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NAVAJO-HOPI LAND DISPUTE

DOCUMENTS

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THE UNIVERSITY
KANSAS STATE UNIVERSITY

HEARING BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE NINETY-THIRD CONGRESS SECOND SESSION

H.R. 10337

AN ACT 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

S. 2424

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

S. 3230

A BILL TO PROVIDE FOR THE EFFICIENT DEVELOPMENT OF THE NATURAL RESOURCES OF THE NAVAJO AND HOPI RESERVATIONS FOR THE BENEFIT OF ITS RESIDENTS, TO ASSIST THE MEMBERS OF THE NAVAJO AND HOPI TRIBES IN BECOMING ECONOMICALLY FULLY SELF-SUPPORTING, TO RESOLVE A LAND DISPUTE BETWEEN THE NAVAJO AND HOPI TRIBES, AND FOR OTHER PURPOSES

S. 3724

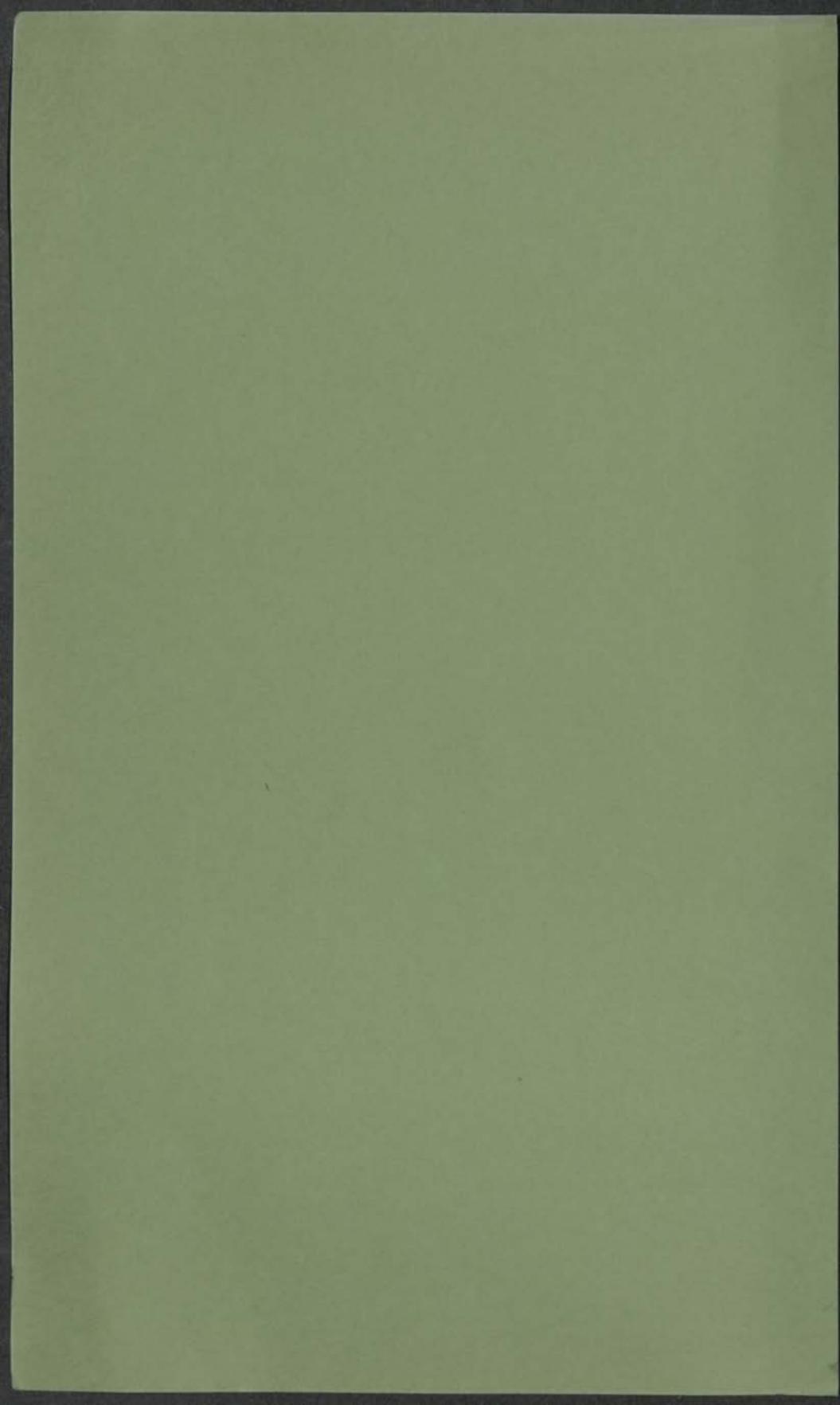
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JULY 24, 1974



Printed for the use of the
Committee on Interior and Insular Affairs

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JULY 24, 1974



Printed for the use of the
Committee on Interior and Insular Affairs

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

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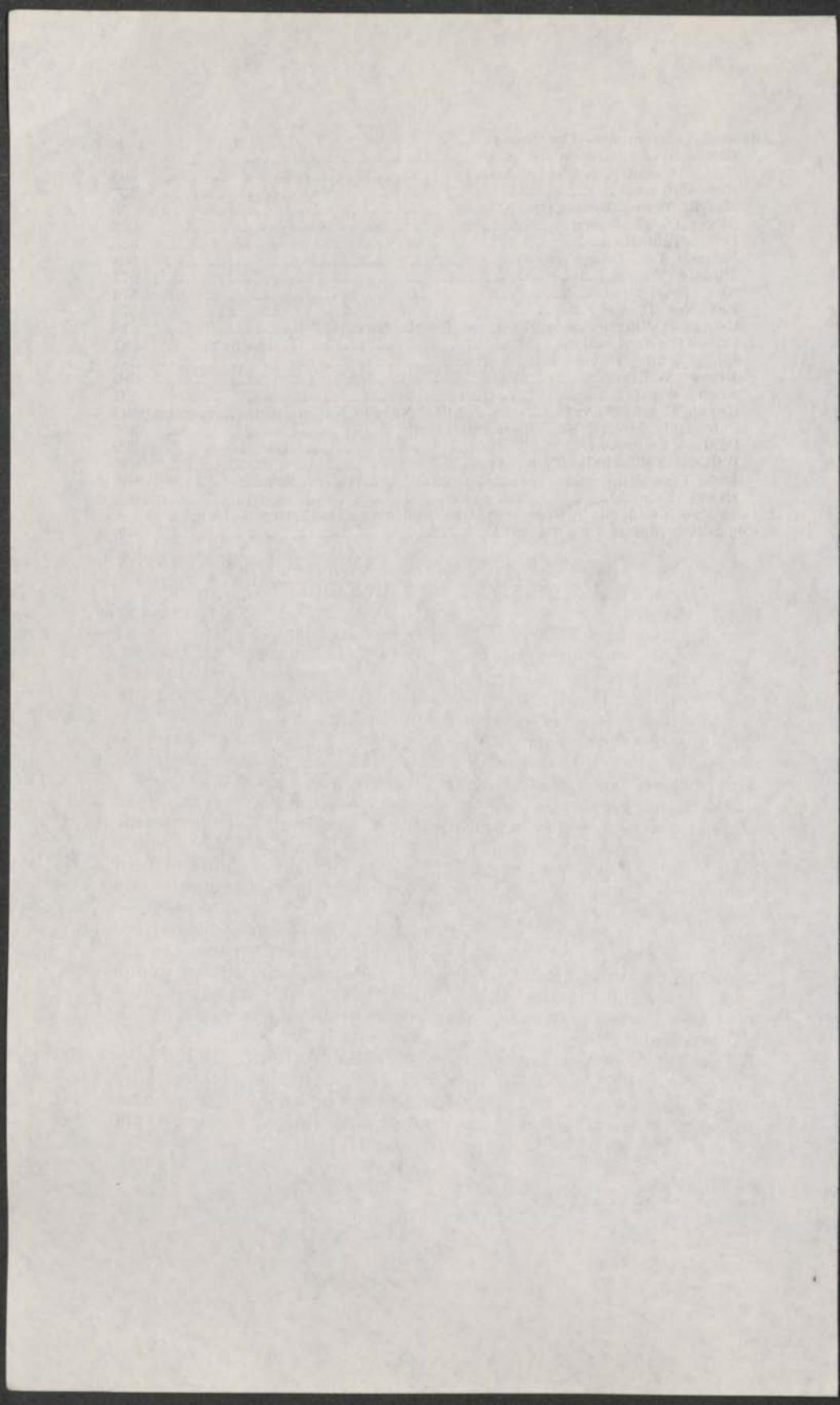
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NAVAJO-HOPI LAND DISPUTE

WEDNESDAY, JULY 24, 1974

U.S. SENATE,
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
Washington, D.C.

The committee met, pursuant to notice, at 9:30 a.m., in room 3110, Dirksen Office Building, Hon. James Abourezk, presiding.

Present: Senators Abourezk, Bible, Metcalf, Haskell, Metzenbaum, Fannin, Hansen, and Bartlett.

Also present: Jerry T. Verkler, staff director; William J. Van Ness, chief counsel; Forrest Gerard, professional staff member; Harrison Loesch, minority counsel; W. O. Craft, Jr., deputy minority counsel; and Ella Mae Horse, staff assistant.

OPENING STATEMENT OF HON. JAMES ABOUREZK, A U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Senator ABOUREZK. The hearing will come to order.

This is an open, public hearing, before the Committee on Interior and Insular Affairs to take testimony from congressional, administration, Navajo and Hopi witnesses on H.R. 10337, S. 2424, S. 3230 and S. 3724 relating to the Navajo-Hopi land dispute.

The purpose of these measures is to provide a legislative solution to a prolonged dispute between the two tribes over approximately 1.8 million acres of land situated in northeastern Arizona.

In addition, the proposed measures attempt to solve several ancillary problems which have grown out of the central dispute. The historical and legal background relating to this issue is already well documented through hearings on the issue and proposed legislative solutions held during the 92d and 93d Congresses before both the House and Senate Interior Committees.

By the act of July 22, 1958, 72 Stat. 403, the 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, one, 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, two, that the court was without jurisdiction to partition the area held jointly. The legalities of the issues raised in *Healing v. Jones* appear to be settled, having been to the U.S. Supreme Court.

However, in order to provide the Hopis with their one-half interest in the joint use area it may be necessary at some point to relocate several thousand Navajos who have resided for varying periods of time in the area.

It is the committee's hope that the hearing today will yield new information and developments to assist us in arriving at an informed judgment on this issue.

The two tribal groups will be allocated 2½ hours each in which to present their testimony. The Hopi Tribe will appear first, followed by the Department of the Interior, and then the witnesses for the Navajo Nation.

At this point I shall order that the four bills pending before the committee and the Department report be made a part of the hearing record.

[The texts of H.R. 10337, S. 2424, S. 3230, S. 3724, and the Department of the Interior's report follow:]

93^D CONGRESS
2^D SESSION

H. R. 10337

IN THE SENATE OF THE UNITED STATES

MAY 30, 1974

Read twice and referred to the Committee on Interior and Insular Affairs

AN ACT

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That all of the surface rights in and to that portion of the
4 Hopi Indian Reservation created by the Executive order
5 of December 16, 1882, in which the United States District
6 Court for the District of Arizona found the Hopi and
7 Navajo Indian Tribes to have joint, undivided, and equal

1 interests in the case entitled "Healing against Jones" (210
2 Fed. Supp. 125 (1962), affirmed 373 U.S. 758), herein-
3 after referred to as the joint-use area, shall be partitioned
4 in kind as provided in this Act.

5 SEC. 2. The United States District Court for the District
6 of Arizona in the supplemental proceedings in Healing against
7 Jones is hereby authorized to partition in kind the surface
8 of the joint-use area between the Hopi and Navajo Indian
9 Tribes share and share alike using the following criteria in
10 establishing the boundary line between said tribes:

11 (a) The Navajo portion shall be contiguous to that
12 portion of the 1934 Navajo Indian Reservation as defined
13 in section 9 of this Act.

14 (b) The Hopi portion shall be contiguous to the exclu-
15 sive Hopi Indian Reservation as established by the court in
16 Healing against Jones, hereinafter referred to as Land
17 Management District 6, and shall adjoin that portion of the
18 1934 Navajo Indian Reservation as partitioned to the Hopi
19 Tribe in section 7 of this Act.

20 (c) The partition shall be established so as to include
21 the high Navajo population density within the portion par-
22 titioned to the Navajo Tribe to avoid undue social, economic,
23 and cultural disruption insofar as reasonably practicable.

24 (d) The lands partitioned to the Hopi and Navajo

1 Tribes shall be equal in acreage insofar as reasonably
2 practicable.

3 (e) The lands partitioned to the Hopi and Navajo
4 Tribes shall be equal in quality and carrying capacity inso-
5 far as reasonably practicable.

6 (f) The boundary line between the Hopi and Navajo
7 Tribes as delineated pursuant to this Act shall follow terrain
8 so as to avoid or facilitate fencing insofar as reasonably
9 practicable.

10 (g) In any division of the surface rights to the 1882
11 joint-use area, reasonable provision shall be made for the use
12 and right of access to identified religious shrines of either
13 party on the portion allocated to the other party.

14 SEC. 3. The partition proceedings as authorized in sec-
15 tion 2 hereof shall be assigned for hearing at the earliest
16 possible date, shall take precedence over all other matters
17 pending on the docket of the district court at that time and
18 shall be expedited in every way by such court.

19 SEC. 4. The lands partitioned to the Navajo Tribe pur-
20 suant to section 2 hereof shall be held in trust by the United
21 States exclusively for the Navajo Tribe and as a part of the
22 Navajo Indian Reservation.

23 SEC. 5. The lands partitioned to the Hopi Tribe pursu-
24 ant to section 2 hereof shall be held in trust by the United

1 States exclusively for the Hopi Tribe and as a part of the
2 Hopi Indian Reservation.

3 SEC. 6. Partition of the surface of the lands of the joint-
4 use area shall not affect the joint ownership status of the coal,
5 oil, gas, and all other minerals within or underlying said
6 lands. All such coal, oil, gas, and all other minerals within
7 or underlying said lands shall be managed jointly by the
8 Hopi and Navajo Tribes, subject to supervision and approval
9 by the Secretary of the Interior as otherwise required by
10 law, and the proceeds therefrom shall be divided between
11 the said tribes, share and share alike.

12 SEC. 7. Hereafter the United States shall hold in trust
13 exclusively for the Hopi Indian Tribe and as a part of the
14 Hopi Indian Reservation all right, title, and interest in and
15 to the following described land which is a portion of the
16 land described in the Act of June 14, 1934 (48 Stat.
17 960) :

18 Beginning at a point on west boundary of Executive
19 Order Reservation of 1882 where said boundary is inter-
20 sected by right-of-way of United States Route 160;

21 thence south southwest along the centerline of said
22 Route 160, a distance of approximately 8 miles to a point
23 where said centerline intersects the township line be-
24 tween townships 32 and 33 north, range 12 east;

25 thence west, a distance of approximately 9 miles, to

1 the north quarter corner of section 4, township 32
2 north, range 11 east;

3 thence south, a distance of approximately $4\frac{3}{4}$ miles
4 following the centerlines of sections 4, 9, 16, 21, and
5 28 to a point where said boundary intersects the right-
6 of-way of United States Route 160;

7 thence southwesterly, following the centerline of
8 United States Route 160, a distance of approximately
9 11 miles; to a point where said centerline intersects the
10 right-of-way of United States Route 89;

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

15 thence east following the south boundaries of sec-
16 tions 2 and 1, township 29 north, range 9 east, sections
17 6, 5, 4, and so forth, township 29 north, range 10 east,
18 and continuing along the same bearing to the north-
19 west corner of section 12, township 29 north, range 11
20 east (unsurveyed);

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

24 thence east, a distance of 1 mile to the northwest

1 corner of section 18, township 29 north, range 12 east
2 (unsurveyed) ;

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

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

12 thence due north, along the west boundary of the
13 Executive Order Reservation of 1882, a distance of
14 approximately 27½ miles to the point of beginning.

15 SEC. 8. The Secretary of the Interior in hereby au-
16 thorized to allot in severalty to individual Paiute Indians, not
17 now members of the Navajo Indian Tribe, who are located
18 within the area described in the said Act of June 14, 1934,
19 and who were located within said area or are direct descend-
20 ants of Paiute Indians who were located within said area
21 on June 14, 1934, land in quantities as specified in the
22 Act of February 8, 1887 (24 Stat. 388), as amended, and
23 patents shall be issued to them for such lands in the manner
24 and with the restrictions as provided in sections 1, 5, and 6
25 of that Act, as amended.

1 SEC. 9. Hereafter the United States shall hold in trust
2 exclusively for the Navajo Indian Tribe and as a part of the
3 Navajo Indian Reservation the lands described in the said
4 Act of June 14, 1934, except the lands partitioned to the
5 Hopi Tribe pursuant to section 2 hereof and the lands as
6 described in section 7 hereof and the lands in the exclusive
7 Hopi Indian Reservation commonly known as Land Manage-
8 ment District 6, and further excepting those lands allotted
9 pursuant to section 8 hereof.

10 SEC. 10. (a) The Secretary of the Interior is authorized
11 and directed to remove all Navajo Indians and their personal
12 property, including livestock from the lands partitioned to
13 the Hopi Tribe pursuant to section 2 hereof and as described
14 in section 7 of this Act. Such removal shall take place over a
15 period of five years from the date of final partition by the
16 court referred to in section 2 with approximately 20 per
17 centum of the Navajo occupants to be removed each year.
18 No further settlement of Navajo Indians on the lands parti-
19 tioned to the Hopi Tribe pursuant to section 2 hereof and
20 as described in section 7 of this Act or Land Management
21 District 6, shall be permitted unless advance written approval
22 of the Hopi Tribe is obtained. No Navajo Indian shall here-
23 after be allowed to increase the number of livestock he grazes
24 on the areas so partitioned to the Hopi Tribe pursuant to
25 section 2 hereof and as described in section 7 of this Act, nor

1 shall he retain any grazing rights in those areas subsequent
2 to his removal therefrom.

3 (b) The Secretary of the Interior is authorized and
4 directed to transfer not to exceed 250,000 acres of public
5 lands within his jurisdiction within the States of Arizona or
6 New Mexico to the Navajo Indian Tribe: *Provided*, That
7 the Navajo Tribe shall pay to the United States the fair
8 market value for such lands as may be determined by the
9 Secretary. Such lands shall, if possible, be contiguous or ad-
10 jacent to the existing Navajo Reservation and title shall be
11 taken by the United States in trust for the benefit of the
12 Navajo Tribe.

13 SEC. 11. The Secretary of the Interior is authorized
14 and directed to remove all Hopi Indians and their personal
15 property, including livestock, from the lands so partitioned
16 to the Navajo Tribe pursuant to section 2 hereof and as
17 described in section 9 of this Act. Such removal shall take
18 place over a period of two years from the date of final parti-
19 tion by the court referred to in section 2 with approximately
20 50 per centum of the Hopi occupants to be removed each
21 year. No further settlement of Hopi Indians on the lands so
22 partitioned to the Navajo Tribe pursuant to section 2 hereof
23 and as described in section 9 of this Act shall be permitted
24 unless advance written approval of the Navajo Tribe is ob-
25 tained. No Hopi Indian shall hereafter be allowed to in-

1 crease the number of livestock he grazes on the areas so par-
2 titioned to the Navajo Tribe pursuant to section 2 hereof
3 and as described in section 9 of this Act, nor shall he retain
4 any grazing rights in those areas subsequent to his removal
5 therefrom.

6 SEC. 12. (a) The United States shall purchase from
7 the head of each Navajo and Hopi household who is re-
8 quired to relocate under the terms of this Act the habita-
9 tion and other improvements owned by him on the area
10 from which he is required to move. The purchase price shall
11 be the fair market value of such habitation and improvements.

12 (b) In addition to the payments made pursuant to
13 subsection (a), the Secretary shall:

14 (1) reimburse each head of a household whose
15 family is moved pursuant to this Act for his actual
16 reasonable moving expenses as if he were a displaced
17 person under section 202 of the Uniform Relocation
18 Assistance and Real Property Acquisition Policies Act
19 of 1970 (84 Stat. 1894);

20 (2) pay to each head of a household whose family
21 is moved pursuant to this Act an amount which, when
22 added to the fair market value of the habitation and
23 improvements purchased under subsection (a), equals
24 the reasonable cost of a decent, safe, and sanitary

1 replacement dwelling adequate to accommodate such
2 displaced household: *Provided*, That the additional pay-
3 ment authorized by this paragraph (2) shall not exceed
4 \$15,000 for a household of three or less and not more
5 than \$20,000 for a household of four or more: *Pro-*
6 *vided further*, That the additional payment authorized
7 by this subsection shall be made only to a displaced
8 person who purchases and occupies such replacement
9 dwelling not later than the end of the one-year period
10 beginning on the date on which he receives from the
11 Secretary final payment for the habitation and improve-
12 ments purchased under subsection (a), or on the date on
13 which he moves from such habitation whichever is the
14 later date. Nothing in this subsection shall require a
15 displaced person to occupy a dwelling with a higher
16 degree of safety and sanitation than he desires.

17 (c) In implementing subsections (b) (1) and (b) (2)
18 of this section, the Secretary shall establish standards con-
19 sistent with those established in the implementation of the
20 Uniform Relocation Assistance and Real Property Acquisi-
21 tion Policies Act of 1970.

22 (d) The Secretary is authorized to dispose of dwellings
23 and other improvements acquired pursuant to this Act in
24 such manner as he sees fit, including resale of such improve-

1 ments to members of the tribe exercising jurisdiction over
2 the area at prices no higher than their acquisition costs.

3 SEC. 13. The Navajo Tribe shall pay to the Hopi Tribe
4 the fair rental value as determined by the Secretary of the
5 Interior for all Navajo Indian use of the lands referred to in
6 section 5 and described in section 7 of this Act subsequent
7 to the date of the partition thereof.

8 SEC. 14. The Hopi Tribe shall pay to the Navajo Tribe
9 the fair rental value as determined by the Secretary of the
10 Interior for all Hopi Indian use of the lands referred to in
11 section 4 and described in section 9 of this Act subsequent
12 to the date of the partition thereof.

13 SEC. 15. Nothing herein contained shall affect the title,
14 possession, and enjoyment of lands heretofore allotted to in-
15 dividual Hopi and Navajo Indians for which patents have
16 been issued. Hopi Indians living on the Navajo Reservation
17 shall be subject to the jurisdiction of the Navajo Tribe and
18 Navajo Indians living on the Hopi Reservation shall be
19 subject to the jurisdiction of the Hopi Indian Tribe.

20 SEC. 16. The Navajo Indian Tribe and the Hopi Indian
21 Tribe, acting through the chairman of their respective tribal
22 councils, for and on behalf of said tribes, including all vil-
23 lages, clans, and individual members thereof, are hereby
24 authorized to commence or defend in the United States Dis-

1 trict Court for the District of Arizona an action or actions
2 against each other for the following purposes:

3 (a) For an accounting of all sums collected by said
4 Navajo Indian Tribe since the 17th day of September 1957
5 as trader license fees or commissions, lease proceeds or other
6 similar charges for the doing of business or the use of lands
7 within the Executive Order Reservation of December 16,
8 1882, and judgment for one-half of all sums so collected,
9 and not paid to the Hopi Tribe, together with interest at the
10 rate of 6 per centum per annum compounded annually.

11 (b) For the determination and recovery of the fair
12 value of the grazing and agricultural use by said Navajo
13 Tribe and its individual members since the 28th day of Sep-
14 tember 1962 of the undivided one-half interest of the Hopi
15 Tribe in the lands on said day decreed to said Hopi and
16 Navajo Tribes equally and undivided as a joint-use area,
17 together with interest at the rate of 6 per centum per annum
18 compounded annually, notwithstanding the fact that said
19 tribes are tenants in common of said lands.

20 (c) For the adjudication of any claims that either said
21 Hopi or Navajo Tribe may have against the other for dam-
22 ages to the lands to which title was quieted as aforesaid by
23 the United States District Court for the District of Arizona
24 in said tribes, share and share alike, subject to the trust title
25 of the United States, without interest, notwithstanding the

1 fact that said tribes are tenants in common of said lands.
2 Said claims shall, however, be limited to occurrences since
3 the establishment of grazing districts on said lands in the
4 year 1936, pursuant to section 6 of the Act of June 18, 1934
5 (48 Stat. 984).

6 Neither laches nor the statute of limitations shall con-
7 stitute a defense to any action authorized by this Act for
8 existing claims if commenced within two years from the
9 effective date of this Act.

10 SEC. 17. The Navajo Tribe or the Hopi Tribe may in-
11 stitute such further original ancillary, or supplementary
12 actions against the other tribe as may be necessary or desir-
13 able to insure the quiet and peaceful enjoyment of the re-
14 servation lands of said Hopi and Navajo Indians by said
15 tribes and the members thereof, and to fully accomplish all
16 objects and purposes of this Act. Such actions may be com-
17 menced in the United States District Court for the District
18 of Arizona by either of said tribes against the other, acting
19 through the chairman of the respective tribal councils, for and
20 on behalf of said tribes, including all villages, clans, and
21 individual members thereof.

22 SEC. 18. The United States shall not be an indispens-
23 able party to any action or actions commenced pursuant
24 to this Act. Any judgment or judgments by the court shall

1 not be regarded as a claim or claims against the United
2 States.

3 SEC. 19. All applicable provisional and final remedies
4 and special proceedings provided for by the Federal Rules
5 of Civil Procedure and all other remedies and processes
6 available for the enforcement and collection of judgments
7 in the district courts of the United States may be used in
8 the enforcement and collection of judgments obtained pur-
9 suant to the provisions of this Act.

10 SEC. 20. Notwithstanding any provision of this Act, or
11 any agreement or settlement reached under authority of this
12 Act, the Secretary of the Interior is authorized and directed
13 to immediately commence reduction of the numbers of all
14 the livestock now being grazed upon the lands within the
15 Joint Use Area of the 1882 Executive Order Reservation
16 and complete such reductions to carrying capacity of such
17 lands, as determined by the usual range capacity standards
18 as established by the Secretary of Interior after the date of
19 enactment of this Act. The Secretary of the Interior is di-
20 rected to institute such conservation practices and methods
21 within such area as are necessary to restore the grazing po-
22 tential of such area to the maximum extent feasible. He shall,
23 in addition, upon determination of any settlement under au-
24 thority of this Act, provide for the survey, location of monu-
25 ments, and fencing of boundaries of any lands partitioned
26 under such settlement. There is authorized to be appropriated

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

3 SEC. 21. The members of the Hopi Indian Tribe shall
4 have perpetual use of Cliff Spring as shown on USGS 7½
5 minute Quad named Toh Ne Zhonnie Spring, Arizona,
6 Navajo County, dated 1968; and located 1,250 feet west
7 and 200 feet south of the intersection of 36 degrees, 17
8 minutes, 30 seconds north latitude and 110 degrees, 9
9 minutes west longitude, as a shrine for religious ceremonial
10 purposes, together with the right to gather branches of fir
11 trees growing within a 2-mile radius of said spring for use
12 in such religious ceremonies, and the further right of ingress,
13 egress, and regress between the Hopi Reservation and said
14 spring. The Hopi Tribe is hereby authorized to fence said
15 spring upon the boundary line as follows:

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

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

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

24 thence south 46 degrees east, 600 feet;

25 thence north 38 degrees east, 1,300 feet to the point

1 of beginning, 23.8 acres more or less: *Provided*, That
2 if and when said spring is fenced the Hopi Tribe shall
3 pipe the water therefrom to the edge of the boundary as
4 hereinabove described for the use of residents of the area.
5 The natural sand of fir trees within said 2-mile radius
6 shall be conserved for such religious purposes.

7 SEC. 22. Notwithstanding anything contained in this
8 Act to the contrary, the Secretary of the Interior shall make
9 reasonable provision for the use and right of access to iden-
10 tified religious shrines of the Navajo and Hopi Indians for
11 the members of each tribe on the reservation of the other
12 tribe.

13 SEC. 23. If any provision of this Act, or the application
14 of any provision to any person, entity or circumstance, is
15 held invalid, the remainder of this Act shall not be affected
16 thereby.

17 SEC. 24. (a) For the purpose of carrying out the
18 provisions of section 12 of this Act, there is hereby au-
19 thorized to be appropriated not to exceed \$28,800,000.

20 (b) For the purpose of carrying out the provisions
21 of section 20 of this Act, there is hereby authorized to be
22 appropriated not to exceed \$300,000.

Passed the House of Representatives May 29, 1974.

Attest:

W. PAT JENNINGS,

Clerk.

93^d CONGRESS
1st SESSION

S. 2424

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 17, 1973

Mr. FANNIN (for himself and Mr. GOLDWATER) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That all of the surface rights in and to that portion of the
4 Hopi Indian Reservation created by the Executive order of
5 December 16, 1882, in which the United States district
6 court found the Hopi and Navajo Indian Tribes to have
7 joint, undivided, and equal interests in the case entitled
8 "Healing against Jones" (210 Fed. Supp. 125 (1962)),

1 affirmed 373 U.S. 758), hereinafter referred to as the joint-
2 use area, shall be partitioned in kind as provided in this Act.

3 SEC. 2. The Secretary of the Interior (hereinafter
4 referred to as the "Secretary") is hereby authorized to parti-
5 tion in kind the surface of the joint-use area between the
6 Hopi and Navajo Indian Tribes share and share alike using
7 the following criteria in establishing the boundary line be-
8 tween said tribes:

9 (a) The Navajo portion shall be contiguous to that
10 portion of the 1934 Navajo Indian Reservation as defined in
11 section 9 of this Act.

12 (b) The Hopi portion shall be contiguous to the Ex-
13 clusive Hopi Indian Reservation as established by the court
14 in *Healing against Jones*, hereinafter referred to as "Land
15 Management District 6" and shall adjoin that portion of the
16 1934 Navajo Indian Reservation as partitioned to the Hopi
17 Tribe in section 7 of this Act.

18 (c) The partition shall be established so as to include
19 the high Navajo population density within the portion parti-
20 tioned to the Navajo Tribe to avoid undue social, economic,
21 and cultural disruption insofar as reasonably practicable.

22 (d) The lands partitioned to the Hopi and Navajo
23 Tribes shall be equal in acreage insofar as reasonably prac-
24 ticable.

25 (e) The lands partitioned to the Hopi and Navajo

1 Tribes shall be equal in quality and carrying capacity insofar
2 as reasonably practicable.

3 (f) The boundary line between the Hopi and Navajo
4 Tribes as delineated pursuant to this Act shall follow terrain
5 so as to avoid or facilitate fencing insofar as reasonably prac-
6 ticable.

7 SEC. 3. The Secretary shall conclude the partition of the
8 joint-use area and shall cause to be published in the Federal
9 Register the description of such partitioned areas within six
10 months from the date of this Act.

11 SEC. 4. Effective on the date of publication of the descrip-
12 tion of such partitioned areas the United States shall hold
13 in trust exclusively for the Navajo Tribe and as a part of the
14 Navajo Indian Reservation the area so partitioned to said
15 Navajo Tribe.

16 SEC. 5. Effective on the date of publication of the descrip-
17 tion of such partitioned areas the United States shall hold
18 in trust exclusively for the Hopi Tribe and as a part of the
19 Hopi Indian Reservation the area so partitioned to said Hopi
20 Tribe.

21 SEC. 6. Partition of the surface of the lands of the joint-
22 use area shall not affect the joint ownership status of the coal,
23 oil, gas, and all other minerals within or underlying said
24 lands. All such coal, oil, gas, and all other minerals within or
25 underlying said land shall be managed jointly by the Hopi

1 and Navajo Tribes, subject to supervision and approval by
2 the Secretary of the Interior as otherwise required by law,
3 and the proceeds therefrom shall be divided between the said
4 tribes, share and share alike.

5 SEC. 7. Hereafter the United States shall hold in trust
6 exclusively for the Hopi Indian Tribe and as a part of the
7 Hopi Indian Reservation all right, title, and interest in and
8 to the following described land which is a portion of the land
9 described in the Act of June 14, 1934 (48 Stat. 960) :

10 Beginning at a point on west boundary of Executive
11 Order Reservation of 1882 where said boundary is inter-
12 sected by R/W of United States Route 160;

13 thence south southwest along the centerline of said
14 Route 160, a distance of approximately 8 miles to a point
15 where said centerline intersects the township line be-
16 tween townships 32 and 33 north, range 12 east;

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

20 thence south, a distance of approximately $4\frac{3}{4}$ miles,
21 following the west boundary of sections 4, 9, 16, 21, and
22 28 to a point where said boundary intersects the right-
23 of-way of United States Route 160;

24 thence southwesterly, following the centerline of
25 United States Route 160, a distance of approximately

1 11 miles, to a point where said centerline intersects the
2 right-of-way of United States Route 89;

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

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

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

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

19 thence south, a distance of 1 mile, to the south-
20 west corner of section 18, township 29 north, range 12
21 east (unsurveyed);

22 thence east, a distance of approximately 9 miles,
23 following the section lines, unsurveyed, on the north
24 boundaries of sections 18, 17, 16, and so forth in town-
25 ship 29 north, range 12 east and continuing to a point

1 where said section lines intersect the west boundary of
2 Executive Order Reservation of 1882;

3 thence due north, along the west boundary of the
4 Executive Order Reservation of 1882, a distance of ap-
5 proximately 27½ miles to the point of beginning.

6 SEC. 8. The Secretary of the Interior is hereby author-
7 ized to allot in severalty to individual Paiute Indians, not
8 now members of the Navajo Indian Tribe, who are located
9 within the area described in the said Act of June 14, 1934,
10 and who were located within said area or are direct descend-
11 ants of Paiute Indians who were located within said area on
12 June 14, 1934, land in quantities as specified in the Act of
13 February 8, 1887 (24 Stat. 388), as amended, and patents
14 shall be issued to them for such lands in the manner and with
15 the restrictions as provided in sections 1, 5, and 6 of that
16 Act, as amended.

17 SEC. 9. Hereafter the United States shall hold in trust
18 exclusively for the Navajo Indian Tribe and as a part of the
19 Navajo Indian Reservation the lands described in the said
20 Act of June 14, 1934, except the lands described in sections
21 5 and 7 hereof and the lands in the exclusive Hopi Indian
22 Reservation commonly known as Land Management District
23 6, and further excepting those lands allotted pursuant to
24 section 8 hereof.

25 SEC. 10. The Secretary is authorized and directed to

1 remove all Navajo Indians and their personal property,
2 including livestock, from the lands described in sections 5 and
3 7 of this Act. Such removal shall take place over a period
4 of five years with approximately 20 per centum of the Navajo
5 occupants to be removed each year. No further settlement
6 of Navajo Indians on the lands described in sections 5 and 7
7 of this Act or Land Management District 6, shall be per-
8 mitted unless advance written approval of the Hopi Tribe is
9 obtained. No Navajo Indians shall hereafter be allowed to
10 increase the number of livestock he grazes on the areas
11 described in sections 5 and 7 of this Act, nor shall he retain
12 any grazing rights subsequent to his removal therefrom.

13 SEC. 11. The Secretary is authorized and directed to
14 remove all Hopi Indians and their personal property, includ-
15 ing livestock, from the lands described in sections 4 and 9 of
16 this Act. Such removal shall take place over a period of two
17 years with approximately 50 per centum of the Hopi occu-
18 pants to be removed each year. No further settlement of Hopi
19 Indians on the lands described in sections 4 and 9 of this Act
20 shall be permitted unless advance written approval of the
21 Navajo Tribe is obtained. No Hopi Indian shall hereafter be
22 allowed to increase the number of livestock he grazes on the
23 areas described in sections 4 and 9 of this Act, nor shall he
24 retain any grazing rights subsequent to his removal therefrom.

25 SEC. 12. The Navajo Tribe shall pay to the Hopi Tribe

1 the fair rental value as determined by the Secretary for all
2 Navajo Indian use of the lands described in sections 5 and 7
3 of this Act subsequent to the date of this Act.

4 SEC. 13. The Hopi Tribe shall pay to the Navajo Tribe
5 the fair rental value as determined by the Secretary for all
6 Hopi Indian use of the lands described in sections 4 and 9
7 of this Act subsequent to the date of this Act.

8 SEC. 14. Nothing herein contained shall affect the title,
9 possession, and enjoyment of lands heretofore allotted to in-
10 dividual Hopi and Navajo Indians for which patents have
11 been issued. Hopi Indians living on the Navajo Reservation
12 shall be subject to the jurisdiction of the Navajo Tribe and
13 Navajo Indians living on the Hopi Reservation shall be
14 subject to the jurisdiction of the Hopi Indian Tribe.

15 SEC. 15. The Navajo Indian Tribe and the Hopi Indian
16 Tribe, acting through the chairman of their respective tribal
17 councils, for and on behalf of said tribes, including all vil-
18 lages, clans, and individual members thereof, are hereby au-
19 thorized to commence or defend in the United States Dis-
20 trict Court for the District of Arizona an action or actions
21 against each other for the following purposes:

22 (a) For an accounting of all sums collected by said
23 Navajo Indian Tribe since the 17th day of September 1957
24 as trader license fees or commissions, lease proceeds or other
25 similar charges for the doing of business or the use of lands

1 within the Executive order reservation of December 16,
2 1882, and judgment for one-half of all sums so collected,
3 and not paid to the Hopi Tribe, together with interest at the
4 rate of 6 per centum per annum compounded annually.

5 (b) For the determination and recovery of the fair
6 value of the grazing and agricultural use by said Navajo
7 Tribe and its individual members since the 28th day of
8 September 1962 of the undivided one-half interest of the
9 Hopi Tribe in the lands on said day decreed to said Hopi
10 and Navajo Tribes equally and undivided as a joint use area,
11 together with interest at the rate of 6 per centum per annum
12 compounded annually, notwithstanding the fact that said
13 tribes are tenants in common of said lands.

14 (c) For the adjudication of any claims that either said
15 Hopi or Navajo Tribe may have against the other for dam-
16 ages to the lands to which title was quieted as aforesaid by
17 the United States District Court for the District of Arizona
18 in said tribes, share and share alike, subject to the trust title
19 of the United States, without interest, notwithstanding the
20 fact that said tribes are tenants in common of said lands.
21 Said claims shall, however, be limited to occurrences since
22 the establishment of grazing districts on said lands in the
23 year 1936, pursuant to section 6 of the Act of June 18, 1934
24 (48 Stat. 984).

25 Neither laches nor the statute of limitations shall con-

1 stitute a defense of any action authorized by this Act for
2 existing claims if commenced within two years from the
3 effective date of this Act.

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

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

20 SEC. 18. All applicable provisional and final remedies
21 and special proceedings provided for by the Federal Rules
22 of Civil Procedure and all other remedies and processes
23 available for the enforcement and collection of judgments
24 in the district courts of the United States may be used in the

1 enforcement and collection of judgments obtained pursuant
2 to the provisions of this Act.

3 SEC. 19. The Secretary is hereby authorized and directed
4 to survey and monument the boundaries of the Hopi Reser-
5 vation as defined in sections 5 and 7 of this Act.

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

19 Beginning at a point on the 36 degrees, 17 feet 30
20 inches north latitude 500 feet west of its intersection
21 with 110 degrees, 9 feet west longitude, the point of
22 beginning;

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

1 thence southwesterly 1,200 feet (in a straight line)
2 following the 6,900 feet contour;
3 thence south 46 degrees east 600 feet;
4 thence north 38 degrees east, 1,300 feet to the point
5 of beginning, 23.8 acres more or less: *Provided*, That if
6 and when said spring is fenced the Hopi Tribe shall pipe
7 the water therefrom to the edge of the boundary as here-
8 inabove described for the use of residents of the area.
9 The natural stand of fir trees within said 2-mile radius
10 shall be conserved for such religious purposes.

11 SEC. 21. Notwithstanding anything contained in this
12 Act to the contrary, the Secretary shall make reasonable
13 provision for the use and right of access to identified religious
14 shrines of the Navajo and Hopi Indians for the members of
15 each tribe on the reservation of the other tribe.

16 SEC. 22. If any provision of this Act, or the application
17 of any provision to any person, entity or circumstance, is
18 held invalid, the remainder of this Act shall not be affected
19 thereby.

S. 3230

IN THE SENATE OF THE UNITED STATES

MARCH 22, 1974

Mr. MONTROYA (for himself, Mr. DOMENICI, and Mr. MOSS) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To provide for the efficient development of the natural resources of the Navajo and Hopi Reservations for the benefit of its residents, to assist the members of the Navajo and Hopi Tribes in becoming economically fully self-supporting, to resolve a land dispute between the Navajo and Hopi Tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SHORT TITLE

4 SECTION 1. This Act may be cited as the "Navajo-
5 Hopi Development Act of 1974".

1 by the Hopi Tribal Council. The members of the Commis-
2 sion shall elect a Chairman from among their number.

3 (b) The members of the Commission shall be com-
4 pensated at not to exceed the maximum for grade GS-18 of
5 the Classification Act of 1949, as amended.

6 FUNCTIONS

7 SEC. 102. In carrying out the purposes of this Act,
8 the Commission shall—

9 (1) analyze the results of the programs initiated on
10 the reservations under the Act of April 19, 1950 (Pub-
11 lic Law 474, Eighty-first Congress), and other Federal
12 laws;

13 (2) prepare, on a continuing basis, comprehensive
14 and coordinated plans for the economic and social de-
15 velopment of the reservations;

16 (3) conduct and sponsor investigations, research,
17 and studies, including an inventory and analysis of the
18 resources of the reservations;

19 (4) review and study, in cooperation with the
20 agency involved, Federal, State, tribal, and private pro-
21 grams and, where appropriate, recommend modifica-
22 tions or additions which will increase their effectiveness
23 on the reservations; and

24 (5) encourage private investment in industrial,
25 commercial, and recreational projects.

1 (1) to adopt, amend, and repeal bylaws, rules, and
2 regulations governing the conduct of its business and
3 the performance of its functions;

4 (2) appoint and fix the compensation of an execu-
5 tive director and such other personnel as may be neces-
6 sary to enable the Commission to carry out its functions;

7 (3) request the head of any Federal department or
8 agency (who is hereby so authorized) to detail to tem-
9 porary duty with the Commission such personnel within
10 his administrative jurisdiction as the Commission may
11 need for carrying out its functions, each such detail to be
12 without loss of seniority, pay, or other employee status;

13 (4) arrange for the services of personnel from the
14 Navajo and Hopi Tribes;

15 (5) accept, use, and dispose of gifts or donations
16 of services or property, real, personal, or mixed, tan-
17 gible or intangible;

18 (6) enter into and perform such contracts, leases,
19 cooperative agreements, or other transactions as may
20 be necessary in carrying out its functions and on such
21 terms as it may deem appropriate, with any depart-
22 ment, agency, or instrumentality of the United States
23 (which is hereby so authorized to the extent not other-
24 wise prohibited by law) or with any State, or any polit-
25 ical subdivision, agency, or instrumentality thereof, or

1 with any Indian tribe, or with any person, firm, associa-
2 tion, or corporation;

3 (7) establish offices at such locations as it may
4 select; and

5 (8) take such other actions and incur such other ex-
6 penses as may be necessary or appropriate.

7 INFORMATION

8 SEC. 107. In order to obtain information needed to
9 carry out its duties, the Commission shall—

10 (1) hold such hearings, sit and act at such times
11 and places, take such testimony, receive such evidence,
12 and print or otherwise reproduce and distribute so much
13 of its proceedings and reports thereon as it may deem
14 advisable;

15 (2) arrange for the head of any Federal department
16 or agency (who is hereby so authorized to the extent
17 not otherwise prohibited by law) to furnish to the Com-
18 mission such information as may be available to or pro-
19 curable by such department or agency; and

20 (3) keep accurate and complete records of its doings
21 and transactions which shall be made available to public
22 inspection, and for the purpose of audit and examination
23 by the Comptroller General or his duly authorized
24 representatives.

PERSONAL AND FINANCIAL INTERESTS

1
2 SEC. 108. (a) Except as permitted by subsection (b)
3 hereof, no tribally appointed member nor any employee of
4 the Commission shall participate personally or substantially
5 as member or employee, through decision, approval, disap-
6 proval, recommendation, the rendering of advice, investiga-
7 tion, or otherwise, in any proceeding, application, request
8 for a ruling or other determination, contract, claim, con-
9 troversy, or other particular matter in which, to his knowl-
10 edge, he, his spouse, minor child, partner, or any private
11 organization with which he is serving as officer, director,
12 trustee, partner, or employee, or any person or organiza-
13 tion with whom he is negotiating, or has any arrangement
14 concerning prospective employment, has a financial interest.
15 Any person who shall violate the provision of this subsection
16 shall be fined not more than \$10,000, or imprisoned not
17 more than two years, or both.

18 (b) Subsection (a) hereof shall not apply if the mem-
19 ber or employee first advises the Commission of the nature
20 and circumstances of the proceeding, application, request for
21 a ruling or other determination, contract, claim, controversy,
22 or other particular matter and makes full disclosure of the
23 financial interests and receives in advance a written deter-
24 mination made by the Commission that the interest is not so

1 substantial as to be deemed likely to affect the integrity of
2 the services which the Commission may expect from such
3 member or employee.

4 (c) Notwithstanding any other subsection of this sec-
5 tion, the Federal member of the Commission and any Fed-
6 eral officers or employees detailed to duty with it pursuant
7 to paragraph (3) of section 106 shall not be subject to any
8 such subsection but shall remain subject to sections 202
9 through 209 of title 18.

10 (d) The Commission may, in its discretion, declare,
11 award, and rescind any contract, loan, or grant of or by
12 the Commission in relation to which it finds that there has
13 been a violation of subsection (a) of this section or any of
14 the provisions of sections 202 through 209 of title 18.

15 TITLE II—DEVELOPMENT OF PROGRAMS

16 HIGHWAYS AND ACCESS ROADS

17 SEC. 201. (a) The Commission shall, in cooperation
18 with the Secretary of Transportation, the Secretary of the
19 Interior and the Navajo and Topi Tribal Councils, prepare
20 a comprehensive plan for the construction of development
21 highways and access roads on the reservations. The purpose
22 of the development highways shall be to open up areas
23 with a developmental potential where commerce and com-
24 munication have been inhibited by lack of adequate access.
25 Access roads shall serve specific recreational, residential,

1 educational, commercial, industrial, or other like facilities.

2 (b) The Commission shall designate (1) the general
3 corridor location and termini of the development highways,
4 (2) local access roads to be constructed, (3) priorities for
5 the construction of segments of the development highways,
6 and (4) other criteria for the program authorized by this
7 section.

8 (c) In the construction of highways and roads author-
9 ized under this section, employment preference shall be
10 given to residents of the reservations and preference may
11 be given to the use of materials and products indigenous
12 to the reservations.

13 (d) To carry out the plan prepared under subsection
14 (a) of this section there are hereby authorized to be used
15 such sums as have been authorized and appropriated pursuant
16 to section 104 (a) (9) of the Federal-Aid Highways Act of
17 1973 and such other sums as have heretofore been or may
18 hereafter be authorized and appropriated for the construction
19 of Indian reservation roads and bridges, as the Commission,
20 the Secretary of Transportation, and the Secretary of the
21 Interior shall agree.

22 AGRICULTURAL AND IRRIGATION DEVELOPMENT

23 SEC. 202. (a) The Commission shall, in cooperation
24 with the Secretary of Agriculture and the Secretary of the

1 Interior, prepare a comprehensive plan for the proper utiliza-
2 tion of the agricultural and water resources of the reserva-
3 tions. Such plan shall include an analysis of the uses to be
4 made of the water to be generated by the Navajo Indian
5 irrigation project.

6 (b) To carry out the plan prepared under subsection
7 (a) of this section there are hereby authorized to be used
8 such sums as have heretofore been or may hereafter be
9 authorized and appropriated for agricultural and irrigation
10 development; including such development on Indian reserva-
11 tions, as the Commission and the appropriate Federal agency
12 head shall agree.

13 LAND STABILIZATION, CONSERVATION, AND EROSION

14 CONTROL

15 SEC. 203. (a) In order to provide for the control and
16 prevention of erosion on the reservations and promote the
17 conservation and development of the soil and water re-
18 sources, the Commission, in cooperation with the Secretary
19 of Agriculture and the Secretary of the Interior, is authorized
20 to enter into agreements with the respective tribes and oc-
21 cupiers of land having rights to occupy such land, providing
22 for land stabilization, erosion control, and reclamation
23 through changes in land use, and conservation treatment,
24 including the establishment of practices and measures for the
25 conservation and development of soil and water, and other
26 resources.

1 (b) Under such agreements, the respective tribes and
2 occupiers of the land shall agree with the Commission to
3 carry out the land uses and conservation treatment provided
4 for in the agreement.

5 (c) In return for such agreement, the Commission shall
6 be authorized to furnish financial and other assistance in
7 such amounts and subject to such conditions as the Commis-
8 sion determines are appropriate and in the public interest
9 for carrying out of the land uses and conservation treatments
10 set forth in the agreement. Among the forms of other assist-
11 ance shall be special employment preference on projects
12 funded by the Commission for the person occupying the land
13 or members of his immediate family.

14 (d) The Commission may terminate any agreement
15 with an occupier or tribe by mutual agreement if the Com-
16 mission determines that such termination would be in the
17 public interest, and may agree to such modification of agree-
18 ments previously entered into hereunder as it deems de-
19 sirable to carry out the purposes of this section or to facilitate
20 practical administration of the program authorized herein.

21 (e) In providing assistance to the Commission, the
22 Secretary of Agriculture shall utilize the services of the Soil
23 Conservation Service, and is authorized to utilize the facilities,
24 services, and authorities of the Commodity Credit Corpora-
25 tion. The Corporation shall not make any expenditures to

1 carry out the provisions of this subsection unless funds spe-
2 cifically appropriated for such purpose have been trans-
3 ferred to it.

4 (f) There is hereby authorized to be appropriated to
5 carry out the provisions of this section \$2,000,000 for the
6 fiscal year ending June 30, 1975, and \$2,000,000 for each
7 of the succeeding four fiscal years, such sums to remain avail-
8 able for the purposes of this section until expended.

9 MINERAL AND ENERGY RESOURCE DEVELOPMENT

10 SEC. 204. (a) The Commission shall, in cooperation
11 with the Secretary of the Interior and the Navajo and Hopi
12 Tribal Councils, prepare a comprehensive plan for the min-
13 ing and extraction of the mineral resources of the reserva-
14 tions, giving full consideration to ecological concerns.

15 (b) The Commission shall, in cooperation with the
16 Secretary of the Interior and the Navajo and Hopi Tribal
17 Councils, initiate projects beneficial to the tribes and its
18 members for the utilization of the reservations' mineral re-
19 sources, particularly coal, so as to help meet the Nation's
20 energy needs.

21 (c) To carry out the plan proposed under subsection
22 (a) of this section there are hereby authorized to be used
23 such sums as have heretofore been or may hereafter be au-
24 thorized and appropriated to carry out the provisions of rele-
25 vant Federal laws, as the Commission and the appropriate
26 Federal agency heads shall agree.

ECONOMIC DEVELOPMENT

1

2 SEC. 205. (a) The Commission shall, in cooperation
3 with the Secretary of Commerce, the Secretary of the In-
4 terior, and the Navajo and Hopi Tribal Councils, prepare a
5 comprehensive plan for the economic development of the
6 reservations.

7 (b) To carry out the plan prepared under subsection

8 (a) of this section there are hereby authorized to be used
9 such sums as have heretofore been or may hereafter be
10 authorized to be appropriated to carry out the provisions
11 of the Public Works and Economic Development Act of
12 1965, Public Law 89-136, and other relevant laws, as the
13 Commission and the appropriate Federal agency heads
14 shall agree.

15

MANPOWER DEVELOPMENT

16 SEC. 206. (a) The Commission shall, in cooperation
17 with the Secretary of Labor and the Secretary of the
18 Interior and the Navajo and Hopi Tribal Councils, prepare
19 a comprehensive plan for manpower development on the
20 reservations.

21 (b) To carry out the plan prepared under subsection

22 (a) of this section there are hereby authorized to be used
23 such sums as have heretofore been or may hereafter be
24 authorized and appropriated to carry out the provisions of

1 the Comprehensive Manpower Act of 1973, Public Law
2 93-203, and other relevant laws, as the Commission and
3 the appropriate Federal agency heads shall agree.

4 (c) The Commission shall, under such rules, regulations,
5 and standards as it may prescribe, subject to approval by
6 the Secretary of the Interior, provide for the creation of
7 a Navajo-Hopi conservation corps to assist in carrying out
8 the programs provided for in section 203 of this Act. To
9 carry out the provisions of this subsection, the Commission
10 may utilize such sums as shall be available under the pro-
11 grams referred to in subsection (b) of this section.

12 HEALTH

13 SEC. 207. (a) The Commission shall, in cooperation
14 with the Secretary of Health, Education, and Welfare and
15 the Navajo and Hopi Tribal Councils, prepare a compre-
16 hensive plan for health and hospital care on the reservations.

17 (b) To carry out this section there are hereby author-
18 ized to be used such sums as have heretofore been or may
19 hereafter be authorized and appropriated to carry out the
20 provisions of the Act of August 5, 1954, Public Law 568,
21 Eighty-third Congress, and other laws providing for grants
22 and loans for health care and the construction of health-
23 related facilities, as the Commission and the Secretary of
24 Health, Education, and Welfare shall agree.

1 EDUCATION

2 SEC. 208. (a) The Commission shall, in cooperation
3 with the Secretary of the Interior, the Secretary of Health,
4 Education, and Welfare, and the Navajo and Hopi Tribal
5 Councils prepare a comprehensive plan for the construction
6 and operation of schools and the rendering of educational
7 services on the reservations.

8 (b) To carry out the plan prepared under subsection
9 (a) of this section there are hereby authorized to be used
10 such sums as have heretofore been or may hereafter be au-
11 thorized and appropriated for relevant programs under the
12 jurisdiction of the Secretary of the Interior and the Secre-
13 tary of Health, Education, and Welfare, as the Commission
14 and the appropriate Federal agency head shall agree.

15 HOUSING

16 SEC. 209. (a) The Commission shall, in cooperation with
17 the Secretary of Housing and Urban Development, the Sec-
18 retary of the Interior, and the Navajo and Hopi Tribal
19 Councils, prepare a comprehensive plan for the construction
20 or rehabilitation of housing to meet needs of low- or moder-
21 ate-income families and individuals on the reservations.

22 (b) To carry out the plan prepared under subsection
23 (a) of this section there are hereby authorized to be used
24 such sums as have heretofore been or may hereafter be au-
25 thorized and appropriated for relevant programs under the

1 TITLE III—ADJUSTMENT OF INTERESTS
2 BETWEEN HOPI AND NAVAJO TRIBES

3 CONGRESSIONAL FINDINGS AND PURPOSES

4 SEC. 301. (a) The Congress, after review of the decision
5 of the United States District Court for the District of Arizona
6 (Civ. No. 579), entered on September 28, 1962, in the
7 suit captioned Healing against Jones, reported at 210 F.
8 Supp. 125, finds in conformity with that decision as follows:

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

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

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

1 (4) that Navajos have lived on a substantial por-
2 tion of the land located in the Executive order reserva-
3 tion both prior to and since December 16, 1882;

4 (5) that under the provisions of the Act of July 22,
5 1958, Public Law 85-547, the Hopi Tribe has an
6 exclusive interest in that portion of the Executive order
7 reservation known as land management district 6, con-
8 taining 631,194 acres, and the Hopi and Navajo tribes
9 have joint, equal, and undivided interests in the remain-
10 ing 1,822,800 acres contained within said Executive
11 order reservation (such 1,822,800 acres referred to
12 hereinafter as the joint-interest area) ;

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

17 (7) that on April 24, 1943, the Office of Indian
18 Affairs divided the Executive order reservation between
19 an area of use and occupancy set aside for the Hopis
20 (land management district 6) and an area of use and
21 occupancy set aside for the Navajos (the remainder of
22 the reservation, now the joint-interest area) ; and that,
23 when this division was made, according to the Court,
24 "[m]any Navajo families, probably more than one
25 hundred, then living within the extended part of district

1 6, were required to move outside the new boundaries
2 and severe personal hardships were undoubtedly ex-
3 perienced by some.”

4 (b) The Congress further finds—

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

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

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

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

25 (5) that it is the purpose of this Act to provide for

1 the settlement of the conflicting land interests of the
2 Hopi and Navajo Tribes and to confirm the rights conferred upon the Hopi Tribe by the 1934 Act in the
3 lands outside the 1882 Executive order area.

4 SEC. 302. (a) Immediately following its organizational
5 meeting the Commission shall commence an investigation
6 to determine—

7
8 (1) which lands within the joint-interest area
9 were on July 22, 1958, used by Hopi Indians for residential or agricultural (including grazing) purposes
10 and which lands were on that date used by the Navajo
11 Indians for such purpose;

12
13 (2) which lands within the portion of the joint-interest area which on July 22, 1958, were used and
14 occupied for residential or agricultural (including grazing) purposes by Navajo Indians were on or about
15 July 22, 1958, used by Hopi Indians for the purposes
16 of wood cutting and gathering, obtaining coal, gathering plants and plant products, visiting ceremonial
17 shrines, and hunting.

18
19 (b) The investigation of the issues set forth in
20 subsection (a) of this section shall be completed within six
21 months from the date of the organizational meeting, at which
22 time the Commission shall file a report with the Secretary
23 of the Interior and the chairmen of the Navajo and Hopi
24
25

1 Tribal Councils, respectively, describing the lands at issue by
2 metes and bounds, and illustrating their findings where nec-
3 essary by field notes and plats. As to areas found to have
4 been used by Hopi Indians pursuant to clause (2) of sub-
5 section (a) of this section the report shall describe such uses.

6 (c) Within ninety days following the filing of the re-
7 port under subsection (b) of this section, the Commission
8 shall appraise the value of the respective interests described
9 in said report and shall make public the results of such ap-
10 praisal. In making such appraisal it shall consider such re-
11 ductions in the value of the surface as can be expected to
12 occur as the result of mineral exploitation under the pro-
13 visions of leases in effect on the date of enactment of this
14 Act.

15 (d) Immediately following the issuance of the appraisal
16 report, the Secretary of the Interior shall cause to be served
17 on the Navajo Tribal Council and the Hopi Tribal Council
18 the form of an order which shall—

19 (1) provide that all lands identified by the report
20 under subsection (b) of this section to have been used
21 and occupied by Navajo Indians on July 22, 1958, in
22 accordance with clause (1) of subsection (a) of this
23 section shall be held by the United States in trust for
24 the Navajo Tribe of Indians;

25 (2) provide that all lands identified by the report

1 under subsection (b) of this section to have been used
2 and occupied by Hopi Indians on July 22, 1958, in ac-
3 cordance with clause (1) of subsection (a) of this sec-
4 tion shall be held by the United States in trust for the
5 Hopi Indian Tribe;

6 (3) provide that all lands identified by the report
7 under subsection (b) of this section to have been used
8 by Hopi Indians on or about July 22, 1958, in accord-
9 ance with clause (2) of subsection (a) of this section
10 shall be subject to easements in favor of the United
11 States in trust for the Hopi Indian Tribe, which shall
12 be defined as to the area, nature, and extent of use ac-
13 cording to the uses made on or about July 22, 1958:

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

21 (e) The order provided for in subsection (d) of this
22 section shall be final, except that any party aggrieved by the
23 Commission's determination of value under clause (4) of
24 subsection (d) of this section shall be entitled to review
25 thereof by filing a petition with the clerk of the United

1 States District Court for the District of Arizona within
2 sixty days from service of the order. The district court
3 thereupon shall have jurisdiction to review said determina-
4 tion which shall constitute prima facie evidence of the facts
5 and values established thereby, and the court shall, as soon
6 as practicable after hearing the parties, enter a decree con-
7 firming, modifying, or rejecting the Commission's deter-
8 mination. The decree so entered shall be appealable in the
9 same manner and within the same time period as any other
10 final judgment of the district court. Petition for review or
11 other proceedings hereunder shall not affect the finality of
12 the Commission's findings pursuant to clauses (1), (2),
13 and (3) of subsection (d) of this section.

14 (f) Upon determination of the amount of compensa-
15 tion due the Hopi Tribe under the provisions of subsections
16 (d) and (e) of this section, the Secretary of the Interior
17 shall loan an amount not to exceed \$18,000,000, without
18 interest, to the Navajo Tribe subject to the following
19 conditions:

20 (1) that within six months following a final deter-
21 mination of the compensation due the Hopi Tribe under
22 the provisions of subsections (d) and (e) of this section,
23 the Navajo Tribe shall pay the full amount of said com-
24 pensation to the Hopi Tribe; and

25 (2) that the Navajo Tribe shall repay the loan

1 by paying to the United States the proceeds derived by
2 the tribe by the exploitation of the mineral resources
3 described in subsection (h) of this section, but not less
4 than \$500,000 annually.

5 (g) Upon execution of the agreement provided for in
6 subsection (f) of this section the order of the Secretary
7 of the Interior issued under the provisions of subsection (d)
8 of this section shall take effect.

9 (h) The United States shall hold in trust for the joint
10 use and benefit of the Navajo and Hopi Indian Tribes all of
11 the subsurface rights, interests, and estates in the joint-inter-
12 est area, including all coal, oil, gas, and other minerals within
13 or underlying said land, and such rights, interests, and estates
14 shall be managed jointly by the Hopi and Navajo Tribes,
15 subject to supervision and approval by the Secretary of the
16 Interior as otherwise required by law, and the proceeds
17 therefrom shall be divided between the said tribes, share and
18 share alike.

19 (i) There is authorized to be appropriated \$18,000,000
20 for the loan as provided in subsection (f) of this section.

21 JUDICIAL PARTITION OF MOENCOPI AREA

22 SEC. 303. (a) The Navajo Indian Tribe and the Hopi
23 Indian Tribe, acting through the chairmen of their respective
24 tribal councils for and on behalf of said tribes, are each hereby
25 authorized to commence or defend in the United States Dis-
26 trict Court for the District of Arizona an action against each

1 other and any other tribe of Indians claiming any interest in
2 or to the area described in the Act of June 14, 1934, for the
3 purpose of determining the rights and interests of said parties
4 in and to said lands and quieting title thereto in said tribes.

5 (b) Lands, if any, in which the Navajo Indian Tribe or
6 individual Navajo Indians are determined by the court to
7 have the exclusive interest shall continue to be a part of the
8 Navajo Indian Reservation. Lands, if any, in which the Hopi
9 Indian Tribe, including any Hopi village or clan thereof, or
10 individual Hopi Indians are determined by the court to have
11 the exclusive interest shall thereafter be a reservation for the
12 Hopi Indian Tribe. Any lands in which the Navajo and Hopi
13 Indian Tribes or individual Indians are determined to have a
14 joint or undivided interest shall be partitioned by the court on
15 the basis of fairness and equity and the area so partitioned
16 shall be retained in the Navajo Reservation or added to the
17 Hopi Reservation, respectively.

18 (c) The Navajo and Hopi Indian Tribes are hereby
19 authorized to exchange lands which are part of their respec-
20 tive reservations.

21 (d) Nothing in this section shall be deemed to be a con-
22 gressional determination of the merits of the conflicting claims
23 to the lands that are subject to adjudication pursuant to this
24 section, or to affect the liability of the United States, if any,
25 under litigation now pending before the Indian Claims Com-
26 mission.

1 vations") lag significantly behind the rest of the Nation in
2 the development and use of their natural resources and that
3 its residents suffer serious economic deprivation. It is the
4 object of this Act to provide a program for the comprehen-
5 sive development of the natural and human resources of the
6 reservations so as to enable its residents to attain a level of
7 economic well-being comparable to that attained in other
8 parts of the Nation and to become economically fully self-
9 supporting. Furthermore, it is the object of this Act to solve
10 the land dispute between the Navajo and Hopi Tribes in a
11 manner which would be in harmony with such a program of
12 reservation development.

13 TITLE I—THE NAVAJO-HOPI DEVELOPMENT
14 COMMISSION

15 MEMBERSHIP

16 SEC. 101. (a) There is hereby established a Navajo-
17 Hopi Development Commission (hereinafter referred to as
18 the "Commission") which shall be composed of one Fed-
19 eral member appointed by the President, by and with the
20 advice and consent of the Senate, two members appointed
21 by the Navajo Tribal Council, and two members appointed
22 by the Hopi Tribal Council. The members of the Commis-
23 sion shall elect a Chairman from among their number.

24 (b) The members of the Commission shall be com-
25 pensated at not to exceed the maximum for grade GS-18 of
26 the Classification Act of 1949, as amended.

FUNCTIONS

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SEC. 102. In carrying out the purposes of this Act, the Commission shall—

(1) analyze the results of the programs initiated on the reservations under the Act of April 19, 1950 (Public Law 474, Eighty-first Congress), and other Federal laws;

(2) prepare, on a continuing basis, comprehensive and coordinated plans for the economic and social development of the reservations;

(3) conduct and sponsor investigations, research, and studies, including an inventory and analysis of the resources of the reservations;

(4) review and study, in cooperation with the agency involved, Federal, State, tribal, and private programs and, where appropriate, recommend modifications or additions which will increase their effectiveness on the reservations; and

(5) encourage private investment in industrial, commercial, and recreational projects.

RECOMMENDATIONS

SEC. 103. The Commission shall, from time to time, make recommendations to the President and the Congress with respect to—

(1) the expenditure of funds by Federal agencies on the reservations; and

1 (3) request the head of any Federal department or
2 agency (who is hereby so authorized) to detail to tem-
3 porary duty with the Commission such personnel within
4 his administrative jurisdiction as the Commission may
5 need for carrying out its functions, each such detail to be
6 without loss of seniority, pay, or other employee status;

7 (4) arrange for the services of personnel from the
8 Navajo and Hopi Tribes;

9 (5) accept, use, and dispose of gifts or donations
10 of services or property, real, personal, or mixed, tan-
11 gible or intangible;

12 (6) enter into and perform such contracts, leases,
13 cooperative agreements, or other transactions as may
14 be necessary in carrying out its functions and on such
15 terms as it may deem appropriate, with any depart-
16 ment, agency, or instrumentality of the United States
17 (which is hereby so authorized to the extent not other-
18 wise prohibited by law) or with any State, or any polit-
19 ical subdivision, agency, or instrumentality thereof, or
20 with any Indian tribe, or with any person, firm, associa-
21 tion, or corporation;

22 (7) establish offices at such locations as it may
23 select; and

24 (8) take such other actions and incur such other ex-
25 penses as may be necessary or appropriate.

INFORMATION

1

2 SEC. 107. In order to obtain information needed to
3 carry out its duties, the Commission shall—

4 (1) hold such hearings, sit and act at such times
5 and places, take such testimony, receive such evidence,
6 and print or otherwise reproduce and distribute so much
7 of its proceedings and reports thereon as it may deem
8 advisable;

9 (2) arrange for the head of any Federal department
10 or agency (who is hereby so authorized to the extent
11 not otherwise prohibited by law) to furnish to the Com-
12 mission such information as may be available to or pro-
13 curable by such department or agency; and

14 (3) keep accurate and complete records of its
15 doings and transactions which shall be made available
16 to public inspection, and for the purpose of audit and
17 examination by the Comptroller General or his duly
18 authorized representatives.

PERSONAL AND FINANCIAL INTERESTS

19
20 SEC. 108. (a) Except as permitted by subsection (b)
21 hereof, no tribally appointed member nor any employee of
22 the Commission shall participate personally or substantially
23 as member or employee, through decision, approval, disap-
24 proval, recommendation, the rendering of advice, investiga-
25 tion, or otherwise, in any proceeding, application, request

1 for a ruling or other determination, contract, claim, con-
2 troversy, or other particular matter in which, to his knowl-
3 edge, he, his spouse, minor child, partner, or any private
4 organization with which he is serving as officer, director,
5 trustee, partner, or employee, or any person or organiza-
6 tion with whom he is negotiating, or has any arrangement
7 concerning prospective employment, has a financial interest.
8 Any person who shall violate the provision of this subsection
9 shall be fined not more than \$10,000, or imprisoned not
10 more than two years, or both.

11 (b) Subsection (a) hereof shall not apply if the mem-
12 ber or employee first advises the Commission of the nature
13 and circumstances of the proceeding, application, request for
14 a ruling or other determination, contract, claim, controversy,
15 or other particular matter and makes full disclosure of the
16 financial interests and receives in advance a written deter-
17 mination made by the Commission that the interest is not so
18 substantial as to be deemed likely to affect the integrity of
19 the services which the Commission may expect from such
20 member or employee.

21 (c) Notwithstanding any other subsection of this sec-
22 tion, the Federal member of the Commission and any Fed-
23 eral officers or employees detailed to duty with it pursuant
24 to paragraph (3) of section 106 shall not be subject to any

1 such subsection but shall remain subject to sections 202
2 through 209 of title 18.

3 (d) The Commission may, in its discretion, declare,
4 award, and rescind any contract, loan, or grant of or by
5 the Commission in relation to which it finds that there has
6 been a violation of subsection (a) of this section or any of
7 the provisions of sections 202 through 209 of title 18.

8 TITLE II—DEVELOPMENT OF PROGRAMS

9 HIGHWAYS AND ACCESS ROADS

10 SEC. 201. (a) The Commission shall, in cooperation
11 with the Secretary of Transportation, the Secretary of the
12 Interior and the Navajo and Hopi Tribal Councils, prepare
13 a comprehensive plan for the construction of development
14 highways and access roads on the reservations. The purpose
15 of the development highways shall be to open up areas
16 with a developmental potential where commerce and com-
17 munication have been inhibited by lack of adequate access.
18 Access roads shall serve specific recreational, residential,
19 educational, commercial, industrial, or other like facilities.

20 (b) The Commission shall designate (1) the general
21 corridor location and termini of the development highways,
22 (2) local access roads to be constructed, (3) priorities for
23 the construction of segments of the development highways,
24 and (4) other criteria for the program authorized by this
25 section.

1 (c) In the construction of highways and roads author-
2 ized under this section, employment preference shall be
3 given to residents of the reservations and preference may
4 be given to the use of materials and products indigenous
5 to the reservations.

6 (d) To carry out the plan prepared under subsection
7 (a) of this section there are hereby authorized to be used
8 such sums as have been authorized and appropriated pursuant
9 to section 104 (a) (9) of the Federal-Aid Highways Act of
10 1973 and such other sums as have heretofore been or may
11 hereafter be authorized and appropriated for the construction
12 of Indian reservation roads and bridges, as the Commission,
13 the Secretary of Transportation, and the Secretary of the
14 Interior shall agree.

15 AGRICULTURAL AND IRRIGATION DEVELOPMENT

16 SEC. 202. (a) The Commission shall, in cooperation
17 with the Secretary of Agriculture and the Secretary of the
18 Interior, prepare a comprehensive plan for the proper utiliza-
19 tion of the agricultural and water resources of the reserva-
20 tions. Such plan shall include an analysis of the uses to be
21 made of the water to be generated by the Navajo Indian
22 irrigation project.

23 (b) To carry out the plan prepared under subsection
24 (a) of this section there are hereby authorized to be used

1 such sums as have heretofore been or may hereafter be
2 authorized and appropriated for agricultural and irrigation
3 development, including such development on Indian reserva-
4 tions, as the Commission and the appropriate Federal agency
5 head shall agree.

6 LAND STABILIZATION, CONSERVATION, AND EROSION
7 CONTROL

8 SEC. 203. (a) In order to provide for the control and
9 prevention of erosion on the reservations and promote the
10 conservation and development of the soil and water re-
11 sources, the Commission, in cooperation with the Secretary
12 of Agriculture and the Secretary of the Interior, is authorized
13 to enter into agreements with the respective tribes and oc-
14 cupiers of land having rights to occupy such land, providing
15 for land stabilization, erosion control, and reclamation
16 through changes in land use, and conservation treatment,
17 including the establishment of practices and measures for the
18 conservation and development of soil and water, and other
19 resources. The joint-interest area identified in subsection
20 301 (a) of this Act shall be given priority in the develop-
21 ment of any programs of this section.

22 (b) Under such agreements, the respective tribes and
23 occupiers of the land shall agree with the Commission to
24 carry out the land uses and conservation treatment provided
25 for in the agreement.

1 (c) In return for such agreement, the Commission shall
2 be authorized to furnish financial and other assistance in
3 such amounts and subject to such conditions as the Commis-
4 sion determines are appropriate and in the public interest
5 for carrying out of the land uses and conservation treatments
6 set forth in the agreement. Among the forms of other assist-
7 ance shall be special employment preference on projects
8 funded by the Commission for the person occupying the land
9 or members of his immediate family.

10 (d) The Commission may terminate any agreement
11 with an occupier or tribe by mutual agreement if the Com-
12 mission determines that such termination would be in the
13 public interest, and may agree to such modification of agree-
14 ments previously entered into hereunder as it deems de-
15 sirable to carry out the purposes of this section or to facilitate
16 practical administration of the program authorized herein.

17 (e) In providing assistance to the Commission, the
18 Secretary of Agriculture shall utilize the services of the Soil
19 Conservation Service, and is authorized to utilize the facilities,
20 services, and authorities of the Commodity Credit Corpora-
21 tion. The Corporation shall not make any expenditures to
22 carry out the provisions of this subsection unless funds spe-
23 cifically appropriated for such purpose have been trans-
24 ferred to it.

25 (f) There is hereby authorized to be appropriated to

1 carry out the provisions of this section \$2,000,000 for the
2 fiscal year ending June 30, 1975, and \$2,000,000 for each
3 of the succeeding four fiscal years, such sums to remain avail-
4 able for the purposes of this section until expended.

5 MINERAL AND ENERGY RESOURCE DEVELOPMENT

6 SEC. 204. (a) The Commission shall, in cooperation
7 with the Secretary of the Interior and the Navajo and Hopi
8 Tribal Councils, prepare a comprehensive plan for the min-
9 ing and extraction of the mineral resources of the reserva-
10 tions, giving full consideration to ecological concerns.

11 (b) The Commission shall, in cooperation with the
12 Secretary of the Interior and the Navajo and Hopi Tribal
13 Councils, initiate projects beneficial to the tribes and its
14 members for the utilization of the reservations' mineral re-
15 sources.

16 (c) To carry out the plan proposed under subsection
17 (a) of this section there are hereby authorized to be used
18 such sums as have heretofore been or may hereafter be au-
19 thorized and appropriated to carry out the provisions of rele-
20 vant Federal laws, as the Commission and the appropriate
21 Federal agency heads shall agree.

22 ECONOMIC DEVELOPMENT

23 SEC. 205. (a) The Commission shall, in cooperation
24 with the Secretary of Commerce, the Secretary of the In-
25 terior, and the Navajo and Hopi Tribal Councils, prepare a

1 comprehensive plan for the economic development of the
2 reservations.

3 (b) To carry out the plan prepared under subsection
4 (a) of this section there are hereby authorized to be used
5 such sums as have heretofore been or may hereafter be
6 authorized to be appropriated to carry out the provisions
7 of the Public Works and Economic Development Act of
8 1965, Public Law 89-136, and other relevant laws, as the
9 Commission and the appropriate Federal agency heads
10 shall agree.

11 MANPOWER DEVELOPMENT

12 SEC. 206. (a) The Commission shall, in cooperation
13 with the Secretary of Labor and the Secretary of the
14 Interior and the Navajo and Hopi Tribal Councils, prepare
15 a comprehensive plan for manpower development on the
16 reservations.

17 (b) To carry out the plan prepared under subsection
18 (a) of this section there are hereby authorized to be used
19 such sums as have heretofore been or may hereafter be
20 authorized and appropriated to carry out the provisions of
21 the Comprehensive Manpower Act of 1973, Public Law
22 93-203, and other relevant laws, as the Commission and
23 the appropriate Federal agency heads shall agree.

24 (c) The Commission shall, under such rules, regulations,

1 and standards as it may prescribe, subject to approval by
2 the Secretary of the Interior, provide for the creation of
3 a Navajo-Hopi conservation corps to assist in carrying out
4 the programs provided for in section 203 of this Act. To
5 carry out the provisions of this subsection, the Commission
6 may utilize such sums as shall be available under the pro-
7 grams referred to in subsection (b) of this section. Preference
8 for employment enrollment in programs under this section
9 shall be given persons identified by the Secretary of the In-
10 terior under the provisions of section 306 of this Act and
11 their lineal descendents.

12 HEALTH

13 SEC. 207. (a) The Commission shall, in cooperation
14 with the Secretary of Health, Education, and Welfare and
15 the Navajo and Hopi Tribal Councils, prepare a compre-
16 hensive plan for health and hospital care on the reservations.

17 (b) To carry out this section there are hereby author-
18 ized to be used such sums as have heretofore been or may
19 hereafter be authorized and appropriated to carry out the
20 provisions of the Act of August 5, 1954, Public Law 568,
21 Eighty-third Congress, and other laws providing for grants
22 and loans for health care and the construction of health-
23 related facilities, as the Commission and the Secretary of
24 Health, Education, and Welfare shall agree.

EDUCATION

1

2 SEC. 208. (a) The Commission shall, in cooperation
3 with the Secretary of the Interior, the Secretary of Health,
4 Education, and Welfare, and the Navajo and Hopi Tribal
5 Councils prepare a comprehensive plan for the construction
6 and operation of schools and the rendering of educational
7 services on the reservations.

8 (b) To carry out the plan prepared under subsection
9 (a) of this section there are hereby authorized to be used
10 such sums as have heretofore been or may hereafter be au-
11 thorized and appropriated for relevant programs under the
12 jurisdiction of the Secretary of the Interior and the Secre-
13 tary of Health, Education, and Welfare, as the Commission
14 and the appropriate Federal agency head shall agree.

15

HOUSING

16 SEC. 209. (a) The Commission shall, in cooperation
17 with the Secretary of Housing and Urban Development, the
18 Secretary of the Interior, and the Navajo and Hopi Tribal
19 Councils, prepare a comprehensive plan for the construction
20 or rehabilitation of housing to meet needs of low- or moder-
21 ate-income families and individuals on the reservations.

22 (b) To carry out the plan prepared under subsection
23 (a) of this section there are hereby authorized to be used
24 such sums as have heretofore been or may hereafter be au-

1 TITLE III—ADJUSTMENT OF INTERESTS
2 BETWEEN HOPI AND NAVAJO TRIBES

3 PARTITION OF THE EXECUTIVE ORDER AREA OF 1882

4 SEC. 301. (a) The United States District Court for the
5 District of Arizona (hereinafter referred to as the "district
6 court") is hereby authorized to partition in kind between the
7 Navajo Tribe and the Hopi Tribe the area referred to as the
8 joint-interest area of the Executive Order Reservation of
9 1882 (hereinafter referred to as the "joint-interest area")
10 in the decision of the United States District Court for the
11 District of Arizona (Civ. No. 579), entered September 28,
12 1962, in the suit captioned Healing against Jones, reported
13 at 210 F. Supp. 125.

14 (b) The district court shall use the following criteria
15 to establish the line of partition required by subsection (a)
16 of this section:

17 (1) Lands partitioned to the Hopi Tribe by the
18 district court shall be contiguous to the exclusive Hopi
19 Indian Reservation established by the court in Healing
20 against Jones.

21 (2) In order to avoid undue social, economic, and
22 cultural disruption the line of partition established by
23 the district court shall be drawn to include in the Navajo

1 area insofar as reasonably practicable all areas of high
2 Navajo population density.

3 (3) The lands partitioned to the Navajo Tribe and
4 the Hopi Tribe shall be equal in acreage insofar as rea-
5 sonably practicable.

6 (4) The line of partition established by the district
7 court shall follow terrain in order to avoid or facilitate
8 fencing insofar as reasonably practicable.

9 (5) In any division of surface rights in the joint-
10 interest area the district court shall make reasonable
11 provision for the use and right of access to identified
12 religious shrines of either the Navajo Tribe or the Hopi
13 Tribe on lands partitioned to the other tribe.

14 SEC. 302. The lands partitioned to the Navajo Tribe
15 under section 301 of this Act shall be held in trust by the
16 United States exclusively for the Navajo Tribe and as a part
17 of the Navajo Indian Reservation.

18 SEC. 303. The lands partitioned to the Hopi Tribe
19 under section 301 of this Act shall be held in trust by the
20 United States exclusively for the Hopi Tribe and as a part of
21 the Hopi Indian Reservation, subject to the provisions of
22 section 307 of this title.

23 SEC. 304. The partition under section 301 of this Act

1 of the surface of lands in the joint-interest area shall not
2 affect the joint-ownership status of the coal, oil, gas, and all
3 other minerals within or underlying such lands. All such
4 coal, oil, gas, and all other minerals within or underlying
5 such lands shall be managed jointly by the Navajo Tribe and
6 the Hopi Tribe, subject to the supervision and approval of
7 the Secretary of the Interior as otherwise required by law,
8 and the proceeds therefrom shall be divided equally between
9 the Navajo Tribe and the Hopi Tribe.

10 SEGREGATION OF THE HOPI INTEREST IN THE NAVAJO

11 RESERVATION

12 SEC. 305. The United States shall hold in trust exclu-
13 sively for the Hopi Indian Tribe and as a part of the Hopi
14 Indian Reservation all surface and subsurface rights, inter-
15 ests, and estates in and to the following described lands which
16 comprise those portions of the lands described in the Act of
17 June 14, 1934 (48 Stat. 960), outside of the Executive
18 Order Reservation of 1882, on which the Hopi Tribe was
19 located on the date of said Act:

20 Beginning at the northwest corner of township 31
21 north, range 11 east, Gila and Salt River meridian;
22 thence west 1 mile; thence south 8 miles, thence east
23 4 miles; thence north 2 miles; thence east 4 miles;

1 thence north 6 miles; thence west 7 miles to place of
2 beginning containing approximately 35,200 acres, and
3 which will be when surveyed sections 1 and 12 of town-
4 ship 30 north, range 10 east; sections 4, 5, 6, 7, 8, and 9
5 of township 30 north, range 11 east; all of township 31
6 north, range 11 east; and sections 6, 7, 18, 19, 31, and
7 36 of township 31 north, range 12 east.

8 The conveyance of exclusive rights in the Hopi Tribe to
9 the above-described lands shall constitute a full and com-
10 plete settlement of any right of the Hopi Tribe to any of
11 the lands described in the Act of June 14, 1934 (48 Stat.
12 960) : *Provided*, That nothing in this section shall be deemed
13 to affect the liability of the United States, if any, under
14 litigation now pending before the Indian Claims Commission.

15 STATUS OF TRIBAL MEMBERS WHO RESIDE ON LANDS

16 PARTITIONED TO THE OTHER TRIBE

17 SEC. 306. The Secretary of the Interior is authorized
18 and directed to complete within one year after the partition
19 of the joint-interest area by the district court under section
20 301 of this Act a report which shall provide the following
21 information concerning the areas referred to in sections 302
22 and 303 of this Act:

23 (a) the names of all adult members of the Hopi
24 Tribe who reside within the area referred to in section
25 302 of this Act, and the names of all adult members of

1 the Navajo Tribe who reside within the area referred to
2 in section 303 of this Act: *Provided*, That for pur-
3 poses of this clause the phrases "adult member of the
4 Hopi Tribe" and "adult member of the Navajo Tribe"
5 shall mean any member of the Hopi Tribe or the Navajo
6 Tribe who has reached age eighteen;

7 (b) the names of all persons identified under clause
8 (a) of this section who, on the date of enactment of this
9 Act and for at least one year preceding it, have raised
10 livestock in the joint-interest area;

11 (c) the number of years any person identified under
12 clause (a) of this section has resided in the joint-
13 interest area;

14 (d) the fair market value of the habitation and im-
15 provements owned by the heads of household identified
16 under clause (a) of this section.

17 SEC. 307. Notwithstanding any other provision of this
18 Act—

19 (a) any person identified by the Secretary of the
20 Interior under clause (a) of section 306 of this Act
21 who has resided since his birth in the joint-interest area
22 and any surviving spouse of such person, shall be author-
23 ized by the Secretary to remain in residence for life on
24 the residential site used by him on the effective date of
25 this Act;

1 (b) any other person identified by the Secretary
2 under clause (a) of section 306 of this Act and the
3 spouse of such person, shall be authorized by the Secre-
4 tary to remain in residence on the residential site used
5 by him on the effective date of this Act for a period
6 equal to the number of years such person had resided on
7 such lands prior to the date of enactment of this Act:
8 *Provided*, That any married person whose spouse is
9 authorized under this section to remain in residence for
10 a longer period than such married person shall be per-
11 mitted to reside in such area for such longer period,
12 whether or not the spouse survives;

13 (c) the grandfather, grandmother, father, or mother
14 and any lineal descendant of a person who qualifies
15 under the provisions of paragraph (a) of this section
16 may live on the residential site of such person during the
17 lifetimes of such person and the spouse of such person
18 and for one year after the death of the surviving spouse;

19 (d) the grandfather, grandmother, father, or
20 mother and any lineal descendant of a person who quali-
21 fies under the provisions of paragraph (b) of this sec-
22 tion may live on the residential site of such person as
23 long as such person or the spouse of such person resides
24 there: *Provided*, That if such person and the spouse of
25 such person should die prior to the expiration of their

1 authorization to stay on the land, the grandfather, grand-
2 mother, father, or mother and any lineal descendant of
3 such person may remain in residence on the residential
4 site until such authorization expires or for one year after
5 the death of the surviving spouse, whichever occurs
6 sooner;

7 (e) any person who under this section is entitled
8 to remain in residence in the joint-interest area and
9 who is identified by the Secretary under clause (b) of
10 section 306 of this Act, shall be authorized by the Sec-
11 retary to raise livestock under such regulations as the
12 Secretary shall prescribe.

13 PURCHASE OF IMPROVEMENTS AND REIMBURSEMENT FOR
14 EXPENSES

15 SEC. 308. (a) The United States shall purchase from
16 the head of any household who has been identified under
17 clause (a) of section 306 of this Act at the time such per-
18 son relocates from his residential site (which relocation may
19 occur sooner than required), or from the estate of such per-
20 son upon the death of the surviving spouse and the departure
21 of the grandfather, grandmother, father, or mother and any
22 lineal descendant of such person, the habitation and other
23 improvements owned by such person and required to be
24 abandoned. The purchase price shall be the fair market value
25 of such habitation and improvements as determined under

1 clause (d) of section 306 of this Act, adjusted to reflect
2 increases in the Consumer Price Index of the Bureau of
3 Labor Statistics of the Department of Labor between the
4 date of valuation under clause (d) of section 306 of this
5 Act and the date of abandonment under this section.

6 (b) In addition to the payments made pursuant to sub-
7 section (a), the Secretary of the Interior shall—

8 (1) reimburse each head of a household whose
9 family is moved under this Act for his actual reasonable
10 moving expenses as if he were a displaced person under
11 section 202 of the Uniform Relocation Assistance and
12 Real Property Acquisition Policies Act of 1970 (84
13 Stat. 1894) ;

14 (2) pay each head of a household whose family is
15 moved under this Act an amount which, when added to
16 the fair market value of the habitation and improvements
17 purchased under subsection (a), equals the reasonable
18 cost of a decent, safe, and sanitary replacement dwelling
19 adequate to accommodate such displaced household:
20 *Provided*, That the additional payment authorized by
21 this subsection shall be made only to a displaced person
22 who purchases and occupies such replacement dwelling
23 not later than the end of the one-year period beginning
24 on the date on which he receives from the Secretary final
25 payment for the habitation and improvements purchased

1 under subsection (a), or on the date on which he moves
2 from such habitation, whichever is the later date. Noth-
3 ing in this subsection shall require a displaced person to
4 occupy a dwelling with a higher degree of safety and
5 sanitation than he desires.

6 (c) In implementing subsections (b) (1) and (b) (2)
7 of this section, the Secretary shall establish standards con-
8 sistent with those established in the implementation of the
9 Uniform Relocation Assistance and Real Property Acquisi-
10 tion Policies Act of 1970.

11 (d) The Secretary is authorized to dispose of dwellings
12 and other improvements acquired under this Act in such
13 manner as he sees fit, including resale of such improvements
14 to members of the tribe exercising jurisdiction over the area
15 at prices no higher than their acquisition costs.

16 DETERMINATION OF ANNUAL RENT DUE THE HOPI TRIBE

17 SEC. 309. As long as persons continue to reside in the
18 joint-interest area under the provisions of section 307 of this
19 Act, the Secretary of the Interior is authorized and directed
20 to determine annually the extent of the use made by the
21 Navajo Tribe, and the extent of the use made by the Hopi
22 Tribe. Beginning one year after the effective date of this
23 Act, the Secretary is further authorized and directed to deter-
24 mine annually the fair rental value of the use made in the
25 preceding year by Hopis of the area held for the Navajo

1 Tribe under section 302 and the fair rental value of the use
2 made by Navajos of the area held for the Hopi Tribe under
3 section 303, and the United States shall pay the difference
4 between the two amounts to the Tribe entitled to it.

5 AUTHORIZATION OF APPROPRIATION

6 SEC. 310. There are authorized to be appropriated such
7 sums as shall be required to carry out the provisions of sec-
8 tions 308 and 309 of this Act.



United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 23 1974

Dear Mr. Chairman:

This responds to your request for the views of this Department on H.R. 10337 in the Senate of the United States, an Act, "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"; S. 3230 a bill, "To provide for the efficient development of the natural resources of the Navajo and Hopi Reservations for the benefit of its residents, to assist the members of the Navajo and Hopi Tribes in becoming economically fully self-supporting, to resolve a land dispute between the Navajo and Hopi Tribes, and for other purposes"; S. 3724 a bill "To provide for efficient development of the natural resources of the Navajo and Hopi Reservations for the benefit of its residents, to assist the members of the Navajo and Hopi Tribes in becoming economically fully self-supporting, to resolve a land dispute between the Navajo and Hopi Tribes, and for other purposes"; and S. 2424 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."

We recommend enactment of H.R. 10337 in the Senate, if amended as suggested herein. We recommend against enactment of S. 3230, S. 3724, or S. 2424.

All four of these bills are designed to resolve a longstanding dispute over certain lands held jointly by the Hopi and Navajo Tribes. The background and earlier recommendations which the Department supplied concerning this controversy are set out in our letter of May 14, 1973, to the House Committee on Interior and Insular Affairs, which is reproduced in House Report No. 93-909. After reexamining our position set out in that letter that no legislation should be enacted, we have reluctantly concluded that it is no longer viable. In light of the lack of progress in alleviating the Hopi-Navajo problems since May of 1973, we no longer believe our preference for resolution via existing judicial authority and proceedings is realistic. Moreover, we see no sign of the voluntary settlement of the dispute between the two tribes which we would much prefer. Subject to the amendments which we shall discuss, we believe that H.R. 10337 constitutes the surest and fairest means of settling the bitter disputes in which the tribes have engaged and we recommend that it be enacted. We would emphasize, however, that we approach the task of implementing any large-scale relocation of Indian people with great reluctance and would not wish to undertake it without a strong mandate in law.

I. H.R. 10337 IN THE SENATE

H.R. 10337 in the Senate would authorize the United States District Court for the District of Arizona to partition the surface of the joint-use area of the 1882 Executive Order Hopi Reservation between the Hopi and Navajo Tribes. The partition would be carried out pursuant to several criteria set out in the bill, such as that undue social, economic, and cultural disruption should be avoided as far as possible; and that the lands partitioned between the two tribes should, insofar as possible, be equal in acreage, value, and animal carrying capacity. The United States would hold the partitioned sections of the joint-use area in trust for the respective tribes. Partition of the area's surface, however, would not affect the joint ownership of its subsurface minerals, which would be managed jointly by the tribes under the supervision of the Secretary of the Interior. This bill would remedy by partition a dispute over ownership and enjoyment of certain lands in the area of the Navajo Reservation known by the village names of Moencopi and Tuba City; this dispute dates from the establishment of boundaries for that reservation in 1934. The bill would also provide allotments to certain Paiute Indians living in the Navajo Reservation.

H.R. 10337 would further direct the Secretary of the Interior to remove all Navajo Indians and their belongings, including livestock, from the Hopi area which results from the partition. This removal would take place over a period of 5 years, with 20 percent of the Navajos being removed each year. The Secretary would be authorized and directed to sell to the Navajo Tribe not more than 250,000 acres of public land within his jurisdiction and to hold this land in trust for the tribe. Hopi Indians would be removed from the Navajo area resulting from the partition over a period of two years, with 50 percent of the Hopis being removed each year. The Secretary would buy from the head of each removed household his habitation and other improvements; would reimburse him for actual moving expenses; and would grant him an additional payment (not to exceed \$20,000 for a household of four or more) sufficient to enable him to buy a decent, safe, and sanitary replacement dwelling. For carrying out the relocation program, a sum not

to exceed \$28.8 million would be authorized to be appropriated. The bill would direct the Secretary immediately to reduce the number of livestock grazing within the joint-use area to its carrying capacity; to institute conservation practices so as to restore the grazing potential of the area; and to provide for the survey, location of monuments, and fencing of boundaries of any lands partitioned by settlement between the two tribes. A sum not to exceed \$10 million would be authorized to be appropriated for these purposes. The bill would guarantee use of a certain named spring as a Hopi religious shrine and would enable the Secretary to provide access to other shrines for both tribes.

II. S. 2424

This bill is similar to H.R. 10337 but without the amendments made by the House Committee and on the House floor. One significant difference between the two bills is that under S. 2424 the Secretary of the Interior, rather than the court, would partition the joint-use area. In addition, S. 2424 contains no relocation benefits and does not provide for Navajo purchase of public lands, as does H.R. 10337.

III. S. 3230

S. 3230, which would be cited as the Navajo-Hopi Development Act, links solution of the tribes' land dispute with their economic development. Title I of the bill would set up a Commission composed of members chosen by the President and the two tribes. The Commission would review the potential of the tribes' reservations for development, encourage private investment in developmental projects, make legislative and fiscal recommendations to the Congress and Federal agencies, and formulate the programs discussed in Title II, *infra*. The bill contains safeguards against conflicts of interest involving members or employees of the Commission.

Title II of the bill directs the Commission to develop the following programs on the reservations in cooperation with the two tribes: construction of development highways and access roads; proper utilization of agricultural and water resources; agreements between the tribes and the Commission concerning land stabilization, erosion control, and reclamation; mining and extraction of mineral resources; economic development; manpower development; health and hospital care;

construction and operation of schools and provision of educational services; construction or rehabilitation of housing to meet needs of low-or moderate-income families and individuals; and effective law enforcement and administration of justice. Generally speaking, the Commission would apportion funds made available for these programs between the two tribes in proportion to their respective resident populations.

Title III of S. 3230 would resolve the Hopi-Navajo land controversy on the basis of various Congressional findings, among them that Hopi occupancy of the joint-use area has been de minimis; that expulsion of Navajos from the area would create serious hardship for them and result in substantial cost to the United States; and that separate treatment of the area's surface and subsurface estates is feasible. Accordingly, the bill would direct the Commission to determine the proportionate use of the joint-use area as of July 22, 1958 (the date of enactment of the Federal law which committed the dispute to judicial determination and vested joint, equal but undivided ownership of the disputed area in the two tribes). Upon receiving the Commission's determination, the Secretary of the Interior would issue an order declaring that the surface areas used respectively by each tribe as of that date be held in trust for it, except that certain Hopi easements would be maintained on Navajo land; and fixing the monetary amount due the Hopi Tribe should its surface area turn out to be less than one-half the total acreage. The Secretary would also be directed to loan up to \$18 million, without interest, to the Navajo Tribe upon certain specified conditions. The subsurface estate of the joint-use area would be held in trust for--and managed jointly by--the two tribes, subject to the supervision of the Secretary of the Interior. Finally, S. 3230 would settle the controversy over the Moencopi area by conferring jurisdiction over the controversy, including the power to partition the area, on the U. S. District Court for the District of Arizona.

IV. S. 3724

Titles I and II of S. 3724 and S. 3230 are virtually identical. The two bills differ substantially, however, in settling the Hopi-Navajo land dispute. S. 3724 would authorize the Arizona

District Court to partition the joint-use area between the two tribes. As in H.R. 10337, among the criteria to be applied by the court to this partition would be the inclusion in the Navajo area, insofar as possible, of all areas having high Navajo population density. The subsurface estate of the joint-use area would remain undivided, to be managed jointly by the tribes. The bill would resolve the controversy over the Moencopi area by declaring that a specified tract of land within the area described in the bill would be held in trust for the Hopi Tribe.

Any adult member of either tribe identified by the Secretary of the Interior as having resided since birth on that portion of the joint-use area held in trust for the other tribe would be authorized to continue to reside there for life. Any adult member of either tribe identified as having resided for a lesser amount of time on that portion of the joint-use area held in trust for the other tribe would be authorized to continue to reside there for that same period of time. Certain relatives of both classes of person could live on these persons' residential sites for comparable periods of time.

S. 3724 would provide that the United States would purchase the habitation and improvements of relocated Hopi or Navajo households and would make other payments in a manner similar to that set out in H.R. 10337 in the Senate. Finally, the bill would direct the Secretary of the Interior to calculate rental values attaching to each tribe's use of lands held in trust for the other under the life or equivalent-term-of-years residence programs described supra. The United States would reimburse the tribes for any inequities in such rental calculations.

V. DISCUSSION

Since our May 14, 1973, report to the House, relatively little progress in settling the Hopi-Navajo dispute over the joint-use area has been made. The Arizona District Court has held the Chairman of the Navajo Tribe in contempt for failure to abide by its order to reduce the amount of livestock grazed by that tribe in the area. The Hopi Tribe has recently promulgated a new, stringent trespassing ordinance which if enforced would result in the Hopi Tribe's impounding Navajo livestock in the joint-use area. We consider it only a matter of time before existing conditions erupt in hostile confrontations between the two tribes. Finally, we have seen that the court's order to reduce livestock will inevitably lead to some relocation of people. At present there is no statutory authority to compensate people who must move because of the loss of or to follow their livestock; this is a gap which we believe must be filled. For all these reasons,

we endorse the basic concept of H.R. 10337: the court should be given jurisdiction to partition the joint-use area.

Judicial partition of the disputed area would be meaningless without providing for relocation of such Indians as may be living on tribal land within the portion of the joint-use area that is partitioned to the other tribe. We recognize that a major relocation of people in this way is a grave human problem. We earnestly hope that if H.R. 10337 is enacted, the affected people will move willingly to join their tribespeople, and we are recommending a system of cash incentives to encourage early and voluntary relocation. However, we believe it is likely that some affected persons will resist relocation and that the authority of the United States Government will have to be invoked to compel their relocation. The forcible movement of people is an action that we are most reluctant to recommend. However, in light of the history and present state of the tribes' dispute, we see no alternative if the Hopis' adjudicated rights are to be realized.

In the remainder of this section, we shall provide the outlines of our position. In the last section of this letter, we shall offer the amendments to H.R. 10337 in the Senate which are necessary to implement that position.

We have no objection to the guidelines for judicial partition set out in section 2 of H.R. 10337. With regard to relocation, we believe that intensive study is required before any persons are moved. Relocation of large numbers of people pursuant to judicial decision would present the United States with an exceedingly complicated situation involving problems of promulgation, census, appraisal, logistics, and location and construction of housing. Accordingly, we believe that a period of two years after the decision of the court should be allowed for planning and preparation of the necessary relocation. At the end of the two-year period, we would submit this plan to the Congress; if after sixty days the Congress had not enacted overriding legislation, we would begin to implement the plan. Although we believe that the 5-year relocation schedule set by H.R. 10337 is appropriate, we recommend against a 20 percent per year quota of relocated persons. We believe that such determinations as this should be left to the plan which we would develop.

In addition, we generally support the relocation payment provisions of section 12 of H.R. 10337. As stated above, however, we believe that there should be cash incentive payments to encourage voluntary and early relocation by affected persons. We propose to pay \$5,000 on the date of relocation to heads of households who contract to move before the end of the first year after the plan referred to above goes into effect. We also propose that heads of households

who so contract within two, three, and four years be paid \$4,000, \$3,000, and \$2,000, respectively. Heads of households who contracted to move in the fifth year after the plan went into effect would receive no incentive payment.

Section 10(b) of H.R. 10337 would authorize and direct the Secretary to sell up to 250,000 acres of land to the Navajo Tribe. We strongly recommend that the Secretary be authorized, in his discretion, and not also directed to make such a sale. We also recommend that only the surface estate of such lands be transferred to and held in trust for the tribe.

We recommend that the dispute over the Moencopi area be settled by the court, with the jurisdiction to effectuate its determination by partition, and not by direct partition as in section 7 of H.R. 10337. The disadvantage of direct partition is that neither the Hopi nor the Navajo interest in this area pursuant to the 1934 Act which consolidated the Navajo Reservation has ever been judicially determined. Congressional determination of the tribes' relative interests would inevitably lead to litigation, with the likely result being a judicial determination that the United States had taken property rights from one of the tribes and was obliged to compensate the aggrieved tribe. We therefore believe that judicial determination of the tribes' interests and corresponding judicial partition of the Moencopi area are the proper procedures for settling this dispute.

Because of our uncertainty as to the funds necessary to settle the Hopi-Navajo dispute--an uncertainty which must await the court's decision and the development of the plan discussed above--we recommend that all authorizations in the bill be open-ended rather than fixed at definite dollar amounts.

VI. PROPOSED AMENDMENTS TO H.R. 10337

Section 1: no comment.

Section 2: The words "share and share alike" should be stricken from page 2, line 9, to avoid the implication of a continued joint interest of the tribes in the surface area after partition.

Section 2(g): For purposes of clarification, we suggest adding at the end of this subsection (page 3, line 13) the words "including but not limited to the area described in section 21 hereof." We also recommend that a new criterion for partition be added, as subsection 2(h): "Insofar as possible, the joint-use area shall be partitioned so as to provide equal likelihood of mineral development in each tribe's partitioned area."

Section 3: no comment.

Section 4 and 5: no comment.

Section 6: We agree that continued joint ownership of the beneficial interest in the mineral rights within the joint-use area is necessary: since the area's mineral values are unknown, it would be impossible to divide them equitably. However, as this section now stands, there is the possibility that a disagreement between the tribes could block one tribe's desire to develop mineral resources. The Secretary would work with the tribes to reconcile the differences, but we recommend that the following provision be added at the end of section 6 to give the Secretary authority to approve development if he believes it to be in the tribes' overall best interests despite the objections of one tribe:

"In the event of a dispute between the tribes regarding the exploration or development of such minerals, the Secretary is authorized to resolve such dispute by arbitration; if such arbitration is not successful, the Secretary is authorized to take such actions, consistent with his trust responsibility as he determines are in the best interest of the tribes."

Section 7: In line with our recommendation that the dispute over the Moencopi area be settled by judicial partition, we suggest that, with minor modifications, the language in section 303 of S. 3230 be substituted for the present language in section 7 of H.R. 10337. The modifications we propose are for purposes of conformity with the framework of H.R. 10337 and recognition of the existence of individual Hopi and Navajo allotments within the area described by section 7 of H.R. 10337 (*i.e.*, our language as supplemented by our amendment to section 15, *infra*, would avoid any taking of these allotments). In line 2, page 25, of S. 3230, after the date "1934," we would add the following phrase: "except the 1882 Executive Order Hopi Reservation.". At the end of the first and second sentences of the section 303(b) of S. 3230, we would insert the words "except as provided in section 15 of this Act".

Section 8: no comment.

Section 9: To carry out the intent of section 15--avoiding a taking of allotted lands while assuring that the allottees are subject to the jurisdiction of the tribe within whose reservation their allotments are located, we suggest that the phrase "(subject to the provisions of section 15 of this Act)" be inserted after the word "excepting" on page 7, line 8, and that the phrase "and those lands allotted prior to enactment of this Act" be inserted before the period in line 9, page 7.

Section 10: We recommend the insertion of a new section 10 and the renumbering of the present sections 10, 11, and 12 accordingly. The new section 10 would provide for the census and relocation plan mentioned above, as follows:

"Sec. 10(a) The Secretary of the Interior shall complete a report within one year after the date of final partition by the court pursuant to section 2 of this Act and a separate report within one year after the date of final partition pursuant to section 7 of this Act. Each such report shall contain the following information concerning the partition to which it applies:

- (1) the names of all members of the Navajo Tribe who reside within the area partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the area partitioned to the Navajo Tribe; and
- (2) the fair market value of the habitations and improvements owned by the heads of households identified by the Secretary as being among the persons named in clause (1) of this subsection.

(b) The Secretary of the Interior shall prepare plans corresponding to the reports required by subsection (a) of this section to carry out the removal and relocation of the households and their members identified pursuant to clause (1) of subsection (a) of this section. Each such plan shall:

- (1) be developed to the maximum extent feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal governments;
- (2) take into account the social and cultural impact of relocation on persons involved in such relocation;
- (3) identify the place or places to which such households shall be relocated;
- (4) specify the manner in which housing for such households and such related community facilities and services as water, sewers, roads, and schools shall be made available in timely fashion;
- (5) be submitted to the Congress within two years from the date of the appropriate final partition by the court; and
- (6) unless Congress provides otherwise by law, take effect sixty days after the date of submission to the Congress."

The relocation provision, section 10 of H.R. 10337, which would be renumbered section 11, should be amended to read as follows:

"Sec. 11(a) The Secretary of the Interior is authorized and directed to remove all Navajo households and members thereof; as determined by the Secretary, and their personal property, including livestock, from the lands partitioned to the Hopi Tribe pursuant to sections 2 and 7 of this Act. The removal from lands partitioned pursuant to section 2 of this Act shall take place in accordance with the plan required for such removal by section 10 of this Act and shall be completed by the end of five years from the date on which such plan goes into effect. The removal from lands partitioned pursuant to section 7 of this Act shall take place in accordance with the plan required for such removal by section 10 of this Act and shall be completed by the end of five years from the date on which such plan goes into effect. No further settlement of Navajo Indians on the lands partitioned to the Hopi Tribe pursuant to sections 2 and 7 of this Act or on 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 area partitioned to the Hopi Tribe pursuant to sections 2 and 7 of this Act, nor shall he retain any grazing rights in those areas subsequent to his removal therefrom."

To implement the incentive payment recommendation made in section V of this letter, we suggest that a new section 11(b) (replacing the old section 10(b), which would be renumbered 11(c) as discussed above) be added to H.R. 10337.

"(b) In addition to the payments made pursuant to section 13 of this Act, the Secretary shall make payments to heads of households identified in the report prepared pursuant to section 10(a) of this Act according to the following schedule:

(1) the sum of \$5,000 to each head of a household who, prior to the expiration of one year after the effective date of the appropriate removal plan provided for in section 10(b) of this Act, contracts with the Secretary to relocate. Such payment shall be made on the date of such relocation as determined by the Secretary.

(2) the sum of \$4,000 to each head of a household who is not eligible for the payment provided for in clause (1) of this subsection but who, prior to the expiration of two years after the effective date of the appropriate removal plan provided for in section 10(b) of this Act, contracts with the Secretary to relocate. Such payment shall be made on the date of such relocation as determined by the Secretary.

(3) the sum of \$3,000 to each head of a household who is not eligible for the payments provided for in clauses (1) or (2) of this subsection but who, prior to the expiration of three years after the effective date of the appropriate removal plan provided for in section 10(b) of this Act, contracts with the Secretary to relocate. Such

payment shall be made on the date of relocation as determined by the Secretary.

(4) the sum of \$2,000 to each head of a household who is not eligible for the payments provided for in clauses (1), (2), or (3) of this subsection but who, prior to the expiration of four years after the effective date of the appropriate removal plan provided for in section 10(b) of this Act, contracts with the Secretary to relocate. Such payment shall be made on the date of such relocation as determined by the Secretary."

We also recommend that the following new section 11(c), which is designed to discourage persons from moving into the joint-use area in the hope of obtaining relocation incentive payments, be added to the bill:

"(c) No head of a household which moved into the joint-use area later than one year prior to the date of enactment of this Act shall be eligible for payments made pursuant to this section."

Section 10(b) of H.R. 10337 should be renumbered as 11(d) and, in order to provide necessary discretion in the relocation of Navajos, we recommend that it be amended to read as follows:

"(d) Consistent with the plan required by section 10(b) of this Act to be developed within one year after the date of final partition by the court pursuant to section 2 of this Act, the Secretary is authorized to transfer to the Navajo Tribe the surface estates in lands under his jurisdiction in the States of Arizona and New Mexico which he deems to be suitable and necessary to carry out the removal and relocation of Navajo households and their members pursuant to this Act. The total lands so transferred pursuant to this subsection shall not exceed 250,000 acres. Title to lands so transferred shall be held by the United States in trust for the benefit of the Navajo Tribe, which shall pay to the United States the fair market value for lands so transferred. Such lands shall, if possible, be contiguous, or adjacent to the Navajo Reservation. As to all land transferred pursuant to this subsection, the United States shall reserve and retain all minerals in such land, together with the right to mine, develop, and remove them."

The relocation of Hopi Indians would be governed by a new section 12, which would read as follows:

"Sec. 12. The Secretary of the Interior is authorized and directed to remove all Hopi households and members thereof, as determined by the Secretary, and their personal property, including livestock, from the lands partitioned to the Navajo Tribe pursuant to sections 2 and 7 of this Act. The removal from lands partitioned pursuant to section 2 of this Act shall take place in accordance with the plan required for such removal by section 10(b) of this Act and shall be completed by the end of two years from the date on which such plan goes into effect. The removal from lands partitioned

pursuant to section 7 of this Act shall take place in accordance with the plan required for such removal by section 10(b) of this Act and shall be completed by the end of two years from the date on which such plan goes into effect. No further settlement of Hopi Indians on the lands partitioned to the Navajo Tribe pursuant to sections 2 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 partitioned to the Navajo Tribe pursuant to sections 2 and 7 of this Act, nor shall he retain any grazing rights in those areas subsequent to his removal therefrom."

Section 12(a)(renumbered 13(a)): On page 9, line 6, we suggest that "Secretary of theInterior" be substituted for "United States". On page 9, line 7, the words "Navajo and Hopi" are unnecessary. To take into account our proposed new section 10(a) we suggest, before the period in line 11 on page 9, the insertion of the phrase "as determined under clause (2) of section 10(a) of this Act".

Section 12(b)(renumbered 13(b)): We suggest that provision be made in the first proviso for housing cost increases over the life of the Act. This could be accomplished by inserting before the colon in line 5, page 10, the following:

"except that the Secretary may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease such limitations to reflect changes in housing development and construction costs, except for costs of land, during the preceding year".

In the second proviso to the same subsection, the one-year period is unduly restrictive; we recommend that on page 10, line 9 the word "one" be changed to "two".

We also recommend that an additional proviso be inserted into clause (2) to insure that the payments are used for their purpose. We would add to the end of the clause (line 16, page 10 of H.R. 10337) the following:

"Provided, further, That payments made pursuant to this clause shall be used only for the purpose of obtaining decent, safe, and sanitary replacement dwellings adequate to accommodate displaced households."

Consistent with our amendment to section 10 (renumbered 11), section 12(c) (renumbered 13(c)) should be amended by adding a new sentence at the end thereof:

"No payments shall be made pursuant to this section to any person who was not a resident of the area from which he is being relocated for at least one year prior to the date of enactment of this Act."

Sections 13 and 14 should be combined into one section as follows:

"Sec. 14. The Secretary of the Interior is authorized and directed to determine annually the aggregate fair rental values of the use made (a) by members of the Navajo Tribe of lands partitioned to the Hopi Tribe pursuant to this Act and (b) by members of the Hopi Tribe of lands partitioned to the Navajo Tribe pursuant to this Act. To the extent that in any year the value in clause (a) exceeds the value in clause (b), the Navajo Tribe shall pay an amount equal to such excess to the Hopi Tribe. To the extent that in any year the value in clause (b) exceeds the value in clause (a), the Hopi Tribe shall pay an amount equal to such excess to the Navajo Tribe.

Section 15: To take into account the presence of Paiute Indians and avoid a jurisdictional vacuum with respect to them, we suggest that "and Paiute" be inserted after "Hopi" on page 11, line 16, and after "Navajo" on page 11, line 18.

Section 16: no comment.

Section 17: no comment.

Section 18: no comment.

Section 19: no comment.

Section 20: We recommend that the sentence beginning on line 19, page 14, be amended to read as follows: "The Secretary of the Interior is directed to institute such use practices and methods within such area as are necessary to improve the grazing potential of the area." In addition, for purposes of clarification, we suggest that the sentence beginning on page 14, line 22, be rewritten as follows:

"He shall, in addition, provide for the survey, location of monuments, and fencing of boundaries of any lands partitioned pursuant to this Act."

To recognize the fact that this Department has sufficient general appropriations authorization authority to meet the expenses to be incurred pursuant to section 20, we suggest that the last sentence of the section be stricken.

Section 21: no comment.

Section 22: no comment.

Section 23: no comment.

Section 24(a). We suggest that the sum authorized to be appropriated for the relocation expenses under section 12 (renumbered 13) be changed to "such sums as may be necessary" due to the uncertainties of actual costs over the approximately seven years that the expenses will be incurred. We also recommend that sums appropriated remain available until expended. Since section 24(b) is duplicative of existing authority, as well as of authority provided in section 20, as discussed supra, we recommend that section 24 be rewritten as follows:

"Sec. 24. There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act, such sums to remain available for the purposes of this Act until expended."

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,


Commissioner of Indian Affairs

Honorable Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
United States Senate
Washington, D.C. 20510

Senator ABOUREZK. I would just like to add that when I chaired hearings in Winslow, Ariz., in 1973, I told the people assembled, the Navajo and the Hopi, that I would like to see a solution to this matter before the end of 1974, before the end of this Congress.

I would still like to see that solution come about. There has been a great deal of emotion attached to this issue, escalating during the last year or year and a half. Unfortunately, there have been people outside of the two tribes involved in this matter who are adding to that escalation of emotion and passion about how this settlement ought to occur.

I, personally, believe that there has to be a division of the land at some point, but I also personally believe that it is a serious question, a very serious question of how you handle the people who live on that land who have to be uprooted.

My own personal experience has been that creating a new set of refugees is not the way to arrive at any kind of solution. I have had enough bad experiences with refugees in my own personal experience.

And I, personally, do not want to see any more. I cannot speak for the other members of this committee or of the Congress, but if there is anything that can be done to avoid that, I hope that we can arrive at that kind of collective wisdom.

I would like to ask Senator Fannin, the ranking minority member on this committee, if he would like to make an opening statement at this time.

Senator FANNIN. Yes, Mr. Chairman.

STATEMENT OF HON. PAUL J. FANNIN, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator FANNIN. There is no question that the time has come to resolve this decade-old dispute. I recall that when we were in Winslow, Ariz., you pledged both the Hopis and the Navajos, that if they did not arrive at a settlement themselves, Congress would take action.

We know that the current situation of uncertainty and animosity is detrimental to everyone involved. We know that such conditions have resulted in overuse of the range and an understandable unwillingness for either tribe to make needed investments in improvements to safeguard this land.

An equitable settlement of the controversy is needed, not only to keep the peace today but to preserve reservation resources for tomorrow. The tribes we are concerned with today have long and proud histories stretching back thousands of years.

They are great peoples who conquered a frequently harsh environment without the technological equipment available to non-Indian settlers who came only in recent times.

Today the Navajos and Hopis are important and respected elements of Arizona, and other States in the West which are very much involved. Today they face challenges perhaps even more difficult than those of ancient times.

These tribes must determine how they are to deal with the 20th century. Their full energies should be concentrated on self-determination and how to benefit from today's world without succumbing to it.

Thus, it appears to me that this dispute is sapping much of the

tribal energy which could be better put to use on other problems. I have had verification on that from the chairman of the Navajos.

I have also talked to the chairman of the Hopis who agrees this is a problem that must be settled. We welcome our fine neighbors, Chairman Peter MacDonald and his council; Chairman Abbott Sekaquapewa and his fine group.

They are all to be commended for the work they are doing for their people. It might be well to stress that the problem we are examining here is a dispute between two Indian tribes. It does not involve relations between Indians and non-Indians.

Congress seems to be the only authority which can initiate a resolution to this problem, since the two tribes have not been able to reach a settlement. Again, I emphasize, I wish this were not so.

I wish they could have settled this problem themselves. The judgment in this dispute, whether it comes ultimately from the Congress or the courts, will be deemed by many on each side of the issue to be wrong, regardless of what the final decision may be.

So it is not a happy burden. But it is the clear responsibility of Congress to act in such controversies. It is my hope that we will act as soon as possible after these hearings, and I feel that we can.

Thank you, Mr. Chairman.

Senator ABOUREZK. Thank you.

Senator Metzenbaum.

Senator METZENBAUM. No statement.

Senator ABOUREZK. Senator Hansen.

Senator HANSEN. I have no statement.

Senator ABOUREZK. We are pleased to hear, this morning, as our first witness, the Honorable Pete Domenici, the junior Senator from New Mexico.

STATEMENT OF HON. PETE V. DOMENICI, A U.S. SENATOR FROM THE STATE OF NEW MEXICO; ACCOMPANIED BY CHARLES GENTRY, LEGISLATIVE AIDE

Senator DOMENICI. Thank you, Mr. Chairman and members of the committee, distinguished leaders of the Navajos Nation and the Hopi Nation. Let me first say, Mr. Chairman, I have a prepared statement.

Usually I do not read prepared statements, but I am going to today because I think I have made a diligent effort to boil down into a few pages my views with reference to the problem.

As a preface, however, I would state to you and to the committee that I certainly do not claim tenure in terms of involvement in this problem that is anywhere near the tenure of Senators like Fannin, Goldwater, yourself, and other members of the committee.

On the other hand, Mr. Chairman, I submit that perhaps I, as a junior Senator, one who comes to this problem with a fresh kind of view, has something to contribute by way of an analysis.

And it is in that spirit that I come here. I would like to say at the outset that I will explain my views and certainly in them support a bill which my senior Senator, Senator Montoya, and I have introduced.

I know there is no hard and fast solution and although my door has regularly been open for discussion on this matter, I note that because

of the introduction of that bill, that perhaps the leadership of the Hopi Indians feel that their views are not welcome.

I would state to their chairman at this point, that my testimony today does not conclude my participation. I will work with the committee and on the floor in an effort to come up with an equitable solution, to do my share in this problem, even though the land is not in my State.

And I say to Mr. Abbott Sakaquaptewa that I welcome his views on what I have said today in person in my office as a Senator interested in trying to solve the problem. I greatly appreciate this opportunity to appear before the Interior Committee to present to you and the other members of the committee my views on the best solution to the long-standing Hopi-Navajo land dispute.

May I also take this occasion to commend the members of the committee for their genuine interest and individual personal involvement in trying to bring an equitable resolution to this dilemma.

I will not take the committee's time to outline the mechanics of the various bills being considered since the members are familiar with the major differences. Neither will I take the committee's time to belabor the background leading to the present situation, the unhappy circumstance we are here to discuss and terminate, if possible.

Although that background is well known there are differences of opinion as to the meaning and significance to be attached to certain past occurrences. It is my position that it is simply unproductive to continue to wrestle with the nuances of history.

Hearings records of this committee are replete with descriptions of historical events relevant to the present dispute and many, if not most, of those events are interpreted and explained by the Hopi as having a particular meaning, yet those same events are just as logically explained by the Navajos as having an entirely different meaning.

Trying at this point in time to resolve this dispute based on differing perceptions of historical events in my opinion is an exercise in futility if the true objective is to provide a final settlement which recognizes the current reality and applies the most equitable principles toward its resolution.

Mr. Chairman, that present reality is plain. There is a significant amount of reservation land, the legal title to which is jointly held, but which is occupied exclusively by members of the Navajo Tribe.

I might point out that this is not a new reality since there is no question that the Navajos have occupied the land involved for many years, years sufficient to render it part of their heritage.

This reality, Mr. Chairman, is central to this issue and its existence cannot be overlooked or denied so as to put the matter conveniently to rest. While there may be some legitimate disagreement about the actual number of Navajos living on the disputed land, the fact is that those numbers are great by anyone's count, ranging from about 6,000 to over 8,000.

The other relevant fact is, regardless of actual number of Navajos residing there, there are no Hopi. On this point there is no dispute. So we have a situation here where we are measuring in my opinion people interests against paper or legal interests and in my opinion people interests must take precedence.

Mr. Chairman, over the years the U.S. Government has allowed, if not encouraged, the Navajo people to utilize and live on this land. Now there are those who want to pin that full responsibility on the Navajos for being there, and in effect, punish them by forcing them to abandon their homes and their established and cherished way of life.

What would the proponents of this approach have this land used for instead? They would have it used basically for grazing and perhaps as a means to control the surface use and development, but in any case not as homesites, at least not in the foreseeable future, or as a direct and daily means of family sustenance as is now the case.

I cannot believe that this committee or the Congress would force or even allow the partition and movement provided for in H.R. 10337 or S. 2424. I cannot believe that we would be a party to making refugees of up to 8,500 Navajos. These fine people already have more than sufficient experience as refugees at the hands of the U.S. Government.

Mr. Chairman, while I appreciate Senator Abourezk's personal efforts to effect a reasonable and equitable compromise and while I commend Senator Abourezk for his deep concern, I cannot endorse his bill, S. 3724. His bill simply drags out the inevitable removal of Navajos to satisfy a legal interest of the Hopi that can be satisfied in other ways not requiring wholesale dislocation of people of either tribe.

These are basically my reasons for joining with my senior colleague from New Mexico, Senator Montoya, in the introduction of S. 3230. That bill would avoid the pitfalls of indiscriminate partition and pains of forced movement of families attached to their homes.

I would like to insert at this point a map of geographic areas within the Navajo Reservation.

Senator DOMENICI. This bill breaks the land area involved down into three major categories, all three of which are definite, identifiable geographic areas within the larger Navajo Reservation. One area is that which is for the exclusive use of the Hopi Tribe and this bill confirms that separate, exclusive use by the Hopis. [As indicated on I of the map.]

The second area is one designated in the bill as the joint use area because in that area it is recognized that the Navajo people and the Hopi people have a joint, equal, and undivided one-half interest. [As indicated on II of the map.]

This bill would settle the conflicting claims of Navajos and Hopis by creating a commission to identify and dispose of three subcategories of land, depending on land use as of July 22, 1958.

I think that date, July 22, 1958, deserves mention, because indeed we will hear testimony that true or not in the recent past perhaps a Navajo has caused a changing circumstance in the area.

We do not believe it is as serious a change in occupancy or use as described by some. But to avoid the problems involved in that accusation, this subcategory would be dated as of qualities, characteristics, and characteristics in use as of July 22, 1958.

This date is proposed since it is the date of the Navajo-Hopi Jurisdictional Act which represents the last statutory attempt to settle conflicting claims of land interest between the two tribes.

The three subcategories of land and the disposition of each category would be as follows: First, land which on July 22, 1958, was used by Hopi Indians for residential or agricultural purposes, to be held in trust for the Hopi Tribe.

Second, land which on July 22, 1958, was used by Navajo Indians for residential or agricultural purposes, to be held in trust for the Navajo Tribe of Indians.

Third, lands identified under the second subcategory in the joint use area which on July 22, 1958, were used by Hopi Indians for certain specific purposes, including ceremonial and hunting purposes, to be subject to easements in favor of the United States in trust for the Hopi Indian Tribe according to the specific uses made on or about July 22, 1958.

It is anticipated that the value of the surface interests which would be identified in subcategory 1 to be held in trust for the Hopis, would be less than one-half of the value of the surface interests of the total area of joint use.

This bill provides that the Navajos would pay the Hopis from a Government loan the difference between one-half the total surface interest and the total surface value of lands to be held in trust for the Hopis.

This would compensate the Hopi people for having received in actual land less than one-half of the area of present joint use and would require very little, if any, dislocation of Indian families.

This method would also be the less expensive to the taxpayer since relocation allowances would be held to a minimum and since the Navajo Tribe would repay the Government loan from moneys that we would advance to them, to carry out this provision.

It should be noted that all these provisions in the joint use extend only to surface rights and maintain equal rights of the two tribes to all minerals in the joint use area.

The third major category of land interests recognized by this bill covers the area related to the act of 1934. In this area, known as the Moencopi area, the bill would authorize a judicial determination of the interests of the two tribes. [As indicated on III of the map.] I think the committee is well aware of the fact that that area has certain different legal as well as physical characteristics than the other land we have been discussing.

The bill provides for addition to the Navajo Reservation of all land which the court determines Navajos have exclusive interest in and addition to the Hopi Reservation all land where the Hopis have exclusive interest.

For that land which the court determines that there is a joint or undivided interest, this bill provides for judicial partitioning in accordance with the principles of fairness and equity.

The two tribes would be authorized to exchange lands which are part of their respective reservations. I continue on with my statement and I will not read it now, describing other aspects of the bill that Senator Montoya and I have introduced.

I think the committee can arrive at those particular distinctions that I have not described generally here. I think it is obvious that what we are being asked to do by various bills, Mr. Chairman and members of the committee, is to swap people and occupancy rights for grazing rights.

I, personally, feel that the Montoya-Domenici bill recognizes that if we have to do that we ought to try to give to the Hopis either money or land, so that they will be made whole, with reference to grazing rights, and that to the Navajo people who occupy land, we will give them that land to occupy. I think this is a tough decision for anyone to make as to how we go about doing this.

But it seems to me that that is the issue before the Congress. It is people versus grazing rights. I don't think we can make the people whole. I have no doubt that we can make those who need grazing rights whole.

I thank the chairman and the committee for giving me a few moments to discuss my views.

Senator ABOUREZK. Thank you very much, Senator Domenici.

I am scheduled to testify before another committee at 10 a.m. and it will be necessary for me to leave soon for that appointment.

I would, first of all, like to say that so far when you said that you could not endorse the Abourezk bill you kept it at 100 percent. Nobody else has endorsed it either.

Senator DOMENICI. Of course, Mr. Chairman, I endorse that portion of it that has to do with economic development because I think it is identical with the Montoya-Domenici bill.

Senator ABOUREZK. It is. I wonder if I might ask you to go over again what your proposal is in as simple terms as possible, so that we can all try to understand what you are proposing.

Senator HASKELL. Mr. Chairman, he refers to geography. Could we have somebody point out locations on the map there?

Senator ABOUREZK. Yes. That's a good point. There are many Senators attending this hearing today who have not been on the scene, and did not join us in field hearings last year, so it would be helpful while you are talking if someone could point to the map.

Senator DOMENICI. Mr. Chairman, if you would, this is Charles Gentry, my legislative aide. We have a small map identical with that which has already been included in the record. Mr. Gentry, would you explain the one, two and three areas of the map to the committee, please?

Senator FANNIN. Mr. Chairman, if the Senator would yield. It might be beneficial if we would explain that the total reservation of the Navajos is 16 million acres, and in the disputed areas there is 1,800,000 acres.

Of course, we are talking about one-half portions, which would be 800,000 acres so that is just 5.6 percent of the total acreage of the Navajo reservation.

Senator HASKELL. The disputed area, Senator Fannin—

Senator FANNIN. I just thought that we should understand that it is a very small percentage of the total Navajo Reservation.

Senator HASKELL. It is the area in red?

Senator FANNIN. Yes.

Senator DOMENICI. I think the crucial part of the Montoya-Domenici bill is the way we would describe three kinds of land and then have the arbitration occur with reference to them.

I would like Mr. Gentry to use that map and as he does to explain the one, two, and three categories of land, if the chairman will permit.

Senator ABOUREZK. Please go ahead.

Mr. GENTRY. This is what we identified in our bill as major category land one. This would be exclusively devoted and held for the Hopi Indian Reservation, the one outlined in red with the roman numeral I.

Senator ABOUREZK. Your proposal is to hold that area in trust for the Hopi Tribe; isn't that already the case?

Mr. GENTRY. Yes, that is the case, as I know it, in all of the pending bills.

Senator METZENBAUM. What is its present status?

Mr. GENTRY. To my knowledge—

Senator FANNIN. That is unaffected.

Mr. GENTRY. The second area would be the larger rectangular area, the 1882 Executive order.

Senator ABOUREZK. If I may interrupt. The rectangle here referred to is what is called the 1882 Executive order area that was designated for Hopi Indians and other Indian tribes; that is how it is described in the order.

That is also the disputed area, outside of the red boundary. Please go ahead.

Mr. GENTRY. In this, which is now referred to as the joint use area, the Montoya-Domenici bill would divide that into three separate categories. The primary one of which would be that which was occupied and used exclusively by Navajo on or about July 22, 1958, and that property to the extent that it exceeded one-half of the total surface area of that area would be bought by the Navajo from the Hopi, in the Montoya bill, with a loan by the Government to be repaid.

Senator ABOUREZK. May I stop you there? You say that the area within the joint use area that has been used as of July 22, 1958, by Navajos, would be retained by Navajos and paid for.

Senator DOMENICI. That is correct.

Senator ABOUREZK. How many acres and how many Navajos live on that? Have you made that kind of breakdown?

Mr. GENTRY. No, sir. I have not. This entire joint use area is primarily, if not exclusively, occupied at the present time by Navajos.

Senator ABOUREZK. Do you know how many acres you are talking about?

Mr. GENTRY. I do not, Mr. Chairman.

Senator HANSEN. Mr. Chairman, if I could interrupt. I wonder if it would not be helpful for the record if those areas would be identified in one fashion or another, so as to permit us to refer back to them and know what we are talking about.

Senator DOMENICI. We could do that, Mr. Chairman. We have that map in a record exhibit form. I am sorry that I do not have one for each, but each of the categories has a roman numeral description alongside of it, and the description of the land so described from the Montoya-Domenici bill.

We would ask that it be made a part of the record. I do not know if it will help with this particular discussion but it does precisely what the Senator questioned.

Senator ABOUREZK. It already has been included.

Senator HANSEN. If you would permit me, Mr. Chairman, could those Roman numerals that Senator Domenici has used on the smaller map be marked on the larger one?

Senator ABOUREZK. It is all right with me.

Senator HANSEN. I think there is a question about it.

Senator ABOUREZK. I think that map belongs to the Hopi. Do we have your permission to mark it up?

Mr. BOYDEN. I might say this, your honor. We have a small map with all of this put on, and including the acreage, and enough to pass around to each of the Senators. If you would like those at this time—

Senator ABOUREZK. Yes; that would be wonderful.

Mr. GENTRY. Mr. Chairman, in the Domenici-Montoya bill the Commission that would be created would have the authority and the function to establish precise location of the different kinds of property rights and occupancy, as of July 22.

Senator ABOUREZK. I understand. But the problem is right now, if we are going to decide on this kind of a solution then we would need to know how many people are involved and how many acres are involved and how much money is involved.

I do not think we could come to any kind of decision without knowing that first. That is really all we are asking.

Senator DOMENICI. I would make this point, Mr. Chairman. I think the best that anyone is going to do is to estimate there, because the Montoya-Domenici bill defines the characteristic of the land specifically, and then, someone will have to determine if that characteristic exists on 50,000 acres or 450,000.

So I do not think anyone can do that, other than showing you a descriptive map as to where Navajos now live, by some symbolic kind of use.

Senator ABOUREZK. Is it really that you are saying that any land used by Navajos in 1958 would be retained by Navajos. You are then talking about the whole joint use area. You are not even dividing that up, is that correct?

Senator DOMENICI. Would you address yourself to that, Charles?

Mr. GENTRY. I think that is essentially correct, although there have been some movements since 1958. Those may be very minimal in comparison to the total area.

Senator ABOUREZK. But in 1958 did not the Navajos pretty well blanket that whole joint use area?

Mr. GENTRY. I think they pretty well blanketed it; yes, sir.

Senator ABOUREZK. So you would not be able to pick out any area that was not Navajo.

Mr. GENTRY. I think that they would; yes, sir.

Senator ABOUREZK. What areas would those be?

Mr. GENTRY. I do not know the specific areas. But this approach would not have the difficulty, once those areas are identified, even if they are in a patchwork arrangement, of trying to partition along any kind of line, that might be described.

Senator ABOUREZK. Please continue.

Senator DOMENICI. Would you describe the other?

Mr. GENTRY. The third area is the Moencopi area, which according to the Montoya-Domenici bill, the future right and ownership would be determined according to the general principles of equity and judicial determination, with partitioning powers invested in the court.

Senator BIBLE [presiding]. Are there further questions of the Senator from Colorado? I want to move this along because I think these preliminary questions will be answered by some of the experts, as to the size and to the number of Navajos and the number of Hopis involved, and where they are located.

I do not think that we ought to waste the time of the distinguished Senator from New Mexico, who has many, many commitments.

Senator DOMENICI. I think the chairman is precisely right. We know there will be witnesses who advocate the Montoya-Domenici bill, who will do precisely what the chairman said. They will describe these areas with reference to their characteristics, number of acres, and the like.

Senator HASKELL. Senator, I just want very briefly to see if I understand. Senator Domenici, the area in the rectangle outside the red is occupied by Navajos and Hopis. Your bill would do what there?

Senator DOMENICI. Our bill would say as to that piece of real estate we are going to determine which portion of it is occupied exclusively by Navajos, and that real estate would then become part of the Navajo Tribe, to the extent that you when you add up their land, that it is more than one-half of the original joint use area.

The Hopis would be paid the fair market value of that excess over one-half. We are making the assumption that if we started back with the original court order that we would have cut it in half, not only as to joint use but as to fee and everything else.

So to the extent that that exceeds one-half, they would be paid the fair market value, and the Navajos would then have ownership, with the exception of their existing status of joint use and joint rights in and to all of the minerals.

Senator HASKELL. Thank you. Is the same thing true to the left, that you called Moencopi?

Does your bill do the same thing there, or is that in a completely different status?

Senator DOMENICI. It is handled completely differently. We think there is real reason for handling it different. It is not part of the Executive order that described the rectangle tract sort of in this manner.

To the Hopis and other Indians that the Secretary determined to have permission or right to use it. The exact reverse is true on the other one. That is Navajo, with the same language in it.

So it is considerably different at this point, in terms of occupancy and in terms of its origin.

Senator HASKELL. Thank you very much, Senator Domenici. Thank you, Mr. Chairman.

Senator BIBLE. Certainly. Are there further questions of the Senator? The Senator from Arizona.

Senator FANNIN. Mr. Chairman, I want to commend the junior Senator from New Mexico. I will say some of the statements that he made will be answered by some of the witnesses, both the Navajos and Hopis. I think it is deserving of some explanation on some of the stipulations he has set into his legislation.

As time goes along, we will see that those are answered.

Senator BIBLE. I appreciate your appearance here this morning. Further questions will certainly analyze and subject to close study your suggestion in solving this very sticky problem. Thank you very much.

Senator DOMENICI. Thank you, Mr. Chairman.

Senator BIBLE. Our next witness will be the very distinguished Senator from Arizona, an expert in this whole field. I am very happy to recognize Senator Goldwater.

**STATEMENT OF HON. BARRY M. GOLDWATER, A U.S. SENATOR
FROM THE STATE OF ARIZONA; ACCOMPANIED BY TERRY EMERSON, COUNSEL**

Senator GOLDWATER. Mr. Chairman, I want to thank you and thank the committee for holding these hearings on the various bills that have been proposed to solve this age-old problem.

I do not intend to take a lot of time. There are some very expert witnesses here, witnesses in law and witnesses in fact, that can answer the questions that you have on your mind.

I want to say at the start that this is probably the most difficult task that I have ever undertaken in my life. I think the first time that I visited the Hopi and Navajo Reservations was almost 60 years ago.

I have been a constant visitor to both reservations in all of the years since. In fact, at one time and for a number of years, I was co-owner of a trading post at the foot of Navajo Mountain on the Navajo Reservation.

So it is not easy for me to appear here today and take sides. I would much prefer politically to be in the middle. But I cannot, in all fairness to the Hopi, who I feel to be right in this. I have to take their side, and I can tell you this is not done easily.

You may wonder why we have always believed that people who have been on the land first have some prior rights to it. When the first non-Indians visited this part of Arizona and New Mexico, back in 1530-39 and 1540 and 1542, there was no mention of a tribe that we call the Navajo today.

Not even by other names, such as Navatu, Navaja, and other names that have since come to them. The Hopi, however, had lived in that general area of Arizona, some of us believe, for 2,500 years.

Oraibe is the oldest and continuously inhabited village on the North American Continent, and there was argument as to how long ago they came here, but it is well over 1,000 years.

So they were in that land, occupying that general area of Arizona before the Navajo came down from the north. The treaty with the Navajo, however, was made at an earlier date than the Hopi. The treaty of 1868 made after the long walk, which is one of the historic parts of the Navajo history, embraced what is now Tenninushay, and it is treaty land.

It is the only treaty land occupied by either the Navajo or the Hopi. The other parts of those reservations were created by Presidential proclamation.

Senator BIBLE. Where is that land located? Is it located within that map there?

Senator GOLDWATER. No; it would be at the northwest, about 6 inches to the northeast of the far corner, and is not involved.

Senator BIBLE. It is not involved in this problem?

Senator GOLDWATER. No. That was the original Navajo Reservation. It has since expanded, by Presidential proclamation, to 16 million acres, going clear to the Colorado River on the west, and into Utah and Colorado and New Mexico.

So in my opinion, if it is an argument on who was there first, there is no question in my mind that the Hopi was there first. I do not think that, however, should have any great bearing on the legal proceedings.

Back in the 1950's it was obvious that we needed a court decision to settle this dispute, because there was no indication at that time, nor is there any indication at this time, that this is going to be settled amicably, out of court.

I wish this could be done. I have always believed that good men, acting in good faith, could settle any argument, particularly an argument like this. But we have never been able to get the two sides together, where they can argue this whole thing out.

Now there have been a number of court decisions and I ask the chairman's consent that a court history of the Hopi-Navajo dispute I have prepared will be made a part of the record.

Senator BIBLE. Without objection, that will be made a part of the record at this point, and marked "Exhibit 1."

[The court history follows:]

EXHIBIT 1

COURT HISTORY IN THE HOPI-NAVAJO LAND DISPUTE

Date of decision or order

Sept. 28, 1962

1. Pursuant to the act of July 22, 1958, a three-judge U.S. district court for Arizona was convened to determine the conflicting claims of the Hopi and Navajo Tribes in the reservation established by the Executive order of 1882. The court held that the Hopi Indians had exclusive interest in Grazing District 6, consisting of about 650,000 acres, and that each tribe shared an equal interest in the remaining 1.8 acres of the reservation. *Healing v Jones*, 210 F. Supp. 125 (1962).

June 3, 1963

2. The U.S. Supreme Court affirmed the judgment of the district court. *Jones v. Healing*, 373 U.S. 758 (1963).

EXHIBIT 1—Continued

COURT HISTORY IN THE HOPI-NAVAJO LAND DISPUTE—Continued

Date of decision or order

- Dec. 3, 1971 3. The Ninth Circuit Court of Appeals held that the Hopi Tribe has an immediate right to the use and occupancy of one-half of the joint use area, and is entitled to a writ of assistance by a Federal district court. *Hamilton v. Naka*, 543 F. 2d 152 (1972).
- Sept. 7, 1972 4. The district court for Arizona reconfirmed the Hopis in their rights to joint use and possession and found that the Navajo had, in effect, ousted the Hopis from their joint use area.
- Oct. 14, 1972 5. The district court for Arizona ordered the Navajo Tribe to permit the Hopi to exercise joint use, and specifically to reduce the Navajo livestock and cease new construction in the area.
- May 29, 1974 6. The district court for Arizona found the Navajo Tribe guilty of contempt in failing "to bring to an end the unlawful grazing, monopolizing, and damaging of the range lands within the joint use area" and to end new construction by the Navajo Tribe, in the area. The case is on appeal in ninth circuit now, but the Navajo Tribe still is liable for \$250 per day for each day of noncompliance.

Senator GOLDWATER. I point out that starting in 1962 and coming up to the present time the courts have consistently ruled in favor of the Hopi. The last decision, a contempt citation against the Navajo, is now under appeal. But the appellate court would not stay the contempt order and the Navajo Tribe is paying \$250 a day for contempt of court. The courts have clearly recognized that the Navajo have some liability in this.

Senator BIBLE. They are paying it?

Senator GOLDWATER. They are paying \$250, and it is my understanding, although I have no proof, but I think the Hopi lawyers can point out that that can go to \$500 a day, including attorneys fees, for contempt of court.

The court orders supporting the Hopi rights of land use and occupancy have been made repeatedly, and the Navajo leaders have refused to comply with the court orders.

Senator BIBLE. Are they making payments or are they not making payments?

Senator GOLDWATER. It is required, but I do not know if the payments are being accumulated or paid separately.

Senator BIBLE. We can query them and find out.

Senator GOLDWATER. Yes.

Senator BIBLE. Do you have a court order that requires that payment?

Senator GOLDWATER. Yes; I have with me a copy of the order of May 1974.

Senator BIBLE. Without objection, that will be made a part of the record.

[The court order follows:]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

ABBOTT SEKAQUAPTEWA, 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,

vs.

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;
WILLIAM H. SAXBE, ATTORNEY
GENERAL OF THE UNITED STATES, ON
BEHALF OF THE UNITED STATES,

Defendants.

No. Civil 579 Pct.
(JAW)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND
JUDGMENT AND ORDER
ON CITATION FOR CONTEMPT

*1) livestock reduction
order and
Peter MacDonald's
failure to comply*

An Order to Show Cause dated July 19, 1973, having been duly issued by this Court, directed to, and served upon defendant Peter MacDonald on the 1st day of August, 1973, returnable to this Court on the 25th day of August, 1973, at 9:30 a.m. requiring Peter MacDonald to show cause why he should not be punished for contempt of Court because of his alleged failure to obey, comply with and carry out the provisions of the Order of Compliance entered herein on the 14th day of October, 1972, and

the Order to Show Cause having come on for hearing on August 25, 1973, and the Court having heard testimony from witnesses and having reviewed documentary evidence at a hearing on said 25th day of August, 1973, and at further hearings thereafter, and the Order to Show Cause having been amended on March 30, 1974, pursuant to leave of this Court granted on December 1, 1973, to cite Peter MacDonald and the Navajo Tribe which he represents for their alleged failure to obey said Order of Compliance, and having heard argument by both parties, and being fully advised, the Court makes the following Findings of Fact and Conclusions of Law, viz:

FINDINGS OF FACT

1. On October 14, 1972, this Court entered herein an Order of Compliance (hereinafter "Order of Compliance"), a copy of which is attached hereto as "Exhibit A" and by reference made a part hereof.

2. On October 31, 1972, this Court issued a Writ of Assistance (File Document 137) directing the United States Marshal for the District of Arizona to serve the same upon the defendant MacDonald, together with a copy of the Order of Compliance. The United States Marshal served the Writ of Assistance and a copy of the Order of Compliance upon defendant MacDonald on December 15, 1972.

3. Pursuant to the provisions of Paragraph 8 of the Order of Compliance, on December 14, 1972, the United States submitted and filed herein (File Document 139) a plan to facilitate and implement the Order of Compliance with relation to prevention of damage to and misuse of rangeland in the Joint Use

Area. On April 23, 1973, this Court entered its Order (File Document 151) approving and adopting the plan of the United States. However, the plan failed to come to fruition and nothing has been accomplished by any of the defendants by way of reducing the livestock in the Joint Use Area to the carrying capacity of 16,278 sheep units year long, which was established in August, 1973 (Finding No. 6, *infra*).

4. On October 17, 1973, defendant Attorney General of the United States, on behalf of the United States, moved the Court to amend the Order of Compliance to enlarge the time for compliance with Paragraphs 1 through 4 of the Order, to and including October 14, 1974; and on November 21, 1973, defendant MacDonald moved the Court to amend the Order of Compliance by enlarging the time for compliance with Paragraphs 1 through 4 of the Order to and including October 14, 1975. Both motions were denied by written Order entered herein on January 25, 1974.

5. The livestock carrying capacity of the Joint Use Area as determined by the soil and range inventory referred to in Paragraph 1 of the Order of Compliance was 22,036 sheep units year long.

6. On or about August 16, 1973, the United States[^] completed and filed herein a new range reconnaissance report, as directed in Paragraph 2 of the Order of Compliance, which determined the actual carrying capacity of the Joint Use Area, as of the date of the report, to be 16,278 sheep units year long.

7. Paragraph 3 of the Order of Compliance cancelled all existing livestock grazing permits covering lands within

the Joint Use Area as of October 14, 1973, and such cancellation was reaffirmed by this Court on January 25, 1974.

8. No new permits permitting grazing upon the Joint Use Area have been issued by the Bureau of Indian Affairs since October 14, 1973.

9. Notwithstanding the Court's Order of Compliance entered on October 14, 1972, neither defendant MacDonald nor the Navajo Indian Tribe made efforts or took steps in good faith to accomplish the reduction of Navajo livestock in the Joint Use Area within one year to one-half of the carrying capacity determined by the soil and range inventory of the 1882 Executive Order reservation (exclusive of District 6) dated in 1964; nor did either defendant MacDonald or the Navajo Indian Tribe, after completion and filing with the Court in August, 1973, of the new range reconnaissance determining the present carrying capacity of the Area, make efforts or take steps in good faith to accomplish the reduction of Navajo livestock within six months to one-half of the carrying capacity established by such new range reconnaissance. (RT 3/3/73, pp. 58, L 24--61, L 23; RT 9/14/73, pp. 59, L 9--73, L 19; RT 4/20/74, pp. 124, L 1--125, L 8, pp. 134, L 25--136, L 3).

10. In 1972, the Navajo Indian Tribe estimated that there were approximately 120,000 sheep units on the range in the Joint Use Area. (RT 4/20/74, pp. 136, L 7--137, L 18). Counsel for defendant MacDonald and the Navajo Indian Tribe have admitted that the Area is overgrazed. (RT 9/14/73, p. 66, L 15-18). While defendant MacDonald insists herein that plaintiff has not established that the Navajo are grazing in excess of 8139 sheep

units (one-half the actual carrying capacity per the 1973 Range Reconnaissance Report, Finding 6, supra,) within the Joint Use Area, a proposal submitted by defendant MacDonald to the Bureau of Indian Affairs on April 10, 1974, requested funds with which to remove 29,200 sheep units from the Joint Use Area. (RT 4/20/74, pp. 127, L 17--128, L 19). In spite of vague claims by defendant MacDonald and the Navajo Indian Tribe as to: (1) livestock sales and prospective livestock sales in the Joint Use Area; (2) proposed establishment of a livestock enterprise for the removal of livestock from the Area; (3) removal of unbranded livestock from the Area; and (4) investigation of alternative grazing lands for the Navajo livestock, the facts are that the Area has been for years, and now is, severely overgrazed by Navajo livestock and such livestock presently grazed in the Area greatly exceeds 8139 sheep units.

11. The failure to reduce livestock to the carrying capacity in the Joint Use Area before the commencement of new growth in 1974, which is estimated as on or about May 1, will result in further injury to and loss of soils. (RT 4/20/74, p. 123). On February 22, 1974, William Benjamin, Project Officer for the Joint Use Administration Office, Flagstaff, Arizona, requested the Navajo Tribe to furnish by March 15, 1974, its proposed schedule as to time for reduction of livestock in the Joint Use Area. (Pl. Ex. 13; RT 4/20/74, pp. 121, 122). The Navajo Tribe failed to furnish any schedule for the reduction of livestock (RT 4/20/74, p. 122), but on April 10, 1974, delivered to the Joint Use Administration Office a letter dated March 21, 1974, requesting \$92,600 from the United States

Government on a contractual basis, so that the "Navajo Tribal Range and Livestock Department can assist the Federal Government to conduct a series of voluntary livestock sales in or near the 1882 Executive Order Reservation." (RT 4/20/74, pp. 39, 40, 124; Def. Ex. A, 4/20/74). On December 24, 1973, plaintiff furnished to the Project Officer of the Joint Use Administration Office a written proposal of the Hopi Tribe for removal of livestock from the Joint Use Area. (Pl. Ex. 13, p. 2, 4/20/74).

12. Although the Order of Compliance cancelled all existing grazing permits on the Joint Use Area as of October 14, 1973, and although this cancellation was affirmed by the Court's order of January 25, 1974, (File Document 179), and although no new grazing permits have been issued pursuant to the provisions of the Order of Compliance, defendant MacDonald and the Navajo Tribe have made no effort whatever to persuade, direct, or coerce any Navajo livestock owner who has been grazing stock in the Joint Use Area without a permit to desist from such conduct. In this regard, defendant MacDonald and the Navajo Tribe have taken the position that only the Superintendents on the Navajo Indian Reservation can cancel such permits. (RT 4/20/74, pp. 26, L 8--29, L 1).

13. Paragraph 7 of the Order of Compliance 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 are now under construction in the Joint-Use Area."

Notwithstanding the provisions of Paragraph 7, it appears that since October 14, 1972, twenty or more structures have been erected in the Joint Use Area in violation of the Order.

14. In 1973, there were brought to the attention of the Comptroller General of the United States 131 cases of claimed construction by Navajos in the Joint Use Area after October 14, 1972, which might be new construction in violation of Paragraph 7 of the Order of Compliance. Representatives of the Comptroller General examined 37 of these cases prior to November 26, 1973, and reported that nine of the cases were new construction, i.e., construction that did not replace a burned or dilapidated building or construction that added to existing buildings. The report stated, further, that Federal funds had been used in four of the nine cases. (Pl. Ex. 1, 4/20/74).

15. While the defendant MacDonald and the Navajo Tribe have brought the provisions of Paragraph 7 of the Order of Compliance to the attention of Navajos living in the Joint Use Area and have advised such residents that any new construction may violate Paragraph 7, they have done nothing to prevent construction in violation of the Order but have contented themselves with notifying the Hopi Tribe that if the Hopis will bring any claimed violation of Paragraph 7 to the attention of Samuel Pete, of the Navajo-Hopi Land Dispute Commission, an investigation will be made.

16. A "ceremonial structure" reported by the Comptroller General as a violation of Paragraph 7 (Pl. Ex. 1, p. 17, 4/20/74) was explained by the owner to the representatives of the Comptroller General as being a temporary structure for use during a nine-day ceremonial to begin November 13, 1973, and to be dismantled thereafter. At the hearing before this Court on April 20, 1974, Samuel Pete testified that the ceremonial structure had been removed prior to April 11, 1974, when Pete drove to its site. (RT 4/20/74, p. 35). In fact, however, it appears that the structure was still standing on April 16, 1974, when Nathan Begay, an employee of the Bureau of Indian Affairs, visited the site and photographed the structure. (RT 4/20/74, p. 44, Pl. Ex. 2). It appears, also, that there were ten additional instances of Navajo construction in the Joint Use Area which were commenced subsequent to November 26, 1973. (RT 4/20/74, pp. 44--95; Pl. Exs. 3 through 12).

CONCLUSIONS OF LAW

1. Defendant MacDonald appears herein pursuant to authority granted by, and by virtue of, the Act of July 22, 1958, 72 Stat. 402, as 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 and all Navajo Indians claiming any interest in the lands described in the Executive Order dated December 16, 1882.

2. Neither the defendant MacDonald nor the Navajo Tribe has taken the reasonable measures within their power and available to them to bring to an end the unlawful grazing, monopolizing, and damaging of the range lands within the Joint Use Area by members of the Navajo Tribe.

3. Neither defendant MacDonald nor the Navajo Tribe has endeavored in good faith to comply with the Court's directions in Paragraphs 1 and 2 of the Order of Compliance looking to the reduction of Navajo livestock in the Joint Use Area.

4. Neither defendant MacDonald nor the Navajo Tribe has taken the reasonable measures within their power and available to them to bring to an end and eliminate construction of improvements by members of the Navajo Tribe within the Joint Use Area which are in Violation of Paragraph 7 of the Order of Compliance.

5. The reasons offered by defendant MacDonald and the Navajo Tribe for non-compliance with the Court's orders for reduction of livestock and for control of new construction upon the Joint Use Area do not constitute good cause or reasonable justification for such non-compliance.

6. Jurisdictional sanctions are necessary in these proceedings to coerce defendant MacDonald and the Navajo Tribe into complying with the Court's orders.

7. Plaintiff is entitled to have this court exercise its equitable power to award him attorneys fees and costs in connection with these proceedings and any further proceedings necessarily taken hereafter herein to enforce the orders of this Court.

JUDGMENT AND ORDER

The foregoing Findings of Fact and Conclusions of Law have been made and entered herein by the Court and good cause appearing therefor,

IT IS ORDERED, ADJUDGED AND DECREED that defendant Peter MacDonald and the Navajo Indian Tribe are guilty of contempt of this Court in failing to reduce the livestock upon the Joint Use Area as ordered and directed by the Court and in failing to control new construction within the Joint Use Area as ordered and directed by the Court.

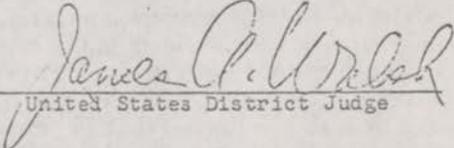
IT IS ORDERED AND ADJUDGED, FURTHER, that defendant MacDonald and the Navajo Indian Tribe commence reduction of livestock upon the Joint Use Area, as ordered and directed in the Order of Compliance, within five (5) days from date hereof. The reduction shall be pursued without regard to the voluntary compliance of individual Indians. All parties to this action shall cooperate fully with each other and with the United States to accomplish the reduction with due diligence.

IT IS ORDERED AND ADJUDGED, FURTHER, that defendants MacDonald and the Navajo Indian Tribe pay a fine in the sum of Two Hundred Fifty Dollars (\$250.00) per day, commencing on the date of this order and judgment and continuing until the livestock of the Navajo Indians within the Joint Use Area is reduced to 8139 sheep units year round, such fine being imposed to coerce defendant MacDonald and the Navajo Indian Tribe into compliance with the Court's orders and to be paid to the Clerk of this Court.

IT IS ORDERED AND ADJUDGED, FURTHER, that defendant MacDonald and the Navajo Indian Tribe shall within ten (10) days from date hereof submit to this Court the names and mailing addresses of all persons claiming ownership of the improvements pictured in plaintiff exhibits Nos. 2 through 12, inclusive, in evidence in this case on April 20, 1974, together with the names and addresses of all persons claiming ownership to the improvements described on pages 11, 12, 13, 14, 15, 16, 18, and 19, Pl. Ex. 1, in evidence on April 20, 1974; and that the United States submit to this Court within sixty (60) days from date hereof a complete inventory of all improvements within the Joint Use Area, by clear legible aerial photographs or otherwise.

IT IS ORDERED AND ADJUDGED, FURTHER, that plaintiff have and recover of and from defendant MacDonald and the Navajo Indian Tribe costs and reasonable attorneys' fees incurred herein, such fees and costs to be hereafter fixed by the Court following a hearing of the parties held for that purpose.

DATED: May 29, 1974.


United States District Judge

Senator METZENBAUM. Will the Senator yield? I am not quite clear about the relevance of that court order and the fact that they are in contempt of it to the pending legislation. Does the pending legislation and that court order go to the same end?

Or is it a different aspect of the dispute?

Senator GOLDWATER. Yes, sir. It goes to the same end, to the rights of the Hopi to use and occupy the land described in the legislation. As I told both tribes, legislation is the end result of the inability of two groups to come together. Now the court has repeatedly ordered the Navajo to vacate this land and to curtail improvements on it, and the Navajo have repeatedly refused to do it.

Until today, the only recourse that the Hopi people have in view of the Navajo's continued refusal to obey the court findings and orders is to go through the legislative branch of government, and enact a law that we feel they will have to obey.

Now, to that point, there are a number of bills before this committee, not just the Fannin-Goldwater bill, S. 2424, I would just briefly discuss this. As amended, the House-passed bill, H.R. 10337 would provide for partition to be made by the U.S. District Court for Arizona, while S. 2424 provides for partition by the Secretary of Interior.

I now believe that court partition is preferable, because it would be done immediately. This is a slight variance from the original Fannin-Goldwater bill.

But I think both Senator Fannin and I would agree to the House amendment.

Senator BIBLE. May I question at that point? Why could the court not have decided that and made a partition way back in whatever that year was, 1952, 1956, 1958, whatever the year was?

Why could they not order partition at that time?

Senator GOLDWATER. Congress has never given them the authority to do it. The court never questioned, however, that the Hopi were correct in feeling that they had the rights to this disputed land today.

Senator BIBLE. The court did not have the jurisdictional authority to make the partition or division or completely resolve the point some 20 years ago?

Senator GOLDWATER. That is right. That is what the House bill will do and it is what the Fannin-Goldwater bill will do, as amended by the House. Now there is an understandable concern, and I share this concern, about people who might be forced to leave lands that they have lived on for any length of time, a year or 50 years.

It is my belief that it is physically possible and reasonable for the court to draw the line, so that 70 percent or more of the Navajos may stay on the Navajo side. This would mean that some, not all, Navajos would have to be relocated.

Certainly not the 8,000 or 8,500 that we hear talked about today. I have heard that figures range from 5,000 to 13,500, and I can assure the committee that the Hopi lawyers will be able to supply you with very accurate population density figures and locations that dispute these exaggerated claims.

Now, under both the bills, any Indians who are affected by the partition would have 5 years to move. I ask unanimous consent that the complete analysis of the Fannin-Goldwater bill be made a part of the record.

Senator BIBLE. That analysis was made by who? It is your own analysis?

Senator GOLDWATER. Yes. An analysis by my personal legal staff.

Senator BIBLE. Without objection that will be the order.

[The analysis follows:]

JULY 23, 1974.

Under the Fannin-Goldwater bill, S. 2424, the Secretary of the Interior would partition the Joint Use Area between the Hopi and Navajo Tribes. As amended, the House-passed bill, H.R. 10337 would provide for partition to be made by the U.S. District Court for Arizona. I now believe it is preferable to do it immediately, and support court partition.

It is physically possible and reasonable for the court to draw the line so that 70% or more of the Navajos would stay on the Navajo side. About 2500 or less Navajo Indians would have to be relocated.

Under both bills, any Indians who are affected by the partition will have five years to move.

S. 2424 contains no relocation payments for Navajo or Hopi Indians who have to move their dwellings after partition of the Joint Use Area. Under the House-passed bill, these Indians would receive (1) moving costs, (2) compensation for their present dwelling, (3) up to \$20,000 a family to buy a new home, and, (4) if the recommendation of the Department of Interior is accepted, an additional \$5,000 incentive payment. I have no objection to these payments, and, in fact, think it is a wise and fitting step to provide statutory authority to compensate Indians who must move.

The House-passed bill, but not S. 2424, contains a provision authorizing the Secretary of the Interior to partition lands between the Hopi and Navajo Tribes in the area of Moencopi. The village of Moencopi, where 1,200 Hopi Indians now live, was and is the major settlement of the Hopi in that area.

The primary justification for granting the Hopi land in this area is expressed in a sworn statement by James Stewart, General Superintendent of the Navajo Reservation for over 7 years, and Director of the Indian Bureau Lands and Minerals Division from 1933 to May 1942.

Mr. Stewart relates that before the 1962 decision in *Healing v. Jones*, the words used in the 1882 Executive Order about "other Indians" were pro forma only, used in all Executive Order Reservations.

Now that the courts have decided the Navajos have rights in a large portion of the 1882 Hopi Executive Order Reservation, Mr. Stewart believes justice required that an area equal to that taken away from the Hopis should be added to their Reservation in the vicinity of Moencopi. This is based on similar language about "other Indians" in the Act of 1934 consolidating that Navajo Reservation.

Senator GOLDWATER. I also ask unanimous consent for the benefit of the committee that a sworn statement by James Stewart, who was Director of the Indian Bureau of Land and Minerals Division from 1933 to 1942 and their superintendent of the Navajo Reservation, be made a part of the record, because it has a direct bearing on decisions made at that point in time, that have a big effect on this. This is persuasive testimony in support of the Hopi by an expert who was close to the problem.

Senator BIBLE. Without objection it will be the order.

[The sworn statements follow:]

THE ALBUQUERQUE HILTON,
Albuquerque, N. Mex., May 17, 1973.

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.

MAY 31, 1973.

HON. LLOYD MEEDS,

Chairman, Indian Affairs Subcommittee, Interior and Insular Affairs Committee, House of Representatives, Congress of the United States, Washington, D.C.

DEAR CONGRESSMAN MEEDS: As I was testifying before your committee the other day something kept gnawing away at the back of my memory saying there's a man around who really knows what this is all about, but for the life of me I couldn't come up with his name.

Lo and behold, when I went down this past Sunday to peruse my mail, as I do on Sundays once in a while, I came upon a letter written by the man I was trying to remember, Jim Stewart who from 1933 to 1942 occupied many positions in the Bureau of Indian Affairs, topped by the Superintendent of the Navajo Reservation. This letter is one of the best explanations of the Navajo-Hopi dispute I have come across and I suggest that you read it; in fact, if you'd like to make it a part of the record, I think it would certainly be a great addition. I am asking my attorney Mr. Terry Emerson to try to locate a copy of Mrs. Charlotte Westwood's legal analysis of this whole problem, and if he can find one, he will forward it to you for the record. If you have any questions on this, don't hesitate to call.

With best wishes,

BARRY GOLDWATER.

(Sworn statement by Jim Stewart, former General Superintendent of Navajo Reservation.)

AFFIDAVIT

STATE OF NEW MEXICO,
County of Bernalillo, ss

James M. Stewart being first duly sworn on oath deposes and says:

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. I was there slightly over 7 years.

Before the decision in *Healing vs. Jones*, it was never considered that the Navajos had rights to land within the Hopi Executive Order Reservation of 1882. The words and such other Indians as the Secretary of Interior may see fit to settle thereon were pro forma and appeared in other Executive Order Reservations. During the 30's Commissioner Collier and I with others prevailed upon Secretary Ickes to have that conditional language stricken from all similar 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 have been divided, as to me it was a government land steal not an adjustment.

While I was with the Department it was the policy and the law as interpreted by the Solicitor based on court decision that Indians could not share tribal rights in more than one reservation. The *Healing v. Jones* decision was a departure from this policy. It allowed the Navajos to share in both the Navajo and Hopi reservations.

The visits I made to the Hopi Reservation in the fall of 1932 were for the purpose of explaining the Hagerman proposal and to obtain the opinion of the Hopi Indians of the various villages. No attempt was made to persuade them that it was good legislation. It was merely a group of informative discussions. In each and every case the Hopi turned it down.

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

My long experience with this particular problem prompts me to say that the joint area must also be partitioned and divided if the Hopi are to have any reasonable opportunity to protect their lands.

The contiguous area I have recommended, as referred to above, should become the exclusive property of the Hopi in the territory west of the Hopi Executive Order Reservation, carrying with it all mineral rights for the Hopi Indian tribe.

JAMES M. STEWART.

Subscribed and sworn to before me this 7th day of September, 1973.

OLGA NEUGEBAUER,

Notary Public, Residing at Albuquerque, New Mexico.

[Seal]

My Commission Expires June 19, 1974.

(Verification of Jim Stewart's sworn statement by another Government official who served on the Navajo and Hopi Reservations in the 30's and 40's.)

SUN CITY, ARIZ.

December 31, 1973.

Re. S. 2424.

Hon. BARRY GOLDWATER,
U.S. Senate, Washington, D.C.

Dear SENATOR: Of my nearly thirty-seven years creditable Federal service, some twenty-two were associated with the Bureau of Indian Affairs. The latter, beginning in the mid-thirties, included eleven and one half years on the Navajo and Hopi Reservations. During this period my activities and responsibilities

were more concerned with technical aspects of the Natural Resources Program rather than with administration. They did involve close working relationships with many of the older and more influential leaders among both groups, who unfortunately were not always looked upon as such by some of the administrators.

My recollections are that the Executive Order of December 16, 1882 established what is referred to as the Executive Order Area for use of the Hopis (Moquis) and such other Indians as the Secretary of the Interior might settle thereon. I do not recall that the Secretary ever formally settled Navajos upon the Area. They were permitted, however, to encroach upon it to the extent that many families became well established and portions were badly over-utilized by their livestock. This suggests, unless the record proves otherwise, that the Navajos had no legal right to any portion of the Executive Area.

Creation of Land Management Unit 6, commonly referred to as the Hopi Reservation, subsequent administrative actions, or lack of action, plus certain legal opinions and court rulings have, in my opinion, all tended to compound the problem and delay settlement of the issue.

The establishment of a definite boundary between the Hopi and the Navajo Indian Tribes, as provided by S. 2424, will do much however toward settlement of the long standing dispute. Demarkation alone will have little effect unless execution and administration of provisions of the Bill, when adopted, are vigorously and equitably pursued with dispatch. No doubt several individuals who assisted with its framing, or who have knowledgeable administrative background on the Navajo or Hopi Reservations, are more qualified than I to comment on the possibility of such execution.

Although we still have doubts that the encroachment of the Navajos into the Executive Order Area has any validity we are aware that over the years they presumably have established certain rights. There are hopeful that the Congress will see fit to pass S. 2424, as introduced by yourself and Senator Fannin.

Respectfully,

W. H. BERRY.

Senator GOLDWATER. I ask also that a history I have prepared of the Moencopi section of this reservation be made a part of the record.

Senator BIBLE. Without objection, that will be the order.

[The history follows:]

MOENCOPIHistorical Background

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

Indian Claims Commission

The Findings of Fact in Docket 196 of the Indian Claims Commission dated June 29, 1970, held in Finding of

Fact No. 20 that the aboriginal title of the Hopi Indian Tribe as of 1882 included a large tract of land to the west of the 1882 Reservation. The lands partitioned to the Hopi in the Moencopi area in H. R. 10337 and S. 2424 are well within the aboriginal lands designated by the Indian Claims Commission.

Congressional Action

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

Hopi Needs in Moencopi Area

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

1. Present Hopi villages and farm lands located in the Moencopi Wash area.
2. The lands surrounding the Pasture Canyon watershed for the protection of the Hopi Pasture Canyon Water development.

3. Sufficient range land to graze Hopi cattle belonging to the Moencopi residents.

4. Two commercial corners located on the east side of the intersection of U.S. Highway 160 and Arizona Highway 264.

5. Sufficient land to join the Moencopi area to the Hopi lands located in the 1882 Reservation.

6. The use of a highway as a division or boundary between the Hopi interests and the Navajo Reservation.

Navajo Use and Population

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

Present-Day Problems Requiring Partition

The bitter dispute between the Hopi and the Navajo Tribes in the 1882 Joint Use Area has carried over into the Moencopi area. Navajo livestock recently have destroyed some Hopi crops. A Navajo tribal member has attempted to build a home on the commercial corner traditionally reserved for the Hopi. A Hopi was arrested by Navajo police and his fishing equipment was confiscated for fishing on the Pasture Canyon Reservoir, and has been convicted in the Navajo Tribal Court. Another Hopi found Navajo cattle grazing 50 miles distant from their assigned range area trampling his corn

field. The cattle were rounded up and impounded by the Hopi police and Mr. Honahni was arrested by the Navajo police for theft. Navajo police refuse to respond to Hopi requests for assistance in the Moencopi area claiming they have no jurisdictional authority, yet the Navajo Court has ordered a Hopi man to pay for a cow which he struck and killed with his car in the village of Moencopi.

Senator BIBLE. Will you point out that part to which you refer on this big map?

Senator GOLDWATER. The Moencopi section is the irregular shaped piece to the west.

Senator BIBLE. All right.

Senator GOLDWATER. This has gotten into the act rather late, and I think they have a clear case in their favor. Moencopi was established by dissidents among the Moencopi people who moved to Hopenville many, many years ago.

Over there they were able to develop water. They were able to develop better agriculture, probably, than any of the other Hopis who are among the world's best agriculturists. They can grow corn out of the bare rock.

The Moencopi situation, I think, is entirely in favor of the Hopi.

Senator BIBLE. Is that in controversy in the bills that are before us, or does everybody agree with what you say about the Moencopis, that everybody figures that belongs to the Hopis?

Senator GOLDWATER. In the House bill it is mentioned and you will have to consider it and you will hear testimony from both tribes as to their feelings about Moencopi.

Senator BIBLE. What does the House bill do with it?

Senator GOLDWATER. The House-passed bill but not the Senate bill contains a provision authorizing the Secretary of the Interior to partition lands between the Navajo and Hopi tribes in the area of Moencopi.

About 1,200 Hopi Indians now live in this village of Moencopi. It is the major settlement of the Hopi in that area, although I will point that that Navajos lived in that area back in the days of the 1860's and 1870's because Tuba City, which was one of the first trading posts built on the Navajo Reservation that was settled by the Mormons, at about that time, to trade with the Indians.

And the Indians included Navajo. I have always believed that the trail which brought the Navajo into what is now Arizona and New Mexico, came down the western side of the reservation pretty much through Monument Valley, Marsh Pass, and spread out across the east.

So we have to recognize that Navajo were there. Probably as early as Navajo were any place on these 16 million acres.

Senator BIBLE. What is the bill that yourself and Senator Fannin have introduced proposing to do with Moencopi? What do you do with that particular area?

Senator GOLDWATER. We do not mention it because frankly it was not a matter of concern when the bill was drafted.

Senator BIBLE. Is that still your same feeling? If we are going to settle this dispute, it looks to me like you ought to settle the whole thing.

Senator GOLDWATER. It has now been brought into contention by the House bill. The Hopis have strong feelings about it and the Navajos have strong feelings about it.

In this case, it might be possible to divide or partition the lands in a way that both could use them. But I have doubts about that, and again the Hopi were on these lands long before the Navajo.

Senator BIBLE. In any event, you would subscribe to the view that as long as you are moving into this problem and attempting to come to a final solution after all these years, we ought to also consider Moencopi, is that not right?

Senator GOLDWATER. You cannot avoid it now.

Senator BIBLE. That is right, because it has been brought into contention.

Senator GOLDWATER. That is correct. Mr. Chairman, I have nothing to add. As I say, the people who represent both tribes will present the facts and figures and legal arguments far better than I.

I merely wanted to express myself as a person who had been interested in this problem for more years than many of these Indians are old today. I hate to admit that, but it is the truth.

And I have enjoyed living with and knowing both of these people. You cannot find finer people anywhere in this world. It is very disturbing to me, personally, as an Arizonian, to take sides in any matter like this.

Senator BIBLE. I would hope that we can get it resolved. We certainly ought to do it and we ought to do it this year. This is one thing that I thoroughly prescribe. As far as I am personally concerned, I am not going to drag my feet.

I think this has been dragging along too long. It was great to have you here today. I want to defer, first, to your colleague from Arizona, in case he might have some observations or questions.

Senator FANNIN. Thank you, Mr. Chairman, I want to commend Senator Goldwater. At one time I think he was considered a Navajo. He is one of the most highly respected men in this country, as far as his expertise in Indian affairs.

I certainly know that he has lived with the Indian people, has worked with the Indian people, and he certainly has had a great association with the Navajo. He is still very desirous of being of assistance to Navajos.

I think he feels as I do, that by passing this legislation we are benefiting both tribes, because it brings to a conclusion the controversy that has been in existence for so long which has held up the development on the lands involved.

I just want to commend the Senator again for taking this tremendous interest in resolution of the dispute.

Senator BIBLE. The Senator from Montana.

Senator METCALF. No questions.

Senator BIBLE. The Senator from Wyoming. Senator Abourezk. The Senator from Oklahoma. The Senator from Ohio. The Senator from Colorado.

Senator HASKELL. Briefly, Senator Goldwater, what is the difference between your approach and Senator Fannin's approach and the Domenici-Montoya approach?

Senator GOLDWATER. The basic difference is that the Montoya-Domenici approach would set up a commission to develop economic and health programs and to determine how the land is to be partitioned. I have no objection to setting up a commission or programs for health or anything else.

But I do not believe that that commission would be acceptable to both sides. This has been suggested by me back into the 1950's. I think if a commission were set up it would require a very, very high bond on both sides to assure that the commission's recommendations would be carried out.

If they will not follow a court order, I do not think they would follow a commission order, although I would not be opposed to a commission if we can somehow be assured that both sides would live by the decision.

Senator HASKELL. Thank you very much, Senator Goldwater. Thank you, Mr. Chairman.

Senator BIBLE. Do we have any further questions? I am going to turn the gavel back to Senator Abourezk at this time, who is the chairman of the Senate Indian Affairs Subcommittee. Thank you very much for your appearance here this morning. You are welcome to stay but I know that you have a very busy calendar.

Senator GOLDWATER. Thank you, Mr. Chairman.

Senator ABOUREZK [presiding]. I would like to welcome Senator Montoya, the Senior Senator from New Mexico. If you are ready, Senator Montoya, we would be pleased to hear your testimony.

**STATEMENT OF HON. JOSEPH M. MONTOYA, A U.S. SENATOR FROM
THE STATE OF NEW MEXICO**

Senator MONTOYA. Yes, thank you, Mr. Chairman, and members of the committee, for affording me this privilege of appearing before you on this legislation. I have quite a lengthy statement which analyzes the different bills which are pending before the Congress.

In order to save time, I would like to submit the statement and present a summary to the committee.

Senator ABOUREZK. We would be pleased to accept that for the record, and to hear your summary.

[The prepared statement of Senator Montoya follows:]

STATEMENT OF UNITED STATES SENATOR JOSEPH M. MONTOYA (D-NM)
BEFORE THE SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
REGARDING S. 3230, S. 3724, AND H. R. 10337, BILLS WHICH ATTEMPT
TO SOLVE THE NAVAJO-HOPI LAND DISPUTE. JULY 24, 1974.

Mr. Chairman:

The Navajo-Hopi land dispute has its roots very deep in history. It is a controversy caused to a large degree by the shameful Indian policies of the Federal Government during the 19th century. In 1864, the government removed a majority of the Navajo from their ancestral lands and relocated them in the Fort Sumner area of eastern New Mexico. When the government finally permitted the tribe to return to their lands in 1868, it gave them only a small portion of these lands. Their small and relatively barren acreage was unable to support the tribe; and, to survive, the Navajo wandered onto the land which is the subject of the hearing today.

The Department of Interior estimates that by 1882, three hundred Navajo had settled on these lands, and the Navajo estimate that there were many more than this. But, at any rate, in 1882, President Arthur, by Executive Order, set aside 2.5 million acres of this land for the use and occupancy of the Hopi and "such other Indians as the Secretary of Interior may see fit to settle thereon." There is evidence that the

Order was hastily prepared and issued and that its prime purpose was to create a reservation so the Hopi Indian agent would have authority to keep white intruders out of Hopi villages. The Order ignored the fact that the Navajo had lived on a portion of this land for some time and that the Hopi, for the most part, lived in their villages and did not use the land on which the Navajo had settled.

AREAS CONSIDERED IN BILLS

The bills before the Committee all discuss three distinct geographic areas. The first of these is the area within the 1882 reservation generally known as District 6. It is within this area that most of the Hopi live. It has been set aside for exclusive Hopi use by the Department of Interior since 1891, and the Healing v. Jones court held that the Hopi tribe is entitled to exclusive use and occupancy of this land. Both tribes, as well, are in agreement that all rights and interests in District 6 are vested exclusively in the Hopi tribe. Thus there is no controversy concerning this area.

The second geographic area that these bills are concerned with is what is called the "joint-interest" or "joint-use" area of the 1882 Executive Order reservation. The joint-use area is composed of all the Executive

Order territory not included in District 6. The Healing court held that both tribes had been "settled" in this area by the Secretary of the Interior and were each entitled to an undivided, half-interest in the land. One of the questions before the Congress and before this committee is how to equitably divide this 1.8 million acres.

All three bills take a different approach to this problem. H. R. 10337 takes what I think is the most unsatisfactory approach: it would authorize the Federal District Court in Arizona to divide the land into equal acreage and assign half of the rights in the surface land to each tribe. It would give all the Hopi living on land partitioned to the Navajo two years to move from the Navajo land and would give all the Navajo living on land partitioned to the Hopi five years to move from the Hopi land.

This approach is very neat and seems to provide a just solution to the problem, but such is not the case. The bill fails to take into account that fact that this area is almost exclusively inhabited by Navajo and has been so inhabited for over one hundred years. The Hopi Tribe has used this joint-use area primarily for ceremonial purposes and not for grazing livestock or for agricultural use. The passage of H. R. 10337

would result in the forced relocation of over 6,000 Navajo from this area.

S. 3724, introduced by Senator Abourezk, would divide the land into two equal parts, just as H. R. 10337 would. However, Senator Abourezk's bill is much more aware of the tremendous human costs of this forced relocation. S. 3724 allows a "life estate" for those born on the land and allows those who moved there to remain for a period equal to the time they have already lived there. The government would pay rent to the Hopi for the Navajo living on this land. I am afraid, however, that this "life estate" provision, while showing a sensitivity wholly lacking in the House bill, would put unbearable pressures on the Navajo families, for children born on this land after the partition will not be able to remain there after their parents' deaths. Thus they will have no interest in the land and no incentive to remain with their families. As Dr. Aberle wrote to you, Mr. Chairman, on February 26, 1973, "...the breakup of (the Navajo Family) is likely to destroy the basic strength of the Navajo people which lies in their family system."

The bill that I have introduced, together with my colleagues, Senator Domenici and Senator Moss, S. 3230, would eliminate the tremendous human cost of forced relocation. It provides a humane solution to

the problem thrown back to the Congress by the Healing court: How is this joint-use area to be equitably divided? In my view, this bill is a better approach not because it conforms more to the findings of Healing v. Jones (all three bills do that) but because it takes a more realistic appraisal of the problem, and because it considers human realities as well as legal principles. S. 3230 provides that a joint Navajo-Hopi Development Commission be formed which would determine which sections of the joint-use area were occupied by each tribe on July 22, 1958, the date on which the Congress passed the Act which provided the jurisdictional basis for the Healing decision. The Secretary of the Interior would be authorized to divide the lands based on the findings of the Commission, holding in trust for the Hopi all lands which the Hopi occupied on that date and in trust for the Navajo all the land occupied by the Navajo on that date. The Secretary would be authorized to loan to the Navajo Tribe a sum not to exceed \$18,000,000, without interest. With this money the Navajo people would pay the Hopi for any land the Navajo occupy which exceeds one-half of the total joint-use area. The Navajo Tribe would repay the loan by paying to the United States the proceeds derived by the tribe from the

exploitation of the mineral resources of its land in an amount not less than \$500,000 annually.

Under these provisions, there will be no relocation with its accompanying high human and financial cost. In addition, the Hopi interest in land they have never used is "bought out" at a fair price.

It should be mentioned that under all three of these bills the rights in the subsurface interest of this entire joint-use area will remain for the joint-use and interest of both tribes.

The third geographic area that these bills concern themselves with is land commonly called the "Moencopi Area." It is important to point out that this acreage was not a part of the 1882 Executive Order land and the interests of the two tribes in it was not at issue in the Healing v. Jones case. The Moencopi Area was part of a larger area of land added to the Navajo Reservation by Congress in 1934. The Act (48 Stat. 960) stated that the land was to be ^{for} the benefit of the Navajo Tribe and "such other Indians as may already be located thereon." When this Act was passed, there were some Hopi living in this area, primarily in the two villages of Moencopi.

While it is clear that the Hopi who were living there in 1934 and their descendants do have rights to part of this area, there has never been a judicial or even quasi-judicial finding defining the rights of the two tribes to this land. The Navajo estimate that 35,000 acres of the land in this area were occupied by Hopi in 1934.

Despite the fact that there has never been a judicial determination of rights in this area, H. R. 10337 would give exclusive use and occupancy of a total of 243,000 acres of this land to the Hopi. In addition to the land allegedly occupied in 1934 by the Hopi, the House bill would also give the Hopi exclusive right to the surface and subsurface of a corridor between the Hopi villages at Moencopi and Hopi-occupied land in the 1882 Executive Order area. This section of the House bill will displace over 2,000 Navajo. In addition, it is extremely likely that this provision will be considered an unconstitutional "taking" of the Navajo's vested interest in this land. The Abourezk Bill (S. 3724) takes a much more reasonable approach to this problem. It gives to the Hopi 35,200 acres in the Moencopi area and does not give them any exclusive interest ^{or} in a right to a corridor.

After the forced relocation provisions, it is this section of the House bill that troubles me most. It seems clear to me that the Congress should not divide up this land without some sort of judicial determination of rights of the two tribes. I believe that the approach provided for in the

bill that I introduced together with Senator Domenici and Senator Moss contains more assurance that justice be done. It authorizes the tribes to sue and defend in federal court to determine their respective rights in this land.

RELOCATION

Mr. Chairman, what troubles me most about the House bill is the forced relocation of over 8,000 Navajo. Under the provisions of this bill, families whose ancestors have lived on this very land for over 120 years will be uprooted and forced to move elsewhere. Such forced relocation will have tremendous cultural and economic impact on the people who are moved.

To begin with, there is the problem of where they are to be moved. The Navajo Reservation is unable to support either them or their livestock. While the House bill does authorize the Secretary of the Interior to sell to the Navajo 250,000 acres of land, the location and quality of that land is nowhere specified. What is to happen to these more than 8,000 men, women, and children if suitable land cannot be found? Where are they to go?

Even if the Secretary is able to find suitable land, it more than likely will be in an area some distance from their present lands.

This would mean not only that many large families and kinship groups would be split up but also that many relocated people would lose their jobs. Many Navajo commute to jobs close to where they live. If they were to be moved any great distance, they would have to choose between losing their jobs or living apart from their families. Since the unemployment rate on the Navajo Reservation is over 65% (as of 1973), it is extremely unlikely that these people will be able to find work where they would be relocated.

If the relocation land were unsuitable for raising livestock, the relocated people would not only be unable to support themselves, but would also undergo tremendous cultural disruption, because to the Navajo his livestock is a symbol of his wealth and his relation to the land.

Thus it is likely that, even if relocation land is available (which is yet to be demonstrated), relocation will have an adverse impact on the Navajo culture.

In addition to these cultural problems, forced relocation would cost both the Navajo and the Federal Government a great deal. The House bill authorizes a total of \$28,800,000 for the Secretary of the Interior to purchase the dwellings and improvements of the relocated people and to pay for their relocation costs. There is considerable question whether this

is an adequate sum. In 1972, Mr. Richard Shifter, the Navajo Washington Counsel, estimated that an expenditure of \$40,000,000 would be required to finance the forced removal of these Navajo to comparable lands elsewhere.

In addition to these costs, there are hidden costs not taken into account in the bills. If the relocated people are removed to an area presently unoccupied or sparsely occupied, the Bureau of Indian Affairs would be required to furnish them with new schools, health facilities, roads, and other improvements at an as yet undetermined cost.

Mr. Chairman, I very strongly feel that this Committee should explore all of the alternatives to such a massive and disruptive forced relocation of over 8,000 people. Our great nation is still feeling the impact of the many injustices perpetrated during our most recent relocation, that of the Japanese Americans during World War II. We should not let this happen again. To this day the memory of the 1864 relocation remains vivid with the Navajo people. I do not believe we should repeat in the 20th century an act so similar to that of 1864. There is a better way to deal with this problem, and I believe the bill that Senator Domenici, Senator Moss and I introduced is this better way.

OVERGRAZING AND VIOLENCE

Before I close my remarks, I would like to briefly address two areas. The first of these is the charge that the Navajo are overgrazing this joint-interest area. It is no doubt true that overgrazing is occurring, but this is not reason enough to justify forced relocation. The overgrazing problem stems not from any greed on the Navajo's part but from his lack of options: Although the Navajo Tribe has been portrayed by some as a wealthy tribe, the facts show the opposite. In 1973, over 54% of the total Navajo reservation was receiving some form of public assistance, and over 65% were unemployed. The Navajo do not need to be chastized. They need to be helped. It is to help both the Navajo and Hopi, that the bill that I introduced together with Senators Domenici and Moss establishes a Commission with the power to plan and execute projects for the economic and social development of these two tribes. Senator Abourezk's bill incorporates similar provisions. It is by giving the Navajo and the Hopi (who also overgraze their land) concrete alternatives that we can solve the overgrazing.

Secondly, I would like to address the many charges of Navajo violence against the Hopi. I have heard these charges and have seen Hopi

publications which discuss them. But I have never seen evidence presented by an impartial source which documents that these incidents represent anything more than isolated occurrences by individuals and not a pattern of organized violence planned by the Navajo Tribe. Before the Committee accepts stories of this violence, I hope that it insists on hearing evidence and listens to the positions of both sides.

CONCLUSION

In closing, Mr. Chairman, I once again ask you to consider all the options carefully before you approve either H. R. 10337, which uproots over 8,000 men, women, and children from lands their ancestors lived on over 120 years ago or S. 3724 by Senator Abourezk, which (regardless of the good intentions with which it was offered) would be a severe blow to the Navajo families involved. I hope you will give careful consideration to S. 3230, which Senator Domenici, Senator Moss and I introduced and hope that you will agree with us that it presents the most equitable solution to this tremendously complex problem.

Thank you.

Senator MONTOLA. The committee is considering four bills today which attempt to settle the Navajo-Hopi land dispute, a dispute caused to a large degree by the shameful actions of the Federal Government in the 19th century.

Three of these bills, H.R. 10337, S. 2424, and S. 3724 would result in the forced relocation of thousands of Navajo people, whose ancestors, in many cases, have lived on this same land for over 120 years.

I believe that the bill I introduced with Senator Domenici and Senator Moss is a better solution, because it recognizes that the Government has condoned the Navajo occupancy of this land and that the uprooted people will undergo tremendous human and financial hardships.

The pending bills, as you know, concern two areas of dispute. The 1882 joint use area and the Moencopi area. The joint use area consists of all of the 1882 Executive order area, except the exclusive Hopi Reservation generally known as district 6.

This joint use area comprises 1.8 million acres, and the Federal court held in *Healing versus Jones* that both tribes owned an undivided half-interest in this land. S. 2424 and the H.R. 10337 would force the removal of over 6,000 Navajos from this area.

S. 3724 would likewise force the Navajo from this land but would allow this to happen gradually. My bill, S. 3230, would permit the Navajo to buy out the interests of the Hopi and to remain on the land they now occupy.

I oppose the partition provisions of S. 2424, H.R. 10337, and S. 3724, because they force the Navajo to pay the price for Government bungling. It is important to realize that the Navajos did not brutally force their way into Hopi land.

They wandered onto those lands, following their sheep, in search of grazing lands. To determine the equities in this situation I believe it is important to consider the policies of the Federal Government in explicitly and implicitly settling such other "Indians," and I use that in quotes, in the 1882 areas.

After the Treaty of 1868 the Navajo were settled on a reservation which lay entirely to the east of the 1882 Executive order area. Between that time and 1958, however, the boundaries of the Navajo Reservation were modified and extended 25 times by Executive order, until they completely surrounded the 1882 so-called Executive area.

Congress was involved in this process, too, by participating in boundary changes brought about by acts of Congress. Such acts were passed in 1930, 1931, 1933, 1934, 1948, 1948, and 1958. You ask "How did the Navajo get into the disputed area?" I answer that we, the people, through Executive orders and acts of Congress, settled them there.

We, the people, through the BIA and the congressional appropriations committee built roads and schools and health clinics for them in this area, recognizing their presence, and offering them facilities to perpetuate their residences within the area.

Now let us not be so unmindful of our own actions that we come to the false conclusion that the Navajo is an intruder. He is on his land, and we gave it to him.

The second geographic area that is in dispute is the Moencopi area, which lies west of the joint use area. H.R. 10337 and S. 2424 give to the Hopi settled in this part of the Navajo Reservation exclusive rights

to 243,000 acres of this land, including both surface and subsurface rights to corridor between the Hopi area of the 1882 reservation and the Moencopi area. This would involve the forced relocation of an additional 2,000 Navajos.

In my view this is one of the more appalling features of these two bills. This area was not part of the Healing versus Jones decision. In fact, there has never been a determination of the rights of the two tribes in this area.

My bill would allow for a judicial determination and would avoid what well may be an unconstitutional taking of many acres of Navajo land.

In conclusion, I want to repeat my concern that the tremendous human suffering involved in the forced relocation of over 8,000 men, women, and children, not occur. I believe that this relocation is not necessary, and that the bill which Senators Domenici, Moss, and I introduced, that is S. 3230, would do justice to both tribes and involve the forced relocation of no one.

That, in brief, is my summary of the lengthy statement which I have submitted to the committee, Mr. Chairman and members of the committee, and I thank you for this opportunity.

Senator ABOUREZK. Thank you, Senator Montoya. Senator Fannin.

Senator FANNIN. No questions.

Senator ABOUREZK. Senator Bible.

Senator BIBLE. I have no questions of the Senator.

Senator ABOUREZK. Senator Hansen. Senator Metzenbaum.

Senator METZENBAUM. No questions.

Senator ABOUREZK. Senator Bartlett.

Senator BARTLETT. Mr. Chairman, just one. I would ask the distinguished Senator from New Mexico, your bill would treat the Moencopi area the same way as the Hopi-Navajo joint use area; is that correct?

Senator MONTOYA. Yes. Except in the joint use area there has been adjudication and a judicial determination and in the Moencopi area there has been no such judicial determination.

My bill would require that some judicial determination be made.

Senator ABOUREZK. In other words, your bill, Senator Montoya, would not allow a legislative determination of Moencopi right now?

Senator MONTOYA. That is correct.

Senator ABOUREZK. Senator Haskell.

Senator HASKELL. I have no questions.

Senator ABOUREZK. Senator Metcalf.

Senator METCALF. I have no questions.

Senator BIBLE. May I ask one question of the senior Senator from New Mexico? Do you not think that we ought to also resolve Moencopi at the same time we are working on this?

Senator MONTOYA. I would have no objection to this. The only reason that I put this provision in the bill is because whatever legislative action we take with respect to the joint use area would take place after a judicial determination has been made in recognizing that judicial determination.

I was trying to put the Moencopi area in the same category and have it go through the same process.

Senator BIBLE. I think the Moencopi might result in a problem just as bad as the problem you have right now in the area in controversy. It

seems to me if we are heading into controversy, we might as well try to solve the whole thing.

Senator MONTROYA. I would have no objection to it. If the Congress makes a legislative determination following their pattern of a judicial determination with respect to the joint use area.

Senator BIBLE. I appreciate your observations. Thank you.

Senator ABOUREZK. Thank you, Senator Montoya.

Senator MONTROYA. Thank you.

Senator ABOUREZK. At this time I have been asked by the United Mine Workers of America who have sent me a letter dated July 23, 1974, to submit it for the record, and without objection I will do so.

[The letter follows:]

United Mine Workers of America



TELEPHONE
AREA CODE 202-638-0530

UNITED MINE WORKERS' BUILDING
900 FIFTEENTH STREET, N. W.
Washington, D. C.
20008

July 23, 1974

The Honorable Jim Abourezk, Chairman
Subcommittee on Indians
U. S. House of Representatives
Washington, D. C.

Dear Representative Abourezk:

Among its 200,000 members, the United Mine Workers of America has a number of Navajo coal miners in Arizona who would be adversely affected by the passage of S. 2424, the legislation proposed by Senators Goldwater and Fannin to settle the land dispute between the Navajo and Hopi Indian tribes. Many of the 200 Indian coal miners and their families would be forced to move from land they and their ancestors have occupied for more than a century without any provisions for just compensation for their land and homes, and without any preparation whatsoever for their relocation. In fact, almost 8,500 members of the Navajo tribe would be affected by passage of this bill.

The solution to the land dispute offered in S. 2424 is neither equitable nor just. It leaves 8% of the Navajo Indian Nation without homes, without schools for their children and without a hint of any suggestion of how or where to relocate their families and all at great expense to the taxpayer. The reason for this forced migration, the largest since the W.W. II forced relocation of Japanese-Americans, eludes us.

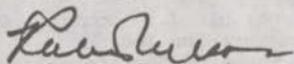
The dispute between the two Indian tribes over use of the jointly owned land could well be settled by mediation rather than by Federal legislation. Given time and guidance, the two tribes could arbitrate this matter to a reasonable and fair settlement. Outlined in Title III of S. 3230, a bill introduced by Senator Montoya which would also provide for the resolution of the land dispute, is a framework to provide for a thorough investigation of the possible disposition of joint-interest areas and for an immediate settlement of the respective interests of the Hopi and Navajo Tribes without the removal of Hopi or Navajo families from the lands on which they now live. S. 3230 would allow the tribes to settle the dispute among themselves without imposing the Federal will on the final disposition.

The United Mine Workers has a great affinity for the plight of the Navajo and Hopi people who are being threatened with removal from the land and homes they have known for generations. Such feelings of helplessness are well known to generations of coal miners who have suffered the negative effects of a system that is deaf to the pleas for humane and compassionate treatment of those who are least capable of defending and protecting their rights.

We urge this committee to discard S. 2424 and instead give consideration to S. 3230 which can provide a solution to the land dispute while precluding the displacement of 8,500 Navajo Indians and which would also terminate further friction and possible confrontation between the Navajo and Hopi Tribes.

We ask that this letter be included in the Committee's record.

Sincerely,



Robert Nelson, Director
Legislative Department

Senator ABOUREZK. This is supporting, apparently, the Navajo position. I have not yet read the letter, but it will be in the record for everyone to see.

The next witness will be Mr. John Boyden, general counsel for the Hopi Tribe, Salt Lake City, the chairman of the Hopi Tribe, Abbott Sekaquaptewa, and accompanied by others who are to be introduced at this time.

Do you have your statements with you?

Mr. BOYDEN. Yes.

**STATEMENT OF JOHN S. BOYDEN, GENERAL COUNSEL FOR THE
HOPI INDIAN TRIBE, SALT LAKE CITY, UTAH**

Mr. BOYDEN. Mr. Chairman, I believe it would be advisable with your permission for me to file my statement and make that part of the record.

Senator ABOUREZK. It will be accepted.

[The prepared statement of Mr. Boyden follows:]

STATEMENT OF JOHN S. BOYDEN
BEFORE THE COMMITTEE ON INSULAR AFFAIRS
UNITED STATES SENATE

JULY 24, 1974

My name is John S. Boyden. I am an attorney at law, duly licensed to practise in the State of Utah, in various Federal Courts of Appeals, and the Supreme Court of the United States. I have represented the Hopi Indians of Arizona as their General Legal Counsel under contract approved by the Secretary of the Interior since the 1st day of September, 1951. I was instrumental in negotiating for, and drafting, the Act of July 22, 1958, (72 Stat. 408) which authorized the judicial determination of the rights and interests of the Navajo and Hopi Tribes and all individual Indians claiming an interest in the area set aside by the Executive Order of December 16, 1882. I was the Chief Trial and Appellate Attorney in the case of Healing v. Jones, 210 Fed. Supp. 125, Affd. 373 U.S. 758, the action commenced pursuant to the authority of the aforementioned act. I am also the Approved Claims Counsel for the Hopi Indian Tribe, and I was the Trial Attorney in the case of Hopi Indian Tribe v. United States of America, Docket 196, before the Indian Claims Commission. As a result of my experience in the preparation and trial of those cases, I am familiar with the history of the Hopi people and their controversies with the Navajo Indian Tribe. I am currently handling the supplementary

proceedings instituted by the Hopi Tribe in which a Writ of Assistance was served upon the Navajo Tribal Chairman and the United States Government requiring delivery of possession of a joint, undivided and equal interest in the land that is currently referred to as the Joint-Use Area. I am also handling the proceedings for contempt instituted by the Hopi Tribe in which the Chairman of the Navajo Tribal Council has been found guilty of contempt for failure to obey the orders of the Court.

At the suggestion of the Chairman of this Committee, I will endeavor to confine my statement to matters that have occurred since the voluminous hearings that have been held in both the House and the Senate on this same controversy, with only such connecting material as the explanation may require.

As the records and files of both the Senate and the House will disclose, a specially constituted three-Judge Court on September 28, 1962, determined that the Hopi Indian Tribe and the Navajo Indian Tribe, for the common use and benefit of their respective members, but subject to the trust title of the United States, have joint, undivided and equal rights and interests both as to the surface and sub-surface, including all resources in and to all of the area described as Joint-Use Area on the map I have distributed to the members of this Committee. On June 3, 1963, that judgment was affirmed by the Supreme Court of the United States. After eight years of

attempting to negotiate with the Navajo Tribe and to persuade the Bureau of Indian Affairs that it had responsibility in delivering to the Hopi its one-half interest, the Hopi Tribe on March 13, 1970, petitioned the District Court for an Order of Compliance or Writ of Assistance to enforce its rights as a co-tenant. The District Court held that it did not have jurisdiction because the statutory authorization did not include authority beyond determining the rights of the parties. The Hopis appealed this decision to the Court of Appeals for the Ninth Circuit, where it was reversed and remanded for further action consistent with its opinion. That decision was also taken to the Supreme Court of the United States by the Navajo Tribe by a petition for a Writ of Certiorari, which the Supreme Court denied. Thereafter, the District Court heard testimony and determined that the United States had vacillated and procrastinated in failing to protect the Hopi rights in the Joint-Use Area and further that the Navajo conduct in preventing the Hopi Indians from using any substantial portion of the Joint-Use Area had, in effect, ousted the Hopis from the land in which the Court had determined they had an equal interest with the Navajo Tribe. On October 14, 1972, the Court issued its Order of Compliance, ordering and directing that the Defendants permit the joint use and possession of the Joint-Use Area to the Hopi Tribe and Navajo Tribe, share and share

alike. The Order further provided for the reduction of livestock to be commenced immediately and completed within the periods specified in the Order. Further building of improvements for the Navajo Tribe in the Joint-Use Area was ordered to cease to give the Hopi Indians an opportunity to have equal use. Other specifications were in the Order including plans for implementation and facilitation of the execution of the judgment. Pursuant to that Order, a Writ of Assistance was served upon the Navajo Tribal Chairman and upon Attorney General of the United States. The Navajos have appealed every formal order of the Court so that there are now before the Ninth Circuit Court of Appeals four separate appeals regarding this one case. Two have been briefed and argued, a third has not quite been fully briefed, and the Court of Appeals has granted an expeditious consideration of an appeal taken from the conviction of Peter MacDonald and the Navajo Tribe on charges of contempt of court for failure to carry out the Court's orders. That case has been fully briefed, and there will be no argument unless the Court specifically requests such argument. The Defendant, Chairman MacDonald, and the Navajo Tribe, have been assessed a penalty of \$250.00 per day until they comply with the Order. There has been no stay of execution. A petition by the Navajo Tribe for a stay of execution on the contempt order particularly has been denied.

Twelve years after the judgment of the Court determining the interest of the Hopi Tribe, the Navajo Tribe still stands in defiance of the Court, failing to reduce livestock, failing to cease building new homes and hogans and failing to permit the joint use by the Hopi Tribe. The Navajo Tribe still stands in virtual exclusive possession of the entire Joint-Use Area.

Honorable James A. Walsh, United States District Judge for the District of Arizona, on September 14, 1973, stated as follows:

I more and more think that a tremendous mistake was made here in the Bill when it was before the Congress that created the Court when it had the provision in there for partitioning and it was taken out, on the basis that either the tribes could settle among themselves or Congress could do it. We actually got into this case, the courts got into it, because there was a vacuum there. The tribes were at loggerheads for years, they couldn't settle it. Congress wouldn't settle it, and it got into the courts and the equipment that the Court needed really to conclude the thing was left out, and that is the part to take it over. And again it was left to the tribes or the Congress to actually, if they were found to have had joint interest, the Court would have the power to partition it, that was taken out and now we are eleven years later right back where we started with the same contentions. And obviously, I mean the evidence in the earlier hearing here showed that Mr. MacDonald told the Hopi right after Healing and Jones: Well, the Court says that you have a joint interest, but that doesn't mean possession, and we will help you any way we can to make the Government pay you for what you have lost.

But there is no attitude here of: Let's get this thing resolved. This is the difficulty I have with the position.

The statement contains one error in that Mr. MacDonald is credited with making a statement that was, in fact, made by his predecessor, Raymond Nakai. The statement of the Judge clearly indicates the urgency and necessity for the passage of a bill providing for the partition of the Joint-Use Area, if the Hopi Tribe is to be afforded the same right that is afforded to all other citizens of this country. By that, I mean the right to enjoy the fruits of judicial determination, the right to possess the land which the highest Court in the United States has determined to be its property.

Much has been said about the inhumanity and the brutality of requiring the Navajo Indians to surrender the property they unlawfully possess. I call to your attention that from the time the Navajo Tribe commenced to overgraze the Joint-Use Area, to 1973, when a new range reconnaissance was made at the direction of the Court to determine present carrying capacity, that capacity had been reduced approximately 75% of its potential. Between the years 1964 and 1973, the destruction had amounted to a 25% reduction.

In 1939, a special inquiry staff created and sponsored by the Phelps-Stokes Fund, consisting of Thomas Jesse Jones, Chairman and Educational Director of that Fund, Charles T.

Loram, Chairman of the Department of Race Relations of Yale University, Harold B. Allen, President of the National Farm School formerly Educational Director of Near-East Foundation, and Ella Deloria, Sioux Indian Anthropologist, concluded "members of the inquiry, and especially the agricultural expert, with experience both at home and abroad, are convinced that over-grazing of land, capable of supporting only 55,000 sheep units by almost a million sheep units is a menace to the very lives of the Navajo people." They further stated, "All-in-all, the members of the inquiry are agreed that the general trends in soil conservation and in related movements are decidedly in the direction vitally needed on the Reservation." That was in 1936. Yet, when the United States government attempted to reduce the livestock, they met with such violent opposition from the Navajo Tribe that it is now often referred to as a catastrophe. As patriotic citizens of this country, the Hopi Indians object to this abuse of any land in the United States, believing that the natural resources must be preserved for future generations; particularly, they are violently opposed to the destruction of their lands by the Navajo Tribe. I might add, the Navajos have no difficulty moving into the Joint-Use Area and particularly around District 6. The claimed inhumanity is in the reverse movement. The Navajos have painted themselves into a corner. The action to be taken by this Committee will not solve the

Navajo problem, nor will inaction solve it. What you do have a chance to do is to restore some semblance of justice to an outnumbered group of faithful, industrious people, who have received shameful treatment at the hands of their government and their more powerful neighbors.

Now let us consider the Hopi interest in the 1934 Navajo Reservation outside of the Joint-Use Area. The Solicitor of the Department of the Interior has held that the 1934 Act creating the Navajo Reservation for the Navajo Indian Tribe and such other Indians that were residing within that Reservation, clearly protected the rights of the Hopi Tribe. Navajo pressures in that area are becoming unbearable. Emmett Tso, a Navajo Indian, commenced an action against Abbott Sekaquaptewa, Chairman of the Hopi Tribe, in the United States District Court because Tso had attempted to build a home on the Hopi Commercial Corner near Tuba City that had been determined by the Assistant Secretary of Interior to be land upon which the Hopi Tribe could construct improvements without permission from the Navajo Tribe and had been enjoined by the Hopi Tribe from so doing. He now seeks a restraining order in Federal Court against the Hopi Tribal Court and government. Wilbur Honahni, a Hopi, was arrested by Navajo police, and his fishing equipment was confiscated, for fishing on Pasture Canyon Reservoir without a Navajo fishing license. He was convicted in Navajo Tribal Court and has appealed. Pasture Canyon Reservoir is the Reservoir that stores the water

for the Hopi farms. Several years ago, the Navajo Tribe attempted to obtain possession of this Reservoir by Congressional action but when the facts were disclosed to the Senate, the version of the Bill was revised to protect the Hopi Reservoir and those works were never delivered to the Navajo Tribe. Repairs have been made upon this Reservoir with Hopi money in order to preserve the supply for the Hopi farms. This is a new attempt on the part of the Navajo, Tribe to further encroach upon the rights of the Hopi Indians in this area. Navajo cattle, from an area 50 miles distant, were found grazing and trampling upon the cornfield of Alton Honahni, a Hopi Indian of Moencopi. The cattle were rounded up and impounded by the Hopi police. The Navajo Tribe then arrested Mr. Honahni for theft of cattle. This action is still pending in the Navajo Tribal Court. Numerous other cases have been heard by the Navajo Courts involving Moencopi matters. In one instance, a Hopi was ordered to pay for a cow which he struck and killed with his car in Moencopi. The animal belonged to a Navajo and was trespassing on a Moencopi street when killed. On the other hand, the Navajo police refuse to respond to Hopi requests for assistance in the Moencopi area, claiming they have no jurisdictional authority. The situation in this area is becoming electric, and immediate action is required. Violence and bloodshed seem to be an order of the day; but, in my humble opinion, this great body still has an opportunity to prevent such occurrences.

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 Navajo and such other Indians as were already located thereon. At that time, the entire Hopi Tribe was situated within the boundaries described. (Thus unlike the Executive Order creating the 1882 Hopi Reservation, this legislation granted contemporaneous rights in the 1934 Reservation area to more than one tribe.) No settlement of the Hopi Tribe in the 1934 Navajo Reservation was required as contrasted with the settlement requirement of the Navajo Tribe in the 1882 Hopi Reservation. There were also Paiute Indians living within the reservation whose rights were thus recognized. There is nothing in the 1934 Act that can be used as a yardstick for determining the quantum of land to be given to the Hopis. At the suggestion of Senator Abourezk made in connection with the Winslow hearings on March 7, 1973, Richard Shifter, Washington counsel on legislative work for the Navajo Tribe, addressed a letter to the Senator giving his interpretation of that Act. In that letter, reference was made to a series of meetings with the Hopi Indians held by James M. Stewart, who was then Director of the B.I.A. Lands and Minerals Division. Mr. Stewart later became General Superintendent of the Navajo Reservation. It is true that Mr. Stewart stated it had been suggested the Hopi

Indians be given about 500,000 acres in the Hopi Reservation and about 32,000 in the Moencopi area. But Mr. Stewart was only attempting to explain the Hagerman proposal and obtain the opinion of the Hopi Indians of the various villages. No attempt was made to persuade them that it was good legislation. In each and every case, the Hopi Indians turned it down, and the legislation did not take that form. In order to clarify the situation, an Affidavit was obtained from Mr. Stewart on the 7th day of September, 1973. Mr. Stewart among other things says: "In view of the fact that the courts have now taken a large portion of the original Hopi Executive Order Reservation from the Hopi people, it is now my considered opinion that justice requires that an area equal to that taken away should be added to the Hopi Reservation in the vicinity of Moencopi and should be a contiguous tract of land between the Hopi Reservation and the Moencopi section." May I be permitted to file the Stewart affidavit as a part of my statement?

The Navajo one-half of the Joint-Use Area in the Hopi Reservation will amount to 910,796 acres. The Hopi Tribe wanted an equal acreage in the Navajo Reservation, with which Mr. Stewart agrees, but after hearing the claims of both parties, the House of Representatives determined that the land to be given the Hopis in the 1934 Navajo Reservation should be 245,627 acres. This acreage is determined from the description in both bills as they

passed the House in the 92d and the 93d Congresses. While the House determination is over 665,000 acres short of what the Hopis feel they are rightfully entitled to have, they appreciate that as the years go by, the Navajo onslaught will continue to overwhelm the equities of the situation and thus weaken the Hopi position by the passing of time. The Hopi Tribe is, therefore, willing to accept the House determination and quit-claim whatever other interest it may have in the 1934 Reservation outside of the lands which will be allotted to the Hopis under the bill as passed the House.

As heretofore explained, the situation in the Moencopi area is becoming more tense as the Navajos insist upon pre-empting further Hopi property. The exigencies of the situation require that an immediate determination be had if bloodshed and further violence is to be averted. The Navajo attempt to now compromise the compromise is consistent with its companion position with respect to the Joint-Use Area where a compromise is sought after a full determination by the Courts. The ludicrousness of the Navajo position regarding the 1934 Reservation will be further illustrated as we consider the proposal introduced by Senator Abourezk.

It has further been urged upon this committee that partition of the 1934 Reservation to protect the Hopi rights will subject the United States to an action by the Navajo Tribe. We call

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to your attention the fact that the Indian Claims Commission has already determined that every foot of the land partitioned to the Hopi Tribe under the House bill has been determined by the Indian Claims Commission as Hopi aboriginal lands as of 1882. If the land is restored to the Hopi Tribe, it will be an offset against that claim, thus reducing the Government's liability in an action already tried. It might also be observed that the Navajo aboriginal claim as of 1868 was far from the lands here in question. They must prove aboriginal possession of lands they did not have in 1868. And they have the additional obstacle provided by the 1934 Act of Congress which protected the rights of the Hopi Tribe within that area.

The bill introduced by Senator Montoya, S. 3230, would authorize the two tribes, through their respective chairmen of their tribal councils, to commence or defend in the United States District Court for the District of Arizona, an action against each other to determine their respective interests under the Act of June 14, 1934. We beg of you not to subject the Hopi Tribe to another ten or twelve years of litigation during which period the Navajo Tribe can completely overwhelm the Hopi Tribe in all areas of the 1934 Reservation. The Hopi Tribe has neither the money nor the time for the further luxury of litigation. The 1934 Act provides no basis for a determination of the quantum of the interest of the Hopi Tribe. It

simply preserves an interest for the Hopi Tribe in the 1934 Reservation. To restrict it to the Moencopi area is a Navajo proposal. They ignore the fact that almost all of the 1934 Reservation at one time belonged to the Hopi Tribe. They further argue that possession as of 1934 should be the standard. Congress of the United States, when enacting the legislation authorizing the suit to determine the joint-use interest, refused this theory because equity required that some protection be given to the ousted tribe. Then, too, there is considerable land that cannot be said to be occupied by either tribe in 1934. If the Hopis were required to prove what land they occupied in 1934 exclusively, then the lands that were not completely settled would all belong to the Navajo Tribe. This would be a way of freezing the growth of the Hopi Tribe, while allowing the Navajo to expand at will. Again, I say further litigation in this area is an outright imposition upon the Hopi people, although it may be a bonanza for the attorneys involved. The House, now on two occasions, has carefully considered this problem; and, while they have not given the Hopi Tribe what it has requested, its members have had the intestinal fortitude to make a decision with respect to the problem.

Let me make a few further observations with respect to the Montoya bill. *Healing v. Jones* was tried for one solid month after three pre-trials with agreement as to the introduction

of hundreds of exhibits. The matter was taken under advisement and studied by the Court for months after that before rendering its decision. The Montoya bill, in Title 3, is presumptive enough to have this Congress make findings of its own after having authorized the Courts to try the matter. The bill alleges the findings to be determined by Congress are in conformity with the decision. Let me show you how those findings would conform. Under the bill, Congress would find only that the Executive Order was set aside for the use and occupancy of the Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon. I remind you that the Court found that two of the reasons for establishing the Reservation were to reserve sufficient Hopi living space as against advancing Navajos and to minimize Navajo deprecations against the Hopi. Under the bill, Congress would find that the Navajos have lived on a substantial portion of the land located in the Executive Order Reservation both prior to and since December 16, 1882. While the Court found that the Navajo population in the Reservation was only about 300 in 1882 and the Court further found that none of the twenty-one Secretaries of the Interior who served from December 16, 1882, to July 22, 1958, or anyone authorized to act under them, had ever settled the Navajos in the Reservation. The settlement was by implication because of the neglect of the government to protect the Hopi people. The case further held at page 137, that, after the establishment of the Reservation on December 21, 1882, Commissioner

Hiram Price sent a telegram to Superintendent Fleming of the Hopi Reservation as follows:

"President issued order, dated 16th, setting apart land for Moquis recommended by you. Take steps at once to remove intruders."

At page 146, the Court reports in its opinion that R. V. Belt, Chief Indian Division, on October 10, 1888, sent a memorandum to the Secretary of the Interior which concluded as follows:

The Moquis' Reservation was established by Executive Order of December 16, 1882, for the Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon. It comprises no lands set apart for the Navajos, and no Navajos have been settled thereon by the Department.
[Emphasis added.]

On the same day on which the memorandum was written, it was received by Secretary Vilas. Later the same day, he wrote to the Secretary of War requesting that a company of troops be dispatched to the area with instructions to remove all Navajo Indians from trespassing with their herds and flocks on the Moqui Reservation, and to notify them that their depredations must cease and that they must keep within their own reservation." That statement is also found at page 146 of the decision. Under the Montoya bill, the Congress would find that the Hopis have traditionally lived within the area of Land Management District 6, and that the Hopi use and occupancy of the Joint-Use Area has been "de minimis." Congress would make no finding as did the Court in its finding Number 49, "The

failure of the Hopi prior to the settlement of the Navajos, to use a substantially larger part of the 1882 Reservation than is embraced within District 6 was not the result of the free choice on their part. It was due to the fear of the encircling Navajos and inability to cope with the Navajo pressure." Without further analysis, I hope I have illustrated that the Montoya bill is a Navajo bill intended to distort the facts and thus give an apparent justification for the injustice that would be perpetrated by the results of the bill.

Senator Abourezk has also introduced a bill, S. 3724. The first two titles are identical with the Montoya bill, and in my humble opinion, are intended only as sugar coating for the pill the Hopis would be required to take under Title III.

Section 103 of Title III requires a new lawsuit to partition the land. Under the House Bill, Section 2, the partition would be a supplementary proceeding in the existing case. The House bill would, therefore, provide a faster disposition and certainly it would be much less expensive.

Section 303 provides that the land distributed to the Hopis would be subject to Section 607. Section 303 purportedly allows a partition of the land, while Section 307 emasculates the provision by allowing the Navajos to stay on the land, adding further weasel words about keeping the livestock under such

regulations as the Secretary may prescribe. No Secretary or Commissioner of Indian Affairs has been able to withstand the pressure brought by the Navajos to prevent livestock reduction. The bill does by implication what the formers of the bill, I am sure, did not have the audacity to spell out plainly. It ties the hands of the Court in reducing livestock to carriage capacity. Fred Eggan, professor of anthropology, University of Chicago, who is without question, the outstanding anthropological authority on Hopi Indians, spells out the custom of the Navajos to have their daughters, as they marry, bring their husbands to the location of their father's dwelling. To prevent such a practise would require a police force such as is not in existence today. To determine whether a man has lived in the Joint-Use Area for his lifetime is a task that cannot be accomplished. Any statement may be made to the advantage of the person claiming residence and cannot be disproved in any practical way. Professor Eggan states, "By insisting on such provisions, the Navajo Tribe has effectively nullified any use of the Hopi Indians of their portion of the Joint-Use Area during the lifetime of the present Hopi, and very likely even longer." I ask to file, as a part of my testimony, the letter from Professor Eggan under date of July 18, 1974.

Section 305 does not place the 1934 Reservation area in the Courts for determination, but it defines an iniquitable

parcel of land to be received by the Hopi as its full share of the 1934 Reservation. There is nothing in the 1934 act from which the quantum of the Hopi interest can be determined. The description contained in the Abourezk bill must have been put together in a hurry, or by someone who had no understanding of the situation. There are many mistakes in the description, and it does not even make sense as to the territory that it encompasses. I draw to your attention the fact that it leaves out the Hopi reservoir in Pasture Canyon; it leaves out all the business corners near the Tuba City, including those that Assistant Secretary Loesch indicated he would have go to the Hopis; it takes from the Hopis the entire coal deposit that lies between Moencopi and the Hopi Executive Order Reservation; and it sets up a disconnected piece of land that could not possibly be protected by the Hopis with Navajos between it and the Executive Order Reservation. This strip, during the course of the hearing, has been referred to as the "Irritation Strip." Perhaps the most significant point which clearly illustrates the lack of understanding in drawing these lines, is that it omits Moencopi Village, where the Hopis live. This description is not even a fair starting point for a discussion.

Section 309 leaves the determination of rental to the Secretary of Interior which would affect the Navajo Tribe very favorably and discriminate against the Hopi Tribe. The Navajos

would be the Indians who would continue to occupy the Hopi partitioned area. With the political pressures the Navajos are able to bring upon the Bureau of Indian Affairs, the Hopi Tribe could expect to have the same kind of treatment that it has always received at the hands of the B.I.A.

Other provisions conspicuously absent from the bill are these: (a) No provision is made with respect to the Paiute Indians, who definitely were protected by the 1934 Act, since they were then residing within the area described in the Act; (b) There is no adequate provision for the specific protection of Cliff Spring, a very sacred Hopi shrine as described in Section 21 of the House bill; (c) The remedies provided for the Hopi Tribe in Sections 16 and 17 of the House bill are all omitted from the Abourezk bill. Since they were included in the House bill if they were to be dropped by the Senate and the bill passed in that form, it would provide an effective defense against any of the actions to which the Hopis are lawfully entitled and for which provision is made by the House; (d) Allotments were made to both Navajo and Hopi Indians in the Moencopi area. This situation was cared for by Section 15 of the House bill, but is not provided for in the Abourezk version.

H.R. 10337 is the fair and logical determination of the House of Representatives in two Congresses. We urge its passage. May I conclude by quoting from Job, Chapter 19, Verse 7,

"Behold, I cry out of wrong, but I am not heard; I cry aloud, but there is no judgment."

This is the opportunity for the United States Senate to assist in the administration of justice and in a small way make partial reparation for the wrongs suffered by the Hopi people in the past.

Mr. BOYDEN. In view of the various confusion there is with respect to these various bills and the territory involved, I would like to tell just a little about the history of this matter and what the different bills provide.

If I could do that standing at the map I believe I would be more helpful than in any other way.

Senator ABOUREZK. Please do. It would be helpful to members of the committee who did not attend the hearings last year to have a better understanding. We will interrupt at periodic times to ask questions, if there is something that we do not understand.

Mr. BOYDEN. Certainly. We are not able to bring anthropologists like the Navajos are here, so we do have a letter from a very knowledgeable anthropologist, Mr. Fred Eggan, School of Anthropology, the University of Chicago.

I would like to file this letter that he has written to me with respect to one of the bills. Also, I have the letters that were sent to Senator Jackson, by Mr. Eggan, and I would like to have them made a part of the record.

[The letters follow:]

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF ANTHROPOLOGY
1126 EAST 59TH STREET
CHICAGO • ILLINOIS 60637

July 18, 1974

John S. Boyden
Boyden and Kennedy
1000 Kennicott Building
Ten East South Temple
Salt Lake City, Utah 84133

Dear Mr. Boyden:

I have just received a preliminary copy of the proposed Abourezk bill to provide for the development of natural resources on the Navajo and Hopi reservations, to assist the members of the Navajo and Hopi Tribes to become fully self-supporting, and to resolve the land dispute between the Navajo and Hopi Tribes.

The provision of a Navajo - Hopi Development Commission (Title I) may be of assistance in providing better coordination and a more comprehensive program than is currently in operation, but the two reservations are so different in their particular developmental needs that the Commission might not be able to function very effectively. This is particularly true with regard to Title II - Development of Programs, where the two Tribes often differ rather considerably in their tribal values and interests. Both Tribes have a common interest in highways, resource development and improved housing, but they have quite different interests in the development of water resources and soil conservation, in health, in education and in law and order activities. In these situations the Presidential appointee to the Commission would be in a position to make the basic decisions.

I am particularly concerned, however, with the effect of the provisions of Title III - Adjustment of Interests between Hopi and Navajo Tribes, on the future welfare of the Hopi Indians. In essence, the proposals would make the present situation much worse. While Section 301 provides for a partition of the joint-use area of the 1882 Executive Order Hopi Reservation on paper, Section 307 would effectively postpone any substantial use by the Hopi of their portion for at least fifty years or more.

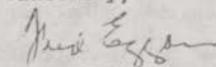
As a result of the U.S. Circuit Court decision in Healing vs. Jones, entered September 28, 1962, the Navajo Tribe was given some 900,000 acres of the 1882 Executive Order Reservation, and since that time the Navajos have continued to occupy an additional 900,000 acres, which represents the Hopi half.

Section 303 provides that the lands partitioned to the Hopi Tribe shall be held in trust exclusively for the Hopi Tribe, but Section 307 provides that any person who has resided on the Hopi portion since birth, or as a result of marriage, is entitled to remain on the residential site for life. Since the Navajo have occupied the 1882 Executive Order reservation by illegal means, and against all efforts by the Hopi to have them removed, this would result in a continuation of a major injustice. The U.S. District Court found that "Neither the Navajo Indian Tribe nor any individual Navajo Indians have the exclusive interest in and to any part of the 1882 reservation." Yet Sections 302 and 307 effectively give the Navajo all of the 1882 reservation outside of district six - for as long as there are Navajos alive who were born there.

The procedures of Section 306, designed to determine the adult members of the Navajo Tribe residing within the Hopi section, are such that accurate information is impossible to secure within a limited period. The Navajo Tribal Council does not have an accurate census after ten years of effort. Navajo names are kept secret and individuals are referred to by nicknames, such as Tall Man, etc. The census of livestock can only be taken with full cooperation, and since the Navajo are under Court order to reduce their flocks, such cooperation is not likely to take place. The custom of men joining their wives, and living in joint compounds with their parents-in-law, further complicates the census situation. A young man could marry an older woman and continue to reside in his wife's area long after her death.

By insisting on such provisions the Navajo Tribe has effectively nullified any use by the Hopi Indians of their portion of the joint-use area during the lifetime of the present Hopi, and very likely even longer. Under these circumstances how can this "Navajo-Hopi Development Act" be of any real assistance to the Hopi Indians? The injustices in Title III are so great that no action would be preferable to passage of the bill in its present form. In my opinion H.R. 10337 is a much better bill and I hope the Senate Committee will give it serious consideration.

Sincerely,



FRED EGGAN

Professor of Anthropology

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF ANTHROPOLOGY
1126 EAST 59TH STREET
CHICAGO • ILLINOIS 60637

July 6, 1974

Senator Henry M. Jackson
Chairman, Committee on Interior
and Insular Affairs
Senate Office Building
Washington, D.C.

Dear Senator Jackson:

I have just received a copy of Professor David F. Aberle's letter of 7th June, 1974, expressing his concern over the probable consequences of H.R. 10337, sponsored by Representative Wayne Owens, which divides the disputed sector of the Executive Order reservation of 1882 between the Hopi and Navajo tribes. I am equally concerned as to the consequences of not physically dividing the joint use area between the Hopi and Navajo tribes, and I would like to present the arguments in favor of the Hopi position.

You may recall that I sent you a letter on Feb. 9, 1973, following your request of January 29, 1973, for answers to a series of questions concerning the long standing dispute between the Hopi and Navajo tribes over reservation lands, and I enclose a copy of my letter, which includes a brief statement of my experience with regard to the Hopi and their problems and my more detailed views. Here I would like to confine my statements primarily to the arguments which Dr. Aberle presents. I have great respect for Dr. Aberle's

scientific research and his findings of fact, but I cannot support his recommendations that the Navajo be allowed to occupy all of the joint use reservation, and the Hopi be recompensed with possible other lands. This is a solution which would increase Navajo pressures on the Hopi reservation and would soon cause grave hardship to the Hopi. Such a solution is neither fair nor legal.

(1) The U.S. District Court, in the case of Dewey Healing vs. Paul Jones, summarized most of the matters of fact and the conclusions which could be drawn from them. I note only two of the "Conclusions of Law":

12. The virtual exclusion of Hopi Indians, accomplished by administrative action extending from 1937 to 1958, from use and occupancy, for purposes of residence and 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. [my italics]

13. Neither the Navajo Indian Tribe nor any individual Navajo Indians have the exclusive interest in and to any part of the 1882 reservation.

The 1882 Executive Order reservation was established to protect the Hopi Indians from trespass by white miners and incursions by Navajos. There were a few hundred Navajo within the boundaries of the reservation and the Hopi tried time and time again to get them removed. Their continued presence--and later expansion in number--has increased the pressure on both land and resources. Not only do the Hopi find it impossible to expand into the joint use reservation

but the overgrazing of Navajo sheep herds is rapidly destroying the range lands. The Navajo are under court injunction to reduce their herds to the carrying capacity of the range but the Navajo Tribal Council has made no effort to comply.

In 1868, when the Navajo were returned from Fort Sumner, there were about 12,000 Navajos, including refugees on Black Mesa and other areas. They had been forced out of their original homeland in northern New Mexico and were now resettled on a new reservation in western New Mexico and Eastern Arizona. In the past century their population has increased ten-fold--to around 120,000. The Hopi, in the same period, have only had a three-fold increase. The resources of the Navajo reservations are also much greater and at present the Navajo tribe has over \$40,000,000 in the bank. The Navajo have not been neglected by the U.S. government nor are they poor.

The Navajo, until recently, have refused to consider paying rent to the Hopi tribe--nor even to discuss the issues in good faith. The Hopi need for expansion on their own reservation is both very great and legally sanctioned. It is currently being frustrated by superior Navajo pressure. The livestock industry, which began around the turn of the century, has suffered depredations in the last few years which have discouraged Hopi entrepreneurs, despite their success in raising cattle. In turn the exclusive Hopi area has been repeatedly trespassed by Navajo sheepherders in search of grass and

water, despite border patrols.

(2) While Congress is not bound by the terms of *Healing vs. Jones*, the court hearing was established by congressional action and the results affirmed by the Supreme Court. Having established the procedure it would seem proper for Congress to implement the conclusions. This has been done in H.R. 10337, sponsored by Representative Wayne Owens, of Utah.

(3) The human and fiscal costs of relocation are alleged to be heavy and Dr. Aberle brings in Zambia and Micronesia as examples. But the Navajo situation is quite different and the program of relocation is such that there are adequate safeguards. What Dr. Aberle does not discuss is the great overload of sheep units and the rapid destruction on the range. If the present drought conditions continue the Navajo will be forced off the joint use reservation by loss of stock and will either invade the Hopi reservation by force or starve. The Navajo live in extended families and move around a limited area from one season to another. They have limited equipment and housing, and with adequate preparation, relocation will be a considerable improvement over their present marginal position.

The U.S. government has an obligation, as trustee for the reservation, to protect the natural environment against destruction through overgrazing and consequent erosion. That happened in the 1930's, when sheep reduction was enforced to

save the range. Today the sheep population has again climbed back beyond safe limits, and similar measures are now under court order, and currently being "enforced" by levying a small daily fine against the Navajo Tribal Council.

Dr. Aberle stresses the potential loss of more than 900,000 acres in the disputed territory, if a division is made, but he doesn't note that the Navajo also gain 900,000 acres by the same division. The Owens bill also provides for the purchase of 250,000 acres, which will more than offset the 243,000 acres they will "lose" near Moencopi. Hence this assumed "loss" of a "total of 1,143,000 acres" is misleading, to say the least, particularly since the Navajo have no valid claim to more than one half of the joint-use reservation. In real terms the Navajo come out well ahead of where they were a dozen years ago, even though they restore half of the joint use reservation to the Hopi.

(4) The proposed legislation of Representative Lujan would require the Hopi to sell territory adjacent to district 6, and which is part of the joint-use reservation, to the Navajo, in exchange for land at a considerable distance. The "advantages" of this plan to the Navajo are obvious. But this is Hopi ancestral land and they have been attached to it for a far longer time than the Navajo have been in Arizona. They will no more consider selling their reservation than the Navajo will theirs.

(5) Dr. Aberle's attempt to redesign Hopi-Navajo relations and early history is not in accord with the facts. There is no

evidence of Navajo settlements, with "farming, herding, hunting, and gathering" in Hopi territory in 1700 A.D., but there is evidence that the Hopis have been on their mesas since 1100 A.D. and before.

In 1882 the Navajos were just beginning to recover from their captivity in Fort Sumner and their population and herds were still small. The number of Navajo on the joint use area is currently estimated at some 8,000, but this is surely an inflated figure--unless the Navajo Tribal Council has been encouraging immigration into this marginal area for political purposes. In my early experiences on the Hopi reservation in the 1930's there were relatively few Navajo families in the vicinity, and relatively little conflict.

While Dr. Aberle emphasizes that Navajos are not nomadic, that is a relatively recent phenomena, brought about by population increase and overcrowding. In the 19th century, there is evidence of considerable "nomadism". Later it was limited to seasonal movements and only in the last generation has the Navajo population become relatively sedentary. The implication of "six generations of continuous settlement" in the joint-use area is misleading. If that had been generally true the region would have been established as a Navajo reservation.

The "myth" that the Hopi are peaceable and the Navajo warlike just happens to be true, despite Dr. Aberle's attempts to modify it in favor of the Navajo. The relations between the Navajo and the Mexicans, and later between the Navajo and

the U.S. military, are not relevant to the situation between the Hopi and the Navajo.

The first Hopi party to visit Fort Defiance in the early 1850's to get acquainted with their agent was ambushed by Navajos en route back to Walpi and the village chief and several other Hopi were killed. A series of similar incidents are characteristic of the traditional and historic records, and the Hopi retaliated where possible. But once the Navajo were put in captivity the Hopi reverted to peaceful means and have remained so for a century. The pressures on district 6 are becoming so severe, however, that the Hopi are again talking of retaliation.

(6) The problem of relocation is a complex one and Dr. Aberle thinks that it shouldn't be considered because there will be resistance. Here, I think the Navajo Tribal Council needs to face the problem of relocation. Dr. Aberle assumes every square foot of the Navajo reservation is over-used, but this is manifestly false. In many districts sheep are no longer as important or numerous as they once were, and there are many Navajo industrial projects for which relocatees could be given preference.

But more important, Dr. Aberle refuses to face the problem of range conservation. He apparently accepts the myth that sheep reduction was forced on the Navajo by the government, but I happen to have been at the meeting in 1934 at Gallup, New Mexico, between Commissioner John Collier and the

Navajo leaders at which the problem was discussed. The Navajo were asked to make the decision, and they ultimately chose sheep reduction in exchange for conservation of the range.

Now, forty years later, they face the same problem on the overloaded joint-use area. The Navajo Tribal leaders are not doing their people any service in ignoring the problem, and the Hopi are not only losing part of their patrimony but will soon be subject to invasion of their own lands if conditions on the joint-use range continue to deteriorate.

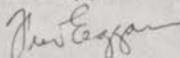
(7) The Moencopi problem is of a different character from that of the 1882 reservation. Dr. Aberle worries about setting "reasonable bounds" and about establishing a corridor connecting the two parts of the new Hopi reservation. But until there is the possibility of moving freely on the joint-use area the Hopi will need a corridor to move sheep from Moencopi to Oraibi.

(8) In the 100 year history of Navajo-Hopi relations and conflict over the Executive Order reservation of 1882, it is clear that progress has been made only when the issues have been adjudicated and the decisions of the courts enforced. *Healing v. Jones* was the first concrete step in settling the problem, and the Owens bill carries the solution a stage further. If it is implemented then there is the possibility of further progress in Navajo-Hopi relations, based on a firm legal foundation and with common understandings. No action--

or action for partisan political purposes--will destroy this progress and the resulting conflicts may well be far more serious than the proposed relocation.

The Hopi and the Navajo, so different in their character and style of life, are the most interesting and intelligent Indians we have in the Southwest. They need to be treated with consideration and respect. I think the Owens bill goes a long ways in that direction and I recommend that the Committee give it most serious consideration, strengthening whatever weaknesses it finds, rather than rejecting it, and starting all over again.

Sincerely,



Fred Eggen
Professor of Anthropology

Enclosure

THE UNIVERSITY OF BRITISH COLUMBIA

VANCOUVER 8, CANADA

DEPARTMENT OF
ANTHROPOLOGY AND SOCIOLOGY

7th June, 1974

Senator Henry M. Jackson,
Chairman,
Committee on Interior and Insular Affairs,
Senate Office Building,
Washington, D.C.

Dear Senator Jackson,

I am writing to you in your capacity as a member of the Senate Committee on Interior and Insular Affairs to express grave concern over the probable consequences of H.R. 10337, sponsored by Representative Wayne Owens, of Utah, a bill to divide the disputed sector of the Executive Order Territory of 1882 between the Hopi and Navajo Tribes, to set aside land for the Hopi of Moencopi, and to relocate an estimated 8,000 Navajos. I am informed that you will shortly hold hearings to determine whether parallel legislation should be enacted in the Senate. I am a U.S. citizen, fifty-five years of age, presently resident in Canada, a professor of anthropology who has done field work at intervals since 1940 among the Navajo Indians. I have published a book and various articles on the Navajo, including "A Plan for Navajo Economic Development", prepared for the Joint Economic Committee of Congress. I first visited the disputed territory in 1950, and since 1965 have done three summers' field work in that area, with additional occasional visits. On May 18, 1973, I appeared before the House Subcommittee on Indian Affairs as an expert witness to testify as to the undesirable consequences of H.R. 5647, sponsored by Representative Sam Steiger of Arizona, a bill whose key provisions would have had substantially the same effects as those of the Owens bill. I believe that I am qualified by training and specific research experience to speak on the issues at stake.

I should like to make the following points. (1) The present conflict between the Navajos and Hopis is the outcome of Federal action and inaction from before 1882 to the present. It is therefore the responsibility of the Government

to respond to the needs of these two tribes in a spirit of generosity, and not to adopt a solution that will cause grave hardship for one of the two parties. The trouble arose because the Executive Order Territory for the Hopis was defined in 1882 in haste and with no consideration for the fact that its borders enclosed an area in which Navajos had been living since 1700, and perhaps far earlier. The lines of the territory were drawn without attention to actual Navajo and Hopi use of the land in 1882. Nothing decisive was ever done, either to settle the Navajos there by right (as the Secretary of the Interior could have done), or remove them. Instead, the court found in *Healing v. Jones* (1962) that the Secretary had by implication legally settled Navajos in the disputed territory in the 1930's and 1940's and by implication at about the same time legally settled Hopis at Moencopi, where they had been since perhaps the late eighteenth century. The court necessarily found that because of the Executive Order the Hopis had rights in the area, and that because of the Secretary's action, so did the Navajos. No basis was ever given in the decision why those interests were equal. The results of the action of 1882, the subsequent inaction, and the implied settlement of Navajos in the disputed territory and Hopis at Moencopi in the 1930's and 1940's are to pit two impoverished Indian groups against one another. Thus far the principal concern of legislation has been to resolve the difficulty at the expense of the Navajos and at apparent minimum cost to the U.S. Treasury. The court declared that the two tribes had an equal interest in the surface and subsurface rights to the territory, excepting for District 6, which was the exclusive property of the Hopi. It asked the Tribes to work out a plan for sharing these interests. They were able to agree to share the profits of mineral exploitation half-and-half, but they have never been able to agree on a plan for dealing with surface rights.

This is not surprising. The Navajo Tribal Council cannot accept the relocation of 8,000 Navajos whose misdeed is to live where their ancestors lived before them. Hence the Navajo Tribe asks how it can rent or buy the Hopi share of the territory. The Hopi, who believe that the whole of the Executive Order Territory is rightfully theirs, and whose traditions make them claim an even larger area, need room for expansion of their livestock industry. Hence they are unwilling to consider leasing or selling any portion of the area. The Owens bill relocates the Navajo and does so at apparent minimum cost to the Treasury, although I shall later point out that the costs of the operation are hidden.

(2) Congress is not bound by the terms of *Healing v. Jones*. It can enact legislation not in accord with that decision.

(3) The human and fiscal costs of relocation will be heavy, and there is no reason to believe that, however carefully planned, the relocation can be successful. Everything that is known about the compulsory relocation of people who depend on the land for at least a part of their living goes to show that compulsory relocation is a dire step for such people. Professor Thayer Scudder, an anthropologist at California Institute of Technology, who made a field study of a major relocation project in Zambia and who has done a comparison of a number of large-scale relocations, has concluded that the scientific, technical, and social scientific knowledge necessary to carry out a successful relocation does not exist, that costs for the relocation itself tend to be double or triple the amount originally planned, that there is a prolonged period during which serious economic, social, and psychological problems resulting from relocation must be dealt with, that it is difficult if not impossible to combine relocation with plans for new types of technological and ecological adjustments for the relocatees, that there is a high risk not only of creating an indigent population but of creating an expectation of permanent support (the dependency pattern), and that resistance to compulsory relocation is a normal expectation. He therefore holds that compulsory relocation should never be undertaken unless all alternatives have been most carefully considered and found less desirable. Professor Robert Kiste, an anthropologist at the University of Minnesota, reports that after nearly 30 years the natives of Bikini have been moved three times (and a portion of the population a fourth), have never been able to make a satisfactory economic adjustment, have had their political organization seriously impaired, and, now that they have made their fourth, and for some their fifth move, back to Bikini, have learned to live in constant expectation of Government support. Other U.S. efforts in Micronesia appear to be no more effective. The history of Indian removal in the U.S. provides no comfort for those contemplating this relocation.

In the 1930's the Navajo Reservation would support about 1 sheep per 28 acres, on average. Its present carrying capacity, except in a few areas where there have been range improvement programs, is probably lower. A casual observer may think the reservation is underpopulated because it has low population density, but it is seriously overcrowded now. It is, furthermore, entirely subdivided into hereditary use right areas, where families have lived for generations. There is no economic possibility of removing Navajos from the area to be vacated to other areas on the Navajo Reservation, and any effort to

do so can lead only to intolerable friction. It is as if people displaced by a through-way were to be pushed into the houses of strangers living elsewhere in the city. Neither party could view this as just. The Owens bill provides for the purchase of 250,000 acres, to replace more than 900,000 acres Navajos will lose in the disputed territory, and 243,000 they will lose around and east of Moencopi, a total of 1,143,000 acres. This is clearly totally inadequate. There is no provision in the bill for developing the necessary amenities in any new territory thus purchased: schools, roads, administrative centers, power, gas lines, stores. Its housing provisions allow more than is needed to replace the average sub-standard Navajo house in the area and not enough to provide adequate housing. The hidden costs, then, are for the immediate future the administration of the relocation and the provision of an infrastructure in a new area. Other hidden costs may include those involved in the increased morbidity and mortality that are ordinary accompaniments of compulsory relocation in its initial stages. Long-range costs are quite possibly those of supporting the relocatees over a long period of time. These costs do not take into account the immeasurable costs of the demoralization and disorganization of the relocated Navajos. The few Navajos removed from the Hopi reservation not too long ago have yet to be resettled in any satisfactory fashion. The negative effects of relocation may stretch over decades.

(4) There are alternatives, although there is no alternative that will please both parties to the dispute in all ways. Representative Lujan of New Mexico has drafted legislation that would provide for Navajo purchase of half the disputed territory and for the Hopi to use the funds thus received to purchase additional land elsewhere, which would become a part of the Hopi reservation. This plan has three advantages: it eliminates Navajo relocation, it supplies land that the Hopi badly need for expansion of their cattle industry, and (an advantage for the Federal government) it supplies that land at no cost to the government. It is my opinion that the U.S. Government should purchase land for the Hopi, but it is a sign of the gravity with which the Navajo Tribe regard relocation that it is willing to pay \$18,000,000 to retain Navajos on the land in the disputed territory. In addition, the Hopis need access to the disputed territory for firewood and timber and to visit sacred shrines. The Navajo Tribe accepts these needs and is prepared to guarantee them. Since the Hopi need land for cattle, which does not require the relocation of entire communities to care for the cattle, no important movement of Hopis is required

by the Lujan proposal. The one problem the bill does not meet is the Hopi feeling that they want the land in the disputed territory, not other land, a feeling based on tradition and religion. It should not be forgotten, however, that the Navajos are also deeply attached to the land, that for them, too, it has religious significance, and that they have occupied it for at least 270 years.

The Owens bill, then, requires relocation of Navajos and all its attendant ills, satisfies the Hopi attachment to the particular land in question, and allows cattle to live where people once did. Immediate and long-range costs are high. The Lujan proposal requires no relocation of Navajos or Hopi, but still allows Hopis room to expand their cattle industry, and everything else they need and want except the particular piece of property under consideration. The major costs fall on the Navajo Tribe, and there are no obvious long-range deleterious consequences. If relocation should be carried out only after careful consideration of alternatives, the Lujan proposal merits serious consideration. It is a viable alternative with far fewer negative consequences than the Owens bill.

There are other alternative proposals developed in the House Subcommittee on Indian Affairs, including one prepared by Representative Lloyd Meeds for compulsory arbitration between the two Tribes. This, too, has merit by comparison with the Owens bill, but has fewer obvious advantages than the Lujan bill.

(5) The David (Hopi) and Goliath (Navajo) myth has resulted in a punitive attitude toward the Navajos that is not justified. It has several components. One is that a rich Tribe of 130,000 or more members is bullying a poor Tribe of 6,000 or so. This masks the reality: that 8,000 poor Navajos and 6,000 poor Hopis, all of whom need more land, are competing for the same stretch of territory, and that a resolution of the conflict in favor of the Hopis means enforced relocation of Navajos, with tragic consequences down the generations. Another is that the Navajos have kept on moving in on the Hopis. It is hard to judge events far in the past, but it is more reasonable to say that from 1700 on (and perhaps before) the Navajos began to exploit the land near the Hopi towns for their entire livelihood--farming, herding, hunting, and gathering, whereas previously and subsequently (at least since the early sixteenth century) the Hopis used that land not for agriculture, but moderately for herding, and principally for hunting, gathering, and fuel and timber. Since 1882, the Navajos,

because of population increase, have filled the area more and more densely, while since the 1930's, actions of the Commissioner of Indian Affairs, as sanctioned by the Secretary of Interior, have had the effect of limiting use of the disputed territory by Hopi who once ran their livestock there. There was no mass Navajo migration; there has been a differential rate of population increase as between the two populations. Part of this myth is that new houses being built in the disputed territory are the result of migration of Navajos into the territory. No proof of this proposition has ever been presented. In theory, no new housing can be built in the disputed territory without Hopi permission. Yet since 1962, normal population growth among the resident Navajos results in the continuous formation of new families, which need new houses. Faced with this problem, Navajos have built. Another myth is that Navajos are restless nomads and the Hopis sedentary farmers. Because it is alleged that Navajos are nomadic, some Congressmen seem to believe that they won't mind moving. Navajos are not nomadic. As a result of population pressure from the Spanish and later the Mexicans, Navajos no longer live as far east and north as they did in the 1600's. As a result of the growth of their own population and herds they have expanded. This does not involve nomadism, but rather the movement of some families out of crowded areas on to new land. Such an expansion is no more a sign of nomadism than the filling in of a continent by Americans between 1630 and 1870. When they were less crowded and when there were fewer water resources, Navajos moved their livestock seasonally over greater distances than is now the case. Within customary use areas, families frequently leave one homesite to build another, sometimes because a larger house is needed, sometimes because crowding makes it necessary to use what was once summer range year-long, and sometimes because all Navajos used to believe, and many still believe that if a death has occurred in a house, the house should be abandoned. None of these activities make the Navajo a nomadic population. Although they are not village-dwellers, they are sedentary. Even if they were nomadic, enforced relocation and movement toward empty pasture are very different matters. I should like to emphasize that within the disputed territory, the grandparents of my oldest informants lived in the areas where these informants now live with their children, grandchildren, and great-grandchildren. Six generations of continuous settlement can be seen here. During all that time, of course,

some descendants married and moved out of the use area, while others brought their spouses in, but genealogical continuity was not broken. Another feature of the myth is that the Hopi are entirely peaceable whereas the Navajos were so warlike that they had to be conquered and put into captivity at Fort Sumner. The Hopis have a relatively peaceful history, for one thing because concentrated villagers do not do well to provoke more scattered people: they are more easily attacked than attackers. They have, however, their own history of raids. The Navajos were engaged in the give-and-take conflict that characterized the Southwest under the Mexicans. They were raiders and fighters, at least as much victims as aggressors; yet it was the Mexicans who were protected from the Navajos by the U.S. military campaign, not vice-versa. What all of these myths do is justify the enforced relocation of the Navajos at minimal expense to the Government. They should be set aside. Punitive attitudes have no place in arriving at a settlement.

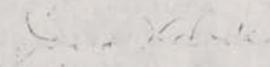
(6) Compulsory relocation is different from voluntary relocation; relocation of a cohesive group of people is different from the relocation of separate families, as when a through-way goes through a city; relocation of those who live on the land is different from relocation of city-dwellers. The consequence of some of these differences have been mentioned. I must, however, touch on the problem of resistance. Professor Scudder considers it to be a constant feature of large-scale relocation. Hence it is reasonable to expect it in this case. If this is mentioned, some Congressmen say that resistance should not be a factor to be considered, since that amounts to intimidation. But for me not to mention it is irresponsible. I do not know what form it might take, or how long it might last. It is hard for me to imagine a compulsory relocation of 8,000 people that will not pose serious problems, including the risk of injury or death to some relocatees and some of those attempting to manage the relocation.

Certain Congressmen seem to see their way through this problem. By enforcing a huge livestock reduction in the disputed territory in the name of conservation of the range, they expect that, deprived of a livelihood, the Navajos will leave the area. They do not seem to consider that these Navajos have nowhere to go. The livestock reduction seems nothing more than enforced starvation. It, too, raises risks of the same sort as compulsory relocation, in the form of ^{residence} ~~residence~~.

(7) No rationale has ever been given for the allocation of 243,000 acres to the Hopi of Moencopi. There is no evidence that at any time they utilized an area of this size. It does provide a continuous Hopi reservation, stretching all the way from the other Hopi towns to Moencopi. But the reason for this continuous stretch is to allow Hopis to travel to and from Moencopi on their own land, lest they face Navajo hostility. Yet the Navajo hostility is engendered by the effort to remove Navajos. Certainly a reasonable tract must be bounded for the Moencopi Hopi, but the Owens bill does not provide reasonable bounds.

(8) Since relocation is a drastic step not to be undertaken without careful consideration of the alternatives, since the Hopi-Navajo conflict stems from Federal action and inaction, since a generous settlement would provide the Hopis with the land they need for cattle and access to the disputed territory for religious purposes, fuel, and timber, and would require no relocation, and since the long-range human and dollar costs of relocating 8,000 Navajos are very great, I urge the Senate not to concur in the Owens bill but instead to consider the alternatives like those already developed in the House Subcommittee on Indian Affairs.

Sincerely yours,



David F. Aberle,
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February 9, 1973

Henry M. Jackson, Chairman
 Committee on Interior and Insular Affairs
 United States Senate
 Washington, D.C. 20510

Dear Senator Jackson:

With reference to your letter of January 29, 1973 concerning the "long standing dispute between the Hopi and Navajo tribes over reservation lands in Northeastern Arizona," I will be glad to provide answers to your questions and to testify at future public hearings, if that is desirable.

I first visited the Hopi-Navajo reservations in 1930 and spent longer periods on the Hopi reservation during 1932, 1934, 1939, 1940, 1941, 1942, and, more briefly, almost every year since World War II. I am familiar with the writings on both Hopi and Navajo. I testified for the Hopi - as expert witness - at the earlier trial in Prescott, Arizona, in 1962 to settle the ownership of 1802 reservation, and in the Hopi Claims proceedings in Washington, D.C. I have a major scholarly interest in the history and culture of the various tribes of the Southwest. The *Social Organization of the Western Pueblos* (1950) is my major publication on the region but I have several less extensive papers on the Hopi. My major interest in the present controversy is to see that justice is done to both Hopi and Navajo.

With regard to the general problem of joint use of the 1802 reservation I suggested in 1962 that the best solution would be for the Navajo tribe to lease and pay rent for each Navajo family on the Hopi "half" of the reservation until the Hopi wished to utilize their share directly. This would have provided "title" to ownership and some income to the Hopi tribe, and also allowed a gradual physical takeover as the Hopi expanded.

For various reasons this solution was not adopted and there have been ten years of fruitless negotiations, with the situation getting worse each year until violence has erupted (See, for example *N.Y. Times*, Feb. 14, 1971, p.56, column 1). With the current overgrazing of the joint use area and the intrusion of Navajo into the Hopi reservation, the normally peaceful Hopi either have to fight back or suffer the consequences.

Question 1.

For a century and more the Hopi and Navajo have had an ambivalent relationship. They have always traded, and individual Hopi have Navajo trading partners. On the other hand Navajo have also periodically raided the Hopi towns, and after 1868, have raided fields, stolen stock, and occasionally killed Hopi.

There has been some intermarriage, particularly at Walpi on First Mesa. Navajo men occasionally marry Hopi women and aid in herding Hopi sheep. Hopi men seldom marry Navajo women, since the life style of the two groups is different enough to make the adjustment a difficult one.

Navajo generally have a feeling of superiority to Hopi in terms of their greater numbers, nobility, and former fighting skills. Hopi have traditionally been defensive fighters, defending their villages with both magical rituals and weapons. In the early days of U.S. control, Navajo policemen were frequently used to compel Hopis to send their children to schools and otherwise to conform.

The much greater population of the Navajo also contributes to their dominant position. From 12,000 in 1868 to 120,000 today, the Navajo impose a physical threat to Hopi survival. The Hopi have also grown in population, but at a much slower rate -- from 2,000 to 6,000.

The general history of Navajo-Hopi relations is clearly laid out in Dewey Healing vs. Paul Jones (1962) and doesn't need to be restated. Hopi have varying attitudes toward individual Navajo but their feeling that they do not get justice in Navajo courts is clear. The facts can easily be obtained by analyzing the cases -- Navajo "justice" does not satisfy Hopi "justice." I don't think it satisfied our ideas of justice either.

Question 2.

At present it is not possible for the Hopi and Navajo to jointly use the joint use area of the 1882 reservation. Both tribes are moving away from a subsistence economy but it will be a long time before the pressure on reservation land is reduced. Public Health activities will further increase Navajo population, currently one of the fastest growing populations in the whole world.

The Hopi, traditionally an agricultural tribe, who also became sheep herders, have been expanding their cattle holdings in the last 50 years. The Navajo, traditionally hunters, took over

some agriculture, but primarily became sheep herders, particularly in the regions surrounding the Hopi. The overload that has developed on the joint use area is almost completely of Navajo origin and can be expected to increase in the next decade. The situation is currently much worse than in the 1930's when sheep reduction was carried out.

** on the joint use area*

Sheep reduction is a serious threat, particularly to the Navajo of this area, who have little else to support them. But the alternative is worse -- with the impending destruction of the range through overgrazing, the Navajo families will either invade the Hopi reservation or become completely dependent on the U.S. government or the Navajo tribe. The former will intensify the violence. The latter will reduce the progress the Navajo are making.

I see no alternative to maintaining the range lands and improving their carrying capacity if possible. But it is clear that this can't be done without removal or reduction in the number of sheep units. Navajo keep horses for prestige purposes, even though most families have access to pickups. Navajo also prefer goats, even though they are more destructive to the range. Finally, Navajo women own most of the sheep and the failure to consult them in the 1930's was a serious error.

Since the sheep have to be largely removed from the joint use area, the concurrent removal of Navajo families should be seriously considered. A separate BIA agency to manage the joint use area won't work because the Navajo have too much political power.

Question 3.

I have partly answered this question above. The Navajo will possibly agree to a "voluntary" stock reduction but will not be able to carry it out. The herd of sheep is a "mother" to the Navajo kinship group - the main source of sustenance and nourishment - and voluntary reduction on a large scale is unthinkable.

The sheep were reduced to approximately carrying capacity around 1940-43 - thirty years later they have reached a 400% overload, despite subsistence use and sale of lambs. This process will continue until other forms of subsistence can be found for Navajo and Hopi alike.

The Navajo blame the BIA for the sheep reductions in the late 1930's and psychologically it was a disaster equivalent to their imprisonment in Fort Sumner in 1864-68. Hence, if the reduction is not handled properly, relations between the U.S. government and the Navajo will be worse. If it is not carried out,

relations between the Hopi and Navajo will be worse, and both tribes will suffer.

Question 4.

Acts of violence between Hopi and Navajo will increase if the reduction is handled so that the Hopi receive the "blame." It is clear that the reduction has to take place to save the range, whether the Navajo are completely convinced or not. The sequence of events is important. (1) The area in question will need to be cleared and fenced. (2) The range will need to be allowed to come back. (3) The physical division of the reservation should then be established and fenced. (4) Only then should the Hopi be allowed to move onto their portion. (5) Surplus Hopi portions might well be leased or rented to Navajo families for a period, under suitable controls.

Question 5.

The Hopi believe the 1882 reservation was given to them. They have always resented the Navajo as intruders on their land. Individual Hopi have long spread out on ranches to the south of the villages and would continue to do so, if not hemmed in by the Navajo. I would assume that the "good spots now occupied by the Navajo" would in some cases be occupied by the Hopi, since the 1962 decision gives them "equal rights and interests" in the joint use reservation. At present they do not have "equal rights" and have been unable to achieve them by ten years of negotiation.

I do not believe that "revenge" plays any significant role, though many individual Hopis have suffered personal losses. I do not believe that most of the Hopi feel their actual survival is threatened by the Navajo but they do feel hemmed in and surrounded - in simple fact they are. The Navajo have a treaty with the U.S. government which gives them much greater control over their reservation than the Hopi have over theirs. They could make it difficult for Hopi to move freely over Navajo lands - and they could do the same for non-Indians, as well.

There are factions among the Hopi - and among the Navajo as well. In this dispute I strongly believe the great majority of the Hopi supports the Tribal Council in its efforts to get the judicial decisions translated into action.

The so-called Traditionalists are active and vocal, but not numerous. They are against all governmental interference with the Hopi way of life -- including wells, electric lights, etc. -- and therefore support the Navajo plea to let the two tribes work out a solution.

At the 1962 hearings there were Navajos who supported the Hopi position and were against the efforts of the Navajo Tribe to take over 4/5's of the 1882 Executive reservation. How united the Navajo are today I do not know.

Young Hopi - and young Navajo - are better educated than their parents and much less interested in subsistence farming and sheep herding on marginal lands. When they become the Pueblo and Navajo leaders a couple of decades from now, they may be able to cooperate in the development of the joint reservation to a greater extent. The subsurface resources are relatively easy to deal with, and money can be divided in half. But the differential reaction to the lease with the Peabody Coal Co. for strip-mining operations on Black Mesa suggests that the Hopi and the Navajo have different ideas about the significance and use of land and resources.

For the Hopi the land has a sacred character. The Hopi early made a compact with Masau'u, their chief deity, in which they were given the land in exchange for the performance of the proper rituals of the ceremonial cycle. The Navajo have a more utilitarian view of land and its utilization, and were formerly content to move their sheep to new locales when the range was exhausted or population increased. Modern Navajo herds date only from 1868 when the U.S. government distributed a small number of sheep to individual families. In 60 years the Navajo and their herds increased phenomenally and not only filled up the continually extended reservation but encroached on the 1882 Hopi Executive Order reservation, which was set up in part to keep the Navajo out of Hopi territory.

The actual Hopi territory was considerably larger than the 1882 Executive Order reservation, as the Hopi have demonstrated to the satisfaction of the Claims Commission. They, therefore, feel that their rights to the reservation have been limited by Navajo intrusion and they look to the courts and the Congress for relief.

Question 6.

The Navajo naturally view the land they now reside on in a different light from the Hopi. A few Navajo hid out in the Black Mesa region when Kit Carson was rounding up the Navajo in the 1860's, and others joined them when the tribe returned from captivity. Most of the modern population on the joint reservation is an expansion of Navajo migrants in the regions surrounding the Hopi reservation. The few hundred original Navajos have now grown to several thousand and their herds to over 100,000 sheep units.

The Navajo argue that occupation is the important consideration and that the court decisions are wrong or irrelevant. They object to removal from their homes without knowing what will happen to them, and even more to losing their sheep herds. In the

Black Mesa region the Navajo are organized into extended families centered around a woman and her daughters, and this group controls range areas and a joint herd of sheep. Husbands who marry in gradually add their own sheep to the herd. When the oldest woman dies, the sheep range and the sheep may be divided, each daughter starting a new unit.

If you have sheep, they need to be watered every day, if possible. If local water sources - springs, washes, ponds, or modern wells with windmills - run dry, the Navajo has to lead his sheep to water elsewhere.

Question 7.

Under all the circumstances I think a partition of the lands is essential to solve the land controversy between the Hopi and Navajo. Even where there are fences, they are frequently cut to provide access to water or feed. Such a reservation should be contiguous, except possibly for sacred areas such as the Hopi have at greater distances and within or beyond the Navajo reservation. With regard to the Moencopi area, which is a special problem, it is possible that a stipulation that the highway or roads are open, might be adequate. But a Hopi driving his sheep from Oraibi to Moencopi on a direct route might be in difficulty.

My own belief is that partition will make for better neighbors. The boundaries will need to be fenced and access of animals will need to be controlled. The present negotiations have gone on for a long time, without outside control, and with no results. With the court orders, however, there are now basic conditions laid down which I assume have to be accepted by the parties concerned.

Question 8.

I assume that Congress, in its Act of July 22, 1958, 72 Stat. 402, which set up the District Court hearings, and their decision which was affirmed by the Supreme Court, has provided a framework within which the present Navajo-Hopi land controversy must be decided.

I think this framework is adequate and doesn't need extensive revision. It is clear that the Hopi have a legal right to use of the joint reservation, and it is equally clear that they are at present denied that right. It is also clear that the Navajo have a legal right to use of the joint reservation, and at present they are using their share and most of the Hopi's share as well.

It is also clear that the United States government as trustee, has an obligation to prevent destruction of the range through

overgrazing. To that end the Court Order provides for reduction of livestock and restricted use until the range physically recovers.

Since both sheep and population have to be removed, it is -- relevant to consider moving them together. It will then be possible to divide the land in some equitable fashion and to make provisions for renting or leasing lands not immediately used by either tribe.

The alternative is an increase in violence and ill feeling which will result in possible killings of stock and of people during the next decade. In the long run, the problem may diminish, but neither the Hopi nor the Navajo will wait that long.

Sincerely,

Fred Eggan
Harold H. Swift Distinguished
Service Professor of Anthropology

FE:uw

Senator ABOUREZK. Do you have other copies of that letter?

Mr. BOYDEN. No, I do not. Sorry.

Senator ABOUREZK. I wonder if we could ask those folks sitting on the floor if you could move over here. You could see the map better and it would give Mr. Boyden some room to operate in.

Mr. BOYDEN. I would like to explain the map and just what it is. This little square, triangular piece here, it is irregular, is district 6. There is not any question about that. It has been determined to be fully Hopi.

And the Hopis were crowded into this by the Department of Interior, and the court in making its decision said it had no business doing that. It was at all times illegal. But they were put in there and there was not any question about district 6.

With respect to the joint use area, that is this part that is in black and the joint use area is everything in the black, except district 6. So when we speak of district 6 we were talking about exclusive Hopi Reservation that is not affected by any of the bills.

When we talk about the joint use area, we are talking about the rest of the Executive order reservation outside of that. The Moencopi area, as delineated in the House bill, is the red area over here to the west of the Executive order reservation.

That is the Moencopi area. Let me give you just a little bit of an explanation about this. In 1848, well, it is pre-1848, this was Mexican Territory, before the Treaty of Guadalupe-Hidalgo.

At that time the Navajos were causing considerable trouble over the State of New Mexico, and the U.S. Army was sent down to drive them out, so they drove them over into the Hopi country, before 1848.

That is not my statement. That is the statement that is found in the Indian Claims Commission decision in that regard. In 1848 all of the Government witnesses in the claims case, and, remember, there are several cases involved in this, the Navajos filed a case in the court of the Indian Claims Commission.

The Hopi filed a Claims Commission case, docket 196. Then we have Healing versus Jones that was authorized by the Congress, and I will explain all of those. Now the Navajos contended that certain lands were taken away from them.

But all of the Government witnesses, as well as the Hopi witnesses, have said that in 1848 the Navajo land was much as Senator Goldwater says, it was all over to the east. None of this was Navajo territory in 1848.

Now, in 1868 the Navajos had gone forward so the Indian Claims Commission said that they had established that aboriginal claim to the area that I marked here. The dotted line going clear to the top and clear over here, down like this, that I have outlined here with that dotted green line.

That is where they said. You will notice that nothing that we are talking about was included in that line in 1868. That is the finding of the Indian Claims Commission.

Senator BIBLE. Might I ask a question of Mr. Boyden, Mr. Chairman?

Senator ABOUREZK. Please.

Senator BIBLE. Whose map is this? Is this the Hopi map? This is prepared by you?

Mr. BOYDEN. Yes, this was prepared by us to illustrate these things.

Senator BIBLE. I do not know where the Navajo lawyer is. Is there any dispute as to the accuracy of this map? Do you agree that it is an accurate map?

Mr. VLASSIS. It is roughly representational, Senator.

Senator BIBLE. I do not know what that means. But as a lawyer—everybody is in agreement that the controversy is in the rectangular area; is that correct?

Mr. VLASSIS. Yes.

Senator BIBLE. You agree with that?

Mr. VLASSIS. Yes.

Senator BIBLE. I guess that is all right.

Mr. BOYDEN. In 1868, that was the territory they were in. Now, in 1882, at the time of the establishment of the Executive order reservation, the Indian Claims Commission in our case held that the Hopis then had aboriginally occupied the land in the dotted red, and that is not rough.

That is—those are the points put in there by the Commission. It includes everything we are talking about as of 1882. That is the finding of the Indian Claims Commission. We have that on appeal, because we think the Hopis occupied more than that.

That appeal has not yet been determined. That is roughly the explanation of this map. In 1882, an Executive order reservation was established. This was established for several reasons.

Two of those reasons were to provide sufficient living space for the Hopi as against the advancing Navajo, further to minimize Navajo depredation. So that was why this was established.

Now there were other reasons. There were two white people in there, that, as Benjamin Franklin would say had rendered themselves exceedingly obnoxious and there was no way that they could get them off.

That was a problem. The Mormons were locating over around Moencopi. They were afraid they would come into the area. So this was intended to stop that. That was the reason it was set aside. It had one provision in it that caused us all the trouble. That was they said, quote, "And such other Indians as the Secretary of the Interior will see fit to settle thereon."

That is how we got into the trouble we are talking about now, and I will talk about that a little bit more later on. Now this Congress in providing for the bill on July 22, 1958, said to the courts, "We want you to determine the rights and interests of these parties in here.

"We want you to make a fair and just determination that will be fair and just in law and equity." So all of these equities that we are talking about were taken into consideration by the courts.

You gave them a job to do and they did it. So they said, "We contend that the Navajos ought not to be in there at all." They said, "What happened is—

Senator ABOUREZK. May I interrupt you there, Mr. Boyden. If you are talking about the *Healing v. Jones* decision—

Mr. BOYDEN. Yes.

Senator ABOUREZK. It said the Navajos should not be in there at all?

Mr. BOYDEN. That is correct. I said the Hopi contention was—

Senator ABOUREZK. Oh, I am sorry. I thought you said the court decision was.

Mr. BOYDEN. Oh, no. The court made a different decision which we feel we are obligated to abide by because we have been to the Supreme Court of the United States on this thing.

Now the court made its decision and this is what it said. This is exclusive Hopi territory because it was set aside for the Moquis. The Moquis and Hopis are synonymous terms.

So there is no question about that. That belongs to the Hopi people, exclusively. There is no territory there that the Navajo owns exclusively, and any time that the United States has taken people out of here and put them into this area as they did, that is having taken them out of what is not the joint use and put in here, it was at all times unlawful.

That is what *Healing v. Jones* held. So they said because the Hopis were unlawfully excluded, even though the Secretary had authority to settle the people there, when he settled them there he could not oust the Hopi, therefore they both had an undivided joint interest.

Now, let us talk just a second about the equities involved in this case. We do not want to go through all of those things again. We talked about these tragedies and all of this land but when we talked about the equities we found such extreme cases as this to get the Hopis out. They took one Hopi woman by the hair and swung her around in the air.

Senator ABOUREZK. Who is "they"?

Mr. BOYDEN. The Navajo Indians.

Senator ABOUREZK. Do you know who did it exactly?

Mr. BOYDEN. You can find this in the transcript, in *Healing v. Jones* which is now on file.

Senator ABOUREZK. Are you able to tell the committee here, now, who it was?

Mr. BOYDEN. No; I do not know the man by name.

Senator ABOUREZK. It was one Navajo man who did it?

Mr. BOYDEN. I can produce the testimony, if it is desirable. But this is just one. I am just illustrating because they were told to determine what was fair and just in law and equity.

This court did an additional thing, and the lawyers will know that this is significant. When they got through they said, "What we have done in making this determination is fair and just in law and equity."

Now, you gave the court the authority to do that. They have done it and some of these bills have now been introduced. Going ahead, after the court took one solid month to try it, and on agreements, we had some hundreds of exhibits, that they went through the whole history of this.

And Judge Hanley made an excellent story of the whole thing, the whole story on it.

I have it here. The whole business. There it is. The determinations they have made including the findings of fact and conclusions of law. Then they added to their decree what we have determined, that is, this part in district 6, exclusively Hopi.

The other, 50-50, is a fair and just determination in law and equity. Now those are not the exact words, I could read the exact words if it is important. So now the question is, after having given it to the courts to decide, and it went clear to the Supreme Court of the United States, then is Congress now going to overrule what the Supreme Court has affirmed?

That is the question that we have before us. Now, 8 years of negotiations passed—

Senator ABOUREZK. I wonder if I might stop you right there?

Mr. BOYDEN. Certainly.

Senator ABOUREZK. When you say is the Congress going to overrule what the Supreme Court has affirmed, I wonder if you would state to the committee what the Supreme Court has affirmed; in essence, a short description of that decision.

Mr. BOYDEN. I do that and show the contrast, when I talk about the two bills just a little later, but if you would like me to do it right now I will do it.

Senator ABOUREZK. I wonder. What I do not think ought to happen is that you ought to refer to some vague decision erroneously. I think the committee ought to understand fully what that decision was, so that when you refer to it—

Mr. BOYDEN. In *Healing v. Jones* the decision was that title is quieted in the Hopi Tribe to the exclusive right, title, and interest, including surface and subsurface and all improvements thereon in the Hopi Tribe in this area put in red, that we call district 6.

Senator ABOUREZK. There is no dispute about that in these bills—nobody that I know of is building up any dispute about that area. Do you know of anybody?

Mr. BOYDEN. With respect to the joint use area—

Senator ABOUREZK. Mr. Boyden, do you know of anyone who is bringing up a dispute on that area?

Mr. BOYDEN. Not yet. But I would not be surprised.

Senator ABOUREZK. What is the balance of that decision, then?

Mr. BOYDEN. The balance of the decision said that the joint use area that I am referring to here, outside of district 6 but inside the Executive order is to be share and share alike with the Navajo and Hopi Tribes.

It did not partition it, because it did not have authority.

Senator ABOUREZK. There was, in other words, the decision said the Hopi and Navajo Tribes would have an undivided equal interest in that disputed area; is that essentially the decision?

Mr. BOYDEN. I will read it to you. The judgment says:

The Hopi Indian Tribe and the Navajo Indian Tribe, for the common use and benefit of their respective members, but subject to the trust title of the United States have joint, undivided and equal interest, both as to the surface and subsurface, including all resources in and to that part of the reservation lying outside of land management District 6, as defined on April 24, 1943 and described in Paragraph 31 of the Findings of Fact.

Senator ABOUREZK. With respect to that decision, when you say you are hopeful that Congress will not overrule the decision of the court, which piece of legislation that has been introduced proposes to overrule the court?

Mr. BOYDEN. The Montoya.

Senator ABOUREZK. How does it do that?

Mr. BOYDEN. May I reserve that until I analyze the bill, because I will point it out specifically?

Senator ABOUREZK. OK.

Senator BIBLE. May I ask a question on the point that Mr. Boyden is addressing himself to, Mr. Chairman? That is, is there anywhere in the Supreme Court decision or in the findings of fact or the conclusions of law that define the share and share alike and have an undivided in-

terest in the area in dispute, which is the area in controversy, the joint use area?

Is that defined with more precise terms as to what it means?

Mr. BOYDEN. No, not in the decree itself. To me it is perfectly clear, when you say they have an undivided share and share alike joint interest, I think that means exactly what it says.

Senator BIBLE. What does that mean, then? Will you spell it out?

Mr. BOYDEN. It means that they are both entitled to be on that part of the reservation together.

Senator BIBLE. Do they each have block acre and they divide the disputed area 50-50, or do they each share each block, or how do you interpret that share and share alike?

Mr. BOYDEN. The courts have gone into this further, Senator Bible. But I would like to tell you about—

Senator BIBLE. You will cover that a little later?

Mr. BOYDEN. Yes, I will.

Senator BIBLE. I think that language might be very significant. I think that difference of opinion is precisely what that means.

Mr. BOYDEN. It might clarify it if I tell you that the court held, when we had a further supplemental hearing on this, that the Navajos had ousted the Hopi Tribe so they did not have any use of it.

Senator BIBLE. Is that what their decision said?

Mr. BOYDEN. That is what a supplemental decision said by the district court.

Senator BIBLE. The district court?

Mr. BOYDEN. That is right.

Senator BIBLE. The Federal District Court of Arizona?

Mr. BOYDEN. Yes.

Senator BIBLE. I think it would be helpful to have that decision made a part of the record; it will speak for itself.

Senator ABOUREZK. Do you have that decision?

Mr. BOYDEN. Yes.

Senator ABOUREZK. I think it must be in the record of last year.

Senator METZENBAUM. Would you distinguish from the original decision and the supplemental decision? I didn't get that nuance.

Mr. BOYDEN. Senator Bible is pushing a little ahead of my story.

Senator BIBLE. I do not mean to do that.

Mr. BOYDEN. If I could just develop this I could tell you the various steps. Then it would be easy for us all to understand.

Senator BIBLE. I apologize. You have a great reputation as a fine lawyer, and I am sure the Navajo lawyer has the equal reputation. Lawyers all have fine reputations. [Laughter.]

Senator BIBLE. I say that because a lot of the people in this Interior Committee are not lawyers.

Senator ABOUREZK. Or wish we were not.

Senator BIBLE. In deference to them I think we ought to say a kind word about our trade or profession or whatever it may be called. I will not anticipate you any further. Thank you.

Mr. BOYDEN. Now, Senator Bible, that decision was made just as I read it to you there. After that we had 8 years of negotiation in attempting to persuade the Department that it had some responsibility to see that we were let on to this part of the reservation without success.

So, after that, on March 13, 1970, we filed a petition for a writ of assistance. The court then said, the district court in Arizona then said,

"I can't do anything about it because the congressional act did not give us any authority except to make a determination of the interests, and we cannot enforce our own judgment."

We did not think that was the law, so we appealed that to the ninth circuit court of appeals. The ninth circuit said the district judge is wrong, and it is definitely established in the United States that a court has the authority to make a determination, has the authority to enforce its own judgment.

So they said, "We will send this back to the district court, and proceed with the hearing with respect to the writ of assistance. The Navajos appealed that—they did not appeal it.

They had to go by writ certiorari. They applied for a writ and the Supreme Court denied it. So that became the law. Then the district court proceeded to make a determination as to whether we were entitled to writ of assistance.

The district court, after this appeal, then tried and found—tried the case, and they found against the United States and against the Navajo Tribe, and they said that the United States has procrastinated and vacillated and failed to protect the Hopi interest.

That is in the findings of fact. They said that the Navajo Tribe had many things, including cutting the tailsoff some of the animals and butchering Hopi livestock, and had been tantamount to an ouster of the Hopis from the joint use area.

So that is what was in the findings of the court. So, on October 14, 1972, it entered its order of compliance and said this is what you have to do. But the circuit court had said to them, remembering at all times that both of these tribes are entitled to use this and are entitled to use of it share and share alike.

Now, the District judge made a very significant statement with respect to this. I will not even tell you how it happened. It is in the September 14, 1973, at one of the hearings, Judge Walsh, Hon. James Walsh of Arizona said this.

I more and more think that a tremendous mistake was made, hearing the bill, when it was before Congress that created the court, when it had the provision in there for petitioning, and it was taken out on the basis that either of the tribes could settle among themselves or Congress could do it.

We actually got into this case. The courts got us into it because there was a vacuum there. The tribes were at loggerheads for years. They could not settle it. Congress would not settle it and it got into the courts.

And the equipment that courts needed, really, to conclude the thing was left out and that is the part to take it over. Again, it was left to the tribes or the Congress to actually, if they were found to have had joint interests, the court would have the power to partition it.

That was taken out and now we are, 11 years later, right back where we started with the same contentions. And obviously I mean the evidence in the earlier hearing here showed that Mr. MacDonald—that is a mistake.

It is his predecessor, Mr. Nakai—told the Hopi right after *Healing v. Jones*, well, the court says you have a joint interest, but that does not mean possession.

And we will help you in any way we can to make the Government pay you for what you have lost.

That is the Montoya bill. We could have settled it 10 years ago if we wanted to take money for this land.

"But there is no attitude here of let's get this thing resolved. This is the difficulty I find with your position." That is what the court said with respect to that.

Now, in the order of compliance the court says this:

We have got to bear in mind that the Hopi have got to have a one-half interest and use of it just the same as the other because that is what the circuit court mandate said.

Then they say, "The way we first have to do this is to reduce the livestock down to carrying capacity." There had been a range reconnaissance which showed a great overgrazing. So they were reducing this down to carrying capacity.

So they said according to the range reconnaissance that we have you must reduce it to carrying capacity within 1 year's time. And then I want another, this is what the court said, "I want another reconnaissance taken as of now which is 10 years later, to determine present carrying capacity.

"It must be done within a year and within 6 months thereafter I want further reduction down to one-half of the carrying capacity." Those were the first orders of the court. There are some other orders that are not particularly material here. We got together on division of funds and a few things of that kind.

But the other important one was the court said, "You just build in here" and there were all kinds of buildings, as I will show you by another map, around district 6. The court said:

That building has to stop, without the permission of the Hopis, with this exception. That the Hopis can go in and build if they want to build, until they have buildings equal to, the same as your buildings.

That is what was done. Then the court issued a writ of assistance and served it on the Attorney General of the United States, and served it upon the chairman of the Navajo Tribe and said, "This must be done."

Well, the time for the reduction of livestock has come and gone. It has not even been substantially commenced. We have lots of testimony with respect to that. But that is what the court has held, that they have not even started to reduce the livestock in good faith.

And so the court now says the time has gone. They asked for an extension of time. The Navajos asked for 2 more years. The Government asked for another year. The court said:

I will not grant either one of them. The time has elapsed. You have not done it and you have got to do it now and I want you to start within 5 days of this order. And you will pay to the clerk of the court \$250 a day until you do get this job done.

Senator METZENBAUM. Mr. Boyden, may I ask a question? Did I hear you say that that same court, which you have been quoting, the lower court, that that court did say that the Navajos should pay the Hopis for this land?

Mr. BOYDEN. No; I did not say that, or, if I did, I certainly did not mean to, because that is not so.

Senator METZENBAUM. I thought you were saying that—

Mr. BOYDEN. I said that is what the Montoya bill says.

Senator METZENBAUM. You said that is what the Montoya bill says, but in saying that that is what the Montoya bill says, were you not previously reading from what the district court had said?

That is what I understood you to say.

Mr. BOYDEN. The district court never said anything about paying for the land. If I did say it I was certainly in error. I do not remember saying it.

Senator METZENBAUM. Thank you.

Mr. BOYDEN. So that is on appeal at the present time. As a matter of fact, the whole process is on appeal, four appeals from every order of the court.

The first two appeals have been argued. The third one has not been fully briefed. The fourth one was given an expeditious hearing and the Navajos asked for a stay of execution so they would not have to pay the \$250 a day and that was determined by the court. That was refused, and the court took it under advisement.

I filed my brief the day before I left, yesterday. That is now before the court. The court says there will be no reply brief. They further say that there will not be any hearing unless they ask for one, and it will be deemed submitted within 7 days after my brief has been filed.

And it has already been filed. I assume that within 7 days, unless they ask for a hearing, there will be no hearing.

Senator BIBLE. Mr. Chairman, all I was going to ask was has any money actually been paid in?

Mr. BOYDEN. No.

Senator BIBLE. It is still tied up in court?

Mr. BOYDEN. The court has not asked them to bring it in and pay it. He said "You are paying this amount" so it is accumulating.

Senator BIBLE. What do you mean? They are paying it. If no one is getting any money, how are they paying it?

Mr. BOYDEN. They have not actually collected the judgment.

Senator BIBLE. That is what I am saying.

Mr. BOYDEN. Not a penny has been paid.

Senator BIBLE. From the date of the effective order of the court until today, what would the total amount be?

Mr. BOYDEN. May 29th, \$250 a day until now.

Senator BIBLE. May 29th, 1974?

Mr. BOYDEN. That is correct.

Senator BIBLE. All right. Thank you.

Mr. BOYDEN. Now, if any money has been paid that I do not know about, that could be so, but I think I would know if they started to pay.

Senator HASKELL. Mr. Boyden, the court that you filed your brief with is the circuit court of appeals; is that correct?

Mr. BOYDEN. The Circuit Court of Appeals for the Ninth Circuit.

Senator ABOUREZK. Senator Metcalf.

Senator METCALF. That was my same question. I was not sure which courts were involved. All four appeals are pending before the Ninth Circuit?

Mr. BOYDEN. That is correct.

Senator ABOUREZK. Before you proceed, let me ask the Navajo attorney; has anything been paid on that?

Mr. VLASSIS. No. I did not think it was necessary under the circumstances to pay until there was a determination by the Ninth Circuit. In all probability the payments will never be made.

Senator ABOUREZK. Mr. Boyden.

Mr. BOYDEN. That is the statement of the Navajos. Of course, that ought to go against their 2½ hours. [Laughter.]

Senator ABOUREZK. We will dock them 20 seconds.

Mr. BOYDEN. Now much has been said about the inhumanity and the brutality of moving the Navajos off of this area. Let us just look at this

thing. The first range reconnaissance in 1964 showed them shamefully overgrazed.

In 1939 the Peabody Institute and the Phelps-Stokes Foundation, Yale University with several other people operating on the team, all of which are named in my statement, held this with respect to the Navajo Reservation.

Members of the inquiry and especially the agricultural expert with experience both at home and abroad are convinced that overgrazing of land, capable of supporting only 550,000 sheep units, is almost one million sheep units—by almost one million sheep units, is a menace to the very life of the Navajo people.

That was in 1939. Then they say, "All in all, the members of the inquiry are agreed that the general trend in soil conservation and in related movements is decidedly the direction vitally needed on the reservation."

Now this has been referred to often as a great catastrophe when the Government went in and tried to reduce it. As a matter of fact, I was assistant U.S. attorney for Utah at that time, and handled the grazing cases at that time.

So you could not do it and it became a catastrophe because the Navajo said, "We will not do it." Just like they told you today, they will not pay the fine that the court tells them to pay.

So they defied the court. And the Department of Interior, that is, the Bureau of Indian Affairs just gave up the ghost, and did not try to reduce it. I know there were some horses reduced and so forth.

But when we took the range reconnaissance that was done at the direction of the district court in 1973, we found that for 1964 to 1973 there had been another reduction of carrying capacity by 25 percent.

So that the grazing capacity in this area has been reduced by perhaps 75 percent from the time they started to overgraze it. So to leave them there in that fashion to overgraze, to destroy their land, the Hopis are very much opposed to that sort of thing, if anybody does it.

Because we are all citizens of the world and we owe something to the generations to come: no one should be allowed to destroy natural resources. Many of our bills in Congress have expressed that opinion.

But we, of course, specifically object that when you do it to our land, you are certainly being unfair about it, and you have now reduced that that much. So we feel that some reparation ought to be made with respect to that.

Senator HASKELL. Mr. Chairman, Mr. Boyden, are you going to get in later on how many people permanently live on the disputed area, and of which tribe?

Mr. BOYDEN. I think I can do it. I think I can do it pretty closely, and that is brand new information that we just got this week.

Senator HASKELL. Thank you, sir.

Senator ABOUREZK. I think I should interrupt at this point. There has been a news bulletin just passed through the committee here. The U.S. Supreme Court has decided eight to nothing to require the President to turn over the tapes, to the Special Prosecutor.

Mr. BOYDEN. I move to amend it so that the Navajos turn over to the Hopis their land, too. [Laughter.]

In talking about the difficulty of moving these people in and out, I will talk to you about that when I show where this population is

located. But here is the interesting thing, and I want to file with the committee a dwelling count in the joint use area.

I do not have extra copies of it, but I would like to file that with the committee because I will produce a map to show that we have been vague about this thing. We can never make a personal account here and we have to do this in a way that would explain how this was done, but it will very effectively show how it was done.

[The dwelling count follows:]

DWELLING COUNT IN NAVAJO-HOPI JOINT-USE AREA

In mid-July, John B. Keating, Jr., and Thomas Budge were engaged to count the dwellings on the Joint-Use Area. The techniques to be used were aerial photographic interpretation with field correlation on the ground and in light aircraft. In researching the problem imagery was found to be available over the area for several dates and at different scales (See Exhibit 1). It was also discovered that the Arizona Highway Department (now part of the Arizona Department of Transportation) had recently published a new county map series over both Coconino and Navajo Counties. These maps had dwellings depicted on them using a separate symbol for each dwelling. A comparison of the county maps and aerial photos for each dwelling. A comparison of the county maps and aerial photos showed a close correlation between the two source materials.

A more intense accuracy test was performed on the maps to see if they could be utilized as source material in the construction of a dwelling density map. First, the Photogrammetric Mapping Division, Arizona Highway Department was visited to see if correct compilation methods were used. Mr. Jim Webster, Division Director, pulled the original aerial photographs that were used to compile the maps over the joint-use area. These photos were used on both the ground and in the air to count and locate dwellings by Highway Dept. personnel. Mr. Ralph Eady, Supervisor, County Mapping, stated that the Department's specifications for dwellings included all houses and hogans that appeared to be inhabited. He also stated that the Department does not attempt to find out if the dwelling is occupied at the time of the survey.

Several of the aerial photos were examined under stereoscopic equipment and compared highly with the maps on dwelling counts. These photos and the maps compiled from them were taken into the field on July 15, 1974 to compare with actual dwellings on the ground. A low flying light aircraft was the primary mode of transportation. The maps compared within three percent of the actual buildings on the ground. A more detailed look at this low variation showed that in most incidences more dwellings were counted on the ground than were on the maps and that they appeared to be newly constructed buildings. A total of fifty-six (56) dwellings were found to be under some phase of construction and several house trailers appeared to be new. Two of these apparently new trailers were located in Pinon. These 56 new dwellings should not be taken as a total count as only part of the area was in the sample survey.

The 1970-71 Coconino and Navajo County Highway maps were determined to be the most accurate source available to produce a dwelling density map. These maps were also compared with the U.S. Geological Survey's topographic 7.5' quadrangles dated from 1964 to 1968. The dwellings on the 46 U.S.G.S. maps within the joint-use area numbered 3,233. This compares with 2,965 dwellings on the Arizona Highway County maps. The discrepancy between these two is less than three percent. The HR 11128 Bill's proposed line was also plotted on the county maps. It was found that 1,509 dwellings were within this line and that 136 of these dwellings were in the area West of the joint-use area and East of U.S. Highway 89.

The 12 individual county map sheets were assembled into one map. This map was then divided into one mile squares extending the basic Township and Range System. The dwellings within each one mile square cell were counted and a dwelling density map was produced utilizing standard cartographic techniques. This map (Exhibit 3)¹ is 44 x 42 inches in size and has the dwelling density depicted on a color overlay, with another overlay with the HR 11128 line on it. This map clearly shows many concentrations of Navajo dwellings within the joint-use area. While the overall density is very low, one dwelling per square mile, the

¹ Map retained in committee files.

uneven distribution of dwellings found in the area makes the actual density much less.

The low altitude overflights, also brought to light differential grazing along the boundary between the Hopi Reservation and the Joint-Use Area. It was easy to identify overgrazing in the areas outside the Hopi Reservation especially when a fence divided the two areas.

J. BRUCE KEATING, Jr.,
*Director (Acting) Center for Remote Sensing
 and Cartography, University of Utah.*

AERIAL PHOTOGRAPHY AVAILABLE OVER THE NAVAJO-HOPI JOINT-USE AREA

Agency	Date	Scales
1. U.S. Geological Survey	1964-67	Various.
2. Arizona Highway Department	1970 Coconino County 1971 Navajo County	1 in equals 5,000 ft. Do.
3. Arizona Resources Information System (high-resolution U-2 imagery).	1972-73	1 in equals 2 mi.
4. BIA (Olympus aerial survey) (project underway, northern half of area has been flown but clouds have caused a delay in this project).		1 in equals 1,320 ft.
5. Arizona Highway Department (project photos along proposed new roads available in some portions of study area).		1 in equals 1,000 ft.
6. Skylab imagery	June 1973	1 in equals 16 mi.
7. ERTS imagery	Every 18 days from August 1972.	Do.

MAPS AVAILABLE ON THE NAVAJO-HOPI JOINT-USE AREA

1. USGS	1964-68	1:24,000 and 1:62,500.
2. USGS	1970	1:250,000.
3. Arizona highways	1970-71	1:125,000.

Mr. BOYDEN. Now, in that report that I have just given you, just in one sector they found 56 new homes that were in the process of construction now, and we have had two citations here which were modified in a final decision by the lower court that they cannot do it, but they are still doing it.

And they saw the hammers of some of them still building in this area. Fifty-six of them. Now let me show you, there is not any difficulty at all in moving in. The difficulty comes in and the pain comes in a reverse motion.

That is where the trouble is. There is plenty of room here. And I do not like the statement that this is a question of people versus grazing rights, even when it comes from a Senatorial source, and I will tell you why.

Because the Hopi people have a custom of living in villages and they go out and use the land. The Navajos have a custom of having several hogans, and they would move to different areas during the different seasons.

Nobody will change the life pattern of either one of them. There is no question about this being people versus grazing. This is grazing versus grazing. There is plenty of room, as I will show you, for the Navajos to live on their one-half, and many of them to live on a mile space each.

So it is grazing versus grazing; that is a misnomer and it is misleading to say that it is people versus grazing.

Senator ABOUREZK. Mr. Boyden, I wonder if I might interrupt you there. You have hit upon probably the crux of this whole thing. I think it is useful to try to straighten a few things out.

Are there not, in the disputed areas, and especially in the area that has been marked off now as exclusive Hopi land in the disputed area in the House bill and a couple of other bills, are there not Navajo people living permanently on that area?

Mr. BOYDEN. Yes. No question of it.

Senator ABOUREZK. Are there not Navajo schools there and Navajo institutions that give the Navajo who live there a sense of permanence?

Mr. BOYDEN. They have received Government help, there is no question about it. I am not able to locate the schools for you.

Senator ABOUREZK. But in specific answer to my question, are there institutions such as schools, welfare agencies, and other such institutions that give the Navajo who live in that area a sense of permanence?

Mr. BOYDEN. Yes, I am sure there are welfare agencies because we found some of these people who were getting welfare through the Navajo agency and the Hopi agency, so they got double welfare. I know they got that.

Senator ABOUREZK. I know, Mr. Boyden, that you cannot resist the temptation to snipe at the Navajo, but—

Mr. BOYDEN. I am not sniping. I have some good Navajo friends. But when the Navajo are wrong—

Senator ABOUREZK. Some of your best friends are Navajo, but in an effort to try to resolve that question I wonder if we cannot just establish some of the facts; that is what I am trying to do.

Is it or is it not true that there are some permanent institutions that give the Navajo a sense of permanency in that area?

Mr. BOYDEN. Yes. I think my next map will be very helpful in that regard. I hope you are not intimating that I am not giving any facts, by what you say.

Senator ABOUREZK. I am not intimating anything. I am just trying to establish some facts. I wonder if we could have order in the hearing room. If the audience would refrain from talking or laughing it would be very helpful.

Mr. SEKAQUAPTEWA. If we are going to be restricted to a certain timeframe I would only ask that the other side be restricted in the same way. I think we should have this hearing conducted in a fair manner to both sides. We have a lot of information to give, and Mr. Boyden has not given all that he has got.

Senator ABOUREZK. In my opening statement, if you will recall, the committee has allotted 2½ hours to each side. I do not know if you recall the opening statement.

Mr. SEKAQUAPTEWA. I recall it. I just want to be sure that we get equal time.

Senator ABOUREZK. If you see any unfairness or inequity please tell the committee and we will straighten it out.

Mr. SEKAQUAPTEWA. I will, Mr. Chairman.

Senator METZENBAUM. Mr. Chairman, I wonder, on that subject, if the Hopi spokesman would not want to reserve some time for rebuttal. It seems to me that it might be helpful to the committee.

Mr. BOYDEN. I certainly would.

Now, may I say to the committee, that we have had so much guessing about what is in this area, we employed just in July from the University of Utah a man who is expert in reading aerial photographs and so forth, and the complete source material is on file.

I do not want to take the time to show how impressive this is here, because it is in the record. We will run short of time if I begin to explain that.

But the Arizona Road Commission made certain surveys and there were certain things available so that you could tell the number of dwellings in this area that they are talking about.

Now I would like to show you this. That where there are more than 10 dwellings per square mile in the joint use area, it is in red on this map. Where there are 5 to 10 dwellings per mile, that is less than 10, but from 5, that is orange.

And the yellow indicates one to four dwellings per square mile, and the green indicates less than one dwelling per square mile in the joint use area. There are maps, 70 and 71. They have made a survey, a low-level flight to make checks of what has been done.

Now, Senator Abourezk, I think that pretty well tells you what the story is, as to where these people are located, and how densely populated it is. And when we say that there is not room, outside of what might be given to the Hopis here for the dwelling, that just is not so.

The whole question is grazing, and there is not enough grazing—it is overgrazed with the Navajo sheep, without a Hopi there, over 700 percent at the present time, which is suicide.

I cannot understand where the Sierra Club is when we are talking about destruction of land in that fashion. Seven hundred percent overgrazed. We are talking very much about grazing versus grazing.

I would like to bring an overlay on this, to show you one thing. This was the Steiger bill, which was introduced in the House, in which they delineated the area. That is the area that was delineated for the Hopis and the Navajos outside it.

It might be improved upon, so we are the first to say it might be. But there was in this the number of families in it, the number of hogans that were in it. Incidentally the number of hogans is not a definite determination of how many people are there, because they are not all occupied.

But the number of hogans, I will not recall it from memory, you can read it in the exhibit I just handed you, how many there were in the Steiger bill. Now in the Owens bill we thought we were compromising.

And this passed the House this year. We said if that is not drawn fairly then let the court draw it. Now, goodness knows, we did not want to go back to court again, because we have been there so long now that we are exhausted and financially embarrassed.

But if that is not fair let a court decide what is fair under the circumstances and let him draw the line wherever it might be. There is the difference between the bill that passed the House in the 92d Congress and the bill that passed the House in the 93d Congress.

So the court draws the line, instead of here. Now there are several places it can be avoided. They said, under the criteria established, that you must take into consideration and avoid, where possible, densely populated areas of this kind.

But suppose you take them and you move them that far. That is no great relocation problem, to call them refugees. They are not driving them out of the country. They are not driving them anywhere.

They own a half-interest and they have less than one hogan per square mile in all of the green area out there. Now, when the area office that has been established for the joint use area went to visit some of these places that were hogans, they found that pretty well they were all occupied when you got around district 6.

But when you got out further, as I remember it, I think we might have someone here from the office that can verify it. I think they found as much as 20 percent of the hogans were not occupied, when you got out a little bit further.

And the Hopis have always contended that what they are doing is moving around district 6 to block us in. We have some of these people who are in the joint use area that are probably coming over.

But we cannot prove it. If they say they did not, there is no way in this world that we can prove that they did. We have tried several things. Statements can be made to their advantage.

Let me give you two examples. In one of the supplemental hearings in Arizona we had a man who drove Mr. Sekaquaptewa cattle out of the joint use area. They were in this area over here. He said he did not do it on the stand. So Mr. Sekaquaptewa was smart enough to have taken a picture of him doing it, and of his truck and got the license number and checked it and produced it in court.

But he said he did not do it. Now we have another example in which the court found this, just the other day. The chairman of the so-called Hopi-Navajo Land Commission, and that is another deceptive situation, there isn't a Hopi on it, this is a creation of the Navajo tribe, and they issued these things to Congress as though the Commission had decided this thing.

They are a Commission of Navajos and Navajos only. That man said with respect to a ceremonial structure that he had gone up there and that it had been removed. Our man went up after and took a picture of it still standing and introduced it in court. And said it has not been removed. It was removed later, but it was not then. But in the Montoya bill they say find out whether these people have lived there their lifetime. There isn't a man on the face of the earth within his lifetime who can determine, or a Commission, how long those people have been in their area.

They can make their statements, and you cannot disprove them to save your life. Another thing that happens, also, that makes time so important to us. There is a custom of the Navajo people that when a daughter marries she brings her husband to the residence of the father. He has his own little cluster, and this is the way that much of the colonizing has been done.

You are not going to change that custom by letting them stay here another 5 or 10 years or whatever it is. There are not enough policemen in this country to enforce that.

The only way to do this is to do like the House did. They said, in the Moencopi area, we will make a decision now, not later, because if you put that through court again and they drag it, like they have done, to the Supreme Court on every decision, they will be so full of Navajos by that time that it would be the same old story again.

We will have to displace them all. So time is very important in this case. And the House had the intestinal fortitude to draw the line. It is not what we wanted, as the Stewart affidavit will show you.

The Stewart affidavit says—I went over and explained that this was an explanation in respect to a letter written by Mr. Shifter to this committee, saying that Mr. Stewart had indicated how many acres would be here and how many there.

Mr. Stewart gave his affidavit and said, "I was only explaining a bill, as the bill proposed by Mr. Hagerman, and that bill was not acceptable to any of the Hopis" and the legislation did not follow that at all. He said, "I am of the considered opinion" and he was a former superintendent of the Navajo reservation, a former director of the Division of Lands and Mineral Resources, I believe they called it at that time.

And he says whatever is taken away from the Hopis in this ought to be given to them outside in equal numbers. Well, the House did not do that with us. The House said, "No, we are not going to give you some 900,000 acres.

"We will give you 200 and some odd thousand acres." That is about 600 and some odd thousand acres less than we had asked for. But we know this. We are realistic about this. That the more that time goes the less the Hopi gets.

If we had it when they first started to do this, when they set it aside to protect us against them, we would have had all of this reservation without any question. So we feel that time is important.

I know that a lot of Hopis will say that is not enough acreage for us over there. But it does take in the situation, it takes in the canyon reservoir, which is the source of their irrigation.

It takes in a couple of business corners that the Secretary of the Interior authorized the Hopis to build on, without consent of the Navajo tribe. And it takes in the Hopi village and a few other things that ought to be taken into consideration.

So we are practical about this. This has passed the House, and if it could pass the Senate in that form it would be satisfactory. This map that I have already shown you, there was 1,509 Navajo homes within this Steiger line.

I do not know how many people are on that reservation but that is all there were. Then if this is redrawn perhaps it can have less. You do not have to have half of the people in the joint use area.

You can draw the line in that fashion. I believe I have pretty well covered what our rights are here, and according to equity. And the court is saying, "We are going to get it for you" and unless Congress stops them we will have a reduction of livestock down to capacity, and the court has canceled all grazing permits there now.

There is not one sheep on that area that is there lawfully now. The court canceled the permits and said, "We will issue the permits, 50-50 to the two tribes" but the Navajo have not taken them off and we are still defied, as far as the court is concerned.

Now, let us go to the Navajo Reservation out here. The Navajo Reservation in 1934 was established by act of Congress—

Senator HASKELL. Mr. Boyden, may I interrupt? Before you do that, Mr. Boyden, I gather you favor the House bill. Is that the preference of the Hopi Tribe?

Mr. BOYDEN. Yes.

Senator HASKELL. What does the House bill do as to subsurface rights?

Mr. BOYDEN. The House bill does nothing in here, and that is no problem with us in the joint use area. It leaves it 50-50. But let me tell you how easily we get along on that.

The Peabody Coal proposition, they went to a Navajo tribe and got a lease from them. They said "We would like to lease our one-half interest—"

Senator HASKELL. Mr. Boyden, all I am interested in finding out is, does the House bill leave the mineral interests jointly for the two tribes?

Mr. BOYDEN. Yes.

Senator HASKELL. That is all I wanted to know.

Mr. BOYDEN. Yes, it does. Now, then, going into the 1934 reservation. That was a big reservation. I would have to show you on the other map. But without putting it up it came clear around over here, and there were only parts in that that were established, definitely, for the Navajo Indians.

With all due respect to what Senator Montoya said, every single one of the Executive orders that were west and out this way not one of them was set for the Navajo Indians. They were set for Indian purposes or for further order of the Congress or something of that kind.

It was over on the east side where they do it for the Navajo tribe. So when they had passed the 1934 act this is what they said. They said, "We will establish this for Navajos and such other Indians residing thereon."

Now, the description came out like this, and all of the Hopis were residing thereon or therein. There were a few scattered Paiutes residing therein. So this is distinctly unlike the situation over here, because in the 1882 reservation the Executive order said, "For the Moqui Tribe of Indians and such other Indians as the Secretary of Interior may see fit to settle thereon."

So there had to be a settlement. But there was a contemporaneous recognition of the Hopi rights in this area, because Congress in 1934 set that aside for the Navajos and the Hopis because they said, "residing therein" and they were all residing therein.

They said "with respect to this area it shan't affect the title to the joint use area." But that was protecting the Hopi rights and the Solicitor gave an opinion and said "There is no question about the Hopis' rights in this area."

So when utilities up in this area clear above that started to build their lines, I said, "Just a minute. We have an interest in there. Unless you pay us for right-of-way the same as you pay the Navajo Tribe I am going to go to court about it."

Their attorneys went through the whole thing and said "You are right" and paid us over \$100 and some-odd thousand dollars for the rights-of-way up in this area up here. Now, Senator Haskell, up in this area we have those rights to these utilities.

And you know they are not paying us something for nothing if we did not have title to it. They pay this money to us and the lines and the rest of it. Under the House bill as passed this time only the mineral rights under this area that goes to the Hopis would belong to the Hopis exclusively, and the Hopis would quitclaim all the rest of their interests in all the whole reservation.

Well, there is not a single thing in the 1934 act to tell anything about the quantum, that the Hopis would have. It just says that it protects their interest, and that is all. This is the false part about what has been suggested in one of these bills.

And also the Department has come up. I do not know if they cleared this with the Solicitor or not, but they asked the court to make a decision which is political in nature, and the cases are clear in that you cannot delegate that to the court.

This is a policy decision to be determined by the Congress. If you are going to determine the policies you have to write the criteria by which they do it.

If you do not write the criteria you will find it is unconstitutional. You just cannot do it that way. So to me, when you start to write the criteria in this thing, it is easier to delineate it and get it all behind us now, than it is to go through that and make us go to the Supreme Court two or three more times and fight this thing out long after I am out of the picture.

I would like to get this settled now. And let me say this. That in that 1934 reservation we have one of the witnesses here today that lived over there when the Navajo problem was not a problem at all, and knows what the situation was.

This is a case of where the House has taken the bull by the horns. They have not given us what we want, but they have given us something and they have taken in the most vital things that are important to us.

Senator ABOUREZK. What didn't the House give you that you wanted?

Mr. BOYDEN. They wanted it just like Stewart said. They thought that since the courts had taken from us a one-half interest in this that we ought to get equal acreage outside to the west of what was taken away.

Senator ABOUREZK. In other words, you would want an acreage equal to the entire 1882 area?

Mr. BOYDEN. No. Just equal to the one-half that was taken away from our reservation.

Senator ABOUREZK. I mean a total amount.

Mr. BOYDEN. Tit for tat. You take that many acres from our reservation and we ought to take that many from yours.

Senator ABOUREZK. You believe in other words that a court decision that gave the Navajo an undivided one-half interest was really not intended to?

Mr. BOYDEN. That is right. We contended we were entitled to it all.

Senator ABOUREZK. So the House, you think, should have given you the entire area?

Mr. BOYDEN. That was the Hopi contention.

Senator HASKELL. Would you trace the line on that map where the House divides the joint area? I gather the House divides the joint area between the two tribes?

I am talking about the present House bill.

Mr. BOYDEN. The present House bill does not divide this joint use area. It says "We will leave it to the court to divide it." It lays the criteria down in which it says several things, including, "Put the Hopi next to the Hopi and connect it up with your Moencopi, and try to avoid the dense populations of the Navajo so you do not have to move any more people than you want" and so forth.

Those are the provisions specifically set out in the bill. Now, after the establishment of this reservation, as I have told you, there is no criteria here at all. If you try to set criteria—let me tell you what the problem is.

Suppose you say like they did here, the Navajos tried in this area to get it according to where they have possession of it and Congress would not go with that. They said, "While you have driven them out, can we just recognize your illegal acts?" Of course we cannot do that.

That is what they are asking us to do over here. We think it is not fair at all, to say that where they were in possession as of a certain time, because if you go back far enough it depends on where you put the time, there were not any Navajos there at all.

In 1882 you can see we have aboriginal possession of that and that is what they held. Well, I would like, now, if I might to just analyze two of the bills here, to indicate what the situation is.

I want to show you, first of all, what a problem we have in Moencopi, and why we cannot afford to go through a long process of lawsuits over there again. We have got a serious situation over there.

Here I can give you the names, Senator Abourezk. Emmett Tso, spelled T-S-O, a Navajo Indian, is claiming one of the corners that the Secretary said we can build on. That is, the Hopis can build on without the consent of the Navajos.

He went in there and started to try to build himself, and the Navajo Tribe stopped him.

We are defending a case in the U.S. district court because of that. I will tell you some of the things that have been said on both sides are far from being reasonable.

Senator METZENBAUM. You mean the Navajo Tribe stopped him?

Mr. BOYDEN. The Hopi Tribe stopped him. Yes, the Hopi Tribe stopped them. If I said Navajo, I meant Hopi. I do that too often. Another case, Wilbert Honahni, a Hopi, was arrested by the Navajo police for fishing in the pasture canyon because he did not have a Navajo license.

They took his equipment away from him and convicted him in the court. That has to go to the Federal court. On a Hopi reservoir—and there is a good story in connection with that—the Navajos tried to get that at one time by saying that everything on the Navajo Reservation will be transferred from the Government to the Navajo Tribe.

It passed the House. We discovered it after it passed. We came back here and explained it to the Senate, and the Senate took it out, and that did not go to the Navajo Tribe. Then the House concurred.

So that is not the property of the Navajo Tribe. It was exempted from that bill. Yet they are arresting these people, the Navajo—the Navajo are arresting the Hopis for fishing in this place.

You know the Hopi money is used to repair that. To keep that for their farms. That is the kind of a problem we have. Then Navajo cattle—we traced the brand from 50 miles away—were trespassing in the Moencopi village.

Close to it there in the Hopi cornfields of Alton Honahni, a Hopi Indian, the cattle were rounded up by the Hopi police and taken away and held in trespass in the Hopi area. And the Navajo then arrested Alton Honahni for theft of the cattle.

We are, of course, in the process of defending that. You can see that we cannot go on with that kind of thing. Not only is it unfair to expect

tribes to do that, if we had had somebody who had what it took a long time ago, we could have avoided all of these things.

But they just do not do it. They just let them go because the Hopis are a small, helpless people and the Navajos are moving on and taking over. Now, this is a direct method of taking over, and there are many other things, too.

On the other hand, they arrested a Hopi who had run into some Navajo cattle that were trespassing down in the Hopi village, and they have jurisdiction for that. But when we go in to do something about it, they say they cannot entertain a Hopi suit because they do not have the jurisdiction to do it.

It does not make sense, but it creates real problems. That is why it is very important that some kind of a decision be made in this regard and be made right soon. If you put this over, creating a problem that if you go over there with the kind of a bill we have here with the Montoya bill where we say all you have to do is turn this over to the courts, without a criterion, then the first thing that will be determined by the courts is it is a political thing and cannot be done.

The reason it was taken out of the first bill, this partitioning proposition, that question that was raised by Perry Morton who was in the Department of Justice at that time and came over and testified.

We took it out to please the Department of Justice in order to get the bill by. That is why the partitioning was not in, and that was not even half as close as the question we are raising there now.

We feel that it is very important that that be protected. Let me make a few other observations with respect to the Montoya bill. I know my time is going, and I would like to have a little time for rebuttal.

Now, in *Healing v. Jones*, as I have told you, it was tried for a solid month. All of these exhibits and three pretrials in Phoenix and San Francisco make this determination, and the Montoya bill picks out what it likes. And strains some of it and leaves off the other part of the bill and makes that a congressional finding. Superimposing that upon the court's finding that has been to the Supreme Court.

Let me just illustrate that. Under the bill Congress would find only that the Executive order was set aside for the use and occupancy of the Moqui and such other Indians as the Secretary of the Interior may see fit to settle thereon.

I remind you that the court found that two of the reasons for establishing was to protect against the Navajos, as I have already mentioned, and they make no mention of that at all.

Under the bill Congress would find that the Navajos have lived on a substantial portion of the land located in the Executive order reservation, both prior to and since December 16, 1882.

Now the court found that the Navajo population in the reservation was only 318 in 1882 and the court further found that none of the 21 Secretaries of the Interior who served from December 16, 1882, the date of the Executive order reservation, until the passage of the act in 1958, not one of them ever authorized or anyone ever authorized under them had ever settled the Navajos in the reservation.

That is what the court held. The settlement was by implication because of the neglect of the Government to protect the Hopi people. The case further held, on page 137, that after the establishment of the reservation in 1882, Hiram Price sent a telegram.

He was in the Washington office. He sent a telegram to Superintendent Fleming then of the Hopi Reservation and he said, "The Pres-

ident issued orders, dated the 16th, setting apart lands for Moqui recommended by you. Take steps at once to remove the intruders."

At page 146 the court reports in its opinion that R. V. Bell, Chief, Indian Division, I suppose that was the same as Commissioner of Indian Affairs at the time, October 10, 1888, sent a memorandum to the Secretary of the Interior which concluded as follows:

The Moqui Reservation was established by Executive order on December 16, 1882, for the Moquis and such other Indians as the Secretary of the Interior may see fit to settle thereon.

Now, bear this in mind. "It comprises no land set aside for the Navajos and no Navajos have been settled thereon by the Department." That is 6 years after the 1882 reservation. On the same day in which the memorandum was written, it was received by Secretary Vilis, the Secretary of the Interior.

Later the same day he wrote to the Secretary of War, requesting that a company of troops be dispatched to the area, with instructions to move all Navajo Indians from trespassing with their herds and flocks on the Moqui Reservation and to notify them that their depredations must cease, and they must keep within their own reservation.

This statement was also typed on page 146 of the decision. Now, to put in the statement in the Montoya bill without putting in the full facts distorts it and changes it and makes a justification for doing something that is unfair.

Under the Montoya bill the Congress would find that the Hopis have traditionally lived within the area, land management district 6. And the Hopi use and occupancy of the joint use area has been de minimis.

In law that means that it does not amount to much. The court did find that. But the court also said—

The failure of the Hopi prior to the settlement of the Navajos to use a substantially larger portion of the 1882 reservation than is embraced in district 6, was not the result of free choice on their part. It was due to the fear of the encircling Navajos, and inability to cope with Navajo pressure.

Without further analysis, I hope that I have illustrated to you that the Montoya bill is a Navajo bill that distorts what the facts are, in order to justify an unjust conclusion.

There is not any question about that, as far as I am concerned. Now, Senator Abourezk, may I proceed with the consideration of the bill that you have introduced? I want to be very frank about this thing, because I think it is ill conceived, and I want to tell you why.

Section 103 of title 3—let us first talk about titles 1 and 2. That is the same as the Montoya bill. All that is is sugar coating for the pill that the Hopis are required to take under section 3.

So we will not talk about that at all. Then it comes to section 3, section 103—that is title 3, section 103, and it may require a new law suit to partition the land, because all it does is authorize the court.

But in the House version it says, "In the supplementary proceedings." So the court that is familiar with the whole thing could go ahead with it and there would be no question about it.

I am sure that a question could be raised, if we leave section 3 as it is in the Abourezk bill, under section 2 of the partitioning, section 2 of the House bill, the partitioning would be in the supplementary proceedings.

Section 303 provides the land distributed to the Hopis would be sub-

ject to section 607. Section 303 says, "We will partition it 50-50 along those lines" and then section 307 allows the Navajos to stay there.

Some of them, if they had been there a lifetime, stay there a lifetime. Well, somebody does not realize what is going on out there. The court has found when the Hopis even go to gather wood, the Navajos have tipped their wagons over.

They steal their livestock. How will you put them out there when you let these people stay there? It will mean that the Hopi will not get any possession of this land for years to come.

And this is exemplified in the letter that our anthropologist, Mr. Eggan, has sent. Then it adds further words about keeping the livestock under such regulations as the Secretary may prescribe.

That is that the Navajos who would be allowed to stay could keep their livestock under Secretary's orders. Look what the Secretary has done in the last 100 years. And they want to still leave that to him.

Now, it seems to me that we have, by implication, allowed the continued overgrazing here, a matter that I think, by implication, which I am sure the writers of that bill did not have to spell out in plain language to do exactly what it does.

It ties the hands of the court in reducing the livestock. That is exactly what it does. To determine whether a man has lived in the joint use area is a lifetime task. You can go out there and every one of them can tell you. "Sure. I have lived here all my life."

Who will tell you any different. You go out in that wild country and try to determine those things. We tried to find a lot of things. We cannot even get a grunt out of some of those people.

There is no way that anyone can determine that. Professor Eggan says in his report that by insisting on such provisions the Navajo tribe has effectively nullified any use of the Hopi Indians in their portion of the joint use area, during the lifetime of the present Hopi, and very likely very much longer.

Now, again, there is a provision in this, not with respect to turning this over to the courts in 1936. But the other bill, the Abourezk bill, does describe an area. But it describes a very inequitable area, which cuts it down considerably from what the House did.

And this is what it does. It leaves out the Hopi Reservoir in Pasture Canyon and turns it over exclusively to the Navajo. It leaves out the business corners in the joint use area.

In 1936 I know where that road was. It was only 2 years after the reservation was established. When I first went in there it went down from the old Babbitt Trading Post and it was considered as Hopi property on the right hand as you proceeded to the east.

But now that is all filled in and the Navajos have profitable corners several blocks down. So the Secretary said, "We will give you two corners." And they did. But Senator Abourezk's bill takes them away from us. That is what that does.

Then we found a very interesting thing. When we wanted to establish this over here, the Department made a recommendation as to where the line should be drawn. They left what we call the irritation strip, so that these two did not go in.

I just happened to remember that when the Peabody Coal asked for a permit, they asked for a permit for coal, just in that part that was reserved for the Navajo Tribe. So if we are going to get the minerals, we will take the coal we know about and give it to the Navajos.

That was the effect of it. That is why Congress took that irritation strip out. So the present bill would put it back in and let the Navajos have the whole thing. It would leave a disconnected piece in here.

If you knew how tough it is to keep the Navajo sheep out of district 6 right now, we are having trespass actions all the time. Then to put a place where the Navajos will be in between us on both sides, we cannot police it and neither can the United States.

It just does not make any sense. Now, then, perhaps the crowning thing with respect to this is the description in your bill, Senator, leaves out Moencopi Village, where all of the Hopis are residing at the present time.

I have a map to illustrate that here. But I know I am running out of time.

Senator ABOUREZK. Mr. Boyden, I think it would be fairer to you and to the people you represent as well as to the other side, that so long as the time is divided equally, I do not think we have to stop at 2½ hours. If you feel that you need more time I would not restrict you so.

I know you are not going to filibuster.

Mr. SHIFTER. Mr. Chairman, this is a rather unusual situation. But since we are talking about time, I think it should be made known that there are a number of Hopi traditionals who are here who have asked for time.

As I understand it, they have been refused Hopi time. Therefore, the Navajo time has volunteered a half an hour of its time under the present 2½-hour system to allow these Hopis to say what they please.

Perhaps Mr. Boyden would allow—I do not know if he would allow any Hopi testimony, but we will see.

Senator ABOUREZK. I just think people have traveled a long way and I will not shut anyone off on time. Just so it is roughly equal.

Mr. SEKAQUAPTEWA. We would like to have an opportunity to monitor the translation, if we feel they are not accurate, we would give our own translations of what they say.

Senator ABOUREZK. Certainly.

Senator FANNIN. Mr. Chairman, the understanding is we will finish today?

Senator ABOUREZK. Yes. We will work late today and try to get it done. But we do not want to short anyone on time. Provided nobody filibusters, we reserve that to ourselves.

Senator FANNIN. Mr. Boyden, do you have a copy of this map, the colored map that you have there?

Mr. BOYDEN. No, we do not. We just got it the day before we came.

Senator ABOUREZK. Can we have that for the committee files?

Mr. BOYDEN. We can leave that here, but we will probably need it again in lawsuits and we would like to have it back after it has served its purpose.

Senator FANNIN. If we could reduce it in size, we will see if it can be done.

Senator ABOUREZK. We will ask the BIA to reduce it and provide it to the committee and give you the big map back.

Mr. BOYDEN. Fine. Let me just conclude this. I think we can come to a good point to stop here. I want to say a few things that are not in the bill, but I think are of importance.

There is no provision made for the Paiutes at all. Now, what do we do? You simply take the land away from them without due process

of law? The House bill provides for that, but this bill leaves them out entirely. No mention is made of the Paiutes.

There is no adequate provision for the specific protection of Cliff Springs, which is a sacred Hopi place, and which does not create too much controversy. But that is in the House version, and it is left out of this.

The remedies that are provided for the Hopi tribe in sections 16 and 17 of the House bill are all omitted from the Abourezk bill. Of course, if they are in and omitted by the Senate, that makes a very plausible defense against us pursuing any of the remedies we have.

And it may be a very effective defense. There is another thing. There were certain allotments made around Moencopi, both to Navajos and to Hopis. The House bill makes provision for that.

But there is nothing in here to protect those people in that regard, and that should be taken care of. But I think perhaps the most obvious thing that shows—whoever put that description together did it in an awful hurry, or did not understand the situation, because they left out Moencopi Village, and all the Hopis living there are not included within this area they give us.

I think I should say this, as far as the tribe is concerned. We are nearly exhausted. This has been a long time. It took us quite awhile before we got the 1958 bill. Then to proceed as we proceeded for this length of time and the Congress gives it to the courts and the court settles it with respect to one area and now we start talking about the equities again, we want to compromise the compromise.

Most of the rest of the people in the United States certainly do this. They abide by the decision of the Supreme Court of the United States. The Navajo Tribe does not. They defy it.

So we think that we are entitled to exactly the same rights as anybody else in the United States. With respect to the 1934 reservation we beg of you not to throw that into another span like we have here.

You know we cannot match finances with the Navajo Tribe. You know it has got to be a determination that is a policy one, and you have to put criteria down. If you put it in certain ways, you will determine exactly how it is going to be done.

Why can't we do as the House did? Take hold of it and say, "This is it." And save us from that trouble. Now we do not have what we want in the 1934 reservation, by just about one-third of what we are asking for.

But we know if this is extended again the Navajos are moving in and will continue to move in. You put in another 5 years and we will have the same kind of problem all over again.

We feel we are entitled to that, rather than fight this thing, I think it is in the best interest of the tribe, although not all the members would agree with me, to take the House version and the 1934 just as it is. We sincerely believe that more than fairness has been exhibited on the part of the Hopi Tribe. More than patience has been exhibited. I do not know if you will allow me to close with a biblical or at least a scriptural quotation.

I think we could just say, "How long, O Lord, how long?" Thank you.

Senator ABOUREZK. Thank you, Mr. Boyden. You have an hour and 10 minutes remaining on your first initial 2½ hours. It is 12 noon. I think we will break at this time for 1 hour for lunch.

The staff has been trying to get a larger hearing room. We did not know we would have this big a crowd. We could not get a hearing room for this morning any larger than this one. But they are still trying to get a larger hearing room, because it is unfair to the people who have to stand out in the hallway who want to listen to the proceedings.

So if we do find something we will post it at this door out here and tell you where to go. It will be either on the first floor of this building or the caucus room where the Watergate hearings were held earlier in the Old Senate Building.

So, until 1 p.m. we will adjourn the hearings temporarily.

[Whereupon, the hearing was recessed, to reconvene at 1 p.m. in room 318 in the Russell Building.]

AFTERNOON SESSION

Senator ABOUREZK. The committee hearings will return to order. We will open the session again. Mr. Boyden, on your side, you have used an hour and 20 minutes. You have an hour and 10 minutes remaining to use as you see fit.

If you want to yield now to the Navajo side, that is perfectly all right. If you want to continue it is perfectly all right.

Mr. BOYDEN. I think we would like to continue with some of our witnesses at this time.

Senator ABOUREZK. We would like to ask now that we are in a larger hearing room to make sure to use the microphone so the official reporter can hear everything that is being said.

Mr. BOYDEN. Mr. Sekaquaptewa, chairman of the Hopi Tribe, will be our next witness.

Senator ABOUREZK. Please proceed.

STATEMENT OF ABBOTT SEKAQUAPTEWA, CHAIRMAN, HOPI INDIAN TRIBE, SALT LAKE CITY, UTAH

Mr. SEKAQUAPTEWA. Thank you, Mr. Chairman, members of the Interior Committee. I do not feel at home here, as I did but we will see how we do. My name is Abbott Sekaquaptewa, presently chairman of the Hopi Tribal Council. I served previously in that office 10 years ago, and I also chaired the open negotiating committee. That committee was formed in 1962, following the district court decision in *Healing v. Jones*. I would like to refer to that a little bit here, because we, as a negotiating committee have tried, unsuccessfully since 1963, to regain our one-half interest in the 1882 Moqui-Hopi Reservation, through negotiations. Despite the 10 years of efforts before Chairman Peter MacDonald's election to office and thereafter, the committee has been unable to get the Navajo Tribe to come to the negotiating table in good faith to try to come to a fair settlement based on the court's decree.

During Chairman MacDonald's tenure, we have attempted to enter into meaningful negotiations with his administration. Unfortunately, however, MacDonald and his negotiators have always insisted upon negotiations as a substitute for all pending legislation and litigation regarding this problem, and demanded a moratorium on all such pending legislation and litigation in the hope of killing all possibility of a legislative settlement to this longstanding problem.

After the March 7, 1973, Senate hearings of the Committee on Interior and Insular Affairs held in Winslow, Ariz., negotiations were

once again attempted as the result of the committee's acceptance of Mr. MacDonald's promises of a negotiated settlement at that hearing, but broke off in frustration after only two sessions.

Through 10 fruitless years of negotiations and nearly 15 years of litigation, the Hopi have amply demonstrated that the nomadic Navajo will not abide by or obey any law or regulation.

We find in "Campaigns Against the Navajo," a study made by the University of New Mexico, that long before 1868 the Navajo had a long record of intransigence and depredations. Various Governors of New Mexico tried to keep the Navajo from raiding and plundering Mexican, Indian, and White settlements in New Mexico in the early 1800's.

The Navajo, during the Spanish, Mexican and American era, repeatedly violated treaties of peace before their invasion westward into what is now Arizona.

By treaty of June 1, 1868, at Huelte, otherwise known as Bosque Redondo, a reservation was set apart for the Navajo straddling the Arizona and New Mexico boundary, and they ceded to the United States any claim to other lands.

That treaty states in part:

It is further agreed and understood by the parties to this treaty, that if any Navajo Indian or Indians shall leave the reservation herein described to settle elsewhere, he or they shall forfeit all the rights, privileges, and annuities conferred by the terms of this treaty.

True to their nature, the Navajo immediately broke the treaty and began wandering at will all over the lands of the Four Corners area, encroaching upon lands belonging to others.

By these actions, the Navajo also broke a solemn treaty with the Hopi, sealed with a sacred symbol given by the Navajo to the Hopi, that if the Navajo ever returned to their ways of depredation and encroachment, that they must once again suffer the consequences of removal from Hopi territory.

This sacred peace symbol remains with the Hopi to this day at First Mesa. Fourteen times since the treaty of 1868, either by Presidential order or by act of Congress, the U.S. Government has allowed itself to be a party to Navajo treaty violations by ignoring that treaty and compromising Hopi and other tribal lands to the Navajo, the last being in 1934.

This land mass now totally encompasses the 1882 Moqui Reservation and the exclusive Hopi territory known as district six.

By 1882 when it was obvious that the Navajo push westward would soon consume Hopi lands far to the west of the 1868 Navajo Reservation, President Chester A. Arthur on December 16, 1882, set aside the Executive order Moqui-Hopi Reservation.

The Navajo, however, continued encroaching, plundering and settling on this land set aside for the Hopi Tribe. Finally on July 22, 1958, Congress established a U.S. district court of three Federal judges to adjudicate the by then conflicting claims of the two tribes and to quiet title to the lands in question. This court heard the case known as *Healing v. Jones*, civil No. 579, in Prescott, Ariz.

The court decreed, in spite of finding that the Government and the Navajo Tribe had always illegally prevented the Hopis from utilizing the lands of the 1882 reservation, and that of 21 Secretaries of the Interior who served from 1882 to 1962 none had ever specifically either in writing or orally ever settled the Navajos thereon.

That the Hopi and the Navajo Tribes have joint, equal, and undivided rights to all of the 1882 Executive order Moqui Reservation, lying outside the boundaries of grazing district six, share and share alike.

Thus, by the decree of this court, the Hopi people lost one-half of their reservation because the Secretary of the Interior through negligence and failure to protect Hopi rights from Navajo encroachment had "impliedly" allowed the Navajo Indians to settle thereon.

Although it has been determined that in 1882 only 300 individual Navajos were on the Moqui Reservation, today, the Navajos number in the thousands, most of whom are concentrated around the boundary of the exclusive Hopi Reservation and still trespassing with their livestock on Hopi land.

I think this was depicted quite clearly in the map that was presented earlier today by Mr. Boyden. I wanted to point out, too, that I will at points in my statement deviate from the written, prepared statement that I have.

Continuing with the statement, the 1882 joint use land is occupied today almost exclusively by Navajo Indians whose chairman has repeatedly stated that the Navajos will not voluntarily move and give back to the Hopi their half interest.

Mr. MacDonald has threatened and gone on record as late as July 17, 1974, that the Navajos will have to be removed at gunpoint as they were at the time of the Long Walk to Fort Sumner.

The long walk, of which the Navajo seem to be so proud, was brought on themselves by their easy violations of their treaty promises and by more than a generation of predatory war on whites and Indians alike.

With that background, I refer now to the events just prior to and following the Winslow hearings of March 7, 1973. Following nearly 10 years of fruitless attempts to negotiate a settlement that would implement the decree in *Healing v. Jones*, the Hopi went to the U.S. district court for a writ of assistance in 1972 to effectuate that decree and return to the Hopis the use of the land.

After many court hearings the Honorable James Walsh, judge of the U.S. district court for Arizona, ordered that:

One, Navajo livestock be reduced to one-half carrying capacity of the range of the joint use area.

Two, no new home construction or improvements be made by Navajos in the joint use area.

Three, an accounting of all income from the joint use lands was to be made. Other directives were also issued which will not be discussed at this time. I think Mr. Boyden covered this quite adequately this morning.

As of this date, nearly 2 years after the issuance of the court order, the Navajos continue to ignore the court's order by noncompliance. The Navajo has always moved with actions that has suited his particular purpose for that particular time.

They may say here today that they are reducing livestock in the joint use area. They will probably make a token attempt just prior to a major court or legislative hearing so that they can come before you and say that they are complying with the law.

In fact, only cull animals or market cattle that would normally be sold anyway have been sold at public sales while replacement and breeder livestock remain on the land to further damage the range, which is now 750 percent overgrazed.

A Government survey during the summer of 1974 shows that the range in the joint use area is, as I stated, seven and half times overgrazed above capacity.

How can the Navajos come before you and say that the earth is their mother and continue to damage the land beyond repair in many instances?

New housing and new improvements continue to be commonplace in the joint use area. Contrary to the court's order, construction of new houses and new hogan building have been accelerated.

On July 9, 1974, and July 18, 1974, a total of 34 new structures were observed under construction in a 20-square mile area in the north-east section of the reservation. It was just about a week ago that this latest observation was made.

Probably because of a General Accounting Office audit, new Government-financed OEO and HIP-type housing have been phased out in favor of housing construction financed from other sources.

Just last week a Navajo woman, one Betty Phillips, who has moved a new mobile home to Low Mountain in the joint use area, was interviewed and told the interviewer that Mr. Samuel Pete, Chairman of the unilaterally established Hopi-Navajo Land Dispute Commission, had personally come to Low Mountain and consented and approved the mobile home to be moved into the joint use area.

This Hopi-Navajo Land Dispute Commission is without Hopi tribal sanction or participation. This is the same Samuel Pete who testified under oath in U.S. district court in Tucson, Ariz., that a certain hogan constructed for ceremonial purposes was dismantled immediately after the ceremony and was no longer in existence, when in fact the hogan was still in place as photographed and produced in evidence at the court.

The hogan was not dismantled until 2 weeks after Mr. Pete testified to its nonexistence, under oath in district court. As of May 1974, the Chairman MacDonald and the Navajo Tribe are in contempt of court for not having complied with the court's livestock reduction and cessation of new home construction orders.

They have been assessed a fine of \$250 per day, commencing on May 29, 1974, and continuing until the livestock of the Navajo residents of the joint use area are reduced to 8,139 sheep units year long which represents half of the present carrying capacity.

An appeal was made by the Navajo Tribe to the U.S. Circuit Court of Appeals in Los Angeles for a stay of execution of this order, but has been denied. Consistent with their attitude in the past, the Navajo Tribe presently continues to ignore the order.

Trespass of Navajo livestock continues daily into Grazing District Six, and I submit the following figures which are documented factual evidence as derived from the daily reports of the courtesy patrols initiated by the Commissioner of Indian Affairs on April 26, 1972.

This courtesy patrol, consisting of four, two-man teams of one Hopi and one Navajo each, patrol the perimeter of District Six daily and the figures reflect only trespass activities occurring since the Winslow, Ariz. hearings of March 7, 1973, and do not contain figures of trespass activities prior to that time.

Found in trespass were 5,949 horses, 10,065 sheep, and 689 head of cattle. I hasten to add that these figures do not reflect the total of

individual livestock owned, as many of them were the same animals found repeatedly in trespass.

Many incidents, including shooting at an aircraft with firearms on January 11, 1974, have occurred. A Navajo, one Merlin Black Mustache admitted to Mr. Ivan Sidney, criminal investigator for the BIA, Hopi Agency, and Mr. Frank Attakai, criminal investigator for the Chinle BIA Navajo Agency, that he had deliberately fired upon the courtesy patrol aircraft while that aircraft pilot was in the official performance of his assigned duties.

Moreover, the aircraft, when fired upon, was within the boundaries of the exclusive Hopi reservation. BIA employees and federally commissioned law enforcement officers have been deliberately assaulted and yet the FBI and the U.S. attorney's office have found excuses not to prosecute the Navajos who commit such acts of violence.

Two weeks ago on July 9, 1974, Mr. Hugh Sequi, a Hopi Indian herding sheep for another Hopi Indian, Harrington Navasie, shortly after watering the band of sheep at Little Spring, located in the Jed-dito Valley of the joint use area was fired upon with a small-caliber weapon.

No other people reside in that area but Navajo Indians. Mr. Sequi, a lifelong resident of the joint use area, is the son of John Sequi, who was hung in a hogan because he went to claim his livestock after they were stolen by Navajos.

The senior Mr. Sequi died as a result of this hanging by the Navajos. Yet, the Navajo will attempt to tell you that the Hopis do not and will not use the land. Now I ask you, how many of you can long survive against odds of better than 20 to 1, the ratio of Navajos to Hopis, when you are constantly faced with assaults and violence being perpetrated on you by a numerically superior and violent people, while Government law enforcement offices look the other way?

I have related to you only recent incidents of the kind that have intimidated some Hopis and forced other Hopis to relinquish use of Hopi land to the Navajos over the years.

And which 14 years ago resulted in the so-called joint use reservation. Denials of knowledge of these incidents by Navajo officials will not change the facts nor excuse those responsible for the enforcement of the law.

The Hopi have found themselves always at the mercy of the majority Navajo Tribe and never received justice. Only partition of the land, and separating the affairs of the two tribes and establishing clear jurisdiction for each, will solve this problem.

About 2 years ago the joint use area administrative office of the BIA was established in Flagstaff, Ariz., with jurisdiction over the joint use area. The project director was delegated authority equal to that of an area director of the Bureau of Indian Affairs.

It appears to us that, as far as the Hopi is concerned, this office was established only to spend taxpayer dollars. The Hopi has not benefited in any way, but to be told "We sympathize with you, but we cannot do anything."

Their excuses run true to pattern and we are told they have no staff, are up against employment ceilings, do not have funds, and that they do not have specific orders to act.

Since the Flagstaff office has been given jurisdiction and delegated authority to administer the joint use area, why is it not responsible to

carry out the court's order of October 14, 1972, to insure that livestock are reduced to carrying capacity and the land protected?

The BIA has a trust responsibility to insure that the land is not damaged further. They have this responsibility by statute. Yet we are told by the Flagstaff office that they have no specific orders to act and that the court's orders are not clear.

Recently we requested that the joint use office monitor all Navajo livestock sales in the joint use area and to furnish sales records so that we could stay abreast of livestock reduction, if any, by Navajos.

The project director's reply was that this was a waste of money and that he had no specific orders to do so. Obviously sitting in an office day in and day out without any attempt at carrying out your responsibilities is also a waste of funds.

Because of inaction and the lack of cooperation by the Flagstaff field office, the Hopi Tribe decided to proceed on their own and passed two tribal ordinances to reduce livestock and check uncontrolled construction of improvements by Navajos, which they are feverishly doing in an attempt to more firmly establish themselves on Hopi lands.

Ordinance 23, as adopted by the Hopi Tribe, is for the control of unlawful home construction and other improvements in the joint use area. Ordinance 24 is for the seizure and sale of stray or trespassing animals in the joint use area.

In an effort to save the land and effectuate its decree, the U.S. district court in Tucson canceled all livestock permits on the joint use area and all livestock there are now in trespass.

Not only does the Flagstaff field office fail to carry out their assigned responsibility—now they are opposing us by declining to pass on our ordinances and bucking off the approval responsibility to the Secretary of the Interior.

Now we find that the distinguished Senator from South Dakota, the Honorable Mr. Abourezk, has introduced a bill intended to resolve this problem but which in our view will only create an administrative nightmare and visit confusion and tribulation on all concerned for another 100 years.

With all due respect to the Senator, we must in all candor admit that we are extremely disappointed that the Senator has seen fit to reverse his decision made on March 7, 1973, at Winslow, Ariz., when he said:

I can assure you, Congressman Steiger, that this matter will be resolved in a very short time and very expeditiously and I have already made my wishes known that this not go to another commission to be studied further, and that it not be bucked off to somebody else.

But that it be resolved by this Subcommittee and the Full Committee on Interior and Insular Affairs, because I sincerely believe that the dispute, because of vacillation, the delay over the last several decades, has caused the lines to harden on both sides.

Under the distinguished Senator's bill this problem will go to another commission to be studied further, and bucked off to more generations of bureaucrats who will continue to vacillate and delay a final solution to it while the lines continue to harden on both sides and finally erupt in a situation for which we all will be sorry.

Senator ABOUREZK. I wonder if I might stop you there, Mr. Chairman, and ask you, in defense of Mr. Abourezk's bill, which may or may

not be perfect, depending on the point of view, where does it point to another commission to study the matter?

I do not want you to misstate the facts or misstate the record, so I want to be sure I am clear on what you are talking about.

Mr. SEKAQUAPTEWA. I took that out of the minutes of the hearing; 3724 in the Senate of the United States, June 27, 1974, under section 2, under title 1, the Navajo-Hopi Development Commission, establishes a Navajo Development Commission.

This is the section that I am talking about.

Senator ABOUREZK. You are saying that title 1 sends this boundary dispute to another commission to study?

Mr. SEKAQUAPTEWA. It outlines the duties of the bill, and, quote, "In carrying out the purpose of this act, the Commission shall analyze the results of the programs initiated on the reservation under the act of April 18, 1950, 24 years ago, and under Federal law." Unquote.

By my opinion you have to research and study those in order to carry that purpose out.

Senator ABOUREZK. You probably ought to read the entire bill, Mr. Chairman. What it does is establish in an exact manner a development commission, not a—the boundary dispute is handled later on in a separate section of the bill.

I would submit to you that it does not call for further study. It calls for something to happen. That happening is not a study. I just want to call that to your attention.

Mr. SEKAQUAPTEWA. I would reply to that that it is subject to interpretation, depending on who looks at it.

Senator ABOUREZK. Tell me your interpretation; where in the bill does it say that the boundary dispute itself, and who moves when and where will be studied?

Mr. SEKAQUAPTEWA. This is a social problem, as I understand it, by some people. One of the purposes is to conduct and sponsor an investigation, research and studies, including the inventory and analysis of the resources of the reservation and so forth and so on, calling for reviews and studies of agencies involved.

And recommending that a number of things be done. To me, that represents a massive project of study and research and things like that.

Senator ABOUREZK. You have not responded to my question. Where does it say in this bill that you are to study the boundary dispute itself. The boundary dispute it dealt with in a totally separate section. This is a development section.

Let me just say further, if you want to attack the bill, please feel free, but do not misrepresent it.

Mr. SEKAQUAPTEWA. I am not going to represent anything. I want to point out what I feel is the bill. But as I said—

Senator ABOUREZK. That is fine, if you want to do that. But do not misrepresent the contents of the bill. That is all I am asking that you not do.

If you want to leave your statement stand, that is up to you. I just want to make sure that I understand.

Mr. SEKAQUAPTEWA. That is fine. I will leave my statement, as it stands.

Senator ABOUREZK. Thank you.

Mr. SEKAQUAPTEWA. To continue with my statement, bearing in mind that Hopi ancestral lands have already been compromised, to the

Navajo time and again, I must emphasize to you and I strongly impress upon you that S. 2424, and its companion bill H.R. 10337, as passed by the House of Representatives provides the only equitable solution based on the equities established by the U.S. district court, and will most nearly satisfy the rights of the Hopi people.

The favorite cliché of the Navajo Tribe is that S. 2424 would only create a cow pasture for Hopi cattlemen, and that the Hopi would not move out into the joint use area. Chairman MacDonald repeated this charge in his statements to the Albuquerque Press Club on July 17, 1974.

Why should Chairman MacDonald and the Navajos dictate to us what our lifestyle should be? The Hopis had many more uses other than livestock raising for this land until the Navajos made it difficult and forced them by violence to pull in close to the villages in order to be able to conduct their economic activities.

A people can also live in a closely knit community to further their cultural heritage and traditions without having to lose control or jurisdiction of lands that they own. Chairman MacDonald seeks to convince you that:

The Navajo are poor shepherds, unequipped and untrained to make a living any other way. They only know their families and animals, this is the only life they know or comprehend.

Let me tell you that of those Navajo people living in the joint use area, at least half are on some form of assistance, either BIA, State welfare or social security benefits. You will be told that:

the two tribes can live in peace and have lived in peace for hundreds of years, exploited by common enemies and used as pawns by a cynical and arrogant United States government.

The truth will tell you that the Navajos have been on our land little more than 100 years, having arrived on our land hotly pursued by the white Americans because of their depredations. In 1848, the same year as the Treaty of Guadalupe Hidalgo, the Navajos attacked the Hopi village of Oraibi with 1,000 warriors under Manuelito and Black Haks in one of the first major battles between the two tribes.

Yet they will try to tell you that they never waged war. Conflicts of various kinds continue to this day. On the other hand, we have never been at war with the United States. Recent actions of Chairman MacDonald and the Navajo Tribe in mounting a massive drive to unseat politically courageous members of the Arizona congressional delegation clearly confirms our oft-repeated position that the Navajos have always used threats and intimidations to gain their ends.

The equities of this case have long ago been decided. It is now time for justice to be done and the Congress to return to us at least a portion of what is rightfully ours. The tears of the children of Hopi herders and farmers slain by Navajo marauders for 100 years have never been wiped away.

You now have an opportunity to correct that wrong and bring about justice that is long overdue. I think that I speak on behalf of a great majority of Hopi people. I think I speak in behalf of the greatest majority of Hopi people, that the only solution this problem is a partition of the land that will return a portion of what is rightfully ours so that we can have it to call our own, as we once did, and as our ancestors had it before the Navajos people came in to this area.

Thank you, Mr. Chairman.

Senator ABOUREZK. Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman. Mr. Chairman, I commend you for an excellent statement. After the Navajo representatives have given their testimony, I do think I will have some questions.

But as of this time, I will wait and see if they answer some points that you have made. But I do appreciate very much the testimony you have given.

Senator ABOUREZK. I have a couple of questions I might ask. Mr. Boyden, you made the statement at the outset of your presentation, that you, meaning the Hopi, could not afford to bring an anthropologist with you, like the Navajo could.

You made other references, during your remarks, that would, if they were taken in their entire content, lead people listening to believe that somehow the Hopi Tribe, which is smaller in number than the Navajo Tribe, is sorely oppressed and is monetarily poor, relative to the Navajo Tribe.

And in essence you have come into a congressional court of equity with extremely clean hands, asking for equity. At least that is the way I read your testimony. I wonder if the reason is that you cannot afford an anthropologist is because you have to pay what money you have to a public relations firm.

Mr. BOYDEN. We cannot in any way match the money paid to a public relations firms that the Navajos pay. You look in both papers today and see whether publication is to the Navajo or to the Hopi.

We cannot match them in any way, as far as money is concerned. And that is what I said and that is exactly the truth.

Senator ABOUREZK. You do hire a public relations firm in Salt Lake City—

Mr. BOYDEN. Yes, but we are limited on funds. And we are not able to have them here today. As a consequence, all of the articles and the big pictures in the Post and the Star are all Navajo.

We do not have a public relations man here. The Navajos have recently established an office here for liaison besides having attorneys in both Washington and in Arizona. We cannot compare with them in any way.

What I said in the first place is true, and I stay with it.

Senator ABOUREZK. I wonder if you might be able to tell the committee who your public relations firm is.

Mr. BOYDEN. Our public relations firm is Evans & Associates in Salt Lake City.

Senator ABOUREZK. How long has the Hopi Tribe employed that public relations firm?

Mr. BOYDEN. They have had two contracts, both of short duration. I cannot tell you how long the two of them would add up to be.

Senator FANNIN. Mr. Chairman, I wonder how much this has to do with the testimony being given here today. I cannot see the relationship. We could go on and on. I can tell you about people who have been into my office from the Navajos, moving picture firms and things like that.

But I do not think that is relevant to the issue at hand.

Senator ABOUREZK. Certainly, the Senator from Arizona will not object to my asking the question.

Senator FANNIN. I do not object to asking questions, but I think we are on a time situation, and I would hope we could go forward with the testimony.

Senator ABOUREZK. Of course, if we run out of time we will allot more time to the witnesses. I would like my questions answered and I would like to press forward.

Mr. SEKAQUAPTEWA. Mr. Chairman, I would like to respond to your question. The firm of Evans & Associates is not under contract at the present time with the Hopi Tribe. I have discussed the matter with them, but even when they worked for us, we paid them on that basis.

But they are not under contract.

Senator ABOUREZK. If you could tell me how much you paid to the public relations firm for all of the contracts that you have had with them for all of their services.

Mr. SEKAQUAPTEWA. I cannot tell you that. I do not happen to have my bookkeeper with me, but it is not a very large amount.

Senator ABOUREZK. Would you submit those amounts for the committee record, please?

Mr. SEKAQUAPTEWA. If it is pertinent I will be happy to do so. If I am required, I will do that.

Senator ABOUREZK. You are not required to. We are not going to subpoena you. But I wonder if you could cooperate with the committee to that extent.

Mr. SEKAQUAPTEWA. I will defer response to that.

Senator ABOUREZK. To whom?

Mr. SEKAQUAPTEWA. I will defer response to that until I consult with my counsel to see if it is appropriate or necessary.

Senator ABOUREZK. May I suggest to you that I think it is appropriate. I will be one of the Senators considering this legislation.

Mr. BOYDEN. May I just turn the Senator's remarks around? The Senator can't resist taking a jibe at the Hopis. We will be glad to answer your question.

Senator ABOUREZK. I just want to advise counsel for the Hopis that I am not taking a jibe at anybody. My task here today, and I have just been advised of this, my task here today is to try to get at as much information as possible for the benefit of myself and the committee and the Congress.

You have to consider this very serious question. It is not made any easier by virtue of the fact that you have, since you have been testifying today, taken persistent jabs at the other side. I want to go on record as saying that I do not consider it—I have the highest respect for both the Hopi and the Navajo.

It does not affect my judgment any either way, very frankly, what you say about the Navajo. You have said all morning that they were fighting the U.S. Army. As a matter of fact I would get a little suspicious of any Indian tribe that did not fight the U.S. Army back in those days.

Not today, but back in those days. It does not affect my judgment, either the statements you have just made since you began testifying by way of misrepresenting my legislation and my statements, my own statements.

Neither does it affect my judgment when you say that if you think it is pertinent you will furnish something for the record. I just might

remind you that you are coming to this Congress asking for equity and you probably ought to have clean hands in doing it.

That is my purpose in asking about your public relations firm. It is all in this Sunday, July 21 article in the Washington Post about the PR firm that has been handling the range war that you have put on, according to the article.

All I want to say is, if you want to joust with me, that is fine. I think it is a lot of fun. I would say the matter is much more serious than you put it on. I will be happy to joust with you all day long. It does not matter to me.

Mr. BOYDEN. You were quoting from a public relations product of the Navajo tribe. You want us to talk about something that we do not think has anything to do with the case.

We do not want to be arbitrary. We do not see what our limited way of trying to respond to public relations and how much we pay to them has anything to do with dividing this land.

That is the only point we make. We are trying to stick to the point and get the facts over.

Senator ABOUREZK. If you want to stick to the point and get the facts over, I suggest you should have opened it up with your references this morning to the poor Hopi tribe as related to the wealthy Navajo tribe.

What does that have to do with it?

Mr. BOYDEN. I think it is perfectly obvious, if the Senator does not see it, I think the rest of us do.

Senator ABOUREZK. Well, then, if you want to open the point up, then I am going to continue to ask you some questions about your expenditures for public relations. I would like to inquire further if I might.

There is a reference in this article about the Hopi PR firm's managing a range war. If I could read out of this article:

While Boyden was lobbying in Congress and arguing in the courts, Evans & Associates, your PR firm, virtually stage-managed a range war on the borders of the Hopi Reservation.

During 1970 to 1972 few papers in the southwest escaped having a Sunday feature on the range war, about to break out between the two tribes. Photos of burned corrals and shot up stock tanks and wells were printed

Although such incidents were not widespread. I wonder if you might be able to comment about that.

Mr. BOYDEN. I do not know what they are talking about. The public relations did not say anything, as far as we are concerned, that was not true. I brought into the last session of the hearings we had a picture of where the Navajo had taken a 2x4 and hit the Hopi police officer over the head and split his head wide open.

The matter was handed to the U.S. Attorney and was not even prosecuted. It was put on the basis of these were Indian tribes fighting among themselves, and they would not do anything about it.

Now the incidents on the burning of this corral and the shooting of the holes in the tank are all true stories. We brought the people who were involved here to testify and that is in the record.

Because we simply bring this to the attention of someone why blame it on the public relation firm? If it had not have happened they would not have been able to say it, but it did happen.

And the pictures are there to show it.

Senator ABOUREZK. What about the allegations in this same newspaper article? I just want to read a paragraph out of this. "At the same time, Evans & Associates was representing the Hopi Tribe from 1970 to 1973, they also represented a trade association of 23 utility companies engaged in building powerplants and strip mines in the Four Corners area.

"The group was called West Associates. The mailing address was the same as Evans & Associates." Is there any connection between the agency that the Hopi Tribe seems to see or at least representatives of the tribe seem to see in getting the land divided?

Is there any connection between that and the desire of utility companies or coal mining companies in getting in there and getting out the resources?

Mr. BOYDEN. I will try to dispel the fog they have created there. Yes, Peabody Coal Co. is the one that is doing the strip mining. That lease was entered into by the Navajo Tribe. Then they asked us to concur by doing at least what we did.

Evans Advertising has nothing to do with Peabody Coal Co. and had nothing to do with leasing. We have no conflict of interest with Peabody. That is the first part. With respect to the utilities so far as they are concerned, we have no conflict with the utilities.

They have paid us for rights-of-way, and this is just a creation to fog up something that is not there.

Senator ABOUREZK. Do Evans & Associates represent 23 utility companies?

Mr. BOYDEN. I would not have the slightest idea that they represent utility companies.

Senator ABOUREZK. They are not here today, are they? Evans & Associates?

Mr. BOYDEN. No, they are not. That is why we are happy to do the answering—

Senator ABOUREZK. That is why you are what?

Mr. BOYDEN. That is why we are happy to do the answering. If we had them here they could get the articles in the paper like this. We would like an opportunity to be heard, too. But I cannot see what this has to do with the problem at issue.

Senator FANNIN. Mr. Chairman, I agree. If you would yield, I assume you are going to ask the same questions of the Navajo witnesses?

Senator ABOUREZK. Are you questioning me, Senator Fannin?

Senator FANNIN. Yes, I am. This is a full committee hearing. It is not a subcommittee hearing. I think internal financial affairs of the respective tribes is not an issue. This is not an investigating subcommittee.

It is a hearing of the full committee. And I quote Senator Jackson's opening statement. "This is an open, public hearing before the full Committee of Interior and Insular Affairs, to take testimony from congressional, administration, Navajo and Hopi witnesses on H.R. 10337, S. 2424, S. 3280 and S. 3724 relating to the Navajo-Hopi land dispute."

Senator ABOUREZK. With all due respect to the Senator from Arizona, I would ask the questions that I feel need asking. As long as I

am chairing the hearings, and I am not voted down by the full committee, I will continue.

Does the Senator have anything more to say?

Senator FANNIN. I just question the intent of the Senator from the standpoint of bringing in to the committee hearing something that is not relevant.

Senator ABOUREZK. It is not relevant in whose eyes?

Senator FANNIN. As far as the Senator from Arizona is concerned.

Senator ABOUREZK. Then the Senator from Arizona need not ask the questions.

Senator FANNIN. I will just insist that the chairman ask the questions of the Navajo representatives that are here today testifying or, if they do not, then I will ask the questions.

Senator ABOUREZK. If you feel the need I think you are entitled to ask the questions of anybody you want.

Senator FANNIN. In my opening statement I tried to be unbiased, and stated what I felt was the case; as the matter now stands I was hoping we could go through these hearings, receive the testimony of the witnesses, and go forward with a markup of legislation that would settle this dispute.

Senator ABOUREZK. I wonder if I might just be allowed—I am sorry that this has broken out in the hearings. But since you have opened it up, I wonder if I might just be entitled to state that the question of the internal finances of the Hopi Tribe was opened up by counsel of the Hopi Tribe in his presentation this morning.

Very frankly, I do not see the need for me to explain any question that I ask, but I will do it for the record. When I saw that he was going to open that up, I think the internal finances of that tribe, so far as this committee is concerned, is an open record.

If he does not want to answer he does not have to. The only thing I want to say is that if you want the committee to fully consider everything, then you ought to be entitled to disclose those things considered pertinent by members of the committee.

Senator FANNIN. Mr. Chairman, if we had a month of hearings we could not get all the information you are talking about.

Senator ABOUREZK. We cannot cut the committee hearings short just because someone feels like it. We really do have to try to get as much information as we can.

Mr. BOYDEN. I apologize for not having been able to have the anthropologist here. I substituted a letter in place of it. Because of that I must now answer what the Washington Post has to say.

Senator ABOUREZK. You are not forced to answer, Mr. Boyden. You are neither under subpoena nor under oath. But if you want your point of view considered, I would suggest your full point of view be considered.

Senator BARTLETT. Mr. Chairman, I was just apprised that apparently the question had to do with cost to the Hopi Tribe of a public relations firm. I was just wondering, what was the purpose of that question?

Senator ABOUREZK. I am sorry the Senator from Oklahoma was not here to hear the purpose of the question. The purpose of the question was to ask the chairman of the Hopi Tribe and counsel for the Hopi Tribe why they could not—if they could not afford an anthro-

pologist why they could afford a public relations firm. Does the Senator have any other questions?

Senator BARTLETT. I have a comment.

Senator ABOUREZK. Go right ahead.

Senator BARTLETT. It is a rather interesting answer you gave.

Senator ABOUREZK. I agree with the Senator from Oklahoma. So to your knowledge, Mr. Boyden, or Mr. Chairman, there is no connection between the urgency you see in separating this land and moving the Navajos off and any desire on the part of the utility companies or coal companies to get in there and get out the resources on the joint use area?

Mr. SEKAQUAPTEWA. No, not as far as I know. And to my knowledge there is no connection whatsoever. The same remarks and questions you are asking have been asked us by supporters of the group.

Senator ABOUREZK. You brought up, during your testimony, the fact that the Navajo had been chased by the U.S. Army for their depredations and wrongdoings and so on. What connection, in your opinion, does that have with this dispute today?

Mr. SEKAQUAPTEWA. That these conflicts historically have been with us since the Navajo people have been here, and they have never been resolved. And that these incidents of conflicts between the two tribes continue and always to our disadvantage.

And in order to—for the Hopi Tribe to be able to survive as an ethnic entity on the land that they can call their own, and have the right of determining their own destiny and their self-determination, that partitioning and the giving of lands back to the Hopi Tribe are the only conditions under which this is possible, by our experience.

Senator ABOUREZK. Do you agree or disagree with the figure generally given that there are between 6,000 and 8,000 Navajo people living in the area? That has been delineated in the House bill as Hopi territory.

Mr. SEKAQUAPTEWA. You are referring to H.R. 11128?

Senator ABOUREZK. The Owens bill.

Mr. SEKAQUAPTEWA. The Owens bill does not delineate anything in the joint use area.

Senator ABOUREZK. I think your statement was that it is not—this is directed to Mr. Boyden. It is not a question of people being moved off versus cattle being moved on. You say it is grazing versus grazing. Wasn't that an accurate depiction of your statement?

Mr. BOYDEN. That is accurate.

Senator ABOUREZK. Yet there are several thousand Navajo people living along with their livestock on that land, and you do not consider it a hardship, you say, on them to move, because they are traditionally nomads?

Mr. BOYDEN. That is what you said. I did not say that I didn't consider it was a hardship.

Senator ABOUREZK. What did you say?

Mr. BOYDEN. I said they were moving and they were building houses right now in this area. Where they come from I do not know. We cannot find that out. But I say this. If livestock is the problem, they are overgrazing. If they want to live, they can just move a mile away or something of this kind.

And the houses would be a mile apart. So we get to the question of location. I very strongly suspect that some of the people who live within the joint use area are moving around the border of District Six.

But I cannot prove that. All I know is that some of those other houses were abandoned. And when the Flagstaff office examined some of those, they said windows were boarded up on some of them and the trails to the outhouses were covered with weeds and things of this kind.

So that they knew that some of those houses were abandoned. We know that there are a lot of new houses going up around District Six.

But all we can do is guess.

Senator ABOUREZK. Would you think it would be a hardship or not be a hardship to, within a very short period of time, to move the Navajos that would be living on land that might be delineated as Hopi land?

Mr. BOYDEN. The hardship comes in what you are going to do with them. This bill is not going to solve the Navajo problem.

Senator ABOUREZK. Which bill?

Mr. BOYDEN. Anything we have before us will not completely solve the Navajo problem, because if they are over 700 percent overgrazed, if you keep it all you take it all away from the Hopis, they cannot support them.

So they have a problem to solve that has nothing to do with the Hopis. The only thing is we happen to be living next to them and we are taking the brunt of it. If this were in South Dakota we might have a different attitude.

Senator ABOUREZK. Who might have a different attitude?

Mr. BOYDEN. I say it might pose a different problem.

Senator ABOUREZK. I suppose it would. Let me ask you, what would you recommend that the committee do with the Navajo living on the disputed area, that you do not think ought to live there?

Mr. BOYDEN. I would say that the only way there is any practical way for the Hopi to have any use of this at all is to have it separate from the Navajo, because they do not get along.

The Hopis are intimidated. They cannot use it, and that has been the history. If the Hopis are to get anything, the Navajos must have a partition line. As I say, moving of a house is not a problem at all.

It is the question of who is going to use the land for grazing. These people do not have to move very far. They can move maybe a mile or two and have plenty of room to live in the same place.

The movement is going forward all the time. They are moving right now, but you do not hear any squealing. The only squealing is when you start to move them back; that is where the problem comes.

Senator ABOUREZK. Move them back from where?

Mr. BOYDEN. From around District Six. They are moving toward that all the time.

Senator ABOUREZK. You mean, move them back and away from District Six?

Mr. BOYDEN. That is right. There is plenty of room in this area for all their houses to be replaced. They do not need to go anywhere.

Senator ABOUREZK. I really do not understand if you have answered my question. I do not think you have. Where would you put the Navajo that you want to move off the disputed area?

Mr. BOYDEN. As I say again, you are not going to put them anywhere. There is not enough land in Arizona that is available, in order to put them where they can continue to have livestock grazing as their only means of support.

I am saying that that part is over and done with, because the land is nearly destroyed. Now we have 25 percent of what we started with and the Navajos are using it all. Space is not the problem.

Where you live is not the problem. If you divide this half and half and try to avoid as much as you can, the Navajo population, there is plenty of room out there.

Their houses are over 1 mile apart, where they would not have to move only a couple of miles.

Senator ABOUREZK. Where is that?

Mr. BOYDEN. Right in the joint use area. The green area we are talking about.

Senator ABOUREZK. I wonder if you would show us on the map.

Mr. BOYDEN. Yes.

Senator FANNIN. Mr. Chairman, perhaps we could describe just exactly what the House bill does. I will ask Mr. Boyden if he will refer to the House bill. I would just like to state the understanding I have and see if this is the understanding you have regarding the House bill; H.R. 10337 would grant the district court supplemental proceedings in *Healing v. Jones*, the jurisdiction to partition the surface of the joint use area between the Hopi and Navajo Indian tribes; is that your understanding?

Mr. BOYDEN. That is correct.

Senator FANNIN. It goes on to aid the court in its determination by establishing certain criteria for partitions which include equal acreage and quality of land insofar as practicable, and contiguity of lands partitioned, and inclusion of high Navajo population density in the portion partitioned to the Navajos so as to avoid as much disruption as possible.

That is what you are going to explain; is that right?

Mr. BOYDEN. Yes.

Senator FANNIN. You are in agreement with the explanation that has been given?

Mr. BOYDEN. I am.

Senator FANNIN. Thank you.

Mr. BOYDEN. Now, Senator Abourezk, as you see, all of this green is where the houses are more than a mile apart. We do not know where they draw the line. But suppose these people in the red here had to move them.

They could be moved just that far into the green where they are a mile apart. I realize that when you are talking about grazing, it does not supply the grazing. We cannot do that with this bill.

These people have got to find some other means of making a living, because if you do not give the Hopis anything they still have got more livestock than they can possibly sustain by 700 percent overgrazing.

We are not saying this solves the Navajo problem. And what your bill does will not solve the Navajo problem. But what we need to do, as far as the Government is concerned, and I have sympathy for the Navajo people.

What I have said does not mean that because I am an advocate of the Hopi that I have not sympathy for them, and I know their problem is a tough problem. But this does not solve it.

You have to have some way of taking care of those people. But not just simply take the Hopis away and let them have all the Hopi use; that does not even solve it. That does not even come near to solving it.

Senator FANNIN. Mr. Boyden, you are saying that maintaining Navajo control would not solve the problem. Your thoughts are that this House bill would best solve the problem as far as the settlement of the dispute between the Navajos and the Hopis; is that right?

Mr. BOYDEN. My thought is that the bill, as it has been passed by the House, in substantially the same form twice, is the best solution we have before us at this time.

Senator FANNIN. We are not discussing whether or not the Navajos will have sufficient areas for grazing, because they do not have now.

Mr. BOYDEN. That is correct.

Senator FANNIN. So that is not a part of this settlement.

Mr. BOYDEN. That is right. The only thing I was going to do was to answer the question of Senator Abourezk when he asked me if I thought this was going to be a hard situation for them.

They are in a hard situation. They have painted themselves into a corner.

Senator ABOUREZK. Let me ask you further, Mr. Boyden. Where do you suggest, when you say they move just a mile, you are suggesting that a boundary line not be drawn; do I understand—

Mr. BOYDEN. No. I am not taking that attitude. I am saying we let the court determine that. The first Steiger bill that passed the House, and that was the Steiger bill, was this area here, that is in the dotted line.

That is the way that it was divided. In order to get away from the proposition that that was improperly drawn, they said, "Well, let the courts divide it," taking into consideration where the Navajo population is.

If they can do a better job after they hear the whole thing, that is fine and dandy with us. That is the Owens bill.

Senator ABOUREZK. If the court does divide and take into consideration the low density and the high Navajo density and they still have to move several thousand Navajo people, what I am asking you is, where should those people be put? Where would they go?

Mr. BOYDEN. To get back to the bigger question, now, we can solve, what are you going to do with them? Now the court is going to reduce this livestock, and a good many of these people are on relief at the present time.

So there is a real problem. I do not know what they will do with them. I do know it is not in fact a question of living space. It is not the division that is causing the trouble.

The trouble is that there is not sufficient grazing land even where they are, and that will not solve that problem.

Senator ABOUREZK. That issue is out of the way, the issue of the grazing, really. I have seen some of that territory when we were out there last year. There really is not much grazing left anyway.

So that issue is gone. You do not disagree with that?

Mr. BOYDEN. No, I do not disagree with that.

Senator ABOUREZK. Really, the only issue I see here, as I see it, is that the issue is jerking people up, ripping them up from where they

are at and putting them somewhere else en masse. That, to me, is the issue.

Mr. BOYDEN. When you say "somewhere else" we have the whole Executive order reservation here and there is plenty of room on one side wherever it is for them. It does not have to be somewhere else. But this will not sustain them; that is my point.

Senator ABOUREZK. I think I understand that. But are there not people, for example, who have jobs in some of the Government agencies that are located throughout this area who would have a hardship put on them by having to move and lose their job?

Are there not schools that the children are attending in the joint use area?

Mr. BOYDEN. Yes. There are some schools.

Senator ABOUREZK. That is what I was trying to get at this morning. There are permanent institutions, permanent in a relative sense, that would make it very difficult for people to give up and move to some different location.

And what I am telling you is that while it may be an easy solution for you, because you are the Hopis' advocate, it is not so easy for this committee or the Congress, really. You said at one point that the House had the guts, the intestinal fortitude, to draw a line and do something about it.

I do not think it is a question of intestinal fortitude. It is a question of two Indian peoples, and unlike you, I do not believe there is any malice on either side, very frankly. There is getting to be some now, but I do not think originally there ever was.

Two Indian peoples who have been moving around on some land who now find there has to be a boundary drawn; that is the question we have to answer. That is the one we are trying to get the answer to.

Mr. BOYDEN. When I talk about drawing a line, I talk about the 1934 reservation, not this Executive order reservation at all. The House did not draw any line. They let the court draw the line.

The 1934 reservation is where they have now drawn the line, because Navajos have moved in to take over that. There are not many Navajos concentrated on that now, but give us another 5 years, and it will be just like this.

We know that. When it comes to this part, suppose that the Navajos are unable to stop the court proceeding which says you will reduce livestock, and they take the livestock off, notwithstanding their saying they will not do it.

There those people stand. That is without any legislation at all, and the livestock is gone, and it will not support the livestock where it is. I do not think even Congress has the nerve to do that.

They do not want to just let all the livestock starve to death. There they stand. And if we do not move them at all they have no livestock. So the problem you asked me is really not the problem of just saying which side of the line are you going to live on?

The question is, what are you going to do when your livestock is gone? That is the thing at issue in this bill. We do know this. As long as you leave the Navajos on the part where the Hopis are supposed to have it, there will be intimidation, even gathering wood.

You cannot do that. They just do not live together, and that has been the experience for over 100 years. So if we do not move them out, the Hopis get no interest at all. If you let them stay there, for

another lifetime, as you say, all we are doing is passing it off to someone else, and we will be back here doing the same thing 100 years from now.

Senator ABOUREZK. Why do the Hopi traditionalists oppose your position?

Mr. BOYDEN. They do not. They have Thomas Jenkins here and Mina Lansa, who will testify. Those people have opposed everything, even building of roads, and many things of this kind.

But we have two of the traditionalist chiefs here today to support the House bill. Every body politic has its objectors, and we have a few on the Hopi Reservation.

Senator ABOUREZK. Why do they object?

Mr. BOYDEN. That goes beyond me, why they go against the Hopi interests. You would have to ask them.

Senator FANNIN. As far as the moving of people and consideration of schools or whatever might be affected, that was true when they moved from district 6; was it not?

In other words, these people have had to move out of district 6 because of the procedure followed to settle the dispute at that time?

But as far as the court is concerned, as I understand it, they would be given the right to partition with the least displacement possible, taking into consideration all of the issues involved, schools, roads, whatever else might be involved; is that true?

Mr. BOYDEN. That is true. That is what the bill provides.

Senator FANNIN. So we cannot say it is going to be inequitable until we know just what they will do. We just feel this is the most equitable way to handle this situation, I think that is what was decided in the House.

Mr. BOYDEN. That is correct.

Senator FANNIN. So I feel we must take action, otherwise the Navajo suffer. Because as long as we do not make a decision, then they do not know where they stand as far as construction of homes, or locating on different areas.

They may be displaced in time. So they are just as ill-affected as the Hopis; are they not?

Mr. BOYDEN. That is correct.

Senator FANNIN. So we are making a decision, feel, that is needed, beneficial to both Hopis and the Navajo Tribe. I feel it is highly essential that we do make a decision at this time.

Otherwise, we will be back again with a long procedure, just as we have in the past.

Mr. BOYDEN. That is right.

Senator FANNIN. Thank you.

Senator ABOUREZK. You said this morning that you were going to advise the committee at a later time, when I asked you which bill overrules the court decision. I do not know if you ever did that.

Mr. BOYDEN. I think I did. I do not think the Senator got it. I went through meticulously to show you how the Montoya bill picked out the things that were favorable to the Navajo side, when they considered the equities and left out all of the provisions favorable to the Hopi on the other side.

I went through that in my testimony, and that is what I was referring to, which I said distorted the bill so that it just took one side and did away with the court's decision by taking one side of the

equities, which the court decided and used that as the justification for not doing what the court said.

Senator ABOUREZK. Now, the Montoya bill actually provides for the purchase by the Navajos of the Hopi half; is that not essentially what it does?

Mr. BOYDEN. Yes.

Senator ABOUREZK. The court decision provided for an undivided, equal interest.

Mr. BOYDEN. That is correct.

Senator ABOUREZK. In property law, when that kind of decision is handed down is it one way to provide an interest for a sellout to the other party?

Mr. BOYDEN. That is one of the methods. On a partition, if you cannot divide it equally, why, they do have what they called "owelty," so that one side pays the other. But this is the situation that the Hopis are against.

At one time they had this whole thing. They are making a last ditch stand. They have just gone so far. They say, "We cannot go any further." Right here, around District Six, I think when you were out there. Senator, you know what the trespass problem was right in District Six.

That is exclusively Hopi. That is your problem.

Senator ABOUREZK. But just getting this point straight. There is not actually an overruling of the court decision; it is just one of the options of the court decision, really, is it not?

Mr. BOYDEN. No. The court does not say a thing about selling out, and the Hopis would not sell out and they would not take the money if the Government gave it to them. They feel that strongly about it.

This is their ancestral home. They have been there—we proved in two cases that the Hopis have been in this area. We proved it with dendro chronology. We proved it with pottery, sherds of utility side and the decorative side.

They have been in this area possibly since the year 500. Now they say, "Give it up because it is the Navajos' ancestral home." And there are Hopis who are just not going to do that. The court said, "You do not have to. You have a half-interest in this."

Unless Congress changes it, why, we have got a half-interest. That is not on appeal now. If we lost all four appeals, that would take the half-interest away from us. All it would do, and it would not take away from us the Ninth Circuit Court of Appeals decision which says that the court can enforce its judgment.

It would be just a matter of how you do it, if we lost every appeal. That is where we stand, legally. Unless we interfere. And the Montoya bill does interfere. As I say, if that was a fair solution, it could have been solved years ago, because the Navajos would have been glad to have the Government pay for it a long time ago.

And the Government would have been glad to get out of the problem. But the Hopis just would not take it, because this is their ancestral home and they do not want to give it up. They think they have given up enough.

I think they have, too.

Senator ABOUREZK. You have gone a total, now, of 2 hours and 33 minutes.

Mr. BOYDEN. Senator, we do not want to take more time than is necessary. We have our people here to testify. We can file those statements. We kind of feel that answering Evans Advertising and things irrelevant like that have taken up our time for presentation of the case.

We do not want to impose on anybody, and we will be very happy to file their statements and withhold any more testimony.

Senator ABOUREZK. Mr. Boyden, you were answering questions just like anybody who comes before a committee, who is allotted time. If you are seeking sympathy because I spent 5 minutes asking about the newspaper article, you will not get any from the chairman.

Mr. BOYDEN. I am not seeking sympathy. Only I do realize what the chairman said, that he would fight like hell to defeat the Hopi bill. It is in the same article you are talking about is there.

I am just realizing what is practical; that is all.

Senator ABOUREZK. I certainly hope you do realize what is practical. Thank you, Mr. Boyden.

Senator BARTLETT. Mr. Chairman, is Mr. Boyden available for questions?

Senator ABOUREZK. They will have time to come back. They have gone for 2 hours and 35 minutes.

Mr. BOYDEN. May we submit the statements of the witnesses—

Senator ABOUREZK. I am not going to shut off their testimony now. I just think you have had over 2½ hours. We ought to let the Navajo come up. You will have time to rebut.

Mr. BOYDEN. All right, then. We will reoffer them if we do not have a chance to have them testify.

Senator ABOUREZK. Surely.

[The newspaper article requested by Senator Abourezk follows:]

[From the Washington Post, July 21, 1974]

WHOSE HOMES ON THE RANGE? COAL FUELS INDIAN DISPUTE

(By Mark Panitch)

Panitch is a freelance writer specializing in energy and the environment. He was a reporter for two years for the Arizona Daily Star, Tucson.

Navajo and Hopi Indians who used to skirmish across the rangelands and mesas of the Southwest have moved their fight into the federal courts, the halls of Congress and the media. They no longer fight with bows and arrows or even rifles; they use sophisticated legal, political and public relations weapons.

While once they might have fought over a few head of stock or even a woman, today the two tribes are fighting for control of almost 3,000 square miles—1.8 million acres—of scrubby Arizona rangeland. While theoretically only the surface rights are at stake, portions of the disputed land overlay at least 2.5 billion tons of easily accessible coal. As much as 25 billion tons may be there.

At today's price of about \$4 per ton, that coal could be worth \$10 billion or more, depending on demand. In addition there are geologic signs of oil, gas and uranium in the area.

The Hopi Tribal Council says the disputed lands belong to the Hopis both by law and tradition. "These lands are being taken by the Navajo who threaten violence if anyone resists," says Hopi chairman Abbott Sekaquaptewa. The Hopi characterize the Navajo Tribe as "big" and "rich" and "arrogant" and they say the Navajo have gotten away with their land grab through complacency by the federal government. (Hopi Indians number about 6,000; the Navajo tribe about 135,000.)

The Navajo have in fact managed to retain physical control of the disputed land. But, ironically, it is the Hopi, who characterize themselves as "small" and

"weak" and as "the underdog," who have won virtually every battle so far. The Navajo are fighting what can only be called a holding action.

While the Navajo leaders seem to decide their own policy in the Navajo capital of Window Rock, the locus of Hopi policy seems to be in Salt Lake City, almost 500 miles from the Hopi mesas. Both the Hopi's energetic and effective lawyer, John Boyden, and their public relations counsel, Evans and Associates, are headquartered in Salt Lake City. And much of the Hopi success can be attributed to their Mormon allies.

The Church of Jesus Christ of Latter Day Saints has had a close association since the 1890s with the "progressive" faction of Hopis. Mormons were the first missionaries to be allowed to preach on the Hopi mesas after the Spanish friars were driven off. Many "progressive" Mormon Hopis have sat on the tribal council in the past 40 years. "The Mormon religion is the predominate Hopi (Christian) religion," says John Dwan, director of public relations for Evans and Associates.

Through their Mormon allies, the Hopis also have developed allies in the worlds of industry and government.

PARTITION AUTHORITY

Among Boyden's string of legal successes are a series of strategic court victories that leave the Hopis with the right to use half of the disputed land. And although both the federal district court and the Supreme Court have refused to partition the land, Boyden worried a bill through the House last May giving the courts that authority. The Senate Interior Indian Affairs subcommittee will hold its second series of hearings on the land dispute this week. Two bills are under consideration. One, sponsored by Arizona's two Republican senators, Paul Fannin and Barry Goldwater, follows the House bill, calling for partition of the land, removal of Navajos living on the Hopi side within five years and reimbursement for "moving expense."

Subcommittee Chairman James G. Abourezk (D. S.D.) also has a bill. His would grant title to half the disputed land—about 800,000 acres—to the Hopi. But instead of forcing the removal of the Navajos, creating a "refugee problem," Abourezk would allow a "life estate" for those born on the land and allow those who moved there to remain for a period equal to the time they have already lived there. The government would pay rent to the Hopi for the Navajos living on their land.

Hopi Chairman Sekaquaptewa says the Abourezk bill is "unacceptable." Hopi public relations man Dwan simply dismisses Abourezk as "a Navajo partisan." Navajo public relations man Jerry Anderson, of the Washington public relations firm of Maurer, Fleisher, Zon and Anderson, isn't so sure. "The Navajos think Abourezk is well intentioned," he says. But so far they refuse outright support of his bill.

The question of what would happen to the Navajos living in the disputed area has become central to the whole debate. The Navajo argue that as many as 8,000 of their people—more than the total Hopi Tribe—would have to be moved if partition is enforced. "They would become refugees," says Navajo Chairman Peter MacDonald.

The just solution, says MacDonald, "would be for the government to buy out the Hopi surface rights and give them to the Navajo. The two tribes would continue to share the mineral rights."

But MacDonald noted that the tribe which controls the surface controls access to the minerals. That tribe can grant such things as leases, exploration rights and rights of way for roads.

Hopi Chairman Sekaquaptewa argues essentially that what the Navajo do with their excess population is their problem. "This land was once all ours," he says, "now the court says only half of it is ours. This is the first time in history that people will be paid \$28 million for stealing someone else's land," he says, referring to the reimbursement section of the House bill.

Bureau of Indian Affairs officials at the Hopi Agency at Keams Canyon, Ariz., say that land recovered in the dispute will be used by "progressive" Hopi to raise beef cattle for market. The establishment of a beef industry among the traditionally agricultural Hopi is a BIA goal that goes back almost 100 years.

COURT RULES FOR HOPIS

The dispute over land ownership simmered along until the mid-1950s. Then Boyden was able to lobby a bill through Congress which authorized the federal

court to hear a suit by the Hopis against the Navajo. In 1962, a special three-judge federal court ruled that the Hopi were entitled to an undivided half interest in the 1882 reservation outside of a 650,000-acre area reserved for their exclusive use. In 1963 the Supreme Court upheld the district court.

Since that time, the federal courts have ordered the Navajo to reduce their livestock to half the carrying capacity of the disputed range. Although the court sees this as a way to give the Hopi their legal due, the Navajo sees this as another white man's punishment.

They recall that Kit Carson slew their sheep. Then during the Roosevelt administration in the 1930s, following their refusal to establish a tribal council under the Indian Reorganization Act (IRA), Navajo sheep were once again rounded up and slaughtered. This time it was to prevent dust bowl conditions and reduce the amount of meat on the market. The Navajo, though, was unable to comprehend the economics, only the terrible sense of loss and anger when his worldly wealth was wiped out by the white man.

The Navajo Tribe is now appealing a contempt of court citation for failing to reduce the stock on the range.

Although the courts upheld the Hopis' legal right to use the land, they essentially decided that they were unable to enforce their decision by partitioning the land.

Boyden's campaign for a partition bill bore fruit May 29 when the House voted to approve such a bill, 290-38.

THE "RANGE WAR"

While Boyden was lobbying in Congress and arguing in the courts, Evans and Associates virtually stage-managed a range war on the borders of the Hopi reservation.

During 1970-'72, few papers in the Southwest escaped having a Sunday feature on the "range war" about to break out between the two tribes. Photos of burned corrals and shot up stock tanks and wells were printed, although such incidents were not widespread.

The issue generally was, and still is, that the BIA has "frozen" construction, including well drilling, in the joint-use area as a way to force Navajos to comply with the stock reduction order. Instead, many Navajos simply drive their stock to water inside the Hopi exclusive-use areas.

But the Hopis hired a ranger, a white former rodeo cowboy named Elmer Randolph, to patrol their fence-line. He was to impound Navajo stock inside the border and arrest the herders. In one celebrated incident Randolph told a 100-year-old Navajo man who spoke no English to dismount. When the old man remained in his saddle, Randolph pulled him from the horse, seriously injuring the old man. There were also charges that Randolph made forays into the joint use area and "kidnapped" Navajo stock.

Some local Navajos did threaten Randolph and there were occasional shots fired as the pressure on the Navajo herdsman mounted. On the one hand, their sheep were dying from lack of water and forage; on the other hand, they were arrested and their flocks were impounded if they drove them to water and grass.

By calling Evans and Associates, a TV crew often could arrange a roundup of trespassing Navajo stock. Occasionally when a roundup was in progress, Southwestern newsmen would be telephoned by Evans and notified of the event.

A print reporter could arrange a tour of the disputed area in a BIA pickup truck driven by the ranger.

Interviews with then Hopi Chairman Clarence Hamilton could also be arranged through Salt Lake City. But they were granted only when BIA officials could be present and the officials usually answered the questions. At the height of the "range war" tribal officials apparently lost whatever control they had to Salt Lake City and BIA.

The BIA lands officer at Keams Canyon, Sam Miller, claimed credit for devising the roundup technique to pressure the Navajo. He generally coordinated the roundups.

"Does the BIA in Washington know about this activity?" a reporter asked Miller in 1972.

"The area director in Phoenix (John Artchoker) certainly does," Miller said, "and he reports directly to Washington."

Reporters who visited Window Rock got a less effusive welcome. They had to make their own way over 50 miles of unmarked dirt roads to the Navajo side of the disputed area. There they were often assumed by the local people to be

bill collectors or BIA officials. Little information usually came from such an all-day adventure.

So most stories that resulted from the "range war" opened with a description of Navajo encroachment, moved on to the ranger impoundment stock—and ended with Navajo threats of violent retaliation—the range was about to be set aflame by Navajo bellicosity. Although there were elements of truth there, the whole story was more interesting and less romantic.

In the 1971-'72 period the Four Corners power plants were a major national environment issue. The Senate Interior Committee held a week of field hearings in the area.

There was a split among Indian groups about the question of fighting the strip mining of Black Mesa, the main coal depository in the joint-use area. Some who were opposed to mining nevertheless felt that, if mining were to be carried on, new contracts should be drawn giving more money to the Indians.

Navajo chairman Peter MacDonald was already calling for new coal contracts that gave more to the Indian.

But the main Indian spokesman for the strip mines and power plants was Hopi Chairman Hamilton.

UTILITY TIES

At the same time Evans and Associates was representing the Hopi Tribe in 1970-'73, they also represented a trade association of 23 utility companies engaged in building power plants and strip mines in the Four Corners area. The group was called WEST Associates and their mailing address was the same as Evans and Associates.

"The Indians have resources to sell and our other clients have money to buy those resources," an Evans-for-Hamilton spokesman told a reporter. "There is no conflict of interest there." Besides, he said, the BIA had to approve the contract between the Hopis and Evans.

The arrangement was convenient, however. The relationship between the Hopi council and the power companies strip mining their land became almost symbiotic. On the one hand, Hamilton speeches written by Evans would be distributed through the public relations machinery of 23 major Western utilities. On the other hand, these utilities would tell their customers, often through local media contacts, that the Hopi were "good Indians" who wouldn't shut off the juice that ran their air conditioners.

Because of the efforts by representatives of the Hopi to present that tribe's viewpoint, the Hopi rapidly took on the aura of the underdog who just wanted to help his white brother. Some of the Navajo, on the other hand, were saying threatening things about closing down polluting power plants and requiring expensive reclamation of strip-mined lands.

Why did the BIA permit a company that represented utilities buying Hopi coal to represent the Hopi?

A BIA spokesman said that, while attorney's contracts generally require approval, the Hopi agreement with Evans did not.

However, the Secretary of the Interior—or the BIA commissioner—did have to approve the coal leases. Fine, except that the secretary was also one of the buyers of coal.

Through the Bureau of Reclamation, the Interior Department owns 25 per cent of the largest Four Corners power plant.

The Bureau of Reclamation's power at Interior was so great that when citizens wrote to the department to ask about Black Mesa, they were sent a brochure prepared and published by the Peabody Coal Company.

To carry the chain to its conclusion: Peabody Coal strip mines Black Mesa in the joint-use area under a contract approved by the Interior Department. According to James Ridgeway in his book "Power Play," Kennecott Copper (which owns Peabody) "through its interlocks with Zions Utah Bancorporation . . . is interted to the extensive industrial holdings of the Mormon Church."

Evans no longer represents WEST. "I don't even know if they still exist," says Dwan casually. West Associates still exist and are being represented by a New York public relations firm.

"I'LL FIGHT LIKE HELL!"

The Navajo has continued to press the Interior Department for new contracts based on the selling price of coal and its energy content. "So far the BIA and the Interior Department have been unresponsive to this approach," says Navajo minerals director Robert Schryver. "The tribe wants to participate in the real value of the resource," he says, "what the company actually gets for it."

So far the Interior Department has pressed the Navajos to sign contracts based on a per-ton royalty agreement.

Senior Senate Interior Committee staff members tend to see the situation in much the same light as the Interior Department. "The Navajos are just dragging their feet on development," says one aide.

On the land dispute, the Interior Committee aide echoed the Hopi theme. "It's always easy to side with the big and powerful," he says, "but sometime you have to take a stand on the merits."

What about the "refugee problem?" Well, he says, "people get moved for highways all the time. This is the same kind of situation."

So when the question is finally decided, the issues probably will be Hopi legal rights versus potential Navajo refugees. The questions of conflicts of interest will likely be lost.

"The best solution would be to buy out the Hopis," says Navajo chairman MacDonald.

"We only want what is ours, what the court gave us," says Hopi chairman Sekaquaptewa.

But Sen. Abourezk might have the last word.

"The status quo is preferable to all that damn refugee trouble," he says, "I'll fight like hell for my compromise."

Senator ABOUREZK. A vote has been called on the floor. We are going to call at this time, before the Navajo witness, the Commissioner of Indian Affairs, Morris Thompson, who will make a very brief statement.

And we will adjourn briefly after his statement. We will take the vote and come back.

STATEMENT OF MORRIS THOMPSON, COMMISSIONER OF INDIAN AFFAIRS

Commissioner THOMPSON. Mr. Chairman, I am pleased to have with me today Mr. William Benjamin, Director, Joint-Use Administration Office, Bureau of Indian Affairs. Lynn Montgomery, also from the Joint-Use Area. Mr. William G. Lavell, Phoenix Field Solicitor, Interior Department.

Dennis Drabelle, Office of Legislative Counsel, and Ralph Reeser, Congressional and Legislative Affairs Staff, BIA.

Mr. Chairman and members of the committee, this is my first appearance before you to testify on the subject matter of these bills. But as you know, the Department of the Interior has been deeply involved in the Hopi-Navajo controversy, particularly in the last few years.

You have already heard witnesses from the Hopi tribe and are undoubtedly well versed in the background and history of the joint-use dilemma. So I will not spend any time retelling the tangled story of how the controversy developed.

Before outlining the Department's position on these bills, however, I would like to explain why we have changed our mind since May 14, 1973, when we recommended to the House of Representatives that no bill be enacted.

Mr. Chairman, we have always felt that two goals in this matter are of paramount importance. First, providing the Hopi Indians with full enjoyment of the area they hold jointly with the Navajo Indians.

And, second, as little disruption of the lives of both Hopi and Navajo Indians as is necessary to achieve the first goal. When we recommended to the House last year that no bill be enacted, it was our fervent hope that the court and tribes would come to an accommodation pursuant to existing law.

Unfortunately, we no longer consider this hope realistic. Since the time of our report, the court has held, and continued to hold, the chairman of the Navajo Tribe in contempt for failure to abide by its order to reduce the amount of livestock grazed by that tribe in the joint use area.

The Hopi Tribe has recently promulgated a new, stringent trespassing ordinance which, if enforced, would result in the Hopi Tribe's impounding Navajo livestock in the area.

Finally, we have seen that the court's order to reduce livestock will inevitably lead to some relocation of people. At present there is no statutory authority to compensate people who must move because of the loss of, or to follow, their livestock.

This is a gap which we believe must be filled. For all these reasons, we endorse the basic concept of H.R. 10337 in the Senate. The court should be given jurisdiction to partition the joint use area.

Judicial partition of the disputed area would be meaningless without providing for relocation of such Indians as may be living on tribal land within the portion of the joint use area that is partitioned to the other tribe.

We recognize that a major relocation of people in this way is a grave human problem. We earnestly hope that if H.R. 10337 is enacted, the affected people will move willingly and we are recommending a system of cash incentives to encourage early and voluntary relocation.

However, we realize that some affected persons may resist relocation and that in some cases it may not be possible to carry out the court's partition on a voluntary basis.

In the remainder of my testimony, I would like to provide the outlines of the Department's position. We recommend enactment of H.R. 10337 in the Senate, if amended, as suggested in our report, and against enactment of the other bills under consideration.

Our report sets out that position in full detail and furnishes the amendments to H.R. 10337 which we recommend. We have no objection to the guidelines for judicial partition set out in section 2 of H.R. 10337. With regard to relocation, we believe that intensive study is required before any persons are moved.

Relocation of large numbers of people pursuant to judicial decision would present the United States with an exceedingly complicated situation involving problems of census, appraisal, logistics, and location and construction of housing.

Accordingly, we believe that a period of 2 years after the final partition of the court should be allowed for planning and preparation of the necessary relocation. At the end of the 2-year period, we would submit this plan to the Congress.

If, after 60 days, the Congress had not enacted overriding legislation, we would begin to implement the plan. Although we believe that the 5-year relocation schedule set by H.R. 10337 is appropriate, we recommend against a 20-percent annual quota of relocated persons. We believe that such determinations as this should be left to the plan which we would develop.

In addition, we generally support the relocation payment provisions of section 12 of H.R. 10337. As stated above, however, we believe that there should be cash incentive payments to encourage voluntary and early relocation by affected persons.

We propose to pay \$5,000 on the date of relocation to heads of households who contract to move before the end of the first year after the plan referred to above goes into effect.

We also propose that heads of households who so contract within 2, 3, and 4 years be paid \$4,000, \$3,000, and \$2,000, respectively. Heads of households who contracted to move in the fifth year after the plan went into effect would receive no incentive payment.

Senator ABOUREZK. Excuse me, Mr. Commissioner. I believe we have to go vote. We will recess for about 5 minutes.

[Recess.]

Senator ABOUREZK. The hearings will come to order. Mr. Commissioner, you may proceed with your testimony.

Commissioner THOMPSON. Section 10(b) of H.R. 10337 would authorize and direct the Secretary to sell up to 250,000 acres of land to the Navajo Tribe. We strongly recommend that the Secretary be authorized, in his discretion, and not also directed to make such a sale.

We also recommend that only the surface estate of lands transferred to the Navajo Tribe be held in trust for its benefit. We recommend that the dispute over the Moencopi area be settled by the court, with the jurisdiction to effectuate its determination by partition, and not by direct partition as in section 7 of H.R. 10337.

The disadvantage of direct partition is that neither the Hopi nor the Navajo interest in this area pursuant to the 1934 act which consolidated the Navajo Reservation has ever been judicially determined.

Congressional determination of the tribes' relative interests would inevitably lead to litigation, with the likely result being a judicial determination that the United States had taken property rights from one of the tribes and was obliged to compensate the aggrieved tribe.

We therefore believe that judicial determination of the tribes' interests and corresponding judicial partition of the Moencopi area are the proper procedures for settling this dispute.

We recommend that a planning procedure, similar to that recommended to carry out partition of the 1882 area, be employed here.

Because of our uncertainty as to the funds necessary to settle the Hopi-Navajo dispute, an uncertainty which must await the court's decision and the development of the plans discussed above, we recommend that all authorizations in the bill be open-ended rather than fixed at definite dollar amounts.

Mr. Chairman, this concludes my statement. I am prepared to answer questions which the committee may have.

Senator ABOUREZK. Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman.

Mr. Thompson, I appreciate very much your being here today with your associates. I am sorry that the time is so short. I do appreciate what you have said about the House legislation.

You do recommend these amendments. Without the amendments do you still feel that this bill would be a fair and equitable settlement? Are the amendments of such serious consequence that they would affect your feeling on the bill?

Commissioner THOMPSON. There are several primary concerns. I think the amendment that we would hope that the committee and Congress would include would be the one of the study of the partition to insure how the move can be effected or at least implemented with the least amount of problems to the inevitable tribe.

We feel the conclusion of that is rather important.

Senator FANNIN. Since we will be marking up the bill, we hope immediately, and you do not recommend the definitive authorization, but support open-ended rather than fixed-dollar amounts, I am just wondering whether or not that would be possible, since we do have members of the Interior Committee who do not favor any open authorization.

I would appreciate it very much if you could arrive at a figure that you think would cover the amount and submit it to us. Even an estimate as to a fair amount and sufficient to take care of what you anticipate would be involved.

I realize from your statement that the uncertainty is very questionable in your mind. I still want to be in a position to recommend an amount, if that becomes a necessity.

Commissioner THOMPSON. Senator, we would be pleased to do that. We did submit some information to the House side. The estimate there was \$28 million, approximately, to effectuate the relocation.

One of the reasons that we would like to see it open-ended if at all possible is that, No. 1, in the plan we hope would be rather comprehensive, may come up with additional costs.

Inflation may be a factor between now and the time the plan is to be implemented. But we would be pleased to submit our best estimate as to what the cost would be.

Senator FANNIN. Thank you very much, Mr. Commissioner.

Senator ABOUREZK. Mr. Commissioner, your amendments would require a 2-year wait, while you take a census, do a logistics study, try to locate housing and try to construct new housing; is that correct?

Commissioner THOMPSON. If I may respond, Senator. We recommended inclusion of a 2-year study time, after the partitioning by the courts.

Senator ABOUREZK. After partitioning?

Commissioner THOMPSON. That is right. After partitioning by the courts for several reasons. Recommending that relocation as I indicated in my statement is a very grave problem, a very human problem.

We would like the maximum time amount under the House bill which starts immediately. We really feel we need more time to plan exactly what type of housing we are going to offer the Navajo people, where it is going to be, what type of lifestyle we are going to offer them.

We feel that if we have time to work with the Navajo Tribe and the affected people, that this planning time could really do, hopefully, a lot to minimize some of the anxiety that certainly exists with the Navajos currently.

Senator ABOUREZK. Have you got any kind of map or chart that would show the location and the number of school facilities, health facilities, welfare offices, whatever other Government structures and institutions exist on the area, with specific reference to the area of low Navajo density which might be determined to be in any kind of partition Hopi area?

Commissioner THOMPSON. I understand we have that on the map. Mr. Benjamin might be able to point out some of those facilities.

Senator ABOUREZK. I would like to see that.

Mr. BENJAMIN. There is a school here, Red Lake School, and a school there and a school there, Rocky Ridge. A school at Low Mountain and a school at Sabadelkai, which is right on the line.

Senator ABOUREZK. What about other Government facilities, health facilities, welfare offices?

Mr. BENJAMIN. The Public Health Service has a hospital at Keens Canyon, that is inside district 6 right here.

Senator ABOUREZK. I am talking about just the joint use.

Mr. BENJAMIN. Nothing but day clinics.

Senator ABOUREZK. Where are they?

Mr. BENJAMIN. I do not know exactly where they are. They are located generally at chapter houses.

Senator ABOUREZK. Can you provide the committee with a smaller chart, or, it doesn't matter—it is pretty important that we see what all of the facilities are. That school, health, welfare area and in the joint use area.

Commissioner THOMPSON. We will contact Public Health in an attempt to get the information to the committee as soon as possible, Mr. Chairman.

Senator ABOUREZK. Would you put it on a map and show the delineation of district 6 and the joint-use line? We would be grateful.

Commissioner THOMPSON. We will be pleased to.

Senator ABOUREZK. What is your estimate of the number of Navajos residing on the joint-use area?

Commissioner THOMPSON. We do not really have an accurate accounting. The figures range anywhere from 5,500 to 8,000.

Senator ABOUREZK. But it is a minimum of 5,500 people?

Commissioner THOMPSON. That is our current estimate; yes, sir.

Senator ABOUREZK. Where do you get your information for these estimates?

Commissioner THOMPSON. I believe the figures we utilized were the 8,000 number, or approximately the 8,000 number were the Navajo Tribe's figures. Our figures generally vary from 5,500 to 6,000.

Senator ABOUREZK. How did the Bureau arrive at their figures?

Commissioner THOMPSON. Excuse me, Senator, I am just informed that I may be technically somewhat wrong. When we say 5,000 to 8,000 that would be our estimate and the people that would be required to be moved.

The total figure in the 1882 area is approximately 10,000.

Senator ABOUREZK. Ten thousand Navajo. You say no matter how the line is drawn, you will have to move between 5,000 to 8,000 people?

Commissioner THOMPSON. That is our estimate.

Senator ABOUREZK. How did you count those people?

Commissioner THOMPSON. I defer that question, Mr. Chairman, to Mr. Benjamin.

Mr. BENJAMIN. Mr. Chairman, we used the Navajo count. The Navajo made a house-to-house count to answer the Steiger—they put their point forward in the Steiger bill as the number of people that would be affected.

They furnished a map showing the locations of the hogans where the people lived. This gave us a concentration. We did accept those figures.

Senator ABOUREZK. Have you ever considered asking the National Aeronautics and Space Administration to do aerial photos of the joint use area; the Moencopi area, to determine where hogans are?

Mr. BENJAMIN. Yes, sir. We have met with representatives of that organization. We are, at present, however, under contract with a private firm. And they are flying the area.

They will supply us with photographs by August 15.

Senator ABOUREZK. Large enough so you can count the hogans and know exactly where they are?

Mr. BENJAMIN. Yes, sir. And we will identify each improvement. This will also include any other improvements, like windmills, springs, sheds, barns and so forth.

Senator ABOUREZK. It will be able to identify schools and other facilities with those photographs.

Mr. BENJAMIN. Yes, sir, we will.

Senator ABOUREZK. To the best of your information, do the Navajo maintain more than one hogan per person, or per family?

Mr. BENJAMIN. Yes. This would have to be not personal knowledge, but only information that I have gathered in talking to people who reside there and people who work there. Within their grazing areas, they move sometimes from one to another.

Senator ABOUREZK. And they have, generally, one hogan at a far distance from their original hogan. How does that work?

Mr. BENJAMIN. Like I said, I think I am talking hearsay.

Senator ABOUREZK. Does anyone on the staff with you here know?

Commissioner THOMPSON. I do not think we have that information ready. We would be pleased to try to respond. Perhaps the Navajo witnesses would be more informative on that point.

Senator ABOUREZK. Yes. We will ask them about it as well. In other words, you have contracted with a private aerial photography firm that will do the work that we talked about. Let me ask you this. Is it going to be equivalent to the satellite photographs that NASA is able to take?

Do you know precisely what kind of pictures they will take?

Mr. BENJAMIN. We got samples from the NASA pictures and we were not able to identify hogans or buildings. The flights that we are getting are low-level flights, and the photography is good and the stereo helps.

Senator ABOUREZK. Thank you, Commissioner Thompson.

[Subsequent to the hearing the following information was received:]

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., July 29, 1974.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: During the July 24, 1974 hearing before your Committee on H.R. 10337, and other bills relating to the Navajo-Hopi land dispute, we were asked to furnish current information as to the costs of implementing H.R. 10337 for purposes of establishing an appropriation authorization figure in the event the Committee does not accept our request for an open-end authorization.

The authorization figures in H.R. 10337 as passed by the House were based on the information contained in the enclosed January 25, 1974 letter which we provided to the House Indian Affairs Subcommittee. In summary, that information was as follows:

	<i>Millions</i>
Purchase of improvements-----	\$6.4
Moving expenses-----	2.0
Replacement dwellings-----	20.4
Boundary survey-----	.3
Total-----	29.1

Section 20 of H.R. 10337 was revised by a floor amendment and now contains a \$10 million appropriation authorization for livestock reduction and restoration of the grazing potential of the joint use area "to the maximum extent feasible". We have no firm plans or figures on the cost of such restoration. However, we believe that a \$10 million authorization utilized over a 20 year period of restricted grazing might achieve restoration. A 10 to 12 year program with restricted grazing would probably require \$50 to \$60 million to achieve restoration. As indicated in our report to your Committee, we have sufficient authority to request appropriations for range restoration activities and the section 20 authorization is unnecessary.

The cost of the incentive payments which we proposed in our July 23 report to your Committee would depend upon how many households voluntarily agree to relocate and when they do so. If all 1100 of the households, which we estimated in our January 25 letter to the House Subcommittee might be displaced by the bill, elected to leave between the date of final partition and one year after the effective date of our relocation plan, the cost would be \$5.5 million (1,100 × \$5,000) in addition to the above figures. If none of the families agreed to leave voluntarily the provision would cost nothing although we would anticipate considerable Federal costs under other authorities for court eviction actions, marshalls, Bureau staff, etc., that would be associated with forcible removals.

The housing cost figures which we provided the House Subcommittee in our January 25 letter, for use in connection with section 12(b)(2) of H.R. 10337, were based on total costs of \$21,000 and \$26,000 per housing unit for the small and large families respectively each reduced by the approximately \$6,000 per family value of habitations and improvements to be purchased by the Secretary pursuant to section 12(a). Based on a current Farmers Home Administration approved project in the Window Rock, Arizona area, we now estimate those total cost figures to be \$23,000 and \$31,000 respectively. Therefore, based on these averages, the section 12(b)(2) limits should be \$17,000 and \$25,000 respectively and the total cost of section 12(b)(2) would be about \$23.1 million, assuming no further cost inflation.

With the above changes, the costs of H.R. 10337 for authorization purposes over the life of the bill, would be as follows:

	<i>Millions</i>
Purchase of improvements-----	\$6.4
Moving expenses-----	2.0
Replacement dwellings-----	23.4
Boundary survey-----	.3
Incentive payments-----	5.5
Range restoration-----	10.0
Total -----	47.3

As indicated in our report, we recommended that the appropriation authorizations in H.R. 10337 be "such sums as may be necessary" and that the funds appropriated remain available until expended. If a dollar limitation is to be imposed on the appropriations to be authorized, we suggest that a single such amount be provided rather than separate amounts for various sections of the bill to minimize the possibility of amendatory legislation by our being able to offset higher than anticipated costs under one section with lower than anticipated costs under another section.

It should be noted that the above cost figures do not include the cost of damages for which the United States might be found liable in connection with implementing section 7 of H.R. 10337 which partitions an area outside the 1882 Executive Order Reservation to the Hopi tribe. As we indicated in our July 23 report to your Committee, the extent of the rights of the Hopis under the 1934 Navajo boundary act (48 Stat. 960) has not been judicially determined and the extent to which the Congress grants the Hopis more than they may be determined legally to be entitled to could result in a taking of Navajo property rights without a provision for compensation. Obviously, if there is such a taking, the United States would be liable for damages to the Navajo tribe.

Sincerely yours,

MORRIS THOMPSON,
Commissioner of Indian Affairs.

Enclosure.

UNITED STATES DEPARTMENT OF THE INTERIOR,
BUREAU OF INDIAN AFFAIRS,
Washington, D.C., January 25, 1974.

HON. LLOYD MEEDS,
Chairman, Subcommittee on Indian Affairs,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your December 13, 1973 letter requesting our estimate of the cost of implementing H.R. 10337 (relating to partition of the Navajo-Hopi disputed area) as marked up on December 11, 1973 and reported by your Subcommittee to the Full Committee.

Sections 10 and 11 of H.R. 10337 require the removal of Navajo and Hopi Indians, respectively, from lands partitioned to the Hopi and Navajo tribes, respectively. As you know, precise unchallengeable population figures are not available for the area involved. In addition, section 2 of the bill provides for a judicial partition in the future so that it is not possible at this time to precisely identify the lands to be partitioned to each tribe. However, for purposes of estimating the cost of implementing H.R. 10337 as reported by the Subcommittee, we believe that the following reflects the best available information.

The partition of land described in section 7 of the bill will require the relocation of approximately 200 families. The judicial partition authorized in section 2 will require the relocation of approximately 900 families. Therefore, we estimate that a total of 1100 families (6,300 persons) would be relocated under the terms of the bill.

Section 12(a) of the bill requires the United States to purchase at "fair-market value" the "habitations and improvements" of the families relocated pursuant to the bill. We estimate that the value of habitations and improvements (including improvements shared by a number of families) will average about \$5,800 per family relocated. Therefore, the aggregate cost of section 12(a) for the 1100 families would be approximately \$6.4 million.

Section 12(b) (1) directs the Security to reimburse each relocated family for their "actual reasonable moving expenses." A precise figure is difficult to arrive at because not only are the families to be relocated not precisely identified but it is not known where they will relocate. We understand that the cost of moving 17 Navajo families from the Hopi Reservation to locations on the Navajo Reservation averaged about \$1,800 per family. Based on that figure, the aggregate of the moving costs for the 1100 families would be approximately \$2.0 million.

Section 12(b) (2) directs the Secretary to pay to each relocated family—

an amount when added to the fair market value of the habitation and improvements purchased under subsection (a), equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such displaced household: *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed \$15,000 for a household of three or less and not more than \$20,000 for a household of four or more. * * * Nothing in this subsection shall require a displaced person to occupy a dwelling with a higher degree of safety and sanitation than he desires.

We estimate that 330 of the relocated families will have 3 or less members and that 770 families will have 4 or more members. We also estimate that the cost of the prescribed replacement dwelling would average \$18,000 for the families of 3 or less members and \$26,000 for the families of 4 or more members. We believe that these costs will require average payments near the \$15,000 and \$20,000 maximum amounts. Therefore, the cost of section 12(b) (2) would be approximately \$20.4 million.

Section 20 of the bill requires the Secretary "to survey and monument the boundaries of the Hopi Reservation as defined in sections 5 and 7 of this Act." We estimate that there will be some 300 miles of boundary with a cost averaging \$1,000 per mile. Therefore, the cost of section 20 would be approximately \$300,000.

In summary the estimated amount of appropriations required to implement H.R. 10337 as marked up by your Subcommittee on December 11, 1973 would be as follows in 1974 dollars:

	Millions
Section 12(a)	\$6.4
Section 12(b) (1)	2.0
Section 12(b) (2)	20.4
Section 203
Total	29.1

It should be noted that these costs do not include amounts for fencing, restoration, land purchases or future litigation damages which have been discussed from time to time. We have included only those costs which the bill specifically requires be borne by the Interior Department.

Our Solicitor suggests that we point out the possibility of the United States being found liable for damages in connection with implementing section 7 of the Act which partitions an area outside the 1882 Executive Order Area to the Hopis. The area encompasses some 243,000 acres and includes the Moenkopi area plus a corridor connecting it with the Hopi area within the 1882 Executive Order Area. The Hopi interests in the section 7 area were recognized in the 1934 Navajo Boundary Act (48 Stat. 960) by inclusion of language that the lands were withdrawn for the benefit of the Navajos and "such other Indians as may already be located thereon." However, the extent of the Hopi interest has never been determined judicially or otherwise. While there may be no question as to the validity of the Hopi interest in the Moenkopi area, the extent to which section 7 describes more than the Hopis may be determined legally to be entitled to could result in a taking of Navajo property rights without a provision for compensation. Obviously, if there is such a taking, the United States would be liable for damages to the Navajo Tribe.

We should also like to offer the following technical comments and suggestions on the bill.

At the end of section 7, the reference to the base line and meridian was omitted. We suggest that the period following the last word ("beginning") be changed to a comma and the following added to the sentence "all within the Gila and Salt River Base and Meridian."

In section 12(b) the one year limit on the time a family has to complete construction of or purchase and occupy a replacement dwelling may be unduly restrictive considering the problems of developing new housing on the Navajo Reservation. We suggest that a two year period be allowed.

Section 12(d) is silent on the disposal of the proceeds of the resales by the Secretary of the habitations and improvements purchased from relocated families and, therefore, we assume that the intent is that the proceeds be deposited in the Treasury as miscellaneous receipts.

The revised description of Cliff Spring in section 21 of the bill is larger than necessary and more precise references should be made to angles, distances, and corners. We suggest that the last five lines before the proviso be rewritten as follows:

thence south 45 degrees west, 1,000 feet to a point on the 6,900 feet contour;

thence south 46 degrees east, 500 feet, to a point due south of the spring;

thence northeast, 1,000 feet to the point of beginning, containing 11.5 acres more or less.

Sincerely yours,

(Sgd) MORRIS THOMPSON,
Commissioner of Indian Affairs.

Senator ABOUREZK. The next witness will be Peter MacDonald.

Mr. MACDONALD. I yield 30 minutes of the Navajo time to the traditional Hopis that came down who wanted to testify, which the Hopi delegation refused to allow them the time. We would like to give 30 minutes of our time to give their testimony.

Senator ABOUREZK. You can use your time any way you want.

If you would speak directly into the microphone we would appreciate it.

STATEMENT OF MINA LANSA, HOPI HEREDITARY KIKMONGWI, ORAIBI

MINA LANSA. My name is Mina Lansa, Hopi Kikmongwi of Oraibi Pueblo. I speak to you Senators on behalf of the Kikmongwi of Shungopavy Pueblo on the second mesa and for our traditional and religious leaders and people expressing our strong opposition to Representative Owens' bill, H.R. 10337, or any other bill or bills that are

initiated in Congress of the United States without our consent, and which intends to interfere with our internal affairs by cutting up our sacred homeland, fencing it and bringing about allotment to Hopi, Navajo and Paiute people.

Our Hopi prophecy foretold that someday when our white brothers come upon our homeland, some of them might put aside all honor, justice, and fair play even though our white brothers claim that they follow religious and moral principles which value the sacred nature of all people.

The Hopi prophecy foretold that some of our white brothers would openly attempt to destroy our religious structure by uprooting our Hopi way of life. And eventually taking control of our homeland.

In doing so they will end all life if they are not careful. It seems clear to me that this prophecy is now being fulfilled. I saw the map of our so-called disputed land at one of the Navajo meetings last week.

This was the first time I had even seen such a map because the Hopi Tribal Council has never taken the time to explain these bills to the Hopi people. I was deeply moved and then and there knowing our traditional religious instructions, I determined that I must come to this hearing at all costs in order to help stop these bills.

My traditional people and I are poor. We have no ready travel fund. The so-called Hopi Tribal Council has not given my traditional people any tribal money to come here.

Because my people do not recognize the Hopi Tribal Council, we have hesitated to ask for such travel money. Because my traditional people follow religious instruction and do not follow the tribal council, the council has not given us the chance for full and free expression on such important matters as these bills.

Instead, they ignore us even though we are their elders, and they say things against us that are not true. The tribal council denies the powers and authority of Kikmongwis, who are religious leaders of the Hopi villages, and the council uses lies, gossips, and personal insults against anyone who thinks differently than they do.

So I have called on the Navajo people to meet with my traditional people, and recently we have held several meetings but only lately have we learned the full meaning of this and other bills.

The traditional Navajo and Hopi people can resolve these issues by themselves. We do not need these bills now and we will tell the Senators and Congressmen if we do not them. It is not true that the traditional people of our two tribes are unable to agree on this matter.

When I return to Oraibi Pueblo, I will call a meeting of all people concerned so that we can determine our own future without outside interference. I do not want the lands of any Navajo or Hopi people to be cut up or to be fenced.

This would be against our religious instructions. As Kikmongwi, I must fulfill my religious instructions which require protection of all life and all land. If our land is cut up and Navajos are forced to move, my people and I will not be responsible for the hardship, suffering, and possible bloodshed that this will bring.

This trouble will not come if the Congress lets the traditional Navajo and Hopi people settle these questions in their own way. This is what we will do to prove to all that we can resolve the matter peacefully.

Senator ABOUREZK. Thank you.

Senator BARTLETT. Mr. Chairman, just an inquiry. As you know, I have missed some of the meeting up to this time and did not have a chance to ask questions of Mr. Boyden. As I understand it, this witness has a balance of 30 minutes left. Is that correct?

What I am getting at—

Senator ABOUREZK. Well, they are using 30 minutes out of the Navajo time.

Senator BARTLETT. I see. What I am getting at is could the three of us divide up the time remaining for these people so that I might have a chance to ask some questions?

Senator ABOUREZK. Divide up the time equally between who?

Senator BARTLETT. Between you, Senator Fannin and myself. May we each have say 5 minutes and then see what time remains? Being in the third slot here and I wanted to insure my chance to ask some questions, of the witnesses.

Senator ABOUREZK. I do not plan to deny you any opportunity to ask questions. I plan to give you plenty of opportunity.

Senator BARTLETT. Could I have 5 minutes, then, Senator?

Senator ABOUREZK. I do not think there is any need to do that just yet. If any one of us gets to filibustering, we might have to do that. But I do not think there is any real reason to do it now.

Senator BARTLETT. I would request that we each have 5 minutes.

Senator ABOUREZK. I will consider your request. Thank you. How many traditional Hopi agree with your position?

MINA LANSA [through interpreter]. I will have to explain what "traditional" means. She says that most of our people follow the general way of life and recognizing these facts which she has just presented.

Senator ABOUREZK. My question is, how many Hopi people agree with the position you have stated in your statement?

MINA LANSA [through interpreter]. She would not be able to give the number, but traditional life based on unwritten law, spiritual relations is basic in most of our people, and they still believe and follow that system of life. This is their instructions and teachings, so most of them are still following it.

Senator ABOUREZK. I guess what I am trying to get at is—I understand the Hopi are like all Indian tribes. There never were before 1934 any elections, like the white man has. But decisions were arrived at more by agreement and long conversation and so on.

Are there more people who agree with the chairman's position, or more people who disagree with the chairman's position? Are you able to tell the committee that?

MINA LANSA [through interpreter]. You are talking about these bills?

Senator ABOUREZK. About the statement that you gave.

MINA LANSA [through interpreter]. She said as far as she is concerned about these statements, it is pretty well known throughout all of the villages, especially traditional people.

The elders know these instructions and teachings. That is why they still follow the religious instructions, they perform ceremonies every year. And most all of the Hopis are following it, even Tribal Council members are performing ceremonies.

So these instructions are well known to our village.

Senator ABOUREZK. Thank you. Senator Fannin.

Senator FANNIN. Thank you, Mr. Chairman. We had field hearings at which time we stopped at the Second Mesa at Oraibi and we had testimony from the leader of the tribe, as I understood it, Mina Lansa, the leader of the tribe.

At that time I think they testified—I have the testimony on tape that somewhere around 5 or 10 percent were represented by the traditionalist people that she was involved with; is that correct?

MINA LANSÁ [through interpreter]. She remembers that but she was not sure whether that was the right figure given at that time, because many of the elders do not understand some of the percentage figures that you people understand.

And when you ask questions like that a lot of them do not quite understand it. They say a certain number or figures that they do not really know clearly just what the number would be.

Senator FANNIN. At that time we had an interview that lasted, perhaps, 10 minutes. She gave information regarding the traditions of the tribe, and how proud she was of her people, and how they had handed down these traditions over the years.

She talked about their crops and about their livestock. When I asked about the crops and livestock, she said that very few of her people are involved in the raising of livestock or growing crops.

She said about 95 percent of her people are on welfare. Does she recall giving that information?

MINA LANSÁ [through interpreter]. I remember something along that line, but I do not really remember the number I said. But I remember it; yes. Several people are living on welfare, and most of the people are supposed to be making a livelihood on farms and stock.

Senator FANNIN. We were speaking of the people that she was involved with. I have played the tape back. I could have a transcript of it for the record, but I did not want to do anything that would not be to her liking.

Thank you.

Senator ABOUREZK. Senator Bartlett.

Senator BARTLETT. Mr. Chairman, thank you.

I would like to ask Ms. Lansa how many people do you represent?

MINA LANSÁ [through interpreter]. It is only Kikmongwi, and Kikmongwi are the symbol of life, based on religious principles. And we represent all of our people as caretakers of land and life.

That is the way I consider my position and the people around me as my children.

Senator BARTLETT. Is there a number of people you represent?

MINA LANSÁ [through interpreter]. I will not be able to count the number, but I state that I have followed the instructions of the Kikmongwi, and see all living things as children. We become a caretaker of all of them, so I continue to work in that fashion, so I cannot give you a number, in my position of taking care of all of the people.

Senator BARTLETT. Are you elected or self-appointed?

MINA LANSÁ [through interpreter]. We do not have any holding of elections placing any Kikmongwi in. But we have our own traditional way of installing the next in line from the clan, or anyone that has that qualification.

I have been given that authority from the former Kikmongwi and that is how it was passed on to me, in a traditional way, which is the way he had received his and the same way he passed it on to me.

Senator BARTLETT. Your statement says that, "It is not true that the traditional people of our two tribes are unable to agree on this matter." We have heard testimony here today that there have been efforts for many years to reach an agreement on this matter, all of which were to no avail. What agreement can you reach?

MINA LANSA [through interpreter]. We have known that there was a negotiating committee set up on both sides, the Navajo and the Hopi, which tried to bring negotiations in this case. But we know that it has not been successful.

But nowhere the people who are involved, the village peoples from both sides have had a chance to really get down together. This is why I am now asking that we have that opportunity, to get the people together who will be involved who are in a majority and may be able to sit down together as human beings should, and settle it among ourselves some way.

That is why I want to have this meeting set up.

Senator BARTLETT. But what partition or what use of the land would you consider equitable and just?

MINA LANSA [through interpreter]. As mentioned, I take care of all land and life on a religious basis. I cannot allow anyone to cut it up, divide it in any shape or form, because still following my religious principles, praying that all living things would continue, and it is their natural way, so that all life will be maintained and preserved for the future.

That is why I want to ask you not to pass any bill that tends to disrupt or draw a line.

Senator BARTLETT. Thank you very much.

Senator FANNIN. Mr. Chairman, just one question. As I remember, when we had her testimony before, she stated that she was given this assignment of being a leader by her father, and that his father before him was a leader and so on. Down through the years, this had been passed on.

Evidently there was not a son to be appointed, or to take over this lineage of leadership. That is why she became the leader; is that true?

MINA LANSA [through interpreter]. That is true that I was knowledgeable about the position of my father, and he passed this position to my younger brother, but he could not stay out there.

He lives in Los Angeles. So he, in turn, passed that to me, the way the authority was passed to him. He received this authority from his former uncle in the same way, so this was passed on in this traditional way to me.

That was done in my home before the old Kikmongwi passed away.

Senator FANNIN. I have come across her testimony. At that time she stated that Mr. John Lansa, I guess, was interpreting for her, and said "Our records indicate 142 residences, but of course not all of them remain here. Some of them work in other areas."

So when we were trying to find out just how many people she represented, that was the answer given. Thank you very much.

Senator ABOUTREZK. Thank you for your testimony. Chairman MacDonald, how do you want to handle the rest of this witness list?

STATEMENT OF PETER MacDONALD, CHAIRMAN, NAVAJO TRIBAL COUNCIL

Mr. MacDONALD. Chairman Abourezk, members of the committee, I have a written statement here. I will follow that pretty closely, and maybe in two or three areas I may deviate and ad lib as I go along.

To my left here I have George Vlassis, the general counsel for the Navajo Tribe. We also have some witnesses in the room here who would like to testify, if time permits.

Mr. MacDONALD. Chairman Abourezk, members of the committee, I am glad to have the opportunity to meet with you today to discuss the dilemma which is the Navajo-Hopi dispute. Both the Navajo and Hopi people have been forced into a position of opponents by the policies of our government.

Unfortunately, our Government has neither been compassionate enough nor wise enough to resolve the underlying problems which gave rise to this dispute. It has, however, in keeping with its past dealings with native American people, been able to set Navajo against Hopi in a desperate effort to have both tribes ignore the real culprit, the Bureau of Indian Affairs.

The bills before you, H.R. 10337 and S. 2424, which would force over 8,000 of our people from their homes are not a forthright solution.

They are, instead, a deliberate attempt to make all Navajo people pay for a century of Government neglect and tragedy. We come to Washington today to meet with your committee in an attempt to convince you not only that the relocation proposals are bad, but also that there are ways of reaching a fair, just and permanent solution to this problem.

I am here today to speak for the Navajo people, whose lives and homes are threatened. You should recognize, however, that the effect of the proposals before you will taint your dealings with native American people throughout this country for decades to come.

It is most important that you understand and appreciate the history of our dealings with the Federal Government. You do not write on a clean slate. Instead, your actions must be considered in light of our past.

Over 110 years ago, our people, the Navajo people, were competing with Anglos and Mexicans for land in what was then the New Mexico Territory. The Administration in Washington decided to end that Navajo problem once and for all by taking all our people into captivity.

To do so they fought a war not only against our armed men, but against our women, our children, our aged and our sick. Under the direction of General Carleton and the command of Kit Carson, they invaded the heartland of Navajo country, Canyon de Chelly.

Not content with merely capturing our people, they destroyed our homes, burned our crops, and killed our fruit trees. Almost 9,000 of our people were sent to Bosque Redondo on the Rio Pecos in eastern New Mexico.

Many of our people were killed resisting those who fought to take them from their homeland. Others fled into the hills, taking with them only that which they could carry on their backs. For those who reached Bosque Redondo after an arduous forced march through the New Mexico winter, what awaited them was America's first concentration camp.

Like so many Government programs both before and after, it was not enough to simply capture our people and take their land, the Government sought to capture our spirit and destroy our culture.

Our way of life was to be changed. No longer were we to roam the Colorado plateau. We were instead to become Christian farmers. To be sure, there were those who argued against this, who warned, both before and after our captivity, that it was wrong and that it would not work.

Finally, General Carleton recognized his error and permitted our people to return once again to our homes after 4 years of tragic experiment on the part of the U.S. Government.

Only after severe damage was done to the Navajo people. Those who returned received only a few sheep. The lucky were able to obtain a horse or two. They had to return to a land that had been ruined by Kit Carson's army.

And yet they were able to build from these ashes a new life in the land that they loved and we love. Now there are those who again say that almost 9,000 Navajos must be taken from their homeland.

Can't they understand that the memory of the last time we were forced from our homes is as clear today as it was on the day that Kit Carson's army marched through Canyon de Chelly?

Even if they have forgotten, I can assure you neither I nor my people have forgotten this bloody chapter in our history. It is important to remember that the reason given for our imprisonment at Bosque Redondo was the supposed threat to Anglo land.

There are those, however, who will tell you that we were not imprisoned for our wrongs, but because our land was wanted by the Anglo. Are we to expel almost 9,000 people today to satisfy someone else's hunger for our land once again?

I recognize that many of you are concerned with the state of the range in the Executive order reservation. You tell us that this land is overgrazed and that we must reduce our flocks.

Again, you do not write on a clean slate. During the 1930's and 1940's a program of forced livestock reduction was undertaken throughout Navajo country, of which we have heard John Boyden was the Assistant Attorney General enforcing that livestock reduction on the Navajo.

To save the land, no matter what the cost to the people, was the goal of this program. To accomplish this goal, the Soil Conservation Service and the Bureau of Indian Affairs would leave a family with less livestock than it needed to live. The horrors of those days are etched in our memories. I can remember as a child watching Government agents pour kerosene over our animals and setting them afire, then going to bed hungry that night.

When you ask us to reduce our livestock, you must consider the actions of your predecessors. Some Hopi would tell you that we are to be punished for the supposed wrongs of our parents and grandparents.

I tell you, too, that we remember what your parents and grandparents did to us. What are the proposals before you? In short, they are to take lands on which our people have lived for centuries and to turn them into a pasture for cows.

But not quite. Hopi cattle will not graze on the lands from which our people may be driven, for they have no cattle to put on them at the present time. Instead, the wind blowing across an empty land

will be the only monument to the homes in which our people lived and died.

We hear all this talk about relocation. It is criminal that neither our Government nor the advocates of these bills will tell you where our people are to go. Do they expect them to disappear from the face of the Earth?

Mr. Boyden suggests that the Navajo live in the neighborhood outside of the area that is going to be partitioned. But we have the same problem that each and every one of you have.

If the entire New York City is to be moved, who, in this room, who in this Congress, is willing to make room for the 14 or 15 million people who are to be moved from the city of New York?

Will they take proud, independent people from the homes which they have built for themselves and place them in a Government slum on the welfare list? Because that is exactly what is going to happen, if the relocation proposal takes place.

But why are we to be punished? Why are we to lose our homes? What crimes have 8,500 Navajo people committed? Do you believe that the 80-year-old mother of eight who lives on Black Mesa is violent or greedy? Is the 100-year-old man who was forced from his horse by the Anglo-Hopi ranger a criminal?

You also heard, this morning, how bad the Navajos were to the Hopi. Let me say this. That outside of those who tried to make it appear that Navajos and Hopi completely have distaste for each other, underneath that film there is a great reservoir of compassion and understanding for one another.

Just one example. We have in this room Mr. and Mrs. Eddie Scott. I would like to have them stand up at the present time. Eddie and Peggy Scott. Peggy Scott is a Navajo. Eddie Scott is a Hopi.

Both live in the disputed land. They have two children. Their two children are disputed children. They do not make wars on each other. We see in their eyes and in their face nothing but love for one another and their children.

The past Hopi chairman, Clarence Hamilton, has a lovely Navajo wife from Denahotso, Ariz. There are many, many more examples where we have people having great compassion and understanding for one another.

Some will tell you that we violate the law and that I have been held in contempt of court. If I am in contempt because I cannot ask my people to make their children go hungry, then I am indeed in contempt.

If I am in contempt because I will not ask my people to shiver in the cold and deprive their families of shelter, then I am in contempt. No law, however, can make people starve themselves, and no order of any court can make a person deprive his family of their next meal.

No law can tell a man that he must live in a packing crate because a court 400 miles away tells him he cannot build a stick-and-mud hogan, as the court order that we have been talking about this morning.

Some Hopi leaders will tell you that this is a land question or a title question. It is not. If it were merely a land question then surely the Hopi would be willing to take the alternative land we have offered.

This entire problem originated with people in Washington who drew lines on maps without considering who was living on the land.

I think John Boyden this morning gave you quite a bit on that particular incident.

If the issue is not land, then, what is it? The issue is people and how to fashion a solution that helps people. Such a solution can be found in the legislation which has been introduced by your colleagues, Senators Moss, Montoya, and Domenici.

At this juncture I would like to say that too often we have been told that the bill that has been introduced by Senators Goldwater and Fannin are the bill proposed by your home state Senators.

Therefore, if the home State Senators are sponsoring the bill, then it must be all right. Let me say this to that. Navajos have a home. We live in three States. Therefore, we look to the Senators from New Mexico, Utah, and just as much as we look to the Senators from the State of Arizona.

So to give you the magnitude and the complexity of the problem that exists, even the home State Senators for the Navajos are in disagreement as to how the solution should be handled that would be most fair and equitable.

Senators Montoya, Moss, and Domenici's proposal, S. 3230, recognizes that underlying all the so-called land problems is the problem of poverty. This gnawing problem of gut-grinding poverty is the central feature of the life of the Navajo who lives in this area.

You have heard this morning and you have heard it many times, I am sure, the great, big, giant Navajo, 140,000, millions of dollars, oil and gas, the richest tribe in the country.

This is not so. The people you see in this room are from the joint use area. They are not 140,000. They do not have money in the banks. They do not have oil wells. Many of them who are here are on welfare.

Many of them only earn on the average of \$800 a year. These are the people we are talking about. These are not the giant Navajos that have been pictured to be moving in on the Hopis. How can you ask people who do not know whether they will have a next meal to consider questions of title? Is it important to someone who may not live through a hard winter to plan for a 10-year range improvement plan?

This is a region without roads, without power, without water, without jobs, and with very little hope. How can you ask more of these people? And yet, to fashion a solution to this problem, you must understand the Navajo attachment to his land.

For the Anglo, land is something to be bought and sold or held for a profit. You may say that a man's home is his castle, but that does not seem to stop him from selling his castle and buying a bigger one.

We have only the land on which we are born. Rich or poor, the land on which we are born is our birthright, and we are born only once. We are not born in some rented apartment.

We do not move three or four or five times before we are 15 or 16. If we lose our land, there is nothing to replace it. If you would take away the land of 8,500 of our people, there is nothing you could replace it with.

When you took us to Bosque Redondo, we returned to our land. When you took our sheep from us in the 1930's and 1940's we did not run to the cities, we stayed with our land. When the Bureau of Indian Affairs attempted to relocate our people in the 1950's, it failed because our people returned to the land.

You tell us that you cannot understand how we can be so attached to a land which to your eyes offers so little. For us, the answer is simple. It is our home, and we can have no other.

S. 3230 would have the Navajo pay to stay on our land. It would permit us to remain on the land which we occupied in 1958. This date was chosen to answer the arguments of those who tell us that Navajos have moved on to the disputed land in recent months or recent years.

If you were to come to this land yourselves, and I hope you do, you would understand how ridiculous that statement is. For those of our people who were born there, it is the only land on Earth. But to say that people would choose to live on a land that lacks almost every necessity which Anglos take for granted reveals an ignorance I simply cannot understand.

Contrary to what some would tell you, we do not seek delay. But we are willing to take the time to find a just solution.

Our answer to those who ask how long it will take to solve this problem is that it will take just so long as it takes to find that just solution. We recommend first that a commission be established, paid for by the Government, and staffed by Navajo and Hopi people, as well as experts, to go to the area in question and to make a determination of the number of people who live there, of the likely effects of relocation, of the actual Navajo and Hopi use and occupancy, and of any other factor which they determine relevant to a fair, just and equitable solution. Alternatively, we would urge the Congress to adopt S. 3230, which would provide a solution to this long-standing problem which would bring necessary economic benefits to the Hopi without inflicting tragic consequences on the Navajo.

A third possibility would be for this body to adopt the proposal of Congressman Meeds for a limited period of negotiation, which, if unsuccessful, would be followed by compulsory arbitration.

There is a fourth alternative which unfortunately has not been given serious consideration. This administration and this Congress have said they believe in Indian self-determination. Such a belief, if genuine, must include the right of native American people to determine their own destinies.

Self-determination does not mean the right of an Indian tribe to choose the color of the new BIA school. Self-determination does not mean the right to decide who shall be sent to the next Washington-sponsored BIA Conference.

Self-determination means the right to struggle for solutions of problems which are significant. You are granting us nothing if you tell us we may make decisions when those decisions are inconsequential to us.

I must note here that this dispute and all the problems which have occurred have been as a result of mistakes by the Federal Government. I would respectfully suggest that the Government has had its chance and we have not yet had ours.

I come before you today to respond to the charge that we Navajos are lawless and greedy. Some tell you that since we took the Hopi land we ought to be punished.

I tell you we did no such thing. We Navajos in the best American tradition came into a land that was empty over 200 years ago and did exactly what your ancestors did. We wrested a life out of this bitter land.

We built homes for our wives and children. We planted gardens and hunted. When we received sheep, we quickly learned how to raise them. We struggled to make a living in a difficult land and, to a large extent, succeeded.

My understanding of the American dream differs from that of the Hopi leaders. We do not look to the white man and ask him to deliver us. We do not want deliverance. We want respect. To us the American dream is to fashion a life through hard work and to make something of yourself, and this we have done.

Now those for whom the American dream is to wait to be delivered would ask you to take away from us what we have been able to accomplish through hard work.

You have not taken away Flagstaff from the Anglos who live there because they took it away from our people, and we do not ask that you do so.

In the same vein it is not right for the Hopi to tell you to take back our land from us. When we tell you that Flagstaff and Gallup and Cortez were taken from us you have told us that you will pay us in money and we make that same offer to the Hopis.

We Navajos are not violent. We have resolved our disputes through our elders long before there were any jails or any white man's courts. Our home is sacred to us. If you mistakenly pass legislation which says to our people that they must lose their homes and their life, I cannot promise you that the result will be peace and resignation.

I would not respect a man, whatever his race, who gives up his home without a fight and I do not think that you would respect such a man either. I am not threatening violence, but I am telling you that if that which we fear must come to pass, you will have been forewarned.

Like some 14,000 Navajos, I, too, served in our country's Armed Forces in the advance of this country. We fought because we believed that in this country a man had a right to his home and that it was right to fight in defense of that home.

I can tell you that we still believe that it is right for a man to fight in defense of his home. Let me say, finally, that I am fully committed to a government of law. I also recognize that a government of law can retain the respect of the people it governs only so long as it respects that higher law.

We have no quarrel with the Hopi people. But we tell you here today that you must not and you cannot solve economic problems by making poor people poorer. All of us seek a just and lasting solution to the problem which confronts us.

I can tell you today that a solution which deprives 8,500 people of their homes is neither just nor lasting.

Thank you very much.

Senator ABouREZK. Thank you, Mr. Chairman. You did not say anything about the Abourezk bill in your statement, one way or the other. I just want to know if you want to make it official and also unanimous that you are opposed to it, along with everybody else.

Mr. MacDONALD. Senator Abourezk, I did not make a statement regarding the Abourezk bill because I was simply rejecting one proposal. That is the Goldwater-Fannin-Owens approach to the settlement of this dispute.

I was also planning to bring about those which I believe would be most favorable. Of course, your particular bill which talks about—it is something that we have not really discussed at all.

Right on the surface, it has the same ring of partitioning and movement of people. For that reason, we more or less put it in with the partitioning and movement of people bills.

Senator ABOUREZK. Of all the alternatives talked about, which alternative does the Navajo Tribe favor over all of the rest?

Mr. MACDONALD. The alternative we favor, and the Navajo Tribal Council has endorsed, is the Montoya-Domenici-Moss bill, S. 3230.

Senator ABOUREZK. After that, which alternative do the Navajo people endorse?

Mr. MACDONALD. Second to that, we ask a fair investigation and factfinding commission that is going to not be biased for us or biased for Hopis or have an outside influence. That it be brought in and actually get down and get the underlying facts of the people and the situation that has brought about the problem as it is today.

From that, a genuine suggestion be made. I am willing to submit to that, and be able to move from that point into some kind of negotiated settlement, or even binding arbitration.

Senator ABOUREZK. In the Meeds alternative that you spoke of briefly in your presentation, you suggest that there be a period of negotiation with binding or compulsory arbitration at the end of a given period.

Would you favor in such legislation that the Congress establish a series of alternatives such as, perhaps, an Abourezk alternative, a Montoya-Domenici alternative and so on, and so on, in the event the period of negotiation failed and a negotiating commission were to enforce or impose some kind of settlement upon the two sides.

Mr. MACDONALD. I would be in favor of that proposal. I am in favor of a proposal that would leave all options open, if we are going to try to hit for the middle-of-the-road solution, so that equities and just solutions could be achieved.

The reason I am very, very leery of the Fannin-Owens bill is that it has the same ring of things we have experienced and I guess whether the court does it and we have had experience with the courts, or whether the Interior Department does it, we still have had experience with Interior and Bureau of Indian Affairs.

As you can see right now, they are talking about partitioning and moving the people. So if you take these special interest groups out of this whole dispute and try to make it as impartial as possible, then it is, I think, a very possible solution.

Senator Goldwater here stated that if the Navajo and Hopi traditional groups ever get together, yes; that is the way to do it. But let me say this. Just by saying that is not going to accomplish that.

I have tried. I am sure Abbott has tried. What we need is someone that can bring all of these forces together, the tribal council, the traditional people, in such a way that there is a kindling of genuine negotiations.

In the absence of anyone coming down in that fashion to the Navajo and Hopi group, they are not going to get together. As you see, John Boyden did an effective job defending the Hopis, and that is his job, and he is going to do that, and so long as he is saying negotiate with the Navajos but hold back, because I can win for you in Congress,

then certainly they are not going to come to the negotiating table next year. If the same thing is happening to me, I am sure I will not negotiate. But maybe if Henry Kissinger comes down—I am not promising anybody anything. But just beginning to really take this Indian self-determination seriously and begin to work on this. I am sure, with all the minds and wisdom of this country, we can certainly make something.

Senator ABOUREZK. The Hopis claim that you will not do any negotiating in good faith. I am curious to know, when we were in Winslow last year, there was some kind of agreement between—not between but by both parties.

Yourself and Clarence Hamilton at the time that you would both in good faith try to negotiate. They claim that your side would not do it.

Mr. MACDONALD. Let me correct that. I do not know what they mean by your side would not do it. But right after the hearing we scheduled a negotiation session with the Hopis in Salt Lake City.

This was on April 2, 1973. Here is the record of our negotiations. At that time I suggested that we leave out the reporters, we leave out the attorneys, let just the Navajo and Hopi official representatives get together.

We did that, and in my mind, made great progress. We talked about—we got that map out and we talked about how in the world can we achieve equity, recognizing the 1963 court decision, without moving people.

That was the basis of our discussion at the beginning. There was talk about, perhaps, making the entire Executive order a special reservation for Navajo and Hopis who are in that area.

There was also a suggestion by us that we get alternative land, and the Hopis said, "If you do that, we need a corridor from the southern part of district 6 down to whatever lands you might find."

We agreed we would go, spend our money, make surveys, and locate that land. So this was the agreement. We said "We will meet again in Phoenix" 1 month after that Salt Lake meeting, to go over these things.

I have the minutes of the Salt Lake meeting here—I mean the Phoenix meeting, May 4, 1973. Our land people brought their maps. We were ready to discuss the alternative land and the other question of making that a separate reservation for the two tribes, so that no one has to move.

When we laid down our maps and began to talk, what we heard from the Hopis was, "We do not want to discuss alternative land. We do not want to discuss the corridor. We do not want to talk about joint reservations. All we want is Sam Steiger's bill passed."

That is right in here. I was very surprised—

Senator ABOUREZK. You say there were records kept of the negotiations?

Mr. MACDONALD. Right. I have them right here. If you want them we will submit that for the record.

Senator ABOUREZK. I would like to have it for the record.

[The information referred to above was retained in committee files.]

Mr. MACDONALD. I was very puzzled as to why all of a sudden the change of mind. But we were willing to negotiate in whatever way we can to resolve the problem. I know now after listening to John Boyden this morning, even he could persuade me, I imagine, if he was trying to tell me something else.

But I suspect that the problem was that the forces that wanted the partition to be pushed pressed the Hopis to lean firm on the Steiger partition, even then. In this respect we have tried.

And of course, there was an election that took place on the Hopi Reservation last January. Abbott took the chairmanship, and I wrote a letter to him in January asking him to name a date and place where we could continue with the negotiations.

I never received a reply to that letter. Then, about 3 months later, I sent another letter asking him, again, to name a date and place where we could negotiate. No reply to that letter.

About 3 months ago when Owens' bill was turned back from the House because of a suspension of the rules, I called Elvin Dustee, vice chairman of the Hopi, and spoke to him. I said, "Look, why are we not negotiating? The bills are going back and forth. We are spending a lot of money, our resources, time and effort, all because we are not getting together.

"Why do we not get together? We must save some money, and we can save time and resolve this thing." I said, "Why don't you contact Abbott and ask him if we could negotiate?" I said, "I would like to hear from him or have those two letters answered."

None to date. So I am ready to negotiate right now. Even after the hearing. I am willing to negotiate anywhere, any time, as long as it takes, if it means resolving the problem.

Senator ABOUREZK. There are ways to negotiate or to offer negotiations, where one side offers the other side something that you know they cannot accept. Is that the case now?

Are you willing to talk about something beside the Navajo staying on the land totally? In other words, are you flexible enough so that it is worth while for the Hopis to negotiate?

Mr. MACDONALD. I believe it is worth while for the Hopis to negotiate. They were talking about alternative lands. They were talking about having that reclaimed area to make it a complete joint reservation.

We were talking about Navajos giving to Hopis \$18 million dollars, including a half interest in the minerals for the use of the area. There are many other options that I am sure we have not explored.

Senator ABOUREZK. I do not know if you answered me. Are you willing to explore the option of a partition? Have you foreclosed that?

Mr. MACDONALD. Yes. If we can negotiate—partition without moving people, I am in favor of it.

Senator ABOUREZK. You are putting conditions on it. Are you willing to talk about partition without conditions in your negotiations?

Mr. MACDONALD. It would be very difficult. If we talk in that term, I would rather explore other areas first, before we talk about the partitioning of the land. That is the last, most drastic thing—

Senator ABOUREZK. Are you foreclosing—

Mr. MACDONALD. I am not foreclosing anything.

Senator ABOUREZK. Partitioning?

Mr. MACDONALD. I am not foreclosing. We need to get together and continue negotiation, to effect a settlement.

Mr. VLASSIS. Mr. Chairman, if I could make a comment. On occasion perhaps I can obviate the necessity of making a long and formal statement as we go along. I would like to point out—I notice Mr. Loesch is sitting back there.

He and I and the chairman of the Navajo Tribe and the Hopi Tribe and certain high members of both tribes met in Albuquerque almost 3 years ago. At that time a proposal was made by the Government to which the Navajo Tribe agreed to attempt to jointly administer the reservation with the Hopi Tribe. Both tribes agreed to that agreement, in the presence of Mr. Loesch.

The Hopi Tribe repudiated that agreement within a week after the meeting was over. I would like to point out, as we go along, because I do think the testimony to date has been so colored by attempts to show Navajos as being noncooperative.

I would like to take recourse for 1 second, if I may, to the famous case of *Healing v. Jones*. It seems to me that everyone who reads this case picks up three words: Joint, undivided, and equal.

But there are some other words in here which the Hopis have violated consistently. I do not think in bad faith. I do not think anybody read this case. It is on the last page of the case, and the case is over 100 pages long. Quote :

It will now be for the two tribes and Government officials to determine whether, with these basic issues resolved, that is the land title, the area lying outside District Six can and should be fairly administered as a joint reservation.

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

Chairman MacDonald and myself have been working on this situation for almost 4 years. There has never been any situation in which the Hopi Tribe to date has been willing to consider the joint administration of the Executive order area.

Yet it, too, is one of the mandates of *Healing v. Jones*. It is just that that mandate was never brought to the floor, either in the hearings or in the Federal courthouse.

Senator ABOUREZK. I think in fairness you ought to read the remainder of that paragraph.

Mr. VLASSIS. You mean you want to talk about the unkind things about the Navajos? I read the full paragraph.

Senator ABOUREZK. I do not think you ought to read the unkind things. You probably already read the part we are discussing up here. Senator FANNIN, do you have any questions?

Senator FANNIN. Yes. I would like to yield to the Senator from Oklahoma, since he will be going to a meeting. Mr. Chairman, he has decided to stay, so I will move ahead.

Chairman MacDonald, I appreciate very much this opportunity to discuss this subject with you, because in your statement you indicate that we are rather cruel people, talking about asking your children to go hungry.

We have nothing like that in mind. We want to help in every way possible, and you know that we have in every instance. Asking your children to shiver in the cold and be deprived of shelter, nothing in our legislation would indicate that we desire that.

I know there are Federal programs on the reservation that are doing a great deal to help your people. We want to continue them and expand them.

It is just yesterday that we passed a bill that is going to come up, as far as a health program is concerned. It is the most comprehensive health program devised for Indian people. I am proud of this program.

We certainly do not think that you are fair in making the statement that, or describing us in a position of wanting to do damage to your people. That is just the opposite of what we would like to do.

We feel that the solution to this problem would be the greatest service that we could perform. We want to do just what you say here, in your statement on the first page when you say there are ways of reaching a fair, just solution to this problem.

That is exactly what we want to do. Now, I think that we have made it very evident to you. We are proud of the Navajo people. You probably represent more Indian citizens than any other chairman in this Nation.

You have a reservation of 16 million acres. That is about half of all of the reservation land in the United States. We are proud in Arizona that you are developing your oil. It is the only oil in Arizona that we have. We are proud that you are developing your rich coal reserves and uranium. We are proud of what you have been able to do with your large lumber industries.

I think we are partners with you. Certainly, we are not trying to take a position that will be detrimental to you. But I think as long as you have said, Mr. Chairman, that you disagree with the bill that Senator Goldwater and I have introduced, I would like to go to H.R. 10337 and get your thoughts there, I think this meets every objection you have given here today.

This would grant the district court in supplemental proceedings to *Healing v. Jones* the jurisdiction to partition the joint-use area between the Hopi and Navajo Indian Tribes.

If we have confidence in our courts, and I think you do, I think you should certainly be willing to let this take place. To aid the court in its determination the bill establishes certain criteria for partition, which includes equal acreage and quality of land, insofar as practicable; and contiguity of lands partitioned, and inclusion of the high Navajo population density in proportion to the Navajos to avoid as much disruption as possible. Don't you think that is a fair proposition?

Mr. MACDONALD. It may sound fair, but you look at the map—
Senator FANNIN. That hasn't anything to do with this bill.

Mr. MACDONALD. Yes; it does.

Senator FANNIN. There is no proposed Navajo removal area that is being considered in H.R. 10337.

Mr. MACDONALD. Senator, maybe I did not make myself clear. I said suppose that drawing of proposed partition which was made on the Steiger line—

Senator FANNIN. That bill is on the wayside now. It is not under consideration anymore.

Mr. MACDONALD. How else can you draw a line on that map, if that line was not there, to get equal acreage and be fair and move the least amount of people because—

Senator FANNIN. Let me ask how could we do it? I would just say that in some of the court's decision it is stated that they did not have the authority to do this.

It also stated if the authority had been given the court for this 10 years ago or more, this would have all been settled. But they did not have that authority. This bill would give them that authority.

Mr. MACDONALD. Senator Abourezk, Senator Fannin, I recognize what you are saying, what H.R. 10337 says. It says that the land in here will be divided equally without moving too many people around.

Senator FANNIN. Do not refer to the land in there. I want to be sure we are talking about the same thing. It is talking about the whole area.

Mr. MACDONALD. This is determined.

Senator FANNIN. Yes.

Mr. MACDONALD. This is district 6 and this is the disputed land in here.

Senator FANNIN. The whole area. But you are encompassing just what was within that line.

Mr. MACDONALD. No, I am not, Senator. These red and green diamonds are Navajo homes all in here. What I am saying is let us suppose, for some strange reason, that 10337 did pass and then the court comes around.

The bill says we have to divide the land by equal acreage in every way.

Senator FANNIN. To the greatest extent possible; that is right.

Mr. MACDONALD. Which way would you draw it, to move the least amount of people, since it is all operated in this function, so it is very difficult.

Senator FANNIN. No one is saying it is not difficult, Mr. Chairman. But what is fair and equitable, I feel, can be done. I do not know of any other solution that would settle it as you desire.

You say that you would like a permanent settlement of it. Certainly, so would we. It seems to me what has been stated today concerning H.R. 10337, and what has been stated by the Commissioner, would seem to me to satisfy all of the stipulations you have expressed in your testimony.

Mr. MACDONALD. With the exception that you are going to move a large number of people. Regardless of how you draw that line you would have to give the Hopis equal acreage of land.

Just by looking at that map I see that it is very limited as to how far they can draw the line outside of district 6 in order to give this land to the Hopis without affecting location.

Senator FANNIN. District 6 is not a consideration. This is outside of district 6.

Mr. MACDONALD. That is right.

Senator FANNIN. So the area there as marked out in those lines is not in consideration at this time. That bill is not the one that passed the House. The one that passed the House, the Owens bill, does not draw the line.

It leaves the court to draw the line. But it gives a criteria for partition, which includes a very fair and equitable formula. I would think that you would be very pleased with that Mr. Chairman.

Mr. MACDONALD. The way I read the bill is that equal acreage—it means that line, no matter how you draw it, is going to come out in some way close to 6,000 or 7,000, up to 8,500 people being dislocated.

It depends on how you draw the line, of course.

Senator FANNIN. Mr. Chairman, we would hope not. There is a great deal of feeling. Someone said probably 70 percent of the Navajos could be accommodated.

I would not want to make a statement of how many could be because I do not know. But I do feel that this would have been settled some time ago if, originally, the Congress had given the authority to the court to make that partition.

It is regrettable that it did not, because then you would be on your way to development of your lands in a way that you know would hold. You would not face this problem in the future.

But if we do not get this settled now, you cannot make the developments that you deem necessary. You have so stated. There are many problems that will occur as the result of not taking action at once.

I feel that we have vacillated over a period of years. We have not really taken the action that we should have taken. Now that it has gone this far, the House-passed bill, with the recommendations that have come up from the Bureau of Indian Affairs testimony we have had today, it seems to me that we have a solution that is very fair and equitable.

Mr. MACDONALD. Senator, let me ask this question. What is so terribly wrong by allowing the Navajo to live in those areas where you find red and green areas as they are, and buying the surface interests that the Hopi have acquired by the 1963 court decision?

Senator FANNIN. The reason that it is wrong to not take action is that it is not fair to the Hopis to have Navajos occupying most of the land when it is supposed to be a joint use area.

Mr. MACDONALD. This I understand. But we find ourselves in the situation in Gallup and other areas by us claiming that the Navajos were there, and the court held that we were there, but they do not want to move Gallup because they feel they have settled there and have a right to live there.

Senator FANNIN. Mr. Chairman, the Navajo Tribe now has 16 million acres in reservation. This is not a large amount for the Navajos. It is a large amount as far as the Hopis are concerned.

Percentagewise, it is a few percent of your total land.

Mr. MACDONALD. Senator, here is the information you will probably receive in other testimony. At the present time in that joint use area alone, including the Hopi Reservation, in the Hopi Reservation there are 631,000 acres of land, approximately, between 5,000 and 6,000 Hopis in that area.

If you do some calculation there are 123 acres per person for the Hopis in district Six. If you count the Navajos living in the outside 1.8 million remaining of the 2.5 million Executive order reservation, Navajos have about 178 acres per person. With that you almost have an equal situation right now, the other thing is, if you should partition half of that 1.8 million where the Navajos now live and have lived for many years and give it to the Hopis you will end up with 298 acres per person for the Hopis and 89 acres per person for the Navajos outside what you have partitioned to the Hopis.

Yet, we talk about equity, we talk about what is right and equal. It appears to me that the persons who need more land now and probably in the future for some time would be the Navajos, who derive their income from grazing sheep and cattle.

Senator FANNIN. Mr. Chairman, the thing about that is, if we take your formula, the more rapidly you move over there the greater rights you have. I do not agree with that. I think that is wrong. But let us talk about something else.

Where is the closest coal mine to this area, to the 1882 area?

Mr. MACDONALD. Strip mining?

Senator FANNIN. Where your coal mining operation will be.

Mr. MACDONALD. The Peabody Coal operation is taking place right in here.

Senator FANNIN. That is on a 50-50 basis. You are sharing it equally with the Hopis on that?

Mr. MACDONALD. That is right. The royalty that was agreed upon we split 50-50 with the Hoppis.

Senator FANNIN. Now the United Mine Workers, I do not know why they got into this act, but here they talk about the fact there are 200 Indian coal miners and families that would be forced to move from the land.

If they are right up there I do not see that that will make much difference. Even if you do not know where the line would be drawn, the families will migrate up near there anyway, I would think.

It would be advantageous for them. I have been over the lands there. I know there is a problem as far as travel. Certainly it is advantageous if they are working in the mine to be near their place of employment.

It says about 200 miners. How many miners altogether work at the coal mines?

Mr. MACDONALD. In the Peabody I think there are about 375 or 400 who are now working in the mines. Also, with the railroad being built in this area.

Senator FANNIN. Certainly the work is up in that direction anyway, so as far as movement is concerned it would be logical that it would be advantageous for them to be able to move, especially when it is being paid for and they will be relocated. They will have new homes and they will have all these incentives.

It seems to me that they would welcome that opportunity.

Mr. MACDONALD. Senator, perhaps I did not make myself very clear. The Navajos are attached to a particular place where they are born, and that is where they live.

We may roam around, but we always come back to the place through generations. Sure, it is nice for me and you and everyone else to say, "Why don't they just move over here? There are blank areas over here."

But that is easier said than done. Just look at ourselves. Suppose, Senator, you lived in Phoenix, and as a Senator, that would give you \$20,000 and I want you to move to Alaska, because it is good for you. I want you to live there.

And you do not want to go. You come from a different culture. You would resent that, and you would rather go to Alaska on your own.

Senator FANNIN. I will tell you something that I do not think will hold up on your argument there. Your young people that are going to college and are developing their abilities and professions are not coming back on the reservation.

They are being involved in other work, that is not in the reservation area where they formerly lived. We even talked about the desire of having them go back, where they would be involved in work that would be much needed on the reservation.

Mr. MACDONALD. That is true, Senator. There are quite a large number of Navajo educated young people who are moving into settlement centers, like to the city and shift around. But what they are doing is waiting for development to take place.

Maybe they will come back. They come back every summer and throughout the winter, to visit their relatives, their mothers, their

fathers, in order to discuss with them what the economic potentials might be and how they could someday come back here and build some kind of an economic program that would bring them back right where they were born.

It is not by choice. It is economic necessity.

Senator FANNIN. I understand that, because I talked to some of them. Some that were just back visiting. It would happen to be a Hopi family at this time, so it would be the same for the Hopis, as far as that is concerned.

At the same time, they say opportunities in professional work and manufacturing would not be in any of the areas you are talking about. So they are going to have benefits and in H.R. 10337 they are given incentive to move.

You cannot argue that their plight would be harmed, because they would be in a much better financial position, a much better economic position. So I do not see why you would not gladly accept the Owens bill.

Mr. MACDONALD. Senator, I do not know whether I really go along with that, because if you would experience or have experienced with us that the terrible experience we have gone through many times.

First, captivity at Fort Sumner for 4 years, where people were promising us that there would be green valleys and you would be farmers, you would get away from this Canyon de Chelly wilderness and move over there, there is plenty of water there, and everything will be good for you.

You will have plenty to eat, and a large land and everything else. These are all written in army manuals and documents and congressional records of how beautiful land it is that we were taken to.

But it turned out to be a very bad experience where I just have the same thing in this bill, 10337. I urge you, as my Senator from Arizona, to think very seriously about other alternatives, other than 10337.

Senator FANNIN. Mr. Chairman, we introduced another one. But when we talked about people moving, I know your planning on your new irrigation project is to have people move from other areas. You have lands that the new irrigation projects are going to be operating in the next few years, maybe 5 years from now, 10 years from now. Don't you expect some of your people to move into those areas?

Mr. MACDONALD. Senator, the irrigation project that is conceived in the form of Navajo irrigation project is to grow crops, and not growing people.

Senator FANNIN. You employ people. You know if families are going to be involved, and grow the crops, the families are going to move to those areas. It is just natural. They will have the opportunities.

Mr. MACDONALD. That is right, sir. But these will not be the same type of people you are talking about.

Senator FANNIN. It is conceivable that they could be or could not be. I am not going to say what you are going to do, Mr. Chairman. I am just saying I know from the testimony about the irrigation project.

You do expect to accommodate quite a number of families. Isn't that true?

Mr. MACDONALD. Hopefully, this would be those who have been educated and who are looking for jobs and an opportunity to practice some kind of a free enterprise by going into a venture of large farming.

We look to these people who would be successful in that area.

Senator FANNIN. They could just as well come from that area of your reservation as any other area?

Mr. MACDONALD. These people are here. They have a different life-style, a different way of life.

Senator FANNIN. I talked to some of the youngsters going to school and going on to college. I think they have the same hopes and aspirations. It does not say because they live in that area that they are not going to have an opportunity or are not going to benefit by the programs available, through your hard work and through the efforts of the Tribal Council in connection with the Federal Government.

Mr. MACDONALD. Senator, those young people who are in this area have additional problems to the problems the other young people experience, outside of the 1882 area, because they were not allowed to have expansion of schools in that area, no high school in that area.

Therefore, the educational grade level for people in that area is much lower than the Navajo educational grade level on the outside.

Senator FANNIN. May I ask, Mr. Chairman, do any of these youngsters attend any farm school?

Mr. MACDONALD. Yes, many of them do. That is a boarding school in the middle of that 45 miles.

Senator FANNIN. Won't they be attending Navajo Community College?

Mr. MACDONALD. Yes, when they finish high school they will be, I am sure.

Senator FANNIN. So they will fall in the same category as the other youngsters on the reservation. I say they will have the same opportunity. I do not see why you say that they will not have.

Mr. MACDONALD. One other factor that I think must be mentioned, Senator, is that everybody gets alarmed because there are girls being born in that area, because there is a tremendous fear that the Navajo culture permits a young man to move to his wife's home.

Automatically you think, all the girls being born in there, it is just that much more population increase. But it works the other way, too. All the boys born in that area are moving out, too, to marry those who might be on the outside.

So the net result might be negligible.

Senator FANNIN. Well, I think you have proved my point, and thank you.

Senator ABOUREZK. Senator Bartlett.

Senator BARTLETT. Mr. Chairman, thank you. Chairman MacDonald, it is very nice to have you here with us today. I understand you went to the State with the most Indians of all for your education; is that correct?

Mr. MACDONALD. That is right, Senator. I love the State of Oklahoma.

Senator FANNIN. As the chairman well knows, a non-Indian can have a blood transfusion and be classified as an Indian.

Senator BARTLETT. I meant that for the Senator from your State.

Senator ABOUREZK. Will the Senator yield? I just want to ask Chairman MacDonald and notify him that flattery will get him nowhere.

Mr. MACDONALD. You will have to subtract that time from our time.

Senator BARTLETT. Chairman MacDonald, I understand that the Healing-Jones decision in 1962 ruled that the land in dispute would be divided 50-50, and that included the—

Mr. MACDONALD. That is not the way that our General Counsel tells us that the 1962 court decision stated both tribes have equal, undivided interests. We wrestled with it and do we divide the land or does it mean that both of us live on it on an equal basis?

This question has bothered me. That is the reason I would feel that if that is the question, that both have an equal interest in there, that there must be another way to achieve that equity which was gained in 1962.

Senator BARTLETT. Are you saying the court said there would be equal, undivided interest?

Mr. MACDONALD. That's right, sir.

Senator BARTLETT. It is from that court decision that you divide the royalty on a 50-50 basis?

Mr. MACDONALD. Yes.

Senator BARTLETT. The fruits of the royalty are divided exactly 50-50?

Mr. MACDONALD. That is right, sir.

Senator BARTLETT. The Hopis do not receive more or less of the benefits of the royalty than the Navajos, and vice versa?

Mr. MACDONALD. No, it is on a 50-50 basis.

Senator BARTLETT. Do you consider that the fruits of the surface of the land are also divided on that kind of an equal basis?

Mr. MACDONALD. I believe that the court's intention was that the usage of the surface be on an equal, undivided basis; yes.

Senator BARTLETT. And you think that the fruits of the land have been divided equally?

Mr. MACDONALD. To this day the usage of fruits of the land has been almost exclusively used by the Navajos. Even before that decision and most certainly since the decision.

Senator BARTLETT. Chairman MacDonald, has there been any effort on your part or the leaders of your tribe to have the fruits of the land equally divided or equally enjoyed or equally utilized, recognizing that there are no boundaries?

Mr. MACDONALD. I cannot really tell what transpired since 1963 to 1971, when I took office. But I understand there was some negotiation that took place. Also, there were discussions as to how this equity that was newly acquired by the two tribes in that area would be administered.

When I came on the picture in 1971 there was a bill, the Steiger bill, which had been in the House, suggesting a partition. At this point we found ourselves very much frozen for partition and against partition, and there was a wedge put in between people who wanted to achieve that partition.

I tried to effect a negotiation outside of that context. That is why I did not want to have the attorneys there. I did not want the media there. We wanted this to be done just between the tribes.

Senator BARTLETT. Has there been, either prior to your leadership or during your leadership an effort on the part of the Navajos as a proposition to the Hopis, to use the land equally? Again, not necessarily by arbitrary boundaries but by equal use?

Mr. MACDONALD. Yes. As a matter of fact, the meeting which occurred in Albuquerque, N. Mex., 3 years ago, that was the intent there. Our effort there was OK. We set up the Navajo-Hopi Joint Administration Commission, where all livestock in that area and everything else would be administered according to the needs and usage of the people.

And there would be a way to discuss methods of making that decision workable without drawing any lines.

Senator BARTLETT. If it were administered according to the needs of the people involved, the Navajos, having many more people than do the Hopis, then it would not be equally divided between the tribes.

Mr. MACDONALD. We recognized at the outset that this would not be the case.

Senator BARTLETT. The point I am trying to establish is whether there actually has been an effort on the part of the Navajos for equal use by each of the tribes of the land, and equal sharing of the fruits of that land.

Mr. MACDONALD. The only effort I can recall was the effort 3 years ago, when we did meet, and at that time the Hopis agreed to it. They signed the agreement. I signed the agreement.

We were going to set up a program. First, we wanted to talk about development of schools and roads, and within that context, try to reach some kind of a joint area.

Senator BARTLETT. Chairman MacDonald, you referred in your testimony on several occasions to our land. What do you mean by "our"? Do you mean the Hopis and the Navajos, or do you mean the Navajos?

Mr. MACDONALD. When I am saying "our land" I mean the Navajos. I am speaking for the Navajos.

Senator BARTLETT. You say in your statement that you are committed to Government law. You also say that you recognize that a government of law can maintain the respect of the people it governs only so long as it respects the higher law.

Does this mean that you believe in matters of equity and justice for the citizens of this country, and there is a higher law than the Supreme Court?

Mr. MACDONALD. Yes. There is a higher law than that which guides the principles of this country and any nation. That is the consciousness that is given to us by our Creator who gives us that determination, whether we should be compassionate or otherwise.

I refer to that as something we need to look upon as a way to feel compassion, not only for the Navajos but the Hopis and everyone else.

Senator BARTLETT. I agree that there is a higher law in that sense. But do you feel that there is a higher law, higher than the Supreme Court to adjudge differences between people, to address grievances?

And, if so, how does that work? If you think that the decisions of the Supreme Court are not final, how do we reach a final decision for justice?

Mr. MACDONALD. I think there are two or three examples where we have some Supreme Court decisions that were meant and intended to work a certain way and have not worked. Therefore, Congress made new laws as a result.

I am talking about this forced segregation and busing and various decisions that have been discussed in various courts.

I think they are all—I think that is the beauty of the American system, that if it does not work, then you have and the Nation has an opportunity to make redress.

Senator BARTLETT. In other words, you are saying you can obey certain laws and not obey certain laws, according to the Supreme Court's decision. According to your own conscience; is that your point?

Mr. MACDONALD. We are all American citizens, and whatever law has been made, we have to obey them. But on the other hand, there are ways to appeal it. There are ways to request redress of things that may actually have been allowed, that were unworkable.

In this case we are faced with a situation, that is why we are here. Hopefully we can resolve it sometime.

Senator BARTLETT. But you do agree that the Supreme Court law would be the final law that you would obey—the Navajos would obey, and the Hopis should obey, and all the rest of us should obey, as it might pertain to this?

Mr. MACDONALD. That is right. That is the reason we are here, sir.

Senator BARTLETT. Mr. Chairman, thank you very much.

Mr. MACDONALD. Thank you.

Senator FANNIN. Mr. Chairman, I would like to make the same request that the chairman did not make, a request of the Navajo Tribe to furnish the committee with the information that was requested of the Hopi tribal chairman, regarding PR expenditures that have been made for public relations work.

Do you have a firm here in Washington, D.C., that handles your public relations work?

Mr. MACDONALD. That is right, sir.

Senator FANNIN. What is the name of that firm?

Mr. MACDONALD. Maurer, Fleisher, Lon and Anderson.

Senator FANNIN. Well, they do a pretty good job. I note that Broderick Crawford who was in my office one day was one of your representatives. Did he make the film that you were hiring him to produce?

Mr. MACDONALD. No, Broderick Crawford never made any films. I know Broderick Crawford is from 20th Century Fox—

Senator FANNIN. He was on the reservation. They were filming. He came in regarding whether or not they could get some assistance. He said that his purpose was to show what was happening as far as the Navajo people were concerned, in relation of this land dispute.

Mr. MACDONALD. If he did I am not aware of it. We did have some companies come to the reservation. Two weeks ago we had Clint Eastwood. Some time before that we had Marlon Brando. They come around and we give them all the courtesies we can.

Senator FANNIN. Maybe counsel can elaborate on that, because one of his representatives accompanied Broderick Crawford.

Mr. VLASSIS. You mean one of my attorneys did?

Senator FANNIN. One of your attorneys.

Mr. VLASSIS. That could well have been. But as far as I know Mr. Crawford was not engaged or paid by the Navajo Tribe. If I am wrong in that statement I will give you a written statement to that effect.

Senator FANNIN. What I would like is to have an outline, the same as the request that was made of the Hopi tribal chairman. I would like to have the same information furnished by you.

Mr. MACDONALD. I would be very glad to.

Senator FANNIN. Thank you.

[The information requested was not received in time to be included in the record.]

Senator ABOUREZK. I have some more questions. Do you have anything else you wanted to say?

Mr. MACDONALD. I have some more witnesses back here who are very nervous.

Senator ABOUREZK. You have a little more than 40 minutes left. You have until 5:40, 5:43, if you want to be exact. Would you agree to a proposal that would give the Hopis something less than one-half of the joint use area, and include in that reimbursement in cash and an increased share in the mineral rights?

Mr. MACDONALD. Would you go through that again, Senator?

Senator ABOUREZK. Would you agree to a proposal that would give the Hopi something less than 50 percent of the joint use area, so far as surface rights are concerned, and then compensate them for taking less than half the joint use area by reimbursement in cash, plus an increased share in mineral rights?

Mr. MACDONALD. Yes, we would entertain that. That is one of the options.

Senator ABOUREZK. I have something that I did not hear. I was out of the room for a couple of minutes. I did not hear if anyone asked you this question. There have been allegations both during this hearing and during the other hearings that the Hopi have tried to use the joint use area, and certainly they are entitled to use it.

How do you respond to the allegations that the Navajo, either the tribe or an individual Navajo, will not allow them to use it?

Mr. MACDONALD. That came up at the meeting 3 years ago in Albuquerque. We indicated at that time that there were perhaps one or two who may want to move out of district 6 into the joint use area.

We say at the present time we have no procedure as to how in the world you are going to do this. One of the things that was going to be the work of the commission to be set up was to work with the Hopi and Navajo Tribes and a government official to develop a procedure by which, for a Hopi in district 6 who wants to move, this request will be honored.

And some kind of a step be made, without this discriminating. Someone from district 6 herding their cattle or sheep out into that area—this would not be the right way to approach it.

The right way would be to go through some kind of procedure, just as the Navajo does, in order to get this grazing permit to graze in a certain area. There is a procedure they go through.

Senator ABOUREZK. Why do you need a procedure? What is wrong with Hopi moving on just like the Navajos move on?

Mr. MACDONALD. Because they are two different individuals. One, all the Navajos within that area feel that they have all that area as their use, to graze their sheep. So if a Hopi wants to come in, whatever area he wants to come in must be considered in light of how it is used and who is using it and what can be done to accommodate that request.

That becomes a very difficult job, even just taking that one case.

But there was this option open. The same thing is true if the Navajo goes on the outside of the 1882 area. There has to be that same procedure.

Senator ABOUREZK. You are saying that a Navajo outside the joint use area cannot move on at will?

Mr. MACDONALD. No.

Senator ABOUREZK. Have they ever moved at will?

Mr. MACDONALD. No, they cannot. Because every inch of that land, even outside, has been assigned in some way or fashion as a use for a particular family who has a certain amount of livestock.

Senator FANNIN. Mr. Chairman, on that assumption, how can the Hopis ever have any rights on that land? It is 700-percent overgrazed. How could they move livestock on that land? The livestock could not survive, could they?

Mr. MACDONALD. This was part of the work of the Commission. To check and form grazing regulations to resolve not only the livestock question but also to go into some kind of land restoration and conservation program, where wells are needed, earth dams are needed in that area, to improve upon it.

Right now it cannot be done. You cannot build a road. You cannot even put up a windmill. You cannot even build a school or a hospital with that court order, you cannot even build a house.

So it is a very difficult situation in that area right now.

Senator FANNIN. We realize that and that is why we are trying to help you. We feel it is absolutely essential that we get this settled so you can go forward. As far as the Navajos are concerned, that would be appropriate for their development.

As it stands now very little can be done until the livestock grazing is cut back. I understand that the courts have requested, not only requested but demanded, that the grazing be cut back.

Of course, this is another subject. We went through that before. But I do not see how the Hopis can ever expect, if we continue on as we have in the past, to benefit by their rights to that land.

Mr. MACDONALD. It is a very difficult situation. All I am saying is that we have found ourselves in a situation where he had a horse and has been riding that horse ever since. Perhaps his grandfather has given him a small pony, and he has been riding that, and he has saddles and bridles for it and all of a sudden I say, "That is my horse."

Then, of course, we went to court and the court tells—and, of course, stories were told in such a way, I do not know who won the horse—if both won that horse and used the horse in such a way that it is undivided, equal half-interest.

So then, what do we do? One of the ways to do it would be to say, "Let me ride the horse one day and then I will give it back to him and he rides the horse the next day." Or we could both sit on the horse and ride the same horse together.

That way we have an equal, undivided half-interest in the horse. Or he may suggest or I may suggest that I cut the horse in half and we kill it. So the most sensible thing, if we are reasonable and sensible men, we will sit down and say, "Look. We both have this crazy decision about having equal, undivided things.

"You have been riding the horse. I do not know the horse. It will take me a long time to get used to it. So why not take this horse and

have it evaluated and see how much it costs, and you give me half of the value that I have through the court.

"If I want to buy another horse, fine. If I want to buy cattle instead of the horse, I will do that, too. If I want to put it in the bank, I will do that. You take your horse. I no longer have any interest.

I think it is this kind of a thing we are talking about. It will not do any good to cut the horse in half. The horse would be dead.

Senator FANNIN. That is a very poor analogy. You cannot compare a horse to that land. You can divide that land and the Hopis could use part of it and you could use part of it. That analogy is certainly not valid.

There is not any way that you can say they could not divide that land with one tribe using part of it and another tribe using part of it. It would certainly benefit both. I just do not understand why you still maintain that the Navajos, because of what they have done, should have rights that they are not willing to grant to the Hopis, or have not granted to the Hopis.

Mr. MACDONALD. What they have done; what do you think we have done?

Senator FANNIN. I think you have occupied land that you are not entitled to occupy.

Mr. MACDONALD. Senator, we occupied that land long before 1882. We have proven it. It is in the documents. Healing versus Jones says that in 1962 the court gave title to that land to the Navajos and the Hopis.

As a matter of fact, the Hopi use area has enlarged over the years, rather than shrinking down to the area as they have said. So it is not that we, knowing that that land was not ours—that our forefathers moved in there.

They moved in there as they moved long before any type of question was known or brought up by anybody.

Senator FANNIN. Mr. Chairman, the testimony today I think has been fairly clear from both your testimony and the testimony of the Hopi counsel, that the Hopis feel it is their land.

You moved on it, you acquired certain rights which the Government was willing to observe, then. So they made a division to give you an equal right on the land. When that was done, the Hopis felt they had lost half of it and now you want to take the other half.

That is the way they feel. I think we can go over that forever and still not come to a conclusion. The point is, I feel there is an equitable settlement. I feel it is in this House bill. I hope you will accept it that way.

Mr. MACDONALD. Thank you very much, Senator. I would just like to say that I know Abbott very well. In fact, last winter he gave me some peaches when I was going to the Hopi Reservation, and they were delicious.

On the other hand, I believe that if you look at it, you can look at it in a different way. The Navajos are in there. Instead of Navajos being the predator on the Hopis, I would like to look at it from the other point.

The Navajos were the protector of Hopis. If we were not in that area perhaps all that land would have been gobbled up by somebody else from Flagstaff or from Winslow. Perhaps there would not be that

big area to be squabbling about. But because the Navajos were determined to keep everybody away from encroaching, outside interests, we were the great protector.

Senator FANNIN. There seems to be a little disagreement on that, but thank you very much.

Senator ABOUREZK. Do you have some more witnesses?

Mr. VLASSIS. Mr. Chairman, I would like to take this opportunity, time is running out, to make a formal request in connection with extension of time for all sides to continue testimony, for a number of reasons.

For one thing the presentation this morning was primarily a legal one on behalf of the Hopi Tribe. The presentation today in connection with the Navajo position has been primarily cross-examination of the chairman.

We have a substantial legal position, in addition to the anthropologist, whom we do, in fact, have here and one is coming all the way from Mexico City for this hearing today. The third reason, and I request very strongly a continuation of the hearings either in Washington or in the field.

It is a peculiar situation that arose in connection with the testimony of Interior before the Navajos went on. That, unfortunately, is in connection with coal. The coal issue, other than being referred to on a few occasions, is something that has not come to the forefront.

In the oral statement that was given by the Commissioner taking the position of the Department of the Interior, there was no mention that I could find that refers to the proposed amendments to the Owens bill with respect to royalties in the event of a dispute between the two tribes.

Page 8 of the report of the Department of the Interior, of which I was able to obtain a copy yesterday, has the following language in it:

In the event of a dispute between the tribes regarding the exploration or development of such minerals, the Secretary is authorized to resolve such disputes.

If the Secretary determines that exploration or development would be in the overall best interests of the tribe, he is authorized to take such actions as he deems necessary to implement such exploration or development.

In simpler language, what that proposal is, by Interior, is that if one tribe agrees to a low royalty on coal and another tribe insists on a high royalty on coal, the decision will fall within the hands of the Secretary of the Interior.

It is a fact that coal in the West lies primarily in three areas. One, where the railroads were quite able to take care of themselves. The other lies in the hands of the Federal Government, who is also quite able to take care of itself.

The third repository of coal in the West are the Indian tribes. The fact of the matter is the current price of coal was roughly 54 cents a ton. Nevertheless, the Navajo tribes and other tribes are receiving as little as 15 cents a ton.

Therefore, the issue of coal with respect to the amendments to the Owens bill is an enormously sensitive issue. In that circumstance, I think we should—I think both tribes should have an opportunity to respond to that particular issue which has not surfaced during the course of these hearings at all.

Senator FANNIN. Mr. Chairman, there are two Senators here listening to this testimony. You have the privilege of supplying additional information. I think you are prepared to do so now.

If you are prepared to do so now you can do it in writing. The agreement that we delay these hearings to this time, I assume was at the request of the Navajo Tribe—I do not know if it was, Mr. Chairman, or not.

But anyway, we had a strict understanding with the chairman and Chairman Jackson that we would hold hearings today; that after the hearings we would proceed to consider the markup of legislation.

I would say, Mr. Chairman, that that is the understanding. I think it would be highly improper to vary from that agreement.

Senator ABOUREZK. Senator Fannin.

Senator FANNIN. Mr. Chairman, I am willing to stay all night, if necessary, to hear testimony. But midnight would be within our agreement, and I am very willing to sit here and hear testimony up until midnight.

Mr. VLASSIS. I do not mean to be quarrelsome. Needless to say, we would like very much to complete the testimony. But I still point out something significant here. There has been no testimony or comment, nor can there be any sensible testimony in the fact that the Owens proposal, as it is now before the Senate committee, has been cast in such a form to take the power of decision away from both tribes, with respect to the development of coal in that area.

We spent all day talking about real estate developments and people and not one word about the coal. With that I would say we could put on our anthropologist witness so that we may send him back to Mexico, and hurry along as fast as we can.

Senator ABOUREZK. You want to do what?

Mr. VLASSIS. I would like to put on our anthropologist and hurry him along as fast as we can. But I would renew the request for a field hearing, particularly in connection with this coal situation.

Senator ABOUREZK. I, personally, as one member of the committee, would like to see additional hearings. I was not any party to an agreement of holding just this one day's hearing.

It is well known to Senator Fannin and Senator Bartlett that I would like additional hearings, particularly field hearings. I do not know if the committee will decide that, but I think you ought to go ahead with your witness, and not argue on your time here.

Senator FANNIN. Mr. Chairman, it is in the testimony. The commitment of the chairman. I just hope that he will abide by that commitment. We had field hearings. We went out after we had hearings here in Washington.

We had additional field hearings. Now we are having additional hearings here. We have gone on and on over several years having hearings. Most of the testimony is identical. I think that we have sufficient information.

The House felt they has sufficient information to act. I feel we have sufficient information to act.

Senator ABOUREZK. I do not think they can decide the issue amongst the three of us. I think you ought to proceed with the testimony.

Senator BARTLETT. Mr. Chairman, I think we can agree that we are not in a position to authorize additional hearings.

Senator ABOUREZK. We may not be in a position to authorize that but we are not in a position to stay here all night, either.

Senator BARTLETT. We had an offer to stay half the night by Senator Fannin.

Senator ABOUREZK. Senator Fannin only speaks for Senator Fannin.

Senator BARTLETT. That is right. And Senator Abourezk speaks for Senator Abourezk.

Senator FANNIN. It takes one Senator to chair the hearings.

Senator ABOUREZK. I think you ought to proceed with your witness.

Mr. MACDONALD. Thank you, Senator.

[Subsequent to the hearing the following information was received:]

JULY 26, 1974.

HOB. HENRY M. JACKSON,

*Chairman, Senate Interior & Insular Affairs Committee,
Washington, D.C.*

DEAR SENATOR JACKSON: I ask that you include the following statement as part of the record of the hearings on the Navajo-Hopi Tribal dispute:

On behalf of the Navajo Tribe and particularly those Navajo families living on the sections of the Executive Order Area who may be forced to leave their homes by the passage of S. 2424 or HR 10337, I would like to express my dissatisfaction with the position of the Commissioner of Indian Affairs regarding current pending legislation.

The Commissioner recommends passage of H.R. 10337 which we cannot support since it would partition our land.

The Commissioner makes specific suggestions for amendments with which we cannot agree. The suggestion that a "bonus" plan be instituted to reward Navajo families who would abandon their homes as quickly as possible after passage of such legislation ignores a central issue in this dispute. While there are financial hardships contemplated in such a forced expulsion, our main concern is to protect these families from the emotional, psychological and physical hardships that would be caused by the destruction of their traditional family homes and way of life.

The suggested provisions requiring that payments made under the bill may only be used to obtain replacement dwellings and may only be made to households who have lived on the land more than one year prior to enactment imply that an attempt is being made to settle this area spontaneously for profit. Our people are trying to save the houses that they have lived in for generations.

It is also proposed that the Secretary of the Interior be given discretion to sell lands to the Navajo for relocation purposes. It is essential that land be made available to anyone forceably evicted from his home. There must be a strict and adequate provision for the acquisition of such land.

I would also like to express my approval of the proposal that the Secretary of the Interior be directed to institute a thorough study of the present use and occupancy of the entire Executive Order Area to be submitted to Congress two years after passage of the bill. Such a study is vitally essential before any definite relocation program can be begun.

The suggestions which would provide for open-ended funding for this project and increased payments reflecting changes in the costs of relocation are inadequate.

However, they evidence an attempt to recognize the enormity of the proposed relocations and are therefore a good basis upon which similar amendments could be built.

In summation, the Commissioner's recommendation is totally unacceptable, since he still calls for partition of our land. I cannot support a position that would result in the forced expulsion of my people from their traditional homes.

Sincerely,

PETER MACDONALD,
Chairman, The Navajo Nation.

Mr. MACDONALD. We would now like to ask Professor Scudder, an anthropologist, to testify at this time.

STATEMENT OF THAYER SCUDDER, PROFESSOR OF ANTHROPOLOGY, CALIFORNIA INSTITUTE OF TECHNOLOGY, PASADENA, CALIF.

Professor SCUDDER. Mr. Chairman, members of the committee, my name is Thayer Scudder. I am currently professor of anthropology at the California Institute of Technology in Pasadena, Calif.

I am submitting a vita and a statement for the record of the committee.

In my verbal testimony, I will quote from my statement but I will also abstract from it to try to speed up my testimony.

Senator ABOUREZK. The statement will be included in the record in full.

Professor SCUDDER. For the past 18 years, I have been studying the impact of compulsory relocation or forced removal on world populations.

I believe that I have probably carried out more research on this topic than any other scientist in the world. Since 1970, I have developed, tested, and published on a theory dealing with the effects of forced removal on people; a theory which I now consider applicable to rural communities whose system of land use and beliefs tie them to a particular geographical area.

Hence, the theory is especially applicable to the Navajo people of the joint use area.

In my testimony to you today, I wish to stress the exceedingly detrimental impacts of forced removal on people. I wish to emphasize that forced removal is a drastic step that should be avoided whenever possible.

In the Navajo case, I urge you not to make the mistake of requiring forced relocation as a solution to this difficult and tragic dispute.

During my 18 years of research on forced removal, I have never seen a situation in which forced removal is less justified or less necessary as a solution to a complex problem than in this Navajo case simply because reasonable options are available.

Some of these options were mentioned by Chairman MacDonald in his testimony. The information that I present to you today is relatively recent.

In 1956, for example, we had very little knowledge of the impact of forced relocation on people but that is no longer the case, Mr. Chairman, since there have been a series of excellent studies over the last 20 years dealing with forced relocation in connection with urban renewal, for example, settlement, and a number of other projects.

The results of a number of these studies have been published and the results are remarkably consistent and remarkably depressing in their findings on the impact of forced relocation on people.

They apply, incidentally, to all populations, irrespective of ethnic backgrounds. For example, in the United States, examples include white farmers, black sharecroppers relocated as a result of over 20 dams in connection with TVA authority on a construction program.

Other examples include several million Palestinian refugees, as well as Egyptians and Sudanese relocated in connection with the Aswan Dam project.

Almost without exception, people resist forced relocation. Where resistance fails and relocation occurs, the resulting trauma is very extreme. Indeed, it is difficult to imagine a more grievous insult to a community. We are talking about a community here; not a series of individuals or a series of families.

It is difficult to imagine a more grievous insult to a community than to be forced to leave a beloved home. This is especially true of illiterate people.

I might point out, in the joint use area, because of the court order in 1962 which froze development, the level of illiteracy is considerably greater than in other parts of the Navajo Nation so the trauma is especially true of illiterate people and especially true of the elderly who have lived all their lives in a single rural community.

While this would include the majority of the Navajo people in the joint use area, including men who have formed deep attachments to their homes and to their land, it applies especially to Navajo women.

On June 11, 1974, I talked to a number of Navajo women in the disputed area during a 4-day field visit to the joint use area. These women had known about the possibility of forced relocation to some unknown area for at least 2 years.

As I expected, they were tremendously disturbed and distressed about the possibility. Several requested that they be allowed to give statements voicing their concern.

The importance of these statements lies not in their degree of accuracy, but as indications of a people's deep concern. I have included two in my statement but I will read, now, only one before I go on to discuss the impact of forced removal.

This is the first statement, and the only one that I will quote:

I was born 37 years ago and I am very much discouraged and concerned about the Navajo-Hopi land dispute.

I am uneducated and would not know how else to provide for myself and children other than by the sheep that I care for. I do a lot of weaving to support my family.

The land dispute has disturbed me mentally—

I want to stress this point because I will be returning to it.

It affects a person in this way and it appears that my mental state is getting worse. If I am told to move off the land that I love, I do not think that I can start a new life elsewhere.

Indeed, some of the older Navajo, who had great concerns about this dispute, have passed on because of this dispute.

On my visit, we also talked to an elderly man who, I suspect, was over 70. Matter of factly, this gentleman stated that neither he nor his neighbors would willingly leave the area.

As we have seen in one woman's statement, already some Navajo believe that recent deaths among the elderly have been hastened because of the ominous turn events have taken. People are tensing up. They are blaming Hopi. They are blaming the Hopi attorneys. They are blaming the Federal Government, alike.

Already the same rumors I heard with distressing frequency in Africa, the Middle East, and Asia are beginning to circulate: that the move, basically, is a Government tactic to steal the land of Hopi and Navajo people alike.

While such rumors are very dangerous, they are virtually impossible to stop since they arise not from outside agitators, but from the threat of forced removal. In other words, from the entirely under-

standable attempts of thousands of people to protect their homes and protect their lands.

In all of the African projects with which I am familiar such rumors flourished. In two, they contributed to serious violence with police killing eight homeowners—for what else can we call them—in one case and wounding at least four times as many in another.

I cannot believe that Congress wishes to initiate such a confrontation with the Navajo; yet the possibility of violence is definitely present and I expect it to grow.

Looking to the future I fear that, if forced removal is pushed, the day will come when Government security forces will be called in to intervene and to eject people forcibly from the only homes that the large majority have ever known.

The world over, compulsory relocation is characterized by multi-dimensional stress. The rest of my paper will deal with this. We can divide, for analytical purposes, this multidimensional stress into three categories though please bear in mind that the categories are intimately interrelated.

The first category is psychological stress; the second, physiological stress. I will show compulsory relocation leads to increased death rates, among the elderly in particular. The third category is what I call sociocultural stress.

Psychological stress has been aptly labeled by the psychologist Fried as "the grieving for a lost home syndrome."

This grieving for a lost home syndrome is universally associated with compulsory relocation of communities. It does lead to premature death, especially among the elderly, and there are a number of studies to substantiate this.

This stress, of course, is already present, actually, in the Navajo case. It dates back, at least, to the 1962 court decision which froze all development in the joint-use area pending resolution of the land dispute but it has increased since the people became aware—probably about 2 years ago of congressional moves to evict them from their homes and it will increase if forced removal is, in fact, approved.

Let's go on to physiological stress.

This is easier to measure since the indexes are increased morbidity and mortality rates.

Although the absence of baseline information preceding relocation makes it difficult to prove, what evidence we have strongly suggests that compulsory relocation is accompanied by higher incidence of disease and temporarily heightened death rates.

When I say "temporarily," I mean during a 5- or 10-year period following the relocation.

Now, in addition to the psychological stress that I mentioned, there are several logical reasons why this should be the case. Especially relevant to the Navajo situation is crowding.

Because of land scarcity, forced removal usually is accompanied by increased population densities as people are crowded together in a smaller area. This, of course, would be the case if the Navajo were resettled anywhere on the reservation. It would especially be the case if they were moved just back a short distance from a court-drawn line.

Where people are unaware of how diseases are spread and environmental health is poor, crowding is a major factor responsible for a higher incidence of disease.

In my written statement, I go into some of the diseases which I will predict and I checked this out with public health authorities in the reservation; those that I would predict to become more severe following relocation.

In other words, Mr. Chairman, if forced removal is required, I predict that temporarily heightened death rates among the elderly would occur.

Now, going on to sociocultural stress.

This adversely affects the relocatees' capacity to adjust to new homes and opportunities. People involved in forced removal behave as if a society was a closed system.

During the resettlement period, this means that they stick to the most familiar people in their world, to the most familiar behavioral patterns, to the most familiar ideals. Unable to innovate in major ways during the period of transition following removal, they change only so much as necessary to reestablish old activities in a new habitat.

As a result of such cultural conservatism, it is very difficult for outside agencies, no matter how well meaning, to introduce new occupations and ideas. This is why behavioral scientists involved with forced removal recommend that the resettlement policy should be formulated and executed with subsequent development options in mind.

In the Navajo case, for example, it is extremely unlikely that the conservative and pastorally oriented residents of the joint use area could become successful farmers on the Navajo irrigation project since irrigation would require not only major technological changes, but also major changes in social organization and cultural values.

As I said, such changes are not associated with a transition period of several years following compulsory relocation. There will be individual exceptions, of course; especially certain educated individuals. But we are talking here about very, very, very small numbers of people.

According to Elizabeth Beyal, who conducted what remains the most comprehensive household survey in the joint-use area, sociocultural stress has already begun because of the combined impacts of the 1962 court order and the threat of forced removal.

In addition to noting the uncertainty and hopelessness, which she believes is correlated with higher suicide rates, which I have classified as psychological stress, she believes that pressures building up since 1962 have caused a weakening in family and community structure.

With goals for the future frustrated, a drop in parental responsibility appears to have occurred with an increased incidence of child neglect and juvenile delinquency.

Further insights into the type of sociocultural stress which can be expected in the event of forced removal can be gained by looking at 15 Navajo families, comprising 92 people, who were evicted in November 1972 from the Hopi Reservation, and who are, today, mostly unemployed dependents of the tribe.

These people have a deep suspicion of all outsiders, including tribal representatives. This suspicion can be generalized to the future relocatees, since forced relocation is accompanied by a crisis in local leadership which constitutes another component of sociocultural stress.

This crisis arises because local leaders, in this case the Navajo Tribal Council, are blamed by the relocatees for being unable to protect their most fundamental interests; namely, their homes and livelihood.

Hence, at the time people need strong leadership, relocatees tend to reject their leaders, turning inward upon themselves. We have examples of this already among these 15 families.

According to the staff of Family Service, based in Fort Defiance, those of the 15 families whom they have attempted to counsel are suspicious of outsiders regardless of affiliation.

Obviously, under such circumstances, it is very difficult to get them to help themselves. The problem is compounded by an increased level of dependency, another characteristic which, all too frequently, accompanies forced removal; especially severe in connection with Ghana's Volta Dam relocation and Egypt's Aswan High Dam relocation.

Since the people did not ask to be removed, they consider it the responsibility of the movers to provide for their needs. Hence, some of the 15 families will not take their children the short distance to new schools, expecting the Tribal Council to transport them.

The 15 families also have had difficulties with their new Navajo neighbors in Window Rock. This is an important point that I wish to stress. Their Navajo neighbors in Window Rock see them as competing for land and services.

They have refused the 15 families entry into the local chapter, hence closing off access to certain community services, and they tend to blame them for whatever criminal acts occur in the neighborhood; an attitude which is somewhat justified by the extreme social disorganization with accompanying alcoholism and delinquency that characterizes the majority of the relocated families.

This is the important point.

In behaving in this way, the relocatees' new neighbors are acting just as we would predict from our theory. Unless relocatees are moved to totally uninhabited areas—which is a rare occurrence—one can predict that relationships between them and their new neighbors, the hosts, will be strained, contributing even further to the multidimensional stress of resettlement.

The hosts see the relocatees as encroaching on their own lands. This would be the problem if you moved them back into the joint use area, thus doubling, or increasing by half, the population.

Unaware of the trauma associated with relocation, they resent whatever assistance outside agencies provide, especially if this assistance is not equally available to them. If assistance is made equally available to hosts, they greatly increase costs of the relocation.

For their own part, the insecurity of the relocatees is heightened by the knowledge that their new neighbors resent and ridicule them.

In this statement, I have tried, briefly, to indicate why those of us who have studied compulsory relocation consider it an undesirable option.

Though the details would differ, my conclusions would be the same if the people threatened with forced removal in this dispute were Hopi.

Regardless of the context, compulsory relocation should be avoided until all other alternatives have been carefully considered and found wanting. Such is certainly not the case in regard to the Hopi-Navajo land dispute.

The time factor, unlike relocation in connection with dam construction, is not critical in this case, since the Hopi Tribal Council and attorneys are not claiming the land because they must use it today. In-

deed, they want it not so much for human settlement as for grazing activities.

So, the present rush to push a forced relocation bill through the Senate is not only unnecessary but dangerous. Surely, the time has come to back off and to try another approach.

Should the final decision also involve forced removal, let me close by adding that compulsory relocation of entire communities is an incredibly complex process which no governments have handled satisfactorily, anywhere, at any time.

Not only must people be physically removed with minimal disturbances, but new settlements must be planned and created for them. The provision of improved housing and social services is the easiest part of reconstruction.

Far more difficult, and responsible for the failure of the large majority of planned rural settlement schemes, is the creation of viable economic systems to support the relocatees.

In my own research dealing with relocation in connection with dam construction, I am aware of no cases in which the period of transition following physical removal has lasted for less than 5 years. Indeed, in some cases, it continues today; over 10 years after relocation.

This is the period characterized by multidimensional stress.

Since it ends only when the people feel at home in their new habitat and have become self-sufficient, the failure of economic development programs only prolongs the period of transition and of stress.

Not only is compulsory relocation complex—and it is hard to imagine a more difficult task than creating viable communities for people who are unwilling participants; we have had lots of experience with this in urban renewal and model cities and what have you where we are trying to create new communities from scratch—but it is very expensive, even if you succeed, in terms of capital, personnel, and equipment.

Often, ignorant of what is involved, those responsible for programs of compulsory relocation tend to underestimate the capital costs by a factor of 2 to 3. The BIA was mentioning the need for planning earlier this afternoon and that is the first time I have heard of the need for planning and, without exception, they underestimate the number of people requiring relocation.

For example, frequently a census is carried out. People are moved 5 to 7 years later. During that time, they have been increasing at a rate say, of 2 percent per annum.

When we take into consideration the extreme human costs involved, it should be clear why forced relocation should be required by informed policymakers only as a last resort.

In the Navajo case, it is not too late to pursue a more humane alternative.

Thank you, Senators.

Senator ABOUREZK. Thank you, Mr. Scudder.

[The vita and the statement follow:]

VITA

THAYER SCUDDER

Personal:

Born: August 4, 1930 at New Haven, Connecticut
 Marital Status: Married Mary Eliza Drinker, August 26, 1950;
 Daughters, Mary Eliza, November 20, 1952; Alice Thayer,
 July 21, 1954

<u>Education:</u>	<u>Dates</u>	<u>Degree and Subjects</u>
Phillips Exeter Academy	1944-48	Secondary
Harvard College	1948-52	A. B., cum laude in General Studies (concentration in Anthropology and Biology)
Yale University	1953-54	African Studies and Comparative Religion
Harvard University	1954-56 1957-60	Ph. D., Anthropology (concentration in social anthropology)
London School of Economics	1960-61	Postdoctoral study: African Studies, Anthropology and Ecology

Professional Positions:

Research Officer, Rhodes-Livingstone Institute for Social Research, Lusaka, Northern Rhodesia, 1956-57.
 Assistant Professor, American University in Cairo and Senior Staff Member of the University's Social Research Center, 1961-62.
 Senior Research Officer, Rhodes-Livingstone Institute, 1962-63.
 Research Fellow, Harvard University, Center for Middle Eastern Studies, 1963-64.
 Assistant Professor of Anthropology, California Institute of Technology, 1964-66.
 Associate Professor of Anthropology, California Institute of Technology, 1966-69,
 Professor of Anthropology, California Institute of Technology, 1969-

Overseas Research and Consultation to Date:

- Baseline study (with Elizabeth Colson) of the Gwembe Tonga population of the Middle Zambezi Valley prior to resettlement in connection with the Kariba Dam scheme (research sponsored and financed by the Rhodes-Livingstone Institute -- now the Institute for African Studies of the University of Zambia), 1956-57.
- Ecological survey of the Egyptian Nubian population prior to their resettlement in connection with the Aswan High Dam Scheme (research sponsored by the American University in Cairo and financed through a grant from the Ford Foundation), 1961-62.
- Continuation of Colson-Scudder long-term study of social continuity and change in the Middle Zambezi Valley (research sponsored and financed as in 1956-57), 1962-63.
- Three months in East Africa (Kenya and Tanzania) as a member of a four-man World Bank (IBRD) Mission studying African agricultural development, May-August 1964.
- One month (August) in Nigeria as a Ford Foundation consultant in connection with the planning of the proposed United Nations Development Programme -- Food and Agriculture Organization -- Nigerian Kainji Lake Research Project. Several weeks (January-February) in Ghana and Nigeria as a consultant to the Africa Science Board of the U. S. National Academy of Sciences, 1965.
- One month in Nigeria as an FAO consultant in connection with the planning of the proposed UNDP-FAO-Nigerian Kainji Lake Research Project, June-July 1966.
- Four months (August-November) in Zambia: (a) one month evaluation of the Kariba Lake fisheries and survey of the Kafue Basin as a Consultant for FAO; (b) continuation of Colson-Scudder long-term study of the Gwembe Tonga (while carrying on this research, we have become honorary affiliates of the Institute for African Studies), 1967.
- Two weeks in the Ivory Coast as a UNDP consultant to the Bandama River Authority, October-November 1969.
- Ten weeks (April-June) in Zambia: (a) six week evaluation of the sociological implications of the Kafue River Dam for the present inhabitants as a FAO consultant; (b) four week continuation of the Colson-Scudder long-term study of the Gwembe Tonga, 1970.
- Ten days in the Ivory Coast as a UNDP Consultant and adviser to the Bandama River Authority, October 1970.

- Three days in Thailand as an ECAFE (UN Economic Commission for Asia and the Far East) Consultant to the Committee for Co-ordination of Investigations of the Lower Mekong Basin, March 1971.
- Six months in Zambia: continuation of Colson-Scudder long-term study of social continuity and change among the Gwembe Tonga (research financed by the National Science Foundation), May-November 1972.
- Ten days in Ghana as a World Health Organization Consultant to the Schistosomiasis Project on Lake Volta, March 1973.
- Three months in Zambia: continuation of the Colson-Scudder long-term study of the Gwembe Tonga, June-September 1973 (research financed by the National Science Foundation).
- Ten days in the Ivory Coast as an UNDP Consultant to the Bandama River Authority, November 1973.

International Conferences and Symposia:

- Panama Conference on Tropical Biology, Panama City, 9-12 November, 1966.
- Ghana-U.S. Workshop on Priorities in Scientific Research, Accra, 14-22 January, 1971.
- India-U.S. Ecology Symposium, New Delhi, 22-27 February, 1971.
- Wenner-Gren Symposium on An Interdisciplinary Approach to Planned Social Change, Burg Wartenstein, Austria, 6-15 August, 1971.
- Workshop on Human Settlements in New Lands: Their Design and Development, Cairo, Egypt, 19-30 September, 1971.
- Wenner-Gren Symposium on The Origin of African Plant Domesticates, Burg Wartenstein, Austria, 19-27 August, 1972.

Fellowships and Committees:

Danforth Fellowship (for completion of doctoral studies), 1954-60.

Harvard University Knox Memorial Traveling Fellowship (declined), 1959.

Social Science Research Council Postdoctoral Area Training Fellowship (Academic year spent primarily at the London School of Economics), 1960-61.

Member of the National Academy of Science's Committee on the Development of African Water Resources, 1966-

Publications:

- 1960 "Environment and a Culture," Natural History, April and May issues, pp. 7-17 and 24-31.
- 1960 "Fishermen of the Zambezi," Rhodes-Livingstone Journal, No. 27, pp. 41-49.
- 1962 The Ecology of the Gwembe Tonga, published on behalf of the Rhodes-Livingstone Institute by Manchester University Press, 274 pp.
- 1965 "The Kariba Case: Man-made Lakes and Resource Development in Africa," Bulletin of the Atomic Scientists, December, pp. 6-11.
- 1966 "Man-made Lakes and Population Relocation in Africa," in R. Lowe-McConnell, editor, Man-made Lakes, published on behalf of the Institute of Biology by Academic Press.
- 1966 "Man-made Lakes and Social Change," Engineering and Science, Vol. XXIX, n. 6, pp. 18-22.
- 1966 "The Economic Basis of Egyptian Nubian Labor Migration," in R. Fernea, editor, Contemporary Egyptian Nubia, Human Relations Area Files, HRAFLEX book MR 8-001, Vol. 1:100-139.
- 1967 Contributor to Experiences with Agricultural Development in Tropical Africa, J. C. deWilde assisted by P. F. M. McLoughlin, A. Guinard, T. Scudder and R. Maubouche, Johns Hopkins Press for the International Bank for Reconstruction and Development, in two volumes.
- 1967 Contributor to The Next Ninety Years, California Institute of Technology.
- 1968 With D. Brokensha, "Resettlement," in N. Rubin and W. M. Warren, editors, Dams in Africa, Frank Cass and Co., pp. 20-62.
- 1968 "Social Anthropology, Man-made Lakes and Population Relocation in Africa," Anthropological Quarterly, Vol. 41, No. 3, pp. 168-176.
- 1969 "Relocation, Agricultural Intensification, and Anthropological Research," in D. Brokensha and M. Pearsall, editors, The Anthropology of Development in Sub-Saharan Africa, The Society for Applied Anthropology, Monograph No. 10, pp. 31-39.
- 1971 Gathering Among African Woodland Savannah Cultivators-- A Case Study: The Gwembe Tonga, Zambian Papers, No. 5, Manchester University Press for Institute for African Studies, University of Zambia, pp. 1-50.

- 1972 "Ecological Bottlenecks and the Development of the Kariba Lake Basin," in M. T. Farvar and J. P. Milton, editors, The Careless Technology: Ecology and International Development, Natural History Press, pp. 206-235.
- 1972 With Elizabeth Colson, "The Kariba Dam Project: Resettlement and Local Initiative," in H. R. Bernard and P. Pelto, Technology and Social Change, Macmillan, pp. 40-69.
- 1972 Contributor to Man-made Lakes as Modified Ecosystems, Scope Report 2, ICSU, Paris.
- 1973 "Resettlement," to be published in W. C. Ackermann, G. F. White and E. B. Worthington, editors, The Symposium on Man-Made Lakes, Their Problems and Environmental Effects, American Geophysical Union, Washington, D. C., forthcoming.
- 1973 "Man-made Lakes and Human Health: Resettlement," in N. F. Stanley and M. P. Alpers, editors, Man-made Lakes and Human Health, to be published by Academic Press for (UK) Institute of Biology, forthcoming.
- 1973 "Resettlement and River Basin Development," in B. Siegel, editor, Annual Review of Anthropology, Annual Reviews, Inc., forthcoming.
- Forthcoming: With Elizabeth Colson, "New Economic Relationships Between the Gwembe Valley and the Line of Rail," in D. Forde and J. Van Velsen, editors, Town and Country in East and Central Africa, Oxford University Press for International African Institute.

STATEMENT OF THAYER SCUDDER, PROFESSOR OF ANTHROPOLOGY,
CALIFORNIA INSTITUTE OF TECHNOLOGY

Mr. Chairman, members of the committee, my name is Thayer Scudder. A reasonably complete outline of my work is contained in my vita, a copy of which I will submit for the record to the Committee. I am currently Professor of Anthropology at the California Institute of Technology. For the past 18 years, I have been studying the impact of compulsory relocation or forced removal on rural populations. Initial research in collaboration with my colleague, Ms. Elizabeth Colson of the University of California, Berkeley, was carried out in 1956 among some 55,000 people who were relocated in connection with the Kariba Dam Project in Central Africa. Since that time, I have developed and tested a theory which I consider applicable to all rural communities undergoing forced removal and whose system of land use and whose beliefs tie them to a particular geographical area. Hence, the theory is especially applicable to the Navajo people of the Joint Use Area.

In my testimony to you today, I wish to stress the impacts of forced removal on people like the Navajo; to emphasize that forced removal is a drastic step which should be avoided whenever possible.

The information presented is relatively recent. In 1956, for example, we had little knowledge of the impact of forced relocation on people. That is no longer the case, however, since there have been a series of excellent studies in recent years dealing with forced relocation in connection with urban renewal, dam construction, and a variety of other projects. The results of a number of these studies including my own have been published in the scientific literature. They are remarkably consistent and refer to *all* populations irrespective of ethnic background.

These studies are especially applicable to communities in which the well-being of the members is tied to the land and in which their livelihood requires a highly specialized knowledge of local conditions, a knowledge which is not easily transferrable. Examples in the United States would include the white farmers and black sharecroppers relocated as a result of over twenty dams built by the Tennessee Valley Authority. Other examples include the several million Palestinian refugees, as well as Egyptian and Sudanese Nubians, relocated in connection with the Aswan High Dam. Today in 1974, the most significant example is the Navajo whose lifestyle is so intricately tied to the land.

Almost without exception people resist forced relocation. Where resistance fails and relocation occurs, the resulting trauma is very extreme. Indeed, it is difficult to imagine a more grievous insult to a community than to be forced to leave a beloved habitat.

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

As I believe you all know, for social purposes the Navajo reckon descent through the female line. In the Joint Use Area, they also hold to matrilineal residence norms, which means that after marriage of a Navajo man, he tends to move to his wife's home, where he becomes part of a cluster of kin whose core often consists of an elderly woman and her spouse, her married daughters and their children, and her grandchildren. On June 11, 1974, I talked with a number of Navajo women in the disputed area during a four day visitation to the Navajo Nation. They had known about the possibility of forced relocation to some unknown area for at least two years. As I expected, they were tremendously disturbed and distressed about this possibility. Several requested that they be allowed to give statements voicing their concern. The importance of these statements lies not in their degree of accuracy but as indications of a people's deep concern. Let me share two of them with you.

"I was born thirty-seven years ago and I am very much discouraged and concerned about the Navajo-Hopi land dispute. I am uneducated and would not know how else to provide for myself and children other than by the sheep that I care for. I do a lot of weaving to support my family. The land dispute has disturbed me mentally—it affects a person in this way, and it appears that my mental state is getting worse. If I am told to move off the land that I love, I do not think that I can start a new life elsewhere. Indeed some of the older Navajo who had great concerns about this dispute have passed on because of this dispute."

"I am sixty-nine years old and I was born and raised in this area and have raised my children and their children here. We don't know of any other place that we could go to. We have gotten along very well with the Hopi. I have many Hopi friends. We have shared our food with them. The sheep we raised we traded for the crops of the Hopi. All the Navajos living in this area feel that it is the Federal Government that have created the animosity between the two tribes, and it is very sad to lose this great friendship that we have always had. We do not want to lose this land that is so good to us. It provides many things for us. It cared for us and I guess that is why we call it Mother Earth. The Hopi Traditional leaders regard this land as the Mother Earth also and we should not fight over it. We plead that the Federal Government not remove us from our lands. Where can we go? We are already in poverty. There is tremendous hardship that we are living through."

We also talked with an elderly man (he must have been at least seventy) as he sat cross-legged on a sheepskin beneath a piñon tree. Nearby was a brazier in which horse manure, slowly charring on a layer of hot coals, gave off just enough smoke to act as an insect repellent. Slightly further away was an earth-covered hogan and a corral in which perhaps forty sheep rested during the mid-day heat. An ageless scene of peace, yes; yet the old man matter of factly stated that neither he nor his neighbors would willingly leave this area. As we have seen in one woman's statement, already some Navajo believe that recent deaths among the elderly have been hastened because of the ominous turn events have taken. People are tensing up—blaming Hopi, the Hopi Attorney and the Federal Government alike. Already the same rumors that I have heard with distressing frequency in Africa and the Middle East are beginning to circulate that the move basically is a Government (and Anglo) tactic to steal the land of the Hopi and Navajo people alike.

While such rumors are very dangerous, they are virtually impossible to stop, since they arise not from outside agitators but from the threat of forced removal—from the entirely understandable attempts of thousands of people to protect their homes and their lands. In all of the African projects with which I am familiar such rumors flourished. In two they contributed to serious violence, with police killing eight homeowners (for what else can we call them?) in one case and wounding at least four times as many. I cannot believe that an informed Congress wishes to initiate such a confrontation with the Navajo; yet the possibility of violence is definitely present, and I expect it to grow. Looking to the future, I fear that if forced removal is pushed the day will come when Government security forces will be called in to intervene and to eject people forcibly from the only homes that the large majority have ever known.

The world over compulsory relocation is characterized by multidimensional stress, which we can predict will lead to deaths which otherwise would have been postponed. Analytically, this stress can be broken down into psychological stress, physiological stress, and sociocultural stress, all of which are intricately interrelated in synergistic fashion.

Psychological stress has been aptly labeled by the psychologist Fried as "the grieving for a lost home syndrome," which is universally associated with compulsory relocation. It can and does lead to premature death, especially among the elderly.

In the Navajo case, psychological stress is already present, dating back to a 1962 Court decision which froze all development in the Joint Use Area pending resolution of the land dispute. The effects of this Court Order along with an Administrative decision in 1966 to freeze development in the Tuba City—Moencopi area have been tragic. In the Joint Use Area, legally, people are not allowed even to improve their housing without the approval of the Hopi Tribal Council. In both areas vital government and tribal programs to improve housing, water supply and other facilities crucial to improved health have been stopped. We thus have the incredible situation where a judicial system designed to protect peoples right must share the responsibility for prolonging conditions that we know are correlated with indices of poor health status, such as high infant mortality rates.

In comparison with the rest of the Navajo Nation much of the Joint Use Area has a high incidence of extreme poverty and of illness resulting from poor environmental health. According to the 1970 U.S. Census, the median number of school years completed by Joint Use Area residents was only 1.7 as opposed to 4.1 for the rest of the Navajo Reservation. As we would expect, median family income was lower (\$2,052 versus \$3,084), and unemployment rates were higher. Though the supporting statistics do not exist, Public Health officials with whom I talked were convinced that both morbidity and mortality rates were higher. This

is logical granted the area's lower level of environmental health, the median number of rooms for each house being only 1.1 (2.00 for the rest of the Navajo Reservation), with the median number of persons per occupied unit being 5.3!

While historically this situation has been influenced by extreme isolation and an inadequate road system, recently it has been exacerbated by the 1962 Order. Prohibited from improving their housini without Hopi approval (which becomes less and less frequent as animosities grow), the Navajo are placed in the demoralizing and stressful situation of either ignoring the Court and Administrative Orders or of marking time. Psychological stress of course increased when the people became aware, probably about two years ago, of Congressional moves to evict them from their homes. And it will increase further if forced removal is in fact approved.

Physiological stress is easier to measure, since the indices are increased morbidity and mortality rates. Although the absence of baseline information preceding relocation makes it difficult to prove, what evidence we have strongly suggests that compulsory relocation is accompanied by higher incidence of disease and temporarily heightened death rates. In addition to psychological stress there are several logical reasons why this should be the case. Especially relevant to the Navajo situation is crowding. Because of land scarcity, forced removal usually is accompanied by increased population densities as people are crowded together in a smaller area. Where people are unaware of how diseases are spread and where environmental health is poor, crowding is a major factor responsible for a higher incidence of disease. Though the recently passed House bill fails to even consider specific areas for relocation, there is obviously insufficient land within the Reservation. Yet the Bill is doubly negligent, since it also fails to come to grips with the purchase of equivalent land adjacent to the Reservation, land which is available for a price should Congress agree to its being placed under trust for the Navajo relocatees. Regardless of the outcome, however, it is probable that the population densities will increase as a direct result of forced removal, hence threatening the relocatees with a number of illnesses associated with crowding. For the Navajo, these include TB, bacillary dysenteries (especially if inadequate water supplies are provided; and most resettlement projects in semi-arid lands are deficient in this regard), upper respiratory infections which in the young and the elderly may become seriously complicated by streptococcal infections), epidemic diseases like measles (which can easily be fatal among Navajo children if inoculation programs are inadequate), skin diseases (impetigo for example), and eye diseases.

Sociocultural stress adversely effects the relocatees' capacity to adjust to new homes and opportunities. People involved in forced removal behave as if a society was a closed system. During the resettlement period, this means that they stick to the most familiar people in their world, to the most familiar behavioral patterns, to the most familiar ideals. Unable to innovate in major ways during the period of transition following removal, they change only so much as necessary to reestablish old activities in a new habitat. As a result of such cultural conservatism, it is very difficult for outside agencies, no matter how well-meaning, to introduce new occupations and ideas. This is why behavioral scientists involved with forced removal recommend that the resettlement and development processes be kept separate, although of course resettlement policy should be formulated and executed with subsequent development options in mind. In the Navajo case, for example, it is extremely unlikely that the conservative and pastorally oriented residents of the the Joint Use Area could become successful farmers on the Navajo Irrigation Project since irrigation would require not only major technological changes but also major changes in social organization and cultural values.

According to Elizabeth Beyal, who conducted what remains the most comprehensive household survey in the Joint Use Area, sociocultural stress has already begun because of the combined impacts of the 1962 Court Order and the threat of forced removal. In addition to noting the uncertainty and hopelessness (which she believes is correlated with higher suicide rates) which I have classified as psychological stress, she believes that pressures building up since 1962 have caused a weakening in family and community structure. With goals for the future frustrated, a drop in parental responsibility appears to have occurred with an increased incidence of child neglect and juvenile delinquency.

Further insights into the type of sociocultural stress which can be expected in the event of forced removal can be gained by looking at fifteen Navajo families (comprising ninety-two people) who were evicted in November 1972 from within the Hopi Reservation. Here, however, a note of caution is necessary since these

people represent an extreme (and particularly inhumane) form of relocation which would not characterize the removal of the residents of the Joint Use Area. Evicted on thirty days' notice (in contrast to the five year period proposed in the recent House legislation) without compensation, these people could not join their kinfolk since the latter lived within the Joint Use Area, in which further immigration was illegal. As a result they were shifted to temporary quarters at the Window Rock fairground and then into low income housing, where most of them have become unemployed dependents of the Tribe.

Notwithstanding this grim situation, their deep suspicion of all outsiders, including Tribal representatives, can be generalized to future relocatees, since forced relocation is accompanied by a crisis in local leadership which constitutes another component of sociocultural stress. This crisis arises because local leaders, in this case the Navajo Tribal Council, are blamed by the relocatees for being unable to protect their most fundamental interests—namely their homes and livelihood. Hence at the time people need strong leadership, relocatees tend to reject their leaders, turning inward upon themselves. According to the staff of Family Service (based in Fort Defiance), those of the fifteen families whom they have attempted to counsel are suspicious of outsiders regardless of affiliation. Obviously, under such circumstances it is very difficult to get them to help themselves. The problem is compounded by an increased level of dependency, another characteristic which all too frequently accompanies forced removal (especially severe in connection with Ghana's Volta Dam relocation and Egypt's Aswan High Dam relocation). Since the people did not ask to be removed, they consider it the responsibility of the movers to provide for their needs. Hence, some of the fifteen families will not take their children the short distance to new schools, expecting the Tribal Council to transport them.

The fifteen families also have had difficulties with their new Navajo neighbors in Window Rock. The latter see them as competing for land and services. They have refused them entry into the local chapter, hence closing off access to certain community services, and they tend to blame them for whatever criminal acts occur in the neighborhood, an attitude which is somewhat justified by the extreme social disorganization with accompanying alcoholism and delinquency, that characterizes the majority of the relocated families. In behaving in this way the relocatees' new neighbors are acting just as we would predict from our theory. Unless relocatees are removed to totally uninhabited areas (which is a rare occurrence), one can predict that relationship between them and their new neighbors (the hosts) will be strained, contributing even further to the multidimensional stress of resettlement. The hosts see the relocatees as encroaching on their own lands and, unaware of the trauma associated with relocation, they resent whatever assistance outside agencies provide, especially if this assistance is not equally available to them. For their own part, the insecurity of the relocatees is heightened by the knowledge that their new neighbors resent and ridicule them.

In this statement, I have tried briefly to indicate why those of us who have studied compulsory relocation consider it an undesirable option. Though the details would differ, my conclusions would be the same if the people threatened with forced removal in this dispute were Hopi. Regardless of the context, compulsory relocation should be avoided until all other alternatives have been carefully considered and found wanting. Such is certainly not the case in regard to the Hopi-Navajo land dispute. The time factor, unlike relocation in connection with dam construction, is not critical in this case since the Hopi Tribal Council and attorneys are not claiming the land because they must use it today (indeed they want it not so much for human settlement as for grazing activities). So the present rush to push a forced relocation bill through the Senate is not only unnecessary but dangerous. Surely the time has come to back off and to try another approach.

Should the final decision also involve forced removal, let me close by adding that compulsory relocation of entire communities is an incredibly complex process which no governments have handled satisfactorily. Not only must people be physically removed with minimal disturbances, but new settlements must be planned and created for them. The provision of improved housing and social services is the easiest part of reconstruction. Far more difficult, and responsible for the failure of the large majority of planned rural settlement schemes, is the creation of viable economic systems to support the relocatees. In my own research dealing with relocation in connection with dam construction, I am aware of no cases in which the period of transition following physical removal has lasted for less than five years; indeed, in some cases, it continues today, over ten years after relocation. This is the period characterized by multidimensional stress.

Since it ends only when the people feel at home in their new habitat and have become self-sufficient, the failure of economic development programs only prolongs the period of transition and of stress.

Not only is compulsory relocation complex (and it is hard to imagine a more difficult task than creating viable communities for people who are unwilling participants), but it is very expensive in terms of capital, personnel, and equipment. Often ignorant of what is involved, those responsible for programs of compulsory relocation tend to underestimate the capital costs by a factor of two to three.

When we take into consideration the extreme human costs involved, it should be clear why forced relocation should be required by informed policy makers only as a last resort. In the Navajo case, it is not too late to pursue a more humane alternative.

Senator **ABOUREZK**. The Navajo side has 3 minutes remaining.

What Senator Fannin and I will do is pose our questions to you. Whatever time we run over, that time will be offered in rebuttal for the Hopi side; then, if it is determined to be more time needed, I think that we can offer that to both sides. Just so we keep them equal.

Let me ask you, Mr. Scudder; you say a more humane alternative ought to be pursued.

What is that humane alternative?

Professor **SCUDDER**. You have to realize, here, I am not an expert on either Navajo or Hopi but the alternative which was mentioned early this morning as a possibility by Senator Goldwater and, subsequently, by Chairman MacDonald is the one which, offhand, I would favor; that is, you require the two parties to come together and negotiate.

If they cannot reach a solution, some sort of commission of distinguished citizens and experts will provide some enforced arbitration.

What solution they would come up with, if the two parties were not able to come up with a solution on their own initiative, it is not possible to predict at this moment but that is the mechanism.

Senator **ABOUREZK**. What if the compulsory arbitration results in enforced relocation?

Professor **SCUDDER**. Then that is the way the things go; in which case, if I was asked to testify in that, I would say there is a sociology of relocation. It is a tough task.

There are no guarantees that it can be carried out without the types of stresses that I mentioned; in fact, those types of stresses will occur, although you may induce them, but do it right.

That means, initially you need an extended period of planning. You have to have a very careful census. You have to carry out what you call a social amenities survey to find out where people want to go. You have to find out with whom they want to live.

You have to compare this against the possible options; land within the reservation, land without.

This period of planning takes time and costs money but there are ways for going about the resettlement process which are not reflected at all in the current legislation.

That is what worries me.

You see, where the people will be moved is not mentioned. How the relocation process will proceed is not mentioned.

This increases the stress and, of course, the stress is going to occur.

Senator **ABOUREZK**. Senator Fannin.

Senator **FANNIN**. Mr. Scudder—is it Dr. Scudder?

Professor **SCUDDER**. Either is appropriate.

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

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

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

As a scientist, that was long enough to convince me, then, that the theory is more than applicable because I had these 15 families.

Senator FANNIN. You talked to these few families and you came to your conclusion from talking to these few families?

Professor SCUDDER. No.

I came to my conclusion because of the theory before I arrived at the Navajo Reservation. The theory is a predicted model on how people will respond.

I went to the Navajo Reservation to see if there were particular conditions which might invalidate the theory.

There were no such conditions there.

There is no reason to expect a theory which is applicable to whites in TVA and whites in DC Hydro in British Colombia to blacks in TVA and to people in urban renewal is not applicable to Navajos.

Senator FANNIN. You realize, I think, that you are certainly complicating the testimony of Chairman MacDonald when you made some of your statements.

You say, indeed, some of the older Navajos had great concerns about this dispute, and passed on because of this dispute. This certainly is not in agreement with what the chairman testified; that they are in harmony; that all this intermarriage and cooperation has occurred.

He says they live together and they respect each other.

How do you account for that?

Professor SCUDDER. These are two different things.

First of all, it was my first Navajo woman informant who stated the belief that some elderly people had passed on. What I said was, the compulsory relocation—

Now frequently, as I mentioned, the baseline Public Health surveys are not carried out ahead of time but medical people, working for the World Health Organization, are quite convinced that the psychological stress of compulsory relocation causes old people to die prematurely because they cannot cope with the move to new homes.

Now, what my Navajo informant said was that this psychological stress was already at work in people like herself.

I would predict this stress would cause premature death of a significant—and one person is significant—number of elderly people.

Senator FANNIN. Dr. Scudder, as long as we are talking about that, would you care to discuss the psychological impact on the Hopi people resulting from being surrounded for centuries by the Navajos, completely surrounded?

Professor SCUDDER. This is a historical fact.

What has been the psychological effect of American Indians being surrounded for several centuries by white anglos? How can you give an answer to that?

This is a very difficult, very tragic dispute.

As I said, compulsory relocation is going to increase the tragedy. It is not a solution.

Senator FANNIN. Dr. Scudder, let's be consistent here.

We have the Navajo Reservation, a huge reservation, and we have this Hopi Reservation, as you know, inside of the borders so whatever

they do—if they are leaving the reservation, they must travel through Navajo territory.

Would that not be quite perplexing to the people? I know it is and I am sure you realize that from a psychological standpoint. That would probably be of greater importance than what you have talked about; the thoughts that people will have to move.

In fact, I have been on that reservation many times. I have traveled around on the field trip with both the Navajo and Hopi people, the leaders.

We talked to families. Certainly, I did not find any great concern expressed. They do not like the idea of moving but, as far as any stress that they have, most of them are just learning about it.

Professor SCUDDER. Senator, I do not blame you for not believing the theory—

Senator FANNIN. I am not talking about the theory.

I am talking about reality.

Professor SCUDDER. I know but I want to emphasize that the theory is based on between 25 and 50 cases. There are no exceptions to the kind of multidimensional stress I have mentioned.

In terms of the Hopi, as, I hope, a fairly objective outside observer, I realize that they have very legitimate grievances. These grievances need to be resolved but, what I am saying is, there are a number of options for resolving these grievances; not all of which have been considered.

One of the easiest options and, to me, the least acceptable is being pushed; that is, relocation.

No matter how you cut the cake, you are talking about the compulsory relocation of at least 5,000 people and probably, in my opinion, up to 10,000.

Senator FANNIN. I do not know where you got your figures. They certainly cannot be verified by the information that has been given to the committee, to my knowledge, but let's look at it from the standpoint of whether or not the people will benefit.

That is the important matter.

You observed the way some of the people are living and the types of homes they are living in; without running water, without sanitary facilities, without electricity. You are telling me that, to move into a better home and to have these modern facilities would not be beneficial to them?

Professor SCUDDER. Part of these adverse conditions that you mentioned, of course, go back to the 1962 court order which has frozen development which, of course, has contributed to the kind of stress I mentioned.

The statistics here are rather interesting. Chairman MacDonald mentioned some of them showing that, because of this order, the standard of living—income and what have you—of these people is already lower than that of those on the reservation.

This is all part and parcel of the same package.

Now, there is a time dimension here. I am talking about the transition period that follows compulsory relocation. It lasts for 5 or 10 years, probably.

After that, the people may very well be better off, but during that 5 to 10 years, people will die who would not otherwise die, and there would be very, very difficult conditions.

I ask the question: Do you really want to impose that stress for a 5- to 10-year period on this population in the hope that one can tackle

the extremely difficult economic problem of giving them a higher standard of living 5 or 10 years after you start?

Senator FANNIN. Dr. Scudder, I would say that my personal opinion is that 10 times as many will live that would not have otherwise lived a longer lifetime by having the ability to have these facilities and the care that many times is needed.

So, I think that offsets what you are talking about.

Professor SCUDDER. But the facilities are not tied to whether you relocate them or not. You can provide those facilities quicker if you do not relocate them.

If you have a different kind of solution to the problem—

Senator FANNIN. I beg to differ with you.

There is not that effort being made to provide those same facilities, other than through this relocation program.

Professor SCUDDER. I think, actually, the Montoya bill attempts to provide those facilities.

Senator FANNIN. There is not any information that we have that would carry through to the extent that is provided in the House bill and the recommendation of the administration from the standpoint of what has submitted here today by the Commissioner.

It goes far beyond what has been considered today.

Professor SCUDDER. What I want to do really is lean back and back off.

I think, frankly, that all of the solutions which have been put into proposed legislation are inadequate and that we need to take, with more knowledge, a new start.

One solution is the Commission solution.

Senator FANNIN. We have been restarting now year after year. I think it is time for use to solve this problem with these people. They are certainly deserving of it.

I feel it would be a travesty on justice if we delayed it any longer.

I just cannot agree with you. We have this opportunity and both tribes will be far better served if we go forward with the legislation.

Professor SCUDDER. I agree with that except that I think compulsory relocation, as a solution, is a tragic step backward. I think I can document that with evidence from around the world.

Senator FANNIN. Dr. Scudder, I think if you will look around the world and consider what is happening with people being relocated, very beneficially. I know you are an expert in this field, but if conditions are such that people are not given the opportunity for good health and long life—and I think you recognize that that is true on the reservation—they do not even have the opportunity for sanitary facilities.

I am not talking about modern conveniences. I am just talking about proper care.

Professor SCUDDER. I still do not find it easy to understand why the provision of that kind of a facility need be tied to compulsory relocation. I do not see the correlation.

Senator FANNIN. It so happens that it is, in this case. That is why I am saying that it is far better than not taking steps immediately because, if you are talking about time, if we do not pass this legislation, I do not know when we will have legislation that can be approved.

This has been approved by the House. If we delay it through this session of the Senate or of the Congress, I do not know when we will get legislation.

I feel it would be a severe blow to both tribes if we do not pass this legislation this year. Thank you.

Senator ABOUREZK. Thank you, Dr. Scudder. You have gone over your time 12 minutes, so we will offer 12 minutes to Mr. Boyden or whoever he designates.

Mr. BOYDEN. Mr. Chairman, we believe that we have probably imposed upon you. We are going to repeat ourselves on many things. I would like to do just one thing.

On behalf of the several witnesses we have here who would all, of course, like to have testified, but we have one lady here who lives in the joint use area. We would like to let her depart from her statements just a little and make a few answers for just a moment or two, and we will waive our rebuttal.

I would like, however, to call to your attention that a misstatement was made. I think Mr. Vlassiz was thinking of the opinion or the suggestions made by the Department and not the Owens bill.

The Owens bill does not provide the Secretary or the Commissioner that they may make any decision.

Senator ABOUREZK. He did refer to the amendment offered by the Department.

Mr. BOYDEN. That is right. I am against it, too.

We do not need it. It just is not in the Owens bill. Unless it is put in, it does not even create that problem.

Senator ABOUREZK. Thank you.

Mr. BOYDEN. If you will come forward, please.

May we file the written statements of the rest of the witnesses that are here?

Senator ABOUREZK. Absolutely. After this is over, just give them to the official reporter.

Would you speak right into the microphone?

STATEMENT OF MELVINA NAVASIE FROM JOINT-USE AREA 1882

Mrs. NAVASIE. I am Melvina Navasie from the joint use 1882 area.

I have lived in the area all my life. My father established his home in 1912. From there on, he has been having problems.

In 1912, no Navajo had lived in that area where my father established a home; after, when I was old enough to know there was no Navajo in the area. That is the area of Jeddito Valley.

I have been going through problems, no matter how small I was. I herd sheep, and the Navajo mans would come with their horses and chase me back to the house. That is when the quarreling or fighting begins.

The older I've got, I took part with my father, chasing, tracking Navajos that steal our crops, cutting fences. There are a lot of other things that is true.

I went through all the problems and one problem, and there are others that I will tell you; in 1943 when the reduction was coming up by Government, instead of Government reduction on sheep, the Navajo ranger, Dale Pete, he got 12 Navajo families, came to our corral, corraled our sheep, took as many sheep as they wanted; and there was other people.

My uncle, my father's brother, and my brothers-in-law were living with us down there in the area. They had some livestock also.

That is the time that my uncles, my brother-in-law were giving up, telling them that they had them in that land. Then, when we go after wood, we are told we cannot take firewood. It is 8 miles from where we live.

There is one thing I know of; tell us not to get wood. That is Ellen Woody and others that I know by their name; one that we fought with.

We have been to water places where we get our water. They have tell us not to get our water. The wells belong to the Navajos which my father have established and was put by Government to put wells in.

To this day, I know that I am still having problems. Just 2 weeks ago, my brother was herding sheep. He took them to the water. Somebody shot at him.

Just a month ago, two of our sheep were shot. Even our dogs have been shot.

I live in this area long enough and I know the problems. Raymond Nakai and others maybe don't know the problems, what I am having now, but I am alive here and I testify this is all true.

As long as we have this land, I thought this land was given to us by the Government. I thought that we would live there and make homes but when we were trying to build our home, the Navajos won't let us.

They would come down at night, tear down our walls, tear down the windowpanes that we put up. We did not give up. Every day we do this and next night it is down.

The day that one of the Navajos named Charlie Begay—he was the council. He came over and told us not to build the home. I thought this was our land so we kept on building.

Four day later, a Navajo police came and told us not to build the house until we had a meeting with the Navajo councilmans. We had meetings with the Navajos four times. They kept on putting off until the last meeting we had.

The councilman in that area was Henry Zook. They voted down; the Navajos voted and there was seven against I don't know how many; seven people who did not want us to build the home and it is the same people that have been stealing our crops and that have been telling us not to do these things but some of these that lived in the area, one or two.

Mrs. Martinez, she is the one, told the Navajos, why can't we build the home there, as long as it was the Hopi land? So, I guess that is when the council decided to let us have the home but he only gave us 2 weeks to build the home.

We build our homes with adobe stone but how could a stone house be built in 2 weeks? That is why we only build our home with logs which we have now.

There are other things that I know that we are having problems. Also, these Navajo people that live around there told us that they were encouraged to build their homes along the lines that they will not be moved.

Some told us he would rather get out and have someone help them to build their home and get the money that they want because, when they ask for things to MacDonald, they won't treat it right.

My testimony is true which I have been going through.

Thank you.

[The prepared statement of Harrington and Melvina Navasie follows:]

STATEMENT OF HARRINGTON
AND MELVINA NAVASIE

Our names are Melvina and Harrington Navasie. We are Hopi Indians from Arizona who make our home in the Jeddito Valley in the Joint-Use-Area of the 1882 Moqui (Hopi) Reservation.

Many Hopis farmed and tended their livestock in the disputed Joint-Use-Area for many years and still do. However, many do not make their ranches and homes there because of the continued harrassment from Navajo Tribesmen who have moved into the area. Many Hopi livestock still use the Joint-Use-Area, but live in the nearby villages for protection.

I was born in the Joint-Use-Area in 1926 and have lived in the area since childhood. My father, John Sequi, constructed a stone home and he and his wife moved to this area in 1912. All of us children, numbering five individuals, were born and raised in the Jeddito Valley. I married Mrs. Navasie in 1944 and we have raised our own family of twelve in the same area.

I would like to relate to you some of my experiences with Navajos who have moved into the Jeddito Valley.

As a small child, we had to help our father with many chores and one of these was herding sheep. As we tended our flocks farther away from home, we were harrassed by Navajo riders on horseback using whips to chase us back to our house. Our father would then confront the Navajos sometimes resulting in fist fights as many as three times a week. These Navajos did not live in the area, but still harrassed us because we were Hopi. Only two families of Navajos lived in the Jeddito Valley during my early childhood. The only livestock, sheep, and cattle that grazed in the Jeddito and White Cone Valleys were owned by Hopis.

During my early days, our family farmed vegetables in little garden plots and my father had to stay at our farm at night to protect against the cutting of fences and stealing of crops by Navajos. The Navajos would also ride their horses into the gardens and ruin our crops by running over them.

Also, when fruit trees were transplanted, the Navajos would tie the bottom of the tree with wire and the tree would soon die. These ties were done below the ground and my father could not see the damage until the tree was dying.

In later years, more and more Navajos began to move in and as we grew older, we took part in chasing any Navajos who came to steal our crops. These Navajos would drop their jackets and other clothing in which our crops were stuffed. Next day the older Navajos would appear to get back the clothing. Many times, my father being a kind man, gave these same Navajo some of our crops with the idea that they would quit stealing.

Every day of our lives, our father spoke to us of our hardships and the reasons why we lived in Jeddito. His teachings were that someday we would come head to head with the marauding Navajo and if we did not stay on this land, we would lose some of our lands to the Navajo. To the end of his days, he taught us this and today we remain, going through these same hardships to hold on to the land for the Hopi.

I feel and believe that the Navajos were responsible for my father's death. Navajos had stolen our horses and when my father followed and caught the Navajos, they hung him upside down in a hogan. After returning from this encounter, my father died within a month from hemorrhaging.

After the death of our father in 1954, many more Navajo families moved in making their hogans and bringing their livestock into what was considered Hopi range. Yet many Navajos will and have testified before Congress that they have lived in the Joint-Use-Area for over a hundred years.

Soon after our marriage, Harrington and I began our own family and wanted to build our own home. When we began construction of our home in 1958, Navajos came at night and tore down the walls and door and window frames. We continued to build and the Navajos continued to tear down our home until a Navajo councilman, Charlie Begay, came and told us not to build anymore. Since we Hopis owned the 1882 Reservation, we continued to build our home because we had this right as owners of this land. However, a Navajo policeman, Morris Clashin, came one day advising that we could not build anymore to our house until we met with Navajo Councilmen. We met with the Navajo four times and were told that we had two weeks in which to complete our house. Usually Hopis build pueblo type homes from stone, but because of the time limits, we had to construct our home from logs. Right today, many Navajos are building homes in the Joint-Use-Area without permission and also against a federal district court order.

Since our marriage, the water springs developed by my father were being used and claimed by the Navajo. Many confrontations took place because of this and also over wood. Many fist fights with injuries were experienced while we gathered wood for fuel and cooking.

As of today, our children are continually being harrassed while herding sheep by Navajos. Within the last thirty days two sheep and one herd dog have been shot and killed.

When we were ram herders (235 Hopi Tribal ram herd) for the Hopi Tribe, Navajos from Skunk Spring, Kee Mitchell, Benjamin Yazzie and another person, killed a tribal ram. They cut the throat of the ram in the corral and started butchering it. It was at this time that Harrington went to check the rams and found the three men in the process of butchering. Next morning he found their equipment and tracked their horses to their home in Skunk Springs. The woman of the house identified the knife that was used to kill the ram.

On July 9, 1974 Hugh Sequi was herding sheep belonging to Harrington, when a shot was fired at the her from a small caliber firearm, probably a .22 from the ridge above Little Spring. Someone probably thought the sheep were alone because when Hugh Sequi shouted out no other shots were fired at the sheep.

These are only some of the incidents that are occurring daily to the Hopi people. We are here today to ask you to exercise your trust responsibility to insure that we can live in peace and to give back to us what lands we have lost to these people.

Thank You

Harrington and Melvina Navasie

Senator ABOUREZK. Thank you, Senator Fannin.

Senator FANNIN. Thank you very much. No questions.

Senator ABOUREZK. I have no questions.

Mr. BOYDEN. I hope this illustrates the impact and psychological difficulty of living under harassment that I think ought to be taken into consideration.

We rest our case.

Senator ABOUREZK. We would like to thank all of the witnesses who have appeared here today.

I want to thank the audience for their general restraint in view of the nature of the hearings and the issue we have had today, both Navajo and Hopi.

When we were in Winslow last year, I recall that there were dire predictions of the trouble that might break out in the hearing room. I have never, myself, seen two finer groups of people in my life.

You ought to come up to South Dakota sometime and watch one of our hearings up there.

These are very calm compared to some of the things we go through up in the Sioux Reservation so, on behalf of the other members of the committee, I want to express my thanks.

Senator Fannin, do you have any closing remarks?

Senator FANNIN. Mr. Chairman, I would like to join you in commending all the witnesses, the tribal chairmen, the council, and the people here today.

We are trying to solve a problem. We hope you will bear with us and that you understand the complexities of this problem.

I assure you that, with the testimony that has been given today and over quite a period of time, we will do our very best to have legislation that will be fair and equitable.

Mr. VLASSIS. Mr. Chairman, I had to leave the room for a moment.

I would like to know what the status is with respect to continuation of the hearing.

Senator ABOUREZK. The chairman of the full committee, Senator Jackson, apparently has said that this would be the extent of the hearings; however, I will announce at this time that when we have the next committee meeting, I intend to bring up the issue of further hearings for my own self.

I do not intend to leave it go at this. I do not think we have had enough hearings.

We cannot determine that issue tonight because the full committee is not in attendance.

Senator FANNIN. Mr. Chairman, I do not know whether counsel was here when the statement was made that the reference he made to the House bill was really in reference to the statement from the Department, not included in the bill.

Were you here when that was discussed?

Mr. VLASSIS. No, Senator, I was not.

Senator FANNIN. I think it was concluded; at least, my understanding is that what you have referred to is not in the House bill, as far as the whole question is concerned. Even if it had been, it would still be just a matter of consideration by the committee.

So, the information you furnished us will be considered, of course, in its proper order.

Senator ABOUREZK. You were not here but Mr. Boyden said that the Hopi were against that provision of the Secretary determining how the coal is being handled.

Mr. VLASSIS. I see.

Well, Mr. Chairman, just to preserve the record, may we submit a substantial number of statements that we do have?

Senator ABOUREZK. They will be accepted.

Senator FANNIN. Mr. Chairman, can they be submitted tomorrow?

Mr. VLASSIS. I think we can get the majority of them in by tomorrow. There really are a substantial number, Senator Fannin.

It is just a mechanical problem.

Senator FANNIN. We had an understanding that we would go forward with this legislation. It was delayed.

Senator Goldwater and I acceded to the request of the chairman with the understanding that we would immediately go forward, as I understood it, counsel has all the information available so it should be able to be furnished.

Senator ABOUREZK. I want to ask the audience to please restrain themselves until we get this issue settled. I would like to have order in the hearing room.

Senator FANNIN. I would just like to remind counsel that we did have an understanding. We have gone beyond—I can read back to you.

Senator Jackson's statement, read by the chairman that was in charge today was that the hearings would be on the basis of 2½ hours for each tribe.

We have exceeded that.

I am still very willing to accommodate counsel to stay here and listen to any further arguments.

Senator ABOUREZK. Do you want to submit some statements into the record?

Mr. VLASSIS. Yes, Mr. Chairman.

Senator ABOUREZK. When would you like to do that?

Mr. VLASSIS. We would like to do it as soon as possible but the difficulty is whether we have lawyers available to do it. Certainly, we do, but we have a number of people who do not speak English and some of those intended to testify so we will have to translate in order to submit the statements.

It will take us a while.

Senator ABOUREZK. How long will that take?

Mr. VLASSIS. It will take a few days; not longer than the end of the week.

What I am trying to suggest is that we would be more than happy to get the statements in, even if we have to work all night, but the situation is that we are having a great deal of difficulty in that we have had a substantial amount of testimony that has been given but at least the testimony that has been given on behalf of the Navajo has been at least half cross-examination.

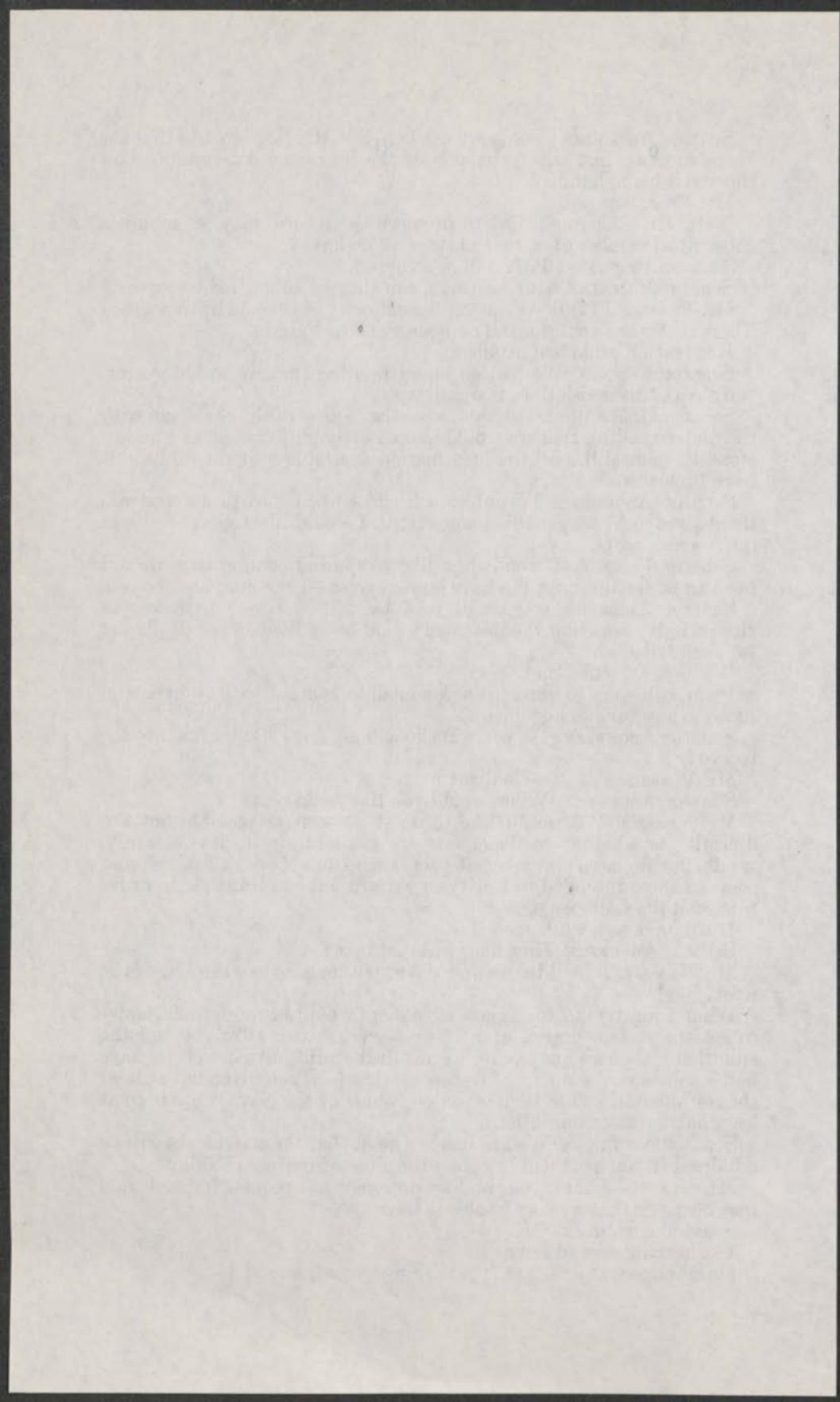
Senator ABOUREZK. We are in agreement that the statements will be admitted if you get them in before the close of business Friday.

Mr. VLASSIS. Thank you; and we do renew our request for such further hearings that we may be able to have.

Senator ABOUREZK. O.K.

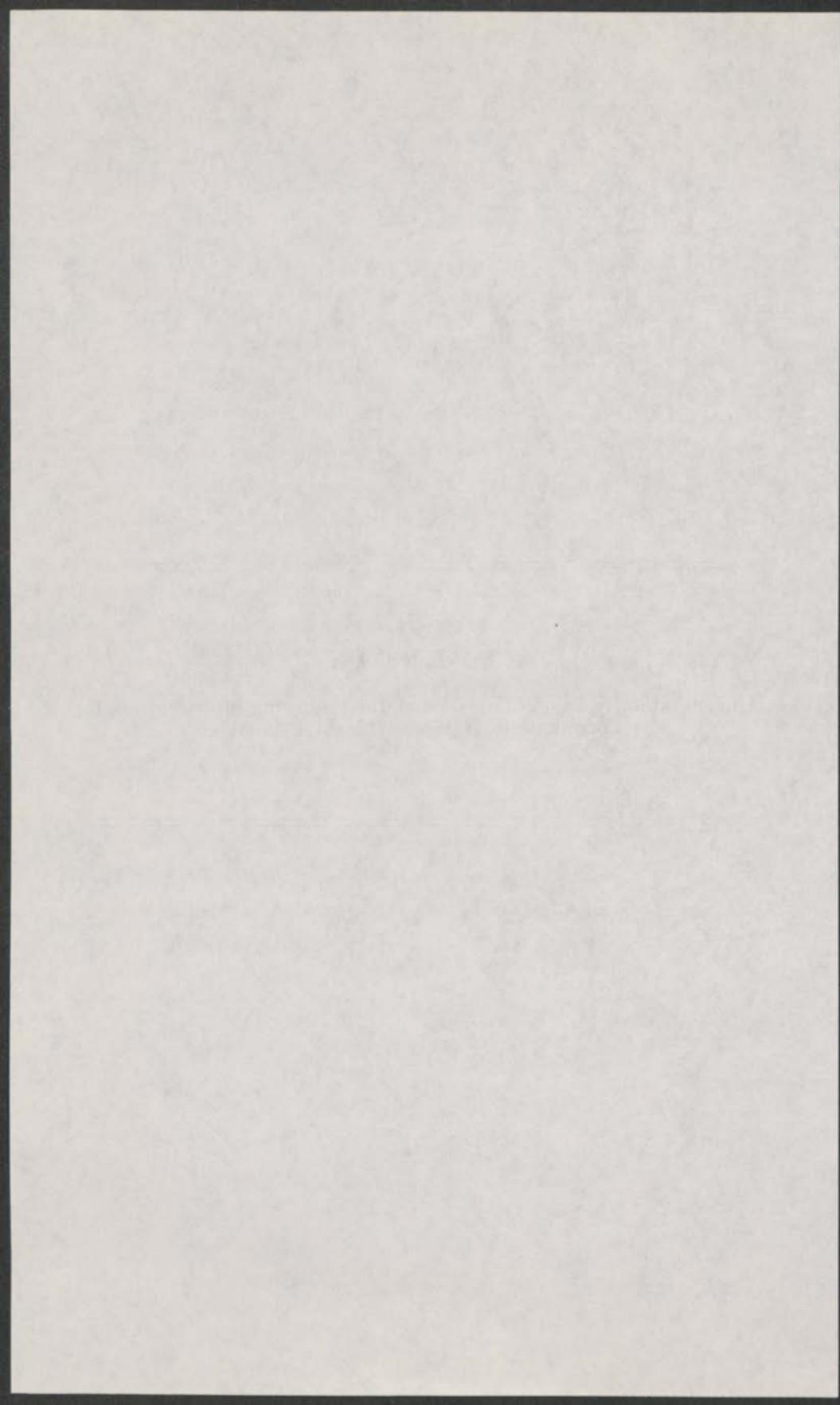
The hearings are adjourned.

[Whereupon, at 6:20 p.m., the hearing was adjourned.]



APPENDIX

Under Authority Previously Granted, the Following Statements and
Communications Were Ordered Printed



STATEMENT OF DAVID F. ABERLE
BEFORE THE COMMITTEE ON INTERIOR AND
INSULAR AFFAIRS
UNITED STATES SENATE
JULY 24, 1974

Mr. Chairman and Senators:

My name is David Aberle. I am a United States citizen, an anthropologist with a Ph.D. from Columbia University, and a professor at the University of British Columbia. I have done fieldwork off and on since 1940 among the Navajo Indians, including many months in the disputed territory of the 1882 Executive Order Reservation, where I have been doing research on Navajo kinship and economic adjustment. I have known Navajos in the disputed territory 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 Committee of Congress. Although I have not done fieldwork among the Hopi, my Ph.D. thesis was devoted to them, and I am familiar with the anthropological literature on that tribe.

Since I have long been concerned with the injustices visited upon both Tribes by the larger society, it is with a heavy heart that I find myself testifying today in a dispute

between the Hopi and the Navajo. I shall tell you why I think that the plan to relocate an estimated 8,000 Navajos, as proposed by H.R. 10337, the Owens bill, is unjust and punitive to Navajos, as well as likely to create an immediate and long-term disaster, but I do so in the hope that any alternative solution that may be adopted will provide for Hopi needs in a generous fashion. It is Federal action and inaction that is responsible for the present conflict, and it is hence a Federal responsibility to find a way out that is minimally damaging to both Tribes.

In the time available, I can do no more than set forth my principal conclusions and comment on a few of them. I have, however, prepared a full statement and I ask permission to submit it for the record.

1. Everything that is known about the effects of large-scale compulsory relocation of rural populations indicates that it should be attempted only when all alternatives have been considered and shown to have even more negative effects. Compulsory relocation is featured by resistance by the candidates for displacement, antagonism between the displaced persons and the population that is forced to accept them, prolonged economic, social, and psychological maladjustment on the part of the relocatees, with high rates of indigence and often the development of a dependent attitude, and

increased rates of illness and death. Although relocation often requires that a population adopt new modes of getting a livelihood, relocatees are poor candidates for occupational retraining, because in their insecurity they cling to familiar ways. The scientific and social scientific knowledge necessary to plan an effective relocation does not exist. Finally, costs of relocation normally run two or three times the estimated budget.

2. The specifics of the Owens bill are almost certain to produce all of these negative effects. The first step is to be a ninety percent livestock reduction, not only in the portion of the disputed territory from which Navajos are to be removed, but in the portion where Navajos are to remain. Representative Owens himself has said that this reduction will make it impossible for Navajos to remain in the disputed territory. The evident intent is to make economic hardship an incentive for removal, but the likely effect is that resistance will arise not only in connection with removal, but earlier, in response to livestock reduction. The reduction is a grave hardship for all Navajos in the disputed territory, but it is particularly punitive for those not scheduled for removal. There is no way that more than a minority of the 8,000 Navajos scheduled for removal from one million one hundred fifty thousand acres of land can be accommodated on the two hundred

fifty thousand acres that the Tribe is to be permitted to purchase for their benefit. There is, furthermore, no plan in the bill for assigning specific families to particular tracts in the new land, nor any funding for an infrastructure in the new land--that is, for roads, power lines, gas lines, schools, administrative facilities, or medical facilities. The remainder of the relocatees must, in theory, be absorbed on the existing reservation. Representative Owens believes that they can be accommodated on the Navajo Irrigation Project. Quite apart from this pre-emption of the Tribal Council's planning of the Irrigation Project, it would be hard to make a poorer choice. The displaced population now does relatively little farming and has no experience of irrigated farming. Relocatees are poor candidates for this kind of retraining, for which the bill makes no provision. They will suffer, and so will the project. Nor can they well be accommodated on the existing reservation, for two reasons. First, although population density is low in the Navajo country, the reservation is seriously overpopulated. In the 1930's the Government estimated that no more than twenty-two thousand Navajos could be supported by farming and herding. Today of the total Navajo population of perhaps one hundred forty thousand, an estimated eighty to eighty-five percent live in Navajoland for all or part of the year. Most of them eke out a living

from farming, herding, part-time on-reservation employment, seasonal off-reservation employment, and welfare. Their annual income makes them one of the most impoverished groups in the United States. Some few have full-time Government or Tribal government jobs, but there is no expectation that the relocatees will be able to move into such positions. Thus relocation promises still further overcrowding and increased poverty. Second, all the available pasture and farm land on the reservation is now in use and is claimed by its present occupants for the pursuits of their livelihood. The reservation is entirely divided into customary, hereditary use-right areas, sanctioned by Tribal Code and thus by the Secretary of Interior. It is a profound misunderstanding to think that a Navajo's only equity on the reservation is his house, his improvements and his livestock permit. He has a birth-status right to a place in Navajoland, which he can normally exercise only in his home area or in his spouse's home area. Any effort to reduce hereditary use-right areas in the rest of Navajoland to accommodate 8,000 displaced persons is doomed to failure, both because of the resultant crowding and because of the resistance of those asked to give up a portion of their own claims to make room for the displaced Navajos. Thus, 8,000 relocatees are to be deprived of their birth-right in land-use without compensation, and it is unlikely

that they will find any place to relocate, save for the minority moved on to new land. The Owens Bill, which provides no machinery for the relocation, does not even acknowledge the existence of these rights, much less the problem faced by relocatees. Furthermore, according to Representative Owens' own statement, not only the 8,000 displaced Navajos must move, but all the inhabitants of the disputed territory, or conservatively six thousand more Navajos, since they are to lose most of their stock. Perhaps it is hoped that younger and better-educated Navajos will move off the reservation forever. The percentage of failures among urban relocatees is very high, so that this is not a promising prospect. In addition, however, the viable economic unit of Navajo life is the extended family. The senior generation carries the brunt of day-to-day care of the stock. Some young adults remain at home to care for the stock, to farm, and to haul wood and water. Others leave their stock with their parents and seek jobs, providing cash and gifts of groceries to the senior generation for their help with the stock. Selective emigration by the young will break up this unit, creating insecurity for the young and indigence for the old. Groups of related families cooperate in larger-scale activities and share the use of vehicles. These units, too, will be broken up by relocation. The fifteen to twenty thousand dollars provided for housing

relocated families is not sufficient for simple modern houses in that area, so that the relocatees are condemned to continue in substandard housing--quite apart from the fact that most will be unable to find a place to build.

3. It takes no specialized study of compulsory relocation of Navajos to anticipate the outcome of the relocation. The ordinary experience and intuition of human beings tells us that if eight thousand inter-related people, living where their ancestors have lived for more than two hundred years, lose their livestock and are told that they must move for some reason other than a higher good, they will resist livestock reduction and removal. The reaction is not peculiar to Navajos. It is to be expected that if the generations are sun-dered, there will be unhappy consequences, that if too many people are forced on to too little land, they will suffer and become indigent, while those asked to make room for them will resist, and that the relocatees will become alienated from support of the Tribal and the United States Governments. Several generations of indigence and maladjustment are likely to follow. The Senate should follow its human intuitions and not concur with the action of the House. Otherwise, it must be prepared to cope with the consequences of its action.

4. The plan to provide allotments for Paiutes resident in the western Navajo country is a return to the disastrous allotment policy of the 1880's, abandoned since the

1920's because it led to fractionated heirship, loss of Indian land, and poverty. An adequate resolution of the Paiute problem rests on more study and consultation both with Paiutes and with the Navajo Tribe.

5. There is no reason why the three issues of the disputed territory, Moencopi village, and Paiute lands must be dealt with in one piece of legislation.

6. The Hopi's half-interest in the surface rights to the disputed territory can be fulfilled by other means than expulsion of the Navajos; that is, by the Navajo Tribe's payment of rental or its purchase of the Hopi interest. These alternatives require lieu lands for the Hopi to expand their livestock industry.

7. A resolution of the conflict that requires minimal Navajo and Hopi relocation will create the fewest short- and long-term problems for both Tribes. In order to meet Hopi needs, land approximately equivalent to their half-interest in the disputed territory should be purchased for the Hopi, as near to their reservation as possible. An area around Moencopi should be defined on the basis of current use or use at some reasonable prior date. Hopi lands around the mesas and at Moencopi should be fenced. And Hopi access to tracts in the disputed territory should be guaranteed, for purposes of hunting; gathering plants, timber, and fuel; and religious

worship. Purchase of lieu land is, in my opinion, a responsibility of the Federal Government, because it created the present problem. The Navajo Tribe, however, is willing to use its revenues to pay the Hopi Tribe for the Hopi half-interest in the surface, which indicates the serious concern of the Navajo Tribal Council to avoid relocation of Navajos. If the money received from the Navajo Tribe is not adequate for new Hopi lands, the Federal Government should provide the balance. Since the Hopi will not have to relocate villages in order to operate their cattle industry on new land, and since under the terms suggested, the Navajos will also not have to relocate, the result will be to enhance Hopi life without damaging Navajos.

Although this plan will meet Hopi economic needs, it will not give the Hopi the particular piece of territory to which they are attached by tradition and by their interpretation of the 1882 Executive Order and subsequent events. On the other hand, Navajos are attached to that same piece of territory by tradition, by a history of more than 200 years of occupancy, and by their present existence. There seems no reason why the Hopi attachment should be rated higher than the Navajo.

This plan should be accompanied by funds to conserve and improve the range in the disputed territory, but more slowly

than under the provisions of the Owens bill, by funds to provide the infrastructure that is required for the new Hopi lands--the roads and water development needed for cattle ranching, and by funds to develop the infrastructure in the disputed territory, which has lagged behind the rest of the Navajo country for 12 years.

8. Before making a decision, Congress should examine far more closely than has been done, the direct and indirect costs, short and long term, of the Owens bill and of alternative measures such as the Moss-Montoya-Domenici bill (S. 3230, which provides for Navajo purchase of a half-interest in the surface of the disputed territory and for economic development for both Tribes), and the Meeds bill (H.R. 7679, which provides for compulsory negotiation and arbitration between the two tribes). It should especially examine the costs to the human beings, Hopi and Navajo, most affected by the legislation. It is likely that any bill requiring payment to move and house eight thousand people that creates long-standing problems of adjustment for those people will prove more expensive than a plan to provide new lands for the Hopi.

9. Any bill to settle the dispute should be based not on a narrow and legalistic construction of the 1882 Executive Order and Healing v. Jones of 1962, but on the recognition that

the Federal Government by action and inaction has wronged both Tribes since 1882. In the Navajo case the Government failed in 1882 to recognize their long-continued prior occupancy in the disputed territory; in the Hopi case it failed in 1882 to recognize their rights in Moencopi. It has ever since failed to make a definitive settlement based on occupancy in both regions. For reasons that are not obvious, recent efforts like the Owens bill and its predecessors, introduced by Representative Steiger of Arizona, have been punitive toward Navajos. This punitive attitude has been justified by unsubstantiated claims that Navajos have immigrated into the disputed territory since 1882, whereas the best inference is that the Navajo population in the area has increased at the same rate as that of the general Navajo population. Efforts have been made to depict the Navajos as homeless nomads, whereas they are sedentary herders and farmers, deeply attached to their land, who move seasonally within their use-areas to rotate their pasture and accommodate to water supply. The Hopi Tribe has been compared to David and the Navajo to Goliath. This image has nothing to do with the realities, which concern not two Tribes, but eight thousand impoverished Navajos, to be displaced for the benefit of the cattle of 5,000 only slightly less impoverished Hopis.

The Navajos are being punished for living where they have lived for generations, by a Government that made a bad decision in the definition of the land rights of the two Tribes in 1882. They are being punished by relocation, by relocation without compensation for such Tribal improvements as water development in the disputed territory, by relocation with inadequate provision for housing and with no realistic consideration as to where the relocatees might go, and by loss of use-right without compensation. They are furthermore being punished by the loss of surface and subsurface rights to two hundred forty-three thousand acres outside the disputed territory, although no evidence has been provided that the Hopi used a tract of this size in the past, and there is considerable evidence that for several generations the inhabitants of Moencopi have used about 35,000 acres around that village.

10. Instead of a bill that is punitive to Navajos and that will cause generations of misery after relocation, Congress should adopt a solution that meets the economic needs of both Tribes. The Federal Government is responsible for the present problem. The costs of the solution should fall on the Government, and not on the Navajo. Solutions are available that would permit Hopi enhancement without Navajo deprivation. One of them should be chosen.

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STATEMENT OF DAVID F. ABERLE
FOR SUBMISSION TO THE SENATE
COMMITTEE ON INDIAN AND INSULAR AFFAIRS
July 24, 1974

I. Background, experience, and qualifications.

David F. Aberle, b. November 23, 1918, St. Paul, Minnesota; U.S. Citizen; Ph.D. in anthropology, Columbia University, 1950; Professor of Anthropology, Department of Anthropology and Sociology, University of British Columbia, Vancouver 8, B.C., Canada.

I have done field work among the Navajo Indians during the summers of 1940-41, 1949-53, 1965-66, and 1968, with additional brief visits to the Navajo country in the summers of 1954, 1964, 1971, and 1973. My principal topics of research have been the Navajo economy from the 1930's to the present, Navajo kinship, the relationship between economic factors and kinship organization and change, and the Peyote Religion among the Navajo, the appeal of which I have attempted to relate to Navajo economic and other deprivations. I am the author of a chapter, "Navajo", in "Matrilineal Kinship", edited by David M. Schneider and Kathleen Gough (Aberle 1961); a book, "The Peyote Religion among the Navajo" (Aberle 1967); a report, "A Plan for Navajo Economic Development", prepared for the Subcommittee on Economy in Government of the Joint Economic Committee, Congress of the United States

(Aberle 1969), which appeared in a compendium entitled, "Toward Economic Development for Native American Communities." These are my publications of greatest relevance for present purposes. I am presently preparing two articles on the Navajo for the Smithsonian Institution's "Handbook of North American Indians," one of which is concerned with the Navajo economy.

I have done short periods of field work in Lower Greasewood near Ganado, Teec Nos Pas and environs, Shiprock, Aneth, Lukachukai, and Crown Point, with briefer reconnaissance trips to Bluff, Mexican Hat, Dinnehotso, Kayenta, and Tohatchi. One summer was spent at Mexican Springs. My most extensive field experience is within the disputed territory. In 1954 I spent two weeks in District 4, in Pinon and north of there on Black Mesa, and during most of the summers of 1965, 1966, and 1968 I worked in the same region. The first trip was concerned with the Peyote Religion; the other visits were taken up with research on kinship and the contemporary economy.

My Ph.D. dissertation (Aberle 1951) was written about the Hopi, based on published materials. Although I have read a good deal about Hopi culture, I have done no field work among the Hopi. A list of my relevant publications appears among the references cited at the end of this statement.

II. General Position.

I should like to urge the U.S. Senate not to adopt H.R. 10337, but instead to consider alternative ways of dealing with the present land dispute between the Navajo and the Hopi. I have four reasons for taking this position.

The first is that in equity, the Navajo claim to the territory from which H.R. 10337 would remove them is strong. The second is that the problem now faced by the two tribes was created by the U.S. Government, and that a resolution of it should not subject the Navajos to the stress of relocation. The third is that in my judgment no relocation plan I can envision will succeed, but rather any relocation will cause economic hardship, severe conflict, social disorganization, and very probably the creation of a dependent population of relocatees. The fourth is that there are alternatives that will avoid many of the unfortunate consequences involved in implementing H.R. 10337.

III. The Navajo and Hopi claims to the disputed territory and the "Corridor".

A. Ancient history.

Archeological data indicate that the ancestors of the Hopi undoubtedly occupied much or all of the disputed territory prior to 1700.

B. Post-Spanish period.

Early references from 1540 to 1686 suggest the presence of Navajos near the Hopi and show their presence west of the Hopi country. Since some of these references are to

"Querechos" (a term used by the Spanish for Apaches in general) or "Apaches" (the Navajos were first known as Navajo Apaches), there is a slim possibility that some other Apacheans were intended. From 1691, however, the record clearly indicates the presence of Navajos near the Hopi towns. In addition, archeological research using dendrochronology (tree ring dates) shows that Navajo settlement in the disputed territory goes back at least as far as 1750. Thus, continuous Navajo occupancy of that area long preceded the creation of the Executive Order territory in 1882. By the same token, data submitted to the Indian Claims Commission establish a list of 328 individuals born within the disputed territory prior to 1882 (all summarized from Correll, 1972).

My own data, gathered independently of the land claims case, fits with that provided by Correll. I have collected the genealogies of a number of Navajos in the disputed territories. The families I know are almost all descendants in at least one line, and often in most or all lines, of people who either had lived in the area before the tribal captivity at Fort Sumner (1864-1868) and moved back immediately thereafter, or moved in immediately after Fort Sumner. Of the latter group, one cannot say that they did not have ancestors in the area before Fort Sumner, but only that they did not mention where their ancestors lived before Fort Sumner and may not have known. Navajos can trace their ancestors at least as far back as the grandparents of the oldest generation then living. Indeed, nicknames of some of those grandparents

are used to designate the places where the grandparents once lived and where some of their grandchildren still dwell.

In sum, the available data strongly support the view that Navajos occupied much of the disputed territory by 1750-1800, and perhaps earlier. The occupancy was for their daily subsistence and not for occasional forays. There is no evidence to show an intensive Hopi use of the area for that period, and specifically no evidence of Hopi villages in the area after 1700. The Hopi had shrines in the area, and they may have used part of the area for hunting, farming, and herding. Nonetheless the lack of dwellings indicates a less intensive use than that characterizing Navajo occupancy.

The Navajo have often been characterized as "nomads" wandering over the North American continent. This conception is an erroneous one. Navajo population has been increasing over the centuries, and a concomitant of that growth has been the movement of people into new areas. That is no more "nomadic" than the westward expansion of the American population. Traditionally (and to a large extent, today) Navajos have not lived in villages; they change the locations of their herding operations seasonally; and within an area used for farming and herding, they change the locations of their homes from time to time. For more than 400 years they have been building hogans (round or polygonal log or stone dwellings),

and building a hogan requires a considerable expenditure of time and effort. (The permanency of the dwelling does not fit with the "nomadic" characterization.) A family may have two or more hogan sites to use in different seasons and may use brush shelters (or, in recent years, tents) during the summer. The maintenance of seasonal dwellings permits them to circulate the sheep from one forage area to another. This practice is still followed by many, but has become increasingly difficult as the population has grown.

Many circumstances led to the building of new hogans and the abandonment of old ones. Marriages, increased family size, the decision to add a spring or a fall camp to the annual cycle of moves, all may result in new dwellings. A death in a hogan is often followed by its abandonment and the building of a new hogan at some distance from the old. Furthermore, every few years a hogan should be rebuilt, and often moved in the process, because its bottom beams have deteriorated and because it may have become infested with insects.

A set of kin subsists within a customary use area. It does not "own" the area in the sense of American ownership of a surveyed tract of salable land, but it has rights in the area unless it abandons it. The navel cord of an infant is buried near where he is born, and Navajos believe his mind will always return to that place even if he leaves it. A customary use area must have sufficient forage for the sheep, with alternate sites for various seasons, some farm land, firewood resources, and stock water, either within it or adjacent to it, or both.

In the past, seasonal moves sometimes led a group to a remote area, primarily because of the shortage of water (which is now more plentiful as a result of Government and Tribal development of wells, windmills, and pumps). Thus, some families moved as far as from Black Mountain to Tuba City, and then moved back at a later season. Some moves of this sort, of course, led to resettlement. In early days, if a family wanted to camp near another one, nothing could be done about it, but in those days crowding in one area still could be dealt with by movement to less populated areas. There was also a good deal of movement during the post-Fort Sumner period (1) as people who had lived in the eastern Navajo country, which became unavailable to them, had to find new locations; (2) as people whose kin had not gone into Fort Sumner sought their relatives; and (3) as people from more heavily populated territory sought more open space. (Downs 1972, esp. 42-94, and Downs 1964 and 1965 are the best treatments of Navajo livestock and farming practices, although I disagree with his description of the Navajo as "semi-nomadic".)

Among the families I have worked with in the disputed territory, numerous families live where their grandparents lived immediately after the return from Fort Sumner and before the establishment of the Executive Order Reservation. The abandoned hogan sites that dot a customary use area (and that are especially common near its borders), rather than indicating

the "semi-nomadic" habits of the residents, are used by the kin group to establish their long occupancy of the area when territorial disputes arise with neighboring kin groups. Instead of indicating that Navajos move, they show that they stay put. I emphasize this point because attempts have been made to attack the equitable basis of the Navajo occupancy in the present dispute by Hopi efforts to characterize Navajos as homeless, aggrandizing wanderers.

C. From the establishment of the Executive Order Reservation (1882) to the present.

The record in Healing v. Jones (1962) makes it clear that the Executive Order Reservation was established precipitately, without detailed reference to actual Hopi use of land within the area, and without attention to the amount or kind of Navajo occupancy of the area (cf. Healing v. Jones (1962: 136-137), esp. those matters pertaining to the actions of Agent Fleming, the Commissioner of Indian Affairs, the Secretary of the Interior, and the President). The primary reason for the rush was fear of non-Indian intruders and Fleming's threat of resignation (in connection with Dr. Sullivan's residency on First Mesa). Prior recommendations had considered a reservation jointly available to Hopis and Navajos; but the Executive Order took no account of the Navajos. It is asserted in Healing v. Jones (1962: 145) that there were only 300 Navajos in the disputed territory at the time, but there is no evidence of any census, and the figure seems improbably low. Correll (1972: 61-68) provides a list of 328 Navajos

born within the Executive Order territory between about 1808 and 1882, all but 16 of whom were born after 1830. It is difficult to believe that if this many can be proven for the period 1830-1882, there were only 300 in the area in 1882. In 1888 Chee Dodge estimated the Navajo population to be five or six hundred (1972 Senate Hearings: 74). In 1882, however, Inspector C. H. Howard estimated at least 8,000 Navajos living off the Navajo Reservation in Arizona, from the western boundary of that reservation to the Little Colorado. This is consonant with a population of at least 1,000 in the disputed territory, and casts further doubt on the low estimates of 1882 and 1888 (C.H. Howard, letter of July 31, 1882, Santa Fe, New Mexico, in National Archives). It is likely that the estimates of 300 in 1882 and 600 in 1888 are for Navajos adjacent to the Hopi towns and fail to take account of others in more remote areas. No census was made during this period.

It should also be noted that there is no record of Hopis born outside Hopi villages and within the disputed territory during the same period, save for one born at Keams Canyon. It is my opinion, to which I shall return, that there were probably about 1,000 Navajos in the disputed territory in 1882 and, more importantly, that they were in many cases descendants of earlier Navajo inhabitants of the area who seem to have dwelt there beginning at least as early as the middle of the 18th Century.

The critical issue with respect to government action in the period since 1882 is as follows: the U.S. Government could have followed several possible courses of action which would have been logical and consistent, but rather it followed none of them. Instead: (1) Though the area in issue here was in 1882 and for many decades before then occupied by both Navajos and Hopis, the Government issued an Executive Order in 1882 which was so ambiguous as to create a continuing question about the right of the Navajos to be there. (2) When the Government, in 1891, recognized the fact of Navajo occupancy by drawing a line of demarcation between Navajos and Hopis, it did not follow up by making an appropriate legal determination of the respective interests of the two tribes. (3) In the period 1936-1943, by executive action, the areas of occupancy were clearly delineated as between Navajos and Hopis, with the Hopis in 1943 obtaining an addition of 150,000 acres to the land allocated to them in 1936. In spite of the fact that everyone concerned was aware that this allocation would ultimately require Congressional ratification, no effort was made to submit the matter to Congress until the Nineteen Fifties. (4) In 1958, Congress, instead of taking the action which would have been appropriate, that of confirming legal title based upon actual occupancy, created a cumbersome judicial machinery whose work is still unfinished, which in 1962 came to the conclusion that Congress in 1958 had created a vested Hopi property right in land on which Navajos had been living since at least 1750.

In these ways Government action and inaction has resulted in the present crisis.

Much has been made of a supposed Navajo migration into the Executive Order Reservation after 1882. An attempt has been made to characterize this supposed migration as Navajo defiance of the U. S. Government.

In the table on page 12 I have listed the population estimates for the disputed territory from 1882 to the present. For the disputed territory, Johnston's figures are almost entirely based on various government sources. The figures show that officials were content to estimate Navajo population somewhat casually--as indicated by the official estimates which remain frozen at 2,000 from 1910 to 1916, dropping somewhat in 1918 and 1919, rising again to 2,000 in 1920 (a year for which there are two different figures), and then varying seemingly without justification between 2,500 and 2,700 from 1920 to 1928. If estimates could be so crude in the 1910's and 1920's, there seems no reason to accept the figure of 300, so often quoted for 1882, as valid.

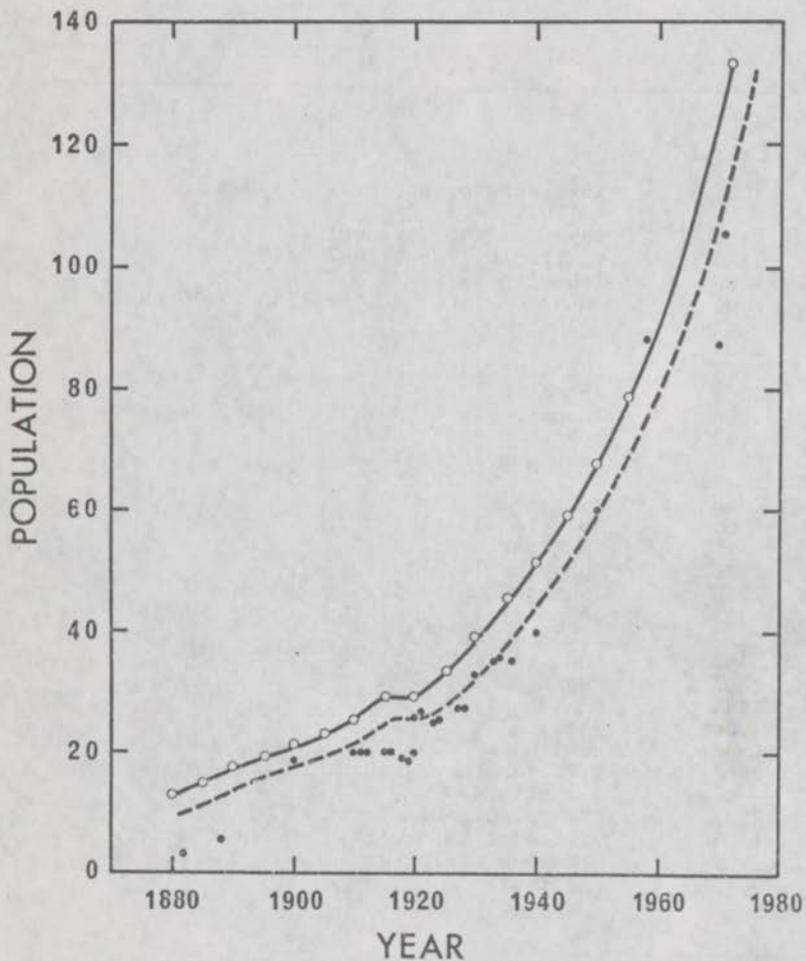
Denis Johnston prepared a series of Navajo population estimates covering five-year intervals from 1870 to 1955, which attempt to allow for errors in the official data (in Aberle 1967: 362). If these are graphed to provide the curve of general Navajo population growth from 1880 to 1955, with additional figures from the Navajo Area Office for 1972, and on the same graph are entered all the estimates for population in the disputed territory from 1882 to 1970, the results are two very similar curves, in spite of the scatter of the data for the disputed territory (see graph on page 13).

ESTIMATES OF NAVAJO POPULATION IN THE EXECUTIVE ORDER TERRITORY
1882-1970

<u>Year</u>	<u>Number</u>	<u>Source</u>
1882	300	1972 Senate Hearings: 28; Healing v. Jones 1962: 145
1888	5-600+	1972 Senate Hearings: 74
1900	1826	Healing v. Jones 1962: 145
1910	2000	Johnston 1966: 86
1911	2000	Johnston 1966: 86; Healing v. Jones 1962: 145
1912	2000	Johnston 1966: 86
1915	2000	Johnston 1966: 86
1916	2000	Johnston 1966: 86
1918	1940	Johnston 1966: 86; 1919 House Hearings: 514
1919	1842	Johnston 1966: 86
1920	2000	Johnston 1966: 86
1920	25-2700	Healing v. Jones 1962: 145
1921	2700	Johnston 1966: 87
1923	2500	Johnston 1966: 87
1924	2575	Johnston 1966: 87
1927	2750	Johnston 1966: 87
1928	2750	Johnston 1966: 87
1930	3321	Johnston 1966: 87 (Healing v. Jones 1962: 145 gives 3319)
1933	3492	Ann. Rept. Secy. Int. 1927: 210
1934	3583	Johnston 1966: 93
1936	3482	Ann. Rept. Secy. Int. 1936: 210
1940	4000+	Healing v. Jones 1962: 160
1951	6000	Healing v. Jones 1962: 145, 168
1958	8800+	1972 Senate Hearings: 28, Healing v. Jones 1962: 145
1970	8743	1972 Senate Hearings: 192
1970	10550	Office of Information and Statistics, Bureau of Indian Affairs, Navajo Area Office

Sources: 1972 Senate Hearings on H.R. 11128; Healing v. Jones decision; Reports of the Secretary of Interior; Denis F. Johnston's summary of data on Navajo population; Office of Information and Statistics, Bureau of Indian Affairs, Navajo Area Office.

Estimated Population, Total Navajo (1000's) and
Disputed Territory (100's) 1880-1973



- Total Population growth in 1000's.
- Estimated Population, disputed territory, in 100's.
- - - - - Hypothetical growth curve, disputed territory, at same rate as total population.

For sources see text

Some estimates fall fairly far outside the line paralleling growth for the total population. The estimates for 1882 and 1888 indicate improbably rapid growth for that period, and those for the years 1916 and 1919 show an improbable decline. The estimate for 1958 would appear to indicate unusually rapid growth between 1950 and 1958, but impact is cancelled both by the figure for 1970 in the Hearings and by the results of the most carefully made count available, that for 1970 by the Navajo Area Office. What is surprising, however, is how close many of the figures come to the hypothetical growth curve (dashed line) for the area (see graph on page 13). For example, this curve was prepared before the 1970 Navajo Area Office census data were made available to me; yet the 1970 count falls almost on the hypothetical curve. The scatter of the estimates is evident, but the trend is even more evident.

The fact must be faced that many of these estimates may be inaccurate by as much as 50 percent, for the years between 1910 and 1920 or so. It is therefore interesting to note that if in 1882 there were as many as 1,000 Navajos in the disputed territory, rather than the arbitrary figure of 300, the entire increase in population from 1882 to the present can be accounted for by natural reproduction, with immigration and emigration balancing one another.

While the interpretations of these data that I have provided are not intended to be definitive, what is important to observe is that there are no facts available to show that Navajos moved into the disputed territory in numbers during

any period from 1882 to the present. Any such interpretation can be based only on accepting at face value the estimates for 1882 and 1888, and there is no valid reason to do so.

Consequently, it is my view that the disputed territory had been utilized by Navajos for subsistence pursuits from at least as early as 1750 until the Fort Sumner period, during which some Navajos probably remained in the area, and that after that period Navajos moved back to the area, where they remained and expanded their population from 1868 to the present.

Incidentally, two informants spontaneously mentioned the allotments that occurred in 1909-1911 but were never brought to finality (cf. Healing v. Jones 1962: 149-150). Unfortunately, I did not understand the significance of these allotments and did not carry out systematic inquiry on the subject. In Healing v. Jones (1962: 149-150), it is stated that 300 Navajos were given preliminary approval for allotments in those years. A Navajo family is usually estimated to consist of an average of 5.5 individuals, and so it seems likely that in 1911 at least 1,650 people were covered by allotments, since family heads would normally apply on behalf of the entire family. The estimated population for 1910 (and several successive years) is 2,000, and a figure of this size would parallel growth elsewhere. Thus, approximately 82.5 percent of the estimated population had applied for allotments.

In connection with immigration and emigration it is important to deal with a charge that was made by John S. Boyden, counsel to the Hopi Tribe. He asserts that:

"Navajo tradition provides a very convenient way of acquiring property that does not belong to the Navajos. A person who establishes residence will raise a family, then each of his daughters at a very early age selects a mate bringing the man to the same area as her father and there raise their family. In this manner, all of the new people who are brought in as husband for the Navajo women and their children claim direct relationship to the original settler and assert the right to all the land they can use in the area" (1972 Senate Hearings: 116).

The above paragraph provides a confusing and misleading description of a matrilineal, matrilocal system of land tenure--one in which people belong to the clan of their mother, and not of their father, and in which a man moves to live with his wife's parents rather than removing his wife to a new location or to live with his own parents (which would be patrilocal residence). Although not a common kind of kinship system, it is shared by the Navajos and Mr. Boyden's clients, the Hopis. A man who moves to live with his wife's parents does not claim relationship to the original settler. Not surprisingly, his children, who are members of their mother's clan, claim rights in the territory she and her husband occupy. This system is no more nor less "convenient" for claiming occupancy than a patrilineal, patrilocal system in which a man's sons remain with him and bring their wives to live with them, the children making claims to the land by virtue of descent traced to their father. In the Navajo case, if a couple has daughters and sons, and if all reside matrilocally after marriage, then their daughters' husbands move to live near them, and their daughters' children

remain on the land. Their sons move to live with their wives, and their sons' children therefore do not remain on their land nor claim it.

Navajos do not adhere rigidly to matrilocal residence. Where a woman has no daughters, sons may well remain at home and bring their wives to live there. In such cases, the children have rights to remain where they were raised. Other circumstances--shortage of land or sheep, needs for labor in the two families in question, death of family members and need for kin to help the aged--may result in a couple's residing elsewhere than with the woman's parents. (See Aberle 1961 for a fuller discussion.) But none of these practices could lead to consequences of any significance in the disputed territory unless it could be shown that within that area, unlike any other part of the Navajo country, whenever a marriage occurred between a person from within the territory and another from outside, residence was invariably with the parents of the spouse living within the disputed territory. No such concerted action has occurred. My records show, in the first place, that most marriages are between individuals both of whom live in the same area, and in the second, that there are instances of movement from the area as well as to the area by one or the other partner. There is no evidence for any imbalance. Mr. Boyden's description of matrilineality and matrilocality is therefore irrelevant for an understanding of the present problem.

Another charge has been levelled against Navajos by legislators, officials of the Department of Interior, and officials of the Hopi Tribe, who imply or state that new construction by Navajos in the disputed territory represents Navajo movement into the area. There is, however, no evidence to indicate that any of the homebuilders are recent arrivals in the disputed territory. Like Navajos elsewhere, Navajos in the disputed territory are likely to replace deteriorated housing with new housing, usually frame or cinderblock dwellings. And like Navajos elsewhere, those in the disputed territory have increased in the years since the court decision of 1962. New marriages and new children require new houses. In the absence of evidence of movement, the charge against Navajos, of wilful immigration into the disputed area should be disregarded.

To recapitulate, Navajos are now in the disputed territory because their ancestors lived there and because the Federal Government, having established a Reservation for the Hopi and other Indians in an area where Navajos were then dwelling, left the Navajos there and then from a legal standpoint "settled" them there. They are there in large numbers today because their rate of natural increase is high, in fact higher than the Hopi rate. That they reside in an area now the focus of a bitter dispute is certainly no fault of theirs and results from no machinations on their part.

After more than 50 years, the Secretary of Interior did de jure "settle" Navajos in the disputed territory by actions taken in the 1930's and 1940's (cf. Healing v. Jones 1962). By that time, a serious problem had been created by the Federal Government. First the Executive Order of 1882 led some Hopi to believe that all the disputed territory was theirs, a belief encouraged by Hopi tradition (which at some levels claims the entire nation as Hopi), even though Hopi occupancy and use of the area appears to have been minimal from 1700 on. Second, from the Navajo point of view, the Navajos were living where their ancestors lived, where their navel cords were buried, in a land that they loved. (The late Charlie Mitchell told Edward Sapir about life at Fort Sumner and spoke of how the Navajos there mourned the places they had left and mentioned them lovingly by name. Two he mentioned specifically were Chinle and Black Mountain--Sapir and Hoijer (1942: 395). Finally, the 1930's administrative settlement represented a belated formal recognition of the Navajo occupancy.

It is not surprising that when Congress decided to let the courts adjust the interests of the parties, the Hopi sued for what they considered to be their rights in the disputed territory, nor is it surprising that the Navajos, who were using the area fully, defended the suit with vigor. The decision, declaring that each tribe had an equal one-half interest in the area beyond District 6, a decision at odds with the actual land use, which left it to the Tribes to work out the allocation,

has wrought havoc ever since 1962. Local Navajos are naturally unwilling to leave their homes, while some Hopis continue to want to use what they conceive the courts awarded them. It is politically dangerous and from a humane point of view, intolerable to the Navajo Tribal Council to attempt the relocation of the Navajos, and hence no division of the area has occurred.

The stalemate, however, has been a disaster for people in the area, in many ways. When I first visited this region in 1950, Black Mesa was known by Navajos elsewhere as one of the most traditional parts of the Reservation. This traditionalism resulted from its remoteness from administrative centers, hospitals, high schools, towns, and jobs, and the virtual lack of all-weather roads. In the 1950's Black Mesa resembled such other inaccessible and traditional regions as Districts 8, 1, and 2, to the north and northwest. Unlike these other regions, however, it was destined to remain a hinterland. The court decision of 1962 resulted in a freeze on all road building in the area (except, of course, for roads needed for the strip-mining at the northern end of Black Mesa), needed building of schools, medical facilities, and administrative centers, and developments of electrical transmissions and natural gaslines. In spite of its large population, it had little in the way of commercial developments, which were also frozen.

As a result of all these factors, the population (1) has a relatively low literacy rate even by Navajo standards

(the median education for the Reservation as a whole is about five years--Navajo Manpower Survey: 6), (2) has access to few local jobs such as those provided by construction programs, high schools, medical facilities, and commercial establishments, but (3) rather has to travel further over worse roads to off-Reservation communities for jobs, and (4) has less people capable of employment in such jobs than other areas. To add to the problems in the region, the high altitude in much of the area makes farming a marginal form of subsistence, and the amount of produce raised is very low by comparison with regions farther east. Under these circumstances, people rely upon livestock more than in most, or perhaps all other parts of the Reservation, and the land is heavily overgrazed in consequence. The overgrazing itself might have been dealt with by a program of chaining, seeding, fencing, and the building of plastic catchment basins for stock water, a program that has been successful in adjacent districts near Chinle, and that can raise the amount of forage per acre 3 to 300 fold. In much of District 4, within the disputed territory, increases of 300 fold can be expected. This program, too, has not been used within District 4, presumably because of the land dispute. In any case, given the economic conditions of this land, the people of the disputed territory are not responsible for the failure to implement a range improvement program in their area.

To summarize, it is not my contention that the Hopi have no rights within the disputed territory, but that in equity the Navajos have definite surface rights there by virtue

of continuous settlement interrupted only briefly and partially in the years 1864-1868, that they have for centuries utilized the disputed territory for farming and herding, and that in law as well they have rights there by virtue of the action of the Secretary in "settling" Navajos in that area in the 1930's and 1940's. More important, it is my view that the present conflict is a result of Federal action, hasty, ambiguous, and ill-considered in the first instance (when the Executive Order territory was created without proper attention to the Navajo residents), dilatory and ill-considered in subsequent years (when no orderly decision was reached as to the definitive allocation of the disputed territory between the two tribes).

H.R. 10337, rather than accepting Federal responsibility for the situation and considering the consequences of Navajo relocation, by implication puts responsibility for the situation on the Navajo residents of the area, who are forced by the bill to suffer all the untoward consequences of the conflict. Yet these Navajos have done no more than reproduce at a rate comparable to the general Navajo population, live where their ancestors have lived, and depend on livestock more than Navajos in most other regions for lack of alternatives--alternatives that might have been created had the same amount and kind of development occurred in the disputed territory that has taken place in Districts 10, 11, and 14, for example. It appears to me that it is the responsibility of Congress to create legislation that, rather than setting the two Tribes at each other's throats and dispossessing an estimated 6,000 Navajos in the disputed

territory, will right the wrongs done by past Federal action and optimize the affairs of both Tribes.

D. Moencopi and the Corridor.

Navajo and Hopi occupancy of the region around Tuba City predates the establishment of any reservation in the area and probably dates to the late 18th century (Brugge 1972). The Hopi probably occupied the areas only seasonally until perhaps the last quarter of the nineteenth century (Nagata 1970: 32-3). Hopi rights in that region were recognized but not determined in 1934 (1972 Senate Hearings: 30). H.R. 10337 awards to the Hopi a considerable area (243,000 acres) from Moencopi to the western border of the Executive Order territory, ostensibly to provide a continuous Hopi Reservation with a corridor from the Hopi mesas to Moencopi. The proposed award to the Hopi involves the relocation of about 2,000 Navajos. I know of no effort to justify the award of this large area to the Hopi on the basis of prior occupancy or current needs. The 800 to 1,000 Hopis at Moencopi need some land for livestock, which so far as I know they now have, but the area proposed goes well beyond these needs. There seems no justification in equity by virtue of past occupancy or present needs, nor in law, for the boundaries proposed in H.R. 10337 nor for the dispossession of about 2,000 Navajos to meet the supposed needs of 1,000 Hopis.

E. Does H.R. 10337 solve a problem or create one?

In its effort to resolve the land dispute, H.R. 10337 proposes a drastic relocation of 6,000 Navajos within the disputed territory. Recognizing that this action will create Navajo

antagonism toward Hopis, and attempting to protect the Hopis of Moencopi, it compounds the problems by requiring the relocation of an additional 2,000 Navajos in the "corridor" area, so that the Hopis may be protected against the antagonism created by the bill itself, by supplying them with a contiguous stretch of fenced territory. What the bill does is to set up a situation in which continuous antagonism can be guaranteed for decades or centuries, which requires fencing and patrolling of Hopi borders, and which requires the relocation of 8,000 individuals, at least 6,000 in the disputed territory and about 2,000 in Moencopi and the corridor.

IV. Probable Effects of Compulsory Relocation.

A. General Remarks.

In my judgment, the result of the compulsory relocation required by H.R. 10337 will be increased Navajo indigence, dependence on Federal support, social disorganization, illness, death, and conflict--conflict between Navajos, between Navajos and Hopis, and between Navajos and the Federal Government. I base this statement on research on the effects of compulsory relocation, on prior U.S. experience with compulsory relocation, and on the specifics of the present situation.

B. Research on Compulsory Relocation.

Professor Thayer Scudder, an anthropologist at California Institute of Technology, who did field research in Zambia on the effects of compulsory relocation resulting from the Kariba Dam (Scudder and Colson 1972), has recently compared

a series of major compulsory relocation projects (Scudder 1973). His conclusions are sobering in the extreme. He finds that a period of post-relocation readjustment is featured by social, economic, and psychological problems, with increased rates of illness and death. Dependence on government aid is characteristic, and in one case has now lasted for seven years. An attitude of permanent expectation of such aid often develops. Although relocation may call for new kinds of economic and technological adjustment, relocatees tend to cling to familiar patterns and to be unable to accept these new requirements. Hostility to the local and national governments that enforced relocation is characteristic. Costs of relocation are normally underestimated by 100 to 200 percent. Finally, resistance to relocation is virtually invariable. Since writing this work, Professor Scudder has visited the Navajo reservation, and it is his judgment, after talking to officials of the Navajo Tribe in Window Rock and to people who are likely to undergo relocation, that all of his conclusions apply directly to the proposed compulsory relocation of the Navajos (Scudder, personal communication).

If we turn to the American experience of compulsory relocation, the record is deeply discouraging. The many enforced relocations of American Indian Tribes in the nineteenth century were attended by poverty, dependence, resistance, alienation, and disorganization. One of these was the Navajo compulsory relocation to Fort Sumner in 1864-68, involving about 8,000 Navajos, or approximately the same number to be relocated under the terms of H.R. 10337. Rated a total failure by the U. S. Government,

which released the Navajos to return to a portion of their old domain, it left a traumatic heritage. The relocation of Japanese-Americans during World War II is not similar to the present enterprise, and was in any event temporary, not permanent and yet, it too is looked upon today with regret. There have been several compulsory relocations of small populations in Micronesia, none of which can be rated a success. As an example, the natives of Bikini, originally less than 170, have been moved four, and in some cases five times since 1946. At no time have they made a successful economic adjustment. Nearly thirty years later, they were returned to Bikini, with their political organization shattered and with an attitude of expectation of permanent government support (cf. Kiste 1972). If the past performance of the United States is any prediction for the future, it can be expected that the relocation planned for the Navajos, like those of American Indians in the nineteenth century, those of Micronesians in the twentieth, and those studied by Professor Scudder, will be attended by serious problems of long duration, and by immediate unfavorable reactions that will be difficult indeed to cope with.

To return to Professor Scudder's views, with which I agree, he believes that the social and natural sciences do not presently have the know-how to avoid serious economic and social problems in projects of this kind. In my view, the only sure thing is that what is known as "Murphy's Law" will operate: "Anything that can go wrong, will go wrong." Professor Scudder concludes that compulsory relocation should never be attempted unless all alternatives have been systematically evaluated and

found to involve even more serious disadvantages than relocation itself.

C. The Present Prospect.

To understand the specific problems of relocating Navajos it is necessary to have some comprehension of family, family cluster, kin-group, and community organization and operation.

The elementary family of husband, wife, and immature children is not a self-sufficient unit among contemporary Navajos living by farming and herding. Instead, a set of such families, sometimes called an extended family, is essential for survival. Such a unit, which I will call a "cluster", might contain an older couple or a widow or widower, and one or more married children, more often daughters than sons because of the practice of matrilocal residence. Other children may be living in a Bureau of Indian Affairs center on the Reservation as well as in an off-Reservation city, employed by the Tribe or the BIA in the first instance and by a private employer in the second. Furthermore, during the year, one or more of the men normally resident in the cluster may work seasonally off-Reservation, on the railroad or in migrant agricultural labor. But there must be some men at home to haul water from wells in barrels and to cut and bring home firewood, and there must be some people to herd sheep. There may be welfare clients in the unit--divorced or widowed women with dependent children, or intact families in which the husband is physically incapable of heavy labor, but lacks sufficient education to find other employment--and there

may be Social Security payments to one or more of the elderly people. It takes the man- and woman-power of the cluster to manage to make a living. Only thus can some people seek jobs while others do the work at home, and only by pooling several sources of income--livestock, wages, and welfare--can a bare sufficiency be achieved (cf. Aberle 1963). In 1969 median Navajo per capita income was \$831.00 and median family income was \$3,484.00. This compares with U.S. figures of \$3,700.00 per capita and \$9,794.00 per family for 1969. Furthermore, 27 percent of Navajo consumption units (families or individuals living alone) received less than \$1,000.00 per annum, and 41 percent received less than \$2,000.00 per annum.

Appalling though these figures are, the situation in the disputed territory is worse. In the Hopi Census Country District (which takes in the southern part of the disputed area) average per capita income is \$598.00, and in the Navajo Monument Census Country District, which takes in much of Black Mesa, it is \$601.00. Thus, in the disputed territory it is reasonable to estimate that per capita income is only a little over 70 percent of general Navajo per capita income. (All figures based on unpublished preliminary analysis of 1970 census data by Gerald J. Boyle, Department of Economics, University of New Mexico.) Under the circumstances of Navajo life in general, and to an increased degree for the Navajos of the disputed territory, no family dares abandon any given source of income, since its total income from all sources is so low. Pooling of labor and income is unnecessary for families living in towns or administrative centers and earning a reasonable income from a job.

Such families, however, often provide cash for their kin, who take care of their stock. Except for such urban families, to deprive a cluster of its old people is to lose herding and farming labor, and sometimes Social Security payments; to deprive it of its young people is to lose transportation (for most trucks are in the hands of the younger adults), income from part-time and seasonal employment, and heavy labor hauling wood and water.

The integral nature of the cluster of families is crucial to an understanding of problems of relocation. In discussions of relocation that I have heard, non-Navajos seem to believe that a differential relocation can be managed; that the young and educated, those most equipped for employment, can be shifted earlier than the older people, or perhaps with the older people left behind permanently. There are at least two defects in such a plan. First, nothing is said about where a large number of new jobs for the young people will be found. (The unemployment and under-employment on or near the Reservation is great.) Second, the young and the old are interdependent, and the breakup of these clusters will lead to an inability of the old people to receive enough cash to survive, or to mobilize enough labor and transportation for certain tasks, while the young depend on the old for the care of their sheep and cattle.

Related clusters of this kind live spread out over a considerable area. It is within this area that the stock water for each cluster is normally to be found. It contains

areas that are used for forage in different seasons and fields for farming. Within it is found the firewood necessary for fuel. By consultation, clusters within the area manage to use different forage areas without interfering with one another. Within this area, too, there is sharing and mutual aid. The core of such a set of clusters (a kin-group) may consist of an older woman and her mature daughters, a set of sisters, or sometimes a set of sisters and one or more of their brothers. Other combinations of relatives are possible, but normally within the kin-group every cluster has at least one member matrilineally related to at least one member of every other cluster. Loans, transportation, cooperative labor in rounding up cattle, assistance in putting on ceremonies--in all these matters the set of clusters is likely to share. So even the cluster is not truly self-sufficient. The kin-group is more nearly so.

The vast majority of Navajo relations with other Navajos are within the community, among neighbors, kin, and friends. They seldom involve reference to hierarchical authority to settle disputes. (That is not to say that the Grazing Committee is never asked to settle a land dispute; but when it is asked, it is likely to suggest that the parties find some modus vivendi, since after all they are neighbors and should get along rather than make a ruling and risk a permanent breach between groups.) The moral tone of Navajo social life is based on cooperation and reciprocity between equals, not on subordination or abstract rules, and this cooperation and reciprocity

becomes more likely when the parties are united by ties of marriage and kinship, and less likely or unlikely as between strangers.

The significance of this for the issue of relocation is considerable. First, not only is the elementary family not a suitable unit for relocation, but the cluster is not either. Rather, it is the kin-group, the set of adjacent, clan- and genealogically-related clusters, that is the significant unit of land control, and water and wood resource management, and that provides crucial support to its members in all sorts of emergencies. Furthermore, a kin-group plucked up and placed next to strangers must now try to develop a modus vivendi with them, and the possibility is as great that relationships will be conflictful as that they will be friendly.

Among the Navajos resident in the disputed territory and the "corridor", the relationships of kin-group to kin-group, and of the kin-group to the land has developed over a century or more. The relocation of these Navajos is bound to lead to disturbances and demoralization. If it is done by relocating individual families and destroying clusters and larger sets of kin, it will not only cause demoralization and disturbance, but it will also lead to indigence and the inability of families to utilize either the land or the job market effectively.

D. Compulsory Relocation Under the Terms of H.R. 10337.

As passed by the House, H.R. 10337 is bound to create serious problems for the relocatees. They will be removed from about 900,000 acres in the disputed territory and 243,000 acres

in the Moencopi corridor. They will number about 8,000. The bill provides for the purchase of 250,000 acres of land with Navajo Tribal funds, in an unspecified location or locations, to be added to the Navajo reservation. The bill does not supply any relocation plan, beyond specifying that 20 percent of the population is to be relocated each year for five years. It furthermore requires an immediate and drastic livestock reduction throughout the disputed territory. It allocates a little less than \$29,000,000 for removal expenses and new housing for relocated families.

From the discussion of the bill in the House debate, as printed in the Congressional Record (H. 4502, daily ed., May 29, 1974) and from comments in the Hearings on the similar Steiger Bill (1973 House hearings, esp. pp. 42-3, 86-7), certain inferences can be made as to how supporters of the bill expect resettlement to occur. (1) It is believed by some that if about 80 or 90 percent of the livestock are removed from the entire disputed territory, this will provide an incentive for relocation by making it impossible for Navajos in the disputed territory to earn a living. (2) To judge by some comments, it is believed that some Navajos can be accommodated in the new lands to be purchased, while others can go to the Navajo Irrigation Project. These views were expressed in the debate on H.R. 10337. (3) In the hearings on H. R. 5647, the Steiger bill, whose effects are similar to those of H.R. 10337, the expectation was expressed that when most of the stock was removed from the disputed territory, and when the land had been improved, all of the Navajos now in

the disputed territory could be accommodated on the half of that land that would remain in Navajo hands. (4) In the House debate the vaguer expectation seemed to be that since the Navajos would retain some 15,000,000 acres, the relocatees could somehow be absorbed on the existing land, and that the additional land to be purchased was only a safety valve for the overflow. (5) A Senator, appearing as witness in the Hearings on the Steiger bill, believed that the relocatees could be absorbed without difficulty on the rest of the Navajo lands. It should be noted, however, that H.R. 10337 does not put forward any specific plan for relocation.

More bluntly, the bill proposes to use the scourge of deprivation of livelihood to induce people to move. Let us consider the possible places for relocation. There is no possibility that the relocatees can be accommodated on the 250,000 acres of new land, which constitutes only 22 percent of the acreage they are to leave behind. The majority, therefore, must be placed on the existing reservation. As to the Navajo Irrigation Project, it would not seem to be a Congressional prerogative to decide for the Navajo Tribe who should occupy its lands (in any event the land has already been assigned). Let us suppose, however, that in desperation the Tribe should elect to place the Navajo relocatees there. It would be a most unfortunate choice. The Navajos of the disputed territory have one of the lowest dependencies on agriculture of any group in the Navajo country. They are inexperienced in intensive farming and completely inexperienced in irrigation farming. Wholesale retraining would be required. Yet Professor Scudder tells us that relocated

populations are singularly bad choices for technological retraining, and that their best chance for success is relocation under circumstances that permit them to retain familiar modes of livelihood. Relocation on the Irrigation Project, therefore, would be damaging to the project and would make for a very low chance of successful adjustment for the relocatees. In addition, Navajos now living in the Irrigation Project area have every expectation of occupying it. This is the normal process when the Tribe exercises its right of eminent domain for the benefit of the Navajo people.

Relocating the bulk of the Navajos who would have to move on the existing reservation is doomed to failure. There are two serious misunderstandings about land on the Navajo reservation. The first is the belief that, because it is thinly populated, it is underpopulated. On the contrary, it is badly overpopulated (actually it is a prime example of low density overpopulation), given existing technology and resources and the on-reservation job market. Over- and under-population are not a matter of population density but of population-resource balance. The second is the belief that there are large areas that are available for settlement. The entire reservation is divided into customary, hereditary use-right areas, recognized in Tribal law (Navajo Tribal Code, T.3, Ch.3, § 310(e) and T.16, Ch.11, esp. §§ 551, 552 and 553). To attempt to relocate Navajos from the disputed territory and the Moencopi corridor on to the rest of the reservation is equivalent to asking farmers displaced by a dam to move on to the land of adjacent farmers, to build homes on that land, and to work a portion of the land. The reactions of relocatees and those asked to receive them would be rejection and resistance. Thus the relocation plan is economically not feasible,

since it still further overcrowds the reservation, and socially impossible, since it violates customary land tenure. To the resistance of Navajos asked to relocate will be added the resistance of Navajos asked to receive them.

Indeed, not too long ago 17 families were removed from District 6, the exclusively Hopi portion of the disputed territory, and they have yet to achieve placement or make a satisfactory economic adjustment on the reservation. If there are problems associated with 17 families, there will be far worse ones when 1,600 families are relocated. The proposal that all of the present population of the disputed territory can be accommodated on half the land of that territory suffers from three serious disadvantages. First, it violates customary use rights of non-relocatees in the disputed territory and will result in serious conflict. Second, it condemns relocatees and non-relocatees to a period of uselessness and indigence until the range restoration program is completed. Third, by instant doubling of density, it prevents that enhancement of Navajo livelihood that should be a matter of serious concern to Congress. In addition, there would still remain the problem of relocating the Navajos of the Moencopi corridor.

The Owens bill fails to provide either a plan for relocation or a coordinating procedure. That is, there is no stated mechanism for allocating relocated Navajos to new land or for finding them places on the reservation. Yet it is obvious that there will have to be some way of deciding who will get places on new land, and where. Either Navajos in numbers will have to wander the face of Navajoland trying to find a spot in which to locate, or there will have to be some coordinating body to find places and assign families to those places. If this

is to be left to the Secretary of Interior or to the Tribe, there will be administrative expenses not covered by the bill. If it is to be left to individual families, there will be chaos. Compulsory relocation is a course of action to be undertaken with the greatest hesitancy; this kind of unplanned relocation is reckless.

The housing provisions of the bill, which allow \$15,000 for a family of 3 or less and \$20,000 for a family of 4 or more, are inadequate. They will not be able to purchase a modest modern house like those found in various housing projects in administrative headquarters. Thus Navajos will move from substandard housing such as they presently occupy to new, substandard housing elsewhere.

There is no provision in the bill for the infrastructure needed in the new land to be purchased: roads, schools, medical facilities, administrative centers, power lines, gas lines. It is not clear whether these are costs to be borne by the Navajo Tribe, or costs that will subsequently fall on the U. S. Government. A relocation that fails to plan for these amenities in the new land is seriously deficient.

Since there is no plan for relocation, it is reasonable to infer that the bill will require each separate Navajo family to find its new location, to move there, to arrange to build housing, and to make its own adjustment. The aim of the bill, therefore, seems to be to atomize the cohesive groups that can now be found in the disputed territory and the Moencopi corridor, and to make them individual, wandering families, left to work out their own salvation. Yet they cannot find places within the

reservation, only a fraction of them can be placed on the new land, and there is no plan to make the new land habitable.

I have thus far written as if somehow the majority of the displaced Navajos could be crowded on to the existing reservation, at the cost of poverty, dislocation, and conflict. It is, however, highly probable that they cannot be so placed. The Owens Bill is based on a fundamental misconception of Navajo rights in land, a misconception that will result in depriving all Navajos not relocated on to new land of a basic birthright. The terms of the Owens Bill suggest that Navajos have specific rights only in their houses and improvements, for which they are to be compensated, and that Navajos have an undifferentiated right in Navajoland as a whole, which they can freely exercise merely by moving from one region to another. Thus, the legislation provides them with no compensation for the loss of their use of land in the disputed territory.

On the contrary, the appropriate way to view the land situation is that by virtue of their birth as Navajos, the Navajo people have a right in Navajoland, or, if born on allotted land, then in their allotments. From the Navajo point of view, the people belong to the land as much as the land to the people. This general right in Navajoland, however, can be exercised only through claim to a specific use-right area. The entire Navajo Reservation is now divided into such use-right areas, recognized by the Tribal Code and thus by the Secretary of the Interior (Navajo Tribal Code, T.3, Ch.3, § 310(e)). There was a time when there was open, unclaimed land, but that time is long past. A Navajo has a life-time claim in a use-right area, ordinarily

that of his/her parents, but sometimes that of another kinsman, as a result of the death of one or both of his parents, their divorce, or some other domestic catastrophe. A claim may be acquired in the use-right area of a spouse, if a person moves to live with that spouse. That claim lapses in the event of divorce, but the claim to the natal area is always potentially available. There is no normal right, however, to move livestock to a spouse's area. Displaced Navajos from the disputed territory are to be deprived of their use-right areas without compensation or replacement. In a few cases they may find kin who will permit them to build homes on the use-right area of those kin, but the displaced Navajos will be unable to move their livestock there, because of overcrowding and because the kin, the neighbors, and the grazing committee will object. The Owens Bill in no way takes into account this permanent loss of rights in Navajoland for relocatees, but allows only for their loss of a home and homesite, which is only a fraction of the problem.

It is true that the Navajo Tribe has certain rights of eminent domain, but it is important to note that the Tribal Code provides for compensation for Navajos deprived of use-right areas or portions thereof, and that it also provides them with first claim to new lands as any become available (Navajo Tribal Code, T.16, Ch.11, §§ 551, 552, and 553). In fact, the Tribe exercises this right with caution; numbers affected are few; and when groups as large as 50 or 100 families are affected, resistance and/or long-term problems result, even though displacement is for the benefit of the Tribe or the community. Minor adjustments as between families or by grazing committees also occur, but

infrequently and involving small numbers. A displacement of 8,000 people will occur under the Owens Bill, for no benefit to the Navajo Tribe or the people themselves, without compensation for loss of a use-right area, without placement on new lands in most cases, and without any recognition of this fundamental Navajo right. It is illusory to believe that the Navajo Tribe can, with impunity, abrogate the use-rights of Navajos elsewhere in Navajoland for the benefit of the relocatees, and any effort to do so will be met by resistance and legal conflict.

There are other objectionable features in the bill. It provides for allotments to Paiutes on the western side of the reservation. During the latter part of the nineteenth century, the allotment policy then followed by the Bureau of Indian Affairs resulted in loss of Indian land, fractionated heirship, unworkable parcels of land, and Indian poverty. That policy was set aside in the 1920's. The Navajo reservation is the largest single tract of unallotted reservation land in the United States. Allotment to Paiutes will undoubtedly bring pressure for other allotments, and may well reverse the policy of the last forty years, returning the Indians to the discredited allotment procedures of the past. There are other ways--as through the Navajo Tribal Council--of ensuring Paiute security on the land.

Although ostensibly providing equal treatment to Navajos on land to be deemed Hopi and Hopis on land to be deemed Navajo, it provides no compensation to the Navajo Tribe for such improvements as water-drilling, but requires the Navajo Tribe to pay the Hopi Tribe for any damage to the range. It deprives the Navajo Tribe of subsurface rights to 243,000 acres in the Moencopi corridor.

In sum, the bill does not plan Navajo relocation but only compels it. The likely effect of the bill is to break down the viable economic units of the Navajos to be relocated--their extended families are larger kin units--to separate the generations, to starve out both the potential relocatees and those who remain in the Navajo sector of the disputed territory, to

separate the generations, and to create impossible tensions between the relocatees and those asked to accommodate them. It puts the entire burden on the relocatee, so far as can be determined, to find his own location and his own adjustment. If anything more is intended, it does not appear in the bill.

There is a sense in which one need not know anything about past relocation efforts, nor anything about Navajo culture, kinship, or economy, to be able to anticipate the outcome of the relocation. If 8,000 inter-related human beings, living where their ancestors have lived for centuries, are thrust from their homeland under these conditions, it can be expected that they will resist relocation. Such a reaction has nothing specific to do with Navajo culture or personality; it is an expectable human response. Deprived of livestock, crowded on to the reservation, moved into new territory that lacks what is needed to render it habitable, the relocatees will be impoverished, dislocated, disorganized, and dependent. Those whom they crowd will be resentful and will also be economically impaired. The relocatees will lose faith in their Tribal government and be alienated from the Federal Government. Years of economic dependency, of administrative problems, and of waste of human potential can be foreseen. These are the results of relocation with which the Congress of the United States will ultimately have to cope.

V. Livestock Reduction and Range Conservation in the Disputed Territory.

A. Present Plans for Reduction and Conservation.

Immediate and drastic reduction is required throughout the disputed territory by a court judgment in favor of the Hopis (now on appeal) and an amendment to H. R. 10337 demands nearly as drastic a reduction, also to commence immediately. A reduction of perhaps 90 percent appears to be contemplated. The Owens bill also authorizes the expenditure of up to \$10,000,000 to accomplish the reduction, fencing, surveying, and restoration of grazing potential (as opposed to BIA estimates of a true cost of \$60,000,000). Whereas range restoration is a critical need in the region, the plan for drastic reduction is punitive and will work great hardship on Navajos. It is Representative Owens's belief that regardless of legislation, "the Navajo living on this disputed land will be required to move, because the courts have ordered that all livestock be removed. There is no grass left to graze upon. The Navajo lives with his livestock. If the livestock is removed from this land, or if the cattle and sheep starve, the Navajo will move, and this move will be very painful, without the benefits of this bill's financial assistance provisions"--that is to say, without the funds for moving and housing provided by H. R. 10337 (quoted from Congressional Record--House, May 29, 1974, H 4513). It is a manifest exaggeration to say that there is no grass left to graze on, even if it is true that the region is overgrazed and the range downgraded thereby. So by court action or by H. R. 10337, the Navajos in the disputed territory, whether on the

section that is to go to the Hopi or on the section that is to remain in Navajo hands, are to be forced out by the elimination of their livelihood--and those in the Navajo sector will not be paid moving or housing expenses under the terms of H. R. 10337. Not only is Hopi land to be preserved from Navajo stock, but Navajo land is to be preserved from Navajo stock. These actions are, I believe, not likely to result in a smooth removal of Navajo relocatees; they will create havoc for Navajos remaining in the disputed territory; and they do not represent a reasonable answer to critical problems of range restoration. To understand the situation better, it is necessary to discuss Navajo livestock dependency in general and in the disputed territory.

B. The Importance of Livestock to the Navajo.

For the Navajo, livestock have multiple values: economic, social, and religious. From sales of lambs, wool, mohair, hides, and occasionally meat, they derive a significant portion of their cash and credit. Many women derive additional income from weaving Navajo rugs from wool and mohair. Lambs, sheep, kids, and goats are eaten, and Navajos thus enjoy an amount and quality of meat that would be unavailable to them if they had to purchase it. This is particularly true on Black Mesa, remote as it is from markets, since there is little fresh meat available in the stores there in any case. A herd is also the equivalent of a person's capital. Given the low per capita income that I have mentioned, cash and credit in a Navajo's hands must go for consumer's goods. Careful management of a herd, however, provides the surplus of lambs, wool, etc., that

can be sold year after year to supply cash income and food, whereas if the value of the herd were put into the Navajo's hands in cash, there is no way that he could deploy it to provide an equivalent yield year after year. The herd of a cluster is operated under one or more permits, but the animals are ear-marked for every individual in the cluster, except young husbands who have left their herds with their parents, as well as for absent members of the cluster who work in administrative centers or towns. The principal herding labor is supplied by the senior generation, and in return the junior generation is likely to allow the older people to keep the money from wool sales, and in many cases from lamb sales as well. There is rotation among the animals of various family members when time comes to kill an animal for food. Young people living away may also come back and ask for a sheep to be killed for food, taking it with them when they leave. Since jobs come and go, they derive security from knowing that there are still sheep and goats available to them if they must return to the community. The goats are regarded as uneconomical by white stockmen. Yet, quite apart from the value of mohair, which is used for weaving and also sometimes sells for good prices, kids are killed by Navajos during the summer, providing delicious fare, and making it possible to save lambs until the fall sales. A kid grows faster than a lamb, so that Navajos thus trade off the meat value of the kid for the sale value of the lamb. This is rational economic activity.

The economic significance of cattle is somewhat different. They, too, are capital, and they are also sold. They are, however, almost never killed for meat, because the only occasion that warrants such an event is a large ceremony with many people in attendance. A family or cluster can consume a sheep in a few days, but a cow or a calf would spoil before it could be eaten by a family or cluster on its own. Cattle are taken care of by men and not by women. Horses are needed for riding and herding in an area with few roads.

The social importance of livestock is also multiple. A family uses its own small stock and occasionally its cattle to provide food during Navajo religious ceremonies. At such ceremonies a family or cluster is host to those who attend a ceremony for which the family pays. Others, principally kinsmen and clansmen, but also friends and neighbors, may also contribute stock to feed the guests. Thus livestock are major items in the reciprocities that bind Navajos to one another. The care and management of the stock is an important item in family and cluster cohesion. Some people are converting from small stock to cattle. The reason for this is that cattle do not require daily herding, and for those with part-time or full-time jobs, cattle permit both wage work and animal husbandry, thus increasing income. Older people, and in particular older women, are unwilling to make this conversion completely, because their social value as herders would disappear and they would become social dependents, instead of useful members of society.

Livestock, and in particular sheep, goats, and horses, have religious significance. They were given to the Navajos, they believe, by the Holy People. If they care for their stock, the Holy People will think the Navajos care for their gift and will send rain and the flocks will live; if they diminish their stock, the Holy People will think the Navajos do not care for their gift and will not send rain. Livestock are represented in Navajo religious practices, and particularly in the important Blessingway ritual, which contains songs blessing sheep, horses, and cattle. All in all, especially for older Navajos, "Sheep are our mother; sheep is what we know; and everything that we know, we learned from the sheep."

Precipitate livestock reduction thus deprives Navajos of cash income, of credit collateral, of capital, of an important element in their diet, of their means of reciprocal social relationships, of their purpose in life, and of a gift from the Gods.

The importance of livestock to the fabric of Navajo life is crucial. It provides a herder with a significant economic role in the family, with an opportunity for valuable work, and with a corresponding feeling of pride, worth, accomplishment, 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 nests 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.

Quite simply, unless livestock reduction in the disputed territory is halted, Navajos there will be deprived of livelihood and a way of life. Reduction on this scale deprives older people of purpose in life, destroys the reciprocity between generations that now provides income from land and from job to old and young alike, and undermines the security of both old and young. Quite apart from the economic consequences of loss of livestock, social disorganization and attendant psychological maladjustment are likely outcomes of major livestock reduction.

C. The Specifics of District 4.

Much of District 4 is heavily overgrazed. In this roadless, jobless, undereducated area, where no range improvement program has been undertaken, and where altitudes of 6,000 feet and above make agriculture marginal, there is maximum incentive to increase livestock holdings because of the lack of alternative sources of income and food. Farther south in the disputed territory, where people depend more on farming and can more easily reach places where they can get jobs, there is less temptation to overstock. It is difficult to change this situation in the northern area without incentives to reduce. Available figures show that overgrazing in the area does not result from the greed of large stockmen but from the efforts of many small owners, who merely try to sustain their families.

Unquestionably the disputed territory must be better managed from the point of view of the balance of animals and plant cover. But a precipitate reduction of 80 to 90 percent of holdings can only cause anguish and opposition, while depriving an impoverished population of a significant source of income and food. The idea that removing the livestock will cause Navajos to relocate without causing difficulties is fallacious. Precipitate drastic livestock reduction is likely to cause quite as much resistance as removal. Again, this prediction does not require any knowledge of Navajo culture or personality; resistance is an expectable reaction to the arbitrary deprivation of livelihood.

D. An Orderly Approach to Conservation.

If Navajos were confirmed in their holdings in the disputed territory, under terms of an alternative plan that I shall discuss below, exactly the kind of range improvement that has occurred in Districts 10, 11, and 14 on the Navajo reservation could occur in the disputed territory, with the cooperation and enthusiasm of the local population. It could not take place suddenly but it could occur at the pace of development elsewhere on the reservation. Not all the disputed territory can be improved, and at least \$10,000,000 would be needed over a period of time for the improvement. Drastic reduction entails inflicting the most severe economic hardship on Navajos for the sake of Hopis, in the case of half the disputed territory, and on Navajos for no good reason in the case of the other half. A reasonable program over a longer period of time can involve a fair degree of stability for Navajos waiting for improvement, and enhancement

for Navajos who undertake such improvement. To improve the range by impoverishing its human denizens seems highly inappropriate.

VI. Some Erroneous Assumptions

In hearings and debates about H. R. 10337, its predecessors, and bills proposed as alternative solutions to the Navajo-Hopi dispute, certain erroneous assumptions have been repeatedly used to justify a decision favoring Navajo relocation. They have no place in a rational decision as to the best course of action. It seems to be believed that the Hopi have a title in equity to the disputed territory because their ancestors lived here and there throughout the area prior to 1700, even if they did not occupy it thereafter. I can think of no other case in which an implication of Tribal title to land is based on an occupancy that had lapsed 150 years before the U. S. Government assumed sovereignty in the region. From 1700 on, there is no evidence of Hopi dwellings in the disputed territory, and Navajo occupancy in the disputed territory began no later than 1750, although some Navajos had to leave during the Fort Sumner captivity. Furthermore, although it is believed by many that only a handful of Navajos lived in the disputed territory, I have provided reasons to consider this to be incorrect. An Executive Order in 1882 should have been based on the facts of Navajo and Hopi occupancy and use, and decisions made in 1974 should not be based on false assumptions on this score.

It is said that Navajos are nomads with no attachment to the land. I have provided reasons for considering them to be sedentary and evidence of their attachment to the land, and

specifically to the disputed territory itself. It is furthermore asserted that they have encroached on the Hopi by constant and illegal immigration into the disputed territory, whereas the evidence is that they have utilized the disputed territory more and more intensively because of their population growth. In the absence of a definitive allocation of land and of fencing, such a process was inevitable, given differential Navajo and Hopi population growth.

Depiction of Navajos as warlike in the 1860's has been used as a basis for relocating them from the disputed territory in 1974, while the fact that the Hopis were not warlike during that period has been used as a reason for giving them land today. This is no more rational than it would be to deny Hopi needs for land on the basis that they rose against the Spanish in the seventeenth century. The Navajos, other Indian tribes, Anglos, and Spanish engaged in conflict after American dominion in the Southwest. They raided one another, were raided, took slaves, and were enslaved. The Pueblos, including the Hopi, as sedentary villagers, had much to lose by conflict and little to gain; they remained aloof. In 1863, the U. S. Government elected to protect the rest of the population from the Navajos, although testimony at the time shows that Navajos were as much in need of protection as other groups. There is no reason why the Fort Sumner compulsory relocation of 1864-68 should be used to justify another compulsory relocation of the same scale in 1974.

The Biblical image of David and Goliath has been used to characterize the struggle between the Hopi and the Navajo. The Hopi Tribe numbers about 7,500, of whom perhaps 5,000 live on the reservation. It has a relatively small treasury and a relatively small territory. The Navajo Tribe numbers 140,000, of whom perhaps 125,000 live on the reservation. It has a relatively large treasury and a relatively large territory. But the groups immediately affected by the conflict are 5,000 impoverished on-reservation Hopis and 8,000 even more impoverished Navajos in the disputed territory and the Moencopi corridor. The question is whether the Navajos shall be displaced from their homes, their farms, and their pastures for the advantage of a smaller number of Hopis who wish to use the land for range. The size of the Tribes, their treasuries, and their total territories is irrelevant.

Although there is reason to consider that the court decision, awarding a half-interest in surface and subsurface rights to each Tribe was inequitable, that decision is likely to constitute the framework for any resolution of the conflict. Many congressmen seem to believe that the Hopi half-interest can be dealt with only by relocating Navajos. It can, of course, also be satisfied by purchase of that interest, by lieu lands, or by rental of the half-interest, all of these constituting ways of avoiding relocation.

Finally, H. R. 10337 and several other efforts to deal with the dispute treat three issues as indissolubly linked that could be settled one at a time and by three distinct legislative acts. These are: (1) the interests of the two Tribes in the disputed territory; (2) the Hopi interest in Moencopi and the western Navajo country; and (3) the settlement of Paiutes in the western Navajo country. The legislative and judicial background for the first issue differs markedly from that for the second and third. The disputed territory and the Moencopi issue are linked by the Hopi Tribe's eagerness to expand their holdings, by the Hopi Tribe's view that it has an undivided if undefined interest in the entire Navajo reservation, and by the Hopi Tribe's apprehension that if it displaces so large a number of Navajos, it must have a corridor from Moencopi to the edge of the Hopi land in the Executive Order territory to protect it from Navajo hostility. If Navajo relocation is not attempted in the disputed territory, the rationale for the corridor disappears, and with it the need for still further Navajo relocation. The issues are linked neither in equity nor in law. As for the issue of Paiute interests, it needs more consideration than it has been given, in order to provide a solution that does not require the beginning of allotment of the reservation, a solution that may be seriously damaging to the Paiutes in the immediate future, and to Paiutes and Navajos over the long run, if the past history of the allotment policy is any guide. The three issues could be settled separately.

VII. Alternatives to H. R. 10337.

A. General framework.

In discussing alternatives, I must deal with all three issues raised by H. R. 10337--the disputed territory, Moencopi, and the Paiutes--even though I think that they are not indissolubly linked. The broad framework for considering alternatives has two dimensions. First, the basic needs of the Hopi and Navajo Tribes should be met in a spirit of generosity by the Federal Government. Second, I accept Professor Scudder's view that alternatives to relocation should be carefully considered and compared with the fiscal and human costs of relocation.

Any equitable settlement should take into account the following needs of the two Tribes. The Hopi need (1) land to expand their cattle industry; (2) a bounded and fenced reservation in the region of the Hopi mesas and around Moencopi; (3) a half-interest in the subsurface rights in the disputed territory; (4) access to sectors of the disputed territory to gather fuel, timber, and plants, and to carry on religious worship.

The Navajos in the disputed territory and around Moencopi need (1) the land they presently occupy or its equivalent; (2) a bounded and fenced segregation of their land from that of the Hopi; (3) a half-interest in the subsurface rights in the disputed territory; (4) access to sectors of the disputed territory for religious purposes.

Both groups badly need funds to preserve and develop their range lands. Funds are needed to expand the underdeveloped infrastructure of the disputed territory and to create an infrastructure for any new lands allocated to either Tribe. The

Tribes are able to (and do) share the subsurface rights; nothing more need be said on this score.

Each group has a passionate attachment to the disputed territory itself. In the Hopi case this is based on tradition and on their interpretation of the 1882 Executive Order. In the Navajo case it is based on tradition and on more than two hundred years of occupancy. In this respect there is no way of satisfying both groups.

If minimal Navajo relocation is to be achieved, and Hopi needs are to be met, the following are the elements of a solution. Navajos should remain in situ in the disputed territory. The Hopi Tribe should receive lieu lands to expand their cattle industry. Although such land could not be immediately adjacent to the Hopi reservation, its utilization for ranching would require only the deployment of ranch labor, and not the relocation of Hopi villages. Although in my judgment the purchase of such land should be a Federal responsibility, because the U. S. Government created the problem, the Navajo Tribe indicates that it is willing to purchase the Hopi half-interest at assessed value, a willingness that clearly indicates the seriousness with which it views proposals to relocate Navajos. The Hopi Tribe should receive a defined territory around Moencopi based on occupancy at present or at some cut-off date to be established by further inquiry. It would appear that the village utilizes about 35,000 acres, and there seems no equitable reason why it should receive more than it uses now or at some prior date yet to be selected. Some minor relocation of Navajos might be required in order to bound the area satisfactorily. Some

minor relocation of Hopis living within the disputed territory might also be required. In both cases these are on a scale so much smaller than that proposed by the Owens bill as to be contemplated without serious misgivings.

The Hopi Tribe should be guaranteed access to sectors of the disputed territory for hunting, gathering fuel, timber, and plants, and religious worship. Funds should be provided to supply the infrastructure of roads, water development, etc., needed for new Hopi lands, and for range development and catching up on development of the infrastructure in the disputed territory, which has lagged behind the rest of Navajoland for many years.

It is possible to introduce variants on this plan. If it is impossible to provide adequate new land for Hopis with money received from the Navajo Tribe to compensate the Hopi Tribe for its half-interest in the disputed territory, additional funds could be added by the Federal Government. The precise boundaries of the Moencopi settlement remain to be determined, and could be adjudicated on the basis of various cut-off-dates: 1936, 1958, the present, or some other rationally chosen date.

Still another kind of alternative can be proposed: compulsory negotiation followed by compulsory arbitration between the two Tribes. The outcome of such an effort is not predictable, but it would probably lead to less relocation of Navajos than that contemplated by the Owens bill. Its principal advantage is that the allocation of land achieved would be agreed to by the parties to the conflict rather than imposed from outside.

As to the Paiute question, it should remain unresolved at present, until Paiute needs have been carefully assessed and until discussion with the Navajo Tribe has been undertaken, since it may well be that the necessary guarantees for Paiutes can be afforded by the Navajo Tribe itself.

B. Comparative Costs.

Legislation akin to the alternatives I have outlined is available. S. 3230, the Moss-Montoya-Domenici bill, has many of the features of a solution involving minimal relocation for Navajos, while H. R. 7679, the Meeds bill, provides for compulsory negotiation and arbitration. It would seem essential that Congress assess the comparative costs in money to the Federal Government and the two Tribes and the comparative human costs to the people involved of the various alternatives, insofar as possible. Yet discussions on this score do not seem to have entered into debate on alternative solutions to the dispute.

It is difficult to assess the comparative costs, but this difficulty is evidence that these costs have not been carefully estimated. The Owens bill requires the Federal Government to pay \$29,000,000 to move and house the relocatees, and the Tribe to pay an unknown sum for new land. It also involves \$10,000,000 to rehabilitate range in the disputed territory and \$300,000 for surveying. Since surveying, fencing, and rehabilitation of range should be features of any plan, they will be disregarded in subsequent discussion. The Owens bill has many hidden dollar costs, however they are to be paid: for an infrastructure in the new

land for Navajos, for administering the process of allocating removed Navajos to new locations, and for paying for the consequences of Navajo indigence and disorganization resulting from resettlement. Somehow funds must be found to develop the infrastructure in the Navajo sector of the disputed territory, which lags behind the rest of Navajoland in roads, schools, medical facilities, commercial facilities, electric power, and gas. As for the relocation itself, Professor Scudder's work indicates that it will cost two or three times the original estimate.

The human costs of the Owens bill include the despair of the relocatees, despair of Navajos remaining in the sector of the disputed territory with almost no livestock, the effects of resistance, the resentment and alienation of relocatees, and the antagonism relocation will cause between them and the Hopis, the Navajo Tribal Council, and the Federal Government.

The alternative of minimal relocation will involve the payment of half the value of the disputed territory by the Navajo Tribe to the Hopi Tribe (as envisaged by the Moss-Montoya-Domenici bill, S. 3230), or \$18,000,000. Since the Navajos can make a lump-sum payment to the Hopi Tribe only if they receive an interest-free loan from the Federal Government, hidden costs include that interest. It is possible that the \$18,000,000 will not suffice to purchase adequate lieu lands for the Hopis, which might involve additional Federal costs. An infrastructure for the new Hopi ranch lands will be necessary, but the amenities necessary for ranching will be less expensive

than those for Navajo occupancy of new lands under the Owens bill. Since few Hopis would have to move to care for cattle, moving and housing expenses would be small. From somewhere funds would have to be found to develop the amenities of the disputed territory to make them on a par with the rest of Navajoland. The costs of a plan involving minimal relocation would, under any circumstances, be easier to estimate realistically than those of removal, so that a caution that final costs may be two or three times estimated costs is unnecessary in this case. It is difficult at present to compare the costs of minimal and maximal removal, but it is highly improbable that minimal removal can cost as much as maximum. Navajo indigence would not be increased under this plan, while Hopi economic conditions would be enhanced. Under relocation, on the contrary, Navajo indigence would grow while Hopi welfare was improved.

The human costs of minimal removal are Hopi resentment at being excluded from occupancy of the disputed territory (but not, be it remembered, from access to it for specific purposes), and at not receiving so large an allocation in the Moencopi area as the Tribe deems desirable.

The economic and human costs of an arbitration and negotiation bill, like H. R. 7679, the Meeds bill, are at present imponderable, since the outcome of the negotiation is unpredictable.

In sum, there are alternatives to H. R. 10337. They promise to be less costly in dollar and in human terms than that bill, and they should be considered in detail, point-for-point before a decision is reached. Unless their disadvantages can be shown to be greater than the disastrous consequences that will follow from the relocation of 8,000 Navajos, one of them should be chosen, since relocation is ordinarily the worst step that can be taken.

VIII. Conclusion.

Action and inaction by the Federal Government from 1882 to the present are responsible for the present conflict. Generosity and far-sighted planning are now necessary to compensate for past errors.

1. Within the Executive Order territory, Navajos have lived in the disputed area for more than two hundred years. Although Hopis made some use of the land, Navajos were the only group to reside on it. Hopis have used land in the Moencopi area seasonally since the late eighteenth century and have occupied the Moencopi village year-round since the latter half of the nineteenth century. The acreage they have used in the region is relatively small.

2. By precipitate action in 1882, by inaction, and by ambiguity the United States Government created the present problem. It wronged Navajos by failing to acknowledge their occupancy of the disputed territory in 1882, and Hopis by failing to acknowledge

their occupancy of Moencopi at the same time. From before 1882 for many decades there were ample opportunities for the Government to evaluate current or earlier residence patterns of each Tribe in each area, as a basis for a definitive settlement of both tribes, but it failed to do so. It divided the area in accordance with actual residence patterns in 1891 and 1936 but did not legitimate those divisions, altered its interpretation in 1943 by taking more land from the Navajos and giving them to the Hopis, and by its actions in 1958, which laid the groundwork for the 1962 court order that led to the present impasse. It is not unreasonable to infer that it chose the device of a court settlement so that mineral leases could be signed with legitimate owners of subsurface rights in the disputed territory, and without regard for the needs of the two Tribes for grazing and farmland. Its action and inaction raised Hopi expectations while Navajos continued to live where they had lived, while their population expanded.

3. The present proposal, H. R. 10337, is generous to Hopis but punitive toward Navajos, in demanding the relocation of 8,000 Navajos, in the failure to compensate the Tribe for improvements in the territory (such as water development), in the loss of subsurface rights to 243,000 acres in the Moencopi corridor, and in the provisions for livestock reduction, which will bring immediate poverty to all Navajos in the disputed territory, whether they are to be relocated or not.

4. The immediate and long-range costs of H. R. 10337 will be considerably larger than those allowed for by the fiscal authorizations of the bill.

5. The specifics of H. R. 10337 are bound to cause resistance, economic hardship, severe conflict, deep resentment, social disorganization, and very probably the creation of a dependent population of relocatees. Even a more generous proposal involving relocation would have all of these effects, although there would be quantitative differences.

6. It is essential that Hopis preserve traditional rights of access to the disputed territory for hunting, gathering of fuel, timber, plants, and religious worship, and that they receive land to expand their cattle industry. All of this can be provided with minimal Navajo and Hopi relocation, by purchase of lieu lands, whether by the Federal Government, or by funds received from the Navajo Tribe for the Hopi half-interest in surface rights, or by both sources. Such a plan should be carried out so as to enhance the economics of both tribes, rather than at the expense of a part of the population of one, as a Federal compensation for the problems the U. S. Government has created.

7. Everything known about compulsory relocation provides ample warning that the execution of H. R. 10337 will be a disaster, leading in the first instance to resistance and subsequently to demoralization, disorganization and despair.

8. Congress should find a means to stop drastic livestock reduction in the disputed territory, since it has effects like those of relocation.

9. The Paiute problem should be dealt with after further study, and not by allotment.

10. H. R. 10337 should be laid aside, and Congress should move as rapidly as possible to an alternative solution that generously provides for the needs of two American Indian groups, who deserve far more at the hands of their Government than they have ever received.

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Statement
of
Mae Alcott

I, Mae Alcott, of Taloni Lake chapter, Luepp Arizona has come to Washington, D.C. to oppose the Owens Bill HR 10337, because this HR 10337 Bill will destroy the Navajo Indians and Hopi Indians if it is approved by the Senators in the Senate. There will be violence between the Navajo Indians and Hopi Indians. I, myself, think that Navajo Indians and Hopi Indians were very good friends until white men introduced a Bill to the Representatives and the Senators to make confusion between the two tribes. Because of the white men Bills some of the Hopi Indian Tribes and Navajo Indians are against each other. They do not trade with each other like it was before. I work among the people on the Navajo Reservation in District 5, and Navajo Indian livestock are taken away from them and impound them at Keams Canyon Corral, and Navajo Indians has to borrow money from each other to buy back the livestock. The Navajo Indians in the area I am working are mentally distrubed due to the Hopi Indians going after their livestock. They are not healthy any more, they do not eat right or sleep. They can not leave their livestock for grazing during the day, alone, because Hopi Indians come and take the sheep,

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horses, and cattle away. Navajo Indians do not do this to the Hopi. They think Hopi Indians are their friends and brothers. I know two (2) women have died due to worrying about their livestock, and not eating or sleeping right. Some Hopi Indians do not care about other people. They talk very badly of the Navajo Indian Tribes. They do not want to hurt the Hopi Indians because they are their brothers. Navajo Indians and some of the Hopi Indians do not believe in drawing lines to divide the two (2) tribes. They want to live happy and trade foods and other items among themselves. The Hopi Tribal Council delegates are lying alot about the Navajo Indians that they do bad things to the Hopi Indians, steal from them and so forth. This is not true.

The Owens Bill HR 10337 is written for the Hopi Indian Tribes only. Why the white men in Washington level are against the Navajo Indians is that the Representative of Arizona is turned down by the Navajo Indian Tribes where he wanted to (1) extend the Grand Canyon National Park, (2) extension of Watpahi National Park on Navajo Reservation, (3) Neorole Canyon done, (4) Bridge Canyon Dam, (5) water rights, (6) mineral resources, (7) power companies, (8) private land Senator Barry Goldwater has near the Navajo mountain on the

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Navajo Reservation in Arizona. Representatives and Senators of Arizona has not been turned down by the Hopi Indian Tribe, that is why, they are for the Hopi Indian Tribe.

I was born near Howell Mesa in December 1942 near the Hopi Indian reservation, and Navajo Indians were moved in 1943 to where they are now. I was an infant when my people were moved by the force of the U.S. government and Hopi Indian Tribe. Some of the Navajo Indian Tribe has died, and there are grave sites of the many Navajo Indian Tribe in the disputed land where Hopi Indian Tribe are making their development on the Navajo Indian people grave sites. At the present time, now, today the Navajo Indians are asked to move again by the U.S. government. The main reason why the "Navajo and Hopi Indian Unity Caravan" is here at the Washington, D.C. at Roger Smith Hotel is to OPPOSE THE OWENS BILL HR 10337. Because it is not good for both tribes Navajo and Hopi Indians.

At the present time most of the Hopi Indians and Navajo Indian teenage groups are not interested in any education or future plans for themselves, and their own people. And they will not be interested in obeying the U.S. government in the future. I, now live in the EOA of 1882, I do not want to move away from this land. Also I know that

the Navajo Indians that are living on the EOA of 1882 do not want to move. Besides there is no other land to make dwellings on.

Mae Alcott

STATEMENT
of
JAMES ASKIKI

I, James Askike, hereby wish to make a brief statement regarding my views of the H.R. 10337 "Owens Bill" up before the Senate Committee hearings.

I am opposed to the passing of the bill because it will have a twofold personal affect on my family -- I am married to a Hopi Indian and our children will be half Navajo and half Hopi. The harsh results will be the split in family ties, children with a destroyed sense of identity and a very inner conflict of adjustment.

I have the greatest fear of the dispute for the situation. The results will be a "landless people" with a twisted sense of identity.

STATEMENT
OF
FRANK T. BEGAY

My name is Frank T. Begay born on July 12, 1912 at Steamboat, Arizona which is location 10 miles along the District #6 boundary line and which is also called 1882 Executive Order area.

My great-great grandparents name Hosteen Altsi who have "long walk" to Ft. Sumner had retained this particular area where we, my families and relatives still remain at present.

Hopis have been our good neighbors whom we traded food with long ago. We provided meat and they grew crops. As far as I remember they lived on three mesas Old Polacca, Second Mesa, and Old Oraibi villages. Those days there were very few Hopis in these villages, today their population is about 7,000 or maybe less.

Plans in Owens Bills will cause many problems that may affect everybody in the United States, not just Navajos that are now in the Executive Order Area. I strongly opposed the Owens Bill HR 10337 and have a support of the Montoya Bill S3230.

STATEMENT

OF

JIM BEGAY

I am a 64 year old Navajo veteran who served overseas during World War II. There are six in my family who I support. I also support my wife's aunt who is very old. We have horses, sheep and goats to care for. We have three places that we move to during different seasons. I am sickly due to my service in World War II in Germany. Because I am a veteran, I have earned certain rights to to my homeland.

The Goldwater-Fannin Bill S2424 will affect us in two main ways. Physically, it will affect us by instilling fear and violence into us. It will also affect us through sickness, disease, and death. Economically, it will affect our livestock, our cornfields and our 350 ft. well that we built for \$5,000. If S 2424 or HR 10337 is passed by the Senate and becomes a law, it will destroy our lives, our properties and our future.

I, as a Baptist Minister of the Gospel of Jesus Christ, do not hate other races and tribes. We are very thankful for what the white people have done such as building hospitals, schools, roads, and so many other good things for us down through the years. For these things, the whites are to be highly commended. God bless them.

There is one current reality facing the Hopi-Navajo people and that is the S 2424 which is evil. Very evil. If it is passed by the Senate, it will not only hurt Navajos but Hopis, whites, and all races and tribes in years to come. Please, you honorable leaders in

Washington and elsewhere from the United States and also the President. Please do not let S 2424 and HR 10337 or any anti-good bills become law. Please sirs and madams! Thank you each one for hav-ing mercy on us. God bless you all.

STATEMENT
of
TIMOTHY BEGAY

My name is Timothy Begay. Presently I reside at Hardrock which located in the now disputed area.

I was born at Big Mountain which is located in the northeast corner of the 1882 Executive Order area and I have lived there for 45- years to date.

My grandparents, parents, relatives were all born in the 1882 Executive Order area.

Etcitty, my great, great grandfather participated in the "Long Walk" to and from Fort Sumner.

After the treaty and when my grandfather returned to the land that is was taken from he had no knowledge that the United States Government had given the land which is now known as the 1882 Executive Order area to the Hopis.

Since then, the United States Government has involved itself without consent by interfering in the lives and affairs of both the Navajo and Hopi tribes. By this interference, the U. S. Government has imposed hardships on both tribes.

If the Owens bill (S.2424) is passed the problems will never be resolved, but it will be a

never ending problem.

I truly believe, through negotiations the two tribes can come to some satisfactory solutions without outside people meddling in our affairs.

Because of the dispute the people have gravely suffered by being denied schools, roads, health and other facilities in the 1882 Executive Order area.

Therefore, I am against and opposing Senate bill S. 2424, because it will affect the lives of 8,500 Navajos and also some Hopi people.

I have come a long way so that I can plead with you leaders and help me to stop the bill. Thank you.

Timothy Begay

STATEMENT OF
EDSITTY BENALLIE

I, Edsitty Benallie, am a 69 year old Navajo Indian who lives within the 1882 Executive Order Area. I'm known to the U. S. Government by my Navajo Tribal Census #5679. I, my children and relatives live only a few hundred yards from Peabody Coal Company's Mine #1 which is a giant open-pit mine.

To my own people, I'm known as "Little Water" and as a traditional Navajo Medicine Man. This what I have chosen to devote my life to in our society. As a religious leader of my people, I vowed to serve the Great Spirit by upholding basic principles that keep man in balance and harmony with Mother Earth.

Now there is this Goldwater-Pennin Bill, S2424, if passed that will uproot our people and disrupt this relationship. We protest this bill because it will destroy us--take away our land, herd of goats and sheep, and our homes. If passed, it was mean the displacement and removal of 6 major families of my relatives and their livestock.

Right now, I live with my grown daughters and my 8 grandchildren in the same locality. We strongly voice opposition to S2424 because we do not have any other place to move since Peabody began strip mining a few years back. S2424 does not mention a place where Navajos will move where pasture land is available.

Many of us live with uncertainty day-to-day because of these two problems--strip mining and land dispute issue. Both problems have already caused my relatives hardship and many sleepless nights, and one brother has even died because of these things. "Why", we ask. You see, the answer is simple. You white people are interested only in the wealth that's beneath Black Mesa. This our forefathers have known and I have known this for years now. Right now, you have the means and the knowledge to mine these rich minerals. This I think is the only and main reason you pushing these legislation upon us, to destroy and weaken us. I seriously don't think any of you white people want to live where I presently live now. That leads me to believe that you only want to get these "riches" that I'm living on.

STATEMENT

of

TIMOTHY BENALLY
P.S. Box 1666, Shiprock, N. Mex.

Mr. Chairman and Members of the Committee:

My name is Timothy Benally.

I'm here in Washington, D.C. on behalf of 135,000 plus Navajos who are very concerned with the Senate bill S. 2424. -- This bill, if approved, will destroy many lives, because, the bill does not provide:

- (1) compensation for the removal, (2) no land is set aside where these 8,600 people are to be moved,
- (3) the livelihood of these people will be completely destroyed by reduction of their livestock, (4) education, hospitals and etc. have to be re-established if they are to be moved. This will be established again if only the Senate is willing to appropriate millions of taxpayers' money.

Timothy Benally

STATEMENT OF ELIZABETH BEYAL
and
JOHNNIE O. FRANCIS
TRIBAL WORK EXPERIENCE PROGRAM

BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
JULY 24, 1974

Mr. Chairman, Members of the Committee:

The primary objective of this statement is to correct and establish the approximate Navajo population count within the Executive Order area or more specifically, in the joint-use area.

In May, June and July of 1972, we coordinated a survey to determine the number of Navajo residents in the joint-use area. In order to obtain figures and to obtain family profiles, the following format was formulated to obtain pertinent information.

1. Name of Head of Household
 - a. census number
 - b. birth date
 - c. years lived in the area
 - d. service in Armed Forces, if any
2. Name of Spouse, Children and elderly grandparents
 - a. census number
 - b. birth date
 - c. years lived in area
3. Educational Background
 - a. Head of Household
 - b. Spouse

- c. Children
 - d. Location of school attended by children
 - e. Education level or number of years in school
4. Source of Income
- a. annual income from full or part-time employment
 - b. self-employment income from livestock
 - c. welfare assistance - State and Federal
5. Property or Assets
- a. type of home structure
 - b. corrals, sheds
 - c. farming plots
6. Residence
- a. approximate location
 - b. agency - chapter community
 - c. living outside proposed partition area was designated by white-color forms
 - d. living inside proposed partition area was designated by pink-color forms.

Bi-lingual Navajo field workers went singly or in pairs. A home-to-home visit or contact was made to obtain accurate information. In several instances, visits were made two or three times.

A summarization showed that the total number of Navajo residents in the joint-use area is 11,475. Of this figure, a total of 1,262 family groups live within the proposed partition area. The 1,262 family groups comprised an overall approximate population of 6,628 individuals. The figure of 6,628 is the number of people actually contacted. It does not include those residents who were living in bordertowns immediately adjacent to the

the reservation temporarily for employment purposes. Allowing for a percentage rate increase of 5% per year for new births since 1972 and for those not available for contact, the survey indicates an approximate Navajo population within the partition area at 8,000 and over.

To the best of our knowledge, this comprehensive survey undertaken in 1972 is the only survey to determine the approximate number of people who will be forced to move in accordance with Senate bill S. 2424. We have with us one copy of that study which we would like to submit to the committee. The expense of reproduction prevents us from offering the desired 100 copies.

During the cold winter season of 1972, 15 Navajo family groups consisting of 92 members were evicted from their ancestral homes within District 6, Hopi Reservation. Since then, family structures have broken down completely. Some of the children were placed in foster homes. The adult members displayed classic symptoms of withdrawal; shock; physical and mental deterioration and eventually became dependent on alcohol. The elderly acknowledged traditional leaders of this group have died. Their deaths have contributed directly to a complete loss of self-identity. The disruption from a traditional way of living and the resulting detrimental social effects began even before actual displacement was made. They watched as their hogans and corrals were torn down and dismantled completely as if they had never existed there before.

The traumatic shock of displacement suffered by the 92 individuals is heartbreaking and agonizing enough. To subject 8,500 people to the same fate is unthinkable and unacceptable.

In coordinating social services on the Navajo Reservation, we are observing the increasing apathy and passiveness among the Navajo people in the proposed partition area. There is evidence that family structures, socially, economically, physically and mentally, are beginning to deteriorate.

Please listen to our plea. Do not consider any legislation that will displace people. To do so is extreme cruelty.

STATEMENT

of

LONDON BIAKEDDY

This is a story back to Fort Sumner days, a man name Hosteen Big Man - 68 years ago at the time move to Fort Sumner. When he return he had a daughter name Ashiiian bi-aquasusi - Lady short skirt. These, my relative have always live in executive order.

This S. 2424 bill is going to destroy a century progress my people have made. For this reason I'm opposing the bill. -- Since my childhood days and up to now I have always depend on livestock for income. I'm not educated. But I live on my land as a wise man. I believe in nature, earth as a mother, father as a sun, and I pray to all four direction. Thus I'm a great believer in culture, tradition and human values. I have always live with prayer. What will happen. If I'm to be remove. It's going to destroy all my physical, culture and traditional being. This is totally a wrong doing to remove people. If a problem needs to be solve, I agree with S. 3230. -- Please I need your help, we are really in great need. Think of it right from the end of your toes to the top of your head. We the so-call Navajo are nobly in need of help. Thank

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you so much. So please help us my Senator, I need your help -- understand me, even though I'm uneducated.

I see and visit with the Hopis almost every day. I know them very well. I know for a fact that Navajos and the Hopis do not burn each other's homes, livestock and do not harm each other in any way. Only when the white Range Rider interrupts and creates disturbances does any disruption come about. The white Range Rider causes all the problem, the Navajos and Hopis do not fight!

I speak the truth.

Landon Biakeddy

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There are many Intermarriage in my district, what will happen to them? Are they being considered too just like the veterans, the Navajos who will be evicted?

Thank you.

Billy Goodman

STATEMENT
of
RUBY BIGMAN

Senator Jackson, it is a great pleasure to meet with you here today -- I am a Navajo Indian, I'm representing the Navajo people of Arizona.

We the Navajo people are very strongly against the Owens bill H.R. 10337 -- due to the fact:

1. If H.R. 10337 becomes a law -- it will destroy the lives of 8,000 Navajo people.
2. H.R. 10337 will cause 8,000 Navajo people to lose their beloved home. This will also affect them emotionally, physically and psychologically.
3. H.R. 10337 has no provision for relocation of the 8,000 Navajo people.
4. H.R. 10337 is very very unconstitutional bill because it singles us out for destruction. It will destroy the unity of the two tribes, Navajo and the Hopi people.

Therefore our dear Brother Senator Jackson, we the Navajos are asking you to support the Montoya bill S. 3230.

Ruby Bigman

STATEMENT
of
ELLEN BILLIE

I'm a representative chosen and approved by the community of over 700 people of Leupp, Arizona. I feel very honored to represent my people as a delegate to inform the U.S. Congressional Senate members of what a disastrous effect the Division of the Land of the Executive Order of 1882 would do to my people (the Navajos) and our notable neighbors, the Hopis.

Rep. Owens had previously documented a bill -- S. 15337 -- which we, the Navajos, and the traditional Hopi Tribes disapprove of thoroughly. The bill is still questionable in the Upper Senate Office, so 120 representatives from all areas of the reservation but particularly from the Executive Order - 1882.

We, the Navajos and the Hopis, through traditional legends believe that within our hearts and souls we once evolved out of the same family. Because of this belief we had shared our homelands and prospered together particularly in the Executive Order of 1882 area. But because of the U. S. Government's continual mistakes, misunderstandings and neglect we had been oppressed with continual conflicts among our two tribes (the Navajos and the Hopis). Now we hope to stop the interference of our American Government, because we (the Navajos and the Hopis) thoroughly can solve our

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our own differences more peacefully because we understand each other more than the U. S. Government. After all we are the ones who live there. We know what the Bill S. 10337 and others similar to it would do to us as members of both tribes.

STATEMENT
of
CLARENCE BLACKROCK

I, Clarence Blackrock, am from Big Mountain area within the 1882 Executive Order.

My wife's great great grandfather was forced to go to on the Long Walk to Fort Sumner. Upon his return to the Navajo Reservation, Washington drew up the Executive Order boundary without his knowledge. It is here that Washington made a mistake. Since then this "mistake" of an arbitrary boundary around the Executive Order has now resulted in the so-called "Land Dispute". Now this S. 2424 is causing many problems for the Navajos and the Hopis. If this bill becomes law, my family, my children and 8,500 Navajos will suffer as a result.

My eight children will be affected by this bill. It will harm our sheep and our whole way of life. Because of this, we do not want this S. 2424.

Navajos and Hopis have lived peacefully side by side for many years. We have carried on trading, practices in a peaceful manner for many years. We continued this friendship without quarrels and without fights. Therefore it is obvious to us that the rumors

of "fights" between the Navajos and Hopis are lies.

I, hereby, plead with you to help us and let us remain on our homeland which we have occupied for generations. I strongly urge you to oppose S. 2424.

STATEMENT
of
CARSON B. CHARLEY

My name is Carson B. Charley, a Navajo Indian an ex-Marine of World War II in 1944 to 1946 served as a Code Talker during the war. I lived in Teesto, Arizona in the 1882 Executive Order area.

Please consider my reasons for opposing the Owens bill S. 2424: This bill will be a disaster to my Tribe, the Navajo Indians, and Hopis will also be affected greatly in their livelihoods. Secondly, our children's education will be affected mentally and physically. I have a full support and a great respect for the United States Constitution as far as rights are concerned.

Please consider the alternative negotiation be given back to the Indians, Navajos and Hopis.

Carson B. Charley

STATEMENT
of
SARAH CLEVELAND

Senator Birch Bayh:

I am representing my people of the Navajo Nation, and my friends and neighbors of the Hopi Indian Tribe, as I am very concerned of the so-called Navajo-Hopi Land Dispute. First of all I wish for it to be known that we, the Navajos have been and still are friends for centuries, as have our ancestors. We have occupied the same District 6 land, shared our many different economic ideas and our medicine without knowing or feeling that we will some day be faced with an unusual problem like this. So therefore my people and my friends of the Hopi Indian Tribe strongly oppose the Senate bill S. 2424.

I also speak on behalf of my people who have served in the wars, mainly speaking of the Navajo Code Talkers. I have briefly stated my feelings and thoughts very simply and small and I personally would like to request your support, my honorable Senator, the Montoya bill S. 3032.

Thank you.

Sarah Cleveland

STATEMENT
of
EFFIE MAE CURTIS

I, Effie Mae Curtis of Crystal, New Mexico, Crystal Chapter, came with Navajo-Hopi Unity Caravan Bus to administer first aid for my old folks that are on the bus. I was selected by community to come to Washington, D.C. We traveled 3 days and 2-1/2 nights, it was a long journey for my old folks. I had administered first aid to 14 patients coming. This was not an easy task for me caring for their needs, getting sick. I change buses 2 times coming to Washington, D.C. caring for my sick patient. We arrived Roger Smith Hotel 7-19-74. I had 5 more patients that got sick. 2 went to bed. I cared for their needs. This Navajo-Hopi land dispute unity caravan trip was not easy. We made history for our grandchildren and so on. I shall long remember this hardship experience with old folks I had to care for sick patients on this trip. My old folks told me that they have never been out of the Reservation or even gone to nearby town. This is their first time away from home and its very hard for them to take this trip. I did encourage them that they have their reason for coming and experience the hardship just like the "Long Walk"

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that our great great grandparents experienced in 1868. They went along with my feelings, expression I put across to them. I am deeply concerned about my people, why! because of their health where it will put them down later on in life. It will cause violence among themselves and others, it will create disturbance in the Navajo Reservation even its not in our area. Navajo, as a whole is a sister and brother, no matter where they come from. I am very much depressed with this Navajo-Hopi land dispute. This is my true statement on this date 7-22-74.

Effie Mae Curtis

STATEMENT
OF
LEONARD D. CURTIS
LEUPP, ARIZONA

In trying to find a fair and equitable settlement with regard to the Senate sponsored bill S2424 relating to the Joint Use Are, I humbly appeal to you for your sympathy and support in opposing S2424. My reason for opposing this bill is due to the 8,500 Navajo people that will be subjected to a force removal from land they lived on for centuries. If S2424 is passed, it will destroy the unity between the tribes that has been established long ago and the fact that there are many intermarriages has not been considered. The inter-married couples will have to be forced to choose between their two families and this is not good.

All we ask is that we be allowed to live in peace on land we have occupied for centuries without outside interference from the whiteman. I feel that the whiteman is totally unaware of the situation as it really is between the Navajos and Hopi tribes and they should not be legislating if they don't know. We Navajos, and Hopis have lived in peace and we still do. There is no physical fighting among our people. We just wish to be left alone and live like brothers and sisters. My people are saddened by this bill S2424 because we will lose everything and must move to some foreign land. The earth is our mother and the sky is our father.

We wish to remain on the land our parents, grandparents, and great-grandparents were born on so please take our request into consideration and assist us in opposing S2424.

STATEMENT

OF

BILL DALTON

I, Bill Dalton, a Navajo Indian do hereby presented my feelings on the Senate Bill HR 10337 presently before the Senate floor. This, what is better known as the Owens Bill, is a "DANGER" to the Hopi and Navajo people. If a decision is made of the land in question it means the relocation of mass numbers of people who have lived for centuries on a land they call their "mother". The Navajo people love and cherish this land, to see it divided and taken away will break their hearts.

In short it will leave 8,500 homeless people. They will be forced from their beloved homes like so many cattle. Will our government and senators let this tragedy happen? I have faith in our Senators and I am depending on a disapproval of this HR 10337, and a more favorable solution be reached. We, Navajos are very opposed to the Land Division and will do everything in our power to have it cancelled.

The traditional Hopis are opposed to the HR 10337 too. To them it also means a ruined relationship with their Brothers the Navajo, and hostility will replace the friendship they now share.

MY SOLUTION: Give the Navajos and Hopis the chance to settle the question of the dispute themselves. Given time, I am certain a workable solution can be reached.

BILL DALTON

Statement by Keith Daw
Red Lake Arizona-Tonalea Arizona

I, Keith Daw have lived in the 1882 Executive Order for a lifetime. I was born and raised in this so called disputed area. My family, parents grandparents, relatives, grandchildren and ancestors all lived and have lived in this area. They too have permanent homes, and a lifetime of improvements in this area. We have homes, hogans, corrals, gardens water wells and other home dwellings in this area for many years.

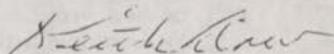
I wish to make some statements for our veterans. My father was a veteran of the old Indian wars during the occupation of Kit Carson and when the U. S. troops were having the war with the Apaches. My father successfully defended our reservation and country so that we could live peacefully in a land area where we wished.

Then during World War II, Mr. and Mrs. Keith Daw's son, Israel Nez, was with the famous U. S. Marine Corps Code Talkers, who were very instrumental in turning the direction of the war when the Code Talkers communication system could not be broken by the enemy. There were many Navajos who were veterans and fought in U. S. wars. Many have died and not returned. They have defended their country successfully. There are many Navajo veterans and their families living in the disputed area who have fought in U. S. wars against the enemy. They were informed to fight for their country, to defend their country from the enemy so they could live in peace where they wanted to. The Navajo veterans have fought for the ideals of the U. S. Constitution "to live in the pursuit of happiness..."

We know of some record that the Hopi people have not engaged in U. S. wars. They have refused to defend their country because of their beliefs.

During the Viet Nam war, one of my sons, Jerry Daw, was killed in action. This happened during the increased action of the Viet Nam war. From my family, we had several people who had strongly defended our country and a place to live with freedom. We even lost our son, thinking that we will live in this disputed area peacefully without any interruption, but our own country is telling us to move from a place where we have sacrificed lives to defend our country faithfully.

If possible, I want the veterans of the United States, all of them and the newspapers and the rest of the country to know our struggle. I appeal to you American people, "Is this the way to treat the first Americans?" When we send our loved ones and children to defend our land in time of wars and when they return after a successful defense, why should they be told to move from their lifelong homes with its improvements. We cannot sleep because our family will be moved and we know it will hurt our children too.



Keith Daw, Delegate in behalf of his people
from Tonalea, Arizona

Statement
of
Percy Deal

Being a concerned youth from the disputed area, as well as an official representative of my Hard Rock chapter and the Navajo Nation do hereby plea that you consider the following areas.

VETERANS:

Referring to a statement made most often by anglos, "I have fought and saved my country, I have the right to live." In a situation such as this (the removal of Navajos off their land) such a phrase should be listened to and considered very seriously. We know that we have every right to use this phrase.

For example, in World War II, some 25,000 Indians participated from about 125 different tribes. 3,600 (13%) of them were Navajos compared to 172.5 (.7%) from the remaining tribes.

The whole world is well aware that the 375 Navajo Code Talkers were the very essence of the United States' and other countries' survival.

Today we hear and read about the many benefits that are available to all veterans, such as housing, life insurance, relief for hardship in the family, etc., which all adds to the relief of what the participant and his family had gone through during the time of action. With the removal of thousands of Navajos and veterans from their homesites,

this would only be a repeat of hardship and telling the veterans to go to hell after having saved yours and a billion other lives.

EDUCATION:

There is some 4500 students in pre-schools throughout high schools, going to government boarding schools, missions, and public schools. After the removal, where will these students go to school when the schools outside the reservation are already filled to overflowing?

POVERTY:

A small percentage of those people living in the disputed area have jobs, surely these few will lose their source of income and fall back on public aid. Presently, the people of the Navajo Nation are, in excess of 65%, receiving some type of financial assistance. Tomorrow after the removal, this figure will more than double.

TAX PAYERS:

If this question was put to the American taxpayers, would they be willing to pay in excess of \$28,000,000.00 of their money to destroy houses, livestock, and human beings?

VIOLENCE:

The Owens Bill S-2474 says that there will be violence if the Navajos are not removed. However, Gentlemen, there will be

violence if any soul attempts to remove these people. The Hopi Tribal Council claims they have been driven up the mesas, but if one will look in Encyclopedia or other history book and read where it says Oraibi, one of the Hopi villages is the oldest city in existence in America, which should prove to you that the Hopi's never did live where the Navajos now live.

COMPENSATION:

In the Steiger Bill and the Owens Bill S-2424, it says that they will pay a minimum of \$15,000.00 for a family of three and not to exceed \$20,000.00 for a family of four or more. Earlier in the year Mr. Steiger paid \$75,000.00 to anglo ranchers when they were forced to move from the Apache Indian reservation. There is a great amount of discriminatory discrepancy from these two gentlemen.

SOLUTION:

In all statements that had been made on both sides, by people of higher status (congressmen, senators, attorneys, lawyers, tribal chairmen, and councilmen) geared toward the grassroot level from the view point of these people, the grassroot people's opinions have been heard, but revised to where glory and publicity will be gained by these people of higher status.

The so-called land dispute by these people of higher status is a problem among themselves only. We the grassroot people, Navajos and Hopis alike, can solve their problems without any interference from other people in higher social status than we are.

TASK FORCE:

We, the grassroot people from the E.O. 1892 are asking for a task force comprise of 5 or 6 senators to interview and evaluate the existing life and land as it is on both sides of the tribes, thus seeing and hearing the true facts.

In closing, Gentlemen, if the Bill should become a law and an attempt is made to remove these people, it would only be a repeat of the "Long Walk" tragedy of the Navajo Nation 100 years ago. The best country in the world, the United States, would look sick in the eyes of other nations. Please think twice before you act.

STATEMENT

of

TED EVANS

As director of the Veteran Affairs Office of the Navajo Tribe working with the Veteran Administration Regional Offices of bordering states of the Navajo reservation. I would like to make this statement.

There are 13,000 veterans on the Navajo Reservation with 700 affected by the Hopi-Navajo dispute area, these veterans are living within the boundary of the 1882 area with their children's parents and all their life improvements are situated there. Further improvements for the benefit of meager existence are curtailed till the problems of the joint use area are resolved. These veterans fought in the Armed Forces of the United States for what they thought was rightfully theirs, but after putting their lives on the line many gave life for the cause of freedom and now they are considered to be moved, relocated with no means of ownership of land of compensation. Human life is not regarded as such by those not affected, especially those who do not even know what kind of land is disputed, what kind of people are being affected or even to understand the livelihood of the people. Many years ago the Indians took advantage of the God given freedom and liberty and

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was recognized by some Presidents of our country. Now this freedom and liberty is being jeopardized.

The United States Marine Corp put in training a group of Navajo Indians, naming them the "Code Talkers" who were very instrumental in the defeat of the Japanese aggression. This has been forgotten so soon and are treated as non-citizens of this great country.

Veteran Administration Regional Offices are located off-reservation with services not readily available. Areas of concern are:

- (1) Housing
- (2) Medical services
- (3) Electrification
- (4) Alconolism
- (5) Benefits
- (6) Education
- (7) Legislation that does not readily apply to the Indian reservation
- (8) Ratings
- (9) Pension and compensation

These areas need to be resolved on behalf of the veterans.

We need the Veterans Administration input in funds, training and services for veterans.

Ted Evans
Director, Navajo Tribe

Statement
of
Glenn C. George

To: Chairman Henry M. Jackson and members of the Committee on Interior and Insular Affairs

Today I am going to make some comments on Bills HR 10337 and S-2424. I am a member of Navajo Tribe, a retired Sergeant, United States Air Force and I am 46 years old, I reside within the 1934 Boundary area, the area that has never been in dispute but it is included in the Bills HR 10337 (S-2424).

I am a member of Navajo Tribal Council, also am chairman of the Tuba City Agency Council which consists of 18 chapters.

On behalf of the people of the Western Navajo Reservation I hereby oppose the removal Bill S-2424. The people that I represent oppose the Bill S-2424 unanimously because it will remove over 8,000 Navajos from the land that they lived on for centuries. The Bill S-2424 is a bad bill. If this Bill is passed it will just create emotional disturbance among Navajos and Hopis. What we want is to settle the land dispute peacefully, with less friction and equitably. Every effort should be considered by the Senators of the occupancy and merits of the Navajos who are living in the 1882 Executive Order area. Forced compulsory removal is not the answer because forced removal is cruel and indeed inhumane and it

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will affect the people psychologically. My honest opinion is that the best solution is not to remove the Navajos but to keep the Navajos where they are but to compensate the Hopis for their half interest in 1882 area, so they can purchase another land with the money they get from the Navajo Tribe. (Re Bill S-3230)

The 1934 Act area was set aside for the benefit of the Navajo and such other Indians as are already located thereon. The Hopi claim that they are entitled to 243,000 acres in the 1934 area. The question is are they really entitled to that many acres? The Hopi claim that the language of the 1934 Act gives them an undivided interest in the entire Navajo Reservation and hold that the transfer of 243,000 acres is quid pro quo for a quit claim to any other interest they may have in the 1934 reservation. The Navajo position is that the Hopi are only entitled to that acreage they were occupying on the date of the Act, estimated at 35,000 acres. I feel that any acreage beyond 35,000 acres taking of the Navajo land in the 1934 area is in violation of fifth amendment of the Constitution of the United States thereby the Hopi should receive only the land they actually entitled to. Every effort should be considered on this matter to reach a just solution to benefit both Hopi and Navajo tribes.

In the name of justice, humanity I ask you not to move these thousands of people. They are simple shepherders. Many of them don't speak English. Very few can read and write. Moving them will destroy and disrupt their livelihood, their families, their way of life. Please prevent this disaster by voting against Bill S-2424 and vote "YES" on Bill S-3230.

STATEMENT
OF
BILLY GOODMAN

My name is Billy Goodman, I am from District Two, Navajo Reservation. I was selected by my people in that community, Southern portion of our district goes into the Executive Order of 1882. My people, my relatives, my class live in this disputed land area. The forced eviction of 8,500 Navajos are my people and 4,500 are my children. The Bill HR 10337 that was pass by the House and is now being put before the Interior and Insular Affair Committee. The people I represent are opposed to this Bill HR 10337 or S-2424 and I am aware of one problem. During World War II our young men served in the Armed Forces. Many have died in action. And now there are many Veterans (Navajo) from the land dispute area. They defended what they believe, and now they are told they will be evicted from the land they defended. And this is the reason why I come here to appeal to you to stop this Bill.

The Hopis were our friends but since the dispute and court orders came into being they have left. Then the Hopis attorney said we are fighting. I am 50 years old, in that period of time, I have never seen Hopis or Navajos making war against each other. All those are false, and all it's doing is developing bad feelings between us.

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There are many Intermarriage in my district, what will happen to them? Are they being considered too just like the veterans, the Navajos who will be evicted?

Thank you.

Billy Goodman

STATEMENT
of
MAE GONNIE

I'm Mae Gonnie. I'm representing my people from Low Mountain. There are 750 people in my community. We are very much concerned about the people that will be affected so we are very strongly against the Bill S. 2424, and would like to oppose this Bill. It will affect us in our cultural, economics and our friendship between Navajos and Hopis, which our ancestors had always been so proud and brought it to us, until now that this Bill is interfering. But we would like to remain to be as it was in the pre-years of our culture, economics and our friendship.

Mae Gonnie

STATEMENT
of
MRS. JANE GREY

My name is Mrs. Jane Grey.

I am a Navajo Indian woman, who has completed a Master of Arts Degree in Elementary Education so as to teach children of any race on my own reservation. My teaching career has included teaching Hopi children from the village of Moencopi, Arizona.

All children I have taught equally with no regard as to race, religion, or color.

To teach them and teach them with equality is my way of teaching.

Now, the U. S. Senate Committee on Interior and Insular Affairs, is about to consider a bill, S. 2424 which will destroy this only educational opportunity for 4,500 school children ages 3 through high school, by removing their parents, who have for generations, unknown to the white man, to parts unknown.

This bill does not make any provisions for placing these people, except that their future will consist of confrontations with frustrations and insecurity.

Now, Honorable Senator, I ask you, as a taxpayer and a U.S. citizen of the United States of America to reconsider this state of affairs in our lives

and not pass the Senate bill known as S. 2424.

I speak on behalf of the coming generations of my Navajo people to get a chance to become contributing, well-adjusted Navajo citizens of our country.

With my heart, I thank you.

BENJAMIN HANLEY
P.O. BOX 247
WINDOW ROCK, ARIZONA 86518



COMMITTEES:
COMMERCE AND INDUSTRY
HEALTH AND WELFARE

Arizona House of Representatives
Phoenix, Arizona 85001
THIRTY-FIRST LEGISLATURE
1973-1974

July 19, 1974

Senate Interior and Insular Affairs Committee
Suite 3106 - Senate Office Building
Washington, D.C. 20510

A drastic measure, S. 2424, is scheduled next Wednesday, July 24th for your deliberation. S. 2424 is the Navajo-Hopi land settlement bill which initiates a major human tragedy. The bill requires the forced removal of 8,500 Navajos from their home from the ancestral lands of their parents, their grandparents, and their forefathers. Your action on S. 2424 will reflect the federal policy with respect to the American Indian.

I am sure Senators Goldwater and Fannin, sponsors of S. 2424, mean well to do justice for their Indian constituents. I agree that the land issue must be dealt with but not in a drastic manner. I realize that Senators Goldwater and Fannin did not intentionally care to overlook the following considerations:

1. Where are thousands of people going to be moved?
2. What are the actual relocation costs and benefits to the U.S. government?
3. What are the anticipated future costs in rehabilitation, welfare, health, and education for these displaced persons?
4. What are the physiological, psychological, social, and cultural effects on the children, mothers, and fathers who will be forced to be moved from their homes?
5. Why is just compensation for lands being taken not offered to the Indians?
6. What just and moral alternatives are available?

I understand and respect that the Hopi tribe had a "joint, undivided and equal" interest in the land in question. That interest is compensable and may be done in a just and equitable manner. It is my firm opinion that when long-time settlers, whether they are whites or Indians, occupy and use land for generations they should be entitled to remain there. When the white man took over Indian land they were not expelled en masse. The Indians were always compensated with money. In the same vain Indians in this matter

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should not be treated differently from non-Indians.

All efforts should be taken to respect and preserve the lives, lands and livelihood of thousands of human beings. There is no judicial decision ordering a mandate to partition the land.

It is well known that the Hopi tribe desires to obtain the land for future grazing expansion of their cattle operation. Hence, the central issue emerges to this: Cattle and land versus human lives. Wherein lies your concern? You must agree that the lives of over 8,000 native Americans must be treated first with the utmost dignity, honor and trust.

I plea with you not to dislocate the center of the world for thousands of my people. I urge you to consider other just and moral proposals than mass removal.

With warmest regards,


BENJAMIN HANLEY
State Representative

cc: All members of Senate Interior and Insular Affairs Committee

STATEMENT OF BENJAMIN HANLEY
REPRESENTATIVE, ARIZONA STATE LEGISLATURE

BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
JULY 24, 1974

Mr. Chairman, Members of the Committee:

My name is Benjamin Hanley. I am from Window Rock, Arizona. I represent approximately 50,000 people as an Arizona State Representative. My legislative district No. 3 encompasses primarily the Navajo and Hopi Reservations. It is the people in my area that I am worried about. I am deeply concerned because of a bill - S. 2424.

S. 2424, as you know, is a bill which attempts to resolve a land issue between the Navajo Tribe and the Hopi Tribe. First, the bill divides the land in question in equal parts, supposedly. Secondly, the bill provides for the removal of 8,500 Navajos from that portion of the land which is to be given to the Hopi Tribe.

Let me talk in depth about the people that will be affected by S. 2424. The Navajos, approximately 8,500 will be directly affected. The Hopis - a few families - will be affected.

I am a Navajo and grew up in Tuba City which is in the Moencopi tract of the S. 2424 bill. My parents still live there and will continue to live there.

With respect to the people in the joint-use area, they are poor, humble, and proud people. Most live in hogans, derive their livelihood from their flock of sheep, and that is their way of life. These people are not newcomers. They are old-time residents. They have used and occupied the land for generations. They have been born there and buried there for centuries. They have herded their flocks in the area for hundreds of years. Their religion runs deep in the body of mother earth. Their very existence has been permanently established in the joint-use area. And today they pray to remain there as they have in the past.

In contrast, the Hopi who are their neighbors have a completely different style of life. I mentioned I grew up in Tuba City, a couple of miles from Moencopi. Moencopi is a Hopi village, where I have many friends whom I grew up with. Moencopi is the place where during the summers I watched the bean dance, the butterfly dance and the many other traditional dances which occur during the summer. And, I vividly recall during the dance, the many times when I was presented with various gifts from the masked Gods. I knew behind each mask was a friend.

The Hopis speak differently from the Navajos. The Hopis live in a closely-knit community with agricultural

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fields nearby. The Hopis' religion is different, but I feel the message gets to the same Great Spirit. But the differences between the Navajo and Hopi did not pose an obstacle to the mutual understanding and friendship that has developed over the generations. Each culture complemented each other in a way that trust, respect and dignity for one another flourished. We have no desire to become enemies. We bear no animosity. We bear only hope and friendship.

While I am talking about Moencopi, let me acknowledge that the Hopis have utilized the immediate area around their village. There are many orchards, fields, and other agricultural endeavors all within a couple miles of Moencopi. Their use of the area does not extend beyond such a radius. Thus, I was totally surprised when I found out that almost a quarter million acres of land was to be given to the Hopi in the so-called "Moencopi" tract.

Another point against the give away of the Moencopi tract is there is no legal basis for such an action. There has been no legislation authorizing a court to determine the rights and interest of the Indians located in the 1934 reservation, which include the Moencopi area. I clearly view this action as a taking of land which is contrary to the 5th Amendment. I urge you to regard the Moencopi tract as a separate issue. It should be deleted from S. 2424.

I do not understand how one reads in the Healing v. Jones decision that the land must be divided. As I read the decision there were two points. One is that the Hopis have an exclusive right to the District 6 area. I have no qualms about that. The second is that the remaining land in the Executive Order Reservation must be held by the Hopis and the Navajos in a "joint, undivided and equal" interest. I do not question the rights and interests of the Hopi Tribe. However I do question the attempt to use Navajo-occupied and used lands to satisfy that interest. There is no place in the Healing decision which mandates a division.

I believe that when long-time settlers, whether they are whites or Indians, occupy and use land for generations they should be entitled to remain there. When the white man took over Indian land they were not expelled en masse. The Indians were always compensated with money. Justice demands that the Navajo in this instance should not be dealt with by a different standard. In this case the Hopi Tribe should be justly compensated for the lands that the Navajo have occupied and used for hundreds of years.

All efforts should be taken to respect and honor the lives, livelihood, and lands of thousands of human beings. I plead with you not to dislocate the center of the world for thousands of my people. Please consider other just, equitable and moral solutions rather than mass removal.

STATEMENT
of
LEONARD HASKIE

I am Leonard Haskie, a Navajo Indian from northern Arizona within the Executive Order of 1882. I came here on the Navajo-Hopi Unity Caravan with one objective. This objective is to relieve those people back on the Navajo Reservation whose lives are at stake. To elaborate on my statement on why our lives are in question, I would like to inform you on the nature of Owen's Bill H.R. 10,337 which is presently in Senate Interior Committee with a new brand S. 2424. To be more specific, Sections 10, 11 and 12 of the bill order approximately 8,500 of us Navajos will be evicted from our beloved lands.

I want to share with you my strong opposition on the bill named above - S. 2424. One of the many reasons why I and my fellow Navajos oppose this bill is because it is going to jeopardize our way of life. To illustrate what this bill S. 2424 can do to us, I want to brief you on what happened in 1864-1868. In 1864 the Navajos were forcibly driven against their wills to Fort Sumner, a concentration camp, approximately 300-400 miles east of the present disputed area. Here the Navajo people lived the most miserable and pitiful days that human beings can

- 2 -

ever tolerate. Many lives were sacrificed and unaccountable and unforgettable hardships were encountered during the four years of exile. I honorably trust you that you will understand our human grievances of the past. These grievances and fears are beginning to build up again. I dread these days of land dispute.

I want strongly to plea for your considerable thoughts and sympathies. I look up to you as one of the great leaders who contributes his sound decisions to whatever is good and beneficial for any American citizen. I know that your position on this S. 2424 will be felt with great emotions. Now, I wish that you consider our alternative and relief bill, S. 3230, which is sponsored by Sen. Joseph Montoya. This latter bill considers both the Hopi and the Navajo Tribes on a fair basis. I strongly feel that the S. 3230 provides equal share of the controversial land, opportunities (job-wise, health, improvements, education, etc.), compensations for the land occupied by people to be removed, and no person is to be relocated. To me, the S. 3230 bill is justice.

I surely want to appreciate your interest and patience on this matter. Whatever you decide I am sure will be fair and acceptable to my people. I know that you oppose any bills that will severely harm people psychologically, physiologically, and emotionally. Thank you.

STATEMENT

OF

BETTY ANN HASKON

I, Betty Ann Haskon, of Cameron, Arizona, a lifetime resident on the Navajo Reservation, am opposed to S2424, which is sponsored by Senators Goldwater and Fannin. I am opposed to this bill because it will drive out 8,500 of my people who not only have spiritual ties to this land, but was ours to begin with.

I have a son, Byron Hushon, who has engaged in the Vietnam War and upon his return the U.S. government did not keep their word with him in insuring his "pursuit of happiness...". They have not allowed him to have a loan, when he asked for it and this blocked his wants/needs to purchase a mobile home which he wanted to put on a land which we are told Grand Canyon National Park and Recreation Center is interested in. I understand there is a bill being sponsored by Congressman Sam Steiger of Arizona to enlarge the Grand Canyon Recreation. This bill has my Winter Camp in it and the same for many of my relatives. This bill will also remove more Navajos and their ancestral homes, it is similar to S2424 in many ways. Why is white man interested in everything we have?

My cornfield is inside Executive Order 11634 and I am told I cannot put a fence around it until I have consulted with the Hopi Tribal Council. Since I am not allowed to fence my cornfield

(due to a freeze), the corn, squash, watermelons, etc. sometimes do not become fully ripe because a stray horse/cattle/or sheep comes along to devour or consume it and we are left without food for the winter.

It has also been repeated many times by my people but S2424 will bring about a repetitious Navajo "Long Walk" where people suffered from hunger, loneliness, pneumonia and other results produced by eviction from one's own home. I do not completely understand the Treaty of 1868, I thought the government said it would no longer remove us from our own home again, yet S2424 will remove us again and will inevitably bring about a war between the Navajos and Hopi Tribes, but Congress should be blamed should they pass this bill. I want my people (Navajos) and Hopi to settle their own problems.

STATEMENT
OF
LEO HAVEN
WINDOW ROCK, ARIZONA

I was born and raised on the Navajo Reservation. I have ten children, all Navajos and live at Window Rock, Arizona.

On behalf of my Navajo family and the 8,500 Navajos who are to be removed from the disputed land area, I am opposed to this bill S. 2424 that will move the Navajo people.

I oppose this Bill because it will hurt the Navajo people. Many more lives of the people will be harmed, homes will be destroyed and damaged, the sense of pride that has been in existence for them during their lives will be more deeply jeopardized. The Navajo people have already suffered enough abuses. Because of the disputed land, they could not build permanent homes, they could not build permanent water wells, gardens, roads, school buildings, Health clinics, housing developments. The economic stabilization of the Navajos is a must for the Navajos to maintain and survive.

The people that developed this Bill have never thought of the impact it will make on the lives of the Navajo people.

The people's losing their homes will affect their social lives. The people's losing and leaving behind their lifetime values will definitely affect their minds. The people's

leaving the places where they were born will create permanent loneliness. The children of the people moved will be affected. There are many children of school age who need more classrooms but BIA people have refrained from building more school buildings. This is in a way denying education to children. There are children of Hopi-Navajo marriages who are being denied equal education because of the land dispute.

The U.S. Government, BIA, the Senators and Congressmen are the ones that are writing these Bills for the Indians. The Indians have little and no participation. Let the Indians write their own Bills, leave outside interests, and people with dollar signs out of the picture and let us resolve our problems.

I know the land area of the supposed disputed land area that has been drawn by white people only; not the Indians. There are millions and millions of dollars of property improvements, homes, chapter houses, community buildings, deep water wells, wind-mills, farms, water dams, roads, paved and unpaved, stores, livestock ranges. How does the Government propose to divide this, destroy it, or compensate for it? It is very difficult.

In my lifetime, when I was a small boy, I saw blood shed when the 1935 livestock reduction was enforced by John Collier and his BIA range riders. I know of a case where police beat up several of my uncles because of livestock reduction. The people tried to reason with the police but on U.S. Government

instructions, BIA forced people to submit to reduce livestock. If you stopped to reason, they took that as noncooperation. They beat up people without any mercy, arrested them and hauled them off to jail. This was an inhuman treatment of the Navajo in 1935. The passage of S. 2424 will create the same type of mistreatment of people living in the disputed area. Again it will be the BIA police with the help of the Hopi police. The Navajos, their families will be abused and brutally removed from the disputed land area. There is going to be bloodshed, people will be hurt, little children will suffer, the U.S. will bring about among the first Americans the most inhuman treatment during the time when their leader is saving let the Indians decide their own destiny--self-determination for Indians.

STATEMENT
of
ANNIE HOMER

I, Annie Homer, one of the chosen Navajo delegates sent to Washington, D.C. by the Navajo people at Hard Rock Community Chapter of District #4 located within the 1882 Executive Order area, northern Arizona, came to you with respect and high regards.

My people are strongly opposed the S. 2424 bill now before the Interior and Insular Affairs Committee, which if passed will caused 8,500 Navajo to be removed from their ancestral land without any provisions made as to where they will be relocated. I for one will be affected by the decision. Remove my people from their land will caused them social disruption, psychologically and physically.

The legislation imposed upon us will not resolve the problems now existed between the Navajo and Hopi tribe. It will only instigate anger, hostilities between the two tribe, bringing hardship to their culture and economically system of livelihood.

We the Navajos feel that we sat on the side line too long. We want to have a voice in our government.

We come to you to support our wishes in favor the S. 3230 Montoya bill. This bill is written so as to help the Hopi Navajo people. This S. 3230 bill provides education, medical, and maintaining our philosophy and our traditional ways.

We the grassroots people the Hopi/Navajo want to make our solution as to where the two tribe will live. The way S. 2424 is written it favors only one tribe. This bill S. 2424 has injustice code as to the Navajo people. The Navajo near the District #6 Hopi land boundary line want peace.

My sincere thanks,

Annie Homer

Date: _____

STATEMENT OF ROGER HONAHNI
BEFORE THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
ON
JULY 24, 1974

My name is Roger Honahni. I am 84 years old and live in the village of Moencopi.

I hope you will accept my statement about the Village of Moencopi. My story begins before 1890 when several Hopis traveled back to Washington, D. C. to meet with government officials regarding the needs of the Hopi people in areas such as education. These first Hopis came back from Washington and told the Hopi people to beware of the expanding White settlement of the West.

My father and mother moved from Oraibi in 1890 when I was only a baby and settled in the old Hopi village at Moencopi. Hopis have lived in Moencopi for centuries. Tuba City was named after a Hopi Chief, who was my great grandfather.

When I was a young boy, I can remember playing in the grasslands around Moencopi with the children of Mormon pioneers who helped us build a school.

When the school was built near Blue Canyon about 1901, the Navajo families began to move into the area. Before then, a few Paiute families were the only other Indians for many miles.

By about 1820, the Hopi school at Moencopi was taken over completely by the government for the use of the Navajos who continued to move into this area, taking from us the better grazing lands.

By 1930, the government was ignoring the interests of the Hopi completely. Our advise was not asked on any matters and the Navajos seemed to control the BIA office in the area. BIA officials told us that they could not treat us equally with Navajos without losing their jobs. Range restrictions were

(2)

applied to favor Navajos and hurt the Hopis. These actions violated promises made to us that we would have a voice in the use of lands.

Finally, when the Hopis passed a Constitution to set up a Tribal Council we began to achieve some protection for our people. I have served on the Tribal Council for many years and have witnessed this struggle first-hand.

Now, the Navajos swarm around our ancient village of Moencopi. Navajo cattle trample our corn fields. Hopis are arrested for stealing by Navajo police when they take Navajo cattle out of our own fields.

Navajo livestock trample our melon patches. Navajos arrest Hopis for fishing without a Navajo permit on the Hopi lake.

Our grasslands have been overgrazed to the point where they are now only sand dunes.

We need your help, Senators, we need it now. Traditional Hopi lands around Moencopi extend for many, many miles what this legislation provides. We are certainly entitled to much more than we are given.

Everyone knows that this bill will determine what is to be the Hopis interest in this area. What is now Hopi under the bill will then be taken from us forever. Such a taking of our lands should not be done to suit the Navajos. It should be done in fairness to my people who have been there since before time.

Do not make us spend our money and time to go to the courts to solve this problem. Solve it now and do justice to the Hopis.

The biggest danger we face now is delay. Many of us have seen many years. We do not know whether good health will continue to follow us in the years ahead. I hope sincerely that now good men will hear our plea for help now. Do not subject us to any possibility of more delay at the hands of the large and powerful Navajo Tribe. Such a delay will only do injustice to the Hopis.

(3)

May you have the courage to take swift action now to end this dispute
and to protect my people.

Thank you,

Roger Honahni

STATEMENT
of
JOHN L. HORSESON

We can't see you so I am writing this to you. Long ago, long before the white people came, my people were free. They lived off the land and were self-sufficient, self-reliant, and self-determined. They learned and practiced self-determination. They planted corn in the fields, built homes, and raised their livestock together. They helped each other with their traditional ceremonies. They worked together and helped each other. They knew each other. They depended on themselves for all their needs.

Then the white people came. They came, holding the Bible in one hand, and the rifle in the other hand. They came looking for new lands, and it was our land that they saw. They tried to change us and move us because we were in the way. But we were satisfied with being where we are in the desert and who we are. Yet we were in the way of progress so they used the rifle, not the Bible.

We were fighting for our lands when the white men called us "savages" because the white men saw us for what we are, not for who we are. We have always fought for our lands, and today, in 1974, we are still struggling for our land, or what is left of it. We are fighting, not with

- 2 -

rifles and arrows, but with the truth and legal facts in the battle field of courts. We are fighting once more because we are in the way of progress -- the progress of John Boyden who wants our Indian land.

Before 1868, for our land, Kit Carson and U.S. Cavalries burned our cornfields, corrals, and our homes. They chopped down and burned our fruit trees. But this wasn't enough. For our land, they killed our old grandfathers and our weakened grandmothers. This wasn't enough. For our land, they starved us and our children and walked us over 500 miles to a "promised" land that was barren and destitute of life.

Everything we have was broken, shattered, ruined, or gone.

In 1868, the U. S. Government said they gave us peace. They even said they gave us new lands which they must hold in trust for us. But today the Congressional people are wondering if they should remove my people from this land.

If the Senators ever passed a bill like S. 2424 we will have an incident like Kit Carson and U.S. Cavalries. Only this time the responsible leaders who will commit the same wrong against us are the responsible persons whoever

will make the decision in favor of such bill as S. 2424. Let the Indians solve this problem so we don't have to blame you but ourselves if it doesn't work.

The present Land Dispute is caused by the 1882 Executive Order because it was passed without consulting whoever Indians were involved with the exception of the Hopi Indians. Should we forever blame all the white people when a few in the U.S. Government were responsible for our present dilemma? To blame a scape-goat is a sign of weakness. Our responsibility is to correct the wrongs that were done (committed and omitted) against our rights.

Today, we the young Navajo People have the will to do things for ourselves but the Bureaucrats say we can't do it. We have the will but it's not free will to do that which we think is best for us (do we have no free reasons too?). All we need is a chance to prove ourselves.

All we are asking you the Congressional leaders is for the freedom to let us, the Navajo and the Hopi Indians settle this land dispute because, like Representative Sam Steiger said, this is a problem between two Indian Tribes. This must be settled without John Boyden and his Evans and Associates who stand to personally gain some Indian land if the Navajo Indians are moved from their ancestral lands according to S. 2424 and/or H.R. 10337. This in turn

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would exclude Peabody Coal Company, Kennecott Copper Co.
and Zions Utah Ban Corporation with the Mormom Church
which has industrial holdings in these mentioned companies.

I hope to God that you will not ask me to leave
my country again. Thank you.

John L. Horseson

STATEMENT
of
FRANK D. ISAAC

I am Frank D. Isaac. I am a Navajo C# 75615 and father of 7 children. My wife is Navajo also. We live on 1882 Executive Order Area in the Navajo Reservation for the last 51 years. Also my mother lived there for 84 years.

I am a medicine man for my people, and am a farmer and have sheep, cattle, and horses. This is all we get income from.

I am a World War II veteran and have been in the South Pacific from 1942 to 1946. I did fight for my country, and people, "yet" now I have been mistreated ever since I got out of the services -- as follows:

- (a) Can't build a good home;
- (b) Can't get a loan from the local bank;
- (c) Can't get help from veteran's program

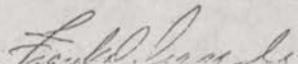
All is due to Land Dispute. Sen. - H.R. 10337 same as S. 2424 which wants to move 8,500 Indian people from the disputed area, I am not the only one who has this problem; it is all of us who live on Executive Order and Land Disputed area. Seventy-five percent of Hopi people do not want this bill - H.R. 10337, 2424 due to the fact that most of the Hopi were working on the Navajo Reservation might loose their jobs if the bill is passed.

I am a registered voter of Arizona (Republican).

- 2 -

If the bill is passed -- H.R. 10937 -- this is going to make trouble between two tribes, Hopi and Navajo who now live together in peace.

So please stop all the Senate Bill against Disputed Land. People want to live (please).


Frank D. Isaac

STATEMENT

of

HOSTEEN JIMMIE

Dear Senator,

I am Hosteen Jimmie, I am 78 years old and have lived on this land since birth. I am a part of this land. I live in harmony with Mother Nature.

I am effected, mentally, physically and socially by the Owens bill H.R. 10337 and Goldwater-Fannin bill S. 2424. I cannot sleep. I am worried about where my children will go, the type of lives they will lead after forcifully being driven off the land. I have school age children who won't have a place to go to school.

I recommend we handle our own problems as Indians. I'm sure we can negotiate with our Hopi brothers at the grassroot level and come up with a solution beneficial to both tribes.

STATEMENT
OF
NED JOE

To: Senator Frank Church

I, Ned Joe, a Navajo delegate from the Navajo Nation living within the so-called land dispute in the Northern portion of Arizona appeal to you with high regards.

My people of the Navajo Indian Tribe very strongly oppose the Senate Bill 2424 and any other bill which favors removal of Navajo Indians, which are now before the Interior of Insular Affairs Committee, which also, if passed, will create greater conflicts between the two Indian Tribes. It will cause great damage, physically and mentally to my people, where young children will lose interest in their school activities where as our many schools and hospitals have been located for years throughout our Indian Reservation. We will have problems of unsituated livestock grazing, and most of all it will mean the removal of 8,500 of my people by means of federal force from their ancestral lands without any provisions, we have no other land to relocate on.

I am also speaking on behalf of my people who have fought in the wars, who have successfully defended our country. We are faced with a problem where we request your support, my honorable Senator.

Thank you.

Ned Joe

STATEMENT
of
MARY ANN JONES

I hereby present the following statement in a desperate effort to save thousands and thousands of Navajo and Hopi lives. It has been left up to you, Senators of the United States, to determine the future of these Native Americans.

I am one of the 8,500 Navajos who will be left homeless if the Goldwater and Fannin bill S. 2424 is approved. My family's sixth generation grandmother was part Hopi and lived as such among them on First Mesa in Pajacca village. With each new generation our great grandmothers gradually made their way into the valleys and became a part of the Navajo people. To this day, we maintain close ties with our Hopi relatives on First Mesa, without any conflicts between us. To our knowledge, our Hopi relatives have never joined in the "Land Grab" which is now being pushed by a handful of Hopi Tribal officials and their white attorney, John Boyden. Instead they apologize for the hardship that their white attorney is causing for the Navajos.

My mother was only a young woman when the 1934 Exclusive Hopi Reservation boundaries were established.

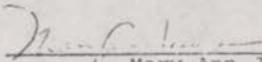
-2-

She was among those who were "ordered" out of District 6 without prior consultation or any knowledge of how the boundaries had been established. They finally moved, but only after being threatened with imprisonment. We now live three miles southwest of the District 6 Hopi Reservation.

Today, our lives have been put to a standstill; we cannot build or improve our homes, we cannot improve our roads, nor can we obtain community centers, schools, or hospitals, all of which are desperately needed for the steadily increasing Navajo population. All these obstructions are direct results of the intrusion of white politicians.

In conclusion, my people would like to point out one final realization of the outcome of the passage of this S. 2424. If the U.S. Government decides once more, to make a paternalistic mistake of making decisions for the First Americans and approve this bill, it will ultimately mean an armed-troop forced removal and bloodshed. That is the only way anyone will be removed from their century-old homes.

Therefore, we ask for your serious consideration and stop this bill before another atrocity is committed against native tribes of this continent.



Mary Ann Jones

STATEMENT

of

BILTA KEE

I, Bilta Kee, am a full-blood Navajo who is known to U.S. Government by this Census Number #5622. I was born here, raised at the foot of Big Mountain, which is within the 1882 Executive Order area (46 years ago). My great, great, great grandfather settled here 3 generations ago. He was 25 years old when our ancestors came back from "Huelte" or Ft. Sumner in 1868. To this day, this area where we now live we consider our only homeland for 3 generations. The Pania-Goldwater Bill known as S. 2424 will force us to move from our land, which is why we strongly oppose it.

This bill, if passed, will affect my close family and relatives which consist of 9 major households at the northeast base of Big Mountain. We have livestock sheep and cattle which is our basic livelihood. There is no other place for us to go. This is not made known in the S. 2424 Bill.

At present, I'm unemployed, which I have been for 4 years now mainly because I'm disabled due to an accident while working with the Santa Fe Railroad. Therefore my future employment is not good. I did not have a formal education which limits my job situation. What little

- 2 -

education I managed to get through my own job experience while working for the Santa Fe Railroad off the Reservation. Right now, the only source of my income are my few sheep and cattle. If relocation is to come about, my family and relatives certainly do not have the money needed to move all the 9 major families. Furthermore, this relocation funds are not even mentioned in the S. 2424 Bill.

Right now there are 5 heads of the 9 households who are unemployed. Others have only managed to find short-term work on the Reservation that can barely provide for their families' needs.

Most importantly, this S. 2424 will cause life-long mental and physical damage not only to myself but to my children and all future generations. Already our children, who are young and are still in school, are affected because we cannot build new school buildings that are needed where we live. All other plans for housing, water wells, and grazing permits have been stopped because of this Navajo-Hopi Land Dispute. At present, all these improvements for our welfare are being denied our children.

For these reasons this 1882 Executive Order is a big mistake that was made by the U.S. Government for both the Navajo and Hopi people. We appeal to you to correct this wrong by stopping the Goldwater-Fanin Bill, S. 2424. Thank you very much.

STATEMENT
of
HUBERT LAUGHTER

I'm Hubert Laughter. I'm representing my people from Shonto, Arizona. There are 1,200 people in my community. I'm strongly opposing the bill, S.2424 because 8,000 people will be hurt, they will be hurt by removing these people from their land. Where will they relocate them if they remove them?

Within that area there are many intermarriages between Navajos and Hopis. They have children, grandchildren on both tribe. What are they going to do? Separate them? If so what will happen?

These problems will create a lot of damage on life and property of 8,600 Navajos, not only Navajos but it will also affect the Hopis. We also lost cooperation between Navajos and Hopi people.

Hubert Laughter

STATEMENT
OF
EMMETT R. LEFTHAND

My name is Emmett R. Lefthand, I was born at Kaibeto, Arizona. I am here in Washington, D.C. to represent 35,000 Navajo Indians in Tuba City area. About 2,200 Navajo Tribe will be evicted from their beloved land they have inherited since birth in the 1934 Indian Reorganization Act. I am employed at Tuba City Agency with Tribal Work Experience Program as a supervisor which pertains to the welfare of 3,000 Navajos in Tuba City area. Many Navajos are uneducated with limited skills, therefore they are unemployed, unadequate housing with poor facilities, poor living conditions.

If Owens Bill should pass, there will be an increase of welfare to relocate these 8,500 people. Since the freeze in these areas in 12 District of Land Management District near Tuba City and in Executive Order Area. Due to the freeze in these areas, we cannot make any further improvements as far as economic development is concerned.

The Navajo's main source of income/^{comes}from raising livestock and crops. Jobs are limited in these areas, therefore, the unemployment rate is tremendously high in percentage. Also many Hopis are employed within the various agencies throughout the Navajo reservations this will be affected.

I am a sole survivor and a veteran of the Vietnam War, I therefore feel I have the rights to make complaints due to our livelihoods. I lost my father in action during the World War II, who has sacrificed his life for the so-called freedom of

United States constitution. The veterans administration programs are not available to many Navajos--the benefits are very poor and unconsiderated.

The senators of Arizona who are supposed to solve these problems in Arizona, mainly speaking of Barry Goldwater who instead made a big conflict for the people Navajos and Hopis land disputes which is causing many hardship and problems. If Owens Bill should be approved, we too will take actions to removed many non-Navajos and traders who claimed lands on the reservation. This too will become a problem for everybody. Many business site leases will be limited or prior to a period time for expiration.

I hereby request for your careful consideration in my strong views and statements that you will help support the Montoya Bill S3230.

STATEMENT OF VIETS LOMAHAFTEWA
BEFORE THE
SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
ON JULY 24, 1974

I am Viets Lomahaftewa. I was born in Shungopovi, Second Mesa, on the Hopi Reservation in 1896, only 14 years after President Chester Arthur created the Executive Order Reservation. I now serve as a high priest in the Somaikol ceremony of the Tewa-Hopi people, conducted by a warrior society. For many years, I also served as a priest in the priesthood of the two-born society.

At this time in my life, I have once again come to Washington with sincerity and faith that you here in this city, entrusted with great responsibility and authority, will deal with us and restore to us our Mother Earth. Upon this land, which the Navajos now try to take from us, are located many sacred shrines which establish our right to this area and which house the nesting places for our sacred eagles.

We Hopis are united in this important mission today----both old and young, traditional and modern. In my lifetime there has never been an issue which has brought all segments of Hopi people together in such a strong and close way. Only a handful of self-seeking dissidents do not support this cause.

We Hopis have tried for generations to resolve this dispute. But our traditional enemies, the Navajos, have frustrated every attempt. They have refused to deal in good faith with us. My own experience as an advisor to the negotiating committee and my observance of the Navajo's refusal to obey court orders convince me that this problem will never be solved unless the Congress straightens its back and digs in.

(2)

We are not a wealthy people. We cannot afford to spend large amounts of money to bring scores of our people to Washington. We would like to do this and they would like to come to tell you the same things I have said.

May my words echo in your ears now, like the voices of all those who are still at home, but who feel as I do. Give the Hopi justice. Give the Hopi peace. Give the Hopi our birthright. Return to us our land.

Thank you,

Viets Lomahaftewa

STATEMENT OF STARLIE LOMAYAKTEWA
BEFORE THE
SENATE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
ON JULY 24, 1974

My name is Starlie Lomayaktewa. I was born in Mishongnovi Village, Second Mesa, Arizona on the Hopi Indian Reservation about 1900. I am presently Kikmongwi of Mishongnovi Village. The title of "Kikmongwi" means "Village Chief." To be ordained a Kikmongwi, it is necessary that a sacred ordination and installation ritual be conducted. By Hopi traditional law, the office of Kikmongwi is reserved only for men who have attained the priesthood. There has never been a woman called and ordained as a Kikmongwi.

As one of the traditional leaders of the Hopi people, I come to appear before you today to express support on behalf of all my Hopi people for this important legislation.

Our traditions teach us that when the Hopi people first came to this world, there was a personage already living here. His name is Massau. We asked his permission to live here in his world. Massau instructed us that we could live here if we kept his commandments and faithfully followed his religious practices.

Massau said that the land was not very beautiful, but that the earth would take care of us. Massau also told us that if we were faithful in living this religion, within the bosom of the earth there are riches which would sustain and support a good life for the Hopi people. The Hopis were instructed never to give their land to anyone else even though other Indians and non-Indians may attempt to take it from them.

Now the Navajos are in our midst and spread out over our traditional areas which for centuries have served as sacred lands where we are instructed to keep the faith.

(2)

Here we have maintained our eagle shrines. Since time immemorial, we have used the purest feathers of the eagle in our sacred ordinances and ceremonies. Since their arrival, the Navajos have been desecrating our sacred eagle shrines and even killing off the eagles. They have violated the privacy of our other religious shrines, pilgrimage routes, and desecrated our ruins which are of great value to the Hopi people, for they are the standards which mark the boundary of our traditional land. This is the purpose for which our ancestors built these places, left them and moved on to build new ones during the migration period. This desecration must be stopped and all of our lands restored to the Hopi, the original owner of the land.

All sincere and true Hopi people support the return of all our land to the Hopi people. I must warn you, however, that there are those among us who are of evil purpose and seek to mislead you. They will represent themselves to be spokesmen for the Hopi. Do not be misled by them for they betray our traditions for their personal gain. The destiny of the Navajo is that ultimately he shall have no place on our land and cannot remain there. It is your duty to fulfill your responsibility and resolve this problem by returning to us all of the land which is rightfully ours.

Thank you,

Starlie Lomayaktewa

STATEMENT
of
ALICE M. LUNA

I, Alice M. Luna, am a full-blood Navajo Indian, who resides within the 1882 Executive Order area. I'm known to the U.S. Government by this Navajo Tribal Census number 79371. I'm also a registered voter within the State of Arizona. By profession, I'm a Social Worker in a facility for retarded Navajo children in Chinle, Arizona. I'm from a household where there has been intermarriage with our Hopi neighbors on the Second Mesa village. We have kept good relations with all Hopis for they have been our in-laws over nearly 10 years now.

Nearly 25 years ago, I was born close to the area where Peabody Coal Company has its huge operation. Within the last 20 years, my relatives have built many permanent homes in the vicinity of where Bureau of Indian Affairs Grazing Districts 3, 2 and 8 merge together. For over 5 generations now, many of my ancestors have lived within this area. Even prior to the 1864 "Long Walk" to Ft. Sumner, or "Hwelte" as it is known to Navajos, my ancestors were living here on the northern rim of Black Mesa and were forced to move to "Hwelte" by Kit Carson's soldiers. After they survived this

horrifying experience they returned and settled here. This I know, because that's what my grandfather, "Black Hat", a knowledgeable medicine man, who died over 10 years ago, has told us, his grandchildren. According to my grandmother, "Red Woman", who also died 3 years ago, she also said that my clan, the "Many Goats Clan" were here prior to the 1864 Forced Removal to Hwelte by the U. S. Government. Because we have lived here prior to the 1882 Executive Order boundary was drawn, we claim ownership to this land by right of original occupancy right. There is much evidence to support this. Many of our ancestors are buried here and are a part of this land.

I am strongly opposed to bill S. 2424 which proposes removal against our wishes. If this bill should pass, it will cause endless and needless hardships and heartaches on our physical, mental, and spiritual well being, as well as cause economic destruction to our homes and lives of 8,500 Navajos. Most Navajos living there, like my family, depend on the land to support our herds of cattle, sheep, and horses for our livelihood and income. Many have built homes, dug wells, and attempt to construct and maintain other improvements such as corrals, roads, etc. which will be destroyed.

For these reasons, many find it inconceivable, painful, and inhuman to know that the U.S. Government in 1974 is again going to force us to just give up what many generations of Navajos have struggled hard to build and maintain. Under this Goldwater-Fannin bill, S. 2424, there are no provisions for an alternative land base either inside or outside of the present Navajo Reservation where there is adequate pasture land for livestock and where displaced people can begin a new life. The relocation compensation of \$20,000 per family is not worth all the emotional and mental misery and economic-social hardship that will incurred by this legislation.

I, therefore, make a formal plea to members of this Committee whom I presume to be responsible leaders of this Nation, to reconsider and reevaluate the entire Navajo-Hopi land dispute problem and vote against S. 2424. This so-called "Indian Problem" does not need a white man's solution but that it needs to be resolved by the people of the Hopi Nation and Navajo Nation. We ask that you correct a 100 years of irresponsibility by the U.S. Government by voting against S. 2424 today.

Alice M. Luna
Alice M. Luna

STATEMENT
of
MARY ANN NAVAJO

It was a pleasure to look forward to meeting you but unfortunately I was unable to meet with you like I hoped to.

But just the same I would like to state my reasons for wanting to see many of you important voted in office. I was born and raised within the Navajo and Hopi land disputed area. So it means many of my relatives are still living there in Piron, Arizona Area. At present time I live at Kayenta, Arizona 180 miles of Flagstaff, Arizona.

I am very much against the S. 2424 bill on the Navajo and Hopi Land Dispute. This bill is made out without any kind of investigation of so called Hopi and Navajos not getting along. I also disagree with 8,000 Navajos having to move out from where they call home for so many many years and from one generation to generation.

These Navajos are in large families. Many old people and middle age Navajos, young ones, school age children, babies. Many we hope will be leaders of day, tomorrow, etc.

- 2 -

These Navajos have no place to move. Even if they moved there is going to be many hardships on all of the Navajos families. Their having to move is going to be hard to accept for all of us.

I am especially worried about our children who presently have to go for 9 mos. away from their home to be educated to BIA School off reservation and on Navajo reservation. Our children are concerned of the dispute between 2 tribes and especially them having to move is like a nightmare for them. We as parents feel it is really going to hurt the young groups especially in school age area. Our people always heard of Washington, D.C. white people wanting education for Navajo children. Many parents are agreed. Their children are going to lose interest in education if Navajos have to move.

On the Navajo reservation there are a large amount of the Hop Tribes working and making a living. Many concerned and feel if any Navajos had to move that their employment is unfinished because they feel like they would have to be in fenced in area with no employment. These Hopis are very friendly and very hurt about what might happen to the Navajo.

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I am representative from (2) chapters which is of (2) middle size communities.

Your considering this matter very seriously is ver much appreciated.

Mary Ann Navajo

STATEMENT OF CHIEF NED NAYATEWA
BEFORE THE
COMMITTEE ON INTERIOR AND INSULAR AFFAIRS,
UNITED STATES SENATE
ON
JULY 24, 1974

My name is Ned Nayatewa. My home is Walpi Village, First Mesa, on the Hopi Reservation. I have lived there all my life -- since 1874. Presently, I am Kikmongwi of my village. I have held this office for 32 years. Prior to becoming the Kikmongwi (Village Chief) of my village I worked for the Bureau of Indian Affairs as a mechanic and also for the telephone company as foreman of a line crew.

As Kikmongwi of First Mesa, my traditional teachings require that I serve my people as a counselor judge and administrator. Various disputes among village residents are referred to me for resolution. I also handle the settlement of estates following the death of any village members. New representatives on the Hopi Tribal Council from our mesa must be certified by me. I also am responsible for the day-to-day business of our mesa district. I also have other duties from time to time which are too numerous to mention. Of course, as Kikmongwi I also play a role in every religious ceremony conducted at First Mesa.

As a true traditional religious leader of the First Mesa Hopi people, I have come here to tell you of my support for the legislation which is now before you as Senators.

I want to say only one or two things. First of all, we Hopis do not want to sell any of our land. Our traditions prohibit it. We want to keep everything we have left. We have already lost too much. The Hopis have been on this land for countless winters. The Navajos have come only recently and have moved in without Hopi permission and against our desires.

(2)

Roads are being built in the Joint Use Area and beyond right now which are exposing the ruins of old Hopi villages. These former dwelling places were established by our ancestors to be the boundary markers which designate Hopi territory. We need to get our land back so that we can begin to use these areas once again, as we did in years past.

We believe that when the Court decided that half of our land was to go to the Navajos, this was wrong. But now we have been prevented from receiving even the other half by the unlawful acts of the Navajos. The time is now here for you to end this wrong to the Hopi people. You cannot solve the whole problem, but you can make right a part of it.

Second, our history tells us that the Navajo is our enemy. They will fight us until the end. They do not respect the truth and other people's property. Hopi people cannot live with this type of conduct.

We depend upon you, Senators to settle this problem. Do not fall into the Navajo trap of more delay. We need this legislation now.

Thank you,

Ned Nayatewa, Kikmongwi
First Mesa Villages

Statement
of
Ernest Nelson

My name is Ernest Nelson, I am 66 years old, I come here from Arizona, a community called Shonto, Arizona. The land dispute started not too long ago and only then we found out about the dispute and at this time a Bill S 2424, introduce into the Senate which would forceful removed Navajo people from their home land. We don't want this to happen to our people. I know that my people live on this land because my mother was born there (she is 106 years old). She knows that our people were here before her. Sometime it makes me sad, I don't sleep or eat because of this dispute. Some of my own relatives are living in this area. Let the people live the way they live before with no dispute between them.

We don't want HR 10337 or S-2424 to become a law.

I was a chapter representative for eight years and medicine for a long time.

I'd voted for all these Senators and House of Representatives from our state of Arizona.

Thank you.

Ernest Nelson

STATEMENT

of

ROSS D NEZ

1. Ross D. Nez, C#5562
2. Born in District 6, 1932
3. My father is Tobe Hogan, also born in District 6, 1870. At time there was nothing mention about Hopi land.
4. In 1934. District 6 was set aside for Hopi Reservation, only Navajo move to other location from District 6. Most of these Navajo that move from District 6 are now living on the edge of District 6.
5. I am here from the area to oppose the Goldwater-Fannin bill S. 2424 because the bill is not good for the navajo that are living in dispute area.

(a) no land to move to.

(b) no white man or other is not to move family without cause. Check your Constitution.

Goldwater and other have to have good reason to move us.

If the Navajo is going to be move than we need school, hospital, land for livestock since livestock is our main income. We Navajos are depending upon. The Federal court wants the reduction of livestock. How would John Boyden feel if the Navajo took all the money he earn or ask him to quit his work. How is he going

maintain his daily need. That is the way the Navajo feels about livestock since that our main income for century. This is my reason for me and my communities to oppose the Owens bill.

Ross D Nez

Statement
of
Don T. Nez, Sr.

My name is Don T. Nez, a selected representative from Red Lake Chapter, Tonalea, Arizona in the Executive Order of 1882 area. I am 38 years old. The reason I come from this area to represent my people who lived in the disputed land area, this dispute have recently started.

Owens Bill HR 10337 or S-2424 should not be considered or to be make a law, the reasons we don't want this to become a law.

We live on this land for generation and generation, we are one with the land, we love this land, we live here, this is our only ways of life we know, our grandparents, our people, our children are concerned about this problem, they don't eat, don't sleep over this dispute. Our children who are growing up are numerous. If this Bill is approved how will they make their living in the future, where will they move to. For this and other reasons please, we appeal to you to stop or repeal this Bill. Leave the settlement to us to solve together to make workable solution.

This statement I make is true. I thank you.

Don T. Nez, Sr.

STATEMENT
OF
HERMAN NORRIS

My name is Herman Norris. I am a full blooded Navajo Indian from Tuba City, Navajo Nation, Arizona. In 1934 I was born in a hospital, which was then known as the Western Navajo Indian Hospital at Tuba City, Navajo Nation, Arizona.

I have practically lived in the community of Tuba City all my life except for a few years when I serviced in U.S. Marines and when I attended schools in California, Arizona and Oklahoma which are outside the Navajo Nation.

As a U.S. citizen and a republican I have voted for Senators Paul Fannin, Barry Goldwater and Congressman Sam Rayburn. These leaders of Arizona whom I faithfully trusted are the same representatives that have introduced bills to remove approximately 8,500 Navajos from the executive order area of 1882 and approximately 2,000 Navajos from the 1934 Tuba City Reorganization Area. I am fully opposed to such bills including S. 2424 which is now before the Senate Interior and Insular Affairs Committee.

In behalf of Navajo people and numerous veterans, I urgently plead the Senators composed of the Interior and Insular Affairs Committee to faithfully understand and give careful consideration and stop the Goldwater and Fannin Bill S. 2424.

If and when the Bill becomes law it will be a repeat of the "Long Walk" and expulsion of several Navajos off their land

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when District 6, the Hopi Reservation, was enlarged in 1943. There will be much psychological, physiological, social and cultural disruption of the Navajo Indian people. There will be a serious creation of hostility between the Navajo and Hopi tribes.

Many veterans have faithfully defended the U.S.A. and the Navajo Nation. Many veterans were inducted into Armed Forces from the very land that is being taken away from them now. Our very language was used against the Japanese by the "Code Talkers" that caused the USA to be victorious of the enemy. Approximately 13,000 Navajo Indians have serviced their country honorably in time of war and also during peace times. With these few very important historical acts that comes to mind at this moment should entitle the Navajo people to stay on their land which they rightfully won by defending it.

Therefore the Navajo people urgently asked your support in stopping the S. 2424 to be enacted into law.

Thank you.

Herman Norris

STATEMENT OF SAMUEL PETE
DIRECTOR NAVAJO-HOPI LAND DISPUTE COMMISSION
THE NAVAJO TRIBE

BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
JULY 24, 1974

Mr. Chairman, Members of the Committee:

I am the director of the Navajo-Hopi Land Dispute Commission. This Commission is made up of Navajo tribal councilmen from the Executive Order Area as well as the 1934 Reservation. Our Commission was created by the Navajo Tribal Council in 1972 to deal with all aspects of the land dispute with the Hopi Tribe.

As you are aware, we are not only involved with the proposed legislation before your committee and the Congress, but also with litigation in Tucson and San Francisco and administrative matters relating to the Hopi-Navajo Joint Use Area Administrative Office in Flagstaff.

When our Commission first began its work, most of the Navajo people in the EOA had never heard of the Healing v. Jones law suit. Most of the people were unaware of what was going on in Washington and of the actions of Congressman Steiger. Our Commission meets with the Navajo people both informally on a daily basis, and, more formally, we have made some 300 presentations at chapter meetings.

In Navajo country the chapter is the local government. It has its own meeting place and deals with many of the matters that affect people within an area of some 25-75 square miles. A typical chapter has between 1,500 and 3,500 members. Chapter meetings are held about twice a month, usually on weekends and are attended by anywhere from one hundred to several hundred people.

During the last two years, the Navajo-Hopi Land Dispute has been on the agenda of every chapter meeting. Our people in this area are desperately afraid that this Congress or the courts or the BIA are going to take their homes or deprive them of their way of life. This is why the members of the Commission and I attend the chapter meetings and discuss the current status of various activities with the people.

I think you should understand that most of our people, especially in this area, do not read English and many of them do not understand English. I only hope that some of you will have the opportunity to visit the land in dispute so that you can see both the problem as well as the attachment to that land that our people have.

It is almost as if the fate of the people of the District of Columbia was being decided some 2,000 miles away by people of a different culture who spoke a different language and who neither knew nor bothered to inform themselves as to the actual conditions of the District.

I am not originally from the land dispute area so I cannot tell you what it was like there some ten or twenty years ago. I am glad that lifelong residents of this area are in this committee room today and they can tell you. I do know, however, that in the two short years that I have been visiting this area regularly, even I can see a difference in the attitude and feelings of the people. People today are very much afraid of what may happen to them. The calm which so typifies the Navajo way of life has been shattered by an uneasiness. Strangers who come into the region are suspect, since the BIA has already taken to marking the Steiger line on the face of the earth.

When the 92 Navajo people who had lived in peace in District 6 their entire lives were forced from their homes in late Fall, 1972, this brought home to the people of the EOA the possibility that they too might lose their homes. Dr. Scudder has already told you of the terrible experience that those people suffered. I will not repeat it here, but I will say that this experience has increased the anxiety and fear of the Navajos whose lives are threatened by the pending legislation.

I am from the Shiprock area of the Reservation. Even in my area which is over one hundred miles away, people are always talking about the Steiger bill or the Owens bill. So you can see that even though the legislation seems to apply to only one area of our country, it really affects everyone.

Some people have asked me whether or not Navajo people would accept relocation. I tell them that I just don't know. You must understand that our people come from an oral culture. History to us is not something that you read in books; it is instead something that we carry around in our heads. In a real sense, "The Long Walk" did not happen to my great grandparents, it happened to me. Similarly the livestock reduction of the 30's and 40's was not only an experience for my parents and grandparents, but is something that I feel as well. For the Navajos who were relocated when the Hopi Reservation was expanded by 150,000 acres in 1943 (some one hundred families), the anguish they suffered is not thirty years in the past. It is almost as real as if it happened yesterday.

So you can see that you are not writing on a clean slate and that the evil which is proposed is cumulative and not original. However strong my feelings are, they are minimal when compared to the feelings of the older Navajos who live in the disputed area.

To ask our people to give up their homes in the remote likelihood that some Hopi cattle may graze where their homes once stood is not reasonable to me and I can assure you is not reasonable for the Navajos whom you ask to do this.

During the time I have been director of the Commission, I have had the opportunity to meet with many Congressmen, many members of Congress and their staffs. I am convinced that you are good and decent people. You have been offered an expedient solution by Senator Goldwater. You have been offered a just solution by Senator Montoya, Senator Domencici and Senator Moss. I urge you to choose justice over expediency.

STATEMENT OF DALE PETE, SR.

I am with the Tour with the Navajo and Hopi Unity Caravan.

Today we all went to a hearing before the Interior Committee of the Senate of Washington, D. C.

There at the hearing we all heard the statement from the Senate and the Hopis and the Navajos.

The last statement was made by a Hopi lady by the name of Mrs. Harrington Vahsei of Jeddito Chapter Area of District 7.

Her father's name old Man Seeque of Jeddito. They were living under the grazing right of District 7 (or) Navajo plan of an operation ever since the grazing permit was issue, I know the old man very well.

At that time I was working as a Range rider for District 7.

Now at the present time they call this Range Rider as now Grazing Committee.

Under the Supervision of the name Abe Avas a white man at Cedar Spring Arizona. We were the Govt. employee at that time.

I lived part time at Jeddito and also at Cedar Spring, Arizona with my family. That was my headquarters.

Old Man Seeque had some sheep and some horses.

I think they were the only Hopi family that was issue the Grazing permit in the Navajo land.

STATEMENT OF DALE PETE, SR.

PAGE 2

As I said a lady made a statement, Mrs. Harrington Vahsei of Jeddito Chapter Area of Dist. 7.

Late in the afternoon I heard my name by Mrs. Harrington Vahsei.

- #1. Saying same thing about Corral.
- #2. Taking the sheep away from her.
- #3. On horseback helping myself taking the sheep.
- #4. Also she mention two other names of Jeddito

Chapter Local members.

I have never intention to hurt the Hopis all my life.

I got some good friends in the Hopi tribe, some old Councilman.

Also Mrs. Harrington Vahsei said I was with some other men at this corral that very day.

I would like to know who these other men's names were. In order to prove it.

To tell you the true she is making a false statement about me of doing such a thing.

She couldn't made a better lies about someone else.

I am a Mormon (or) L.D.S.

And also she herself and her family is a Mormon L.D.S.

Now if she was a good Mormon why did she have to lie about me.

Now I as being good and honest I'll prove that the good lord will forgive her for me.

STATEMENT OF DALE PETE, SR.

PAGE 3

At my home I raise three little Hopis. They are my grandsons.

#1. Dale L. Pete 13 years old

#2. Curtis Pete 12 years old.

#3. Johnnie Pete, Jr. 9 years old.

Their mother ran off. Myra Pete. Hopi.

Their father Johnnie Pete Sr. died 4 years ago.

Johnnie Pete Sr. is my son the father of the children.

My wife Caroline Pete and I we adopt the poor boys legal through the Navajo Court at Window Rock, Arizona.

Also I was married to Katherine G. Pete in 1932 got two children.

#1. Dale Pete Jr. now live in Oklahoma.

Has been in the arm service in U. S. A.

#2. And a daughter Luabelle Pete. She died (or) killed in a car accident.

I was raise by my grandfather Billy Pete Sr. He was old Council Man of Navajo Nation.

He had taught me what not to do to be ashamed of.

I want to have my name to be clear off from this complaint (or) statement.

And how would Mrs. Harrington Vahsei like it if I should make some false statement and mention her name at the hearing in Washington, D. C.

STATEMENT OF DALE PETE, SR.

PAGE 4

Why don't John Boyden find a good and honest family to make a better statement.

We are here for some good and honest people of the Navajos and Hopi people for both tribe, not only Navajos.

To find some kind of solution to solve this land dispute problem.

So we can all live together again like we did before.

It don't cost you a penny to be honest brother and sister the Hopi and others.

I thank you.

Dale Pete

Statement by Dillon Platero, Director
Navajo Division of Education, Navajo Tribe on
Educational Aspects of the Navajo-Hopi Dispute

Mr. Chairman, my name is Dillon Platero. I am the director of the Navajo Division of Education, Navajo Tribe. I am grateful for the opportunity of presenting to you an explanation of the educational aspects of the proposed legislation and, in particular, the impact which the Owens proposal would have on Navajo school children.

The Navajo-Hopi Land Dispute has often been improperly characterized as a contest between unequal and opposing forces, with the Navajo people perceived as the stronger, more affluent, and more oppressive antagonist. With few defenses or resources to muster against such opponents as the Navajo, the Hopi is thus seen in a more sympathetic eye. It is an euphemistic, but inaccurate picture which has drawn the sympathy and attention of the American public for many years.

It appears that the Goldwater-Fennin Bill has so characterized this dispute by offering a solution which is punitive in nature to the Navajo people. The bill proposes the evacuation of eighty five hundred (8,500) men, women and children from the land of their birth, seemingly as retribution for the alleged improper conduct of the Navajo towards the Hopi.

The tendency of the American People to romanticize the Hopis as somehow more "natural" and beautiful than the Navajos has been supported by the tourist impression which

most Americans receive--not from a careful investigation of the subject. As Marlin E. Scott, Member, Navajo Tribal Council, has pointed out, the land area in question was vacant when the Navajos first occupied it, in 1700. It is true that the Navajos did, in the past, encroach on Hopi land; but much of this was restored to them in 1943.

In effect, we are asking you not to romanticize, but to understand that the Navajos are not usurping the rights of the Hopis. In reality, it is the Navajos who will suffer from this bill.

To many of you the movement of the Navajo people from this joint-use area may be comparable only to the movement of men and supplies one might encounter in the military. However, when you consider the movement of a whole people, used to living a way of life for centuries, the analogy breaks down. A better analogy would be that of forcing the migration of the whole rural South into downtown Chicago. The pressure for jobs, recreation, sanitation, energy and many other aspects of life would increase--and where such pressure arises, so does resentment. The Navajo still has the memory of the forced relocations involved in the Long Walk when people were forced to march hundreds of miles, only to be greeted by the administrative and political foolishness of Fort Sumner. For many, this

dreadful memory has persisted, passed from grandfather to grandson, and it now appears that this memory will be further nourished.

However limited your knowledge may be of the Navajo culture, there are aspects of the proposed dislocation which will not be unfamiliar. Dislocation will obviously affect the family life, the child's peer life, and the operation of educational institutions. Different parts of these three spheres of social life will affect all others. Thus, we can expect a vicious cycle of change and dislocation among the family, the social strain of underpopulation and overpopulation in different schools, the aggravation of such anti social problems as alcohol and drug abuse, demoralized teachers, and absenteeism in schools.

First, the Navajo family is what is known as an extended family. That is, it is made up of several related sub-families. In a given area it is customary to find the grandparents, parents, and several children, some of whom are married and have children of their own.

In the Navajo culture, each family inter-relates in the social and economic sphere, creating a strong viable group which can cope with a variety of harsh environmental circumstances. Moreover, this interdependence is not just with one unit of this extended family. Sometimes, for

example, the herds of several families are combined, and the family members share the daily responsibilities of keeping the animals grouped. Other members of the family unit will divide the responsibilities of meal preparation, child care, and other types of chore activities. On a given day, several members of the family will make the journey to the store while others continue maintenance of the use area.

A full scale move of people should necessitate a moving in such a way as to preserve the family unit and cultural integrity of the social and economic unit. In all situations the breakdown in the family unit will cause stress, the result which will affect everyone from grandparents on down to the youngest child. For example, where married children are separated from grandparents, the husband-wife division of labor is disrupted and the eldest generation will face economic disaster, psychological stress, and untimely death. Indeed, the stress caused by the breakdown of the family unit can aptly be compared to the trauma of family dislocation experienced by the black slaves of the ante bellum South.

Assuming hypothetically, that there is sufficient space in the BIA schools for the new children--wherever they may happen to settle, sufficient space is not always accompanied by a comfortable social role for child and teacher.

First, as Barker, in his research on overmanned and undermanned settings has demonstrated (1964 and 1968) the massive removal of personnel from any social group will require their replacement. For a given social system, such a removal may in fact result in an insufficient number of people to fill the requirements of the system. Social roles and statuses will have to be redefined. People will often be confused and frustrated. Such are the oft noticed effects of an undermanned setting. For the overmanned setting, the reverse takes place, but with much the same effect. With what amounts to a population explosion, social roles will diminish; people as a result will often be "stepping on other peoples' toes". There will be too many leaders; too many people to fill too few roles. The effect is biologically comparable to incidents in overpopulated animal societies. The result is again anxiety, frustration, and confusion.

But these are not the only sources of peer group tension. A situation in which a child is torn away from traditional activities will obviously result in a lack of knowledge about what to do with one's spare (non-school) time. When such a situation occurs, again, anxiety, frustration and confusion result. These emotional states often lead to the increased use of drugs and alcohol. These problems, in turn, can be aggravated by, and aggravate the problems of social dislocation mentioned above.

Fourth, it is clear that teachers and school administrations will also be affected with a resultant deterioration of the quality of education. A teacher, in order to impart language skills, must achieve rapport with children. To achieve this, they must maintain a delicate balance with peer group organization. Once this balance is disrupted, the teacher's sense of timing, teaching strategies, and a host of other basic teaching skills, become disrupted. And children, once they sense this disruption, often become more tense and uneasy than they already are. Hence, teacher unease and pupil unease feed upon each other.

Finally, in the day schools from which some of these children would be coming, children have often, in their daily decision-making processes, allocated their time very carefully between that devoted to the economic support of their households, and that devoted to school. This is a tenuous balance. As Topper (1972) has pointed out, the decisions involved in the everyday life of a traditional shepherd are intricately interwoven with ecological and social conditions. The Navajo child, unlike the American Middle Class Child, is often very much involved in these decisions, and hence is an integral part of the support of his household. It is not hard to understand, then, that these intricate decisions become incredibly difficult when the child is away at a boarding school. If either school or the survival of the family must be decided in favor of, will it be small wonder that the child will ditch classes.

Such absenteeism will in turn affect his peer life. We are caught, in effect, in a vicious cycle, where the trauma bred of dislocation disrupts the spheres of other activity, and by so doing, feeds upon itself. It would be reasonable to infer from such a cycle that the conventional means of evaluating a child's performance would also indicate that something will go wrong. And in fact, there is just such evidence.

Clearly, a child, in understanding his notion of self and in mastering the skills of classroom, must maintain a healthy emotional outlook. In order to be emotionally stable, the child must have a stable social environment.

Thus, with the spatial environment of the traditional household disrupted, there is stress on the family. Similarly, studies on the deleterious effect on the child of a broken or separated family have been documented for many cultures, and would be especially disastrous for the Navajo family that places a high value on social and geographic proximity.

On top of these basic difficulties, the absence of essential planning for the move will make an unstable situation even worse. Presently, we know that the ability of the existing reservation to accommodate the population at its current growth rate is inadequate. If over five thousand Navajo people are to be relocated on land which can support them, there must

be an increase in the geographic size of the reservation. Moreover, the relocation will not merely place further stress on natural resources; the social resources of educational and social services must be increased. At this point, the Bureau does not even know where, let alone, how the Navajos are to be relocated. Within the schools themselves, such reorganization requires services which facilitate not only the adjustment of children to their new surroundings, but these which facilitate communication among schools themselves. Yet the total school system on the whole Navajo Reservation is at best non-coordinated. Since we expect few changes in times of relative non-stress, it would be foolish to assume that the school systems would rise to the challenge of crisis, especially when no thought has been given the problem.

The Bureau of Indian Affairs, guardian of the Trust responsibility, has done very little to even consider the seriousness of the problem for planning. The centralization of the Bureau's service system would need to be reorganized to provide the basic administrative service. In addition, in a move of this size, there will have to be a massive development of an administrative network in all areas of the housing, health, transportation, resources, education, and welfare, to name a few. It is one thing to

plan a community in Phoenix, it is another to plan an agrarian community which will accommodate the existing life styles.

In American Education, there is a right implicitly taken for granted by every American. It is the right of the family to relate what a child learns into its own functioning. This right, always only tenuously held by the Navajo, may be taken away and not only his social institutions, but his very daily life--the foundation of these institutions, will be threatened. It seems strange, indeed, that an official educational policy, dedicated to allow the Navajo to someday assume responsibility for the actions of their schools and community, should in reality frustrate these attempts at every turn, for the betterment of a vested interest.

Barker, R.G., 1968, Ecological Psychology, New York, Appleton-Century-Crofts.

Barker, R.G., & P.V. Gump, 1964, Big School, Small School, Stanford, California: Stanford University Press.

Topper, Martin D., 1972, "The Daily Life of a Traditional Navajo Household: An Ethnographic Study of Human Daily Activities," Ph.D. Dissertation, Northwestern University.

Statement
of
Nonabah Riggs

My name is Nonabah Riggs. I am a Navajo Indian residing on the Navajo Reservation in Northern Arizona. We are presently involved in a land dispute with our neighbor, the Hopis.

There is a bill presently pending before the Senate Insular and Interior Committee. The bill introduced by Wayne Owens from Utah, H.R. 10337, will damage thousands of human lives. The bill requires a force removal of 8,000 Navajo people, with no provisions as to where they will re-establish their homes. We have lived on this land for centuries.

The welfare programs will triple. New schools have to be rebuilt. The Navajo Tribe will be set back because we do not have adequate facilities to fulfill the needs of these people.

I trust your judgment that any decisions made, will be to the best interest of human beings. Do not punish us with another long walk or trail of tears. Our lives are in your hands.

The best solution to the problem would be to turn the problem over to the grassroots people, as they will be most affected.

Nonabah Riggs

Statement
of
Della Robertson

I am Della Robertson representing 1,600 Navajo from land dispute District #7. I am opposing Owens Bill, because of my own family and community. If the Bill S.2424 is pass, we won't have any place else to go, we don't own two land. Maybe some Tribe do, but us, we only got what we have now. So we are all suffering from Owens Bill. We want to live like White People do, they got everything such as electricity and everything. But us, Navajos we don't have anything like that on reservation, we can't even build our own shelter for our kids. Those that don't have any homes, we feel like we're livestock. The stock are the only ones that don't have houses to live in. Not only this, but it's gonna harm lots and lots of lives, young and old ages. I don't think our ancestor think about this land the way it is now. They use to say what's on this land is belong to whoever created many Government and it's given to us for a long time to spend our lives on it peaceful. I also got Hopi sister-in-law and they got ten children and wondering what's going to happen to them later on if they separate their mother and father. So your cooperation will be appreciate.

Thank you.

Della Robertson

STATEMENT OF ELMER M. SAVILLA
CHAIRMAN, QUECHAN TRIBE AND
CHAIRMAN, INTERTRIBAL COUNCIL OF ARIZONA

BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE

July 24, 1974

Gentlemen, my name is Elmer Savilla. I am the President of the Quechan Indian Tribe, the President of the Intertribal Council of Arizona, and the Vice-President of the National Tribal Chairman's Association. My testimony today will represent my views on the reasons for intertribal discussions and the solutions for solving intertribal disputes.

I believe that you gentlemen already appreciate the fact that Indian thinking places the highest value imaginable upon those two things most necessary to him for his life, liberty, and happiness -- namely LAND and WATER. The Euro-American society also places great value upon these items -- but for different reasons -- they are not sacred to the non-Indian and can be bought. Indian tribes have historically considered lands away from his physical home as "lands that belong to no one, yet belong to everyone", and so it was until the Euro-American made his appearance.

Certain tribes were taught to place great faith in a new system of government. Other tribes were forced to rely on that new government. It would do no good to relate here today the tragic results of that new survival system upon the Native American. Let us now look at the result of placing great faith in those who cannot, or will not, appreciate Indian values.

This case before you, the Hopi-Navajo dispute, is not an isolated example of man-made disaster but can be added to a list of less-publicized disputes. We don't need a lot of useless rhetoric to pinpoint the causes. Bureaucratic meddling and bungling, feet-dragging tactics, insincere politicians -- not necessarily in that order -- are prime reasons.

The real solution to these types of disputes, of course, is prevention. But since none of us is well-gifted with foresight, we can only insist that bureaucrats do their jobs well in order to prevent future conflicts such as we have here.

I believe that most intertribal disputes are created knowingly with the excuse that what is going to happen will be "best for the good of the country". Indian tribes have been sacrificed many times in the past "for the good of the country", and they are still being sacrificed.

The Central Arizona Project is a classic example of an intertribal dispute being made to happen. It involves 10 tribes, 5 on each side, all of whom at one time had faith in their sworn trustee. This trustee has failed to perform for purely political reasons. Those tribes opposing the CAP have been threatened, coerced, and even attempts at blatant bribery made. Hearings on the matter have been refused, or cancelled, and evidence against the CAP suppressed and ignored. Supporting tribes are lured on by promises of life-giving Water. Their own water was stolen from them previously by the Gila River Decree.

This subject is related to the Navajo-Hopi dispute because the same type of circumstances surround both disputes:

- (a) exploitation of Indian resources for political expediency;
- (b) a tribe-against-tribe dispute caused by the refusal of the trustee to act in the first place; and
- (c) political forces ignoring the human element, compassion, and emotions of the people involved.

Both the CAP dispute and the Navajo-Hopi dispute are genuine life or death struggles between

tribes, yet they have been allowed to become showcases for political aspirations. Both cases involve Indian genocide for the sake of the Euro-American. Both cases have ignored Indian life styles, Indian solutions, and Indian welfare.

I want to remind you of the so-called self-determination concept which has become so popular with the non-Indian. No one yet has explicitly defined self-determination, but to many tribes it means the right and the responsibility to make one's own decisions and to solve one's own problems. This is not new to the Indian. He did this very thing for centuries before the coming of the Euro-American, and gentlemen, it worked. It can work again.

Indian organizations should not be forced to take sides in disputes but should be allowed to practice self-determination again in its purest form. We should again be able to sit in a council and settle our problems without having to worry about the motives of the politicians.

Most legislative solutions have required a winner and a loser. This need not be the case. Indian methods coupled with new intelligence could provide their own solution.

The Intertribal Council of Arizona, in remaining neutral in this dispute, suggests that neither the Department of the Interior, who created the problem, or H.R. 10337, will permanently solve the problem.

The United States may journey to the stars, or rebuild other world governments, but, in 300 years they have not effectively solved any Indian problems because of terrific hidden, sometimes obvious, conflicts of interest and an unwillingness to make concessions for the good of the Indian. You went to war to protect foreign refugees yet you could create that problem here. You sent Henry Kissinger to the Middle East to prevent bloodshed and you send the Indian a bureaucrat. Because Indian Nations are sovereign, perhaps you should now send us Mr. Kissinger.

We insist that the United States Government make those studies necessary for the true facts in the Hopi-Navajo land dispute to be known to all concerned parties. Only in this way will you prevent future Wounded Knees or the Quechan Sleepy Hollow incident, or the potentially explosive Fort McDowell matter. The United States must now prove to the world that they indeed care for their own people.

It is my personal belief that H.R. 10337 would create problems of an individual nature. It provides that a displaced person purchase the house he is moved to. Many Indians have trouble now paying for a house which they voluntarily move into. How would he be expected to pay for that house when reservation unemployment is ridiculously high?

The problems that would be created are too numerous to mention. Both Hopi and Navajo would be affected. No, gentlemen, this legislation is not the answer in my personal opinion. Relocation has never worked for any Indian. Let us learn our lessons from history. You send nations and labor unions to the bargaining table to hammer out solutions behind locked doors. Are not the Indian Nations as important?

I thank you for this opportunity to express my views and opinions to you.

TESTIMONY OF RICHARD SCHIFTER,
WASHINGTON COUNSEL, NAVAJO TRIBE
before the
SENATE COMMITTEE ON INTERIOR
AND INSULAR AFFAIRS

July 24, 1974

In twenty-three years of practice in the field of Indian law in this city I have never before seen the Congress give serious consideration to proposed Indian legislation which was as punitive, as ill-conceived and as clearly unconstitutional, as harsh in its impact on human beings and as wasteful of the taxpayers' money as is H.R. 10337. The bill was passed by the House under a cloud of misrepresentations of the law, misrepresentations of the relevant facts, ethnic slurs against the Navajo people and claims of the imminence of violence.

My plea to this Committee is to look at this proposal closely, to insist that all the evidence is put before you and to make sure that the applicable law is properly analyzed. Some may say that this matter has been studied long enough, that the time has come for action. Let me submit to you, most respectfully, that the predecessor of the bill which is now before you was first introduced in 1971, considered briefly by this Committee in September 1972 and that a one-day field

hearing, attended by two members of this Committee, was conducted in April 1973.

I am, of course, well aware of the fact that this Committee has responsibility to deal with items of major legislation, of nationwide import and cannot allocate an unduly large amount of its time to an issue which it deems to be one of only local significance. I do want to submit to you, however, that few items of legislation before you can have as profound an impact on human lives as this bill. By enacting it, you will cause over one thousand families to be expelled from their homes, from the land which they consider to be theirs. It is when the time comes to enforce that law that the nationwide implications of this action may very well be felt, because there is absolutely nothing in H.R. 10337 that indicates where the expelled people are to go and what they are to do. There is no doubt in my mind that when the time comes to force these people to give up their homes that the attention of the entire country will focus on the events occurring in this sparsely inhabited part of the State of Arizona. When the story of the expulsion begins to make the headlines, people all over the country will indeed ask: How did this ever come to pass?

Permit me to direct your attention to a recent instance where an ostensibly local Indian legislative item was studied by this Committee in great depth and solved in a most admirable fashion. I am speaking of the Alaska Native Claims Settlement Act of 1971. That Act dealt with a problem on which Congressional action had been required since 1867. If I remember correctly, draft legislation of the kind finally enacted in 1971 had been under consideration in the Interior Department since 1946. When the matter was finally taken up by this Committee, it was not treated as local legislation and quickly disposed of. Instead it was analyzed by members of the Committee and by your staff with great care, with the result that a long-term vexing problem was resolved with fairness and justice.

There are many parallels between the Hopi-Navajo land dispute and the Alaska Native Claims problem. I do hope, therefore, that this Committee will be prepared to deal with the issue now before you in the same manner in which you dealt with the Alaska Native Claims matter by allocating to it the time necessary to study all the relevant facts and all the relevant law and making your decision following such a study.

At the outset of my testimony I said that this bill is clearly unconstitutional. Let me be

specific. Under Section 7 of H.R. 10337, approximately 243,000 acres of land are to be transferred from the Navajo Reservation to the Hopi Reservation. I am mentioning this tract of land first because it frequently gets overlooked in discussions of the larger tract about which I shall speak later.

This smaller tract, known as the Moencopi area, was not the subject of adjudication in Healing v. Jones, the case which dealt with the larger area, nor has it been the subject of any other law suit. The Moencopi tract is now part of the Navajo Reservation and has been part of that Reservation since June 14, 1934 when the land was incorporated into the Navajo Reservation by an Act of Congress. What Congress did, when it passed the 1934 Act extending the boundaries of the Navajo Reservation, was not only to guarantee the rights of the Navajos residing on that land but to guarantee the rights of other Indians as well. To secure the rights of all resident Indians, Congress provided that the enlarged Navajo Reservation would be set aside "for the benefit of the Navajo and such other Indians as may already be located thereon."

There is no possible doubt that when it used the foregoing phrase Congress intended to guarantee to all the Indians in the enlarged Reservation the

continued enjoyment of the land on which they lived. It clearly did not intend to allow for a situation to arise in which Navajos could drive their non-Navajo neighbors from the land on which these neighbors lived. But by the same token Congress most assuredly did not intend for the reverse to happen. Yet this is precisely what Section 7 does: It would permit the Hopis to drive their Navajo neighbors from land in the area in which they have lived for more than a century and in which they have had vested, constitutionally protected interests since 1934.

The conclusion that the 1934 Act gave the Indian resident families and individuals vested rights to the lands on which they were "located", irrespective of their Tribal affiliation is not only self-evident from a reading of the text of the law, but is also borne out by its legislative history. At hearings before the Senate Committee on Indian Affairs, 72nd Cong., 2d Sess., on "A Proposed Bill to Define the Exterior Boundaries of the Navajo Indian Reservation and for Other Purposes" (hereinafter referred to as "Hearing"), there was introduced into the record a report by Governor H. J. Hagerman, who had been asked by the Secretary of the Interior to make a study of the Hopi-Navajo land problem. With regard to the so-called Moencopi area,

the area with which Section 7 of H.R. 10337 deals, Governor Hagerman wrote on November 20, 1930 to the Commissioner of Indian Affairs:

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

An area of about 23,000 acres adjacent to and south of the Moencopi village, most of which will be contained in township 31 north, range 11 east, Gila and Salt River meridian. The exact lines of this tract which we believe should be fenced cannot be given until an accurate survey is made in accordance with the recommendations hereinafter to be made. 1/ This area of grazing land has already been, to all intents and purposes, set aside for the use of the Moencopi Hopis by the superintendent at Tuba City.... This group of Indians first came to Moencopi from Oraibi after a political or religious schism in the tribe there in 1892 at the time Tuba City was settled by the Mormons. This the Navajos have always resented. The Hopis say that their people occupied all this country long before that time. If they did so, it was in the very far distant past. However, the Navajos have now become fairly well reconciled to the Hopis' presence there, and even to the use by them of some grazing land. But they feel that, with the general allocation of grazing lands which is now in process, and the proposed limitation of reservation boundaries, it would be only fair to limit and prescribe the area which these Hopis should have the

1/ After Governor Hagerman had surveyed the area and made certain other adjustments in his boundaries, the amount of acreage in his recommendation increased to approximately 32,000 acres.

privilege of using. The Navajos say that the Moencopis have practically all the irrigable land and nearly all the water in this section, and are anxious to have the Moencopis' constant expansion checked. We believe that should a carefully and fairly chosen area be segregated and fenced, the Navajos would be fairly well satisfied. [Emphasis added].

Letter of November 20, 1930, from H. J. Hagerman to Charles J. Rhoads, Commissioner of Indian Affairs, quoted in Hearing, at 123.

On February 7, 1931, the Commissioner of Indian Affairs acknowledged his acceptance of Governor Hagerman's recommendation:

Receipt is acknowledged of your report of May 20, 1930, on the matter of setting aside under fence for the separate use of the Hopi Indians... [a tract] of land... adjacent to the Moencopi Wash in the Western Navajo jurisdiction. Your report has been very carefully considered and discussed and we are of the opinion that there should be set aside for the exclusive use of the Hopis a reasonable and fair area of land. You specify certain boundaries for the proposed [segregation] and we are disposed to accept your recommendations as to these boundaries.... The... area would include a reasonable tract of land for the use of the Moencopi Band of Hopis who, while they settled in the Moencopi Wash at a comparatively recent date, have apparently so definitely acquired occupational rights that the office has no disposition to even try to dispossess them, but, on

the contrary, desires to define, if possible, a reasonable area for their exclusive use. [Emphasis added].

Letter of February 7, 1931, from Charles J. Rhoads, Commissioner of Indian Affairs, to H. J. Hagerman, quoted in Hearing, at 48.

It was not until the following year that the Bureau of Indian Affairs completed work on a proposed bill dealing with the status of the land in Arizona on which Hopis and Navajos resided. To explain that bill, which in amended form later became the Act of June 14, 1934, the Commissioner of Indian Affairs sent a representative, one James M. Stewart, to the Hopi villages. The transcripts of his discussions with the Hopis were put into the record of the Senate hearings and thus became part of the legislative history.

What the transcripts reveal is that Stewart consistently offered a very specific explanation of the phrase "for the benefit of the Navajo and such other Indians as may already be located thereon". At the meeting of November 21, 1932, with members of the Villages of Tewa, Sichumovi and Walpi, Stewart made the following statement:

Now we are going back to section 1 of the bill, especially that part reading that the lands in those lines are to be permanently withdrawn for the benefit of the Navajos and such other

Indians as may already be located thereon. Now I want you to especially bear in mind that the 'as may already be located thereon' that is put in the bill to especially protect the rights of the Hopi Indians to the lands they occupy around here and there is absolutely no chance of the Hopis' rights to the lands being disturbed....

...[S]uggestions have been made to us by our own field men and white persons outside the Indian Service who are apparently friendly to the Hopis that certain lines should be adopted as their permanent boundary lines....[I]t has been suggested that an area of about 32,000 acres be set aside for the use of the Moencopi Wash Hopi Indians. [Emphasis added].

Hearing, at 34-35.

At the meeting of November 25, 1932, with members of the Hopi Tribe from Oraibi Village, Stewart offered an explanation identical in substance:

Section 1 of the bill also contains this phrase. That after this line is set out that the lands in there are withdrawn 'for the benefit of the Navajos and such other Indians as may already be located thereon.' That is very important, that phrase there. We put that phrase 'and such other Indians as may already be located thereon' in the bill so as to protect especially the rights of the Hopi Indians to what is called their reservation.

This area here within this red line (pointing to the map) covers about 500,000 acres. It takes in all of the Hopi Mesas, villages, and also takes in Burro Springs down here and practically all of the water in this part of the country, including Coyote Springs. The separate tract for the Moencopi group of Hopi Indians covers about 32,000 acres. [Emphasis added].

Hearing, at 54.

Finally, Mr. Stewart offered the same explanation at the meeting of November 28, 1932, with members of the Hopi Tribe from the Villages of Hotevilla and Bacari:

That phrase 'and such other Indians as may already be located thereon' was especially put in this bill as to protect the rights of the Hopi Indians in there to this so-called Hopi Reservation. In other words, to protect their rights to the lands they are now using and occupying....

...[I]t has been suggested to us that two distinct areas be set aside for the Hopi Indians; one area taking in all the Hopi mesas and another smaller area taking in the Moencopi Wash Hopi Indians. This orange line here (pointing to the map) is the large area taking in the Hopi mesa. Now the Moencopi area is now shown on these maps. The small area for the Moencopi Wash Indians covers about 32,000 acres.

Hearing, at 68.

The evidence is thus clear that in 1934, when legal rights to the land vested in both the Navajos and Hopis, the Hopis were occupying somewhat over 30,000 acres of land in the Moencopi area. They are still occupying approximately that acreage. They are entitled to that land. Neither more nor less. If they do want to have it segregated from the Navajo Reservation, the Navajo Tribe does not object. The segregation could take place by having Congress specifically set the land aside as a separate reservation for the Hopis or by giving jurisdiction to a court to issue a final decree of partition after examination of the relevant law and the relevant facts. Either approach would be perfectly satisfactory from the Navajo point of view.

What is most definitely not satisfactory is the solution offered by H.R. 10337. Not only would it segregate the land to which the Hopis are legally entitled, but it would grab from the Navajos approximately 208,000 acres of land to which the Hopis have no legal right whatever. Hundreds of Navajo families would be expelled from their homes in this area. It is this action which is clearly in violation of the Fifth Amendment. Unless the taking as such is enjoined, this section could easily result in a judgment against

the United States in excess of \$10 million. The basic legal principle here in issue is clearly spelled out in Shoshone Tribe of Indians v. United States, 299 U.S. 476 (1937).

I shall now proceed with the discussion of the larger tract affected by the proposed legislation, the Executive Order Area. That is the area which was the subject of the law suit entitled Healing v. Jones. When I spoke earlier of the misrepresentation made to the Congress about the applicable law in this field I had reference to the contentions made as to the meaning of the Healing case.

The critical vote in the House, Mr. Chairman, came on an amendment offered by Congressman Meeds. That amendment would have allowed the dispute between the Navajos and the Hopis to be settled by negotiations or decided by arbitration within the framework of the decision of Healing v. Jones.

Immediately before the vote, the sponsor of H.R. 10337, Congressman Owens, appealed to the House in the following words:

[I]t would be folly indeed for Congress to dictate that a three-man arbitration panel should be set up to override what a three-man district court and the Supreme Court have decided are the rights of the two parties. Therefore, I appeal to the members of the committee:

Do not overlook the Supreme Court in a matter where you do not understand the sensitivities and the equities.

Mr. Chairman, let us uphold the Supreme Court. Let us leave this matter in the hands of the courts by defeating the Meeds amendment.

I want to make it clear that I am not accusing Congressman Owens of deliberately misleading the House. It is quite possible that he did not himself know that what he was saying to the House was simply incorrect as a matter of law. For what Congressman Owens was saying was that his bill, H.R. 10337, was the only way in which Congress could legislate in this field and still abide by the decisions of the courts. From my discussions with members of the House I believe that a great many of them voted against the Meeds amendment and for the Owens bill in the belief that Congressman Owens had correctly described the applicable law.

But the fact is that the Congressman's description of Healing v. Jones is wrong. The Healing court, limited in its powers by the wording of the jurisdictional act under which it operated, rendered with regard to the land here in issue a decision in the nature of a declaratory judgment. It held that as to approximately 1,822,000 acres of land in the Executive Order Area, the Navajos and Hopis had joint, undivided

and equal interests, leaving it to the tribes, the Bureau of Indian Affairs, or the Congress to decide how the area should be administered or partitioned. What is often overlooked is that the Healing court also held that

- (1) the vested rights of both Navajos and Hopis in this land was created by Act of Congress in 1958;
- (2) the Navajos, and no Hopis, had lived on the land "from long prior to the creation of the reservation in 1882"; and
- (3) the Navajos, and no Hopis, had been legally "settled" on the land by the Secretary of the Interior in 1931.

The Healing court thus concluded that after Navajos had for generations lived on the disputed land and had in 1931 been legally "settled" there, Congress conveyed to them in 1958 only an undivided one-half interest, conveying the other half to the Hopis. I seriously doubt that that is really what Congress intended to do in 1958, but whatever the intentions might have been, the Healing court decided that that is what Congress did and that is, therefore, now the law.

So the court has decided that this Navajo-occupied area of about 1,822,000 acres belonged in equal shares to the Navajos and Hopis. What are the necessary consequences of that decision?

Congressman Owens contended that his bill, which would leave the subsurface rights undivided, but split the surface into equal compact halves and expel the Navajos from the half which would be annexed to the Hopi Reservation is the only way in which Congress can carry out the Healing mandate. This, as I have said earlier, is simply not the case. There is absolutely no doubt that Congress can follow through on the mandate of Healing v. Jones without expelling a single Navajo from his home.

What has to be kept in mind is that Healing v. Jones decided no more than that the two tribes had each a half interest in the land. The case did not decide which half each tribe owned, nor how the tribes should be put into possession of their respective halves. All that Congress is required to make certain is that each tribe receives the value to which it is entitled.

Pursuant to Healing v. Jones the Hopis have been put in possession of their interest in the subsurface of the jointly-owned tract. What they are now asking for is their half of the surface as well. The value

of that half could be delivered to them, completely in keeping with Healing v. Jones, in any of the following ways:

- (1) in cash, which they could use to buy additional land;
- (2) by giving them greater rights in the far more valuable subsurface;
- (3) by extending, over a reasonable period of time, grazing rights in the joint-interest area, without expelling anyone from the land; or
- (4) by a combination of the foregoing.

The first of the foregoing options is embodied in S. 3230, but each of the other options is equally available and cannot be faulted on humanitarian, fiscal, or legal grounds.

In contrast to the foregoing non-expulsion options there is the option chosen by the House. It can indeed be faulted on each of the foregoing grounds.

There is, first of all, the humanitarian issue. The Navajos of the joint-interest area use for their residences and appurtenant purposes less than 10,000 acres out of a total of 1,822,000 acres. In partitioning this huge land mass, why on earth is it necessary to evict the Navajos from the homes which

occupy, a tiny fraction, less than 1% of the land? Why is it necessary to make this land, to transpose an appropriate term of the Nazi era, "Navajo-rein"? If the land must be partitioned, why can't it be done without requiring people to move? Let us note at this point that the one major government which in recent decades has followed the practice of forcible removal of people from one location to another on ethnic grounds has been the Soviet Union. Is that the example we want to follow?

As other witnesses have pointed out, the Navajo family structure in the area about which we are here speaking is intact. H.R. 10337 and its companion bill pronounce the death sentence over these healthy family relations. The ties will be broken, the relationships destroyed, if people are forced to move. The damage which this will do to the people directly affected will last for generations.

Now let us look at the fiscal issue. We are dealing here with one of the poorest groups in the country. If there is any group of individuals which needs an economic lift it is the residents of this area. And here the United States Government comes along to spend more than \$28 million on them. But what is the money to be used for? Under the House bill it would be used to tear down homes in one place and move people

to newly constructed homes in another place. The fact that they are self-respecting and self-supporting where they are now and will lose both their self-respect and their opportunity to earn a livelihood in their new location is simply ignored. But such loss will surely occur, for the people with whom we are dealing here are largely shepherders and will be unable to find their way into the economy if they are prevented from herding sheep.

The \$28 million which would be spent on removal would only be the down payment. Millions more would be needed as a result of the social damage done by this action. These costs will show up in the larger needs of the welfare budget, the health budget, and the law and order budget.

Beyond all of that there is the question of whether the provisions of H.R. 10337 concerning the removal of people could withstand a challenge on the grounds of unconstitutionality. In my earlier discussion of Section 7 of the bill I was able to say with reasonable certainty that on the basis of the legislative history of the Act of June 14, 1934 and on the authority of the decided cases in this field, including Shoshone Tribe of Indians v. United States, the bill was in violation of the Fifth Amendment. I admit that the law

is less clear-cut when we are dealing with the removal issue. However, I would tell my clients that as we approach the last quarter of the Twentieth Century our courts may very well be hesitant to sanction another Long Walk or another Trail of Tears. I believe that on the facts of this case, where, as I have pointed out, other options are available to the Congress, enactment of a partition law which would result in the forcible removal of people from their homes on purely ethnic grounds will be found to exceed the plenary power of the Congress in the field of Indian affairs, to breach the trust relationship of the United States toward the Indians who are to be removed, and to constitute invidious discrimination in violation of the due process clause of the Fifth Amendment.

With regard to the issue of invidious discrimination, let me point to the pattern of conduct which Congress has adopted when it found non-Indians in possession of land in which Indians had an underlying interest. Such laws as the Pueblo Lands Act of 1924, the Ute Jurisdictional Act of 1938, the Indian Claims Commission Act of 1946, and the Alaska Native Claims Settlement Act of 1971 all adopted the formula of letting the long-term settlers (who happened to be non-Indian) stay on the land and have the Government of the United

States compensate the Indians for the underlying interest. Let me point out that in some of the cases which I have just mentioned the settlers had no legal interest in the land whatever. In this case they have a recognized one-half interest. In the other cases, the United States assumed responsibility for paying compensation. In this case, the Navajo co-owners are willing, as indicated by their support of S. 3230, to pay for the value of the Hopi interest in the surface of the land. Furthermore, in those other cases the existence of the Indian underlying interest preceded the arrival of the settlers. In this case, the rights of the Hopis were created by the Government of the United States after the Navajos had settled the land.

Though the Navajo equities are thus far greater than the equities of the white settlers in the cases which I have mentioned, the Navajos are here to be expelled from their homes while white settlers in similar situations have been permitted to stay. When this anomaly was pointed out to the major spokesman for the Hopi cause in the House of Representatives, Congressman Steiger of Arizona, he made no bones about the racial distinction which he was prepared to make, saying freely:

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

There is no doubt that Congressman Steiger's admission of this racial distinction would greatly strengthen a challenge to this law on the ground of invidious discrimination.

It is against this background that we have asked why it is that some members of Congress still favor the expulsion solution. We are told that they do because the Hopis won't accept another solution. But why must Congress choose only a solution acceptable to the Hopis? After all, the Navajos and the Hopis are co-owners of the land. The solution which the Hopis are seeking, the expulsion solution, is very definitely not acceptable to the Navajos. With no solution presently acceptable to both sides, why shouldn't Congress do what is inherently right from a humanitarian, fiscal, and legal point of view?

Let me in this context, also direct your attention to a basic principle of law governing the partitioning of land. Where a co-tenant asks a court of equity to partition a tract, the principle applies

that those who seek equity must do equity. Is there any question that where it can be shown that a tract of land can be partitioned without expelling a single person from his home, a court of equity will not approve a plan of partition which results in large-scale evictions?

That the enactment of H.R. 10337 would do serious damage to the Navajos and would result in the wasteful expenditure of taxpayers' money is clear. There remains the question of whether it would really benefit the Hopis. I submit to you that in the record of these hearings there is not one iota of evidence explaining why the expulsion solution would be more beneficial for the Hopis than any other solution.

It is said that the Hopis want this land for the sake of tradition. The facts are that (1) Hopis are not disturbed by Navajos when they engage in traditional ceremonies on Navajo-occupied land and the Navajos are prepared to guarantee to the Hopis the right to continue to use the land for traditional purposes in perpetuity, and (2) the traditional Hopis oppose the partition bill.

So the justification for selecting the expulsion option over the non-expulsion options is presumably economic, that this particular grazing area

is to be preferred to other grazing areas, cash, or a greater interest in the mineral deposits. Yet, is there any evidence available to support the proposition that the Hopis will be better off economically by having their reservation lands increase from 631,000 acres to 1,542,000 acres or by 144%? In other words, is there an economic benefit to the Hopis that would, from the point of view of public policy, offset the disastrous loss to the Navajos? Has anyone made inquiries on this subject? In fact, isn't it incumbent upon the Interior Department, in discharging its trustee responsibility, to explore this issue? Does it make sense to move thousands of people and then leave this large area vacant or put a few head of livestock on it, for the sake of being able to depict on the map a "Greater Hopi land"? If there is another reason, a good economic reason, let us ask the Hopis and the Interior Department to show how the Hopis will benefit from the expulsion approach so very much more than they would from the non-expulsion options. Let us make certain that H.R. 10337 does indeed offer the best approach to the allocation of the limited resources with which we are here dealing.

The need for the kind of evaluation which should be made is a need which this Committee recognized

five years ago when it passed the National Environmental Policy Act. Let me call your attention to the relevant language of that Act. It provides in Section 102 that

"all agencies of the Federal Government shall...include in every recommendation or report on proposals for legislation ...significantly affecting the quality of the human environment, a detailed statement by the responsible official on -

- (i) the environmental impact of the proposed action,
- (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,
- (iii) alternatives to the proposed action,
- (iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
- (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented."

A few years ago I was dealing with the Forest Service on a minor amendment to a bill affecting a few thousand acres of uninhabited land in which the Pueblo of Cochiti was interested. An elaborate NEPA procedure was promptly initiated. Here, by contrast we are dealing with over a million acres and one of the largest forced removal proposals of recent times, most assuredly an action "significantly affecting the quality of the human environment" and NEPA is being totally ignored. If there ever was a proposal before Congress which required the kind of procedure which this Committee so carefully

spelled out in the National Environmental Policy Act, this most certainly is it.

At this point let me interject that I have in this presentation addressed myself exclusively to the land dispute which is the subject of all the bills before you. So as not to impose unduly on your time I shall not now address myself to Titles I and II of S. 3230 and S. 3724, but request your permission to submit a supplemental statement on that topic.

Now to sum up, given the serious problems which H.R. 10337 raises, the damage which it would do to thousands of people now living and those yet unborn, I would hope that this Committee will take a long hard look at the House bill and its Senate companion and carefully weigh the other options available.

Please do not consider this a local matter. If H.R. 10337 becomes law, we shall try to have the bill invalidated in the courts. But if we fail there, efforts of enforcement will undoubtedly have nationwide repercussions and should be analyzed in terms of their nationwide ramifications. As I pointed out earlier, this Committee, under Senator Jackson's leadership, helped solve the long-term vexing problem of Alaska native claims. It was treated, quite properly, as a national rather than a local problem. There is every

reason to deal with this issue similarly. If you do, we have no doubt that you will come up with a fair and reasonable solution, a solution which rejects the punitive approach of H.R. 10337 and S. 2424.

Statement
of
Peggy Scott

My husband is Hopi and I am Navajo. Our children are half Navajo and half Hopi. I and my Navajo relatives live within the disputed area. Because of this marriage, our relatives have gotten along very well together. It has also created family ties within the two tribes. We are not one of the few, but one of the many intermarriages of Navajo and Hopi.

I am deeply concerned about Goldwater-Fannin Bill, S-2424, which concerns the removal of 8,600 Navajos including my relatives, grandparents, aunts, uncles, and most of all my children and us. This is the only Land we know of. Our ancestors have lived here for generations. In fact, our family descendents are full-blooded Hopi Indians. As far as I can remember, I have never encountered a situation where Navajos and Hopis are fighting physically.

What I, as a member of the younger generation, cannot understand is why are the Navajos - the Hopis fighting for land our gods have put there for all of us? Not as individuals, but as Indians. Why, all of a sudden is material things so important to us? We, as traditional Indians, that have the most sacred and strong beliefs in ceremonies, are we doing this? You, the Hopi Council - You, the Navajo Council - you are our leaders, our guide and our inspiration - are you so far gone into the Whiteman's world that we the younger generation have to remind you that fighting for land is not within our deep beliefs? It is our home within our sacred mountains, our whole life, thinking, and planning are within these sacred mountains. Have you turned hypocrites also? Then, who can we look up to advise the younger generation to carry on what we believed in? Our belief is that our gods have put us on this land for a purpose - that purpose is to live to the extent of a full life in harmony with nature. To let the creator know we are living as he planned. ^{Why} Are you doing this? Do you know about this?

Many of us want to know, believe, and live according to our beliefs and teach our children our Indian beliefs, but how can we do this when they will not be considered a member of any tribe? Are not your children's future at stake also? I for one will not allow anyone to destroy my children's identity and stability in life.

In closing, I am asking you to please take one minute of your precious time and think about who you are--what you are. We, the people, believe you to be our capable and dignified leaders, therefore, you can solve this problem in the most justified and humanistic manner.

STATEMENT
of
JOHN SCOTT

I am John Scott, a Navajo Indian from northern Arizona. I am an ex-Marine in World War II where I was part of the well-known "Code Talkers" which defeated the Japanese. In spite of this, I feel that I fought for my land and deserve to be compensated for my heroic efforts.

I represent my fellow Navajos in opposing S. 2424 Bill for various reasons. One of the reasons why I strongly oppose this bill is because it is going to harm our way of life severely. The bill, if passed, will remove about 8,500 Navajos off their beloved lands where they have humbly existed for many generations. The traditional beliefs and ways of existence will be destroyed. I know that many lives will perish because we, Navajos, have a strongly spiritual ties with the Mother Earth.

Many elder Navajos are illiterate; some of them are my relatives. If the bill (S. 2424) is passed., these uneducated people will be left homeless, jobless, and floating. If these people are removed, there is no compensation for their removal both religiously and money-wise, no designated place to be relocated, and many other heart-breaking effects. One other bill, S. 3230, sponsored by

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Sen. Joseph Montoya will surely alleviate many headaches and heartaches. The S. 3230 provides a very reasonable allowance for both the Hopi and the Navajo tribes. If I have to make a decision for myself, my people and neighbors, I would strongly favor S. 3230. Please, consider S. 3230 (Montoya's bill) as an alternative solution to the most controversial land disputes in the modern times. I see many benefits my Hopi neighbors as well as my fellow Navajos.

I thank you for your patience and consideration and I know that you will have a heart for human affairs. Again, thank you.

STATEMENT
of
SHIRLEY SCOTT

I am Shirley Scott, a Navajo Indian, from northern Arizona. I am one of the delegates from the Navajo Reservation representing my son, Roger Scott, a Vietnam veteran, my brother Max Lefthand Johnson, a Korean veteran, and many other war-time veterans who have sacrificed their time in defending our country. I am uneducated. My life is very simple. My livelihood depends largely on traditional ways like herding sheep, goats, horses, etc. The little income I get from my herds, I survive from day to day. My father, Yellow Lefthand, a medicineman, taught me no other way to make a living.

The bill (S. 2424) will be under consideration shortly. This bill will really hurt me personally because I cannot speak English. It calls for relocation of 8,500 Navajos and I do not know how to readjust to a new environment. I cannot earn a living at any other place except in the disputed area where I grew up and it is my home. The graves of my great grandfather and grandmother are still within the area. The S. 2424 bill will really harm the kids psychologically, physiologically, and mentally. For many generations the Hopis have been our friends and we live

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in peace. I never dreamed that I will ever witness a day when my people will once again be evicted from their lands. In 1864 the Navajos were marched to a distant land where they were put in a concentration camp. If this bill is passed, the history of 1864 will be duplicated so I personally and strongly oppose S. 2424. The bill does not provide a new land for my people and livestock. Currently, I am just confused and emotionally disturbed.

To show why I am deeply concerned, I traveled with the Navajo - Hopi Unity Caravan. I have to make many sacrifices to come along.

As an alternative please consider the Bill (S. 3230) introduced by Sen. Joseph Montoya. This bill will not remove people off their lands. Instead many benefits will be obtained from it. It will save 20.5 million dollars for the Government and many improvements will come about. Please give us your support on this S. 3230 as a reasonable solution to our problem. I only wish that you have the time so I could personally talk to you. Thank you

STATEMENT OF CATO SELLS
DIRECTOR, DIVISION OF AGRICULTURE AND
LIVESTOCK, THE NAVAJO TRIBE

BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
JULY 24, 1974

Chairman Jackson, Members of the Committee:

As director of the Division of Agriculture, I have had the opportunity to know well the region which is the subject of the pending legislation. I have had much experience not only in the area of range conservation but also in the area of water development. I can tell you that in a dry climate such as that of the "Executive Order Reservation" there is a definite relationship between the water that is available and the condition of the range.

In the winter of 1972-73 Navajo country received a great deal of rain. Rain in our country is always a mixed blessing. On the one hand rain is necessary for plant growth and for regeneration of acquifers. On the other hand since so much of Navajo country, and in particular the EOA lack paved roads, heavy rainfall or snowfall means there will be suffering for our people. In that winter, for example, thousands of livestock were lost because there is no way to get feed for them.

I know there are those who tell you that Navajo people mistreat their land. I would tell you that those

people do not understand the conditions under which we live. In those areas of Navajo country in which there is adequate rainfall and sufficient funds for range conservation practices, our land is as good as any comparable land. You must understand, however, that in the EOA, it has been twelve years since the Government engaged in range improvement or water development. We are maintaining existing facilities at great expense, but are prohibited from making new capital improvements. When you understand that this region is both economically poor and dependent on livestock for the necessities of life as well as an area in which range improvement has been forbidden by Government order, you will understand part of our problem.

As Professor Aberle has told you, our lands do not look crowded to the outsider, but every inch of ground is needed and used by the people who live there. There are many times when we wish to undertake some range improvement and we are always faced with a situation in which more than one family says that their customary use area is located in the area in which the improvement is supposed to be built. Thus, you can see that while our land may be relatively large, in a real sense is crowded.

I lived through the livestock reduction era and know what hardships were suffered by the Navajo people then. We were promised that life would be better if we agreed to cut down the number of livestock that grazed. Unfortunately, we received many promises; but they were simply not kept.

Now this Owens bill proposes a new forced livestock reduction. You must understand that when our people appreciate the importance of livestock reduction and range improvement, they agree to it as quickly and as readily as anyone else. When it is forced on them from outside, they have always resisted it. This proposal to force livestock reduction on our people again will not only not work but it will poison the minds of all our people against needed range improvement.

I can assure you that a Government which would deprive our people of their livestock as well as their homes will not command our people's respect.

I tell you that if the money and time were spent on water development and on range improvement based upon educating our people, you would achieve the range conservation you seek (which we seek as well) without the hardship and heartbreak which the proposed legislation contains.

You must remember that for our people, livestock is not simply a luxury or a way to make a lot of money, it is the way to make sure that our families will have enough to eat at the next meal. You might say that since most of our people have no bank accounts, that their livestock is their social security.

In attempting to force livestock reduction on our people, you would take away not only their next meal, but their security for their old age. Surely you must understand that they will resist.

STATEMENT

of

MR. SELLS

I would like to issue a statement concerning the Navajo-Hopi so-called joint-use area. This problem is over 100 years old. The Federal Government has failed immeasurably in its responsibility as guardian to the Indian tribes in resolving this problem.

The Navajo people were led to believe that the 1882 Executive Order was theirs to use in issuing the stock grazing permits by the Interior Department and with this in mind, the Navajo established homes and other improvements. The Navajo Government in an effort to assist the Navajos living in the area spent millions of dollars in development of water for stock and domestic uses. Today the Tribe is maintaining all of these facilities at tremendous costs, and yet today, by court order of 1962 we are not allowed to make any new capital developments. The area is left without other benefits to these Navajo people.

This is one of the biggest issues facing Congress in determining what to do with 8,500 Navajo people. No solution has been developed as to how these people will be handled. No funds have been allocated to relocate the displaced people.

Mr. Sells

STATEMENT
of
CARL SHARKEY

I, Carl Sharkey, from Chilchinbete Chapter boundary. My grazing permit is divided up by the Executive Order. What will happen to my livestock if the bill passes?

We live together by clan over 1,900 years and continue to this day. This bill will destroy these strong clan ties. If our 8,500 clan relatives are removed from the joint use area, it will harm our strong clan ties. We will be unable to see and live with our relatives. If people are removed, our livelihood will be destroyed. Our source of food and income, mainly sheep will be destroyed. We will be left homeless and without any source of income. This S. 2424 leaves the Navajo without any compensation. This bill leaves no sheep, horses, homes and not even compensation for the Navajos. I do not want this bill. The bill will not help the Navajos like the way Fannin, Goldwater, Steiger and Boyden are saying. They are only after the subsurface mineral "riches"! We do not want only a handful of Hopis, namely the chairman and the few other Hopi Tribal officials to get rich at the expense of the destruction of thousands of Navajos and Hopi lives.

We want to employ the Nixon policy of Indian self-determination. We want to govern our own affairs, we do not want white lawyers to govern or rule us.

We want to continue living in harmony with Hopis as our clan relatives and as our brothers. We have lived in this way with them for a long time.

We want to live according to our Hopi and Navajo religious teachings.

We do not want the S.2424 and any other type of legislative bills. We want to settle our differences with the traditional way without any Anglo lawyers!

White people have been drilling on our land and doing other types of surveying for underground minerals. Even our own tribe council is not aware of these surveys. We know we have riches within the Navajo Nation and that is why the white people are after our land. (coal, gas, uranium, and oil). That's all they want.

I speak the truth.

JOINT STATEMENT

of

MANUEL SHIRLEY
MELVIN YAZZIE
EDDIE WHITE
LUKE COOK

We are here this week to inform all our honorable Senators about our problem with the so-called Navajo and Hopi land dispute in the northern portion of Arizona. We would like to express our feelings and our hardship problems within the 1882 Executive Order area. We are here with our statements, proposals and resolutions, and our representatives. We are all opposing this bill S. 2424 (Owens bill).

Because of these following existing hardship problems with our Navajo people, separating the two Indian Tribes by means of land, mean big trouble for both Tribes. We are having trouble with new construction in this Executive Order area. We are unable to improve our homes for our families, improve livestock grazing, our schools, our clinics and hospitals, and all of our surrounding living improvement. Our families are all having hard times, our children are losing interest with their school and other activities. Our livestock is very poorly situated because of the Executive Order problems.

This Senate bill 2424 will only create more trouble, and hardship and the lives of the 8,600 Navajo people which will be removed.

Please help us to oppose this Goldwater-Fannin S. 2424 as all of Indian communities are strongly opposing this bill S. 2424. We all request for your support and efforts to stop this bill S. 2424.

We thank you very much.

Manuel Shirley

Melvin Yazzie

Eddie White

Luke Cook

STATEMENT
of
GLENNIS SINGER

My name is Glennis Singer and I am a Navajo Indian living on the Navajo Reservation in Tuba City, Arizona in the so-called disputed area. I have eight children and fourteen grandchildren who all live in the same area with me. The children's father is Joe Begay, also Navajo.

I had one son, Robert Begay, who went to World War II to fight for this country and who is now deceased leaving one son with us. Robert received the Purple Heart as a Marine. He went to war with our approval so that we could live in peace here in this country.

But I learned that now the U.S. Government will remove us from our beloved lands and break our spiritual ties that have sustained us against great odds through the centuries. This is not the 1700's or 1800's -- this is the 1970's - the 20th century and because a bill in Congress might send us back to the concentration camps as refugees I am here to speak.

The Hopi and Navajos are both Indian people and live in peace. I am here speaking on behalf of 8,500 Navajo and Hopi people who will be removed. The Bill does

not specify where we will go. I am worried about my children and my relatives. We are poor people and have managed somehow to live off the land with our livestock (horses, cattle and sheep). This is the only livelihood that my people have that gives us continued food. We all have permanent hogan homes and houses. The logs were moved over great distances -- dragged by horses and later by pickup trucks.

There is no war as reported by the Hopi Tribal Council attorney and I learned that the white people in Salt Lake City, Utah are talking for some of the Indians in Arizona. I don't know the men whose names are on the Bill and have never seen them on the Reservation.

This Bill if it is passed will cause greater hardship to us and our future than the "Long Walk" or the "Trail of Tears" that our grandparents suffered. During "the Long Walk" in 1864 my people (about 6,000) were forcibly removed to southeastern New Mexico many hundreds of miles away to prison in Ft. Sumner. They were released to return to this land in 1868 by a treaty with the U.S. Government.

The Indians have given a great deal to our white brothers. We want you to think of us kindly and fairly. We do not wish to be moved.

We ask and invite the Senators to come to our land and see and find out for yourself.

Statement

of

Keith H. Smith

My name is Keith Smith, my home is Kayenta, Arizona on the Navajo Reservation. I am 55 years old. I am the chapter President and former Councilman from my community. The reason I'd come all the way from Kayenta, Arizona is concerning the Owens Bill HR 10337 and S-2424 and how it will hurt our people for purpose I am representing all my people in that area.

This Bill HR 10337 or S-2424 should be stopped or completely taken out the Senate committees for it will removed 8,500 Navajos from their home land, where will they be relocated. hurt their children not only Navajos but the Hopis and their intermarriage.

Our Senators from Arizona were voted for by the Navajos and Hopis and other Senators and Representatives from Utah, Colorado and New Mexico. We depend on these congressmen to make the right decisions on Bills that would affect our people on the Reservation and should be aware of the damages it will do to human beings. They should reconsider this Bill now before the Senate Interior and Insular Affair, we appealed to you Senators to please reconsider and stop this Bill, and if it can't be stop, to reappeal or leave the settlement of the dispute to both tribes.

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The medias says that there are conflicts between the Navajos and Hopis and how the war is about to erupt but it is not so, they should get a task force to go to dispute area and make a full investigation. I thank you very much.

Keith H. Smith

STATEMENT

of

ROY SMITH

I, Roy Smith a 22-year old Navaho from disputed area. My great concern is that I'm a native from Executive Order area. My great-great grandparents had always live on this land even before the Spaniards came. Once two peaceful tribe, Navajo and Hopi, now force by Washington to fight one another for lands. I'm here to oppose H.R. 10337 and S. 2424. These bills will only leave tears, violence and lose of culture and human values.

The only bill that settle these up-rises is Mentoya S. 2230.

This statement is directed to Senator Paul Fannin, you are recognize as a hardest working and most respected member of the U.S. Senate. A man who can understand Indian problems, particularly the Arizona Indian. You have work with Indian people for eight years as member of the Senate Interior Committee. You have been recognize by other members that you work hard for Indian rights and Indian self-determination. You have stated many times that, Indian know best of what is best for them, and Mr. Fannin. It has been written in black and white -- in book on; partition

of the surface rights. That you have stated, that Indian citizens have earned the right to determine their own destiny. I totally agree with you, as well as a voting Indian body of Arizona. Mainly the Navaho. So think of these Indian people before you pass these bills.

The only bill that will settle this century dispute is Montoya S. 3230.

Thank you.

Roy Smith

STATEMENT OF MELVIN TELA
IN OPPOSITION TO H. R. 10337

My name is Melvin Tewa and I am a Hopi Indian residing at Tuba City, Arizona. I am presenting this statement as a representative of the members of the Lower Village of Moencopi, and as a representative of the Traditional Leaders of the Hopi Tribe. I am also a Medicine Man of the Hopi Tribe, as well as a Traditional Leader of the Hopi Tribe.

It is my purpose in making this statement to speak in opposition to H.R. 10337, which is before the 93rd Congress of the United States of America. H.R. 10337 was introduced before the House of Representatives on September 18, 1973, and proposes a partition of certain lands belonging to the Hopi and Navajo Tribes. It is the purpose of the bill to divide the aforementioned land into three parcels. One parcel going to the Navajo Tribe, a second parcel going to the Hopi Tribe, and a third parcel to be allotted to the Paiute Indians living on the lands.

It is the position of the citizens of the Lower Village of Moencopi and the Traditional Leaders of the Hopi Tribe that H.R. 10337 should not be passed and that its passage would be detrimental to the rights of the citizens living within the lands in question. It is further our position that the controversy which exists in regards to the subject lands is contrived and created by the Hopi Tribal Council for the purposes of obtaining the said lands to the benefit of the Tribal Council. It is further felt that H.R. 10337

is an attempt to obtain land by the Hopi Tribal Council at the expense of those individuals residing on the lands in questions.

H.R. 10337 was drafted without consultation with the Traditional Leaders of the Hopi Tribe and without consultation with the local residents residing on the land in question. The people residing on the land in question, as well as the Traditional Leaders of the Hopi Tribe feel that H.R. 10337 does not coincide with their desires or views on the use of the said lands and is in conflict with their wishes in regard to the disposition of the said lands. I respectfully request on behalf of the citizens of the Lower Village of Moencopi, and the Traditional Leaders of the Hopi Tribe that the Congress of the United States conduct hearings in Tuba City, Arizona, to determine the wishes of the people in that area. If the hearings are conducted as requested, the Congress of the United States will find that those people living on the land in question do not wish the lands to be divided or deeded to the various tribes, but rather that the statusquo be maintained. The Congress would further find that the people residing on the lands in question are a peaceful people who are not involved in controversy over the land at the present time and that the only controversy is that which is created by the Tribal Council of the Hopi Tribe. The Congress of the United States would further find that the people living on the lands in question have coexisted in a peaceful manner over the last several years and are fully satisfied with the present situation.

The primary objection to H. R. 10337 is that it would divide the lands in question and award certain parcels to the two Tribes. We do not feel that it is in the best interest of those people residing on the land to have the land divided and fences constructed around the land to prohibit the use of that land to the various Indian people.

A division of the land by necessity requires relocation of certain residents now living on the land. A relocation of the residents on the land creates an undue burden and extreme hardship upon those individuals. The Indian people residing on the lands in question have a love for the land which is hard for outsiders to understand. It should be remembered that many of these residents were born and raised in the same location which they now reside. To remove them from their land and from their birthplace would create a great hardship on them, and could not be compensated for by the Federal Government. The loss of one's land and his relocation cannot be measured in dollars and cents and cannot be compensated for in dollars and cents. The people who now reside on the lands in question do not want to be moved, do not want to be relocated, but only want to remain on those lands upon which they were born.

The plan presented in H.R. 10337 in regards to relocation does not provide for a satisfactory compensation for those people to be relocated. We do not feel that any type of relocation is acceptable and the only solution to the problem at hand is to

As I mentioned earlier in my statement, I am a Medicine Man of the Hopi Tribe. As a Medicine Man I am familiar with the customs and sacred areas located on the lands in question. There are many areas on the said lands which are sacred to both the Navajo and Hopi people. The division of the lands in question would prohibit certain people from visiting and enjoying those sacred places which are so important to them in their practice of their native religion. We feel that the plan as proposed in H.R. 10337 would act to interfere with the practices of religious ceremonies of the people living on the land.

In summation, it is the position of the residents of the Lower Village of Moencopi and the Traditional Leaders of the Hopi Tribe that H.R. 10337 should not be passed by the Congress of the United States. That it would deprive people residing on the lands in question of their rights without just compensation. That it would interfere with the religious practices of the citizens of the area. That it is not necessary to divide the land in question and that the people living thereon are living in peace and harmony and the only interference with that peace and harmony is being created by the Tribal Council of the Hopi Tribe. We ask that H.R. 10337 not be passed by the Congress, and that the people living on the land in question be allowed to live thereon in peace and harmony.

Melvin Tewa

MELVIN TEWA,
Medicine Man of the Hopi Tribe

Representative of the Traditional
Leaders of the Hopi Tribe

STATEMENT OF OLIVER H. THOMPSON
Tecate Trading Post, July 21, 1974

I, Oliver H. Thompson live in the disputed Navajo-Hopi area in Arizona. My family and I live one mile south of District 6, the Hopi Reservation. I have a permanent home, hogan, house, corral, summer shade house, water well, garden and my livestock.

I have lived in this disputed area for a life time. I was born in Keras Canyon on the Hopi Reservation in 1906. At our present location we have lived for 22 years. I have six children who were born and raised in this same area. Our children and grandchildren have also lived in this area a lifetime. And they too have homes. Our children and grandchildren cannot build permanent homes because construction in the disputed area is prohibited. We are informed that there will not be any water wells developed, or homes built or improved in this area. We are subject to constant patrol by guards, airplane patrols along the fences of the disputed area. The fences along the district 6 are poorly maintained. In the past, when the airplane patrol spotted Navajo stock close to the fences, they have radioed the Hopi Police, who would come out, cut the fences, and let the Navajo stock into the Hopi land. The Hopi police, then impound the stock; horses at \$25 per head, sheep \$5 per head and cows \$25 per head. The charge for impounding the stock increases every day.

We are told to move from our homes and we are informed that if we do not move from our homes, the Hopis and the U.S. Government will move us by force. They will do this by destroying our homes with tractors and U.S. troops and cannons will move us by force. We do not want to be moved by force or leave homes that we have built many years ago. We have

lived in our homes many years.

We do not agree with the U. S. Court to impose a judgement on us and charge us for \$250 a day for trespassing fees. This is not fair. The judgement was made without the knowledge of the people living in this area. The Navajo and Hopi chairman do not live in this area. Neither do many of their councilmen. The attorneys and federal officials making this decision do not live in this area.

Because of the intended forceful removal and the serious consequences S-2424 will cause, I as a delegate and spokesman for my people ^{who} oppose S-2424.

STATEMENT OF LENA TSIOSDIA
BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
JULY 24, 1974

It is with deep concern and feeling for my People, whose lives are at stake within the Navajo--Hopi joint use area, that I, Lena Tsosdia, stand before you Mr. Chairman and members of the Committee on Interior and Insular Affairs of the United States Senate.

It is my hope and the hopes of my People that each of you will cast your vote, for or against this Bill S. 2424 with a clear conscience. Before you favor to pass this bill, you must hear our side of the story why we oppose this "desperate expulsion bill."

First of all, there is no mass land dispute between the Navajo and Hopi People. Regardless of what the Hopi Chairman has injected or instilled into your minds, by way of news media or however, there is no range or any kind of war going on out there. There had been a few unfortunate incidents where my People stood up to defend themselves and their livestock. An example and the result of "self--defense" is a photograph, which you probably have already seen, of a busted-head that the Hopi Chairman loves to display publicly to gain sympathy.

This Bill S.2424 is worse than the Long Walk of 1863. The Long Walk of 1863 was enforced upon my People without much compassion, but at least then, the government had a place for them to go to which was to Ft. Sumner. This Bill S. 2424 does not say where they will put our 8,500 Navajos.

The 1882 Executive Order area established by President Chester Arthut of the United States was probably well-intended and the President at that time probably never realized that it would one day cause human sufferings. We all know that there was lack of sufficient and efficient communication at that time and there still is today between the White and Indian.

For generations my People lived side by side with the Hopi Indians in a peaceful human manner. I have never known any member of my Tribe to intentionally harm the Hopis or any other Indians they come in contact with. I know that many of our Navajo People depend on and use Hopi Medicine, Hopi rituals to cure some of their illnesses. My family today still go to Hopi villages to seek Hopi Medicine Men for cure. We are always welcomed by the Hopi Medicine Men and their families and give us their services. During the life time of my grandparents and I as a child, a hopi family occasionally visited our hogan at St. Michaels, Arizona to trade with us. They brought melons, peaches, piki and corn. We gave them money, turquoise and silver jewelry, woven-rugs, and materials in exchange. The Hopi family were always welcomed and we made them feel at home. They were treated with respect and they stayed as long as they desired to trade with other near-by Navajos around our area. This kind of friendly relationship still exists between members of both tribe.

I don't know where the Hopi Chairman has been all this time, not being aware of the real facts of life that exist out there. By the way, he has made some childish remarks about my People. One such remark is, "navajos steal everything they see in sight". If this was true, not a single Hopi village, that lie within the heart of Navajo Nation, would exist today.

Most of my People depend on livestock for livelihood within the 1882 Executive Order area do not understand, do not speak, and do not write English, neither do they think your foreign way, therefore it is difficult for them to comprehend and accept the legal techniques imposed upon their lives. They do understand the land they live on is their mother and that is their whole life security. They live and nourish their bodies upon the land. Although they have great difficulty in surviving, due to lack of water in most areas and other obstacles, they want to remain and continue to live where their ancestors lived for many generations. They will not leave the remains of their loved ones behind.

My father who is seventy years old, a World War II Veteran, lives in Teesto near Winslow, Arizona. Just past April we invited him to visit us, his children, at Window Rock. After two days of his one week visitation he became withdrawn and expressed a desire to go home. He kept talking and wondering about his grandchild who lives near-by his hogan. During his visit I informed him that he might have to move because the Hopis are claiming the land he is living on. We told him that he was welcome to come and live with us in case such a move was enforced. He said, "I am going back home and I am going to stay there. No one is going to move me anywhere." He is now back in Teesto.

If the Hopis wanted the land so bad, they should have fought back for the land, instead of running away from it. They got themselves up there on the Mesa tops where they are presently situated. I want to make myself clear. My father is not moving his butt to no where.

STATEMENT

of

EMMETT TSO
Tuba City, Arizona

Dear U.S. Senator, Committee on Interior and
Insular Affairs,

I'm a Navajo Indian residing within the boundaries of the most recent Goldwater and Fannin bill, S. 2424, Section #5 and Section #2 area, of the Navajo Reservation. We realized that the progress towards an administrative solution is complete and necessarily slow. We also realize that the Hopi Tribe has much interest in the area described in the 1934 Act now as a result of the "Steiger, Owens, Goldwater and Fannin Bill and Freeze Order" and seeming inability of any Federal agency to determine and define the nature, extent and ownership of this area, we will continue to live in a social and economic vacuum.

I wish to express my concern over this modification insofar as it may become law. Although we have been assured that it is temporary and does not carry any suggestion of permanence, we remain skeptical and apprehensive if it were to become a law it would in effect, deprive us of our homes and lands, causing us personal and economic disadvantages and injury in the future.

Our ancestors lived in this area, farmed and herded livestock long before the Hopis moved into this area, even prior to the Executive Order of January 8, 1900. If the present S. 2424 bill were to become law it would deprive us of the only small right to land remaining to us after years of detrimental Federal Indian land policy, it's unconstitutional, because of the fact that most of the bill boundaries, is religious area, such as Black Mesa for one.

Although it is true that the Hopis residing in Moencopi Village use land areas beyond the Village itself, their use of this land has not interfered with the use of what we regard as our land for years the Federal Government has deprived us of the full use of our land. If this Senate S. 2424 bill should become law, it would be the final, and most drastic and devastating solution we could imagine. It would totally deprive us of the land we have long lived upon and worked on as our homes.

In accord with Navajo history told by our people. The Moencopi Village came into being less than 100 years ago, first house was built by the two families in Moencopi Village 80 years ago, who migrated from other villages.

It's the Navajo land they are living on, in this particular area. This will affect 8,600 Navajo

people in the 1882 Executive Order area and the 1934 Executive Order area now included in the Owens-Goldwater-Fannin bill, S. 2424.

I'm a registered voter of Arizona State and a citizen of Arizona.

Please give your utmost and careful consideration and defeat the Senate bill S. 2424.

I personally am officially representing 2,200 persons in the Tuba City Chapter area comparable to a county. Within the disputed area. The entire delegation represents 8,600 people of the Navajo Nation.

Your most expeditious attention and necessary consideration will be greatly appreciated

Emmett Tso

STATEMENT
of
JIMMIE TSOSIE

My name is Jimmie Tsosie, a carpenter and medicine man, who lives at a place called Lower Greasenwood in the 1882 Executive Order area. I'm known to U.S. Government by this Navajo Tribal census number 36203. I was born here in 1918 and have since lived here all my life. My wife and I have 4 children, all of whom live with us along with my other relatives on whose behalf I speak. My wife's family and relatives live right outside District 6 on the Hopi Reservation.

According to my elders, they said that my ancestors headed by our family headman or chief, "Curley Hair", settled here upon their return from 4-year captivity at Ft. Sumner, or "Hwelte" in 1868. Since that time, we have regarded this land as ours until the 1882 Executive Order boundary line declared this area become jointly owned by both Tribes. Despite this, we have lived peacefully with our Hopi neighbors for over many years.

On behalf of my family, I hold a grazing permit to raise cattle and sheep. This is our only means of livelihood since I'm unemployed. This is the situation that my other relatives and fellow Navajos are in.

Since 1962 most of us who live there have been forbidden to build new homes, roads, water wells, or to get new grazing permits which will allow us to expand our herds. We are not allowed to get any type of public assistance for other improvements like hospitals, schools, roads that will benefit our people.

Now 12 years later under this S. 2424 we are being told that we'll have to move again. We are strongly opposed to this bill, it will totally disrupt our lives and welfare but those of our children, their children, and all future generations of both the Navajo and Hopi people. In addition, this S. 2424 will force upon our people much misery by destroying our grazing permits, taking away our land, and disrupting our relationship with our neighbors, the Hopi people.

Already this land dispute issue has placed a restriction on all general improvements such as new homes, roads, hospitals on the land. We are being denied any type of public assistance concerning roads, hospitals, schools which will make life better and easier for us.

When you, the white people, came here in 1620 to this continent, we offered you our help by making your survival on this land possible. In turn you have likewise helped us by offering a better standard of

living such things as hospitals, schools, education, transportation and other modern conveniences that our people have adopted within the last few decades.

In view of these, I strongly plead with you on behalf of my family, clan relatives, and my Tribe to STOP this S. 2424. Please help us correct this century-long mistake made by the U.S. Government.

STATEMENT

of

KEE TSOSIE

I was born and raised in Indian Wells, Arizona on the Navajo Reservation. Today I'm one of the Chapter House officers. Leader of my community, therefore I am deeply concerned about my people. My family live within three miles from the disputed area but most of my relatives live within the disputed area.

500 I strongly oppose bill S. 2424 because removal of 8,000 Navajo people will hurt the whole Navajo population on the entire reservation.

This land was put there for the Navajos in the beginning and have lived here generation after generation. We live off this land by livestock so has our Hopi friends by farming. If the Navajos are removed, they will surely die of hunger, cold and loneliness. We have no other place to go. What will happen to our children in schools? What about the United States veterans, who have fought our wars? What will happen to Navajo and Hopi intermarried couples? Their children?

Navajos have been removed once already in 1864 so we cannot and must not let this happen again. Also after the Treaty of 1868, Navajos have signed

never to use firearms again and who gave Government
the right to make our Navajos use firearms again?

Kee Tsosie

STATEMENT
of
REX NEZ TSOSIE

Dear Senator,

With deep respect and sincerity in your judgment I would like to voice my opinion, regarding the effects H.R. 10337 and S. 2424 introduced by Wayne Owens and Barry Goldwater and Paul Fannin would have on the Navajo people.

I am very concerned and hurt by the bill, which would require a force removal of 8,000 of my people from their homelands.

We are poor, we are uneducated and know no other way of living except by livestock. We are suffering enough, due to no rain, our land is poor, our livestock are poor. Aside from all our suffering, the land and our livestock are previous to us. We are a part of the land and it is a part of us.

We believe the four sacred mountains are the four posts of our home, Mt. Blanco, San Francisco Peaks, Mt. Taylor and Mt. Hesperus, all located on the outer boundaries of our Navajo Reservation in Arizona.

We have been friends with the Hopi people for centuries, our children are intermarrying. We want to

be left alone to solve our own problems. Outside interest has created problems, that never existed before, until the white man was hired to run Indian programs. We use one another's religion, we share and exchange food. We are Indians.

Please, Senators, I am seeking your judgment to the best interest of human lives. Our people. Your people. We are all Americans and should remain brothers and sisters.

Rex Nez Tsosie

STATEMENT OF GEORGE P. VLASSIS
BROWN, VLASSIS & BAIN
GENERAL COUNSEL FOR THE NAVAJO TRIBE

BEFORE THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE
JULY 24, 1974

The Navajo-Hopi Dispute:
"Old Myths and New Realities"

I find it hard to believe that my avowed purpose for appearing before this Senate Interior Committee is to do my best to prove that Navajos are not the lawless pirates of the desert. That there is no range war existing in the Joint-Use Area, nor is there likely to be one in the future unless created by Anglo provocateurs. That the Hopi are not a weak and defenseless people. That the Congress is not strait-jacketed by any legal proscriptions in attempting to resolve this dispute. That Navajos, like all people everywhere, will not simply pack their possessions in the nearest flour sack and beat a quiet retreat if forced from their homes by ill-conceived relocation legislation.

But I would guess that that is the very thing I am being called upon to do and is the very thing all of the Navajos in this room have been sent to Washington by their people to accomplish at great cost and with great effort,

all of which could have been better expended on the many other economic and human problems pressing in upon the poorest of the poor.

I would like first to speak of the triangle that presses upon the Navajo Tribe. I see from the report signed by, of all people, the Commissioner of Indian Affairs, that part of the rationale for removing 8,500 people from their residences in order to gain one percent of the surface area of the Joint-Use Area is that the Navajo Tribe and Chairman MacDonald, as Chairman of the Navajo Tribal Council, have been adjudicated in the federal court as being in contempt for failure to abide by the court's order to reduce livestock by at least eighty-two percent forthwith. The Commissioner concludes, and I quote, that "Finally, we have seen that the court's order to reduce livestock will inevitably lead to some relocation of people." Since "there is no statutory authority to compensate" these people, the Commissioner believes there "is a gap which . . . must be filled."

I don't know whether to laugh or cry. The gap that must be filled is the gap that has been created by the Bureau itself, which, everyone seems to forget, is a co-defendant in the same case. Somehow the Navajos are supposed to be lawless because the Bureau hasn't fulfilled its obligations. In fact, the Bureau's representatives have testified under oath that:

"If we take the livelihood away from them then the Government has the responsibility to see those people do not starve out there. And like I mentioned, I have already informed Washington we are facing that situation."

Now that the Federal Court has taken the recommendation of the Bureau to "take the livelihood away from them," that then becomes the rationale for legislation to remedy this problem. In other words, the Navajo has become the chief pawn in a governmental chess game. First, the Navajo is made even poorer than he was by a plan of stock reduction that simply cannot be complied with, which has itself been recommended and endorsed administratively by the Bureau of Indian Affairs and has been attempted to be enforced by the federal judiciary. Then federal legislation is proposed to remedy the very difficulties that have been caused by the federal trustee, and now the justification for that legislation is to remedy a "gap" that has been created by the neglect of that self-same trustee. The effect of this rather circular reasoning is that the Navajo has been put in a position in which he may well feel it is necessary to do things he might not otherwise do in order to remain alive. He has been coerced into this position by the very federal trustee who now seeks to remedy the sickness that he imposed upon the same beneficiary, the Navajo, that he is charged by law to look out after, at the beneficiary's expense. It is no wonder that the Navajo is confused and puzzled--so am I.

I know that the hour is late and all of you have had the opportunity to hear Mr. Boyden orate on the evils and injustices which have been perpetrated upon his client. I think that the appropriate advice would be that which was given by Nietzsche when he said, "Distrust all those in whom the urge to punish is powerful." If we were to make our judgments of today based upon the injustices of 150 or 200 years ago, we would be making decisions which bore little relationship to the realities under which all of us must live.

It makes no more sense to punish Navajos for wrongs that their ancestors may have committed in the past than it would to punish the white population of this country for the wrongs that it did to the Native American population in the past. If we are not willing to seriously consider the return of almost this entire nation to the descendants of its original inhabitants, then we should not be willing to deprive 8,500 Navajo people of their homes to avenge the supposed wrong which their ancestors did to the ancestors of the present-day Hopis. The ultimate irony is that all the parties to the supposed wrongs are dead and we should let the dead bury the dead.

The Hopi Tribe has argued loud and long that we cannot go against the Supreme Court and take the land from them which that Court held was theirs. First of all, as

I am sure you know by now, the Supreme Court never considered the Healing v. Jones decision; rather, it summarily affirmed the decision of the three-judge court. It is important, and those who would mislead you would have you miss the distinction, to note that it is one thing for the Congress to reverse a Constitutional decision and it is entirely another thing for the Congress to recognize that decision and to choose an alternative course of action. All we are dealing with here is a Congressional eminent domain proceeding in which rights of the Hopi Tribe vested in 1958 will be paid for with money. That is the Navajo proposal and this is the proposal of Senators Moss, Montoya and Domenici.

I might note parenthetically that it is not true that the Congress does not reverse decisions of the Supreme Court. You have the authority, for example, to prevent cases from ever reaching any federal court by virtue of your power to determine the jurisdiction of that court. For example, by increasing the dollar amount from \$3,000 to \$10,000, many litigants are deprived of the opportunity to have the federal courts hear their cases. More specifically, when the Supreme Court ruled in 1944 that the insurance business was commerce, thus jeopardizing state systems of regulation which had evolved over the years, following prior court decisions which had held insurance was not commerce, you swiftly responded

by permitting the states to continue their regulation. When you were displeased with the Supreme Court's rulings in the Miranda and related cases, you quickly rewrote the criminal law and established a standard that pre-existed the Miranda one. In military affairs, you have precluded the court from undertaking the review of certain military actions, including most Selective Service related matters. Thus, even if this were a Constitutional issue (which it is not), the Congress has a long history of taking action contrary to that of the Supreme Court.

Mr. Boyden, some of the Hopi and their supporters have maintained that there is no alternative under the existing law. The theory seems to be that this is inevitable because the Hopi is somehow entitled to precisely that one percent of the land upon which the Navajo resides. Surely, there must be more here than meets the eye--but what could that be? I have searched in vain for what that might be, and as of the date of this hearing I can find only two clues: First, the suppositions which appeared in the editorial section of the Washington Post on Sunday, which I had tended to discount until last night. It was hard for me to believe that, in fact, mineral deposits might have some place in the scheme of things. Second, until now, I had thought the main issue was fulfilling the reasonable expectations of two groups of very poor people. But I am compelled to rethink the problem after looking at page 8 of the recommendations of the Department of the Interior.

There will be found the following proposed amendment to
H.R. 10337:

"In the event of a dispute between the tribes regarding the exploration or development of such minerals, the Secretary is authorized to resolve such dispute; if the Secretary determines that exploration or development would be in the overall best interests of the tribes, he is authorized to take such actions as he deems necessary to implement such exploration or development."

The practical effect of that language is that mineral development in the Joint-Use Area would be transferred from the control of the Navajo and Hopi Tribes directly to the Secretary of the Interior. During the prolonged negotiations that have taken place between mineral extraction companies and Navajo representatives over the last three years, only one transaction has been consummated because in all others the royalty price offered to date has been embarrassingly and uncomprehendingly low. One way to circumvent Navajo reluctance to give away their minerals is to place that power in the Secretary's hands. And he is not the rightful owner of the mineral deposit.

Could this really be mixed in with what otherwise would seem to be straight-forward statements of concern for the welfare of these people? I don't know the answer to that today, but I would hope that by the time field hearings might be scheduled for the area with which we are all concerned today, we would all have a better idea as to whether once again an Anglo hand is reaching for the Indian till in a shadowy fashion.

I am not engaged to deal in doubt and innuendo; I am required to deal in rational thought, with objective evidence. Since the Congress is not limited to any particular method of solving the Navajo-Hopi land dispute, why is it that the one and only solution that is regularly fashioned by the proponents for humanity for Indians continues to embody the provisions of H.R. 10337, which, in turn, is now recommended for passage in a form which encourages the creation of more disputes between the two tribes, which, not illogically, would be encouraged by mineral companies in order to deal with Interior instead of the Indians themselves.

As I think many of you know, coal in the West is not generally in private ownership as it is in the East. In the West, coal is in the hands of three parties generally: the railroads, the Federal Government, and the Indian Tribes. The railroads handle themselves very effectively. Federal coal has been the subject of a great number of discussions in this chamber and elsewhere. Indian coal has been the subject of inquiry by many people. The price of the three kinds of coal has been, in descending order, good for the railroads, not bad for Federal Government, and incredibly low for the Indian.

Hopefully, it will turn out to be true that there is no connection between coal and the Navajo and Hopi. It

does seem unlikely, however, in view of the fact that several of the railroads have placed a moratorium on further leases of coal, that the Federal Government has, for the last couple of years, placed a similar moratorium on coal sales or exploration, and that the price of coal is currently thought to be as much as 54¢ per ton, while the Indian receives as little as 15¢.

It would seem in order to investigate this situation before imposing the purportedly equitable solution contained in H.R. 10337 upon the people who are to be the intended beneficiaries of this generosity.

STATEMENT
of
RUBE WATSON

I live within the Executive Order. We do not want people to be removed from their homes. It will be bad for our children.

My great forefather lived on our present homeland for centuries and centuries. They have all lived and died in our present homeland.

We have known and lived with Hopis for years and years. We do not fight with them and we do not want to fight with them. Why does someone want to divide us?

We do not want S. 2424. We oppose it. We are willing to settle the land question by favoring the S. 3230 instead of S. 2424.

We live by raising livestock. There are no jobs anywhere. We do not raise sheep over and above the limit that was given us by our sheep permits.

I beg your assistance to stop this bill S. 2424 now before it destroys thousands and thousands of Navajo and Hopi men, women and children.

Rube Watson

Date _____

STATEMENT
of
EDDIE WHITE

My name is Eddie White. I am 36 years old, living in Pinon, Arizona, northern Arizona - 8 miles north of Hopi.

My mother and father and their great grandparents who also lived on this land at Pinon 8 miles north of District 6 boundary. There are 2,460 people living in this area. About 1,200 are school-age children, 85 school children are attending Pinon Building School and 40 children going to Day School. School condition are very poor with many lack of facilities. undevelopment roads and school. Some other children attended others school in public school and off reservation school. Between 70 and 80 students traveled to school over 50 miles away from Pinon to Chinley, Arizona. The past twelve years, we suffered many problems. The present bill S. 2424 created more problems for the Navajo people. -- To solve a problem I agree with S. 3230.

Eddie White

STATEMENT
of
BRUCE WILLIAMS'

Senators:

My name is Bruce Williams. My home is in the Sand Springs area, just below the District 6 boundary line.

Even though I work in Tuba City for the BIA, I keep my house in Sand Springs where I have a small number of sheep. I have lived in the Executive Order area all my life except for those years that I served in the Armed Forces.

I was born in what now is District 6 as were my parents and grandparents. I cannot believe that the Hopi people want us to endure the hardship that the Goldwater-Fannin bill S. 2424 would cause.

While I was in World War II Government officials drew a boundary line (1943) for District 6 and forced all of the Navajos living in the area to abandon their homes without compensation. There were many Navajos who had grazing permits within the area which now is call District 6. In the 1930's and virtually all of these permits were withdrawn or cancelled (1974).

I know that the Hopis do not use the lands that we were forced to abandon more than thirty years

ago and I do not believe that they need or would use lands outside of District 6 now.

We are like Hopis in that we wish to build good homes and have nice cars but one cannot have these things under current conditions. More importantly, we can't sleep or eat right for fear that our very land will be taken. Every Navajo who resides in the Executive Order area plus many more are very much concerned over the Goldwater-Fannin bill and, this is affecting the well-being of our people even now.

And also, I think it is, unfortunate, for instance the intermarriages. I think that the remarks and actions by the Hopi Tribal Council leaders have made relations between the two tribes more difficult.

Passage of the Goldwater-Fannin bill would only increase the difficulties between the two tribes. I think our problem can be resolved by discussions in the traditional manner if we are left alone.

Thank you.

Bruce Williams

STATEMENT OF ALLEN WOODY

Yesterday during the hearings before the Senate Subcommittee here there were several false accusations made against the Navajos. Everyone was there to hear true statements, and yet John Boyden introduced a lot of testimony that contained false statements.

We Navajos do not want to fight with Hopis. We want to continue living in peace with the Hopis. We want our children (Hopi and Navajo) to live in peace with each other.

A daughter of a Hopi man whom we called "Meat Man" made the false statements. She is from Jeddito area. She lives near Charlie Begay. We do not bother her.

Her allegations stem back 20 to 30 years ago. The man she named, Dale Pete, was a range rider for District 7 at that time. He worked for John Collier. As for me; I encountered the Hopi lady and her relatives on one occasion. They were driving around for wood but they were intoxicated with wine. So all I did was ask them not go around the community in that condition. That is all I did. I did not refuse them wood nor did I say bad words to them.

It is sad that this so-called "land dispute" is finally getting to where false statements such as those this Hopi lady made, are being introduced into very important hearings and before Washington leaders. We Navajos do not want war.

STATEMENT OF ALLEN WOODY

Page 2

Instead, all we ask is that we continue to live in peace with the Hopis without bad words and bad feelings.

This is all I want to say. Thank you.

STATEMENT

of

KENYA YAZZIE
Navajo Citizen Jeddito
Navajo Nation
Arizona

Subject: Navajo and Hopi Land Dispute

My name is Kenya Yazzie, a member of the Navajo Tribe and member of Jeddito Chapter in District #7 on the Navajo Nation (Executive Order of 1882) in the State of Arizona.

I am 44 years old born on May 5, 1930. My father 96 and mother 59 and have four brothers and four sisters. All reside in the same location all their lives.

I have also six close relatives with their children living in the same vicinity. These are family units of six between Keams Canyon and Jeddito, Arizona. These families were forced or evicted from District #6 in 1944.

We still have our children attending BIA School operated by BIA and Hopi officials according to BIA regulations in Keams Canyon, Arizona. The percentage is 85% Navajo students and 15% Hopi students as day school students.

The Owen's Bill H.R.-10337 or S-2424 is pending in Congress today which I am completely opposed because if

passed it will not only harm our children mentally and physically education wise, but it will also harm them spiritually religious wise. This bill has already harmed and destroyed our livelihood in many ways. Therefore, as a human being to another I am asking you for support to oppose the above mentioned bill.

My father was placed in jail in Keams Canyon, Arizona for impoundment of livestock and resisting unjustly and false arrest. False statements were made against him from the Hopi Court. My father Tsinijinnie Yazzie, Census #70 is 96 years old and hard of hearing which prevented him from expressing himself or defend himself. My father told me recently, he thought of his bad experience, unable to eat or sleep many nights because of this injustice is being allowed.

As a medicineman, he always walked traditionally the blessing way all his life. I felt real bad about the injustice done to me and my families. When I was a healthy man, I done lots of good deeds for the Navajo people, even for the federal government, especially the Hopi sharing food and offered many prayers for all from harming my land and my traditional ceremonies."

The pictures and stories about the incident are all false about the rustling cattle. The photographs should have been taken of individuals facing the camera and printed as such in the newspaper.

I, Kenya Yazzie, have been living in Jeddito Area and been working as Grazing Committeeman all my life. I have never witnessed nor heard of Navajos rustling Hopi cattle neither burn down their houses or corrals.

My personal statements are facts to the best of my knowledge.

Thank you.

Statement
of
Pete Andy Yazzie, Sr.

I, Pete Andy Yazzie, live at Low Mountain School, Biam Dam, Arizona. I was born and raised here. I am 39 years old and have six children. My wife is a Navajo who was also born in this area. All of my children were born at Keams Canyon, Arizona. Our parents, grandparents and our ancestors and relatives all were born and lived in this area during their lifetime. One of our relatives is married to a Hopi.

Our homes are permanent houses and hogans with corrals, garden fields, water wells, and our livestock. We have lived in this area since birth. My wife and her family use to live in District 6 (th Hopi Reservation), but the Hopis moved my wife and her relatives out of the reservation by force in the 1950's when the new District 6 boundary was made. The Hopis have constantly been moving for more lands since then.

I was employed by BIA, Facility & Engineering. We build Kindergarten classrooms, teacher's quarters and health clinics. We have built buildings in Lower Greasewood, Low Mountain, Seb Del Kai, Dilkon, Toyei, Pinon, Cottonwood, Second Mesa, Rocky Ridge, Many Farms. Last December we started to build again at Low Mountain

and Rocky Ridge, but BIA told us to halt construction of buildings in this area because of the land dispute. No more construction until further notice, we were told. This is not fair to the children who need to get an education on an equal basis and without discrimination. In a country of Democracy, education is deprived of our children. Why?

During March 1974, when Navajo livestock were impounded by the Hopis, our family's sheep were impounded and we had to pay \$150 in fines. The Hopis deliberately herded our sheep into their land by scaring them with an airplane. Some of the sheep were approaching lambing season and they lost their young ones. The lambs were born dead. We not only lost our livestock, but also our livelihood.

The people I represent have told me that they do not want to be moved from their permanent homes. They were born and raised in the area they live in. They have made permanent buildings and homes in the area. They have kept their livestock in this area for many hundreds of years and they wish to remain there. They want to stay here where their ancestors have stayed for many years.

In addition to these statement, I wish to inform you that the Hopi official are claiming they are peaceful people but to my knowledge Hopi police and anglo ranchriders wear and carry weapons

with them at all times. I don't see how we can be peaceful with these people on account of these weapons.

I was once a National guard of Arizona 1950-1951. I have two brothers who did their patriotic chores in Vietnam. Many of my relatives also served in the military services. This should be taken into consideration as we risk our lives for our country as well as our reservation.

As a delegate for my people, I wish to oppose the passage of S-2424. My people want to live in peace and happiness.

Pete A. Yazzie Sr.
Pete Andy Yazzie, Sr.

STATEMENT
OF
PAULINE YELLOWHAIR

I am opposed to the passing of Owens Bill HR 10337. If the bill pass that will mean that there will be trouble between the two tribes. The bill will destroy all the culture and traditional being for both tribes.

I think this bill is totally a wrong doing to remove people and make them landless.

I agree with a bill S3230. This bill will solve the Navajo problem.

Pauline Yellowhair

STATEMENT

of

WILLIAM YELLOWHAIR
P. O. #404
Tuba City, Ariz.

Mr. Chairman:

I'm from the Executive Order area, very close to District 6. I'm a stock man, sheep and cattle raiser.

I was born on this land 56 years ago. -- In 1938, districts were established by the Department of Interior through its agency, BIA. After the districts were established, I was forced to move from District 6, to a mile outside of this district.

I have a large family which I support with the livestock I raise. -- I'm also an elect tribal official from Coal Mine Chapter as councilman. In this respect I'm talking for all my people, because the removal will deteriorate the lives of many people, 8,600 lives.

Presently, we cannot make any improvements on our living conditions, and we are to reduce our livestock to a minimum numbers which will not support my family.

Major part of the population is uneducated or have limited education. Because of this, it will be hard for them to adjust to a new life elsewhere.

For these reasons, I'm completely opposed, as well as the people I represent, are opposed, to the bill which is now before the Senate Interior Committee.

The best solution I believe should come from the native Americans that live on this land. They are the people that are affected, therefore they know what is good and what is bad. I think this can be achieved. Why? We have some Hopi traditionalists in our caravan who are also opposed to S. 2424 bill.

Thank you, members of Committee.

William Yellowhair

STATEMENT OF IRENE YESSILTH

I am a Navajo lady from Jeddito area. My name is Irene Yessilth. I have lived there all my life. I am 60 years old. I know a Hopi lady name Melvina Navasi. I live near her home, about 3 miles away. She told some lies about my people, stealing her sheep, shooting her sheep and killing them, also her dogs too. Chasing her and her children, tearing her house down too. That is not true. I live near her place, about 3 miles away. I never hear such things as that. My brother is Charlie Begay, who lives near her place about 1/2 mile. She moved out from Palacca Village in 1914. Her father's name is Seequee. They bought a hogan from a Navajo man named Woody. From that time on, they started living there. They made a field for planting. After the old man Seequee died, they never planted again. I never did see or hear anything like that (shooting, stealing) against her. She told so many lies about my people. The Navajos have been helping her, herding her sheep and they even built a log cabin for her. The man who helped build her house is Bill Yazzie. The log cabin is still there. The Navajos are not tearing down her home.

This is a true statement.

STATEMENT

of

HENRY ZAH

My name is Henry Zah. I am a member of the Low Mountain Chapter, which is in the joint use area. I was born in the joint use area. My parents were born in the joint use area, and their parents before them. For five generations, my people have lived and died on the land which is to be taken from us by the U.S. Congress.

In 1943, we were forced to move from the land called District 6. We left behind our homes and the burial sites of our ancestors. The land which had been ours for centuries was taken. No one lives there now. There was little land available, so all of us who were forced to resettle around the community of Low Mountain. It was a hard, hard time. There was not enough land for the sheep, or food for the people. Since 1962, we have not been allowed to build on the land in the joint use area. No new wells have been dug. The roads get steadily worse. We have no permanent hospitals or clinics. We cannot even bring in electricity for our homes.

Now, if the Owens bill No. 10337 is passed we will have to move again. 8,500 people will be forced from

our homes and the lands of our ancestors. There is no more open land for the sheep on the reservation. What will we do? Where will we go? This move will destroy our livelihood, and probably our lives. The older people will never recover. The younger people will not like it. They may fight not to go.

The Hopis do not need the land. They do not use that land they took in 1943. The Hopi Tribal Government says the Executive Order of 1882 means the land is theirs. The land was ours long before that. We and the Hopis lived together in peace, they on the mesas, we on the plains. Now, because of lines drawn with a ruler on a map of our homes long ago by someone who had never seen them, we must leave our homes, and our way of life. They say we may be given money for our land. What is money to a man without his home, without his sheep, without his land, without his life?

We have come all this way to plead with the Senators for our lives. We are not marks on a map. We are people. During the Second World War, many Navajos from this area served in the armed forces. I fought and returned home. Many didn't. Some were prisoners of war. Some returned disabled. Is the Owens bill our reward for doing our duty? Is justice the destruction of

8,600 human beings? Is Democracy forcing people from their homes and leaving the land to the tumbleweeds and the coyotes? Is America making enemies of two peoples who have lived in peace for centuries?

The Owens bill is wrong. It did not come from the people, either Hopis or Navajos. It will not help the people, either Hopis or Navajos. We plead with the Senators to defeat this bill and leave us our lives.

Yesterday, during the Senate Subcommittee hearing the Hopis and the Navajos testified against one another.

The Navajos testified. John S. Boyden, the Navajo Tribes, and doctors. At the end a Hopi woman testified who is from the Joint Use Area, Jeddito, Arizona. Those she mentioned.

In particular, she mentioned some of us who were herders about eleven years ago. I was a councilman then. The Hopi woman lives in Jeddito valley near a place we call "Sand Spring." Her father was known by us as Seequee and also by a Navajo name meaning "Meat Man." She told about us. She told how Navajos allegedly would not let her have some wood, water for her sheep and her people. She told also of how that Navajos allegedly stole all her sheep. They all are false accusations and I hereby will answer to those allegations to the best of my knowledge.

My name is Henry Zah, and I was then the councilman. True, the Seequee's family did live there (in Jeddito) She said that the Navajos did not help her at all. At one time we noticed the foundation of the house badly needed repair. Our chapter officers decided to build a new home for her which was then built and which is still standing today.

This was during the time I was a councilman. We were obliged to help and we did. Who was it who refused to help her? She lives near Charlie Begay who was a Chapter officer.

This kind of false statements are not only embarrassing but damaging to both the Navajos and Hopis. The allegations she made are false.

The guns she mentioned are not true. She has brothers and other relations. We all know that her father died from some long disease. Navajos did not kill him. She blamed the Navajos. There are 135,000 Navajos, we all have census numbers and names and other identification. Why did she not say who, what Navajo it was who killed her father? Again, these are obviously false statements.

She has two in-laws who are both Navajos. It is unusual that if the Navajos are as mean to her as she claims these two men continue to help her.

However, we all realize that this type of statement is urged and encouraged at attorney Boyden's suggestion.

Today as I know them, they frequently go around the community in intoxicated condition.

#

RESOLUTION OF THE NEZ PERCE TRIBAL EXECUTIVE COMMITTEE

Whereas the Nez Perce Tribal Executive Committee has been empowered to act for and in behalf of the Nez Perce Tribe, pursuant to the Revised Constitution and By-Laws, adopted by the General Council of the Nez Perce Tribe, on May 6, 1961 and approved by the Acting Commissioner of Indian Affairs on June 27, 1961; and

Whereas H R 10337 attempts to divide land between the Navajo and Hopi Indian Tribes; and

Whereas the land, lives and livelihood of over 8,000 Navajo Indians are threatened by this legislation; and

Whereas the Navajo people have for centuries occupied and used the lands within the area known as the 1882 Executive Order Reservation; and

Whereas H R 10337 now pending before the United States Senate would not only cause the removal of thousands of Navajos from their ancestral homelands but would directly cause undue social, economic and cultural disruption; and

Whereas in the year 1974, we cannot tolerate the same and disgrace of another forced expulsion of American Indian people such as occurred with the "Trail of Tears." Now, Therefore, be it

Resolved, That

1. The Nez Perce Tribe of Idaho recommend to the United States Senate to oppose H R 10337 and further opposes any forced removal of Navajo people from their homes.

2. The Nez Perce Tribe of Idaho recommend to the United States Senate to consider alternative proposals which will have the least effect on the lands, lives, and livelihood of the Navajo people and which will provide a just and moral land settlement.

3. The Nez Perce Tribe of Idaho hereby directs copies of this Resolution be transmitted to members of the United States Senate urging their vote and influence opposing H R 10337.

CERTIFICATE

The foregoing resolution was duly adopted by the Nez Perce Tribal Executive Committee meeting in regular session July 9, 10, 1974, in the Tribal Conference Room, Lapwai, Idaho, a quorum of its members being present and voting.

WALTER L. MOFFETT,

Secretary.

RICHARD A. HALFMOON,

Chairman.

Attest.

RESOLUTION OF THE YAKIMA TRIBAL COUNCIL

Whereas there is pending before the United States Senate a bill, HR 10337 sponsored by Congressman Wayne Owens (Utah), which calls for the removal of thousands of Navajos from their ancestral homelands; and

Whereas HR 10337 attempts to divide land between the Navajo and Hopi Indian Tribes, the people who have occupied and used the land for more than a century have been predominantly Navajos; and

Whereas the partition and removal of over eight thousand (8,000) Navajos will create gross inequities and tragedy to the Navajos who are among the poorest people in the country; and

Whereas the price the United States government will pay is not only measured in relocation costs, but it will be reflected in increased welfare, education, health and other social costs for generations to come; and

Whereas the Hopi Indians do have a compensable interest and these are fair, decent and moral alternative solutions, in which this interest can be recognized; and

Whereas all efforts should be taken to honor the trust responsibility of the United States government to protect the lives, land and livelihood of the American Indian people and particularly the Navajos in this instance. Now, therefore, be it

Resolved by the Yakima Tribal Council, meeting in regular session on this 9th day of July, 1974 at the Yakima Indian Agency, Toppenish, Washington, a quorum being present, that the United States Senate be requested to consider other just and equitable proposals than HR 10337; and be it further

Resolved, That the Yakima Tribal Council recommends to the United States Senate to permit American Indian Tribes to solve their disputes by themselves and be it further

Resolved, That the Yakima Tribal Council order that a copy of this resolution be sent to every member of the United States Senate.

Done and Dated on this 9th day of July, 1974 at the Yakima Indian Agency, Toppenish, Washington, by a vote of 10 for and none against.

WATSON TOTUS,
Chairman, Yakima Tribal Council.
JOE SAMPSON,
Secretary, Yakima Tribal Council.

Attest.

PROPOSED RESOLUTION OF THE UNITED SIOUX DEVELOPMENT CORPORATION
OPPOSING H.R. 10337 AND URGING THE UNITED STATES SENATE TO NOT ENACT THIS
PROPOSAL INTO LAW

Whereas 1. For many hundreds of years, the Navajo and Hopi people have lived at peace together, and

2. Various mistakes and breaches of trust responsibility by the United States Government have led to a proposal that over 3,000 Navajo people be forced from their homes, and

3. The forced expulsion of Native American people has throughout our history been a source of shame and disgrace for the United States, and

4. In 1974 we cannot tolerate a new "Trail of Tears" or "Long Walk" or "Cheyenne Autumn," and

5. H.R. 10337, now pending before the United States Senate, would cause over 3,000 Navajo people to pay for the mistakes of the Government with their homes and their lives; Now therefore be it

Resolved, That 1. The United Sioux Development Corporation, for and on behalf of the Sioux people, opposes H.R. 10337 and further opposes any forced removal of Navajo people from their homes.

2. The United Sioux Development Corporation urges the United States Congress to permit American Indian people to solve whatever disputes they may have among themselves by themselves.

3. The United Sioux Development Corporation urges the United States Congress not to require poor Native American people to have to pay once again for the mistakes of the United States Government.

4. The United Sioux Development Corporation finally orders that a copy of this resolution shall be sent to every member of the Congress.

CERTIFICATION

I hereby certify that the foregoing resolution was duly considered by the United Sioux Development Corporation at a duly called meeting at Pierre, South Dakota, at which a quorum was present, and that same was passed by a vote of — in favor and — opposed, this 9th day of July, 1974.

President, United Sioux Development Corp.

RESOLUTION OF THE INTER-TRIBAL COUNCIL OF THE
FIVE CIVILIZED TRIBES OF OKLAHOMA

OPPOSING THE NAVAJO REMOVAL BILL, H.R. 10337 AND S. 2424, AND REQUESTING THE UNITED STATES CONGRESS TO PERMIT NATIVE AMERICAN PEOPLE TO SOLVE THEIR OWN PROBLEMS

Whereas 1. We, the representatives of the Choctaw, Chickasaw, Creek, Seminole and Cherokee Indian Nations, know what it is like to have government intervention in Tribal operations and Tribal disputes, and

2. H.R. 10337 and S. 2424 now pending before the United States Senate would result in the federal government intervening on behalf of one tribe in opposition to another tribe, and

3. It is contrary to the express policy of self-determination of native Americans for the United States Government to interfere in a dispute between two Indian Nations, and

4. Indian Tribes can amicably settle their own differences by arbitration between themselves without government interference, and

5. H.R. 10337 and S. 2424, if passed, would only result in a defeat of the avowed goal of government of its doctrine of self-determination for Indian Tribes: Now therefore be it

Resolved, That 1. We, the Inter-Tribal Council of the Five Civilized Tribes, representing the Choctaw, Chickasaw, Creek, Seminole, and Cherokee Indian

Nation, hereby express our opposition to government intervention in the Navajo-Hopi land dispute by Congress legislating on behalf of a Tribe instead of promoting Tribal unity through arbitration.

2. We request the United States Congress to permit Native American people to solve their own disputes and to provide the necessary expert help when requested by the Tribes involved in the dispute to come to a satisfactory conclusion between the Tribes and approve a contract between the recognized Tribal leadership of each Tribe in lieu of legislation dictating the contract.

3. We authorize and direct the Secretary of this Council to transmit a copy of this resolution to each and every member of the United States Congress.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Inter-Tribal Council at a duly called meeting at Tahlequah, Oklahoma, at which a quorum was present and that same was passed unanimously this 12th day of July, 1974.

B. BOB STOPP,
President, Inter-Tribal Council.
 W. W. KEELER,
Principal Chief, Cherokee Nation.
 CLAUDE COX,
Principal Chief, Creek Nation.
 ED TANYAN,
Principal Chief, Seminole Nation.
 HARRY J. W. BELVIN,
Principal Chief, Choctaw Nation.
 OVERTON JAMES,
Governor, Chickasaw Nation.

QUECHAN TRIBAL COUNCIL,
 Yuma, Ariz., July 2, 1974.

DEAR SIR: On June 17, 1974, the Inter-Tribal Council of Arizona, 17 member Tribes, met in Phoenix, Arizona and considered a previous request from the Hopi Tribe for endorsement by ITCA of legislation favorable to the Hopi position and a request from the Navajo Tribe to have ITCA refrain from "taking sides" in their historic dispute.

ITCA members voted to remain neutral in this matter and the discussion brought out several recommendations which I wish to pass on to you.

First, the Federal Government should do all in its power to resolve the issue in a manner which would not harm either tribe emotionally or physically. Interference, derogatory remarks and downright meddling by outside influences have only served to inflame the issue. It is possible that given enough time and the place to sit down together, Indian tribes like nations would be able to amicably settle their own differences.

ITCA does not wish to meddle either and is prevented from doing so by its own constitution which states in part that "ITCA will represent (a tribe) only upon request of the particular tribe or tribes." ITCA cannot even act as a mediator unless both tribes involved request it. We therefore, would only suggest that we would be willing to serve as a mediator if asked, or participate in a "council" type of discussion to work out differences.

In view of the short time at hand and the seriousness of the situation, every means and method of resolving the issue should be considered. The ITCA reaffirms their neutrality and urges the members of the Senate Interior and Insular Affairs Committee to settle on a method of finalizing the matter that is agreeable to both Hopi and Navajo.

Sincerely,

ELMER M. SAVILLA,
President, Inter-Tribal Council of Arizona.

RESOLUTION OF THE BLUE GAP CHAPTER

RECOMMENDING TO THE UNITED STATES SENATE TO OPPOSE H.R. 10337, AND TO CONSIDER ALTERNATIVE LEGISLATION

Whereas 1. The land, lives, and livelihood of thousands of Navajo Indians are threatened by legislative fiat through the passage of H.R. 10337; and

2. For centuries the Navajo people have occupied and used the lands within the area known as the 1882 Executive Order Reservation; and

3. On May 29, 1974 the United States House of Representatives passed H.R. 10337, a bill to authorize the partition of the surface rights in the Joint Use Area of the 1882 Executive Order Reservation and to authorize the removal of all Navajo Indians and their personal property from the partitioned land; and

4. The partition will destroy the quiet and peaceful enjoyment of the land which thousands of Navajos have occupied and used for generations as substantiated by archaeological data; and

5. The removal of all Navajo Indians will adversely affect the lives of 8,500 individuals and will directly cause undue social, economic, and cultural disruption; and

6. The partition and removal will create gross, cruel inequities to the Navajo Indians who already are experiencing poverty, inadequate housing, poor educational attainments, high unemployment rates, deplorable health conditions, and rare economic opportunity; and

7. The partition and removal of thousands of Navajo families will necessitate a cost of more than \$29,000,000 to the American taxpayers which is a waste of money when the surface rights of the land in question can be acquired for less than \$18,000,000 which the Navajo Nation is willing to pay: now, therefore be it

Resolved, That 1. We, the people, recommend to the United States Senate to oppose H.R. 10337, a bill sponsored by Representative Wayne Owens, (D-Utah),

2. We, the people, recommend that the United States Senate conduct field hearings in the Joint Use Area to obtain first hand knowledge of the true facts,

3. We, the people, recommend to the United States Senate to consider alternative proposals which will have the least effect on the lands, lives, and livelihood of the Navajo Indian people in the Joint Use Area and which will provide a just and moral settlement.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Blue Gap Chapter at a duly called meeting at Blue Gap, Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of 37 in favor and 0 opposed this 22 day of June, 1974.

Councilman.

President.

Vice President.

Secretary.

RESOLUTION OF THE AMERICAN LEGION POST No. 71, CHASE AND NELSON, WHITE CONE CHAPTER, INDIAN WELLS, ARIZ.

We, the War Veterans of World War II, Korean conflicts and with Vietnam, the American Legion Post 71, Chase and Nelson of White Cone Chapter, located in the disputed land area between Keams Canyon and Indian Wells, Arizona.

We had called a duly scheduled meeting here at Fort Wingate, BIA High School on June 3, 1974 at 8:00 p.m., we are greatly concerned about the Executive Order of 1882 in Northern Arizona where the Land Dispute between the Navajos and the Hopi Tribe is located. We as Veterans intend to stay in the Executive Order area where we now dwell. Our ancestors have lived on this land for more than centuries, so many of them have grave sites in this area and we are here to protect, fought and suffered for our land and we ask the Senators that we consider this land once, and will not intend to give it up to the Hopis.

If ever evicted from our land, you will be a disgrace in front of the eyes of the world. Between 7 and 8,000 Navajos will suffer physical and mentally of hardship, loneliness and also will cause heartaches and many will die from loneliness, etc.

If partition should take place of the 1882 Executive Order the following resources that had been developed with so many millions of dollars will be involve and as few housings that cost from \$1,000 to \$20,000 dollars, drinking waters, water for livestock, spring developments and windmills.

But, we the American Legion Post #71 and our fellow Navaho Nation have been discriminated by the United States Government through the BIA Bureaucracy misled by freezing the development in the Robert Bennett, Indian Commission's time. Today the Navajos have lack of boarding schools in the Executive Order reservation. No powerlines to be used, no homesteads to be built, no water development, no road improvements, and now the Federal Government is trying

to cut off our livestock, our main economy subsistence we are in devastation disastrous.

We feel and fought for our rights because we answered the call for duty in time of War in Europe, Asia and the Pacific Conflict and many of our comrades lay down their lives beyond the call of duty and some have been captured and were prisoners of wars. Those who survived, returned with wounded body, some are disabled and some affliction of diseases which shorten our lives today.

You, the United States Senators, know very well that the greatest hero, when the American Soldiers struggled on the defense on all front and was asked the Navajo Indians to use the Native tongue "CODE TALKERS" about three years which saved thousands of lives and billions of dollars. This shortened the Second World War. The Navajo Code Talkers were used in all of the six Marine Corps Divisions.

Today, we ask the American public to understand our communication across the nation. Today, many have heartaches after the unmerciful evicted our Navajo people from undesolved 1962 District Court 3 Panel Decision, who the anglos never have been in and around the Navajos and Hopi Indian Reservation. This includes the members of the American Legion Post No. 71 pass this Owen Bill Number H.R. 10337. This is not the American Democracy way of life, under the Freedom and Majority Rule, but communism way.

We ask you U.S. Senators to reconsider with wisdom before you vote on this Owen Bill Number H.R. 10337. We the American Legion stand together and join with hope and peace, when you listen to our communication. The only solution is just to renew the Executive Order of 1882 Mandate to 1974 to another 100 years by the U.S. President Richard Nixon. If there is no other choice then we will warn our brotherhood American Legion around the country to standby.

EUGENE LEWIS, Sr.,
Post Commander.
CARLOS T. MORRIS,
Post Vice Commander.
LERNUEL YAZZIE,
Post Adjutant.

On June 5, 1974 Time 7:45p.m. the CAC Reservation Wide Vote Yes 376 No 0. at Ft. Wingate, N.M.

RESOLUTION OF THE CAMERON CHAPTER OF THE NAVAJO NATION

OPPOSING THE WAYNE OWENS BILL, H.R. 10337

Whereas 1. The Cameron Chapter of the Navajo Nation has recently learned that House Bill, H.R. 10337 has been introduced and sponsored by our Utah Congressman Wayne Owens, and

2. The Navajo people of the Cameron Chapter stated that the sponsorship of House Bill, H.R. 10337 by Congressman Owens "a friend of the Navajos" has been done without our consultation and feel that Congressman Owens is not aware of the full ramifications of the bill, and

3. The passage of such a bill will result in the expulsion of 8,500 Navajo men, women, and children from their home lands and from the lands of their forefathers and will seriously impair their traditional way of life, and

4. It saddens the Navajo people that the passage of the Owens Bill will only lead to inevitable tribal conflicts, ill-feelings, and possibly violent confrontation between the Navajo and Hopi Tribes traditionally lived together in peace and harmony, and

5. Further reduction of land use of the 135,000 members of the Navajo Tribe will only create additional social and economic hardship, and

6. The United States Government has failed in its trust relationship with the Navajo people in that the Government has failed to supply lands, housing, hospitals, schools, roads, power, and other developments in order to help care for the estimated 8,500 Navajo people who would be displaced by the passage of the Owens Bill, and

7. If the Owens Bill is passed, Congressman Owens' trust and confidence with the Navajo Nation and more particularly with the Navajos residing in the Utah portion of the reservation will be seriously impaired during the time of his anticipated candidacy for the upcoming United States Senate race: Now, therefore be it

Resolved, That 1. The Cameron Chapter hereby opposes the passage of the Wayne Owens Bill, H.R. 10337 that is now before the United States House of Representatives.

2. The Cameron Chapter further requests that the Chairman of the Navajo Tribal Council do any and all things necessary in order to carry out the intent of this resolution.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Navajo Nation Cameron Chapter, at a duly called meeting at Cameron, Arizona, at which a quorum was present and that same was passed by a vote of 62 in favor 0 opposed on this 10 day of March, 1974.

President.

Vice President.

Secretary.

RESOLUTION OF THE CAMERON CHAPTER OF THE NAVAJO TRIBE

OPPOSING THE OWENS-STEIGER NAVAJO EXPULSION BILL, REQUESTING THE UNITED STATES SENATE TO REJECT THIS PROPOSAL AND REQUESTING THE UNITED STATES SENATE TO HOLD PUBLIC HEARINGS IN THE NAVAJO-HOPI JOINT USE AREA

Whereas 1. For hundreds of years the Navajo people have lived within that area known as the 1882 Executive Order Reservation and the Moencopi Joint Use Area ; and

2. During this period, the Hopi have lived in villages of Moencopi and District 6 and have never used that area occupied or used by the Navajo, but Navajos and Hopis have lived in peace ; and

3. The Owens-Steiger Bill (H.R. 10337) would take away this land which is the home of 13,000 Navajo people and deprive them of their homes and way of life ; and

4. In spite of constant efforts by members of the Navajo Tribe to convince the House of Representatives that the Owens-Steiger Bill is an inhumane and barbaric way of dealing with the current controversy between the Navajo and Hopi Tribes, it was approved by the House of Representatives on Wednesday, May 29, 1974. This proposal is now pending before the United States Senate ; and

5. The traditional Hopis and Hopi religious leaders strongly oppose the Owens-Steiger Bill ; and

6. Fair, decent and humane alternate solutions to this dispute exist and have already been endorsed by the Navajo Tribal Council : Now, therefore be it

Resolved, That 1. The Cameron Chapter condemns the Owens-Steiger Navajo Expulsion Bill as being an unwise and inhumane proposal which, rather than solving any existing problems, would only have tragic consequences.

2. This Chapter respectfully pleads with the United States Senate to reject the Owens-Steiger Bill and to approve instead those alternate proposals which will provide a just and lasting solution to this long-standing controversy.

3. This Chapter also respectfully asks the United States Senate to hold hearings on this matter in the Navajo-Hopi Joint Use Area so that they can see first-hand the terrible hardships H.R. 10337 would create.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Cameron Chapter of the Navajo Tribe at a duly called meeting at Cameron Chapter, at which a quorum was present and that same was passed by vote of 149 in favor and 0 opposed this 9th day of June, 1974.

Chapter President.

Chapter Vice President.

Chapter Vice President.

Chapter Secretary.

Concurrence.

Councilman.

PROPOSED RESOLUTION OF THE CHILCHINBETO CHAPTER

OPPOSING THE OWENS-STEIGER BILL (H.R. 10337) AND REQUESTING THE UNITED STATES SENATE TO REJECT THIS BILL

Whereas 1. For hundreds of years the Navajo people have inhabited and used the lands known as the 1882 Executive Order Reservations, and

2. This area has never been occupied or used by members of the Hopi Tribe except on a sporadic basis, and

3. This land is the home of 13,000 Navajo people and is the land on which they were born and on which they have spent all their lives. This land is the land that 15,000 Navajos defended in World War I, World War II, the Korean War and the Viet Nam conflict, and

4. The Owens-Steiger Bill (H.R. 10337) will cause the greatest mass forced relocation of American citizens since the internment of the Japanese in World War II, and will take away this land and deprive Navajo people living thereon of their homes and way of life, and

5. In spite of constant pleas by members of the Navajo Tribe for fair treatment to the House of Representatives in dealing with the currency controversy between the Navajo and Hopi Tribes, this bill was approved by the House of Representatives on Wednesday, May 29, 1974 and is now pending before the United States Senate, and

6. Fair, decent and humane alternate solutions to this dispute exist and have already been endorsed by the Chilchimbeto Chapter, and

7. This Owens-Steiger Bill (H.R. 10337) will result in disruptions, will result in heartbreaks and suffering for every single human being in that area, and

8. The H.R. 10337 will result in the forcible moving of some 6,000 to 8,000 Navajos from their homeland and it will cause violence and bloodshed, and

9. There is a letter being sent to the Senators, Paul Fannin, Barry Goldwater, showing the Hopi religious leader opposing the Bill H.R. 10337. This letter should be given every consideration: Now, therefore be it

Resolved, That 1. The Chilchimbeto Chapter opposes the Owens-Steiger Bill because it is unfair and unjust and displaces thousands of Navajos which, rather than solving any existing problems, would only have tragic consequences.

2. This Chilchimbeto Chapter respectfully asks the United States Senate to reject the Owens-Steiger Bill and to approve the Montoya-Moss-Domenici Bill (S. 3230) or those alternate proposals which will not displace thousands of Navajos and will provide a just and lasting solution to this long-standing controversy.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Chilchimbeto Chapter at a duly called meeting at Chilchimbeto, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 53 in favor and 0 opposed, this 8th day of June 1974.

Chapter President.

Chapter Vice President.

Chapter Secretary.

RESOLUTION OF THE TOLANI LAKE CHAPTER

RECOMMENDING TO THE UNITED STATES SENATE TO OPPOSE H.R. 10337, AND TO CONSIDER ALTERNATIVE LEGISLATION

Whereas 1. The land, lives, and livelihood of thousands of Navajo Indians are threatened by legislative fiat through the passage of H.R. 10337; and

2. For centuries the Navajo people have occupied and used the lands within the area known as the 1882 Executive Order Reservation; and

3. On May 29, 1974 the United States House of Representatives passed H.R. 10337, a bill to authorize the partition of the surface rights in the Joint Use Area of the 1882 Executive Order Reservation and to authorize the removal of all Navajo Indians and their personal property from the partitioned land; and

4. The partition will destroy the quiet and peaceful enjoyment of the land which thousands of Navajos have occupied and used for generations as substantiated by archeological data; and

5. The removal of all Navajo Indians will adversely affect the lives of 8,500 individuals and will directly cause undue social, economic, and cultural disruption; and

6. The partition and removal will create gross, cruel inequities to the Navajo Indians who already are experiencing poverty, inadequate housing, poor educational attainments, high unemployment rates, deplorable health conditions, and rare economic opportunity; and

7. The partition and removal of thousands of Navajo families will necessitate a cost of more than \$29,000,000 to the American taxpayers which is a waste of money when the surface rights of the land in question can be acquired for less than \$18,000,000 which the Navajo Nation is willing to pay: Now, therefore be it

Resolved, That 1. We, the people, recommend to the United States Senate to oppose H.R. 10337, a bill sponsored by Representative Wayne Owens, (D-Utah),

2. We, the people, recommend that the United States Senate conduct field hearings in the Joint Use Area to obtain first hand knowledge of the true facts,

3. We, the people, recommend to the United States Senate to consider alternative proposals which will have the least effect on the lands, lives, and livelihood of the Navajo Indian people in the Joint Use Area and which will provide a just and moral settlement.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Tolani Lake Chapter at a duly called meeting at Tolani Lake, Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of 44 in favor and 0 opposed this 29th day of June, 1974.

President.

Vice President.

Secretary.

RESOLUTION OF THE FOREST LAKE CHAPTER OF THE NAVAJO TRIBE

RESPECTFULLY ASK THE UNITED STATES SENATE TO OPPOSE BILL H.R. 10337, AND CONSIDER AN ALTERNATIVE MEASURE

Whereas 1. The lives and livelihood of thousands Navajo Indians are threatened by the legislative act through the passage of H.R. 10337; and

2. For centuries the Navajo people have the rights to title of the land by occupation and usage within the area known as the 1882 Executive Order Reservation; and

3. On May 29, 1974 the United States House of Representatives passed H.R. 10337, a bill to authorize the partition of the surface rights in the Joint Use Area of the 1882 Executive Order Reservation and to authorize the removal of all Navajo Indians and their personal property from the partitioned land; and

4. Such removal of thousands of Navajos will destroy the quite and peaceful enjoyment of the land and create undue social, economic and cultural disruption.

5. The partition and removal will create gross, cruel inequities to the Navajo Indians who already are experiencing poverty, inadequate housing, poor educational attainments, high unemployment rates, deplorable health conditions, and high crime rates; and

6. The partition and removal of thousands of Navajo families will necessitate a cost of more than \$29,000,000 to the American taxpayers which is a waste of money when the surface rights of the land in question can be acquired for less than \$18,000,000 which the Navajo Tribe is willing to pay: Now, therefore be it

Resolved, That 1. We, the people who are directly affected do hereby recommend that the United States Senate Committee on Interior and Insular Affairs to oppose H. R. 10337, a bill sponsored by Congressman Wayne Owens, (D-Utah).

2. We, the people who are directly affected do recommend that the United States Senate to consider an alternative measure which would do no permanent and irreparable harms to the Navajo families.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Forest Lake Chapter at a duly called meeting at Forest Lake, Navajo Nation

(Arizona), at which a quorum was present and that same was passed by a vote of _____ in favor _____ and _____ opposed this _____ day of June 1974.

President.

Vice President.

Secretary.

RESOLUTION OF THE HARD ROCK CHAPTER—1882 EOA

OPPOSING THE WAYNE OWENS BILL, H.R. 10337

Whereas 1. The Hard Rock Chapter—1882 Executive Order Area of the Navajo Nation has recently learned that House Bill, H.R. 10337 has been introduced and sponsored by your Utah Congressman Wayne Owens, and

2. The Navajo people of the Hard Rock Chapter stated that the sponsorship of House Bill, H.R. 10337 by Congressman Owens "a friend of the Navajos" has been done without our consultation and feel that Congressman Owens is not aware of the full ramifications of the bill, and

3. The passage of such a bill will result in the expulsion of 8,500 Navajo men, women, and children from their home lands and from the lands of their forefathers and will seriously impair their traditional way of life, and

4. It saddens the Navajo people that the passage of the Owens Bill will only lead to inevitable tribal conflicts, ill-feelings, and possibly violent confrontation between the Navajo and Hopi Tribes traditionally lived together in peace and harmony, and

5. Further reduction of land use of the 135,000 members of the Navajo Tribe will only create additional social and economic hardship, and

6. The United States Government has failed in its trust relationship with the Navajo people in that the Government has failed to supply lands, housings, hospitals, schools, roads, power, and other developments in order to help care for the estimated 8,500 Navajo people who would be displaced by the passage of the Owens Bill, and

7. If the Owens Bill is passed, Congressman Owens' trust and confidence with the Navajo Nation and more particularly with the Navajos residing in the Utah portion of the reservation will be seriously impaired during the time of his anticipated candidacy for the upcoming United States Senate race: Now, therefore be it

Resolved, That 1. The Hard Rock Chapter in the 1882 Executive Order Area hereby opposes the passage of the Wayne Owens Bill, H.R. 10337 that is now before the United States House of Representatives.

2. The Hard Rock Chapter further requests that the Chairman of the Navajo Tribal Council do any and all things necessary in order to carry out the intent of this resolution.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Hard Rock Chapter, at a duly called meeting at Hard Rock, Navajo Nation (Ariz.), at which a quorum was present and that same was passed by a vote of 80 in favor 0 opposed on this 9th day of March, 1974.

President.

Vice President.

Secretary.

RESOLUTION OF THE INDIAN WELLS CHAPTER, INDIAN WELLS, ARIZONA 81031

RECOMMENDING TO THE UNITED STATES SENATE TO OPPOSE H.R. 10337, AND TO CONSIDER ALTERNATIVE LEGISLATION

Whereas 1. The land, lives, and livelihood of thousands of Navajo Indians are threatened by legislative fiat through the passage of H.R. 10337; and

2. For centuries the Navajo people have occupied and used the lands within the area known as the 1882 Executive Order Reservation; and

3. On May 29, 1974 the United States House of Representatives passed H.R. 10337, a bill to authorize the partition of the surface rights in the Joint Use Area of the 1882 Executive Order Reservation and to authorize the removal of all Navajo Indians and their personal property from the partitioned land; and

4. The partition will destroy the quiet and peaceful enjoyment of the land which thousands of Navajos have occupied and used for generations as substantiated by archaeological data; and

5. The removal of all Navajo Indians will adversely affect the lives of 8,500 individuals and will directly cause undue social, economic, and cultural disruption; and

6. The partition and removal will create gross, cruel inequities to the Navajo Indians who already are experiencing poverty, inadequate housing, poor educational attainments, high unemployment rates, deplorable health conditions, and rare economic opportunity; and

7. The partition and removal of thousands of Navajo families will necessitate a cost of more than \$29,000,000 to the American taxpayers which is a waste of money when the surface rights of the land in question can be acquired for less than \$18,000,000 which the Navajo Nation is willing to pay: Now, therefore be it

Resolved, That 1. We, the people, recommend to the United States Senate to oppose H.R. 10337, a bill sponsored by Representative Wayne Owens, (D-Utah),

2. We, the people, recommend that the United States Senate conduct field hearings in the Joint Use Area to obtain first hand knowledge of the true facts,

8. We, the people, recommend to the United States Senate to consider alternative proposals which will have the least effect on the lands, lives, and livelihood of the Navajo Indian people in the Joint Use Area and which will provide a just and moral settlement.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Indian Wells Chapter at a duly called meeting at Indian Wells, Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of _____ in favor and _____ opposed this _____ day of _____, 1974.

Councilman.

President.

Vice President.

Secretary.

RESOLUTION OF THE LOW MOUNTAIN CHAPTER

RECOMMENDING TO THE UNITED STATES SENATE TO OPPOSE H.R. 10337, AND TO CONSIDER ALTERNATIVE LEGISLATION

Whereas 1. The land, lives, and livelihood of thousands of Navajo Indians are threatened by legislative fiat through the passage of H.R. 10337; and

2. For centuries the Navajo people have occupied and used the lands within the area known as the 1882 Executive Order Reservation; and

3. On May 29, 1974 the United States House of Representatives passed H.R. 10337, a bill to authorize the partition of the surface rights in the Joint Use Area of the 1882 Executive Order Reservation and to authorize the removal of all Navajo Indians and their personal property from the partitioned land; and

4. The partition will destroy the quiet and peaceful enjoyment of the land which thousands of Navajos have occupied and used for generations as substantiated by archaeological data; and

5. The removal of all Navajo Indians will adversely affect the lives of 8,500 individuals and will directly cause undue social, economic, and cultural disruption; and

6. The partition and removal will create gross, cruel inequities to the Navajo Indians who already are experiencing poverty, inadequate housing, poor educational attainments, high unemployment rates, deplorable health conditions, and rare economic opportunity; and

7. The partition and removal of thousands of Navajo families will necessitate a cost of more than \$29,000,000 to the American taxpayers which is a waste of money when the surface rights of the land in question can be acquired for less than \$18,000,000 which the Navajo Nation is willing to pay: Now, therefore be it

Resolved, That 1. We, the people, recommend to the United States Senate to oppose H.R. 10337, a bill sponsored by Representative Wayne Owens, (D-Utah).

2. We, the people, recommend that the United States Senate conduct field hearings in the Joint Use Area to obtain first hand knowledge of the true facts.

3. We, the people, recommend to the United States Senate to consider alternative proposals which will have the least effect on the lands, lives, and livelihood of the Navajo Indian people in the Joint Use Area and which will provide a just and moral settlement.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Low Mountain Chapter at a duly called meeting at Low Mountain Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of 86 in favor and 6 opposed this 18 day of June, 1974.

Councilman.

President.

Vice President.

Secretary.

RESOLUTION OF THE ROUGH ROCK CHAPTER

OPPOSING THE OWENS-STEIGER NAVAJO EXPULSION BILL AND REQUESTING THE UNITED STATES SENATE TO REJECT THIS PROPOSAL

Whereas 1. For hundreds of years, the Navajo people have lived within that area known as the 1882 Executive Order Reservation; and

2. During this period, this area has never been occupied or used by members of the Hopi Tribe; and

3. This land is the home of 13,000 Navajo people and is the land on which they were born and on which they have spent their lives; and

4. The Owens-Steiger Bill (H.R. 10337) would take away this land and deprive Navajo people living thereon of their homes and way of life; and

5. In spite of constant efforts by members of the Navajo Tribe to convince the House of Representatives that the Owens-Steiger Bill is an inhumane and barbaric way of dealing with the current controversy between the Navajo and Hopi Tribes, it was approved by the House of Representatives on Wednesday, May 29, 1974. This proposal is now pending before the United States Senate; and

6. Fair, decent and humane alternate solutions to this dispute exist and have already been endorsed by the Navajo Tribal Council: Now, therefore be it

Resolved, That 1. The Rough Rock Chapter condemns the Owens-Steiger Navajo Expulsion Bill as being an unwise and inhumane proposal which rather than solving any existing problems, would only have tragic consequences.

2. This Chapter respectfully asks the United States Senate to reject the Owens-Steiger Bill and to approve instead those alternate proposals which will provide a just and lasting solution to this long-standing controversy.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Rough Rock Chapter at a duly called meeting at Rough Rock, at which a quorum was present and that same was passed by a vote of 31 in favor and 0 opposed, this 8th day of June, 1974.

Chapter President.

Chapter Vice President.

Navajo Tribal Council Delegate.

RESOLUTION OF THE SAINT MICHAEL'S CHAPTER

OPPOSING THE WAYNE OWENS BILL, H.R. 18337

Whereas 1. The Communities of St. Michael and Window Rock, Arizona, of the Navajo Nation has recently learned that House bill H.R. 10337 has been introduced and sponsored by our Utah Congressman Wayne Owens, and

2. The Navajo people of the St. Michael Chapter stated that the sponsorship of House Bill H.R. 10337 by Congressman Owens "a friend of the Navajos" has been done without our consultation and feel that Congressman Owens is not aware of the full ramifications of the bill, and

3. The passage of such a bill will result in the expulsion of 8,500 Navajo men, women, and children from their home lands and from the lands of their forefathers and will seriously impair their traditional way of life, and

4. It saddens the Navajo people that the passage of the Owens Bill will only lead to inevitable tribal conflicts, ill-feelings, and possibly violent confrontation between the Navajo and Hopi Tribes traditionally lived together in peace and harmony, and

5. Further reduction of land use of the 135,000 members of the Navajo Tribe will only create additional social and economic hardship, and

6. The United States Government has failed in its trust relationship with the Navajo people in that the Government has failed to supply lands, housings, hospitals, schools, roads, power, and other developments in order to help care for the estimated 8,500 Navajo people who would be displaced by the passage of the Owens Bill, and

7. If the Owens Bill is passed, Congressman Owens' trust and confidence with the Navajo Nation and more particularly with the Navajos residing in the Utah portion of the reservation will be seriously impaired during the time of his anticipated candidacy for the upcoming United States Senate race: Now, therefore be it

Resolved, That 1. The communities of St. Michael and Window Rock, and its Chapter hereby opposes the passage of the Wayne Owens Bill H.R. 10337 that is now before the United States House of Representatives.

2. The St. Michael Chapter further requests that the Chairman of the Navajo Tribal Council do any and all things necessary in order to carry out the intend of this resolution.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the St. Michael Chapter, at a duly called meeting at St. Michael, Navajo Nation, Arizona, at which a quorum was present and that same was passed by a vote of 75 in favor, 0 opposed on this 3rd day of March, 1974.

President

Vice President.

Secretary.

RESOLUTION OF THE TEESTO CHAPTER

RECOMMENDING TO THE U.S. SENATE TO OPPOSE H.R. 10337, AND TO CONSIDER ALTERNATIVE LEGISLATION

Whereas 1. The land, lives, and livelihood of thousands of Navajo Indians are threatened by legislative fiat through the passage of H.R. 10337; and

2. For centuries the Navajo people have occupied and used the lands within the area known as the 1882 Executive Order Reservation; and

3. On May 29, 1974 the United States House of Representatives passed H.R. 10337, a bill to authorize the partition of the surface rights in the Joint Use Area of the 1882 Executive Order Reservation and to authorize the removal of all Navajo Indians and their personal property from the partitioned land; and

4. The partition will destroy the quiet and peaceful enjoyment of the land which thousands of Navajos have occupied and used for generations as substantiated by archaeological data; and

5. The removal of all Navajo Indians will adversely affect the lives of 8,500 individuals and will directly cause undue social, economic, and cultural disruption; and

6. The partition and removal will create gross, cruel inequities to the Navajo Indians who already are experiencing poverty, inadequate housing, poor educational attainments, high unemployment rates, deplorable health conditions, and rare economic opportunity; and

7. The partition and removal of thousands of Navajo families will necessitate a cost of more than \$29,000,000 to the American taxpayers which is a waste of money when the surface rights of the land in question can be acquired for less than \$18,000,000 which the Navajo Nation is willing to pay: Now, therefore be it

Resolved, That 1. We, the people, recommend to the United States Senate to oppose H.R. 10337, a bill sponsored by Representative Wayne Owens, (D-Utah),

2. We, the people, recommend that the United States Senate conduct field hearings in the Joint Use Area to obtain first hand knowledge of the true facts,

3. We, the people, recommend to the United States Senate to consider alternative proposals which will have the least effect on the lands, lives, and livelihood of the Navajo Indian people in the Joint Use Area and which will provide a just and moral settlement.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Teesto Chapter at a duly called meeting at Teesto, Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of 89 in favor and 0 opposed this 9 day of July, 1974.

Councilman.

President.

Vice President.

Secretary.

RESOLUTION OF THE TUBA CITY CHAPTER

OPPOSING THE OWENS BILL (H.R. 10337) AND REQUESTING THE UNITED STATES SENATE TO REJECT THIS BILL

Whereas 1. For hundreds of years the Navajo People inhabited and used the lands known as the 1882 Executive Order Reservation, and

2. This area has never been occupied or used by members of the Hopi Tribe except on a sporadic occurrence, and

3. This land is the home of 13,000 Navajo people and is the land on which they were born and on which they have spent all their lives. This land is the land that 15,000 Navajos defended in World War I, World War II, the Korean War and the Viet Nam Conflict, and

4. The Owens Bill H.R. 10337 will cause the greatest mass forced expulsion and relocation of American citizens since the internment of the Japanese-American in World War II, and will take away this land and deprive Navajo people living thereon of their homes and way of life, and

5. In spite of constant pleas by members of the Navajo Tribe for fair treatment to the House of Representatives in dealing with the current controversy between the Navajo and Hopi Tribes, this bill was approved by the House of Representatives on Wednesday, May 29, 1974, and is now pending before the United States, and

6. Fair, decent and humane alternative solutions to this dispute exist and have already been endorsed by the Navajo Tribal Council: Now, therefore be it

Resolved, That 1. The Tuba City Chapter hereby unconditionally opposes the Owens Bill because it is unfair and unjust and displaces 8,500 Navajos which, rather than solving any existing problems, would only have tragic consequences.

2. This chapter respectfully asks the United States Senate to reject the Owens Bill and to approve the Montoya-Moss-Domenici Bill (S. 3230) or those alternate proposals which will not displace thousands of Navajos and will provide a just and lasting solution to this long-standing controversy. A fair hearing before the Senate and its committees and subcommittees, both in the field and in the halls of the Capitol will be in line of justice and fair play of the constitution of the United States.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Tuba City Chapter at a duly called meeting at Tuba City, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 36 in favor and 0 opposed, this 9th day of June 1974.

Concurred.

DILLON EDGEWATER,
Chapter President.
DANIEL WALLACE,
Vice-President.
JANE B. GREY,
Secretary.
GLENN C. GUYS,
Council Delegate.

RESOLUTION OF THE MANY FARMS CHAPTER

OPPOSING THE OWENS-STEIGER NAVAJO EXPULSION BILL AND REQUESTING THE UNITED STATES SENATE TO REJECT THIS PROPOSAL

Whereas 1. For hundreds of years, the Navajo people have lived within that area known as the 1882 Executive Order Reservation; and

2. During this period, this area has never been occupied or used by members of the Hopi Tribe; and

3. This land is the home of 13,000 Navajo people and is the land on which they were born and on which they have spent their lives; and

4. The Owens-Steiger Bill (H.R. 10337) would take away this land and deprive Navajo people living thereon of their homes and way of life; and

5. In spite of constant efforts by members of the Navajo Tribe to convince the House of Representatives that the Owens-Steiger Bill is an inhumane and barbaric way of dealing with the current controversy between the Navajo and Hopi Tribes, it was approved by the House of Representatives on Wednesday, May 29, 1974. This proposal is now pending before the United States Senate; and

6. Fair, decent and humane alternate solutions to this dispute exist and have already been endorsed by the Navajo Tribal Council: Now, therefore be it

Resolved, That 1. The Many Farms Chapter condemns the Owens-Steiger Navajo Expulsion Bill as being an unwise and inhumane proposal which rather than solving any existing problems, would only have tragic consequences.

2. This Chapter respectfully asks the United States Senate to reject the Owens-Steiger Bill and to approve instead those alternate proposals which will provide a just and lasting solution to this long-standing controversy.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Many Farms Chapter at a duly called meeting at _____, at which a quorum was present and that same was passed by a vote of 27 in favor and 9 opposed, this 7th day of June, 1974.

Chapter President.

Chapter Secretary.

Chapter Vice President.

Navajo Tribal Council Delegate.

RESOLUTION OF THE PINON CHAPTER

Recommending to the United States Senate to Oppose H.R. 10337, and to Consider Alternative Legislation

Whereas 1. The land, lives, and livelihood of thousands of Navajo Indians are threatened by legislative fiat through the passage of H.R. 10337; and

2. For centuries the Navajo people have occupied and used the lands within the area known as the 1882 Executive Order Reservation; and

3. On May 29, 1974, the United States House of Representatives passed H.R. 10337, a bill to authorize the partition of the surface rights in the Joint Use Area of the 1882 Executive Order Reservation and to authorize the removal of all Navajo Indians and their personal property from the partitioned land; and

4. The partition will destroy the quiet and peaceful enjoyment of the land which thousands of Navajos have occupied and used for generations as substantiated by archaeological data; and

5. The removal of all Navajo Indians will adversely affect the lives of 8,500 individuals and will directly cause undue social, economic, and cultural disruption; and

6. The partition and removal will create gross, cruel inequities to the Navajo Indians who already are experiencing poverty, inadequate housing, poor educational attainments, high unemployment rates, deplorable health conditions, and rare economic opportunity; and

7. The partition and removal of thousands of Navajo families will necessitate a cost of more than 29,000,000 to the American taxpayers which is a waste of money when the surface rights of the land in question can be acquired for less than \$18,000,000 which the Navajo Nation is willing to pay: Now, therefore be it

Resolved, That 1. We, the people, recommend to the United States Senate to oppose H.R. 10337, a bill sponsored by Representative Wayne Owens, (D-Utah).

2. We, the people, recommend that the United States Senate conduct field hearings in the Joint Use Area to obtain first hand knowledge of the true facts.

3. We, the people, recommend to the United States Senate to consider alternative proposals which will have the least effect on the lands, lives and livelihood of the Navajo Indian people in the Joint Use Area and which will provide a just and moral settlement.

CERTIFICATION

We hereby certify that the foregoing resolution was duly considered by the Pinon Chapter at a duly called meeting at Pinon, Navajo Nation, (Arizona), at which a quorum was present and that same was passed by a vote of _____ in favor and _____ opposed this _____ day of _____, 1974.

President.

Vice President.

Secretary.





