would be 900,000 over and above the district 6 land that the Hopis would get. What about this other land that you are talking about that could be purchased? Do you remember what that was in terms of acreage?

Mr. MACDONALD. About 900,000.

The land that we saw, we sort of took a block and made a study of it, runs in the area of 900,000.

Mr. LUJAN. Who would buy that land?

Mr. MACDONALD. Either the Government would buy it, or the money that we give to the Hopis would be used to buy that land.

Mr. MEEDS. The time of the gentleman has expired.

The gentleman from Arizona?

Mr. STEIGER. Thank you, Mr. Chairman.

Incidentally, Chairman MacDonald, I agree with your evaluation as to the dollar value of that country south of the reservation and south of town. I believe that dollarwise it would be more valuable than any partition. I also think that the Hopi's total rejection of that plan, even though they recognize that it would be more valuable, sharpens our problem, which is to resolve this thing one way or the other.

I would like to address a question to, I guess, Chairman MacDonald, since you led off, although I think every witness including the good doctor that testified on this matter. By way of background, I am just going to go back to last year's hearing in which we had Mr. Loesch, then of the Department, responding to a question by Mr. Lujan as to how many Navajos would be affected by the Steiger bill, and he says, "An outside figure—5,500, Mr. Lujan."

On that same occasion, we have testimony by Mr. Vlassis in the form of a statement representing the tribe in which he says he refers to a Department report of the BIA that refers to the fact that only—and his "only" is in quotes—"only" 3,900 Navajos would be affected.

Then we go on to a further comment, and this is by way of a summary—I am quoting, incidentally, generally from last year's transcript—this is also a supplementary statement submitted by Mr. Vlassis on behalf of the tribe, and it refers to the fact that over 6,000 Navajos would be relocated. That is the high figure, the 6,000 figure.

Now, you, Mr. Chairman, and all of the other people who have testified, have referred to 8,500.

Now, within this 1 year's time—incidentally, the hearings last year were in April, the 17th and 18th; so it is actually 13 months—I am to

understand either that 2,500 people have moved into this area or you have simply revised your basic estimate as to the effect of population growth. Would you care to respond, Mr. MacDonald, or whoever else might have the information?

Mr. MACDONALD. Yes.

Mr. STEIGER, I will say again, no one, no one has deliberately moved into that area; there is no way that anyone would move into any of those areas in dispute, Navajo that is. The count that we give you is a result of a new study that had been made by trying to get a more accurate account ourselves. That is what it is. That includes also the 8,400, the 8,500 that we are talking about, includes the 1934 figures that you are talking about, 6,000—we are talking about the 6,000 in the Executive order area.

In the statement that I made, I think I said approximately, but this time we said that the closest study that we have made by our tribal work-experience program, indicated that there are over 8,000, and that figure is going to change; it changes every day, as you know. There are newborn in those areas every day. Certainly tomorrow, next month, you are going to have different figures, different by another 500, because the Navajo grows at least 3 percent per year.

Mr. STEIGER. Your answer simply is that you have done a better study, and I congratulate you, because certainly those figures, I have never really been able to get an accurate figure. I know I have asked your office and I have asked the BIA office. I think it is important, because obviously, this is the heart of the problem. If we had to move one person that did not want to move, it would be a problem.

It is obviously compounded by the number of the times that we have to create this problem. That is why I share in your enthusiasm for more accurate figures, and I am pleased that we have them available, because in the past, they simply have not been available, and it is very difficult for us to make a judgment that is going to depend at least in part on how many people are affected, and we get a great variety of figures.

That is all, Mr. Chairman.

Mr. MEEDS. Thank you.

Mr. MacDonald, I have a copy of the order, and No. 7 provides, "No new construction shall be permitted on the joint use area without a permit issued jointly by the two tribes, except the Hopi tribe shall be permitted to construct the number of dwellings or improvements equal to those of Navajo dwellings and other improvements that are permanently existing or are now under construction in the joint use area."

First of all, it is my recollection that you indicated that there were some newer dwellings, correct?

Mr. MACDONALD. Repairs to the old ones are just abandoning on the old ones, and building new homes——

Mr. MEEDS. Were joint use permits obtained for those?

Mr. MACDONALD. No; we could never get any consent from the Hopi tribe on any construction in that area.

Mr. MEEDS. Do you not suppose the court meant what they said that those dwellings were not to be built unless there was a permit issued, that the Hopi consent was one part of that?

Mr. MACDONALD. That is right; and I will let my attorney answer that question, because it is a legal question. But I agree with you that if it is a court order—

Mr. MEEDS. I am not too interested even as a violation but it brings into question the fact that you are coming in here to testify about these things, and you say you have not done these things and you have not done that. Here is recently a court order that is less than 1 year old, that is apparently being violated.

What are we to believe about what has happened since 1882? You see what that type of thing does for me?

Mr. MACDONALD. I can see what it does for you, but you can see what it does for the Navajos. The fact of the matter is that most of those homes that you count as new homes being built, I am positive have been built before the court order, or have been issued. Unless somebody can show me that there are new homes being built yesterday or the day before, then we will have to deal with those.

Second, my attorney also at the time told us that there is an appeal to that order to try to resolve that question in a different way.

Mr. MEEDS. You would agree with me, though, that as long as it is the law, it should be complied with, would you not?

Mr. MACDONALD. It is. Of course, the law is only good if the people understand it.

Mr. MEEDS. I will agree that we have not had perfect examples recently. I do not recall that I have gotten to follow up with you as much as I wanted to. Assuming that Mr. Gorman is correct, and assuming that money which was divided was devoted to a land restoration program, which could bring grazing to a proper perspective within the 3 years, could there then be existing Navajo in the disputed area, the joint use area—pardon me, the disputed area under the Steiger bill if it passed the House—which would be the top part of that strange shaped map—could the Navajos be properly absorbed on the rest of the reservation from that area? Now that is assuming that the land restoration program worked.

Mr. MACDONALD. The Navajos in red areas would be absorbed in the upper portion? Is that the question?

Mr. MEEDS. Yes; the upper portion, the red area.

Mr. MACDONALD. I doubt it very seriously, because there are about 6,000 less than that in that portion.

Mr. MEEDS. Probably closer to 7,000 in that reservation? On the entire half of the reservation?

Mr. MACDONALD. Simply the way the Navajos establish homes, they do not come together like a community, the way they establish their livelihood over the years and even at urban centers like Ship Rock and Window Rock, it is very difficult to bring people into an area so that housing development could be accomplished. They still like to live, even without livestock.

Mr. MEEDS. If I understand it, however, the anthropologists testified that that was about 7 percent of the land area of the entire reservation, is that correct?

Mr. ABERLE. I did not comment to that effect.

Mr. MEEDS. Somebody did. Who said it?

What percent is that upper part of the red in the Steiger bill? What percent of that is the whole Navajo Reservation?

Mr. MACDONALD. What percent of the Navajo Reservation is that part up there above?

Mr. MEEDS. That is correct.

Mr. MACDONALD. I imagine about 5 or 6 percent.

Mr. MEEDS. We are talking about lessening the burden of the land on the rest of the reservation, the entire reservation, almost what—16 million acres.

You still do not think that that remainder would be able to absorb, laying aside for a moment—which I do not mean to, but for the purposes of this discussion—laying aside the dislocation of people and the traumatic aspects of it, simply from the standpoint of a subsistence, do you feel that with that kind of increase that Mr. Gorman described in 3 years, that the rest of the Navajo Reservation could not absorb those people?

Mr. MACDONALD. Not any more than using the Rocky Mountains as an area where you could put all of the American people in that area. It is that kind of situation, not only geographically, but it is just the custom and tradition of the people that prevents that, from that kind of movement, simply because those kind of people who are living in the red area have strong roots in those areas, with or without the livestock.

Mr. MEEDS. Mr. Gorman, could I address the same question to you?

Again, laying aside the traumatic aspect of moving, strictly from a subsistence standpoint, would not the rest of the Navajo Reservation under the type of restoration program that you described, be able to absorb those people in that area that I described?

Mr. GORMAN. No, I do not think so.

Mr. MEEDS. Why do you think not, sir?

Mr. GORMAN. Because the concentration around these waterholes for feedlots, that would eliminate moving anybody out of there.

Mr. MEEDS. I am not quite certain that I understand you, sir. The feedlots on the rest of the Navajo Reservation, or the feedlots on the disputed area?

Mr. GORMAN. We have a map here showing the watering places in the disputed area. What we are talking about is all of this land in here [indicating] and especially the Steiger line in here [indicating]. These are waterholes. These are windmills that are already there, and the concentration of livestock around these windmills, feedlots, to establish feedlots, and then that would leave these areas where they used to graze so that the area could be rehabilitated, such as is being done in district 18, district 11.

Mr. MEEDS. I am talking about a program like that taking place on the entire Navajo Reservation, not just there.

Mr. GORMAN. I think it would be very expensive to carry on a program like that.

Mr. MEEDS. I am sure it would.

Mr. MACDONALD. What I was going to say, Mr. Chairman, the reason I said what I said, it is very difficult to work it in actual, practical terms, is that we just last fall moved by a court order seven families out of district 6. To this day, we still have not found a place for the seven families to move to. They are still at the fairgrounds on the Navajo Reservation in the temporary trailer setup.

Mr. MEEDS. You mean on 16 million acres?

Mr. MACDONALD. That is right.

Mr. GORMAN. We do not have any vacant land, Mr. Chairman. Everything is occupied.

Mr. MEEDS. It is not occupied from the standpoint that it is required to give sustenance to people because it is overgrazed, because it is poor land; is that not the reason, partly the basic reason?

Mr. MACDONALD. They also have a use right to that area, and no more can I force somebody to live in your backyard, can we, the Navajo Nation, force someone to live on someone's use right.

Mr. MEEDS. Can you not vote by majority vote of the council to do that?

Mr. MACDONALD. No, we do not work like the Government. We do not condemn and throw people off their land. We have a heart.

Mr. MEEDS. I certainly hope the Hopis have a heart also.

Mr. MACDONALD. I certainly hope so or they would not suggest their brothers move from the land.

Mr. MEEDS. Dr. Aberle, would you attempt to answer my question, if I have made myself anywhere near clear?

Mr. ABERLE. The question with respect to the absorption of people out from inside of the disputed territory within the redline?

Mr. MEEDS. Yes.

Mr. ABERLE. From a subsistence standpoint?

Mr. MEEDS. Yes.

Mr. ABERLE. Probably from a subsistence standpoint, the people are subsistent. You are talking about a bunch of people who have on an average not more than 50 sheep units per family, and it is estimated that it takes 275 sheep units to provide a comfortable subsistence for a Navajo family. In a sense, to talk about subsistence is a little mystifying, but if I could become a little anecdotal, the situation at present—

Mr. MEEDS. You mean more so?

Mr. ABERLE [continuing]. I do not believe I have told anecdotes yet. The situation is such that when a more remote relative says, I want to move in closer to you, because it would be convenient to me, the relative has to say, it would be nice, only what do I do with my sheep?

If everybody could move over one-quarter of an inch, this would all make sense; but when you talk about shoving a family in amongst two or three large related groups of kin, each of which itself is crowded, you are creating havoc. It does not make sense.

Mr. MEEDS. Again, why is it crowded, sir? Because it is overgrazed, is it not?

Mr. ABERLE. Because there are too many people for the size of the territory.

Mr. MEEDS. The plan that Mr. Gorman talked about, which impressed me a great deal, was an effort to increase what the land would sustain. He talked about a 3-year program, putting the stock in feedlots and having a Navajo-Hopi Conservation Corps, and I am intrigued with conservation corps, to renovate the land and to make it capable of bearing more traffic, so to speak.

Does that then not remove the basic thing that you are talking about, why it is crowded?

Mr. STEIGER. Excuse me, Mr. Chairman.

I wonder if one of you gentlemen would explain to the Chair what it would cost per acre to renovate this land? I think we ought to get

this in perspective, otherwise we are going to be off on a tangent. If you do not know, I would be happy to supply you with the information.

Mr. ABERLE. No.

Mr. STEIGER. The answer is \$100 an acre, minimum. That does not guarantee any success. You are looking at 16 million acres.

Mr. ABERLE. To respond to your question, if there can be land restoration, the main hope that it affords is of enabling people to make more of a living. What you are suggesting is to crowd them in, once you have got this range improved, so they can make as bad a living or worse than they are making now; and you are disregarding the use-right program, which is a very serious one.

Mr. MEEDS. I am not disregarding it, sir, at all. I am asking for the subsistence facts, not the other facts, of which I am very well aware exist.

Mr. ABERLE. A proper answer then, if you were to improve the range, you could subsist more Navajos in poverty and less of it.

Mr. MEEDS. Thank you. The gentleman from New Mexico?

Mr. LUJAN. I would like to follow that. I have been doing some quick arithmetic here, as we have been discussing this subsistence question and what a person needs, and can you move them on to the other part.

I took 16 million acres and divided it by the total population, which is about 120,000. That means that one person has 125 acres.

Now, my good friend from Arizona, who knows a lot about cattle, and things like that, tells me that even after having this land restored when it gets to be very good land, that it would graze 10 head of cattle per section, or 50 head of sheep per section.

So then the doctor says that a family needs 275 sheep in order to survive.

Mr. ABERLE. That was in 1950 figures, sir.

Mr. LUJAN. Even at half that figure, and you can very well see, that it is nowhere near the carrying capacity to give subsistence to 120,000 families; of course that's offset by the fact that not all of them are in the business of raising sheep or cattle. They are involved in other industries.

I think that pretty well points out the fact that you cannot take these people and relocate them into the rest of the Navajo reservation. It still, of course, doesn't get back to the very point of having to relocate the people whether you can accommodate them or not. That is all I have to say about it.

Mr. MEEDS. The gentleman from Arizona.

Mr. STEIGER. Thank you, Mr. Chairman.

Doctor, I don't have much time, so if you could just respond in the affirmative or in the negative. Did you represent the tribe in the *Healing v. Jones* matter?

Mr. ABERLE. I did not, sir.

Mr. STEIGER. How long have you been involved in the study that produced this statement?

Mr. ABERLE. I have been preparing this statement over the last month. The field experience on which it is based was back over more than 20 years.

Mr. STEIGER. I see.

In what capacity were you in in that 20 years?

Mr. ABERLE. I was an anthropologist working on my own with the university and an anthropologist further employed by BIA, a specific study that had nothing to do with land.

Mr. STEIGER. Did it have to do with the Navajo Nation?

Mr. ABERLE. It had to do with the Peyote religion among the Navajo.

Mr. STEIGER. So you were not a Navajo tribe employee. So 30 days ago—

Mr. ABERLE. I'm not an employee.

Mr. STEIGER. You're not being paid by the Navajo tribe?

Mr. ABERLE. They're paying my expenses.

Mr. STEIGER. I see nothing insidious about them employing a man of your reputation, believe me. I must say, sir, that the equation of the Navajo people with the Gwembe Tonga tribe, that answered their relocation problem with weapons is one, were I your employer, I'd take a little umbrage with you. That is not my place to do it, however.

Chairman MacDonald, I think the nitty-gritty of the whole thing was summed up by Chairman Meeds. He asked you if you did not think that you were in violation of the law when you failed to get building permits or when your people failed to get building permits.

If you will be candid with me, which I know you are by nature, Mr. Chairman, would you tell us do you plan to comply with the law, with the court order that asks you or tells you to remove your livestock by October 14 of 1973?

And feel free, as far as I'm concerned, less the chairman has some objection, if you'd like to consult with counsel, that's fine.

Mr. MEEDS. No objection.

Mr. MACDONALD. As far as I am concerned whatever the law is, we are going to abide by it. That is why we recognize that there is a *Healing v. Jones*; therefore, a solution must be found with that in mind; that is why we make those proposals.

In regard to the court order, I will let counsel answer those because he is more up-to-date on it where the thing is right now.

Mr. STEIGER. I don't think that requires the counsel's interpretation. I'm just asking if you, as a chairman of the Navajo Tribal Council, plan to recommend implementation of the court order that says you must remove the livestock from the joint-use lands.

Mr. MACDONALD. If we are so advised by our counsel, yes.

Mr. STEIGER. What has your counsel's advice been to date on that matter?

Mr. MACDONALD. He has not advised me to date about what we should do about that.

Mr. STEIGER. It's now 7 months old. I think it is important that the committee know that if you plan as tribal chairman to accept the court order, assuming that your counsel tells you that appeals have been exhausted, as I understand that the appeals have not been stayed.

Mr. MACDONALD. Maybe I should get advice, now.

Mr. STEIGER. Of course.

[Pause.]

Mr. LUJAN. Mr. Chairman, I was just wondering with the course the questioning has taken if the gentleman from Arizona is implying if nothing is done up until the 11 months, that Chairman MacDonald

would go out there with a rifle or a broomstick, or whatever he can get and shoo the sheep away from the area.

Of course, he has said that he wants to abide by the law. I think the question is going beyond that.

What do you expect him to do?

Mr. STEIGER. I think, Chairman MacDonald and I understand and I'd be happy to explain it to you later—Chairman, if you will respond since I've seen you've had a chance to consult with counsel, I would appreciate it.

Mr. VLASSIS. My name is George Vlassis, general counsel for the tribe. I would like to respond to Mr. Steiger's question about the court order.

Mr. MEEDS. Please do.

Mr. VLASSIS. The court order itself was received on April 24. This is May 14. The order, if you read the text of the order itself, it indicates that the order that was submitted by the Federal Government for our approval by the judge in Tucson was approved. But it was approved and supplemented and amended by the testimony of the Bureau of Indian Affairs in the form of Mr. Irving Schwartz.

Mr. Irving Schwartz was examined on direct, redirect, and cross examined twice, so that the order that appears to be a page or two long is now a volume long and that order is subject to appeal. It is generally known, I think, between the Bureau and the tribe on an informal basis that the first part of the implementation of the order is in fact a range survey. Everyone agrees to the range survey; whenever the Government would want to start the survey, they may.

In the meantime, there's nothing to implement it, and the order is subject to appeal. And if in fact something further happens, with the range survey, we'll probably ask for a stay.

Mr. STEIGER. Counsel, you can speak plainer than that. You will ask for a stay.

Mr. VLASSIS. I may be not able to ask for a stay because the bond might be set too high.

Mr. STEIGER. Is it your intention to ask for a stay? That's my whole point.

Everybody has agreed, Mr. Chairman, that this land is badly overgrazed, and I hope the chairman has a chance to view it for himself, if he hasn't. The Bureau of the Navajos accepts that. The remedy for that is in some doubt. As a matter of fact, Mr. MacDonald, is it not true that the so-called reduction of the 1930's was no reduction; no significant reduction, because the people that had owned the livestock simply refused to comply?

Mr. MACDONALD. That's baloney.

Mr. STEIGER. I'd be happy to have your version of it.

Mr. MACDONALD. At least 50 percent of the Navajo livestock is gone. I can attest to that because of my own home. We had at one time—my grand uncle had 5,000 heads of sheep and it was reduced down to 300.

Mr. STEIGER. Why then was it ruled a failure, because of the failure of the people to cooperate and to comply, which is the official BIA position.

Mr. MACDONALD. Because it continued to get worse, and the Navajo got a living the best way they could, again, by maintaining what was

ever given to them and maybe a little bit more; in some cases, than was allotted, as the carrying capacity at that time.

Mr. STEIGER. There was also a court order, Mr. Chairman, of some undetermined date in which the administrators, the Navajo administrators, of the joint use area were ordered by the court to entertain, accept and process Hopi applications for grazing rights on the disputed lands.

To your knowledge, were any of those ever received, and was any action ever taken either favorable or unfavorable on those applications by the Hopi ranchers?

Mr. MACDONALD. There has not come across my desk any application requesting grazing permits in the joint use area.

Mr. STEIGER. You know then of no grazing applications that were submitted, of your own knowledge?

Mr. MACDONALD. I know of none. This came out a year ago when we met in Albuquerque. At that time, I suggested that we set up a joint board by which we can begin to deal with that question of how it is that the Hopi is going to move into joint use area and actually get a permit, and again, to use some of the joint use area.

But this never came about because the Hopi rejected it as proposed.

Mr. STEIGER. To your knowledge, in the negotiations that you, yourself, have been engaged in and the conversations, both formal and informal, do you know of any plan that the Hopis have shown any interest in, but does not include possession of the same land that your people are now in possession of?

What I'm asking—it's no trick what I'm asking you. Do you know of anything that has been offered by way of compromise on your part or compromise on the part of the Hopi to negotiate in which the Hopis have shown the inclination to respond?

Mr. MACDONALD. We thought there was a great interest when we suggested the land down south and west of the Navajo Reservation, outside of the reservation. But then at our last meeting, which was just 2 weeks ago in Phoenix, they rejected it and went back to the old.

Mr. STEIGER. Mr. Chairman, I just wondered if you would indulge me at this point where perhaps. I think those two questions are so critical; the joint administration of the area and what, if anything, could conceivably be acceptable for the groups would be possible, that one of the Hopi witnesses be asked to return just for the purpose, whenever we're through with these gentlemen, if you feel we have the time to invite them just for the purpose of responding to those two areas.

Mr. MEEDS. Why don't we ask Chairman MacDonald, and if the Hopi people are still here, to enter for the record anything of this nature that they might have, because if we call one back and not the other, we would be accused of favoritism.

Mr. STEIGER. The point I'm trying to make, Mr. Chairman, is one I hope you will accept, at least by stipulation. It is my understanding, it is my opinion that as Chairman MacDonald has eloquently stated, and Mrs. White has stated, and Mr. George has stated, the affinity that these people feel for the lands, which the court has determined does not belong to them, is an affinity that I think all of us, no matter what side of the issue we are on, understand.

Therefore, what has happened is that regardless of what the court determines as equitable, either it is not possible or there is no enforce-

ment device that is available to the Federal establishment, or indeed, to either of the tribes to allow a court order to be enforced in any meaningful manner.

I think the committee must consider, and I know that the chairman of the subcommittee has a real, and I'm most appreciative, a very sincere desire to resolve this thing; and it would have been very easy for him to ignore it. So I appreciate his awareness of the situation. I also share his instincts not to want to move anybody that doesn't want to be moved, because I went through the same metamorphosis myself. I will tell the chairman, if that is indeed achievable, fine.

But the chairman should be aware as the author of the legislation that would force the arbitration as perhaps the most appealable of all the devices. The chairman should be aware and I have tried to elicit this from the Navajos, as they are a sincere people, the Navajos simply don't feel that they have to comply with anything that does not permit them to remain there.

That attitude has forced a situation that can only be compounded because both as they have pointed out; forgetting the immigration into the area, the natural population growth, that both parties are now in a head-to-head confrontation. And I will tell you that the Hopis are my friends, and the Navajos used to be my friends, and I have spent a lot of time on the reservation. And I don't know the Hopis are all that much ahead of the Navajos when it comes to taking care of their land.

I've seen the Hopi land, by any yardstick, Mr. Chairman, is overgrazed. The point is that it is not as overgrazed as the Navajo. The Navajo has not overgrazed his land because he is greedy or avaricious. He has overgrazed it because of overpopulation.

I'll tell the chairman and Chairman MacDonald, it is my firm, unalterable conviction, that whatever is done by the Congress must be, if you will, arbitrary; but it must be final in nature and cannot lend itself to any future procrastination, delay or judgment calls.

Dr. Aberle has come in here in good faith, and in my view, tried to retry *Healing v. Jones* because he went through the anthropological arguments that they went through for months and months and months in *Healing v. Jones*. That is decided. That is laid to rest.

We are now faced with the law. It seems to me, Mr. Chairman, that the fact that it was very difficult for us to get any kind of expression; this says yes, if the Congress tells us to move, we'll move but we won't like it. Chairman MacDonald is too honest, I think, to do that.

I think Chairman MacDonald has serious doubts as to whether his people will move, but that attitude is the very attitude that's going to eventually lead to violence, and the kind of thing that we can't accept. I think we could have brought this out had we brought the Hopi witnesses back.

This is an unalterable—reason and logic is not going to prevail here. That's my point.

Mr. MEEDS. The gentleman from Arizona, I'm sure that we are all aware that this is a very difficult solution because of the attachment of both of these people to the land.

I just have one final question or observation. We are informed that the birthrate is 3 percent, and in less than 2 years, you will have created on the Navajo Reservation the same demands that are being

made by the area in question; which is less than 6 percent of the Navajo population. That is something to think about.

The gentleman from New Mexico?

Mr. RUNNELS. Thank you.

I'd like to ask Chairman MacDonald, do you know how many Hopis make their living from raising livestock?

Mr. MACDONALD. No. We were told that at least by 35 or 40 ranches of the Hopi.

Mr. RUNNELS. Let's talk about the area then. How many Navajos in that area make their living from raising livestock?

Mr. MACDONALD. In the Executive 1882 Order area?

Mr. RUNNELS. Yes.

Mr. MACDONALD. I would say about 95 percent.

Mr. RUNNELS. If the Hopis—if the Steiger bill went through and became law, and if they moved out or were forced out, what do you think the Hopis would do with that land?

Mr. MACDONALD. Nothing.

Mr. RUNNELS. They would not graze it?

Mr. MACDONALD. They won't graze it because their present demand for the grazing in the area is sufficient in the district 6. And if they do use it, they'll vacate that area and probably go into peripheral, and maybe go 5 miles outside district 6. And that's about it. It was just moving that herd that was inside district 6 outside into the 4 or 5 miles of district 6; otherwise, it would remain vacant for another 15, 20, or 25 years. I don't know how long.

Mr. RUNNELS. Thank you, Mr. Chairman.

I'm just asking this question, because like Congressman Steiger a while ago, because of the essence of time; the real issue then is the Hopis do not by nature, they are not livestock people in comparison with the Navajos.

Is this a correct assumption?

Mr. MACDONALD. That is a correct assumption; not only that we tried to grasp the reason behind moving 8,000 people so that the land could be left vacant there, and no one use it, and let the alternative that we are suggesting here is that equity could be achieved in a different way without moving people, and still get the equitable solution that we would like to see.

Mr. RUNNELS. Do the Hopis have any committee or council or something to regulate their people of grazing cattle and sheep?

Mr. MACDONALD. Yes; they have a grazing committee.

Mr. RUNNELS. Do the Navajos have a grazing committee?

Mr. MACDONALD. Yes.

Mr. RUNNELS. Do you believe—I had asked this question of the Hopis. I believe you were in the room. Do you believe that fencing the area off is the only solution, with a fence rather than have an open range, and a joint use space?

Mr. MACDONALD. Yes; fencing—of course, if you're going into a feedlot, fencing is not necessary.

Mr. RUNNELS. Let me ask another question then, due to the chairman's question on some acreage down in the south and west, down by Winslow, and I understood it's much better land than what we're talking about. Let's just say and using a stretch of the imagination.

If that land belonged to the Navajos, and I believe it was 900,000 acres, and that's what we're talking about. If that land belonged to

the Navajos and you went to the Navajos that were in the areas that is being argued about, and you said, we got some good land down here, much better than where you are; would you be willing to pick up stakes and move your family down there. What percentage do you think would go down to that southwest part, if the Hopis didn't want it—I'm asking you a question, do you think the Navajos would want it?

Mr. MACDONALD. I would say perhaps, there would be some percentage, but not high, perhaps 5 percent.

Mr. RUNNELS. Would all of them move?

Mr. MACDONALD. They might be interested in moving down to the new land, but the rest of them because of the long attachment to that area, it's going to be difficult for them to pick up stakes.

Mr. STEIGER. Would the gentleman yield?

Mr. RUNNELS. Yes.

Mr. STEIGER. The point is regardless of whatever happens to the Hopis that Chairman MacDonald wishes to recite, and whatever the transposition of the roles is: the fact is the land belongs to the Hopis and they want it. It's really that simple. This is the hub of the situation, that the Navajos are in possession and they want it.

All of this logic and reason can't be applied to this situation. Thank you.

Mr. RUNNELS. Well, the chairman asked why couldn't they move them to other parts. Am I assuming correctly, water is the main reason why they cannot move, because water can be very difficult—you've showed the map of all the windmills, the windmills and the source of water.

On the rest of the Navajo Reservation is water as easily available as it is in that area?

Mr. MACDONALD. That and plus two other things. No. 1, the people living in that red area, it took them over 100 years to know the land, to cultivate it and locate homes exactly where they wanted it. And that's where they are. It's going to take them that long to come to the new land and experiment with it and move around and finally get to the point. This is the one thing they don't want to go through because they've already found a way to use that land by knowing it for over 100 years.

Number two is that the Navajos also like to have justice rendered to them, just the way that the outside justice works. For instance, we have land much further north of the present reservation boundary and east of the reservation boundary. We know that there are ranchers in there, and other non-Navajo ranchers such as even the city of Gallum, the town of Farmington, Cortez, Colo., and there are people that live in that area and yet, we have a right to that land even by the Indian Claims Commission. And they said the land was ours.

Now, we want that land just as the Hopi wants that land. If you use Mr. Steiger's argument that the Navajo wants that land and Cortez wants to maintain their city there, and doesn't want to move the city, what do we do? You are facing the same question. Would you move the whole city and give the land to the Navajos, even though we don't live there at all, and have not had that land for some time?

The question is that this is not the way. You can do it to us, but you are going to say, we are going to let Cortez be where it is, Gallup where

it is, Farmington be where it is. We're going to pay you off. Let the people live there because you don't use it now.

You're in the other area. We are going to pay you for that; not only that, we are going to pay you the value of the land at the time of the taking, in the 1800's, the value of the land at that time.

So this is what we're asking. I was very appalled when Senator Goldwater said this morning that we don't need to give moneys to the Indians for their relocation. This hurts me, because here it is, my representative saying that, when I know that Steiger and Conlan are busy trying to introduce a bill to pay for the relocation of ranchers from Apache reservations.

This kind of justice is not right. All we are asking here is consider us just the way you would do it if you were in that area, and the Navajos had a claim to it. If there were 6,000 Anglos in a city in that area, would you move it?

I don't think so. You won't even pay us the present value. You would pay us the value that was before anything was ever developed.

I think that what we are asking for is the kind of justice that you would give to everybody else.

Mr. MEEDS. On that happy note, these hearings will be in recess; each side having had their 2, somewhat over, 2 hours.

Thank you very much.

[Whereupon at 3:45 p.m., the hearing in the above-entitled matter was adjourned.]

PARTITION OF NAVAJO AND HOPI 1882 RESERVATION

TUESDAY, MAY 15, 1973

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INDIAN AFFAIRS
OF THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1324, Longworth House Office Building, Hon. Lloyd Meeds, chairman of the subcommittee, presiding.

Mr. MEEDS. The Subcommittee on Indian Affairs of the full Committee on Interior and Insular Affairs will be in session for the taking of further testimony on H.R. 5647, H.R. 7679, and H.R. 7716.

The witnesses today will be those from the Bureau of Indian Affairs, and we are delighted to have with us as the first witness, and the chief witness, our colleague and friend John Kyl. John, welcome back.

Mr. KYL. Thank you very much.

Would you like me to proceed, Mr. Chairman?

Mr. MEEDS. Please proceed, since you know the rules of the committee.

STATEMENT OF JOHN H. KYL, ASSISTANT SECRETARY FOR CONGRESSIONAL AND PUBLIC AFFAIRS, DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY IRVING SCHWARTZ, RESOURCES AND DEVELOPMENT SPECIALIST, BUREAU OF INDIAN AFFAIRS; CHARLES SOLLER, ASSOCIATE SOLICITOR FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR; DENNIS DRABELLE, LEGISLATIVE COUNSEL'S OFFICE, DEPARTMENT OF THE INTERIOR

Mr. KYL. We have with us this morning Dennis Drabelle from the Legislative Office; Ralph Reeser from the Legislative Office, BIA; Mr. Irving Schwartz, who is a resources and development specialist; Charles Soller from the Solicitor's Office; Dave Jones from the Solicitor's Office; Robert Bruce from BIA; and Ray Jackson from the Real Estate Office in Phoenix.

Mr. Franklin and Mr. Rogers are occupied this morning before another committee of the House.

This is our brief statement this morning, accompanied by the report.

You have already had a day of testimony on the Hopi-Navajo land dispute, and I think that it would be superfluous for me to retrace its history this morning. Our report covers this history in some detail. I propose to turn immediately to the position we are taking.

Last year we supported H.R. 11128 as one possible solution to this dispute—while at the same time noting that there might be other

equally viable solutions—because we felt that we had an emergency situation.

A year ago we did not foresee a court order implementing the Hopis' rights for some time. Since then, as you know, the Arizona district court has ruled that the U.S. plan for giving the Hopis true joint use of the disputed area should be put into effect, and actions to that end are under way.

Under these circumstances, we believe that no bill should be enacted. As the court's order unfolds, the Navajos will be required to reduce their livestock in the joint use area to one half of its carrying capacity.

We believe that this action will go a long way toward solving the tribes' dispute and that the rest should be left to the tribes themselves. It would certainly be appropriate for Congress to monitor the progress obtained pursuant to this order. We, of course, plan to do the same.

We recognize, however, that there is a good deal of sentiment in favor of settling the dispute by means of a partition into two or more parcels. If that is the route which the Congress adopts, we recommend that it be done by giving jurisdiction to partition to the district court in Arizona.

The court has years of experience and expertise to draw upon in this matter, and we believe it is the logical entity to decide upon and carry out a partition.

In addition to the outright partition of the joint use area which we recommended last year, we suggested that the possibility of arbitration be considered. H.R. 7679 does establish an arbitration procedure.

As we stated above, however, contrary to our expectations of last year the court has rather speedily taken this matter in hand, and we would prefer to let the court's present order prevail or in the alternative to give the court jurisdiction to partition.

However, should the Congress prefer the arbitration procedure, we offer in our report several amendments which we believe would improve H.R. 7679.

Although we prefer the alternatives mentioned above, we believe that H.R. 5647 is a fair and equitable solution. In the event that it becomes the choice of Congress we recommend several amendments in our report.

I will be happy to answer any questions you may have.

Incidentally, should you desire it, Mr. Irving Schwartz, who is a resource specialist, is here if you desire some delineation of the implementation of the court plan.

Mr. MEEDS. Do you have any other testimony to offer?

Mr. KYL. This is it, with the report, Mr. Chairman.

Mr. MEEDS. Could we just hear informally from Mr. Schwartz, without a written statement, but to give us the background, if you could, sir.

Mr. KYL. Yes, indeed.

Mr. MEEDS. Generally what it did.

Mr. SCHWARTZ. The general background of the plan is based on an economic development, rather than anything else.

In other words, we feel that the two tribes can benefit enormously by taking advantage of what they have there. They have 2½ million

acres of land that needs proper attention to provide a good living for them.

Not only are they not taking care of it, but there are many things that they can do with it that have been impossible, because the two tribes cannot get together.

Our proposal is, that by getting together on this thing, as a large business would, and particularly in regard to the livestock industry, they would fill a great need.

The country is short of beef today. The high prices are such that they would encourage anybody to go into it, and I always contended that the Indian people can do a better job of raising livestock, under proper management, than almost anybody else.

They have the land, and as a matter of fact, there are Indian tribes all over the country that would welcome a pilot proposition, as this might be, to show them the best way of operation.

What we plan to do is to remove a certain number of livestock from the area, and put them into dry feedlots for the purpose of production. This would allow the land to rest for a certain length of time, and allow for certain other systems that can be used for the restoration of the land itself.

The drylot operation has been studied at great length by the specialists that we have in the Bureau. It has been studied and researched at three universities and by the Department of Agriculture, with which we have worked up a proposal that we think will be very good.

The Navajos have a small drylot operation right now up in Ship Rock, which they say is producing very well, at less than half the cost of operation that we figure.

Mr. MEEDS. Mr. Schwartz, have you done some cost analysis on this?

Mr. SCHWARTZ. We have indeed, sir.

Mr. MEEDS. First of all, you might describe the plan in a little more detail. In other words, how many of the livestock will be taken from a given area?

Mr. SCHWARTZ. The total number of livestock, to the best of our estimations, is 124,000 sheep units.

A sheep unit—four sheep units equal one cow unit, and five sheep units make one horse unit.

There are 124,000 on the area at the present time; that is, on the disputed area, the joint use area.

Then, the court order will permit the Navajo tribe to retain one-half of the carrying capacity according to the 1964 soil and range reconnaissance, and that comes down to a capacity of 11,000 sheep units, that may be run on the open range.

In addition to that, we have made a proposal that the Navajos, who have need for a certain number of sheep, be allowed to leave some with their families for the purpose of their own food; to leave about 27,000 units there in drylots on the reservation itself, to supply the needs of these people.

Mr. MEEDS. Pardon me, sir, just for 1 minute. I think that I have missed something. My understanding is that you said there are 124,000 sheep units on the joint use area?

Mr. SCHWARTZ. Yes, sir.

Mr. MEEDS. It was determined by the court order that this number be reduced to one-half the carrying capacity?

Mr. SCHWARTZ. One-half of the carrying capacity, which is 11,000 sheep units.

Mr. MEEDS. That is where you lose me. One-half of 124,000—

Mr. SCHWARTZ. One-half of the carrying capacity, sir. The carrying capacity has been determined by the Soil and Range Reconnaissance of 1964, which the court has mentioned as being the basis of their computation.

Mr. MEEDS. That carrying capacity is what?

Mr. SCHWARTZ. One-half of the carrying capacity is 11,000 sheep units, 22,000 for the entire area.

Mr. MEEDS. Please proceed.

Mr. SCHWARTZ. Have you got to the 27,000 proposal yet?

Mr. MEEDS. Yes.

Mr. SCHWARTZ. We intend to permit the Navajo people to keep them there for their own purpose, but off the range so it will not interfere, and they will be kept in drylots and fenced in. They will be under supervision, so that there will be no chance of them getting out on the open range.

It is the intention to let the range rest for a number of years, then do what we can afford to do for the restoration of the area.

If you take 11,000 and 27,000, that's 38,000, and deduct that from the 124,000—I believe that comes to about 86,000, 87,000 units that are left.

Mr. MEEDS. What will be taking place during this period of time on the land itself? Will there be any kind of conservation program or restoration program?

Mr. SCHWARTZ. It is our intention at the present time in accordance with the court order—the court has ordered a new reconnaissance to be made.

As of this year, we have 15 men out working right today, beginning May 1, to determine the range capacity, and the possibilities of restoration, that are possible, that we can work into a program for restoration. They are doing that now. They complete that on the 1st of July.

Now, based on that, Mr. Chairman, the court has ordered that a new capacity be determined, based on the 1973 reconnaissance.

Now, it may be more, or it may be less, than the 11,000 that I just mentioned to you.

Mr. MEEDS. What type of things are done on the land with that carrying capacity?

Mr. SCHWARTZ. There are several things that are very important, Mr. Chairman.

The land is being eroded way beyond the ordinary concept. It is going to be necessary to prevent that. The watersheds are being despoiled by overgrazing. Anybody who understands agriculture knows that there is no grass, no trees, no foliage, or anything up there left.

The rain just washes off the topsoil and goes off, and just ruins everything. So that is one thing that has to be taken care of.

The other thing is the fact that there is a great deal of silt that comes down. One reason for a part of that is the overgrazing of the area, and the other one is that there is no control. It would take, for instance, in one wash that I have in mind; it might take six or seven dams up and down that area, in order to stop the erosion.

The type of soil that they have there is such that it lends itself to a large silt movement, and that makes it impossible for the people living down below to engage in agricultural activities.

Mr. MEEDS. How long will this land have to be at one-half carrying capacity to restore it? What length of time?

Mr. SCHWARTZ. That is something we don't know.

This past season the area had an extraordinary amount of rain, and we feel that it is quite possible that there is going to be a lot more grass than what we thought there might be.

So, the new range study may indicate an increase rather than a decrease, but we don't know that. It isn't possible for us to make any estimate of that until we know what the weather is going to be.

Mr. MEEDS. Do you have a written copy of your plan?

Mr. SCHWARTZ. Yes, sir.

Mr. MEEDS. Could you submit one, at least for the file in this hearing?

Mr. SCHWARTZ. We would be glad to.

Mr. MEEDS. If there is no objection, we will receive it in the file.

What kind of price tag would you put on it? How much is it going to cost?

Mr. SCHWARTZ. The cost that we have estimated—when I speak of we, I mean myself and those that have been working with me—this is not an official concept of the Department. We have not done anything about getting official approval of it.

But the dry lot operation, including the construction of all of the facilities that are going to be necessary to control, such as exterior fences, interior fences, the management district development, the development of certain waters, the building of the dry lot areas, the purchase of equipment, and everything of that sort, which would include the purchase of all livestock on the area, that comes to about \$7.5 million.

Mr. MEEDS. That is just for the area in dispute.

Mr. SCHWARTZ. Yes, sir.

Mr. MEEDS. Does that contemplate any type of restoration of the land?

Mr. SCHWARTZ. Only what the fencing would provide. In other words, if we can keep livestock off certain areas, we know that it will recover to some extent.

We plan a perimeter fence around the whole area, which would keep out any new livestock coming into the area. We would fence off district 6, which is a Hopi area, and we would provide sufficient management and surveillance to see that the rules are being adhered to.

Mr. MEEDS. You say \$7.5 million. Does that contemplate 1, 2, or 3 years, what?

Mr. SCHWARTZ. That is 1 year, but the 2d year there is practically nothing, except for the cost of operation of the dry lot, and we feel that the dry lot will show a profit. The dry lot will show a profit for the stock holders, and the stock holders will be the Indians, who will have an interest in it.

Although they do not go into dry lots, the Apaches in New Mexico have done a very fine job of cattle raising under the same corporate setup that we are talking about.

Mr. KYL. May I interject one statement, Mr. Chairman.

This plan is in keeping with the court order. In other words, the court order did approve this kind of action, and I hasten to add that Mr. Schwartz does not speak of range management propositions as a total stranger. He is a rancher in this general area, but not close to the reservation.

Mr. MEEDS. We were informed yesterday that, in the opinion of Hopis, there are a lot of new people, or there have been new people moving into the disputed area. That would be, at least for the purposes of this discussion, the area encompassed in the Steiger bill of last year, which was passed by this committee. That would have been in addition to district 6. It would have been that area that would have gone totally to the Hopis, the surface rights.

Mr. SCHWARTZ. Yes, sir.

Mr. MEEDS. One, has the Bureau done anything to determine whether there are new people moving in?

Two, if there are, how many?

Three, if you have not done anything, can something be done to determine if the people have in fact moved in?

Mr. SCHWARTZ. We have had that brought to our attention before.

Mr. MEEDS. You are kidding.

Mr. SCHWARTZ. We have had that complaint, and as far as I know, it might be true. The Navajos do not agree to that. They say that there is some building going on, but it is being done by people that are already located there, or if there is a family there, they might be having an off-shoot from the family, and building another hogan or something there.

We don't know for a fact that that is true, but we have done this. We have taken aerial photographs of that area, of the entire 1882 joint-use area, which locate all of the construction that there is in there.

In other words, the detail of it is such that it will show every house, fence, post, and everything else. It's a terrific job. We are in the process of getting that now.

Then, we also have some aerial photography that was done, I don't remember exactly the year, but it was quite a number of years ago, that might give us some comparison to look at.

We also have an inventory that was taken by the Navajo during the summer of 1972, just last year, and this inventory shows each family, the number of persons in the family, by name, age, and so forth. This inventory can be used as a check against families that are living there, if somebody wants to have a census made.

Mr. MEEDS. Is there any kind of census or any kind of census data that can be boiled down from the U.S. Census that was taken in that area?

Mr. SCHWARTZ. We have made comparisons, sir. The general opinion of people that are living out there, that is the Bureau's people, is that the U.S. Census has not been too correct. And they feel that the reason is that the people don't like to be counted. The Navajo's census, we think, is closer to being exactly what the situation requires. So we are accepting that as the count of the people in the area.

Mr. MEEDS. They are one of the parties in interest here in this matter, and I am sure that they wouldn't purposely not tell the truth. But one of the facts that we have always looked upon is that one of

the parties in interest evidence should not be accepted as totally guiding or totally determining.

That is in your opinion the best evidence you have of the population in the area? Is that right?

Mr. SCHWARTZ. We think so.

Mr. MEEDS. The gentleman from New Mexico?

Mr. LUJAN. Thank you, Mr. Chairman.

Mr. Schwartz, you say this whole plan that you have will cost \$7.5 million. Yesterday's testimony showed—somebody said it would cost \$100 per acre to restore this land. And just a quick figure would be 2 million times \$100 an acre, 2 million acres times \$100 would be \$200 million.

Mr. SCHWARTZ. Mr. Lujan, the figure that I gave you has nothing to do with the restoration of the land. This is just the operation of the livestock, compliance with the court order that we are talking about.

Mr. LUJAN. That's \$7.5 million in addition to the restoration?

Mr. SCHWARTZ. Yes, sir.

Mr. LUJAN. We're talking about \$207 million, then?

Mr. SCHWARTZ. The court does not say anything about the restoration of the land at all.

Mr. LUJAN. Is that part of the BIA plan to restore the land?

Mr. SCHWARTZ. Yes; as far as we can do. We have plans for restoration providing, of course, that we have the money to do it with and the authorization or appropriation; but as of the present time, we are principally concerned with the order of the court that says we must do certain things and do it forthwith, and do it within the time limits that they prescribed.

Mr. KYL. Will the Congressman permit me to elucidate a little on the question that he just asked?

As the Congressman knows and everyone knows, the practical element is water. This year, I have had botanists and range specialists tell me that with the abundance of rain and because of the phenomenal little locking mechanisms of desert seeds, we have plants actually blooming in Arizona that have not bloomed for 50 years. The same thing is true in northern New Mexico.

There are always seeds there. There is always nutrition there for those seeds. I think California Polytechnical Institute uncovered at least one locking mechanism in these desert plants that has been developed through the centuries. This year, we had enough water to sustain them. We actually have the problem of fire hazards in some of these areas.

This does offer a possible study that we have not had in a long time as to what areas do have the capability of growing things. Obviously, you're not going to irrigate the area. There are matters of erosion that can be taken care of and must be taken care of in some fashion.

Those matters can be considered. They can be measured. We can have a program to do that job through the usual small watershed type of protection and so forth.

Mr. LUJAN. Lets turn to the other point about livestock reduction. There is 124,000. We just seem to work with figures that never can be tied down.

Last year in the record, it shows that there was 87,000; this year, 124,000. There's a figure of 50,000 in there.

Let's assume that the 124,000 is correct, as that being the latest figure. You say that we would leave 11,000 in place and then 27,000 in a feedlot; that makes 37,000. You just eliminate the other 87,000?

Mr. SCHWARTZ. Beg your pardon?

Mr. LUJAN. You would just eliminate the other 87,000?

Mr. SCHWARTZ. No. The 87,000 will be purchased in the plan. They will be purchased by the corporation that will operate the livestock industry there, that will be owned by the tribes. They will reduce that number to about 59,000 or 60,000 by the sale of incompetent animals of which there are a great many, because we don't feel that it would be profitable to take a second- or third-rate animal into a drylot operation and get the best out of it.

We are bucking the present reduction of about 40 percent of a scab crop, for instance, and any cowman can tell you that that is a suicidal operation.

Mr. LUJAN. So we are going to take care of the sheep by leaving 11,000 on the range, and we are going to put some 27,000 in feedlots, and we are going to eliminate a great number of them.

Now, what are the plans as far as the 8,000 Navajos that live on that land? What are they going to do?

Mr. SCHWARTZ. Mr. Lujan, we have no plans to move them. The court has no authority to move them. Our plan does not envision moving anyone off the place.

Mr. LUJAN. Is it your understanding that the court says, all right, let's draw the line and say this is Hopi land and this is Navajo land, but let's leave those people that are living there, let's leave them in place; let's leave Navajos on land that we have declared to be Hopi? I thought that was the whole problem.

Mr. SCHWARTZ. We don't plan to move them. I don't think the Hopis have ever asked the Navajos to get off.

They want their economic rights to which they are entitled under the *Healing v. Jones* judgment; that is, one-half undivided interest in the area, surface, subsurface, and all other resources of the area.

Now, you have quite a wide choice of operation there, and nothing is said anywhere about moving people. I know the Navajos don't want to move, and I think the Hopis to a great extent—I'm not going to speak for them—I don't think they have ever insisted that people get off.

Of course, if there is a partition, that might bring up some other problem which we don't envision in the plan. The plan does not plan to move anybody off.

Mr. LUJAN. It is just really operating it as a joint use area. That is the plan?

Mr. SCHWARTZ. Yes, sir.

Mr. KYL. Mr. Congressman, may I elucidate once more?

The court does not draw a line, No. 1. In the plan which was approved by the court, we recognize that there is both an economic interest in livestock, and there is also a way of life involved. That is why the provision has been made for taking these excess sheep, according to the court order, to the drylot. But the family will be permitted to have a small flock in order to maintain a family way of life. And those sheep would be counted against the total carrying capacity.

Of course, there is a matter in which you can get a kind of de facto partition, without actual partition, partition for use; that is through some agreement, getting a grazing area set up or a series of grazing areas where there could, by mutual agreement, be a separate interest in the livestock.

In other words, you have one area that is used by one group, another by another. That is possible if there were agreement by the parties. But the court does not draw a line.

Mr. SCHWARTZ. I would like to add to what Mr. Kyl has just said that we have already, according to the information that we have, partitioned the land itself into what we consider are equal areas for each tribe. We are going to find it possible to allow the Hopi management districts to be contiguous as well as the Navajo districts to be contiguous, and equal, one with the other.

These management districts will be based on the productivity of the land. In other words, if we find that a certain area is capable of taking care of 1,000 head of animals, we will fence that off and provide the other tribe with an equal producing area.

The idea of keeping that fluid is that from year to year we don't know exactly what an equal operation would be. We don't know, as John just said, we don't know when the rain is going to fall. We don't know just what developments the restoration program that we go into may have.

In Moenkopi Canyon, for example, where there is some surface water, we might find it engineeringly possible to bring that water down, and develop a new irrigation system.

Mr. MEEDS. The time of the gentleman has expired.

The gentleman from North Carolina?

Mr. TAYLOR. Yes, Mr. Chairman.

In reading this report, I understand that your first recommendation is that there be no legislation; that the present court order be permitted to operate without legislative interference.

Is that correct?

Mr. SCHWARTZ. Yes, sir.

Mr. TAYLOR. If Congress were not to accept this recommendation, you recommend that this be handled by the courts?

Mr. KYL. Yes, sir.

Mr. TAYLOR. We just give authority to the court to make the division?

Mr. KYL. Yes, sir.

Mr. TAYLOR. A third choice would be arbitration to be handled by the courts. I judge then that you are not supporting either bill before us.

Mr. KYL. Our first order of preference, Mr. Taylor, is that we go along with the present court jurisdiction that has been explained in some detail by Mr. Schwartz. The court to this time has held that it does not have the right to partition. This has been held through each of the court decisions. The Congress can give the court the right to partition.

In retrospect, maybe it would have been wise to give that right of partition when this whole proposition started in the courts, but that was withheld. If, in its wisdom, the Congress determines that it wants to have a partition but by neither of those methods and because it does give an Indian a greater chance in participation, we

feel that this manner of negotiation is the next best order with some amendments that we provide in our report. One example of such an amendment is this: The bill that is before the committee specifies that the District Court in the District of Columbia would select the tribunal. We think that ought to be done by the court in Arizona.

There are a number of other amendments which we offer.

Finally, Mr. Taylor, we recognize that the bill which passed the committee last year is an equitable solution. It does involve the movement of large numbers of people, and that might be true also of the negotiated settlement.

We think there are a lot of problems involved in the actual movement of thousands of people from homes that they have occupied for some time.

Mr. TAYLOR. You recommend either no action or legislation expanding the court's authority?

Mr. KYL. Yes, sir.

Mr. TAYLOR. If there is no legislation, what will happen with regard to the 1934 dispute that you speak of? The court has not taken jurisdiction over that as I understand.

Mr. KYL. We do not address that in this legislation, sir.

Mr. TAYLOR. What would happen with regard to that dispute? Would it continue?

Mr. KYL. We have in fact focused on this joint-use dispute between the Navajo and Hopi. We have not addressed that other dispute that you speak of, sir. We do not think the Secretary has the authority to partition. We think it would take some other authority to do that. But we have addressed this main issue in this case.

Mr. TAYLOR. Just a question now with regard to the livestock; all these sheep, 124,000, do they belong to the tribes or individual Indians?

Mr. SCHWARTZ. They belong to the individual Indians, sir.

Mr. TAYLOR. Now, if you have 124,000 sheep running on a disputed area, and the sheep belong to individual Indians, how, as a practical matter, are you going to decide whose sheep will be removed, as you reduce it down to 11,000?

Mr. SCHWARTZ. Mr. Taylor, our plan as proposed to the court involves the complete cooperation of both tribes. That might be seen as a strange thing, but I've seen stranger things than that happen.

Mr. MEEDS. In this life?

Mr. SCHWARTZ. They say it can be done, and they have got a lot of sensible men on their counsel, both of them. And I think if the carrot were big enough, they might come in and say this is something we might want to go into. And by golly, I think that if we can sell these two tribes on the fact that they have got a real chance for making a killing in the livestock business, that would not only be good for them, but good for a dozen or so other tribes around the country that want to get into the livestock business, I think they might go for it.

And I think the Congress should take that into consideration.

Mr. TAYLOR. If I'm in the business of grazing sheep, and I've got, say, a couple hundred head, it's going to be hard for you to convince me that it's in my best interest to cut that down to less than one-tenth. I might think you're trying to put me out of business.

In other words, I see problems if you deal with me as an individual.

Mr. SCHWARTZ. It is a problem. There's no question about it, but we

believe this: That if we can let the Navajo people understand that we are not reducing their resources, that we are rather increasing the possibility of them getting out of the type of primitive business that they are in now, and modernizing, I believe that they will accept it.

If they don't accept it, they would be very foolish, and I have told them so. And they know it.

Mr. KYL. There is a court order reducing the numbers of livestock.

Mr. TAYLOR. How soon would you hope that the court order would be carried out and reduction can actually be made?

Mr. SCHWARTZ. We are required to cut it down to the specified number by the 14th of October of this year.

Mr. TAYLOR. That will be quite a slaughter of sheep, won't it?

Mr. SCHWARTZ. We don't intend to do that. We don't want to get into the situation that happened to the Navajos in 1930, where they went in there and caused a great traumatic experience there, economically and in every other way. They have never gotten over it. We don't intend to repeat that, that's why we want the cooperation of these people.

We want their good will, and it is the only way that it will work. Our proposition to the court was exactly that, sir, and we told the court that unless we can get the cooperation we can't do it. But we will do everything that we are charged to do, which the court says the United States as a codefendant in this must do certain things. We are doing them and we will do them right up to the hilt.

Mr. TAYLOR. That's all, Mr. Chairman.

Mr. MEEDS. The gentleman from Arizona?

Mr. STEIGER. Thank you, Mr. Chairman.

Gentleman, recognizing that your role is that of reporting the Department's decision and that this is not a decision that you arrived at independently or anything, I would simply like the record to convey that in the view of this member, this has got to be one of the great copouts of all time. The one thing that everybody has agreed to on this issue, the one thing that the tribes have agreed to, the Members of Congress have agreed to, and every Bureau official, that I've ever talked to that has been involved, has agreed to; that the reason that the situation has reached the level that it has is because of the inaction of those that are required to do something; the Bureau, the Congress, and even the courts.

The Bureau comes back in and says, don't do anything. You in your deliberations, you failed to consider that, or you are in some Alice in Wonderland situation in which you believe that you can fool the Indians, if not the public, into thinking that something is being accomplished.

Mr. Schwartz, did it ever occur to you that if, indeed, the census figures are at best vague which I think again everybody will agree that the population figures are simply not accurate; if those figures are not accurate, then as the gentleman from New Mexico pointed out, what in the world makes you think that the existing livestock figures are anywhere near accurate, if the people figures aren't even accurate, because there's simply no way of counting the livestock.

The truth of the matter is that it doesn't matter if it rains from now until Christmas. For every blade of grass that grows up there, they will either acquire more livestock or will fail to ship the livestock that ought to be shipped because the tradition has been that you keep your livestock.

You talk about the carrot and the stick. Mr. Schwartz, I know of your sincerity and know of your hard work, and I think I know something of the difficulty of the problem. So I am not questioning either your efforts or your testimony.

But the fact is that killed horses are now worth 20 cents a pound. They've never been worth that in the history of the business. You mentioned 124,000 sheep units. You and I, and Mr. Kyl know, that we're talking probably about half of that in sheep; another, at least, one-third, in horses, and the balance in cattle.

But we know that there is a great variety of problems in the accumulation of this. We know you're not going to put horses in a feedlot. We know that the people who own the horses don't want to sell them at all. You are aware of all this, yet you have not addressed the thing.

Then the one basic question that—now that I have stopped speechifying—the one basic question, I think, must have occurred to you is, how in the world is all of this going to solve the Navajo-Hopi dilemma as to who gets the use of the land?

If the plan includes that, I would like to hear it. If you contemplate, not only a solution to the overgrazing—that is all you have addressed here this morning—but the results of how that solution will resolve the Navajo-Hopi dilemma.

Mr. SCHWARTZ. The solution would be for these people to get together in an organized effort to establish a first-class, modern livestock business, that will utilize that land as it becomes available to them through the restoration. And in the meantime, it would go into a drylot operation that would be a profitable operation according to all of the research we have done.

Mr. STEIGER. By "these people," you mean the Navajo and the Hopi Tribes joined in this venture?

Mr. SCHWARTZ. Although you say it does not solve the problem, it will if they get together; if they don't get together, it's going to be difficult.

Mr. STEIGER. You have been out there for 6 or 8 months between your trips and your being associated with the joint venture. You have discussed the matter, I know, with members of both tribes.

In your honest opinion—and you are an honest man—what is the likelihood of the Navajo and Hopi cooperating on any kind of a massive venture; that would, one, disrupt the entire lifestyle of the Navajos; and two, require that the Hopis engage in embracing the Navajo rancher?

What is the likelihood of success of that?

Mr. SCHWARTZ. Mr. Steiger, I know a lot of people that are in partnership together that don't speak to each other, but they're in business because they can make some money. I think that might be the case.

Now, the Hopi people, I have letters from them and from Mr. Boyden saying they will cooperate. I spoke to Mr. MacDonald, the chairman of the Navajos, and he likes the idea. He's got some problems there, as you know and I know, and they may have to be subjected to an educational approach to this thing. But I believe it can be done.

I know that you think I'm a cockeyed optimist about this, but it takes all kinds of people to make a world, Mr. Steiger. And I'm giving you what I really believe. I think it can be done.

Mr. STEIGER. I know you are, and I know you are sincere. You pointed out that the reduction that was engaged in in the 1930's was, by your estimation, a failure. We had the then Commissioner Bruce last year describe it as a failure, and he had been involved in it himself. He pointed out to us that it had been abandoned in 1948, completely.

Then, and I'd like to quote this, this is Commissioner Bruce of last year:

Once it became clear that the forced stock reduction program was not going to work, an extensive program of conservation education was begun in an effort to get voluntary compliance with the grazing regulations. This education met with only limited success. Indeed, it failed in most instances.

That, as far as I am concerned, is a very generous analysis of the results.

Mr. Schwartz, the committee here is simply not conversant because the virtue of their experience and the fact that one of the problems, for example, in a simple reduction is that, if indeed you impound 27,000 head of livestock, that would include horses and cattle and sheep, the simple mechanical care of these things is, as I know you are aware, is a tremendous cost. But the noncompliance is even going to be a greater cost, because as long as there is feed out there, and people have livestock, they are going to graze it; they done that all their life. That is why the reduction program was a failure in the 1930's.

That problem is compounded now by the additional animals units that are running there. I am not disputing—again, it is worth the effort, if it works, it will be wonderful. But in the meantime, one of the reasons the Department has recommended against any legislation, which to me has got to be the most untenable position they could possibly have taken, one reason they have adopted that is that there has been no bloodshed on the reservation.

Mr. Schwartz, Mr. Kyl, and you other gentlemen, if you are seriously going to wait until there is bloodshed on the reservations, until you are convinced that this is, indeed, a problem of significance, you are not the intelligent men I think you are. And somebody has got to convince you, if it's the Office of Management and Budget, that they must not wait until the war becomes a shooting war, until they do something substantial. And romance and court orders are not going to get it done.

I do not think that you want to wait until somebody is killed or numbers of people are killed before we do something. At that time, I am sure we will do whatever has to be done. But apparently, we have failed to impart the urgency of this situation on the appropriate officials.

And if we start talking about joint cooperation of Navajos and Hopis, using Navajo livestock to support both tribes on land that the Hopis believe is theirs, I don't see by what rational conclusion you think you are going to avoid combat.

Mr. KYL. Mr. Steiger, I hope you will permit me to speechify for just a moment. Any kind of a suggestion that the Department does not view this thing seriously is, of course, just not true; nor can it be said that sufficient hours and sufficient manpower was not utilized in trying to determine our position.

You say that we suggest that we don't do anything. We are under a court order to do something. The element that is new in what we are trying to accomplish here is this business of a joint livestock venture; in which, incidentally, we are not using Navajo sheep to produce revenue for the tribes. The corporation would buy all of the sheep that would go into the venture.

Mr. STEIGER. Who owns the sheep, cattle, and horses, that the corporation will buy? Who owns them now?

Mr. KYL. Both Hopi and Navajo, sir. More of them would be Navajo.

Mr. STEIGER. You are going to put district 6 livestock in as well as the disputed area?

Mr. KYL. Any surplus, and I know that as time goes on, there will have to be animals purchased for that operation that don't belong to any Indian tribe at this moment. It's the same kind of operation that we would have were it operated privately.

So far as the census matter is concerned, there has been a very serious effort to determine how many people there are, how many head of livestock there are. As a matter of fact, even as to the counting of hogans, the comparison of figures, et cetera, frankly, we don't have an accurate figure, one that we can count on. When we do have a list that specifies names and numbers and families and so on, that will come pretty close to giving us a base of operation.

But we intend to check this again with this new material we have, to compare it with older photographs we have, that do show every residence. We can check these matters.

There is not any question about the overgrazing. There's not any question that we have to reduce the numbers. The court says that, whether their determination is right or wrong, it's not for us to say at this moment.

Mr. STEIGER. Excuse me, Mr. Kyl. You weren't here yesterday. Mr. MacDonald made it very clear and his attorney made it very clear that they plan to do whatever they can legally to forestall the implementation of the order. Their attorney has interpreted the order as one that can be stayed by the posting of a bond.

It is clear that you have not even got over the first hurdle, which is compliance with the court order on the part of the Navajo. Are you addressing that problem in the Department? Are you aware of their attitude?

We have Mr. Schwartz telling us that Mr. MacDonald has written to him, saying he's happy to cooperate. He has a few problems. I hope he tells you he has a few problems, because his people don't want to cooperate.

Can you address that very real problem?

Mr. KYL. Yes, sir. And this is the conclusion we come to, Mr. Steiger; there are problems involved in carrying out this court order. There are also problems involved in moving thousands of people.

And I don't know, when we compare the problems, which is greater. I have a feeling myself that probably we'd get less problems if we can somehow arrive at a solution short of moving people.

We do have here a very serious question. You know Mr. Schwartz well enough to know his attitude on this, and you know because of our multitudes of conversations in the past, that I personally view this thing very seriously.

There is an innate difficulty here because we are trying to solve problems involving Indian customs, traditions, and religious through some kind of third-party intervention or Anglo-Saxon law.

But to say that this picture involves problems that could lead to bloodshed, I think, overlooks the possibilities of these same problems occurring should we partition and move people from one area to another.

Mr. MEEDS. The time of the gentleman has expired.

Mr. STEIGER. Excuse me, Mr. Chairman, just one line out of the report that's appropo to Mr. Kyl, for whom my affection and respect is monumental.

Mr. MEEDS. It is obvious.

Mr. STEIGER. In this statement by Mr. Kyl in the Department report it says:

We recognize that the court's order covers only the first of these disputes, but we do not believe that either of the other problems is grave enough to warrant a legislative remedy at this time.

I would only tell you, Mr. Kyl and gentlemen, that is where, at least you and I, part company as to the judgment and call of this thing.

Thank you, Mr. Chairman.

Mr. MEEDS. The gentleman from the Virgin Islands?

Mr. DE LUGO. No questions.

Mr. MEEDS. The gentleman from New Mexico?

Mr. RUNNELS. Mr. Chairman, may I just ask, back in October 14, 1972, in the court case, in that, wasn't the court supposed to hand down a 60-day plan, and a 90-day plan?

Mr. SCHWARTZ. Yes, sir.

Mr. RUNNELS. Well—

Mr. SCHWARTZ. We presented the order. We presented the answer in 60 days and in 90 days.

Mr. RUNNELS. But yet, didn't the judge actually, Judge Walsh, he didn't actually approve anything until about April 22?

Mr. SCHWARTZ. April 23, yes, sir.

Mr. RUNNELS. Ninety days until it passed. Do we have a 60-day plan and a 90-day plan?

Mr. SCHWARTZ. The 60-day plan, I think, calling it that is a little confusing. The 60 days refers to the time that the Bureau was given to turn in a proposal for the restoration, that is for the protection of the Hopi interest in the area.

Mr. RUNNELS. It was turned in in 60 days. Then the judge took 120 days before he decided that it was all right.

Mr. SCHWARTZ. Yes, sir. Then in 90 days, we were asked to present another plan that had to do with the compliance with the order, and everything not pertaining to the Hopi interest in the grazing land. That was done in 90 days on January 8.

Mr. RUNNELS. What you have done to implement the plan so far, you have the wheels in motion, and I think you have said, you had 15 men starting May 1 on the reservation, and they were going to report back in 30 days.

Is that right?

Mr. SCHWARTZ. That is just one thing. We have been very active in all of the other requirements of the court order, which involved the recording of all instruments that might affect both tribes in the way of income derived from the installations on the joint use area.

We have undertaken to make estimates of, and secure details of, the water resources of the area. We have been working with the Water Resource Division of the Geological Survey.

We have been doing a great many things, everything relative to solving this problem.

Mr. RUNNELS. I understand that 11,000 units run in the area. I can understand—I believe you said that you will have 27,000 in drylots on the reservation, on the area about where they come from. Is that not correct?

Mr. SCHWARTZ. The idea is to have 27,000 on the area in drylots and off the range.

Mr. RUNNELS. Now, you say that you're going to buy about 26,000; you're going to sell because they're third rate, poor grade, and so forth. Then, that leaves you roughly 60,000 that you'll put in a feedlot. Where are you going to build this feedlot?

Mr. SCHWARTZ. Where are we going to put them?

Mr. RUNNELS. Yes, sir.

Mr. SCHWARTZ. We were going to have one of them up at Ship Rock on the Navajo irrigation project up there. They are grazing about 2,700 acres of land; 2,700 acres of land right now in irrigation.

Mr. RUNNELS. It's being irrigated right now?

Mr. SCHWARTZ. It is being irrigated, but not on the project.

Mr. RUNNELS. Off the project?

Mr. SCHWARTZ. Off the project, but it is available.

Mr. RUNNELS. Who owns that 2,700 acres?

Mr. SCHWARTZ. That belongs to the Navajos.

Mr. RUNNELS. Is it already obligated to Navajo individuals?

Mr. SCHWARTZ. Well, we're not going to take the land. All we're going to do is put the feed there.

Mr. RUNNELS. You're going to put a feedlot there at Ship Rock?

Mr. SCHWARTZ. Yes. In other words, we'll take about 10 acres to build a feedlot there. Then, we plan to go other places with that cattle.

Mr. RUNNELS. How many are you going to put in that one—30,000? Where is the other one going to be?

Mr. SCHWARTZ. That will take care of about 11,000 sheep units.

Mr. RUNNELS. Where are you going to put another 49,000?

Mr. SCHWARTZ. We have a chance of putting one in at Parker, Ariz.

Mr. RUNNELS. How far?

Mr. SCHWARTZ. It's about 300 miles.

Mr. RUNNELS. 300 miles. All these figures are in the \$7.5 million?

Mr. SCHWARTZ. Yes, sir.

Mr. RUNNELS. May I ask you, is that in the BIA budget request?

Mr. SCHWARTZ. No, sir. It will have to be appropriated.

Mr. RUNNELS. So it has not been asked for yet by the Department.

Mr. SCHWARTZ. We have no commitment from the Bureau or no commitment from the Budget. We have a request in.

Mr. RUNNELS. If you are under a court order, you know that you are going to have to carry out, supposedly, or if Sam gets his bill through; I don't think he's going to go out there and enforce his—he can't walk on that reservation.

You have been mandated to do this, right?

Mr. SCHWARTZ. We have been mandated to do certain things, and we have agreed to do them, providing, No. 1, we can get the money for it, and the other, to get the cooperation of the tribes.

Mr. RUNNELS. What if this Congress won't give the money for this plan?

Mr. SCHWARTZ. If the Congress doesn't give us the money and the Budget people don't give us the money, we're not going to be able to do it.

Mr. MEEDS. Will the gentleman yield at that point?

Mr. RUNNELS. I yield.

Mr. MEEDS. Don't you have a Budget approval of this report?

Mr. SCHWARTZ. We have an approval.

Mr. KYL. May I clarify this please, sir?

First of all, we don't intend to put all of this total number of livestock in one feedlot, because of a number of factors; the size of the operation, health factors and so forth, the availability of feed, and the fact that you want it closer to the base of operation, so you have to have more than one.

As a matter of fact, this report was cleared by OMB. We have a request for the funds necessary to carry this out.

I am not worrying about getting those funds, any more than I'm concerned about getting the funds to move the people, if you decide in Congress, that you have to move these people, at \$16, \$20, \$30 million.

Mr. RUNNELS. Does the Department have an estimation of what this will cost at this point in time?

Mr. KYL. That is the figure that has been cited in addition to the budget figure.

Mr. RUNNELS. \$7.5 million is just the plan, but he was talking about moving people eventually.

Mr. KYL. If that were the alternative, and then one other factor, sir, not only have we checked with Budget and so on, Mr. Schwartz has been talking to the SBA in case we need that kind of possibility for an operation, a small business Indian enterprise. We have other assistance for Indian enterprises.

We have surveyed and are surveying all of those possibilities. In other words, I am rather confident that we can get the funding to carry the program out.

Mr. RUNNELS. Would the committee think it would be beneficial then that they supply for the record their plan for implementation, since they already have it?

Mr. KYL. We have already agreed to do that.

Mr. RUNNELS. That's all I have, Mr. Chairman.

Mr. MEEDS. I have some further questions, if I may.

I see that you have your solicitor with you. What is your opinion, sir, as to the effect of the court order? Can it be stayed by the appeal that is now going on, or is it not stayed?

Mr. SOLLER. We're not involved in that appeal directly, Mr. Chairman. That is a Navajo appeal. The effect of the court order has not been stayed by the docketing of the appeal, as I understand it. We are proceeding on the assumption that we're obligated to comply with this order as of October 14.

If we don't get the funds, obviously, we will not be able to do it. If we don't get the cooperation of the tribe, we will not be able to. I think

the court understands this because it adopted the Federal plan as explained by Mr. Schwartz in 82 pages of testimony before the court. That was essentially the language of the court order.

And I believe the court understands that the success of our meeting, as a requirement, depends on the cooperation of the tribe and of obtaining the necessary funds.

Mr. MEEDS. What is the court going to do if it is given an order to enforce something that depends upon voluntary cooperation of people? I don't think the courts engage in that type of order-giving. Do you?

Mr. SOLLER. I believe the court understands, Mr. Chairman, that the effectiveness of this plan is dependent upon cooperation. If we don't get it, we'll have to ask for either a stay until we can get it, or take another approach to this problem because it is contingent upon cooperation. And I'm sure that was made clear in Mr. Schwartz's testimony before the court.

Mr. MEEDS. I have to agree with Congressman Steiger about your second suggestion; I think it's probably the greatest copout imaginable. The second suggestion is that the court do it, partition it, or whatever.

If that court were allowed to do this, or be required to do this, what would they do with regard to the partitioning of the 1934 reservation area, since that's not involved in *Healing v. Jones*?

Mr. SOLLER. That would be left untouched, Mr. Chairman, in the existing litigation, the 1934 area, the Moencopi-Tuba City area would not be affected by the court order, as I understand the existing presentation.

Mr. MEEDS. It seems to me that while that court action may not be sowing the seeds of the hurricane, it is at least nurturing it, because you would have the same situation in the 1934 area in the short time that you have now in the disputed area, even within *Healing v. Jones*, at least, it seems that way to me.

So I think that's not a very good alternative.

I would like to get back to finding out how many people we have there, if some of them are new people, if some of the construction is for new people, or if it's only for people who have been in the area.

How can we determine this? Can the Bureau make any kind of survey there, that they feel would be accurate, which could give us, this committee, some knowledge as to whether there are, in fact, new people moving into the area?

Mr. SCHWARTZ. Mr. Chairman, I believe that these figures are about as close as you can get. People do move around, and there are a lot of houses there that are empty. And there are a lot of them where they're doubled up. So it's pretty hard to say exactly.

But the number of Navajo families residing on the Executive order reservation as of last summer were 1,798; and Navajo persons, 9,338. The Navajo families residing—

Mr. MEEDS. 9,000?

Mr. SCHWARTZ. 9,338 Navajo persons living on the Executive order area.

Mr. MEEDS. That doesn't include the 1934 area, does it?

Mr. SCHWARTZ. No, sir. I'll give that to you in a moment.

Mr. STEIGER. Excuse me, Mr. Chairman.

Do you have the figures in the proposed partition area?

Mr. SCHWARTZ. The census of Navajo families residing on the Tuba City-Moencopi area as sectioned by the Steiger bill, 370 families; and Navajo persons, 2,135.

Mr. MEEDS. That's about 3,000 more than any figure we've had; 8,500 is the figure we had yesterday of the Navajos themselves.

Mr. SIGLER. Mr. Chairman, I think he said the entire 1934 reservation—I mean 1882 reservation. And the figures we have been using before are on the part of the joint use area that will go to the Hopis. That figure, I think, was said to be 6,500 people.

Do you have that figure?

Mr. SCHWARTZ. There are 892 families living on the side that would be partitioned by the Steiger bill.

Mr. MEEDS. How many families?

Mr. SCHWARTZ. 892 families.

Mr. STEIGER. How many people?

Mr. SCHWARTZ. I have that somewhere, but I don't have it here.

Mr. MEEDS. Can you furnish that figure for us?

Mr. SCHWARTZ. Could I furnish it for you?

Mr. MEEDS. Yes.

Mr. SCHWARTZ. Yes.

Mr. MEEDS. Has anyone, to your knowledge, made any kind of attempt to find out how many, if any, of these families have moved into the area that would be partitioned under the Steiger bill which would go solely to the Hopis since the Steiger bill was introduced, or at least during the last year?

Has anybody made any on-the-ground effort to go there and find out where these families came from?

Mr. SCHWARTZ. No, sir, they haven't. But we will if you'd like us to.

Mr. MEEDS. Is that a great deal of trouble for you?

Mr. SCHWARTZ. It won't be easy, but if you want it, we'll get it.

Mr. MEEDS. I yield to the gentleman.

Mr. STEIGER. I made this request to the Department four times orally, three times in writing. Each time, I've been assured that they would get to it. It isn't that they haven't been asked, Mr. Chairman.

I think my colleague from New Mexico has also made a request to find out the numbers. The request is a matter of record.

Thank you, Mr. Chairman.

Mr. MEEDS. You see. I think this is a very crucial question; this whole proceeding of whether indeed the Navajo are moving into the area, or if, as their testimony indicated yesterday, they've lived there forever and a day. If they have, in fact, been moving in and settling the area to make a stronger case, I think we ought to know about that.

Mr. SCHWARTZ. The Hopis have complained about that, but we have not been able to determine it. I can give you some further figures on this, if you'd like to hear them.

Mr. KYL. I think some further figures would illustrate the kind of problem we have, Mr. Chairman.

Mr. SCHWARTZ. The count of modern type, which is the gable roof houses on the Executive order area, is 1,422; of the hogan-type houses, 1,429—

Mr. MEEDS. I appreciate that. Maybe you can furnish that information for the record.

Mr. KYL. The matter I was trying to get to, Mr. Chairman, was this; we have to get this kind of a count. There is a set of older

photographs of the entire area. There is a set of new, very recent photographs. The problem is to actually go to those sites where there are additions, and find out what people have moved into those homes, who they are, from whence they came, et cetera.

It is a drive-and-stop proposition all along the line. You have to check each one to find who is living there, how many people are there, how long they have been there, and from whence they came. It is not a simple proposition.

As a matter of fact, this kind of counting has been going on, and has not been completed.

Mr. MEEDS. The gentleman from New Mexico?

Mr. LUJAN. Mr. Schwartz, you say that there are 892 families who live on the Hopi side of the land, that Mr. Steiger has used as a line; that means maybe about 5,000 people would have to be moved.

Mr. SCHWARTZ. I would say so; yes, sir.

Mr. LUJAN. And I gather, Mr. Kyl, that the Department's concern is the same as the concern that we all have, that we do not want to be engaged in moving 5,000 people to some other area, and that we should find some kind of a solution.

Therefore, if that is our concern, has the Department given any consideration to the offer made by the Navajos to buy additional lands elsewhere and give those to the Hopi in exchange for the land that the Navajos are now using?

Mr. KYL. Your question is, Have we given consideration to that?

Mr. LUJAN. Yes.

Mr. KYL. The answer to that is "Yes," a great deal of consideration.

Mr. LUJAN. What is the general opinion within the Department?

Mr. KYL. That alternative would rank below those that are listed in this report that we presented.

Mr. LUJAN. You would think that turning it over to the court would be your first alternative; second, run a line. In either case, you would have to move thousands of people.

Mr. KYL. In the event that you chose the negotiated route, or the partition, it is likely that you would have to move a large number of people.

Mr. LUJAN. And, for the Department, that is preferable to exchanging land for land?

Mr. SCHWARTZ. That's one of the things that we've been concerned with, the moving people, the cost of it. The cost of it is tremendous.

Mr. LUJAN. Of course, that is one consideration, but the very fact of moving people should certainly be the greatest of considerations. It's different to say we're going to put a whole bunch of sheep in a feedlot, than saying we're going to forcibly—which it will come to—remove thousands of people from the area.

Mr. KYL. Mr. Lujan, let me say one further thing in this regard, and here, I'm speaking for myself and reflecting various shades of opinion of others that have been working on this proposition for many weeks.

When there is a possibility of arriving at some kind of agreement between the tribes, I think that is a course preferable to forcing one. In the matter in which you speak, one side says this would be an equitable way of doing the job, and if we're comparing dollar values, that's true.

But the other side says, we are not interested in the dollars, we're

interested in land. And there are good reasons for wanting to be interested in land as far as they are concerned.

In my own consideration, then, if this is the feeling, I have to put your alternative below those others that offer some possibility of agreement between the parties.

Mr. LUJAN. Very well.

Mr. MEEDS. The gentleman from the Virgin Islands?

Mr. DE LUGO. No questions.

Mr. MEEDS. The gentlewoman from California?

Mrs. BURKE. I would like to ask one question.

If the land is partitioned, who will come up with the plan? Would that be a negotiated plan, or would it be a plan that would be proposed by the Department?

Mr. KYL. In our report, we say first of all that we prefer to go with the present decision of the court, the order of the court to follow a certain plan for the settlement; so that we can have a genuine joint use, equal and undivided.

Second, we say, lacking that alternative, we would go to giving the court the authority to partition. We have before the committee this morning at least two, maybe three bills, which in some way would partition, or partition an interest at least. In one case, there would be a negotiated settlement with partition in all likelihood; in the second case, there would be definitely a partition by metes and bounds. Then Mr. Lujan has just spoken about a situation in which he would exchange values, one tribe perhaps keeping most of the land, but paying the other tribe for the land through the funds from subsurface development.

Those are the alternatives that are before the committee.

If I was not responsive, ma'am, I would like you to rephrase the question so I might try again.

Mrs. BURKE. I gather what you are saying. If it is partitioned, you would say, that you prefer it. I was asking the preference.

Mr. KYL. Then the negotiated settlement.

Mr. MEEDS. The gentleman from Arizona?

Mr. STEIGER. Thank you, Mr. Chairman.

I would like to point out, gentlemen, in your language which you recommend the solution by having the court partition; there is no provision in there—there is no language in there that would permit the court to make an allowance, a monetary allowance for the purpose of moving.

Mr. Schwartz has already indicated his awareness, and I know of yours, Mr. Kyl, of the cost of moving.

Are you saying that if the court should partition, then we would have to come back and make some legislative judgment then, as to the amounts of money, or was that simply an oversight in the language that you suggested?

Mr. KYL. It is no oversight, sir. Of course, any Federal expenditure has to be authorized and appropriated by the Congress.

Mr. STEIGER. What you are saying is, you didn't feel that some language, which said then the Government will be obligated to pay the cost of moving, is necessary.

Mr. KYL. We assume that that is the case.

Mr. LUJAN. Will the gentleman yield?

Mr. STEIGER. Yes.

Mr. LUJAN. Where are you going to move them to if the entire Navajo Reservation is already partitioned by permits, much like grazing permits in the Forest Service, and like grazing permits on the Bureau of Land Management lands?

Where are you going to move these 5,000 to 6,000 people?

Mr. KYL. We do not recommend that, sir.

Mr. LUJAN. You said that was a preferable alternative to getting other land, if the court partitions it or if the Steiger bill partitions it, you're faced with the problem of moving 5,000 or 6,000 people.

Where are you going to move them, when each piece of land on the Navajo Reservation is already allotted to someone? Where are we going to move these people?

Mr. KYL. There are also problems of acquisition of land.

Mr. LUJAN. You mean buy other lands to move the Navajos on? That's the solution?

Mr. KYL. Suitable lands, equivalent lands. It's a difficult problem which is, again, one of the reasons why we recommend as we do, not because it is a copout. It is not.

Mr. LUJAN. If we can buy land for the Navajos to move them somewhere, it would seem that a preferable alternative would be for the Navajos to buy land to give to the Hopis, and over a period of time, the Hopis might become attached to that land, much as they are to the joint use area.

Mr. KYL. They might, sir. But they have a preference at the present time, which is quite to the contrary.

Mr. LUJAN. The Navajos have a preference of remaining where they're at. So we're confronted with the preferences of the two tribes. And I feel very badly that the Department has so quickly dismissed the idea, that this might be the only real solution.

Mr. KYL. I appreciate your questions, sir, because you plead our case, I think.

Mr. LUJAN. If we're both talking about acquiring lands to turn over to the Hopis, then we are on the same side.

Mr. STEIGER. I wonder, Mr. Chairman—I will be brief. I think there were some points raised yesterday that I would just take advantage of your gentlemen's presence to clarify.

One, Chairman MacDonald made an equation of another problem in Arizona, that involves the removal of some non-Indian ranchers being moved off of the San Carlos Reservation. And he said that that was the way we should deal the Hopi-Navajo dispute. I would simply, for the purposes of the record, point out that that is exactly what a partition would be. It would be the removal of those people that are now occupying lands that are not theirs, and the reimbursing in some fashion.

I don't think that makes it any more palatable to anybody, but the equation was reversed by Chairman MacDonald and I did not want the record to remain unchallenged on that issue.

Also, with regard to the accuracy, and I have nothing but sympathy for the problem that the Bureau has with regard to such specifics as numbers of people and indeed, the greater problem of numbers of livestock.

I will tell you, Mr. Schwartz again, that I think you have overlooked what is probably going to be as significant a problem that we have—the simple problem of overgrazing, that is the number of

horses. That sounds like a terribly mundane thing, but I think you understand, Mr. Schwartz, that you are not going to get people to give up their horses to place them in some kind of confinement. And without the removal of the horses, you're going—if other livestock is successfully removed—you're going to get an increase of horses.

Again yesterday, Mr. Chairman, the committee was shown a map, and I forgot, it was one of the Navajo witnesses, he showed the location of wells, and it indicated that the partition, as drawn in the Steiger bill, gave an inordinate number of wells on the Hopi side.

In the interest of whatever, I guess it's accuracy, I would offer a map here that was prepared by the U.S. Geological Survey. I'm sorry but I could not determine the date of this, but I am told it is as current as any map on the matter.

It lists the wells, Mr. Chairman, and it totals the number of wells. It does indeed show more well on the Hopi side. There are a total of 39 wells on the Navajo side, and 46 on the Hopi side.

The locations on this map, Mr. Chairman, I would ask the committee to simply look at it, if they can recall yesterday's map, the locations are very different. even on both sides, I think the numbers are different. very different. And even on both sides, I think the numbers are different.

Also——

Mr. MEEDS. If there's no objection, we will include it for the file.

Mr. STEIGER. I would be happy to.

Mr. MEEDS. Without objection, so ordered.

[The material referred to will be found in the files of the subcommittee.]

Mr. STEIGER. Thank you, Mr. Chairman.

Mr. SCHWARTZ. Pardon me, Mr. Steiger, can I answer your question about the horses?

Mr. STEIGER. Sure.

Mr. SCHWARTZ. There are 4,300 horses on the executive order area; 4,352. Now, a good many of those horses are not branded. They don't belong to anybody.

Mr. STEIGER. Mr. Schwartz, I assume you arrived at that figure by the number of permits.

How did you arrive at that figure? By a physical count?

Mr. SCHWARTZ. That was a part of the census that was taken by the Navajos.

Mr. STEIGER. I see Mr. Wilson Skeet in the audience who I know to be a most competent stockman. He is the Vice Chairman of the Navajo Tribal Council, and a man that I have a great respect for; not only for his integrity, but his knowledge of the livestock business. I don't know if there are any less or more.

Mr. Chairman, if we could take the irregular procedure, simply asking Mr. Skeet to comment on that one, very narrow point, as to how many horses are probably in the executive area. I do it only for the purpose of showing how difficult it is again, unless he agrees.

Mr. MEEDS. We'll be happy to have an expert witness on horses.

Mr. STEIGER. Wilson, I'm asking you—Mr. Schwartz has indicated to us that there are 4,300 head of horses on the 1882 joint use lands. And I was asking, I know you live in New Mexico and you don't live over there, if you know from your own experience if that is a good

figure, if you think there are more or less horses, or if that's an accurate figure from your knowledge of that area.

Mr. SKEET. Mr. Chairman and Mr. Steiger, we did some counts in there, that's about a year old. We counted just a little less than 5,000 head, but due to the job and everything else, some of the sales did go, so approximately 4,000 horses would be a good number.

Mr. SCHWARTZ. Mr. Chairman and Mr. Steiger, getting back to the horses, we are prepared to assist the Navajo Tribe in a production effort in relation to the horses. We have the concern in Chicago and some veterinarians in California, who are interested in establishing a horse products laboratory on the Navajo Tribe if they want it. This would be for the production of serum and congregated estrogen and other pharmaceuticals that horses can be used for.

They plan on using 1,000 horses on this production at one time.

Mr. STEIGER. Mr. Schwartz, I will share with you an experience that I am competent to share with you, maybe the only thing I have in this whole matter. Some 15 years ago, and the 5 years previous to that, my occupation was buying the kind of horses that you are describing. One of the places I used to buy them was the Navajo and the Hopi Reservation.

And I will tell you that anybody that has purchased horses from these people will tell you that they part with them only very reluctantly. That to apply your ethic and your standard of the desire of a profit above all else, which I will tell you is my ethic also, is simply not valid.

And I think that we have overlooked the problem. For example, the Hopis advise me that they are going to have a horse sale this week, because they feel that this is an opportune time to reduce their livestock numbers. They figure they're going to get 200 head of horses at the sale, and they're going to have the sale on the Hopi Reservation in the interest of good conservation practices, which I think is very fine.

But I would like to wager right now that if they get 50 head of horses, it will be a very successful sale, not because the Hopis are not anxious to be as good conservationists as any, because the people who own the horses just don't want to sell them.

I agree with my colleague from New Mexico, both my colleagues, that it seems to me that for us to be talking about the problem of moving livestock and confronting them only partially, and then really not confronting the problems of moving people at all, is again totally unrealistic.

Let's assume for the sake of argument, Mr. Schwartz, that by some wild, unreasonable set of circumstances I am right and that the Hopis and Navajos will not form a corporation, they will not pull together in harness, and they will not agree to taking care of Navajo livestock on Hopi land.

In the absence of any alternative, which your recommendations have left us, the chairman has a bill in that would seem certainly to be more desirable from the standpoint of the Department than nothing at all. I happen to think from the standpoint of the Hopis, at least, the Hopis would be better off with the judicial division, but that wouldn't leave the Navajos with any hope.

It seems to me that you are dependent entirely on a court order, which I think the solicitor has very properly indicated is dependent upon the cooperation of the parties. As the chairman points out, that might be unique in judicial annals. You are compounding this whole Alice in Wonderland situation by saying to the court, yes, you're right, you can make beautiful music out here.

I think somebody ought to tell the court that this order is in real jeopardy, and that we need some judicial guidance, or either that—are you prepared to come up, prior to October 14th, and say this will work or this won't work? Have you got any kind of contingency that you can tell before the date in which everybody will be in violation?

Are you going to tell the court, this is not going to work?

Mr. SCHWARTZ. We hope to; yes, sir.

Mr. STEIGER. Will you do that?

Mr. SCHWARTZ. We are going to do our darndest to do that.

Mr. STEIGER. What day have you set for yourself as the time that you are going to assume it's not going to work?

Mr. SCHWARTZ. October 14.

Mr. STEIGER. In other words, you're going to encourage procrastination.

Mr. SCHWARTZ. I'm not going to procrastinate. I'm going to work like the devil at it.

Mr. STEIGER. I'm not underestimating your desire to make it succeed. At that point, you say, you're going to go to the court and say it won't work.

What happens if the tribes turn you down?

Mr. SCHWARTZ. We are going to work on it right now. The tribes turned us down initially. Their attorneys turned us down.

Mr. STEIGER. Thank you.

That's all, Mr. Chairman.

Mr. SCHWARTZ. Let me finish my statement, but I believe that there is room for a certain amount of conviction that we can talk of a negotiation. And we are prepared to talk to the tribes and negotiate this thing as nearly as possible, and then go to the court with the best solution that we can find.

Mr. STEIGER. But the tribes have turned down your plan?

Mr. SCHWARTZ. Yes.

Mr. STEIGER. At least we learned something, Mr. Chairman.

Mr. SCHWARTZ. Let me say this, that the Hopis turned us down to begin with, but they have indicated that they will go with us now.

Mr. MEEDS. I have some further questions.

Does the BIA have any records or anyone who can speak to the question of places of religious significance in the disputed area in the 1882 reservation area?

Mr. KYL. We do not have anything with us, sir.

Mr. MEEDS. Would the Bureau undertake to, again, without totally relying on the tribal witnesses on either side, try to find out for me what areas of special religious significance are in the total 1882 area?

Mr. KYL. Yes, sir. We will.

Mr. MEEDS. On both Hopi and Navajo.

Mr. KYL. Yes, sir.

Mr. MEEDS. I don't mean just the kinds of areas that have a religious significance to people because it is land, but I mean special religious significance.

Mr. SCHWARTZ. Yes, sir. We do have that. We have a map in the Hopi office in Keams Canyon, that shows every religious shrine that the Hopis have in that whole area. We have that.

Mr. MEEDS. If you would make that information available, at least, for our file, I would appreciate it.

Mr. SCHWARTZ. Yes, sir.

Mr. MEEDS. We would also like to have that information with regard to the Navajo religious areas of significance.

Mr. SCHWARTZ. Yes, sir.

Mr. MEEDS. I have one other question now. If this plan were implemented, you are saying it would cost \$7.5 million. Is that correct?

Mr. KYL. Yes.

Mr. MEEDS. Has that money been available, or will it be made available, to the Department? Is it in the present budget?

Mr. KYL. Mr. Chairman, it is not in the budget. We do have reason to believe that it is available, because OMB did approve this report in lengthy conversations yesterday when we talked about all matters of cost.

As I mentioned a moment ago, too, Mr. Schwartz has also been investigating the possibility of funds from the Small Business Administration to be utilized in some instances. There have been discussions with the Agriculture Department as what might be done by them.

Mr. MEEDS. So we're not really sure that even in the unlikely situation, in which we would get the cooperation of the tribes to enforce the court order, we have the money to put the thing in practice. Is that correct?

Mr. KYL. I am confident that the request for the funds will be made, sir. It still has to be authorized and appropriated.

Mr. MEEDS. Even if you had it in the fiscal 1974 appropriation, which we are working on right now in the Appropriations Committee, as you are well aware.

Mr. KYL. Yes, sir. We would attempt to get that into a supplemental appropriation.

Mr. MEEDS. I hope you can give me some assurance that it would not be taken out of funds available for schoolchildren.

Mr. KYL. It would not.

Mr. MEEDS. I must comment on that. I am sure that Mr. Franklin is misquoted when he was quoted in the Milwaukee Sentinel as having said: "Look what this leadership is costing you. It may well result in closing down your schools."

He was allegedly referring to money for the BIA takeover and Wounded Knee; that it be taken from programs for schoolchildren. Obviously, he was being misquoted. Wasn't he?

Mr. KYL. Yes. And I'm sure the interpretation of his remarks casts an improper and incorrect illusion, sir.

Mr. MEEDS. We certainly wouldn't want to keep anyone as head of Indian Affairs within the Interior Department who was prepared to take funds from little Indian schoolchildren, because some other Indians misbehaved at Wounded Knee.

Mr. KYL. I have been spending countless hours with Mr. Franklin, and I can say with absolute assurance that he would not, under any circumstances, try to take funds from the education program, the health program, or other programs for expenses at Wounded Knee or any other spot.

Mr. MEEDS. Then this quote also would be wrong, too, where he said, that the problems of the American Indian world were due to: "blind leadership, and that the Indians should share the cost of destruction caused by the leadership."

Mr. KYL. I am not aware of this quotation, but I certainly see where he is talking about the deleterious situation that might result as far as the public is concerned, as far as the Congress is concerned, if we have a whole rash of this kind of occurrence that we had at Wounded Knee—

Mr. MEEDS. He wouldn't be talking about the actual, monetary cost.

Mr. KYL. No, I am positive of this because I know of the conversations we have had, and I know of his firm position; he does not want the cost of operating Wounded Knee to come out of previously appropriated Indian funds. That is absolutely basic with him.

Mr. MEEDS. I'll give you a copy of the Milwaukee Sentinel for Wednesday, April 11, 1973, where these quotes appear, and I hope you'll take it to him. If these quotes are anywhere near accurate, Mr. Franklin is going to have one hell of a time with this chairman. I'll tell you that right now.

Mr. KYL. I am happy you bring this up, sir, because in all of my time in dealing with Indian affairs, as a member of this committee, and since that time—and I can say this in absolute sincerity—I have never found anyone who is so totally dedicated in trying to solve the Indians' problems, and in getting the funds that we need to settle those problems. I say that unequivocally. He is an earnest, total advocate.

Mr. MEEDS. Very good. That's why I was certain that he had misquoted.

The gentleman from New Mexico?

Mr. LUJAN. Thank you, Mr. Chairman.

I am sure that in the Indian Claims Commission, we've had many of these disputes as to where it might have been established that a tribe had aboriginal rights to some particular property, where it may be a whole community of some 5,000 or 6,000 people.

Is there a precedent that where the residents of that community of 5,000 or 6,000 or 7,000 have been moved off the land, or has the tribe been compensated by money, generally?

Can you think of any place where there has been this kind of dispute, and this many people have been moved out?

Mr. KYL. Let me try that first, and then see if these other gentlemen have something. I hope this is responsive.

Of course, the whole Indian Claims Commission establishment was based on the premise that Indians had been moved from their land, or had been improperly paid for their land, and this matter was adjudicated by the Indian Claims Commission and the distribution of funds was decided by the Congress.

You have pending before you now a claim in which there are three elements of one tribe involved, and the Congress has not been able to get a consensus from the people. You have a recommendation from the Department as to what share of those funds should go to each part of the same tribe; separate, but still part of the same tribe.

And the whole thing—the whole business of the Claims Commission was predicated on that proposition.

Now, I'll ask the Solicitor if there is any specific memory he has of incidences of this nature.

Mr. LUJAN. The basic question is, where has it been determined that a tribe had a right to some particular land and on that land there was a community of 5,000–6,000, 7,000 people. Has there ever been any instance where those 5,000–6,000, 7,000 people have been moved, or is it always resolved in paying the tribe and letting the people stay there?

Mr. SOLLER. Mr. Sigler has pointed out a couple of instances with connection to the Missouri River project. It seems that the Missoula Dam on the Seneca Reservation in New York has involved some moving. In the Dakotas, there were some areas established for that community occupying low-lying lands that were flooded by Corps of Engineer projects. The same is true with the Seneca, where people were physically moved or provided with an opportunity to move to new areas.

Mr. LUJAN. These were for projects of some kind, not just to move them, because the Indian tribe had the right to that land.

Mr. SOLLER. Not to my knowledge.

Mr. KYL. In the case, incidentally of which Mr. Soller speaks, at Fort Thompson in South Dakota, these people were moved to a new location, and the tribe was given certain benefits, developments, and each family was given a family plan distribution to compensate for the move.

Mr. LUJAN. This is because of flooding waters?

Mr. KYL. Because the Big Ben Dam—

Mr. MEEDS. The Chair observes that that's pretty strong enforcement proceedings; either to move or drown.

Any further questions?

If not, the hearings will be adjourned. And we very much appreciate, Mr. Kyl, your presence, Mr. Schwartz and the other gentlemen and we hope that we can come to some resolution of this matter.

Mr. KYL. May I add here one thing, sir? We are available for consultation with you at your beck and call.

Mr. MEEDS. Thank you very much.

Before we adjourn I would like to place in the record without objection a letter from Mr. Jim Stewart to Senator Goldwater dated May 17, 1973 and a letter to Hon. Elmer Staats from Hon. Lloyd Meeds, dated October 12, 1973.

[The letters follow:]

MAY 17, 1973.

THE ALBUQUERQUE HILTON,
Albuquerque, N. Mex.

DEAR SENATOR GOLDWATER: This is in reference to the Hopi-Navajo land problem.

I was Director of the Indian Bureau "Lands and Minerals" Division from 1933 to May 1942, at which time I transferred to the General Superintendency

of the Navajo Reservation with headquarters at Window Rock, Arizona, as you well know. I was there slightly over 7 years.

It was never considered that the Navajo's had or have any legal rights to lands within the Hopi Executive Order Indian reservation, which as you well know was set aside for the "Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon". This language is pro-forma, and appears in other Executive Order reservations. It was meaningless during the past 50 or more years, and originated many years ago to provide landless or recalcitrant bands or groups of Indians with a lieu location.

During the 30's I and Commissioner Collier and others prevailed upon Secretary Ickes to have that conditional language stricken from all such Executive Orders, as we foresaw the possibility of trouble such as is now taking place in the Hopi-Navajo case. However, due to the enormous work load at that time facing me, the proposal was neglected by me and forgotten.

The Hopi Reservation should never be divided as, to me, it would always be a government land steal—not an adjustment.

It is my sincere hope that Congress will pass legislation confirming in the Hopis full title to all the lands and minerals in the Executive Orders area, that those Navajo families now living within the area be allowed to remain, and no others, that after the passage of the legislation the Navajo Tribal Council authorizes and pay a yearly occupancy and lease rental from Navajo Tribal funds to the Hopi Tribe.

In a federal court case of many years ago it was held that an Indian cannot have tribal rights on two reservations. The Indian in question as I remember was named Carl J. Reid Dussome, a Sioux, who had been allotted land on one of the Sioux reservations—had drifted to Oklahoma, married a Kiowa woman and received an allotment of land on that reservation. The court held he must give up one of the allotments. Any law clerk can run this case down for you.

When the colonization program of Hopis and Navajos was being discussed in Commissioner Collier's office. I opposed it on the same grounds, so the matter was referred to the Solicitor's Office of the Interior Department for a legal opinion, which was composed after much research and legal analysis by Mrs. Charlotte Westwood of the Solicitor's staff. This opinion bore out my contention, but was taken quite sourly by the eager beavers on Commissioner Collier's staff—to circumvent it and put their pet colonization program under way Mrs. Westwood's opinion was referred to the Department of Justice for review and of course it was reversed as planned.

I suggest you obtain a copy of Mrs. Westwood's opinion, it would be most helpful to you in this matter. I too would like a copy also, and if not too much trouble a typed copy of this letter.

With all good wishes,

JIM STEWART.

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
U.S. HOUSE OF REPRESENTATIVES,
Washington, D.C., October 12, 1973.

Hon. ELMER STAATS,
Comptroller General, General Accounting Office,
Washington, D.C.

DEAR MR. STAATS: Enclosed is a copy of an Order of Compliance and related material in the case of *Hamilton v. MacDonald* handed down in the United States District Court for the District of Arizona. Item 7 of that Order provides that:

"No new construction shall be permitted on the Joint-use Area without a permit issued jointly by the two tribes, except that the Hopi Tribe shall be permitted to construct that number of dwellings or other improvements equal to those Navajo dwellings and other improvements which are presently existing or now under construction in the Joint-Use Area."

The Subcommittee has heard allegations that Navajo construction has been begun and continued in the prohibited area in violation of the court order and, further, that federal funding, either directly or indirectly, has and is being made available for such construction. The charges indicate that Bureau of Indian Affairs' funds, through their Home Improvement Program and the Tribal Work Experience Program may have been involved as well as funds from the Department of Housing and Urban Development through the Navajo Tribal Housing Authority.

The Subcommittee on Indian Affairs is currently considering legislation to resolve the land dispute between the Navajo and Hopi tribes. In aid of that legislation, the Subcommittee would like an investigation and report on (1) whether new construction has begun by the Navajo within the prohibited area since October 14, 1972 and (2) whether Federal funds, directly or indirectly, have been made available for such construction.

Thank you.

Sincerely,

LLOYD MEEDS,
Chairman, Indian Affairs Subcommittee.

[Whereupon, at 11:45 a.m., the hearing was adjourned.]

[The answer to the above letter with the information for the record had not been received when these hearings were printed, therefore, the material will be placed in the subcommittee files when received.]

