

**Written Testimony of
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On the

**Navajo-Hopi Land Settlement Amendments of 2005
(S. 1003)**

Before the

U.S. Senate Committee on Indian Affairs

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Introduction. Chairman McCain, Ranking Member Dorgan and Members of the Senate Committee on Indian Affairs, thank you for this opportunity to comment on the Navajo-Hopi Land Settlement Amendments of 2005, S. 1003. The introduction of S. 1003 provides an important and timely opportunity for the Navajo Nation and the Federal government to address the status of the Navajo-Hopi Land Dispute and the Bennett Freeze. It also provides an important opportunity to focus attention on the need for developing a plan for the orderly and humane completion of the relocation law, including implementation of a rehabilitation program for affected areas and communities. There will be broad support for S. 1003 if certain critical issues, described in this testimony, as well as in the testimony of the other Navajo witnesses, are fully addressed in the bill. (Note: this testimony does not address litigation matters, which are being addressed by the Navajo Nation Attorney General.) This testimony is divided into three parts: Part I addresses the issues raised by S. 1003; Part II broadly addresses the impact of the relocation law and related construction freezes; and Part III provides a detailed historical review of the Navajo-Hopi Land Dispute.

I have spent my entire adult life working on Land Dispute related issues. I am from the Hardrock Chapter of the Navajo Nation, which was divided in half when the 1882 Executive Order area was partitioned into the Hopi Partitioned Lands and the Navajo Partitioned Lands. In 1980, shortly after graduating from Princeton, I returned to the Navajo Nation to work for the Navajo people, taking a position at the Navajo-Hopi Development Office. My involvement with Land Dispute issues continued during the time that I served on the Navajo Nation Council from 1983-1987. In 1989, I became the Executive Director of the Navajo-Hopi Land Commission Office, the Navajo entity responsible for dealing with all Navajo and Hopi land related issues. I have served in that position for most of the years since. I have seen the hardship that the relocation law and various construction freezes have created from the beginning. Every day, Navajo tribal members come in to my office to tell me of the hardships that they have suffered because of the relocation law. The impact of the Land Dispute will be with the Navajo Nation

for many more generations. I hope that my testimony today will shed some light on the concerns of these people and that this Committee will address those concerns in a humane manner as relocation itself draws to a close.

PART I. NAVAJO-HOPI LAND SETTLEMENT AMENDMENTS OF 2005, S. 1003

A. The Ideal Navajo Bill is Unachievable. The “dream bill” for the Navajo Nation would overturn the relocation law and provide for a right of return to the Hopi Partitioned Land for affected Navajo families. Of course, we know that this is not going to happen. Still, our spiritual ties to the land run deep and it would be a betrayal of our beliefs if we did not again remind the Committee of the nature of the sacrifice that Navajo families who have left their ancestral land have had to make.

B. The Federal Budget and Navajo Relocation. In Chairman McCain’s introductory comments for S. 1003, he expressed concern that the relocation process has cost far more than originally estimated. I do not know who made the original estimate of the cost of this program, but clearly it was made in ignorance of the true situation on the land. Had a proper study been done at that time, the full scope of the relocation would have been understood and perhaps Congress would have responded more favorably to the Navajo Nation’s vigorous opposition to the Navajo-Hopi Land Settlement Act of 1974 (“relocation law”), thus sparing the Federal government great expense and the Navajo people great hardship. As we have actively recommended for ten years (described more fully below), an independent study or assessment of the impact of the relocation law should be undertaken as a first step to development of an intelligent and fair closure plan. The Congress should not make the same mistake today that was made in the early 1970’s of basing critical decisions on incomplete and inaccurate information.

Moreover, now that the Navajo people have had to live through the nightmare of relocation, we do not think Federal budgetary issues should be a basis for limiting funds to complete the program and for completing it in a way that brings some humanity to what has otherwise been a very inhumane process. By far the greatest cost of the relocation program has been housing, the majority of which has been completed. The costs that remain relate to items that support the relocation process or “assist the Navajo Tribe or Hopi Tribe in meeting the burdens imposed” by the relocation law (25 U.S.C. 640d-25) and are, therefore, very important. Unfortunately, only a small fraction of the budget of the Office of Navajo and Hopi Indian Relocation has been spent on this important component of the relocation process.

We take strong objection to the argument that the relocation program should be closed because it has “taken too long and cost too much.” We believe that the United States must finish the job with regard to the Navajo-Hopi Land Dispute and assure that all those who have been adversely affected by the relocation law have a chance at a decent life. As a point of comparison, I think it is worth pointing out that the entire cost to the Federal government over the last 36 years of the Navajo-Hopi Land Dispute is roughly equal to what the United States spends in Iraq every 36 hours.

The cruelest irony of all is that the Federal government has spent \$440 million on the relocation program with the result of impoverishing many Navajo families who previously had lived self-sustaining subsistence lifestyles on the land but who, upon relocation, have found it impossible to reestablish these economic and cultural practices and have subsequently been locked into a downward spiral of despair and tragedy.

C. In the last few years, the two tribes have worked out many of the issues between them.

The Navajo Nation and the Hopi Tribe have been able to successfully resolve between themselves many of the difficult problems caused by the relocation law, including settling various court cases and developing the Accommodation Agreement, among other matters. This process has not been easy for either tribe, but it does demonstrate the value of letting the tribes resolve as many issues as possible. The two tribes continue negotiations on several matters. It is critically important that S. 1003 not disrupt those negotiations, which are likely to achieve similar positive results.

D. S. 1003 is an excellent vehicle for establishing a framework for the orderly, intelligent, compassionate and complete closure of the relocation process. Set forth below are a number of important recommendations which we believe should be addressed, whether in S. 1003 or through other mechanisms, to assure the orderly, intelligent, compassionate and complete closure of the relocation process and, ultimately, bring finality to the land dispute issue.

1. Establishment of a rehabilitation program for the Bennett Freeze area. In 1934, the U.S. Government clarified the western boundary of the Navajo Nation for the Navajo and “such other Indians as may already be located thereon.” This language created ambiguity over ownership of the land, which was nearly entirely inhabited by Navajos. In litigation between the tribes, the Hopi sought extensive rights over the whole area. As a result, in 1966, the Commissioner of Indian Affairs Robert Bennett ordered a “freeze” on development in a 1.5 million acre area in the extreme western portion of the Navajo Reservation, now called the Bennett Freeze Area. As a result of this construction freeze, the Bennett Freeze Navajos have become the “poorest of the poor.” While in theory development was possible with the permission of both tribes, in reality the area was principally occupied by Navajo families and the Hopis rarely granted permission for Navajo projects. Recently, a Federal court approved an agreement between the parties that lifted much of this freeze, finding that most of this area belongs to the Navajo Nation. For the thousands of Navajo families who live there this means that the freeze served no real purpose other than to bring them misery and hardship. S. 1003 should authorize the Office of Navajo and Hopi Indian Relocation (ONHIR), or any entity replacing ONHIR, to oversee rehabilitation of the Bennett Freeze Area. A rehabilitation program would be consistent with the findings of the Interior Appropriations Subcommittee of the Senate Appropriations Committee in a field hearing held in Tuba City, Arizona on July 9, 1993. Going back to the “War on Poverty” and the “Great Society Program” and continuing through numerous Federal initiatives addressing poverty and economic hardship in general, as well as programs directed at Indians in particular, this area has been effectively ineligible for aid. The results have been devastating with most homes lacking electricity and running water, limited infrastructure, few schools and, therefore, no economic development. The Navajo Nation proposes that ONHIR (or its replacement) should be responsible for implementing a housing construction and renovation program, infrastructure improvements (such as roads and electrification), and economic development initiatives

(training, micro-loans, etc.) in this area. ONHIR would not be responsible for relocating any Navajo families, nor for engaging in any land exchange activities or livestock reduction.

Extending ONHIR's official responsibilities to the Bennett Freeze Area requires only a simple amendment to 25 U.S.C. section 640d-11 (c). We understand from discussions with Committee staff that there is significant support for addressing the rehabilitation of the Bennett Freeze Area on the Committee. The Navajo Nation appreciates that support and would like to see specific legislation, whether in S. 1003, or in a companion bill, authorizing this program.

2. There should be no forced relocation of Navajo families. S. 1003 contains language that puts a renewed emphasis on the idea of forced relocation of Navajo families (Section 111(8)). The U.S. Attorney's office, ONHIR and the Hopi Tribe have had extensive discussions regarding this issue and are close to an agreement that will preclude forced relocation. We believe S. 1003 should support this approach, rather than reinforce the deeply troubling idea that Navajo families will be forcibly removed from land that they have called home for generations.

3. The larger impact of the relocation law should be studied and negative consequences addressed, including not only the economic impact, but also the mental and social impact. The Federal government, at a cost in excess of \$440 million, has relocated over 12,000 Navajos and hundreds of Hopis off their traditional lands to surrounding communities and towns. No study has ever been undertaken to assess the long-term effects of the relocation program, much less the strain this relocation has put on the affected communities. Based on anecdotal evidence, many relocated families have been traumatized and suffer from a much higher incidence of alcoholism, poverty, suicide, depression, and physical illnesses than the rest of the local population. In addition, the burden for caring for these families has fallen on the surrounding communities, as well as the Navajo Nation and the Hopi Tribe. At this time, there is insufficient data to quantify the effects of the relocation law. Without such data, it is impossible to plan for the future.

The Navajo Nation has been urging Congress to support just such a study for at least eight years. During his administration, then-Navajo President Albert Hale called for a "time out" in the relocation program at a Senate Committee on Indian Affairs hearing. The purpose of the "time out" was not to stop funding for the ONHIR but, instead, to re-direct the momentum of the relocation program away from forcing further relocation to: (1) a period of critical study and reflection on the relocation programs' goals; (2) an evaluation of the relocation programs' negative impacts; (3) the development of a well-thought out plan for minimizing those impacts; and (4) to an assessment of its success in providing the "humane and generous" relocation promised by Congress. The Navajo Nation proposed the establishment of the Relocation Evaluation and Assessment Project (REAP), which would have initiated a series of studies and planning initiatives intended to provide not only the first comprehensive review of the effects of relocation, but also critically-needed long-term planning so that the eventual termination of the ONHIR does not result in a disastrous transition for the relocation-affected Navajo families and communities. It is axiomatic that "you reap what you sow." The philosophy behind REAP was that good planning now will mean a better future for the Navajo families and communities impacted by the relocation program. The relatively small cost of undertaking critically needed studies and planning would be more than offset by the savings and

increased efficiency and humanity that will be realized in the multi-million dollar federal relocation effort.

The Navajo Nation again urged the importance of a study in the 107th Congress. In response, the Senate Committee on Indian Affairs included language authorizing a study in two of its bills (S. 2711 and S. 3066, 107th Congress), although the measure never became law. The relevant text of that legislation is set forth below:

SEC. 103. NAVAJO - HOPI RELOCATION IMPACT STUDY.

(a) IN GENERAL- Section 34 of Public Law 93-531 (commonly known as the 'Navajo-Hopi Land Settlement Act of 1974') (25 U.S.C. 640d et seq.) (as added by section 203 of the Indian Programs Reauthorization and Technical Amendments Act of 2002) is amended to read as follows:

'SEC. 34. NAVAJO-HOPI RELOCATION IMPACT STUDY.

'(a) IN GENERAL- Not later than 120 days after the date of enactment of this section, the Office of Navajo and Hopi Indian Relocation shall enter into a contract with an independent contractor under which the independent contractor shall complete, not later than 18 months after the date of enactment of this section, a study to determine whether--

- '(1) the purposes of this Act have been achieved; and
- '(2) recommended activities should be carried out to mitigate the consequences of the implementation of this Act.

'(b) SCOPE- The study conducted under subsection (a) shall include an analysis of--

- '(1) the long-term effects of the relocation programs under this Act on the Hopi Tribe and the Navajo Nation;
- '(2) the ongoing needs of the Hopi and Navajo populations relocated under this Act;
- '(3) the ongoing needs of the other communities affected by relocations under this Act (including communities affected by section 10(f) and communities on Hopi partitioned land and Navajo partitioned land);
- '(4) the effects of termination of the relocation programs under this Act, including the effects of--
 - '(A) closure of the Office of Navajo and Hopi Indian Relocation; and
 - '(B) transfer of responsibilities of that Office to other Federal agencies, the Hopi Tribe, and the Navajo Nation in accordance with applicable provisions of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.); and
- '(5) other appropriate factors, as determined by the Office of Navajo and Hopi Indian Relocation.

`(c) RESTRICTION ON STUDY- The study conducted under subsection (a) shall neither address, nor make any recommendations relating to, the relocation requirements for Navajos and Hopis under this Act, including any proposals for the return of Navajos or Hopis.

`(d) REPORT- Not later than 2 years after the date of enactment of this section, the Office of Navajo and Hopi Relocation shall submit to Congress, the Hopi Tribe, and the Navajo Nation a report that describes the results of the study conducted under subsection (a).

`(e) FUNDING- Of amounts made available to the Office of Navajo and Hopi Indian Relocation, not more than \$1,000,000 shall be made available to carry out this section.'

(b) EFFECTIVE DATE- The amendment made by this section takes effect on the later of--

- (1) the date of enactment of this Act; or
- (2) the date of enactment of the Indian Programs Reauthorization and Technical Amendments Act of 2002.

The Navajo Nation strongly supported the proposed study in S. 2711 and S. 3066. The intent of this legislation was to authorize an independent study that would not favor one tribe or the other, but instead would provide credible data for future planning for both tribes and for the Congress. The Navajo Nation wanted the study to be carried out by an independent party that is neutral and objective so that the study would have maximum credibility. Unfortunately, the Hopi Tribe opposed the legislation and it was stricken from the bill.

At the time, the Navajo Nation urged that the study address:

- o Adjustment of relocatees who have been moved to on- and off-reservation communities and the impact of those individuals on those communities, including economic and social impacts;
- o Economic adaptation and financial problems facing relocatees;
- o Identification of substance abuse problems in the various relocatee populations and determination of the need for treatment facilities;
- o Investigation of the availability of traditional religious practitioners to serve the relocated populations;
- o Determination of the current job training status of each relocatee population with recommendations for future job training;
- o Identification of the special needs of the elderly or handicapped relocatees; and
- o Determination of the present and future impact of the relocatee populations on local and regional school systems.

4. Consistent with the findings of the study proposed above, rehabilitation efforts should also be focused on the Navajo Partitioned Land (NPL). The NPL Navajo communities have borne much of the cost of the relocation, having absorbed thousands of relocatees and their livestock in an area that has long been at or over capacity. The NPL's extremely limited infrastructure, which was overtaxed by the influx of relocatees, was further constrained by the construction freeze that was in place from 1963 until approximately 1979 and continues to be grossly insufficient to meet current needs resulting from the relocation law.

5. Further funding of the Navajo Rehabilitation Trust Fund (NRTF) should be undertaken to complete its mission of addressing the "rehabilitation and improvement of the economic, educational, and social condition of families and Navajo communities that have been affected by" the relocation law (25 U.S.C. 640d-30) and all payments advanced to the Navajo Nation from the NRTF should be forgiven. From its creation, the Nation has viewed the NRTF as a fund to deal with the unforeseen and unintended consequences of the Land Dispute not only over the short-term, but also over the long-term. When initially created, it was presumed that the \$60 million authorized would provide a significant start when invested to address the impact of the relocation law. It would then be supplemented on an ongoing basis by the development of the Paragon Ranch energy resources. However, the Navajo Nation received only about \$16 million through the NRTF. The fund itself has generated about \$8 million in interest, thus the total value of the fund to the Navajo Nation has been about \$24 million. The Navajo Nation has expended approximately \$13 million and currently has obligated for near-term expenditure about another \$2 million, leaving about \$9 million. Of that \$9 million, some \$8.3 Million has been committed for the purchase of land in Arizona (some 13,000 acres) to complete the Land Selections provisions in Section 640d-10 (a) (2) of the current law. Notably, the Navajo Nation lost 911,000 acres of land upon which Navajo families resided in the partition and only received as compensation 400,000 acres, of which the Navajo Nation is obligated to pay for 150,000 acres.

A summary of the funding and expenditures of the NRTF is attached to this testimony.

Land is extremely important in Navajo culture. The commitment to purchase additional lands with NRTF monies falls directly the statutory requirements of the law, which is that the NRTF funds are "solely for purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational, and social condition of families, and Navajo communities," affected by the law's provisions. The Navajo Nation has considered many properties, with a number of properties under current consideration. However, because it is critically important that any newly acquired lands purchased with NRTF monies truly benefit the affected Navajo families, the Navajo Nation is exercising due caution in making these acquisitions. Until the land purchases are made, the Navajo Nation is using the interest from the NRTF to pay for ongoing projects to mitigate the effects of the relocation law.

We were encouraged that the initial draft of S. 1003 authorized additional appropriations. We now understand that there is no intent to authorize further appropriations. We would ask that the NRTF, in fact, be reauthorized, and that it receive full funding and that the obligation of the

Navajo Nation to repay NRTF funds be lifted. The coal resources of the Paragon Ranch were to be the source of funds to repay the United States. However, Paragon Ranch has not been developed as expected and no significant development is anticipated in the foreseeable future. Notably, because of the lawsuits authorized by the relocation law, which created unexpected liabilities for the Navajo Nation, the Navajo Nation has already paid the Hopi Tribe approximately \$40 million to settle several cases, with more cases that remain to be resolved. The Navajo Nation is not in a position to pay the NRTF funds back. As the NRTF funds are to address conditions that arise from the relocation law, the cost of addressing those conditions should more properly fall on the Federal government.

The Navajo Nation has strict procedures regarding the use of the Trust Fund to assure that it is only spent in a way that supports its statutory purposes.

6. The relocation law authorizes the Commissioner to make grants “which significantly assist the Commissioner or assist the Navajo Tribe or Hopi Tribe in meeting the burdens” of the law (25 U.S.C. 640d-25). S. 1003 would strike this provision (Section 122), but this is the very provision that provides flexibility to address needs as they arise. Pursuant to this provision, the Navajo Nation has proposed various projects such as a community center for the Navajo families that have signed accommodation agreements with the Hopi Tribe, range and road improvement, power line extensions, and some housing improvement for heavily impacted NPL host families. Although ONHIR has not approved any of these projects, they are exactly the kind of project that brings humanity to the relocation process while addressing real needs that result from the process. ONHIR has actually spent very little money pursuant to this provision. Notably, the draft substitute bill that the Committee staff have released would restore the discretionary fund authorized by this section, but would not retain the directing guidance that the funds are to be used to “assist the Navajo Tribe or Hopi Tribe in meeting the burdens” of the law.

7. Navajo land selections in New Mexico should not be prejudiced. Section 107(c) of S. 1003 provides that the authority of the Commissioner to select lands in New Mexico shall terminate on September 30, 2008. Since the Commissioner’s authority would terminate on that date, it was not clear to us that this authority would continue in the new Office of Relocation at Interior. The Navajo Nation has not yet completed its New Mexico land selections due largely to circumstances beyond its control. Completion of some of those selections is the subject of legislation introduced by Senator Domenici this year (S. 692). The Navajo Nation is concerned that this provision in S. 1003 could impact that selection process and potentially prejudice Navajo interests. We understand from discussions with your staff that it is not your intent to terminate this authority but to in fact have it transferred to the new Office of Relocation.

8. More time should be provided for individuals to be certified for benefits. Even for the individuals who clearly are eligible for the benefits but are only now entering the process, it will be impossible for them all to be processed by September 30, 2005. We understand that the draft substitute bill would extend this date to September 30, 2008. Although that is a significant improvement, it is still possible that many applications will not have completed the review process by that date. There remain some people who were overlooked during the enumeration process but have recently been identified and plan to seek benefits. Also, there are others for

whom the hope of the restoration of their lands to the Navajo Nation has been completely extinguished and are now reluctantly interested in pursuing benefits for the first time.

9. Additional study and support needs to be provided to the relatively small number of Navajo families who were forcefully evicted from District VI prior to passage of the relocation law. Initially, these families received no relocation benefits; eight years later, when they became eligible for benefits, we believe from anecdotal evidence that only about half were certified to receive benefits.

10. Transfer of ONHIR's Responsibilities to Interior. Because ONHIR has developed critical and hard-won experience in working on and near the Navajo Nation, and because there are still issues that need to be addressed, we believe that ONHIR should not be eliminated, although it certainly can be downsized. However, whether ONHIR is maintained, or its responsibilities are transferred to a new Office of Relocation in the Department of the Interior, it is critically important to the Navajo Nation that the issues set forth above are adequately addressed.

11. Congress should hold a field hearing. We urge the Senate Committee on Indian Affairs to schedule a hearing on the Navajo Nation in order to facilitate participation by the people most affected by the land dispute and to provide the opportunity for visits to affected areas and families in order to deepen the Committee's understanding of the long-lasting effects of the relocation law.

PART II. IMPACTS OF THE RELOCATION LAW

The impacts of the land dispute and relocation are diverse and far-reaching. This section outlines the number of people affected by relocation and describes some of the many impacts associated with relocation and the threat of relocation. This section is drawn principally from the analysis in the Western Area Regional Plan (WARP), which is a planning document developed by the Navajo Nation as a guideline for the distribution of Navajo Rehabilitation Trust Fund monies. The WARP provides a quantified impact statement of the human and community needs that have been engendered by relocation, the construction freezes and the "land disputes." The WARP was completed in 1994. Nonetheless, almost without exception the issues raised remain as vital and problematic today as they were 12 years ago. The main difference is that the costs identified in this section have undoubtedly doubled or tripled since the WARP's release.

Overview

To understand what has been happening in the U.S. – Navajo—Hopi Land dispute, it is necessary to appreciate the deep spiritual foundations of Navajo people. For the Navajo, the land is sacred and the concepts of "religion" and "land" are inseparable. In Navajo belief, humans are advancing toward oneness with the universe. As a result, the Navajo consider themselves one part of nature, not its dominant force.

The Navajo creation story teaches that we emerged from the earth and have a special relationship to the land, including a duty to take care of it. This responsibility has been expressed in many ways. For the Navajo, land is sacred in a way that can only be compared with the Western attachment to sacred places, such as churches and cathedrals.

From time immemorial, our holy men have gone into the high places, lakes and isolated sanctuaries to pray, receive guidance from the spirits, and train our young people in the ceremonies that constitute the spiritual life of each tribal community. In these ceremonies, medicine men represent the whole web of cosmic life in the continuing search for balance and harmony, and through various rituals in which birds, animals and plants are participants, the harmony of life is achieved and maintained.

There are certain lands that are sacred because the location is a site where, within our own history, something of great importance took place. Every society needs sacred places. They help to instill a sense of social cohesion and remind people of the passage of the generations that have brought them to the present. A society that cannot remember its past and honor its traditions is in peril of losing its soul. Our people, because of our considerable longer tenure on this continent, have many more sacred places than do non-Indians.

Land is also sacred where something specifically religious has happened. Several mountains in New Mexico and Arizona, for example, mark places where the Navajo completed their migrations, were told to settle, or where they first established their spiritual relationships with bear, deer, eagle and other forms of life who participate in ceremonials.

Tradition tells us that there are, on this earth, some places of inherent sacredness, sites that are holy in and of themselves. Human societies come and go on this earth, and any prolonged occupation of a geographical region will produce shrines and sacred sites discerned by the occupying people. Among the duties that we must perform certain kinds of ceremonies at certain times and places in order that the sun may continue to shine, the earth prosper, and the stars remain in the heavens.

The federal government bears much of the responsibility for the U.S.-Hopi land dispute and, therefore, must play a significant role in its resolution. In 1974, Congress enacted a law which resulted in the partition of land jointly held by the Hopi Tribe and the Navajo Nation. The law went beyond simply dividing the land; it required that Indians located on the “wrong” side of the line relocate. Because of where the boundaries fell, over 10,000 Navajos were subject to relocation, where only 100 Hopis faced a similar fate.

Many of the Navajos who were subject to relocation live traditional subsistence lifestyles, in close harmony with their environment. The relocation of this – on of the first groups of traditional Native Americans – was the largest federally mandated relocations of a racial group since the internment of Japanese Americans during World War II. Relocation of these Navajo families is not just a matter of changing addresses. It is as if they had been stripped of their very souls.

The effort of relocating 10,000 Navajos off their ancestral lands has resulted in enormous hardship and heartache for the Navajo people. Many “relocates” have been traumatized by the adjustments that have been necessary for them to adapt to a foreign/non-Navajo culture.

Relocation Effort

The first relocation of Navajos from Hopi Partitioned Lands (HPL) was in June of 1977. In its 1974 settlement hearings, Congress originally estimated that 1,000 Navajo and 100 Hopi heads of household would be relocated by the June 1986 deadline. This number was based on U.S. Census figures and Bureau of Indian Affairs estimates. By June 1986, the Office of Navajo and Hopi Indian Relocation (ONHIR) – the federal entity responsible for planning and implementing the relocations – had reached Congress’s estimated 1,000 relocatees. As the following figures indicate, the program was far from complete.

IMPACT OF RELOCATION

Cultural, Spiritual and Mental Costs of Relocation

As we have indicated, for the Navajo there are significant impacts related to the threat of relocation and an uncertain future, overcrowding, and substandard housing conditions, lack of economic opportunity and livestock impoundments. In 1982, it was predicted that continued relocation of the Navajo would result in:

1. The undermining of relocatee’s faith in themselves;
2. The dependency of relocatees on the federal relocation agency;
3. The breakup of families due to the increased stress and alienation caused by relocation;
4. Increased depression, violence, illness and substance abuse; and
5. Stress on other Navajo communities that volunteered to make room for the relocatees.

Physical and Economic

For those Navajos who were forced to relocate off their ancestral lands, there have been many prices to pay. Few had marketable skills, employment histories, training, or education with which to pay common expenses that are required in a modern cash economy (such as taxes and utility bills). Many Navajos lost their homes after relocation to loan sharks or suffered severe family instability, health problems, suicide attempts and depression.

Even greater hardships were inflicted on the Navajo “refugees” who have yet to be provided relocation housing and other federal benefits. Of those Navajo families awaiting benefits, many are living under conditions that pose extreme risks to their personal health and safety. Many also have had to move in with extended family members on other parts of the reservation and, as a result, live under severely crowded housing conditions.

Physical and economic impacts related to the construction freeze and the effect on housing availability and condition, effect on infrastructure provision, lack of community and educational

facilities and lack of economic development have compounded the devastating situation even more. The loss of ancestral land and livestock has virtually destroyed the foundation of traditional Navajo life.

The relocation program to the Navajo has come to be identified as the cause of sickness and death. Because the Navajo religion is so deeply tied to Mother Earth, and the very foundation of Navajo life has its roots in ancient tribal customs and close family ties, separating the Navajo from their homes and culture has meant far more than simply moving them to new homes. Increased physical illness, alcoholism, depression, and family breakups have plagued the relocatees. Not surprisingly, many of them have returned to the Reservation despite the lack of housing, economic development, infrastructure provisions and community and educational facilities.

According to one relocatee, “The white people do not understand the trauma that we are facing. It seems I have nothing left to live for. I used to feel useful when I had my livestock – at least I had something to look forward to.”

Impacts

The analysis of physical impacts clearly shows that physical development of the Bennett Freeze and the NPL has been very adversely affected by the lengthy land dispute. Housing units within these areas are more crowded and are far less likely to be served by basic infrastructure, such as running water, plumbing, telephone service or central heating, than other parts of the Navajo Nation.

This lack of basic housing and physical infrastructure development has served to inhibit economic development on NPL and Bennett Freeze lands. Household and per capita income is lower here than in other areas of the Nation. The percent of residents over age 16 who are employed is far lower on Bennett Freeze and NPL lands than within the Western Area as a whole or within the Navajo Nation as a whole.

The remainder of the Western Area, excluding the NPL and Bennett Freeze, shows income, infrastructure and job statistics that are quite positive. This is due in large part to the location of a number of the Navajo Nation’s primary and secondary growth centers within the unaffected portion of the Western area, including Tuba City, Kayenta, and Leupp.

In the identification of physical impacts, particular attention is paid to the Bennett Freeze and NPL areas. Discussion of physical infrastructure and housing needs on the HPL is limited, as this area is not under the jurisdiction of the Navajo Nation. Similarly, housing and physical infrastructure needs within the Nahat’a Dziil Chapter also are not examined in detail, as housing, road, water and other infrastructure improvements are provided by the ONHIR as families move to the area.

It was not until 1987 that the New Lands, or Nahat’a Dziil Chapter, was obtained. Many families who moved earlier in the relocation process moved to border towns adjacent to the Reservation. These relocatees did not fare well, many having little or no experience in a cash

economy and no marketable job skills. Many of these earlier relocatees lost their houses due to inability to pay utility and property tax assessments or through unscrupulous loan practices by private mortgage brokers.

As a result, many former relocatees who initially received benefits have been left homeless by the relocation effort. Although ONHIR policies have changed since the mid 1980s to minimize potential for loss of housing units among Navajos moving off-Reservation, there are thousands of people who have been left homeless by ill-planned moves in the earlier stages of the program.

At current funding levels, the Bureau of Indian Affairs, the Navajo Housing Authority and the Nations Housing Service Programs are able to provide only about 500 units annually, Nation-wide. Needs are also great in other parts of the Reservation. Recent projections show a need for as many as 350 to 600 new housing units annually within the eastern portion of the Navajo Nation, just to accommodate new household formation. These projections do not account for replacement units that may be needed. Thus, much of the Navajo Housing Authority (NHA), Bureau and Tribal housing resources must go toward housing investment elsewhere on the Reservation. Each year, the provision of housing resources fall further behind the growing housing needs.

Land Shortage to Accommodate Relocatees

The division of the Former Joint Use Area resulted in the award of approximately 900,000 acres of lands formerly occupied by Navajos to the Hopi Tribe for the exclusive use of the Hopis. In its place, approximately 350,000 acres of land were acquired in Arizona (the new Nahat'a Dziil Chapter). An additional 20,000 of the 35,000 acres selected, known as the Paragon Ranch, were acquired in New Mexico for the benefit of the relocatees. The Paragon Ranch area was acquired to provide a revenue stream to address needs of the relocatees rather than to provide land for housing. Thus, about 350,000 acres of land were provided for Navajo settlement to replace 900,000 formerly used by Navajos.

Difficulties in Moving On-Reservation

The Navajo Nation extends over a 25,000+ square mile area. To an outside observer, the Nation appears vast, with thousands of acres of vacant or underutilized land. In reality, the Nation's land base is over utilized. The use of Reservation land is governed through customary use rights, grazing permits, homesite and business leases. Every square inch of Reservation land is committed in one form or another through one of these instruments. The population of the Navajo Nation has increased by more than 1,000 percent during the past 100 years. Its land base, however, has actually declined in the last 15 years with the assignment of the HPL for exclusive Hopi use.

Mental and spiritual difficulties are inherent in moving from one's customary use area. Physically moving from one area to another also is a very difficult proposition on Navajo lands. To construct a new housing unit on Reservation lands requires a homesite lease from the Tribal government, even if the house is to be built with funds from ONHIR. The homesite lease process requires approval by the current surface users of the land (such as grazing permit

holders), the local Chapter, the Chapter grazing committee, and the Chapter Council delegates. Unless a relocatee has family members willing to relinquish part of their customary use area to provide land for one or more housing units to accommodate the relocated family, that family cannot build a new house on the Reservation. In some cases, even if a family member is willing to provide land for a new house, the local Chapter may not agree to the move.

Overcrowding in Adjacent Areas

The eligibility requirements and application process for relocation benefits are complex. Only people who had attained head of household status while still living in HPL were eligible at the time of filing for benefits. The year 1986 was established as the cut-off date for acceptance of applications. These eligibility requirements have resulted in disenfranchisement of the following types of individuals.

- People who were under 18 or were claimed as dependents on another family members' application form, even through they may have been household heads.
- People who reached 18 after the 1986 cut-off date, but who are now legitimate heads of household.
- People who did not file for benefits prior to the 1986 cut-off date.
- People whose parents left HPL before they became head of household.

Areas of the Reservation adjacent to the HPL have been impacted by an influx of migrants from the HPL. These migrants include:

- Disenfranchised young adults and others who are not eligible for relocation benefits.
- Older family members who may be eligible for relocation benefits but who have been reluctant to move far from their customary use areas.

Within the NPL, almost 40 percent of the dwelling units house more than two families. The 39-year construction freeze within the Bennett Freeze area has compounded the problems of overcrowding. Within the Bennett Freeze, the number of household heads exceeds the number of available housing units by a factor of almost 4.

EFFECTS OF THE CONSTRUCTION FREEZE

A construction freeze was in effect on Bennett Freeze lands from 1966 to the present day. New dwelling units could not be constructed within Bennett Freeze boundaries during this period. During the period that the freeze was in effect, even minor repairs to existing structures required approval by both the Navajo and Hopi Tribes. This was enforced by the Hopi tribe and only Navajo families were affected.

A similar freeze was in effect on NPL lands from 1963 to 1979. Private, Tribal and Rehabilitation Trust Fund appropriations have been inadequate in the NPL lands to construct and maintain dwelling units to accommodate latent demand from the freeze as well as the influx of individuals and families from the HPL who are not eligible for relocation benefits or who have been waiting years to receive them. The results have been devastating.

A recent survey of Bennett Freeze and NPL households shows that the number of household heads exceeds the number of housing units by a factor of 4 within the Bennett Freeze. As many as 1,300 households are without housing of their own in an area where rental housing is virtually nonexistent.

Almost 40 percent of housing units within the NPL house more than one family. The survey of the NPL indicates that on weekends when family members return from remote work and school sites, almost half of them sleep in cars or campers, or camp outside because their housing units are so overcrowded that they cannot accommodate the full family sleeping.

Fully 70 percent of the housing stock within the Bennett Freeze area is rated as substandard – 50 percent of it in poor condition, an additional 20 percent beyond repair. Almost 55 percent of NPL housing units were rated as in need of major repair or replacement.

In the five chapters surveyed to date in the NPL, new and replacement housing unit needs are estimated at 555, about 80 percent of the current supply. These estimates of need do not reflect needs within the seven NPL Chapters still to be surveyed.

IMPACTS ON INFRASTRUCTURE DEVELOPMENT

The construction freeze and land dispute have affected infrastructure development on the Bennett Freeze and in the NPL. Sixty to ninety percent of disputed area residents live without such basic services as plumbing, running water, kitchens and telephones. Less than 1 percent of the U.S. population is without such facilities – in large part due to publicly-funded water, wastewater, electrification and communications programs instituted or subsidized by the United States government as early as the 1920s.

Sewer Service

While only 1 percent of all housing units within the U.S. are unsewered or are not served by at least a septic tank, fully 75 percent of the housing units within the NPL are without any type of wastewater service. Wastewater service is required by more than 60 percent of the houses in the Bennett Freeze. This compares with 48 percent of the houses on the remainder of the Navajo Nation.

Water Service Needs

50 percent of NPL housing units and only 60 percent of Bennett Freeze area housing units are served by public water systems. Many of the houses getting their water from wells are using dug well which are very shallow and which do not necessarily provide safe drinking water. Where well water is used, sources tend to be remote from residences. Water hauling is thus difficult for most households, consuming a significant degree of time and effort. Where household members are elderly, water hauling can be particularly difficult.

Plumbing Facilities

Approximately 80 percent of houses on the NPL and almost 70 percent of houses within the Bennett Freeze do not have complete plumbing facilities. This means that improvements are needed not only to construct package water and wastewater treatment systems, extend water and wastewater lines to serve homes, but that basic home improvements are needed to plumb houses, add bathrooms, and in many cases, add kitchen facilities such as sinks. About 70 percent of housing units on the Bennett Freeze and NPL lack complete kitchen facilities. Only one percent of the housing units in the U.S. as a whole are without such basic facilities.

IHS has estimated the cost of total water and wastewater service needs on the Navajo, among units which can be feasibly served. The IHS estimate does not include units which are remote from other housing clusters. The HIS estimate, therefore, undercounts total service needs.

Within the Bennett Freeze area, the IHS estimate for water and wastewater improvement costs exceeds \$33 million. The cost of providing water and wastewater service to homes in need within the NPL exceeds \$19 million. Within the remainder of the Western Area, total needs exceed \$40 million. Navajo nationwide, the needs approach \$280 million.

IHS's annual service installation budget for the entire Navajo Nation averages approximately \$10 million, far below actual needs. The backlog of need grows each year.

Home Heating Fuel

Within the United States as a whole, less than 20 percent of housing units are heated with coal, kerosene or wood. About 80 percent of housing units on both the NPL and Bennett Freeze are heated with these fuels because there is no alternative. Gas and electric lines are not present in most of the affected area. Houses have not been constructed with central heating systems. Residents gather wood, another time-consuming effort in this arid region, or heat with kerosene, typically without proper ventilation. Others gather coal from the slag heaps at power plants and coal mines within the region.

Communications Services

More than 90 percent of the Bennett Freeze and NPL residences are without telephone service, compared with 77 percent of the Navajo Nation as a whole and only 5 percent of all U.S. residences. Most Bennett Freeze and NPL homes are accessible only by dirt road. Most of these roads are not built to specification, but are in fact dirt tracks which become totally inaccessible in heavy rains or mild snows. The lack of telephone services in these areas compounds problems associated with remote locations and poor road systems – isolating residents completely during inclement weather, placing them even further from emergency services.

Roads

The road improvement needs on the NPL equal 45 percent of BIA's annual road construction budget. The road improvements required on the Bennett Freeze exceed the BIA's annual construction budget for the Navajo Nation as a whole by more than 186 percent. This indicates

that additional funding sources are needed for road improvements in the areas affected by the construction freeze.

EFFECT ON PUBLIC AND GOVERNMENT FACILITIES

Community Services

Community facilities such as Chapter houses, senior centers and health services facilities are important to Navajo communities. Chapter Houses serve as a central meeting place for discussion of problems, issues and opportunities facing Chapter members. It provides a central area with telephone and utilities which can be used for weaving, preschool, drug and alcohol prevention counseling, food distribution and other important economic, social and political activities. As such, the Chapter House is an integral part of any Navajo community's social, economic and political well-being.

The construction freeze in the Bennett Freeze area and NPL lands has resulted in critical needs for improvement, expansion, and in some cases replacement, of Chapter Houses and senior centers. Development of road, water, sewer and communications are essential to serve the Chapter Houses and senior facilities.

On average, residents must travel more than 50 miles to hospital services. Residents of the NPL are generally 10 to 20 miles from clinic services. There are no clinics within the Bennett Freeze area. Residents must travel to Tuba City or further for any kind of medical care, from 20 to 96 miles. Clinics are needs within the Bennett Freeze Area.

Police assistance is generally located more than 40 to 50 miles from NPL and Bennett Freeze residents. Police stations serving the study area are generally located in Tuba City, Chinle, Window Rock and Kayenta. These stations are understaffed due to budget limitations, particularly in light of the large geographic area they must cover. Holding cells are inadequate to accommodate the need.

Fire protection services are also remote from residential centers. Some BIA volunteer fire services exist, but their primary responsibility is the protection of BIA schools and local government buildings. The condition of the roads serving most study area residences is such that emergency vehicle access is limited under the best of conditions and precluded during adverse weather conditions. A volunteer fire department located 40 miles from a residence accessible only by dirt roads is not able to provide adequate fire protection services.

Educational Services

Within the Bennett Freeze, students attend public schools in Page and Tuba City or attend BIA schools in Tuba City or elsewhere outside of their home chapter. The one-way commute to attend school ranges from 20 miles to more than 70 miles, requiring a bus trip of more than two hours one-way for some students.

Within the NPL, Low Mountain, Black Mesa and Pinon operate local districts or community schools. Boarding schools are located in Teesto and Hard Rock. Local schools are needed in those Chapters which are presently busing students long distances.

Within the remainder of the Western Area, Lechee and Birdspring and Inscription House require local facilities.

New schools will require additional teachers and housing. The goal would be to have at least an elementary school in each Chapter. A continued traditional lifestyle means that people will continue to be dispersed sparsely throughout the area. All roads should be passable year-round. Transportation problems are given as a rationale by the BIA for boarding schools. However, boarding schools are extremely expensive. Increased local control of schools is now the priority of many communities and the provision of schools and education services should be a priority in this case.

Programs are needed for adult and vocational training. They could be set up through schools, enterprises, Chapter Houses, and other institutions. Basic skills are needed by the target population.

Health

The former construction freeze on NPL and Bennett Freeze lands has left these areas underserved by water, wastewater, and electric service. Census data show that only 60 percent of the houses in the Bennett Freeze and less than 50 percent on NPL have running water. More than 80 percent of the houses in both areas heat with wood, coal or kerosene, often without proper ventilation.

The construction freeze curtailed even basic improvements and repairs on existing structures. Recent surveys show that 54 percent of Bennett Freeze housing units are in poor condition and 20 percent are beyond repair.

Because of the limits on new construction and the influx of families from the HPL, housing units within both areas are overcrowded. On Bennett Freeze lands, the number of families exceeds the number of housing units by almost 300 percent, indicating that most housing units accommodate two, three or more families. With the NPL, almost 40 percent of the dwelling units house two or more families.

Environmental conditions have a very direct impact on human health. Data obtained from the Indian Health Service indicate a correlation between the incidence of illness related to overcrowding and unsanitary conditions and the chapter areas most affected by the construction freeze. The Chief Clinical Consultant in Pediatrics for the Navajo Area Indian Health Services has noted that "...overcrowding, the absence of running water, refrigeration, and adequate sewage disposal adversely impact the mental and physical health of Navajos residing on the Statutory Freeze Area." Overcrowding and high density living conditions facilitate the transfer of infection by increasing the likelihood of contact with individuals carrying contagious diseases.

EFFECT ON ECONOMIC DEVELOPMENT

The lack of physical infrastructure within the study area has dramatically affected its ability to attract private employers. The number of jobs on study area lands is low. The number of employed residents is low. Household and per capita incomes are lower than elsewhere in the Nation. Economic development is required for the area to become self-sufficient, but significant public investments in infrastructure – roads, water, sewer, electricity – are required before these areas can generate revenues sufficient to begin paying back the cost of that investment.

Currently the Navajo economy in the study area is experiencing a massive amount of economic leakage that is attributable to lack of investment in the area. Many community members are forced to travel long distances to border towns and metropolitan communities to purchase almost all of their basic goods which include food, clothing, equipment, and personal vehicles. Important services such as laundry, recreational opportunities and auto repair, for example, are found primarily in outlying communities.

Lack of access to banking, investment and lending services is also a barrier to economic development. There are only three banks on the entire reservation and, as a result of the unique land status and jurisdiction problem in the study area, there are major financial barriers to development that severely restrict the Navajo Nation's ability to provide economic and community development opportunities.

Jobs

Within the United States and then Navajo Nation as a whole, there are approximately 0.7 jobs per household. Within the Bennett Freeze area and NPL, the number of jobs per household is less than half of the national average – 0.29 in Bennett Freeze and 0.35 in the NPL.

The construction freeze which curtailed new infrastructure, roadway and building construction has obviously impacted the ability of the Navajo Nation and private business interests to create job opportunities in the affected areas.

The job needs for each area were calculated based on the U.S. average jobs per household. Resulting needs are for more than 500 jobs on the Bennett Freeze and more than 900 in the NPL. These calculations underestimate the job needs within NPL and Bennett Freeze. Because of the construction freeze, many of the occupied housing units on NPL and Bennett Freeze house more than household. Survey research by the Navajo-Hopi Land Commission indicates that there are more than 4,000 households in need of a housing unit in the NPL and Bennett Freeze area. This indicates a need for as many as 2,600 additional jobs in these areas to approach employment levels comparable with the United States as a whole.

Within the remainder of the Western Area, the number of jobs per household is very high, more than 20 percent higher than the national average. The portion of the Western Area which was not affected by a construction freeze includes Tuba City and Kayenta, two of the Navajo Nation growth centers. Tuba City and Kayenta are employment centers attracting employees from across the Navajo Nation.

Employment

The number of unemployed people is typically undercounted on Indian lands. Because there are so few jobs available, potential workers become discouraged and no longer actively seek employment. Potential workers who are not actively seeking employment are not counted as unemployed.

Only 19 percent of the residents over age 16 on NPL lands are employed. More than 40 percent of the NPL labor force is unemployed. Only 26 percent of Bennett Freeze area residents are employed. This compares with 32 percent of Navajo Nation residents outside of the Western area and 61 percent of U.S. residents over age 16. Low employment rates are due to the lack of jobs within a reasonable commuting distance and poor road conditions, which compound difficulties associated with commuting.

Income

Median household incomes are low, 60 percent less than the Navajo Nation average, and less than 20 percent of the U.S. median. Per capita income also is lower than the Navajo Nation average.

Additional jobs must be developed within the study area before income statistics will increase significantly. Job development requires infrastructure development as a precondition or precursor.

EFFECT ON LAND AND RANGE MANAGEMENT

Grazing

If a relocatee has livestock, it is almost impossible to move the livestock, unless the relocatee is moving to the recently acquired Nahat'a Dziil Chapter where special provisions are made for livestock relocation, or unless the relocatee moves to an area where permits were cancelled as a result of the suit filed by the Hopis in 1974. This results in two types of impacts – inability to move livestock, or severe overgrazing, depending on the area one is moving to.

Virtually every square inch of the Nation, outside of the areas affected by the 1974 law suit, is encumbered by an existing grazing permit. Each grazing permit specifies the maximum number of livestock units that can be grazed on the permitted land. Virtually all permitted areas outside of the Nahat'a Dziil Chapter area are already “maxed out,” that is, the number of livestock grazed already meets or exceeds that number allowed by the permit. Thus, people moving to the lands of other family members outside of the areas affected by the 1974 suit, must usually do so without their livestock, thus losing the economic and cultural benefits they provide.

Within the areas affected by the 1974 lawsuit, grazing permits were cancelled. Family members moving to these areas from the HPL could thus move livestock and add stock to their herds. Some families within the NPL now have 300 or 400 sheep units or more. This has resulted in

severe overgrazing within these areas and has caused much resentment among some former permit holders within the NPL. The BIA is in the process of instituting a livestock management program on the NPL, but it will take years to undo the damage to the land and increase its carrying capacity. In the meantime, significant livestock reductions may be instituted by the BIA to reduce herd levels to the land's carrying capacity. Because livestock, livestock ownership and herding are integral to Navajo culture, the planned livestock reductions will prove very difficult for many NPL residents to accept – psychologically, spiritually and economically.

MITIGATION NEEDS

The capital and service needs of the Western Area are tremendous. As such, they must be prioritized and addressed over time. This section outlines the full range of requirements to mitigate deficiencies in housing and infrastructure in the Western Area. .

Basic infrastructure includes:

- *Water or wastewater service*
- *Solid waste services*
- *Electrical and telephone hookups*

Other needs are:

- *The number of new or improved road miles planned for each area,*
- *The additional jobs required to achieve the U.S. average employment per household humber,*
- *New housing units required to house existing households which are doubled up with friends or family members.*

Overall, housing needs represent the largest percentage of total capital requirements, more than 35 percent. Job creation represents the second largest capital requirement within the affected area. Road and water and wastewater needs are 12 and 16 percent of total capital requirements, respectively. Electrical and communications needs are approximately 7 percent of total needs, with solid waste (landfill) requirements at about 1 percent of the overall need.

The Bennett Freeze represents approximately 55 percent of the total capital improvements required, with the NPL representing 45 percent.

Needs for infrastructure development, housing and new job creation total more than \$600 million dollars. The current annual cap on the Navajo Rehabilitation Trust Fund allocation is \$10,000,000.00. At this annual allocation level, current housing and infrastructure needs represent a 60 year backlog, with needs growing annually. It is clear that basic services are required initially, followed by investments in new job creation.

Infrastructure needs are shown to be lower in the Bennett Freeze area than in the NPL. Infrastructure needs are calculated by examining deficiencies in existing housing units. The construction freeze prevented new housing construction on the Bennett Freeze for more than 20 years. As a result, the Bennett Freeze has fewer housing units than does the NPL. Electrical, communications, water and wastewater needs are thus fewer within the Bennett Freeze area because the number of housing units is lower than in the NPL. On a per capita basis, needs within the two areas are quite similar.

PART III. A PRIMER TO THE NAVAJO-HOPI-UNITED STATES "LAND DISPUTE"

Called by a Federal court the "greatest title problem in the West,"¹ the 111-year old Navajo-Hopi-United States "land dispute" is much more--it is a human tragedy on a huge scale, and yet another sad example of Federal mistreatment of Native Americans. The "land dispute" has led to the largest forced relocation of any racial group in this country since the internment of Japanese Americans during World War II,² with devastating spiritual, psychological and economic consequences for thousands of Navajo families.

A. Origins Of The "Land Dispute." In 1882, at the request of the local Bureau of Indian Affairs agent who was seeking authority to evict two non-Indian missionaries working among the Hopi, President Chester Arthur signed an executive order establishing a reservation "for the use and occupancy of Moqui [Hopi], and such other Indians as the Secretary of the Interior may see fit to settle thereon." At the time the reservation was created there were 300 to 600 Navajos living within its boundaries, and approximately 1800 Hopis.³ President Arthur's order, by its broad reference to "such other Indians", clearly encompassed the Navajos who made up one-sixth to one-third of the population. Even so, it was evident that little thought had been given to the actual land usage of the two tribes as the boundaries of the new reservation (known as the 1882 Reservation) were artificially designated as a rectangle--one degree of latitude in width and one degree of longitude in height. Inside this artificial reservation there were over 900 Indian sites--the majority of which were Navajo.⁴

Because of continuing pressure by the Hopi Tribe for a determination as to who legally was allowed to occupy the 1882 Reservation, the Congress authorized the two tribes in 1958 to sue each other to resolve the issue (as sovereign nations, both the Navajo Nation and the Hopi Tribe are immune from suit unless Congress dictates otherwise). The Hopis sued within ten days after the law was passed and claimed exclusive ownership of the 1882 Reservation. In 1962, a Federal court held:

[t]he Hopi and Navajo Indian tribes have joint, undivided, and equal interests as to the surface and sub-surface including all resources appertaining thereto, subject to the trust title of the United States.⁵

In reaching this decision, the Federal court thus ruled that the Navajo Indians living on the 1882 reservation were "such other Indians" as set forth in President Arthur's executive order.

Dissatisfied with this result, the Hopi Tribe began petitioning the Congress for partition of the land. In 1974, this effort succeeded. However, according to a recent history "[i]t was not repeated Hopi

complaints about Navajo encroachment onto uninhabited 1882-area lands that drove the [Federal] government to action. It was the pressure of oil and gas companies to determine ownership of the area."⁶ The "disputed lands" lie on top of one of the richest coal beds in the Western United States. A Congress more interested in Watergate revelations than Indian issues adopted "the Hopi solution", and passed Public Law 93-531 which provided for partition of the 1882 reservation (except for an area known as District Six which had previously been determined to be exclusively Hopi). This law called for the appointment of a Federal mediator to seek a negotiated settlement of the dispute. If the two tribes could not come to agreement--and they did not--the mediator was required to establish within 90 days a partition line dividing the "disputed lands" in half, except for District Six which was to remain in Hopi hands. All the Hopi had to do was wait and not agree to anything for 90 days and the arbitrary boundary partition and draconian relocation provisions would come into effect. The Hopi did just that. The partitioning required by Congress did not require any inquiry into nor a determination of who was actually living on what area of land. Congress simply required the mediator and the federal court to partition the land in half without looking at whether the Hopi Tribe's claims bore any relationship to their use of the lands. The result of the arbitrary partitioning is that thousands of Navajo people, many of whom are non-English speaking, traditional and elderly, were shocked and horrified to learn that the land they and their ancestors have lived on for generations was now Hopi land and that they would have to relocate.

Had this legislation only called for partition, then perhaps today there would be no dispute; there is no reason a large number of Navajos could not live on the Hopi Reservation, just as many Indians live on the reservations of other tribes throughout the country. But Public Law 93-531 called for something more, something terrible: **all members of a tribe located on land partitioned to the other tribe would be forced to relocate!** Because the Hopis live in villages, most already within what was recognized as the exclusive Hopi reservation, it was possible to draw a partition line that would place only 100 Hopis on the Navajo side of the line. In stark contrast, the Navajos, who live in small family groupings located out of sight of each other, numbered over 10,000 on what was now Hopi land. Many of those 10,000 were among the most traditional Indians left in the United States, speaking only Navajo, descended from Navajos who had resided in the same location from long before the establishment of the 1882 reservation,⁷ and living a traditional subsistence lifestyle.

The requirement that these Navajo families undergo forced relocation is totally without precedent since the World War II internment of Japanese-Americans. Notably, where Indian tribes have successfully sued to recover land from non-Indians, the tribes have only received a cash payment; relocation of the non-Indians was never considered an option.⁸

The law, despite its draconian relocation provision, was supposed to be administered in a "generous and humane" manner, with families receiving cash benefits and a new relocation home. In reality, as discussed further below, the relocation and housing program, inhumane in its very conception, has also been bedeviled by bureaucratic ineptitude with great hardships imposed on those families that choose, under great Federal government pressure, to relocate.

B. The Relocation Program

It is like being buried alive.
-- 64 year old woman relocatee.⁹

The effort to relocate over 12,000 Navajos off of their ancestral lands has resulted in enormous hardship and heartache for a proud people. Many of the so-called "relocatees" have been traumatized by the attempt to adjust to a cash economy from their subsistence lifestyles. Few have marketable skills, employment history, training, education or any other means to pay such common expenses in a modern economy as taxes and utility bills.¹⁰ A 1979 survey of relocated Navajos revealed that 25% of them were doing poorly, either having lost their homes to loan sharks, or otherwise struggling with severe family instability, health problems, suicide attempts and depression. A 1982 Relocation Commission survey found that at least one-third of the Relocatees no longer owned their relocation homes.¹¹ A follow-up survey in 1983 found that one-half of Navajos relocated to border towns had either lost their homes or accumulated significant debts due to their unfamiliarity with a cash economy and the unscrupulous actions of lenders.¹² By March, 1984, almost 40% of the relocatees who were put in off-reservation communities no longer owned their relocation homes; evidence of fraud was so great that an FBI investigation was begun.¹³

In 1982, a prominent social scientist predicted that continued relocation of the Navajos would result in (1) the undermining of the relocatees' faith in themselves, (2) the dependency of the relocatees on the Federal relocation agency, (3) the breakup of families due to the increased stress and alienation caused by the relocation, (4) increased depression, violence, illness, and substance abuse, and (5) stress on the other Navajo communities which volunteered to make room for the relocatees.¹⁴ Every expert who testified on the probable effects of the relocation before the law was passed predicted similar dire consequences.¹⁵ Tragically, the intervening years have shown that all of these predictions have come to pass.¹⁶ There has even been a significant rise in death rates among the relocatees after they relocated.¹⁷

Relocation for these Navajo families was not just a matter of changing address. It was an end to their way of life. Truly, they felt "buried alive." For those who remain on the land, resisting the relocation program, a Federally-imposed construction freeze, along with a freeze on almost all Federal assistance, has created nothing short of government enforced squalor.¹⁸ Reduction of livestock by the Bureau of Indian Affairs (BIA), authorized to the "carrying capacity" level of the land, has actually cut much deeper and has led to accusations that the BIA was trying to "starve out" the Navajo families.¹⁹

Even greater hardship has been inflicted upon the Navajo "refugees"--Navajo families who left the Hopi land under Federal pressure and in accordance with the law--who have yet to be provided relocation housing and other Federal benefits. Some of these families have waited as long as 12 years!²⁰ According to Relocation Commission statistics, more than one-third of the refugees awaiting housing are living in substandard conditions that often do not even meet the minimum Federal requirements for temporary housing for migratory farm workers. Some are living under conditions that pose an extreme risk to personal health and safety. Many have had to move in with extended family members on other parts of the Navajo reservation and, as a result, are living in severely overcrowded homes. During the only Congressional oversight hearing ever held on the implementation of the relocation law, the Relocation Commission testified regarding the plight of the Navajo refugees:

We think, frankly, that it's been a travesty that we have not been able to provide benefits to those relocatees that complied in good faith with the order of the courts and the instruction of Congress to leave the area of controversy.²¹

The tragedy of the relocation policy is all the more poignant because it is not the first time the Navajos have been relocated on a massive scale by the Federal government. In 1863, the United States Government dispatched Kit Carson to subdue the Navajos. Kit Carson used Hopi and other Indian scouts in his campaign against the Navajo. To force the Navajos out of hiding, Carson engaged in a systematic "scorched earth" policy, killing or setting fire to Navajo livestock, orchards, fields and homes. Over 8,500 Navajos were captured and marched 300 miles to their "new home" at Fort Sumner, New Mexico. Hundreds died on the march, and thousands died in captivity at Fort Sumner, where living conditions were abominable. The Navajos who escaped capture hid out in remote portions of their land including the Grand Canyon and the top of the Black Mesa, the current "disputed land" area.²² Finally, in 1868, the Army realizing that their effort to transplant the Navajos was a failure, let them return to their homeland in Northern Arizona and Northwest New Mexico. Navajos families still pass down tales of horror and courage from that experience--now supplemented by stories of the ongoing relocation.

C. Navajo Origins In The Southwest. Navajo religious belief teaches that the Navajos have always lived in the Southwest, emerging from a lower world to this, "the Fifth world," in the vicinity of the current Navajo Reservation. The Navajo Creation Story, or Story of Emergence as it is also known, is the central narrative of the most sacred Navajo ceremonial--the Blessing Way. The Creation Story begins with the earth as a great land mass surrounded by an ocean with a solid sky overhead--not unlike the Creation Story in the Bible.²³ Above the sky was another world--the second world--and above that another, and so on until this, the fifth world. The Navajo People traveled up through these worlds, transformed from insect people in the first world, into human beings in the fourth world. The Navajos believe that above the fifth world is a sixth world where all things become "one with the cosmos."²⁴ Several events in the Navajo Creation Story are remarkably similar to the Judeo-Christian story of creation, including an expulsion from the first world paralleling Adam and Eve's expulsion from Eden, and the destruction of the first and fourth worlds by floods, like the biblical story of Noah. Many Navajo religious beliefs and stories are identified with specific sites and topographical features located throughout the current Navajo reservation and in the "disputed land."

Anthropologists have a different view on how both the Navajo and Hopi came to be in present day Arizona, believing that ancestors of both tribes, as well as all the other indigenous peoples of North and South America, crossed a land bridge from Asia over what is currently the Bering Sea, then migrated southward to populate a virgin continent.

The exact arrival of the Navajos in the Southwest is uncertain. A number of anthropologists consider that the Navajos' Athapaskan line of ancestors could have arrived by 800 A.D., perhaps earlier.²⁵ Dating by dendrochronology (tree-ring dating) indicates that Athapaskan tribes constructed homesites in Western Colorado by 1000 A.D., and in Gallup, New Mexico in approximately 1380 A.D. Athapaskan pottery has been found in Gobernador Canyon, New Mexico, dating to 710-875 A.D.²⁶

The written accounts of early European settlers, as early as 400 years ago, identify the Navajo as occupying an area that includes the current "disputed lands" (presumably, the Navajos occupied the area for sometime before the Europeans arrived). In 1583, a probable group of Navajos was identified living "from as far west as the Hopi pueblos . . . to Mount Taylor [one of the four mountains sacred to the Navajos]." The famous Spanish priest, Fray Alonso de Benevides, Custodian of Missions of New Mexico, wrote in 1630 "that the province of Navajo Apaches has a north and south border of some fifty leagues [approximately 150 miles] but it extends westward for more than three hundred [approximately 900 miles], and we do not know where it ends." Benevides later wrote that the land occupied by the Navajo "becomes greater as we go towards the center of their land, which extends so far in all directions that, as I say, it alone is bigger than all others."

That the Navajos occupied an area ranging from the Four Corners region, across the current disputed land, to the Colorado River, was further confirmed by Colonel Doniphan who wrote in 1847 "that the country inhabited by Navajo Indians lies west of [the] range of mountains bounding the valley of Del Norte on the east, and extending down the tributaries of the Rio Colorado of the west, near the Pacific Ocean." Navajo sites have been identified in Keams Canyon, on the current Hopi Reservation, dating from as early as 1644 to 1711.²⁷ In 1846, John T. Hughes wrote that "the Navajos occupy a district of country scarcely less in extent than the State of Missouri. They range from 33 [just below modern day Phoenix] to the 38 [lower Utah and Colorado] of north latitude. They stretch from the borders of New Mexico on the east to the settlements of California on the west." When Kit Carson captured and "relocated" over 8,500 Navajos in 1863, those that escaped lived in the Grand Canyon and on Black Mesa, the very area the Hopis have claimed as exclusively theirs in the "land dispute."²⁸

Ironically, both the Hopi and the Navajo are what is termed "modern ethnic groups." This means that they are formed from various other ethnic groups or communities. Having lived in the same area with many other tribes for as long as 1200 years, this is not surprising. In the case of the Hopis, there is evidence that they formed between the late 1200s and the 1400s from the Chemehuevis of southern California-southwestern Arizona, the Paiutes of the Grand Canyon's north rim (and Utah and Nevada), and other tribal groups located in southern Arizona and even Mexico. During this same period, and in succeeding centuries, there were also significant influxes of, and intermarriage with, Pueblo Indians from New Mexico.²⁹

The Navajos also represent a group of mixed heritage. Based on language studies and other evidence, the Navajos are frequently linked with the Athapaskan peoples of the Northwest and Alaska. However, frequent intermarriage with other peoples in the Southwest has given them a varied heritage and culture. By the end of the 17th century, one-quarter of the Navajo population may have been Pueblo Indians.³⁰ The Navajos welcomed other people, intermarrying heavily, absorbing and adapting their cultures to the Navajo way of life. Many Hopis have joined the Navajos, and several Navajo clans trace their lineage to Hopi families.³¹ As a result, many Navajo can trace some of their heritage to the Pueblo people.

While the lineage of the various tribal groups in the Southwest quickly becomes very complex, the patterns of settlement remain basically the same. The Hopi traditionally lived and occupied villages near water, farming intensively adjacent land, later adding grazing. The Hopi would travel farther

afield to visit religious shrines, to gather herbs, plants, and other items. Not until the late 19th century did a few Hopi occupy land away from their villages as they began commercial livestock grazing. At the same time, other peoples, notably the Navajo, with a mixed focus on hunting, gathering and farming, occupied more scattered dwellings as they subsisted in loosely defined areas outside the Hopi villages.

Despite overwhelming evidence that the Navajos have lived in the Black Mesa area in the center of the "disputed lands" for at least 400 years, and likely far longer, the Hopi government and its public relations firms like to speak of Navajo encroachment on Hopi land -- even if the Hopis never lived on the land, instead using it occasionally for religious purposes and otherwise sharing it with such groups as the Navajo. The Hopi government points to the popular wisdom--and Hollywood image--of the Navajos as "wild raiders", claiming they have suffered "depredations" at the hands of their Navajo neighbors. The Hopis do not point to their own history of raiding, such as the massacre and destruction of the Hopi village of Awatovi by other Hopi villages.³² Indeed, as one anthropologist noted, citing the Hopi example, "[t]he stereotype of the Pueblo Indians as nonaggressive and essentially peaceful lacks validity."³³

On one point the Hopi are right: there was a period of time when Navajos engaged in raiding in New Mexico and Arizona. What is little understood, however, is that this raiding was in response to abuses at the hands of the Mexicans, the Americans and even other tribes. In 1853, the first commander of Fort Defiance, on what is now the Navajo Reservation, referring to relations between Navajos and Whites, wrote:

The brutal murder of Chapitone, a Navajo Chief who signed a treaty with the U.S. in 1849 at Canyon De Chelly, by Mexicans near Cebolleta added to other offenses committed against the Navajos . . . As a nation of Indians, the Navajo do not observe the character given them by the people of New Mexico. From the period of the earliest history, the Mexicans have injured and oppressed them to the extent of their power, and because these Indians have redressed their own wrong, the degenerate Mexicans have represented them as a nation of thieves and assassins . . . They are usually armed with bows and arrows, and a lance. A few of the rich only have guns . . . There are no fixed traders among them, the few sent to their country in 1851 and 1852 were lawless, itinerants with roving licenses . . . Nothing gives an Indian a worse opinion of white men than the tricks and impositions practiced upon them by unprincipled traders. Half the Indian wars of our country have sprung from such causes . . . The Navajos have not always been the aggressors, but have so signally redressed the wrongs inflicted upon them, that their name has become a terror.³⁴

Indeed, by 1860, only three years before Kit Carson was sent to subdue the "Navajo threat", between 5,000 and 6,000 Navajos were held as slaves by New Mexicans.³⁵ The unfair Navajo reputation as "wild raiders," used so skillfully by the Hopi government, has its origin in justifiable actions taken by Navajos to protect their lands, women and children.

The Navajos are not just "visitors" in the Southwest, as the Hopi government claims when arguing that the "encroaching" Navajos should be forced to relocate. Navajos have a long history in this part of the country, and are closely tied to the other indigenous peoples of the region, both in belief and in blood. Their claim to the land is just as strong, and often stronger, than the claim of the Hopi.

In the end, the evidence of conflict between the Navajo and Hopi Nations does not support the Navajos as constant aggressors at the Hopi expense. Rather, it "supports only the conclusion that there were conflicts over scarce resources like water in the [disputed lands]."³⁶

D. Navajo And Hopi Land Use And Cooperation. As the previous section illustrates, the Navajo people have lived in the current "disputed lands" for many centuries, if not over a millennium. During the same period, the Hopi lived in villages, outside the "disputed lands", near water sources, where they engaged primarily in farming. While the two peoples lived in separate, though adjacent localities, the Navajo people always allowed the Hopi people to come on to their land to gather eagle feathers and conduct other religious activities. This tradition of cooperation, far stronger than any history of conflict over scarce resources, is the tradition the current Navajo residents of the disputed land wish to continue.

E. The Myth of Navajo Nomadism. The Hopi government likes to talk of the "encroachment" of Navajo "nomads." As the previous discussion should demonstrate, the Navajos have a long history in the northern Arizona area, and it is unjust to claim that they encroached upon the Hopis. Indeed, the assertion that the Navajos are nomads has been dismissed by every major anthropologist who has studied Navajo history.³⁷ Because the Navajos have a grazing tradition, they commonly engaged in the seasonal movement of animals. Such movement took place within a prescribed area and could not be defined as nomadic.³⁸ Navajo origin stories emphasize farming, hunting and gathering activities, with a lesser emphasis on livestock. The Navajos are considered, in historic times, to be "primarily sedentary agriculturalists."³⁹ As Fray Benavides noted in the 17th century, the Navajos were "great farmers."

F. The Great Navajo Spiritual Bond To The Land

The White Man does not understand that the Indian is bounded to their land and cannot be treated as parcels to be distributed like the U.S. mail.

-- Askie Betsie⁴⁰

Unless you have lived among the Navajo people, walked their countryside herding sheep or gathering medicinal herbs, spoken to their elders, or participated in the ceremonial burial of an umbilical cord on the traditional homesite, it is very difficult to understand the deeply spiritual and intimate bond Navajos feel for their land. This great bond makes it impossible for traditional Navajos to leave their lands for any length of time; and makes it hard for them to survive the trauma of the Federal relocation program.

For the Navajo, land and religion are synonymous.⁴¹ In Navajo belief "man has been advancing toward oneness with the universe . . . [and thus] he identifies himself with all its parts."⁴² As even

previous Federal mediators have recognized, Navajos view the land as "mothergod" and believe they are charged with caring for her.⁴³ The Navajos define the boundaries of their land with four sacred mountains which appear on the Tribal seal: the San Francisco peaks in Arizona, Mount Taylor in New Mexico, and Mount Hesperus and Blanca Peak in Colorado. "Within their boundaries ceremonies have the greatest power; herbs and minerals taken from their slopes are used in the strongest medicines; they themselves are the repositories of never-failing, never-ending life and happiness."⁴⁴

Navajo religious practices focus upon the land and the livestock that the Navajo believe they were given to tend by their gods. Sheep provide life's sustenance, as well as food and wool for weaving. With the rugs and blankets woven by Navajo women, traditional families obtain cash or goods. Among traditional Navajos, sickness is often attributed to being "mutton hungry."

The loss of ancestral land and livestock destroys the foundation of traditional Navajo life. The relocation program, because it takes away both of these, has come to be identified with sickness and death.

My husband passed away early Spring 1986. He and I tried everything and anything to help alleviate this illness but we lost him. He tried hospitals, even traditional ceremonies, but he said he was too affected by the land dispute, land partition, livestock reduction, and relocation. He said nothing could bring him back to the health, peace and harmony he once had, not to mention the self-sufficiency that this family once enjoyed. He said the relocation cost him his life.

-- Relocatee

The deeply spiritual relationship that Navajos have for the land is difficult to describe.

In our Judeo-Christian culture, we have sacred sites. People make pilgrimages to places considered to be holy. But, in the Navajo case, the entire land, within the four sacred mountains, as they have defined it in their tradition and their mythology, is holy land. So, if you were to take a traditional use area and plot out all of the places that are used for religious purposes, rituals, prayers, offerings, thanksgivings, etc., you'd end up with a map that is just literally impossible to see the places because there would be so many of them. There is a place here for collecting plants, there is a place here where one's umbilical is buried, there is a place here where jewels are offered, water here. That is an important concept in Navajo religion. It is quite different, I think, from our own understanding of the land that we live upon which we can, of course, alienate by sale and we can easily move if we want to. Not that we don't have feeling for our

land, but they don't usually involve this matter of daily ritual or weekly or yearly ritual, and so on.

-- Professor John Wood
Northern Arizona University⁴⁵

G. The “Cattle Versus People” Issue. The Hopis also have a religious attachment to the area they call their ancestral homeland. The Navajos respect the Hopi religious beliefs and have sought to resolve the "land dispute" by offering the Hopi other lands they claim as their own, in exchange for the land that has been inhabited for many centuries by the Navajos. The Navajo land exchange proposals were deemed "flexible" and a good beginning "position" by Federal mediators, but have been consistently rejected by the Hopi government.⁴⁶

Because the religious use that the Hopis have for the "disputed lands" is that of access--access to shrines (pilgrimages) and to areas for gathering religious objects (eagle gathering)--the Navajos have offered to allow the Hopis full access rights. Such rights do not conflict with the Navajo religious use of the land, which requires occupancy. In this way, from a religious perspective, the two peoples can live in harmony. Unfortunately, other interests are also pushing the Hopi agenda. In the late nineteenth century, the Hopi began the commercial raising of livestock. The Hopis intend to use the land now occupied by traditional Navajo families, after they have been relocated, to graze cattle. The Navajo families are truly bewildered that they are being relocated to make room for cattle.⁴⁷

Interestingly, many Hopi traditional elders support the right of Navajos to remain on the land.⁴⁸ However, despite their important religious and cultural position, it is difficult for these elders to influence the Hopi government. Traditionally, Hopis express opposition by abstention from the decision-making process.⁴⁹ Many Hopi traditional elders have withdrawn from participation with the Hopi government as their way of resisting the relocation law.

H. Congressional Action And The Accommodation Agreement. In 1991, the Federal Ninth Circuit court ordered mediation between the U.S. Government, the Hopi Tribe, the Navajo families living on the land partitioned to the Hopis, and the Navajo Nation. The order arose out of litigation in which the Navajo families asserted their First Amendment right to freedom of religion as the basis for their unwillingness to relocate off of their ancestral lands.

After the Navajo families agreed to meet ten Hopi pre-conditions, the parties entered into negotiations culminating in an agreement in principle (AIP) reached in Fall, 1992. Under the terms of the AIP, Navajo families would receive 75 year leases for the land on which they now live. The Hopis would receive approximately 500,000 acres of Federal, state and private land as compensation, as well as a \$15 million settlement. As leading anthropologists have noted about the Navajo, "[d]ecisions as to 'community' policy can be reached only by the consensus of a local meeting. The People themselves are the real authority."⁵⁰ In keeping with this tradition, the details of the AIP were considered by the Navajo communities in the "disputed land" as part of the ongoing negotiation among all the parties on the details of the AIP. On August 5, 1993, the Navajo families stated that the AIP does not satisfactorily address their religious and living needs. The Navajo families then offered several counter-proposals that they would like the Hopi Tribe, the United

States, the Navajo Nation, and the mediator to consider. Based on the request of the Navajo families, former Navajo President Peterson Zah also presented an offer to the Hopi Tribe, the United States, and the mediator. President Zah's offer to the Hopis provided that: the Navajo Nation would give up three acres of land to the Hopi for every acre of land on which Navajos families lived that the Hopis ceded in return; assistance in obtaining Lake Powell water; potential revenue from a power transmission line; religious protection; and a payment of \$10 million. The Hopi Tribal Council, within eleven days, rejected this offer and the mediation process.

It became clear in 1994 that, do to enormous opposition in Arizona, many of the key land transfer provisions of the AIP could not be fulfilled. Acknowledging this, the Navajo Nation Council passed a resolution in December, 1994, noting that the AIP, as originally adopted, was no longer viable, and calling for further negotiations.

Subsequent negotiations led to an “accommodation agreement” with a 75-year term, which while not formally approved by the Navajo Nation Council, was approved by the U.S. Congress. In 1996, under the sponsorship of Senator John McCain (R-AZ), Congress passed the Navajo-Hopi Land Dispute Settlement Act, which ratified the accommodation agreement and established a February 1, 2000 deadline for non-signing Navajo families to relocate and for the federal government to “quiet title” of the land to the Hopi Tribe. On that deadline, a number of Navajo families remained on the HPL who refused to sign the accommodation agreement.

In April, 2001, the U.S. Supreme Court denied certiorari (refused to hear) the appeal in the freedom of religion case brought by the Navajo families (*Manybeads v. United States*), clearing the way for possible eviction of non-signing families by the Federal Government.

Conclusion. The Navajo Hopi Land Commission Office looks forward to working with the Senate Committee on Indian Affairs to bring closure to this sad chapter in American and Navajo history in a manner that is both intelligent and compassionate.

OUTSTANDING ISSUES IN THE UNITED STATES – NAVAJO – HOPI LAND DISPUTE

Non-Signing Navajo HPL Families

- Do not want to be moved from their traditional homeland, much less forcibly evicted.
- Want a permanent right to remain on the land, but find the Accommodation Agreement unacceptable on several bases, including its 75-year term, the right of the Hopi's to evict and general Hopi jurisdiction, lack of a trusted dispute resolution provision, and intrusion into sacred practices and sites.

Signing Navajo HPL Families

- Need establishment of a fair and trusted dispute resolution mechanism.
- Seek protection of sacred practices and sites.
- Require assurance that 75-year agreement is renewable.
- Want equal treatment with Hopis on grazing rights and other matters.
- Need separate homesites for children.
- Seek preservation of right to traditional uses of the land (burial rights, gathering rights, grazing, farming, etc.).
- Seek clarification of governmental relationship with the Navajo Nation and the Hopi Tribe.
- Have tremendous community development needs. For decades funding which was available for other low-income communities was not available for the HPL. There is an immediate need to address development of utilities, water and roads; housing and community/governance center; business development; employment; livestock and farming.

Navajo Relocatees

- Relocatees require a measure of ongoing support as federally promised economic and community development has not been delivered.

- **Housing Conditions.** Families need assistance in renovations. There is also a cultural issue tied to handling a home where there has been a death.
- Children that relocated with their parents are now landless and homeless. Prior to relocation, the children had customary use areas available to them within the mother's clan; that form of community support is not available in the new areas (families only have one-acre homesites).
- Many relocatees have complied with the law, but still have not received their benefits. The Office of Navajo and Hopi Indian Relocation is focussed on the HPL residents to the exclusion of these relocatees.

Navajo Refugees

- Many relocatees lost their homes due to the disruptive social and economic impact of the poorly handled relocation process. The federal government should do a follow-up study on this group and provide additional support and services as needed.
- Other Navajo families have relocated and been denied benefits. The vast majority of these cases are overturned by the District Court, but this represents a major ongoing problem.

Navajo Partition Lands Communities

- These communities suffered a disproportionate impact from the relocation into their communities by HPL Navajos and need funding for range improvement and restoration, as well as other infrastructure needs in response to this increase in the NPL population.

Navajo Families Relocated to New Lands

- There is ongoing concern with regard to the effects of the uranium tailings spill into the Rio Puerco. There needs to be a definitive assessment and report on any ongoing risks associated with this incident.

Navajo District Six Evictees

- In 1936, District Six of the 1882 reservation was declared to be exclusively Hopi. A few years later, District Six was expanded. As a result, during World War II, even while their husbands and sons were off fighting the Nazis, Navajo families living in the expanded District Six were evicted by the Federal government without support or assistance of any kind. Subsequent boundary adjustments to District Six put more Navajo families on the wrong side of the line, resulting in further evictions in the 1970's. Those families were forced to live in tents, in the middle of winter, on the Window Rock Fairgrounds.

- The federal government conveniently forgot about these Navajo families, who have no rights under the Federal relocation law. However, my Administration has not forgotten them. They deserve our support and compassion. We will fight for compensation and fairer treatment for them from the Federal government.

NOTES

- ^{1.} Healing v. Jones (II), 210 F. Supp. 125, 129 (D. Ariz. 1962), aff'd, 373 U.S. 758 (1963)(per curiam).
- ^{2.} Hollis A. Whitson, A Policy Review of the Federal Government's Relocation of Navajo Indians Under P.L. 93-531 and P.L. 96-305, 27 Arizona Law Review 371, 372-373 (1985).
- ^{3.} Emily Benedek, The Wind Won't Know Me (New York: Knopf, 1992), p. 34; Whitson, op. cit., p. 375, n. 30.
- ^{4.} Whitson, op. cit., p. 375 n. 30, citing Healing v. Jones (II), 210 F. Supp at 137 n. 8.
- ^{5.} Healing v. Jones (II), 210 F. Supp at 192.
- ^{6.} Benedek, op. cit., p. 134.
- ^{7.} Report of Richard P. Morris to Judge William P. Clark, September 20, 1985, p. 5. Clark was formerly the Secretary of Interior and was appointed by President Reagan to serve as a mediator between the Navajo and Hopi tribes.
- ^{8.} Benedek, op. cit., p. 154.
- ^{9.} Orit Tamir, Relocation of Navajo from Hopi Partitioned Land in Pinon, 50 Human Organization 173, 175 (1991).
- ^{10.} Whitson, op. cit., p. 387.
- ^{11.} Ibid., p. 388, citing 134 Cong. Rec. S13336-37 (daily ed. Oct. 1, 1982) (statement of Sen. Dennis DeConcini).
- ^{12.} Benedek, op. cit., p. 211.
- ^{13.} Whitson, op. cit., p. 389.

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14. Thayer Scudder, No Place To Go, (Philadelphia: Institute for the Study of Human Issues), p. 10.
 15. *Ibid.*, pp. 141-142.
 16. Benedek, *op. cit.*, pp. 174-175.
 17. Scudder, *op. cit.*, pp. 29, 139-140.
 18. Whitson, *op. cit.*, p. 405.
 19. *Ibid.*, pp. 406-407.
 20. Benedek, *op. cit.*, p. 260.
 21. Testimony of Relocation Commission before the House Committee on Interior and Insular Affairs, July 19, 1986.
 22. Clyde Kluckhohn and Dorothea Leighton, The Navajo (Cambridge: Harvard Press, 1974), pp. 40-41.
 23. Raymond F. Locke, The Book of the Navajo, (Los Angeles: Mankind Publishing Co. (5th. Ed.) (1992), p. 55.
 24. *Ibid.*, p. 56.
 25. See Locke, *op. cit.*, pp. 8-9; Benedek, *op. cit.*, p. 59; Kluckhohn and Leighton, *op. cit.*, p. 33; Whitson, *op. cit.*, p. 374 n. 23.
 26. Locke, *op. cit.*, p. 8.
 27. Stokes and Smiley, Tree Ring Dates from Navajo Land Claims, 1964.
 28. Kluckhohn and Leighton, *op. cit.*, pp. 40-41.
 29. Based on research by Klara Kelley, Ph.D., Peggy F. Scott and Harris Francis for the Navajo-Hopi Land Commission, citing Harry Courlander, The Fourth World of the Hopi, (New York: Thomas Crown, 1971) and E. Charles Adams, The Pueblo Katsina Cult, (Tucson: University of Arizona Press, 1991).
 30. Benedek, *op. cit.*, p. 63 (citing Karl Luckert, The Navajo Hunter Tradition (Tucson: University of Arizona Press, 1975), p. 14.
 31. Kluckhohn and Leighton, *op. cit.*, p. 37.
 32. Benedek, *op. cit.*, pp. 54-56.
 33. *Ibid.*, p. 56, quoting Marc Simmons, "History of Pueblo-Spanish Relations to 1821," Handbook of North American Indians, vol. 9 (Washington, D.C.: Smithsonian Institution, 1979), p. 189.

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- ^{34.} See The Navajo Times, February 21, 1991, p. 16.
- ^{35.} Benedek, op. cit., p. 65.
- ^{36.} Whitson, op. cit., p. 383.
- ^{37.} Kluckhohn and Leighton, op. cit., p. 38; Benedek, op. cit., p. 64; Peter Iverson, The Navajo Nation (Albuquerque: University of New Mexico Press, 1981), pp. 5-6.
- ^{38.} Iverson, op. cit., p. 6.
- ^{39.} Ibid., p. 5; Kluckhohn and Leighton, op. cit., p. 35; see also Benedek, op. cit., p. 60.
- ^{40.} Whitson, op. cit., p. 387 (citing Navajo-Hopi Land Dispute Commission, Endangered Dine: The Big Mountain Peoples and Other Land Dispute Navajos, p. 15 (1980)).
- ^{41.} Scudder, op. cit., p. 142.
- ^{42.} Gladys Reichard, Navaho Religion (New York: Princeton University Press, 2d ed., 1970), p. 14.
- ^{43.} Report of Morris to Clark, pp. 9-10.
- ^{44.} Welcome To The Land Of The Navajo, prepared by the Museum and Research Department of the Navajo Tribe, 4th ed., 1974, p. 49.
- ^{45.} Testimony of Professor John Wood, Northern Arizona University, before the Navajo and Hopi Indian Relocation Commission.
- ^{46.} Report of Morris to Clark, p. 10.
- ^{47.} Scudder, op. cit., p. 134; Benedek, op. cit., p. 44.
- ^{48.} Benedek, op. cit., p. 189; Scudder, op. cit., p. 134.
- ^{49.} Ibid., p. 128; report of Morris to Clark, p. 12.
- ^{50.} Kluckhohn and Leighton, op. cit., p. 118.

CHRONOLOGY

- Dawn of Time Navajo oral history states that the Navajos “emerged” in the Four Corners area, with some migration to other areas, including Alaska and other parts of the country.
- 1583 First report by Europeans of probable Navajo occupation of what became the "1882 Reservation"
- 1863 Kit Carson forces 8,500 Navajos on infamous Long Walk to Fort Sumner, New Mexico.
- 1868 Treaty signed between the United States and the Navajo Nation. Navajos incarcerated at Fort Sumner return to "homeland" within four sacred mountains.
- 1882 President Arthur issues an executive order establishing the "1882 Reservation" for the Hopi and "such other Indians as the Secretary of the Interior may see fit to settle thereon." As much as one-quarter of the population on the new reservation is Navajo.
- 1934 Legislation defines boundaries of the Navajo reservation, including what came to be called the "1934 Act Reservation" on its western-side. A portion of the "1882 Reservation", known as District Six, is reserved for the exclusive use of the Hopi Tribe.
- 1941 District Six is expanded. 100 Navajo families are subsequently forced to relocate without any compensation, while husband and fathers are away serving in the U.S. military.
- 1958 Congress authorizes the Hopi and Navajo tribes to sue each other to determine their rights and interests in the "1882 Reservation."
- 1962 A Federal court, in Healing v. Jones, rules that both tribes have joint, equal and undivided rights to the 1.8 million acres of the 1882 Reservation outside of District Six. This area becomes known as the Joint Use Area.
- 1966 Commissioner of Indian Affairs Robert L. Bennett issues a series of administrative orders that restrict development in the 1934 Act Reservation. This becomes known as the Bennett Freeze and remains in effect for 26 years. In 1992, The New York Times reports that it is "government enforced squalor."
- 1974 Congress enacts Public Law 93-531 which directs a 50-50 division of the Joint Use Area, establishes the Navajo-Hopi Indian Relocation Commission, and provides for a Federal mediator to work with the tribes on the dividing line. The law promises a "generous and humane" relocation program and provides that Indians relocated will

receive "decent, safe and sanitary replacement dwelling[s]" and that "community facilities and services such as water, sewers, roads, schools, and health facilities . . . will be available."

The law also allows the Navajos to buy 250,000 acres of land (replacing the 900,000 acres they lost) to minimize the disruptive effect of the relocation.

Hopis file suit in Federal court claiming the 1934 Act reservation as their own.

1975 When tribes cannot reach agreement on a partition line, the Federal mediator submits his recommendation. Meanwhile, Navajo efforts to select relocation lands are blocked by ranchers and the Interior Department.

1977 A Federal court approves the mediator's proposed partition.

1980 Congress passes Public Law 96-305 which authorizes the transfer of 250,000 acres of Bureau of Land Management land to the Navajo Nation and further authorizes the Navajo Nation to purchase 150,000 more acres. Total acreage that the Navajos can acquire is 400,000, in return for the loss of 900,000.

The law also codifies the administrative construction freeze in the 1934 Act reservation, and obligates the Secretary of Interior to "take such action as may be necessary in order to assure the protection . . . of the rights and property of individuals subject to relocation."

1981 Relocation Commission submits detailed plan for relocation to Congress.

1985 Former Interior Secretary William Clark is designated President Reagan's personal representative to encourage the Navajo and Hopi tribes to settle the "land dispute." Clark eventually determines that settlement is unlikely.

1986 July 6 deadline for relocation of Navajos passes with thousands still on the land, and thousands relocated but without having received the promised federal benefits.

1988 Public Law 100-666 establishes a single Commissioner to head the Navajo-Hopi Indian Relocation Commission which is renamed the Office of Navajo and Hopi Indian Relocation.

1989 U.S. government reports to the United Nations that the Navajo-Hopi Relocation Program "entails no enforced relocation." This contradicts the decision of the Federal court overseeing the related litigation.

1991 The Federal Ninth Circuit Court, in Manybeads v. United States, a case brought by the Navajo families subject to relocation on the basis of their First Amendment right

	to freedom of religion, orders mediation between the U.S. government, Hopi Tribe, Navajo families and the Navajo Nation.
1992	The parties to the mediation reach an agreement in principle (AIP), which allows the Navajo families to remain on the land for at least 75 years, and provides the Hopi tribe with approximately 500,000 acres of federal, state and private land in Arizona and a \$15 million settlement. Strong public and political opposition is voiced in Arizona to the AIP, which Congress must enact. Federal district court awards hope 60,000 acres south of Tuba City; Hopis appeal.
1993	Navajo families raise religious and other concerns regarding the AIP. Hopi Council rejects Navajo counter-offer and further mediation efforts.
1994	Political opposition in Arizona makes implementation of AIP as originally drafted impossible. Navajo Nation Council calls for more negotiations.
1995	Ninth Circuit remands 1992 decision, ordering district court to determine the extent of the Hopi religious claim to the 1934 Act reservation.
1996	Congress passes Navajo-Hopi Land Dispute Settlement Act ratifying Accommodation Agreements, which provide a 75-year lease term to signing Navajo families.
1997	Federal district court approves an agreement between the parties lifting half of the freeze in the Bennett Freeze Area; litigation continues regarding status of remaining areas.
Feb.1, 2000	Deadline for non-signing Navajo families to leave the HPL or face forcible relocation by the Federal government.
April 2001	U.S. Supreme Court denies certiorari in case brought by Navajo Families (Manybeads v. United States).Decision clears way for possible Federal eviction of non-signing Navajo families.
2005	Senator McCain introduces the Navajo-Hopi Land Settlement Amendments of 2005 (S. 1003).