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NAVAJO-HOPI LAND SETTLEMENT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

FIRST SESSION

ON

S. 1003

NAVAJO-HOPI LAND SETTLEMENT AMENDMENTS OF 2005

JULY 21, 2005
WASHINGTON, DC

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NAVAJO-HOPI LAND SETTLEMENT

THURSDAY, JULY 21, 2005

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 9:35 a.m. in room 485, Senate Russell Building, Hon. John McCain (chairman of the committee) presiding.

Present: Senators McCain, Dorgan, and Inouye.

STATEMENT OF HON. JOHN MCCAIN, U.S. SENATOR FROM ARIZONA, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Good morning.

I want to thank Senator Inouye for stopping by this morning because he is one of those who has been involved in this issue for many years, as I have. Senator Inouye, for the record, one of my earliest memories was in 1983 when I was a member of the House, now 22 years ago, traveling to Navajo and Hopi lands and having a long series of meetings with Congressman Udall, then chairman of the Interior Committee, to try to get the issue of Navajo-Hopi land disputes settled, one of the few times in Mo Udall's career he was not successful.

Then I know when I came to the Senate in 1987, this issue again was before the committee, the issue of the Bennett freeze, how many families needed to be located, how soon would we be able to terminate this. And now we have spent since 1974 now 31 years we have spent $483 million and witnesses will come before this committee today and say we are still not finished.

It is going to be over. It is going to be over. It is going to be over. It is time it ended. It is time that we brought to a conclusion this tragedy that has afflicted human beings on the Navajo and Hopi Reservations for too long.

I guess, and I would be interested in hearing my colleague from Hawaii's comments, maybe the lesson is you should not try to settle land disputes through legislation. That may be one of the lessons we have learned here since 1974.

I do not diminish in any way the human tragedy that has been associated with this issue. Witnesses today are as well aware of that as I am. I am also aware that is a limited amount of American taxpayer's dollars that could be devoted to worthy causes on both the Navajo and Hopi Reservations: Educational facilities, health care facilities, housing, and many others.

I want to emphasize, we have to bring closure to this. On many occasions in the past, all through the 1980's and 1990's, I was told just a few more years, just a few more years, just a few more years.

The year is now 2005, $483 million spent in the meantime. It is time to bring closure.

I want to clarify that the bill is not intended to alter prior court decisions on land claims or to impact on ongoing negotiations between the Navajo and Hopi Tribes. I commend you for the progress that is being made. I also understand there is a strong desire to address the deplorable conditions on the Bennett Freeze. I, too, want to address this in separate legislation.

When enacted in 1974, the Navajo and Hopi relocation process was intended as a temporary means to relocate families who were living on the disputed land on December 22, 1974, 31 years ago. The act originally intended that relocation activities would be completed by 1986, and that the total cost would be $40 million. Since its inception, the relocation process has been plagued with controversy and delay and the Congress has had to amend the act several times to expand the relocation activity and provide additional appropriations.

I recognize the deep emotional toll that relocation has taken on the Navajo and Hopi Tribes and to the individual relocatees. But after 31 years of identifying and relocating eligible applicants and appropriations of one-half billion dollars, it is time to bring the relocation program to a close.

This bill intends that by September 2008, the relocation office will transfer remaining responsibilities and necessary personnel and funding to the Department of the Interior.

Thereafter the Federal Government will no longer be obligated to provide replacement homes for eligible relocatees. The funds to provide these homes will be placed in trust with Interior for dissemination to eligible relocatees or their heirs. All other necessary relocation activity will be administered by the department until these activities are complete.

In 1996, I introduced a bill that would have phased out the relocation program by September 2001. At a hearing on that bill, many witnesses stated that this was a reasonable timeline to complete the activity, but opposition remained due to the pending approval of the accommodation lease agreements by the Department of the Interior. That activity is now complete and an additional 9 years have passed in which additional relocation activity has occurred.

I commend the relocation office for its ongoing efforts to implement this complex program. I understand that you have reviewed over 4,600 applications, considered numerous appeals and provided relocation homes for over 3,600 families. You have also provided funding to both tribes to address the impacts of relocation.

I welcome you all to the hearing and I look forward to your testimony on this important matter.

[Text of S. 1003 follows:]

II

109TH CONGRESS
1ST SESSION

S. 1003

To amend the Act of December 22, 1974, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 11, 2005

Mr. MCCAIN introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To amend the Act of December 22, 1974, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Navajo-Hopi Land Settlement Amendments of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE NAVAJO-HOPI LAND SETTLEMENT ACT OF 1974

Sec. 101. Repeal of sections.
Sec. 102. Definitions; division of land.
Sec. 103. Joint ownership of minerals.
Sec. 104. Actions.

Sec. 105. Paiute Indian allotments.
Sec. 106. Partitioned and other designated land.
Sec. 107. Resettlement land for Navajo Tribe.
Sec. 108. Office of Navajo and Hopi Indian Relocation.
Sec. 109. Report.
Sec. 110. Relocation of households and members.
Sec. 111. Relocation housing.
Sec. 112. Payment for use of land.
Sec. 113. Effect of Act.
Sec. 114. Actions for accounting, fair value of grazing, and claims for damages to land.
Sec. 115. Joint use.
Sec. 116. Religious ceremonies; piping of water.
Sec. 117. Access to religious shrines.
Sec. 118. Exclusion of payments from certain Federal determinations of income.
Sec. 119. Authorization of exchange.
Sec. 120. Severability.
Sec. 121. Authorization of appropriations.
Sec. 122. Funding and construction of high school and medical center.
Sec. 123. Environmental impact; wilderness study; cancellation of leases and permits.
Sec. 124. Attorney fees and court costs.
Sec. 125. Lobbying.
Sec. 126. Navajo Rehabilitation Trust Fund.
Sec. 127. Availability of funds for relocation assistance.

TITLE II—PERSONNEL OF THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Sec. 201. Retention preference.
Sec. 202. Separation pay.
Sec. 203. Federal retirement.

TITLE III—TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS

Sec. 301. Definitions.
Sec. 302. Transfer of functions.
Sec. 303. Transfer and allocations of appropriations.
Sec. 304. Effect of title.

TITLE I—AMENDMENTS TO THE ACT OF DECEMBER 22, 1974

SEC. 101. REPEAL OF SECTIONS.

(a) IN GENERAL.—The Act of December 22, 1974 (25 U.S.C. 640d et seq.) is amended in the first undesignated section by striking ''That, (a) within'' and all that follows through the end of the section.

(b) ADDITIONAL REPEALS.—Sections 2 through 5 and sections 26 and 30 of the Act of December 22, 1974 (25 U.S.C. 640d–1 through 640d–4; 88 Stat. 1723; 25 U.S.C. 640d–28) are repealed.

SEC. 102. DEFINITIONS; DIVISION OF LAND.

Section 6 of the Act of December 22, 1974 (25 U.S.C. 640d–5) is amended—

(1) by striking ''SEC. 6. The Mediator'' and all that follows through subsection (f) and inserting the following:

''SECTION 1. DEFINITIONS.

''In this Act:

''(1) DISTRICT COURT.—The term 'District Court' means the United States District Court for the District of Arizona.

''(2) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(3) TRIBE.—The term 'Tribe' means—

''(A) the Navajo Indian Tribe; and

''(B) the Hopi Indian Tribe.

''SEC. 2. DIVISION OF LAND.

''(a) DIVISION.—

''(1) IN GENERAL.—The land located within the boundaries of the reservation established by Execu-

tive order on December 16, 1982, shall be divided into parcels of equal acreage and quality—

"(A) to the maximum extent practicable; and

"(B) in accordance with the final order issued by the District Court on August 30, 1978 (providing for the partition of the surface rights and interest of the Tribes).

"(2) VALUATION OF PARCELS.—For the purpose of calculating the value of a parcel produced by a division under paragraph (1), the Secretary shall—

"(A) take into account any improvement on the land; and

"(B) consider the grazing capacity of the land to be fully restored.

"(3) COMPENSATION BY TRIBES.—If the partition under paragraph (1) results in parcels of unequal value, as determined by the Secretary, the Tribe that receives the more valuable parcel shall pay to the other Tribe compensation in an amount equal to the difference in the values of the parcels, as determined by the Secretary.

"(4) COMPENSATION BY FEDERAL GOVERNMENT.—If the District Court determines that the

failure of the Federal Government to fulfill an obligation of the Government decreased the value of a parcel under paragraph (1), the Government shall pay to the recipient of the parcel compensation in an amount equal to the difference between—

"(A) the decreased value of the parcel; and

"(B) the value of the fully restored parcel.";

(2) by striking "(g) Any" and inserting the following:

"(b) LICENSE FEES AND RENTS.—Any"; and

(3) by striking "(h) Any" and inserting the following:

"(c) GRAZING AND AGRICULTURAL USE.—Any".

SEC. 103. JOINT OWNERSHIP OF MINERALS.

Section 7 of the Act of December 22, 1974 (25 U.S.C. 640d–6) is amended—

(1) by striking "SEC. 7. Partition" and inserting the following:

"SEC. 3. JOINT OWNERSHIP OF MINERALS.

"(a) IN GENERAL.—Partition"; and

(2) in the second sentence, by striking "All" and inserting the following:

"(b) JOINT MANAGEMENT.—All".

SEC. 104. ACTIONS.

Section 8 of the Act of December 22, 1974 (25 U.S.C. 640d–7) is amended—

(1) by striking ''SEC. 8. (a) Either Tribe'' and inserting the following:

''SEC. 4. ACTIONS.

''(a) ACTIONS IN DISTRICT COURT.—Either Tribe'';

(2) in subsection (b)—

(A) in the first sentence, by striking ''(b) Lands, if any,'' and inserting the following:

''(b) ALLOCATION OF LAND.—

''(1) NAVAJO RESERVATION.—Any land'';

(B) in the second sentence, by striking ''Lands, if any,'' and inserting the following:

''(2) HOPI RESERVATION.—Any land''; and

(C) in the third sentence, by striking ''Any lands'' and inserting the following:

''(3) JOINT AND UNDIVIDED INTERESTS.—Any land'';

(3) in subsection (c)—

(A) by striking ''(c)(1) Either'' and inserting the following:

''(c) EXCHANGE OF LAND.—

''(1) IN GENERAL.—Either'';

(B) in paragraph (2), by striking ''(2) In the event'' and inserting the following:

"(2) INTERESTS OF TRIBES.—If";

(C) in paragraph (3), by striking "(3) Neither" and inserting the following:

"(3) DEFENSE.—Neither"; and

(D) by striking "section 18" each place it appears and inserting "section 14";

(4) in subsection (d), by striking "(d) Nothing" and inserting the following:

"(d) EFFECT OF SECTION.—Nothing";

(5) in subsection (e), by striking "(e) The" and inserting the following:

"(e) PAYMENT OF LEGAL FEES, COURT COSTS, AND OTHER EXPENSES.—The"; and

(6) by striking subsection (f).

SEC. 105. PAIUTE INDIAN ALLOTMENTS.

Section 9 of the Act of December 22, 1974 (25 U.S.C. 640d–8) is amended by striking "SEC. 9. Notwithstanding" and inserting the following:

"SEC. 5. PAIUTE INDIAN ALLOTMENTS.

"Notwithstanding".

SEC. 106. PARTITIONED AND OTHER DESIGNATED LAND.

Section 10 of the Act of December 22, 1974 (25 U.S.C. 640d–9) is amended—

(1) by striking "SEC. 10. (a) Subject" and inserting the following:

"SEC. 6. PARTITIONED AND OTHER DESIGNATED LAND.

"(a) NAVAJO TRUST LAND.—Subject";

(2) in subsection (a), by striking "section 9 and subsection (a) of section 17" and inserting "sections 5 and 13(a)";

(3) in subsection (b)—

(A) by striking "(b) Subject" and inserting the following:

"(b) HOPI TRUST LAND.—Subject";

(B) by striking "section 9 and subsection (a) of section 17" and inserting "sections 5 and 13(a)";

(C) by striking "section 3 or 4" and inserting "section 1"; and

(D) by striking "section 8" and inserting "section 4";

(4) in subsection (c)—

(A) by striking "(c) The" and inserting the following:

"(c) PROTECTION OF RIGHTS AND PROPERTY.—The"; and

(B) by striking "pursuant thereto" and all that follows through the end of the subsection and inserting "pursuant to this Act";

(5) in subsection (d), by striking "(d) With" and inserting the following:

"(d) PROTECTION OF BENEFITS AND SERVICES.—With"; and

(6) in subsection (e)—

(A) by striking "(e)(1) Lands" and inserting the following:

"(e) TRIBAL JURISDICTION OVER PARTITIONED LAND.—

"(1) IN GENERAL.—Land";

(B) by adjusting the margins of subparagraphs (A) and (B) of paragraph (1) appropriately; and

(C) in the matter following subparagraph (B)—

(i) by striking "The provisions" and inserting the following:

"(2) RESPONSIBILITY OF SECRETARY.—The provisions"; and

(ii) by striking "life tenants and".

SEC. 107. RESETTLEMENT LAND FOR NAVAJO TRIBE.

(a) IN GENERAL.—Section 11(a) of the Act of December 22, 1974 (25 U.S.C. 640d–10(a)) is amended—

(1) by striking "SEC. 11. (a) The Secretary" and inserting the following:

"SEC. 7. RESETTLEMENT LAND FOR NAVAJO TRIBE.

"(a) TRANSFER OF LAND.—

"(1) IN GENERAL.—The Secretary";

(2) by striking "(1) transfer not to exceed two hundred and fifty thousand acres of lands" and inserting the following:

"(A) transfer not more than 250,000 acres of land";

(3) by striking "Tribe: *Provided,* That" and all that follows through "as possible." and inserting "Tribe; and";

(4) in the first paragraph designated as paragraph (2)—

(A) by striking "(2) on behalf" and inserting the following:

"(B) on behalf"; and

(B) by striking the second sentence;

(5) in the matter following paragraph (1)(B) (as redesignated by paragraph (4))—

(A) in the first sentence—

(i) by striking "Subject to" and all that follows through "all rights" and inserting the following:

"(4) REQUIREMENTS OF TRANSFER.—

"(A) IN GENERAL.—Subject to this paragraph, all rights"; and

(ii) by striking ''paragraph (1)'' and inserting ''paragraph (1)(A)'';

(B) in the second sentence, by striking ''So long as'' and inserting the following:

''(B) COAL LEASE APPLICATIONS.—

''(i) IN GENERAL.—If'';

(C) in the third sentence, by striking ''If such adjudication'' and inserting the following:

''(ii) ISSUANCE OF LEASES.—If an adjudication under clause (i)'';

(D) in the fourth sentence, by striking ''The leaseholders rights and interests'' and inserting the following:

''(iii) RIGHTS AND INTERESTS OF LEASEHOLDERS.—The rights and interests of a holder of a lease described in clause (i)''; and

(E) in the fifth sentence, by striking ''If any'' and inserting the following:

''(C) CLAIMS UNDER MINING LAW.—If any'';

(6) by inserting after paragraph (1)(B) (as redesignated by paragraph (4)) the following:

''(2) EXCHANGE OF LAND.—

"(A) IN GENERAL.—In order to facilitate a transfer of land under paragraph (1)(A), the Secretary may exchange land described in paragraph (1)(A) for State or private land of equal value.

"(B) UNEQUAL VALUE.—If the State or private land described in subparagraph (A) is of unequal value to the land described in paragraph (1)(A), the recipient of the land that is of greater value shall pay to the other party to the exchange under subparagraph (A) compensation in an amount not to exceed the lesser of—

"(i) the difference between the values of the land exchanged; or

"(ii) the amount that is 25 percent of the total value of the land transferred from the Secretary to the Navajo Tribe.

"(C) RESPONSIBILITY OF SECRETARY.—The Secretary shall ensure that the amount of a payment under subparagraph (B) is as minimal as practicable.

"(3) TITLE TO LAND ACCEPTED.—The Secretary shall accept title to land under paragraph (1)(B) on behalf of the United States in trust for

the benefit of the Navajo Tribe as a part of the Navajo reservation.''; and

(7) in the second paragraph designated as paragraph (2)—

(A) in the first sentence—

(i) by striking ''(2) Those'' and inserting the following:

''(5) STATE RIGHTS.—

''(A) IN GENERAL.—The''; and

(ii) by striking ''subsection 2 of this section'' and inserting ''paragraph (1)(B)''; and

(B) in the second sentence, by striking ''The'' and inserting the following:

''(B) STATE INTERESTS.—The''.

(b) PROXIMITY OF LAND; EXCHANGES OF LAND.—Section 11(b) of the Act of December 22, 1974 (25 U.S.C. 640d–10(b)) is amended by striking ''(b) A border'' and inserting the following:

''(b) PROXIMITY OF LAND TO BE TRANSFERRED OR ACQUIRED.—A border''.

(c) SELECTION OF LAND.—Section 11(c) of the Act of December 22, 1974 (25 U.S.C. 640d–10(c)) is amended—

(1) by striking ''(c) Lands'' and inserting the following:

''(c) SELECTION OF LAND TO BE TRANSFERRED OR ACQUIRED.—Land''; and

(2) by striking the period at the end and inserting the following: '': *Provided further,* That the authority of the Commissioner to select lands under this subsection shall terminate on September 30, 2008.''.

(d) REPORTS.—Section 11(d) of the Act of December 22, 1974 (25 U.S.C. 640d–10(d)) is amended by striking ''(d) The'' and inserting the following:

''(d) REPORTS.—The''.

(e) PAYMENTS.—Section 11(e) of the Act of December 22, 1974 (25 U.S.C. 640d–10(e)) is amended by striking ''(e) Payments'' and inserting the following:

''(e) PAYMENTS.—Payments''.

(f) ACQUISITION OF TITLE TO SURFACE AND SUBSURFACE INTERESTS.—Section 11(f) of the Act of December 22, 1974 (25 U.S.C. 640d–10(f)) is amended—

(1) by striking ''(f)(1) For'' and inserting the following:

''(f) ACQUISITION OF TITLE TO SURFACE AND SUBSURFACE INTERESTS.—

''(1) IN GENERAL.—For'';

(2) in paragraph (2), by striking ''(2) If'' and inserting the following:

''(2) PUBLIC NOTICE; REPORT.—If''; and

(3) in paragraph (3), by striking ''(3) In any case where'' and inserting the following:

''(3) RIGHTS OF SUBSURFACE OWNERS.—If''.

(g) LAND NOT AVAILABLE FOR TRANSFER.—Section 11(g) of the Act of December 22, 1974 (25 U.S.C. 640d–10(g)) is amended by striking ''(g) No'' and inserting the following:

''(g) LAND NOT AVAILABLE FOR TRANSFER.—No''.

(h) ADMINISTRATION OF LAND TRANSFERRED OR ACQUIRED.—Section 11(h) of the Act of December 22, 1974 (25 U.S.C. 640d–10(h)) is amended—

(1) by striking ''(h) The lands'' and inserting the following:

''(h) ADMINISTRATION OF LAND TRANSFERRED OR ACQUIRED.—

''(1) IN GENERAL.—The land''; and

(2) by adding at the end the following:

''(2) RELOCATION.—

''(A) IN GENERAL.—In order to facilitate relocation of a member of a Tribe, the Commissioner may grant a homesite lease on land acquired under this section to a member of the

extended family of a Navajo Indian who is certified as eligible to receive benefits under this Act.

"(B) EXCEPTION.—The Commissioner may not use any funds available to the Commissioner to carry out this Act to provide housing to an extended family member described in subparagraph (A).".

(i) NEGOTIATIONS REGARDING LAND EXCHANGES AND LEASES.—Section 11(i) of the Act of December 22, 1974 (25 U.S.C. 640d–10(i)) is amended—

(1) by striking "(i) The" and inserting the following:

"(i) NEGOTIATIONS REGARDING LAND EXCHANGES AND LEASES.—The"; and

(2) by striking "section 23" and inserting "section 19".

SEC. 108. OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION.

Section 12 of the Act of December 22, 1974 (25 U.S.C. 640d–11) is amended—

(1) by striking "SEC. 12. (a) There is hereby" and inserting the following:

"SEC. 8. OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION.

"(a) ESTABLISHMENT.—There is";

(2) in subsection (b), by striking "(b) The" and inserting the following:

"(b) APPOINTMENT.—The";

(3) in subsection (c)—

(A) by striking "(c)(1)(A) Except" and inserting the following:

"(c) CONTINUATION OF POWERS.—

"(1) POWERS AND DUTIES OF COMMISSIONER; EXISTING FUNDS.—

"(A) POWERS AND DUTIES OF COMMISSIONER.—Except";

(B) in paragraph (1)(B), by striking "(B) All" and inserting the following:

"(B) EXISTING FUNDS.—All"; and

(C) in paragraph (2), by striking "(2) There are hereby" and inserting the following: "(2) TRANSFER OF POWERS.—There are";

(4) in subsection (d)—

(A) by striking "(d)(1) Subject" and inserting the following:

"(d) POWERS OF COMMISSIONER.—

"(1) IN GENERAL.—Subject";

(B) by adjusting the margins of subparagraphs (A) and (B) of paragraph (1) appropriately;

(C) in paragraph (2), by striking ''(2) The'' and inserting the following:

''(2) CONTRACTS.—The''; and

(D) in paragraph (3), by striking ''(3) There'' and inserting the following:

''(3) AUTHORIZATION OF APPROPRIATIONS.—There'';

(5) in subsection (e)—

(A) by striking ''(e)(1)'' and inserting the following:

''(e) ADMINISTRATION.—

''(1) ADMINISTRATIVE, FISCAL, AND HOUSEKEEPING SERVICES.—

(B) in paragraph (1)—

(i) in the first sentence, by striking ''The'' and inserting the following:

''(A) IN GENERAL.—The''; and

(ii) in the second sentence, by striking ''In any'' and inserting the following:

''(B) ASSISTANCE FROM DEPARTMENTS AND AGENCIES.—In any''; and

(C) in paragraph (2), by striking "(2) On" and inserting the following:

"(2) FAILURE TO PROVIDE ASSISTANCE.—On";

(6) by striking subsection (f) and inserting the following:

"(f) TERMINATION.—

"(1) IN GENERAL.—The Office of Navajo and Hopi Indian Relocation shall terminate on September 30, 2008.

"(2) TRANSFER OF OFFICE DUTIES.—On the date of termination of the Office, any duty of the Office that has not been carried out, as determined in accordance with this Act, shall be transferred to the Secretary in accordance with title III of the Navajo-Hopi Land Settlement Amendments of 2005."; and

(7) by adding at the end the following:

"(g) OFFICE OF RELOCATION.—

"(1) ESTABLISHMENT.—Effective on October 1, 2006, there is established in the Department of the Interior an Office of Relocation.

"(2) DUTIES.—The Secretary, acting through the Office of Relocation, shall carry out the duties of the Office of Navajo and Hopi Indian Relocation that are transferred to the Secretary in accordance

with title III of the Navajo-Hopi Land Settlement Amendments of 2005.

"(3) TERMINATION.—The Office of Relocation shall terminate on the date on which the Secretary determines that the duties of the Office have been carried out.".

SEC. 109. REPORT.

Section 13 of the Act of December 22, 1974 (25 U.S.C. 640d–12) is amended—

(1) by striking "SEC. 13. (a) By no" and inserting the following:

"SEC. 9. REPORT.

"(a) IN GENERAL.—Not"; and

(2) in subsection (b)—

(A) by striking "(b) The" and inserting the following:

"(b) INCLUSIONS.—The"; and

(B) by striking "contain, among other matters, the following:" and inserting "include—".

SEC. 110. RELOCATION OF HOUSEHOLDS AND MEMBERS.

Section 14 of the Act of December 22, 1974 (25 U.S.C. 640d–13) is amended—

(1) by striking "SEC. 14. (a)" and inserting the following:

"SEC. 10. RELOCATION OF HOUSEHOLDS AND MEMBERS.

"(a) AUTHORIZATION.—";

(2) in subsection (a)—

(A) in the first sentence—

(i) by striking "Consistent" and inserting the following:

"(1) IN GENERAL.—Consistent";

(ii) by striking "section 8" each place it appears and inserting "section 4"; and

(iii) by striking "section 3 or 4" and inserting "section 1";

(B) by striking the second sentence;

(C) in the third sentence, by striking "No further" and inserting the following:

"(2) SETTLEMENTS OF NAVAJO.—No further";

(D) in the fourth sentence, by striking "No further" and inserting the following:

"(3) SETTLEMENTS OF HOPI.—No further"; and

(E) in the fifth sentence, by striking "No individual" and inserting the following:

"(4) GRAZING.—No individual";

(3) in subsection (b)—

(A) by striking "(b) In addition" and inserting the following:

"(b) ADDITIONAL PAYMENTS TO HEADS OF HOUSEHOLDS—In addition";

(B) by striking "section 15" and inserting "section 11"; and

(C) by striking "section 13" and inserting "section 9";

(4) in subsection (c), by striking "(c) No" and inserting the following:

"(c) PAYMENTS FOR PERSONS MOVING AFTER A CERTAIN DATE.—No"; and

(5) by adding at the end the following:

"(d) PROHIBITION.—No payment for benefits under this Act may be made to any head of a household if, as of September 30, 2005, that head of household has not been certified as eligible to receive the payment.".

SEC. 111. RELOCATION HOUSING.

Section 15 of the Act of December 22, 1974 (25 U.S.C. 640d–14) is amended—

(1) by striking "SEC. 15. (a)" and inserting the following:

"SEC. 11. RELOCATION HOUSING.

"(a) PURCHASE OF HABITATION AND IMPROVEMENTS.—";

(2) in subsection (a)—

(A) in the first sentence, by striking ''The Commission'' and inserting the following:

''(1) IN GENERAL.—The Commission''; and

(B) in the second sentence—

(i) by striking ''The purchase'' and inserting the following:

''(2) PURCHASE PRICE.—The purchase''; and

(ii) by striking ''as determined under clause (2) of subsection (b) of section 13'';

(3) in subsection (b)—

(A) by striking ''(b) In addition'' and inserting the following:

''(b) REIMBURSEMENT FOR MOVING EXPENSES AND PAYMENT FOR REPLACEMENT DWELLING.—In addition'';

(B) by striking ''shall:'' and inserting ''shall—''; and

(C) in paragraph (1), by inserting ''and'' after the semicolon at the end;

(4) in subsection (c)—

(A) by striking ''(c) In implementing'' and inserting the following:

''(c) STANDARDS; CERTAIN PAYMENTS.—

''(1) STANDARDS.—In carrying out''; and

(B) in the second sentence—

(i) by striking ''No payment'' and inserting the following:

''(2) CERTAIN PAYMENTS.—No payment'';

(ii) by striking ''section 8'' and inserting ''section 4''; and

(iii) by striking ''section 3 or 4'' and inserting ''section 1'';

(5) in subsection (d)—

(A) by striking ''(d) The'' and inserting the following:

''(d) METHODS OF PAYMENT.—The'';

(B) by striking ''(1) Should'' and inserting the following:

''(1) HOME OWNERSHIP OPPORTUNITY PROJECTS.—Should'';

(C) by striking ''(2) Should'' and inserting the following:

''(2) PURCHASED AND CONSTRUCTED DWELLINGS.—Should''; and

(D) by striking ''(3) Should'' and inserting the following:

''(3) FAILURE TO ARRANGE RELOCATION.—Should'';

(6) in subsection (e)—

(A) by striking "(e) The" and inserting the following:

"(e) DISPOSAL OF ACQUIRED DWELLINGS AND IMPROVEMENTS.—The";

(B) by striking "section 8" and inserting "section 4"; and

(C) by striking "section 3 or 4" and inserting "section 1";

(7) in subsection (f), by striking "(f) Notwithstanding" and inserting the following:

"(f) PREFERENTIAL TREATMENT.—Notwithstanding"; and

(8) by striking subsection (g) and inserting the following:

"(g) BENEFITS HELD IN TRUST.—

"(1) IN GENERAL.—Not later than September 30, 2008, the Commissioner shall notify the Secretary of the identity of any head of household that, as of that date—

"(A) is certified as eligible to receive benefits under this Act;

"(B) does not reside on land that has been partitioned to the Tribe of which the head of household is a member; and

"(C) has not received a replacement home.

"(2) TRANSFER OF FUNDS.—Not later than September 30, 2008, the Commissioner shall transfer to the Secretary any funds not used by the Commissioner to make payments under this Act to eligible heads of households.

"(3) DISPOSITION OF TRANSFERRED FUNDS.—

"(A) IN GENERAL.—The Secretary shall hold any funds transferred under paragraph (2) in trust for the heads of households described in paragraph (1)(A).

"(B) PAYMENT AMOUNTS.—Of the funds held in trust under subparagraph (A), the Secretary shall make payments to heads of households described in paragraph (1)(A) in amounts that would have been made to the heads of households under this Act before September 30, 2008—

"(i) on receipt of a request of a head of household, to be used for a replacement home; or

"(ii) on the date of death of the head of household, if the head of household does not make a request under clause (i), in accordance with subparagraph (C).

"(C) DISTRIBUTION OF FUNDS ON DEATH OF HEAD OF HOUSEHOLD.—If the Secretary holds funds in trust under this paragraph for a head of household described in paragraph (1)(A) on the death of the head of household, the Secretary shall—

"(i) identify and notify any heir of the head of household; and

"(ii) distribute the funds held by the Secretary for the head of household to any heir—

"(I) immediately, if the heir is at least 18 years old; or

"(II) if the heir is younger than 18 years old on the date on which the Secretary identified the heir, on the date on which the heir attains the age of 18.

"(h) NOTIFICATION.—

"(1) IN GENERAL.—Not later than 180 days after the date of enactment of the Navajo-Hopi Land Settlement Amendments of 2005, the Commissioner shall notify each eligible head of household who has not entered into a lease with the Hopi Tribe to reside on land partitioned to the Hopi Tribe, in

accordance with section 700.138 of title 25, Code of Federal Regulations (or a successor regulation).

"(2) LIST.—On the date on which a notice period referred to in section 700.139 of title 25, Code of Federal Regulations (or a successor regulation), expires, the Commissioner shall submit to the Secretary and the United States Attorney for the District of Arizona a list containing the name and address of each eligible head of household who—

"(A) continues to reside on land that has not been partitioned to the Tribe of the head of household; and

"(B) has not entered into a lease to reside on that land.

"(3) CONSTRUCTION OF REPLACEMENT HOMES.—Before July 1, 2008, but not later than 90 days after receiving a notice of the imminent removal of a relocatee from land provided to the Hopi Tribe under this Act from the Secretary or the United States Attorney for the District of Arizona, the Commissioner may begin construction of a replacement home on any land acquired under section 6.

"(i) APPEALS.—

"(1) IN GENERAL.—The Commissioner shall establish an expedited hearing procedure for any appeal relating to the denial of eligibility for benefits under this Act (including regulations promulgated pursuant to this Act) that is pending on, or filed after, the date of enactment of Navajo-Hopi Land Settlement Amendments of 2005.

"(2) FINAL DETERMINATIONS.—The hearing procedure established under paragraph (1) shall—

"(A) provide for a hearing before an impartial third party, as the Commissioner determines necessary: and

"(B) ensure that a final determination is made by the Office of Navajo and Hopi Indian Relocation for each appeal described in paragraph (1) by not later than January 1, 2008.

"(3) NOTICE.—

"(A) IN GENERAL.—Not later than 30 days after the date of enactment of the Navajo-Hopi Land Settlement Amendments of 2005, the Commissioner shall provide written notice to any individual that the Commissioner determines may have the right to a determination of eligibility for benefits under this Act.

1 "(B) REQUIREMENTS FOR NOTICE.—The
2 notice provided under subparagraph (A) shall—
3 "(i) specify that a request for a deter-
4 mination of eligibility for benefits under
5 this Act shall be presented to the Commis-
6 sion not later than 180 days after the date
7 on which the notice is issued; and
8 "(ii) be provided—
9 "(I) by mail (including means
10 other than certified mail) to the last
11 known address of the recipient; and
12 "(II) in a newspaper of general
13 circulation in the geographic area in
14 which an address referred to in sub-
15 clause (I) is located.
16 "(j) PROCUREMENT OF SERVICES.—
17 "(1) IN GENERAL.—Notwithstanding any other
18 provision of this Act, to ensure the full and fair eval-
19 uation of the requests referred to in subsection
20 (i)(3)(A) (including an appeal hearing before an im-
21 partial third party referred to in subsection
22 (i)(2)(A)), the Commissioner may enter into such
23 contracts or agreements to procure such services,
24 and employ such personnel (including attorneys), as
25 the Commissioner determines to be necessary.

1 "(2) DETAIL OF ADMINISTRATIVE LAW JUDGES
2 OR HEARING OFFICERS.—The Commissioner may re-
3 quest the Secretary to act through the Director of
4 the Office of Hearings and Appeals to make avail-
5 able to the Office of Navajo and Hopi Indian Relo-
6 cation an administrative law judge or other hearing
7 officer with appropriate qualifications to review the
8 requests referred to in subsection (i)(3)(A), as deter-
9 mined by the Commissioner.
10 "(k) APPEAL TO UNITED STATES CIRCUIT COURT OF
11 APPEALS.—
12 "(1) IN GENERAL.—Subject to paragraph (3),
13 any individual who, under the procedures established
14 by the Commissioner pursuant to this section, is de-
15 termined not to be eligible to receive benefits under
16 this Act may appeal that determination to the
17 United States Circuit Court of Appeals for the
18 Ninth Circuit (referred to in this subsection as the
19 'Circuit Court').
20 "(2) REVIEW.—
21 "(A) IN GENERAL.—The Circuit Court
22 shall, with respect to each appeal described in
23 paragraph (1)—
24 "(i) review the entire record (as cer-
25 tified to the Circuit Court under paragraph

(3)) on which a determination of the ineligibility of the appellant to receive benefits under this Act was based; and

"(ii) on the basis of that review, affirm or reverse that determination.

"(B) STANDARD OF REVIEW.—The Circuit Court shall affirm any determination that the Circuit Court determines to be supported by substantial evidence.

"(3) NOTICE OF APPEAL.—

"(A) IN GENERAL.—Not later than 30 days after a determination of ineligibility under paragraph (1), an affected individual shall file a notice of appeal with—

"(i) the Circuit Court; and

"(ii) the Commissioner.

"(B) CERTIFICATION OF RECORD.—On receipt of a notice under subparagraph (A)(ii), the Commissioner shall submit to the Circuit Court the certified record on which the determination that is the subject of the appeal was made.

"(C) REVIEW PERIOD.— Not later than 60 days after receiving a certified record under subparagraph (B), the Circuit Court shall con-

duct a review and file a decision regarding an appeal in accordance with paragraph (2).

"(D) BINDING DECISION.—A decision made by the Circuit Court under this subsection shall be final and binding on all parties.".

SEC. 112. PAYMENT FOR USE OF LAND.

Section 16 of the Act of December 22, 1974 (25 U.S.C. 640d–15) is amended—

(1) by striking "SEC. 16. (a) The Navajo" and inserting the following:

"SEC. 12. PAYMENT FOR USE OF LAND.

"(a) IN GENERAL.—The Navajo";

(2) in subsection (a), by striking "sections 8 and 3 or 4" and inserting "sections 1 and 4"; and

(3) in subsection (b)—

(A) by striking "(b) The" and inserting the following:

"(b) PAYMENT.—The"; and

(B) by striking "sections 8 and 3 or 4" and inserting "sections 1 and 4".

SEC. 113. EFFECT OF ACT.

Section 17 of the Act of December 22, 1974 (25 U.S.C. 640d–16) is amended—

(1) by striking ''SEC. 17. (a)'' and inserting the following:

''SEC. 13. EFFECT OF ACT.

''(a) TITLE, POSSESSION, AND ENJOYMENT.—'';

(2) in subsection (a)—

(A) in the first sentence, by striking ''Nothing'' and inserting the following:

''(1) IN GENERAL.—Nothing''; and

(B) in the second sentence, by striking ''Such'' and inserting the following:

''(2) RESIDENCE ON OTHER RESERVATIONS.—Any''; and

(3) in subsection (b), by striking ''(b) Nothing'' and inserting the following:

''(b) FEDERAL EMPLOYEES.—Nothing''.

SEC. 114. ACTIONS FOR ACCOUNTING, FAIR VALUE OF GRAZING, AND CLAIMS FOR DAMAGES TO LAND.

Section 18 of the Act of December 22, 1974 (25 U.S.C. 640d–17) is amended—

(1) by striking ''SEC. 18. (a) Either'' and inserting the following:

"SEC. 14. ACTIONS FOR ACCOUNTING, FAIR VALUE OF GRAZING, AND CLAIMS FOR DAMAGES TO LAND.

"(a) ACTIONS BY TRIBES.—Either";

(2) in subsection (a), by striking "section 3 or 4" and inserting "section 1";

(3) in subsection (b)—

(A) by striking "(b) Neither" and inserting the following:

"(b) DEFENSES.—Neither"; and

(B) by striking "section 3 or 4" and inserting "section 1";

(4) in subsection (c)—

(A) by striking "(c) Either" and inserting the following:

"(c) FURTHER ORIGINAL, ANCILLARY, OR SUPPLEMENTARY ACTS TO ENSURE QUIET ENJOYMENT.—

"(1) IN GENERAL.—Either"; and

(B) in the second sentence, by striking "Such actions" and inserting the following:

"(2) ACTION THROUGH CHAIRMAN.—An action under paragraph (1)";

(5) in subsection (d)—

(A) by striking "(d) Except" and inserting the following:

"(d) UNITED STATES AS PARTY; JUDGMENTS AGAINST THE UNITED STATES—

"(1) IN GENERAL.—Except"; and

(B) in the second sentence, by striking "Any judgment or judgments" and inserting the following:

"(2) EFFECT OF JUDGMENTS.—Any judgment"; and

(6) in subsection (e), by striking "(e) All" and inserting the following:

"(e) REMEDIES.—All".

SEC. 115. JOINT USE.

Section 19 of the Act of December 22, 1974 (25 U.S.C. 640d–18) is amended—

(1) by striking "SEC. 19. (a) Notwithstanding" and inserting the following:

"SEC. 15. JOINT USE.

"(a) REDUCTION OF LIVESTOCK.—

"(1) IN GENERAL.—Notwithstanding";

(2) in subsection (a)(1) (as designated by paragraph (1))—

(A) by striking "section 3 or 4" and inserting "section 1"; and

(B) in the second sentence, by striking "The Secretary is directed to" and inserting the following:

"(2) CONSERVATION PRACTICES AND METHODS.—The Secretary shall";

(3) in subsection (b)—

(A) by striking "(b) The" and inserting the following:

"(b) SURVEY LOCATION OF MONUMENTS AND FENCING OF BOUNDARIES.—The"; and

(B) by striking "sections 8 and 3 or 4" each place it appears and inserting "sections 1 and 4"; and

(4) in subsection (c)—

(A) by striking "(c)(1) Surveying" and inserting the following:

"(c) SURVEYING, MONUMENTING, AND FENCING; LIVESTOCK REDUCTION PROGRAM.—

"(1) SURVEYING, MONUMENTING, AND FENCING.—Surveying";

(B) in paragraph (1)—

(i) by striking "section 4" and inserting "section 1"; and

(ii) by striking "section 8" and inserting "section 4"; and

(C) in paragraph (2), by striking ''(2) The'' and inserting the following:

''(2) LIVESTOCK REDUCTION PROGRAM.—The''.

SEC. 116. RELIGIOUS CEREMONIES; PIPING OF WATER.

Section 20 of the Act of December 22, 1974 (25 U.S.C. 640d–19) is amended by striking ''SEC. 20. The members'' and inserting the following:

''SEC. 16. RELIGIOUS CEREMONIAL USES; PIPING OF WATER.

''The members''.

SEC. 117. ACCESS TO RELIGIOUS SHRINES.

Section 21 of the Act of December 22, 1974 (25 U.S.C. 640d–20) is amended by striking ''SEC. 21. Notwithstanding'' and inserting the following:

''SEC. 17. ACCESS TO RELIGIOUS SHRINES.

''Notwithstanding''.

SEC. 118. EXCLUSION OF PAYMENTS FROM CERTAIN FEDERAL DETERMINATIONS OF INCOME.

Section 22 of the Act of December 22, 1974 (25 U.S.C. 640d–21) is amended—

(1) by striking ''SEC. 22. The availability'' and inserting the following:

''SEC. 18. EXCLUSION OF PAYMENTS FROM CERTAIN FEDERAL DETERMINATIONS OF INCOME.

''(a) IN GENERAL.—The availability''; and

(2) by striking ''None of the funds'' and inserting the following:

''(b) FEDERAL AND STATE INCOME TAXES.—None of the funds''.

SEC. 119. AUTHORIZATION OF EXCHANGE.

Section 23 of the Act of December 22, 1974 (25 U.S.C. 649d–22) is amended—

(1) by striking ''SEC. 23. The Navajo'' and inserting the following:

''SEC. 19. AUTHORIZATION OF EXCHANGE.

''(a) IN GENERAL.—The Navajo''; and

(2) in the second sentence—

(A) by striking ''In the event that the Tribes should'' and inserting the following:

''(b) NEGOTIATED EXCHANGES.—If the Tribes''; and

(B) by striking ''sections 14 and 15'' and inserting ''sections 10 and 11''.

SEC. 120. SEVERABILITY.

Section 24 of the Act of December 22, 1974 (25 U.S.C. 640d–23) is amended by striking ''SEC. 24. If'' and inserting the following:

''SEC. 20. SEVERABILITY.

''If''.

SEC. 121. AUTHORIZATION OF APPROPRIATIONS.

Section 25 of the Act of December 22, 1974 (25 U.S.C. 640d–24) is—

(1) moved so as to appear at the end of the Act; and

(2) amended to read as follows:

"SEC. 27. AUTHORIZATION OF APPROPRIATIONS.

"(a) RELOCATION OF HOUSEHOLDS AND MEMBERS.—There is authorized to be appropriated to carry out section 10(b) $13,000,000.

"(b) RELOCATION OF HOUSEHOLDS AND MEMBERS.—There are authorized to be appropriated to carry out section 11 such sums as are necessary for each of fiscal years 2006 through 2008.

"(c) RETURN TO CARRYING CAPACITY AND INSTITUTION OF CONSERVATION PRACTICES.—There is authorized to be appropriated to carry out section 15(a) $10,000,000.

"(d) SURVEY LOCATION OF MONUMENTS AND FENCING OF BOUNDARIES.—There is authorized to be appropriated to carry out section 15(b) $500,000.".

SEC. 122. FUNDING AND CONSTRUCTION OF HIGH SCHOOL AND MEDICAL CENTER.

Section 27 of the Act of December 22, 1974 (25 U.S.C. 640d–25) is amended by striking "SEC. 27." and

all that follows through ''(c) The Secretary'' and inserting the following:

''SEC. 21. FUNDING AND CONSTRUCTION OF HIGH SCHOOL AND MEDICAL CENTER.

''The Secretary''.

SEC. 123. ENVIRONMENTAL IMPACT; WILDERNESS STUDY; CANCELLATION OF LEASES AND PERMITS.

Section 28 of the Act of December 22, 1974 (25 U.S.C. 640d–26) is amended—

(1) by striking ''SEC. 28. (a) No action'' and inserting the following:

''SEC. 22. ENVIRONMENTAL IMPACT; WILDERNESS STUDY; CANCELLATION OF LEASES AND PERMITS.

''(a) IN GENERAL.—No action'';

(2) in subsection (b), by striking ''(b) Any'' and inserting the following:

''(b) EFFECT OF WILDERNESS STUDY.—Any''; and

(3) by adding at the end the following:

''(c) CONSTRUCTION REQUIREMENTS.—

''(1) IN GENERAL.—Any construction activity under this Act shall be carried out in accordance with sections 3 through 7 of the Act of June 27, 1960 (16 U.S.C. 469a–1 through 469c).

''(2) COMPLIANCE WITH OTHER REQUIREMENTS.—If a construction activity meets the re-

quirements under paragraph (1), the activity shall be considered to be in accordance with any applicable requirement of—

"(A) Public Law 89–665 (80 Stat. 915); and

"(B) the Act of June 8, 1906 (34 Stat. 225, chapter 3060).".

SEC. 124. ATTORNEY FEES AND COURT COSTS.

Section 29 of the Act of December 22, 1974 (25 U.S.C. 640d–27) is amended—

(1) by striking "SEC. 29. (a)" and inserting the following:

"SEC. 23. ATTORNEY FEES AND COURT COSTS.

"(a) IN GENERAL.—";

(2) in subsection (a)—

(A) by striking "In any" and inserting the following:

"(1) IN GENERAL.—In any"; and

(B) by striking "For each" and inserting the following:

"(2) AUTHORIZATION OF APPROPRIATIONS.—For each";

(3) in subsection (b)—

(A) by striking "(b) Upon" and inserting the following:

"(b) AWARD BY COURT.—

"(1) IN GENERAL.—On"; and

(B) in the second sentence, by striking "Any party" and inserting the following:

"(2) REIMBURSEMENT OF UNITED STATES.—Any party";

(4) in subsection (c), by striking "(c) To" and inserting the following:

"(c) EXCESS DIFFERENCE.—To"; and

(5) in subsection (d)—

(A) by striking "(d) This" and inserting the following:

"(d) APPLICATION OF SECTION.—This"; and

(B) by striking "section 8 or 18(a) of this Act" and inserting "section 4 or section 14(a)".

SEC. 125. LOBBYING.

Section 31 of the Act of December 22, 1974 (25 U.S.C. 640d–29) is amended—

(1) by striking "SEC. 31. (a) Except" and inserting the following:

"SEC. 24. LOBBYING.

"(a) IN GENERAL.—Except"; and

(2) in subsection (b), by striking "(b) Subsection" and inserting the following:

"(b) APPLICABILITY.—Subsection".

SEC. 126. NAVAJO REHABILITATION TRUST FUND.

The first section designated as section 32 of the Act of December 22, 1974 (25 U.S.C. 640d–30) is amended—

(1) by striking ''SEC. 32. (a) There'' and inserting the following:

''SEC. 25. NAVAJO REHABILITATION TRUST FUND.

''(a) ESTABLISHMENT.—There'';

(2) in subsection (b), by striking ''(b) All'' and inserting the following:

''(b) DEPOSIT OF INCOME INTO FUND.—All'';

(3) in subsection (c), by striking ''(c) The'' and inserting the following:

''(c) INVESTMENT OF FUNDS.—The'';

(4) in subsection (d)—

(A) by striking ''(d) Funds'' and inserting the following:

''(d) AVAILABILITY OF FUNDS.—Funds'';

(B) in paragraph (1), by striking ''proceedings,'' and inserting ''proceedings;''; and

(C) in paragraph (2), by striking ''Act, or'' and inserting ''Act; or'';

(5) in subsection (e)—

(A) by striking ''(e) By December 1'' and inserting the following:

''(e) EXPENDITURE OF FUNDS.—

"(1) IN GENERAL.—Not later than December 1"; and

(B) in the second sentence, by striking "Such framework is to be" and inserting the following:

"(2) REQUIREMENT.—The framework under paragraph (1) shall be";

(6) in subsection (f)—

(A) by striking "(f) The" and inserting the following:

"(f) TERMINATION.—

"(1) IN GENERAL.—The"; and

(B) in the second sentence, by striking "All funds" and inserting the following:

"(2) TRANSFER OF REMAINING FUNDS.—All funds"; and

(7) in subsection (g)—

(A) by striking "(g) There is hereby" and inserting the following:

"(g) AUTHORIZATION OF APPROPRIATIONS.—

"(1) IN GENERAL.—There is";

(B) in the first sentence, by striking "1990, 1991, 1992, 1993, 1994, and 1995" and inserting "2006 through 2008"; and

(C) in the second sentence, by striking ''The income'' and inserting the following:

''(2) INCOME FROM LAND.—The income''.

SEC. 127. AVAILABILITY OF FUNDS FOR RELOCATION ASSISTANCE.

The second section designated as section 32 of the Act of December 22, 1974 (25 U.S.C. 640–31) is amended by striking ''SEC. 32. Nothing'' and inserting the following:

''SEC. 26. AVAILABILITY OF FUNDS FOR RELOCATION ASSISTANCE.''.

''Nothing''.

TITLE II—PERSONNEL OF THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

SEC. 201. RETENTION PREFERENCE.

The second sentence of section 3501(b) of title 5, United States Code, is amended—

(1) by striking ''or'' after ''Senate'' and inserting a comma;

(2) by striking ''or'' after ''Service'' and inserting a comma; and

(3) by inserting '', or to an employee of the Office of Navajo and Hopi Indian Relocation'' before the period.

SEC. 202. SEPARATION PAY.

(a) IN GENERAL.—Chapter 55 of title 5, United States Code, is amended by adding at the end the following:

"§ 5598 Separation pay for certain employees of the Office of Navajo and Hopi Indian Relocation

"(a) IN GENERAL.—Except as provided in subsections (b) and (c), the Commissioner of the Office of Navajo and Hopi Indian Relocation shall establish a program to offer separation pay to employees of the Office of Navajo and Hopi Indian Relocation (referred to in this section as the 'Office') in the same manner as the Secretary of Defense offers separation pay to employees of a defense agency under section 5597.

"(b) SEPARATION PAY.—

"(1) IN GENERAL.—Under the program established under subsection (a), the Commissioner of the Office may offer separation pay only to employees within an occupational group or at a pay level that minimizes the disruption of ongoing Office programs at the time that the separation pay is offered.

"(2) REQUIREMENT.—Any separation pay offered under this subsection—

"(A) shall be paid in a lump sum;

"(B) shall be in an amount equal to $25,000, if paid on or before December 31, 2007;

"(C) shall be in an amount equal to $20,000, if paid after December 31, 2007, and before January 1, 2009;

"(D) shall be in an amount equal to $15,000, if paid after December 31, 2008, and before January 1, 2010;

"(E) shall not—

"(i) be a basis for payment;

"(ii) be considered to be income for the purposes of computing any other type of benefit provided by the Federal Government; and

"(F) if an individual is otherwise entitled to receive any severance pay under section 5595 on the basis of any other separation, shall not be payable in addition to the amount of the severance pay to which that individual is entitled under section 5595.

"(c) PROHIBITION.—No amount shall be payable under this section to any employee of the Office for any separation occurring after December 31, 2009.".

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 55 of title 5 is amended by adding at the end the following:

"5598. Separation pay for certain employees of the Office of Navajo and Hopi Indian Relocation.".

SEC. 203. FEDERAL RETIREMENT.

(a) CIVIL SERVICE RETIREMENT SYSTEM.—

(1) IMMEDIATE RETIREMENT.—Section 8336(j)(1)(B) of title 5, United States Code, is amended by inserting "or was employed by the Office of Navajo and Hopi Indian Relocation during the period beginning on January 1, 1985, and ending on the date of separation of that employee" before the final comma.

(2) COMPUTATION OF ANNUITY.—Section 8339(d) of title 5, United States Code, is amended by adding at the end the following:

"(8) The annuity of an employee of the Office of Navajo and Hopi Indian Relocation described in section 8336(j)(1)(B) shall be determined under subsection (a), except that with respect to service of that employee on or after January 1, 1985, the annuity of that employee shall be in an amount equal to the sum of—

"(A) the product obtained by multiplying—

"(i) 2½ percent of the average pay of the employee; and

"(ii) the quantity of service of the employee on or after January 1, 1985, that does not exceed 10 years; and

"(B) the product obtained by multiplying—

"(i) 2 percent of the average pay of the employee; and

"(ii) the quantity of the service of the employee on or after January 1, 1985, that exceeds 10 years.".

(b) FEDERAL EMPLOYEES RETIREMENT SYSTEM.—

(1) IMMEDIATE RETIREMENT.—Section 8412 of title 5, United States Code, is amended by adding at the end the following:

"(i) An employee of the Office of Navajo and Hopi Indian Relocation is entitled to an annuity if that employee—

"(1) has been continuously employed in the Office of Navajo and Hopi Indian Relocation during the period beginning on January 1, 1985, and ending on the date of separation of that individual; and

"(2)(A) has completed 25 years of service at any age; or

"(B) has attained the age of 50 years and has completed 20 years of service.".

(2) COMPUTATION OF BASIC ANNUITY.—Section 8415 of title 5, United States Code, is amended—

(1) by redesignating subsection (*l*) as subsection (m);

(2) by redesignating the second subsection designated as subsection (k) as subsection (*l*); and

(3) by adding at the end the following:

"(n) The annuity of an employee retiring under section 8412(i) shall be determined in accordance with subsection (d), except that with respect to service during the period beginning on January 1, 1985, the annuity of the employee shall be an amount equal to the sum of—

"(1) the product obtained by multiplying—

"(A) 2 percent of the average pay of the employee; and

"(B) the quantity of the total service of the employee that does not exceed 10 years; and

"(2) the product obtained by multiplying—

"(A) 1½ percent of the average pay of the employee; and

"(B) the quantity of the total service of the employee that exceeds 10 years.".

TITLE III—TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS

SEC. 301. DEFINITIONS.

In this title:

(1) FEDERAL AGENCY.—The term ''Federal agency'' has the meaning given the term ''agency'' in section 551(1) of title 5, United States Code.

(2) FUNCTION.—The term ''function'' means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.

(3) OFFICE.—The term ''Office'' means the Office of Navajo and Hopi Relocation (including any component of that office).

SEC. 302. TRANSFER OF FUNCTIONS.

Effective on the date of enactment of this Act, there is transferred to the Secretary of the Interior any function of the Office that has not been carried out by the Office on the date of enactment of this Act, as determined by the Secretary of the Interior in accordance with the Act of December 22, 1974 (25 U.S.C. 640 et seq.) (as amended by title I).

SEC. 303. TRANSFER AND ALLOCATIONS OF APPROPRIATIONS.

(a) IN GENERAL.—Except as otherwise provided in this Act and the amendments made by this Act, any asset, liability, contract, property, record, or unexpended balance of appropriations, authorizations, allocations, and other funds made available to carry out the functions transferred by this title shall be transferred to the Secretary of the Interior, subject to section 1531 of title 31, United States Code.

(b) USE OF FUNDS.—Any unexpended funds transferred under subsection (a) shall be used only for the purposes for which the funds were originally authorized and appropriated.

SEC. 304. EFFECT OF TITLE.

(a) CONTINUING EFFECT OF LEGAL DOCUMENTS.—Any legal document relating to a function transferred by this title that is in effect on the date of enactment of this Act shall continue in effect in accordance with the terms of the document until the document is modified or terminated by—

(1) the President;

(2) the Secretary of the Interior;

(3) a court of competent jurisdiction; or

(4) operation of Federal or State law.

(b) PROCEEDINGS NOT AFFECTED.—This title shall not affect any proceeding (including a notice of proposed rulemaking, an administrative proceeding, and an application for a license, permit, certificate, or financial assistance) relating to a function transferred under this title that is pending before the Office of Navajo and Hopi Relocation on the date of enactment of this Act.

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The CHAIRMAN. Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, COMMITTEE ON INDIAN AFFAIRS

Senator INOUYE. Thank you very much.

As you have pointed out, Mr. Chairman, this problem has been with us for over 125 years. It is one based on culture and history and much blood has been shed. But as you pointed out, Mr. Chairman, the time has come. Yes, the time has come.

When we first handled this, it was $40 million. Now, it is nearly one-half billion dollars and it could get higher.

But the spirit of cooperation is here, and I am certain that the leaders of both the Hopi and Navajo have learned that by cooperating one can achieve a lot. I hope that spirit will prevail. Some day soon, Mr. Chairman, I hope you and I can go there to celebrate this great event.

The CHAIRMAN. Thank you very much, Senator Inouye. I want to thank you for your continued involvement and commitment on this issue for many, many years.

I again want to commend Chris Bavasi, the executive director of the Office of Navajo and Hopi Indian Relocation, and William Ragsdale, but particularly you, Chris, for the outstanding job that you have performed over many years and exceedingly difficult ones.

Our first panel today is Christopher J. Bavasi, executive director of the Office of Navajo and Hopi Indian Relocation.

He is accompanied by Paul Tessler. Mr. Tessler, would you like to come to the table? Paul Tessler is legal counsel of the Office of Navajo and Hopi Indian Relocation in Flagstaff, AZ. And William P. Ragsdale, who is the director of the Bureau of Indian Affairs, U.S. Department of the Interior.

I think it would be appropriate to begin with you, Mr. Ragsdale.

STATEMENT OF WILLIAM P. RAGSDALE, DIRECTOR, BUREAU OF INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. RAGSDALE. Thank you, Mr. Chairman.

First of all, I want to say that I appreciate the opportunity to appear here before the committee. I appreciate the committee's concern. I want to pledge that we will work with this committee, the Navajo-Hopi Relocation Commission, the Navajo and Hopi Tribes, to transition the activities required by the act and the proposed amendments.

Mr. Chairman, if it is all right with you, I would like to just summarize my views and then answer any questions the committee may have. I would request that my written testimony be included in the record.

The CHAIRMAN. Without objection, all the written testimony will be made part of the record by all witnesses.

Mr. RAGSDALE. Again, thank you, Mr. Chairman, and thank you, Senator Inouye, for being here. I have appeared before this committee before in my younger years, both as a tribal official and as a BIA official. It is good to see you again.

Yesterday, I met with the Navajo-Hopi Relocation Commission. I think we had a very productive meeting. We talked about transitioning the activities of the Commission, particularly the land

management responsibility that the Bureau of Indian Affairs traditionally has on Indian lands throughout the country. I think that we will be working closely together to make that transition by the time, if not before, the term of the Relocation Commission expires.

We have concerns addressed in my formal testimony about any remaining duties that would be required to relocate individual Indians and families, and the determinations of their eligibility, if that is not completed by the term of the Commission. However, the Commission has told me that they expect those activities to be closed and completed before their term expires.

In addition to that, we would like to work with the committee and the Commission to carry out the transition plans. The only other concern that we would have is the personnel provisions that I think if we can work out with the committee that have been brought to our attention.

With that, I will end my testimony, Mr. Chairman, and I will be glad to answer your questions. Thank you.

[Prepared statement of Mr. Ragsdale appears in appendix.]

The CHAIRMAN. As part of your opening statement, do you believe that this legislation is now necessary?

Mr. RAGSDALE. If it is necessary to complete the work of the Commission in finality, yes sir, I do.

The CHAIRMAN. Thank you very much.

Mr. Bavasi, again I want to thank you for the outstanding work you and the Commission have performed over a many year period. Please proceed.

STATEMENT OF CHRISTOPHER J. BAVASI, EXECUTIVE DIRECTOR, THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION; ACCOMPANIED BY PAUL TESSLER, LEGAL COUNSEL, THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Mr. BAVASI. Thank you, Senator.

I do have a written statement that I will submit for the record. I just want to give you the first couple of paragraphs here. Actually, in early June of this year, I and my staff met with the members of the committee's staff in Flagstaff, AZ for the purpose of giving comments on the original draft of S. 1003. The Office is in agreement with the legislation's projected date for completion of relocation and transfer of any remaining functions to a newly created Office of Relocation within the Department of the Interior.

I just want to make it clear that we believe that we can finish the relocation project and be prepared to turn over the land management program to BIA in the time frame that you have submitted in your pending legislation.

With that, I will submit the rest for the record.

[Prepared statement of Mr. Bavasi appears in appendix.]

The CHAIRMAN. Maybe for the record it might be helpful, Mr. Bavasi, to describe to the committee for the record, if I went to the Phoenix Rotary Club today and said, you know, we passed a law in 1974 that was supposed to cost $40 million and take maybe 10 to 12 years, and it has ended up costing one-half of a billion dollars and has gone on for 31 years. How would you describe this saga?

First of all, there is a lesson that Congress probably should not pass laws dictating relocation. Is that the first lesson?

Mr. BAVASI. Probably, but I would do it carefully. I would not want to blame this on anyone. I would merely point out that, well, let me back up. I think the record would show that when this was originally contemplated that the notion was that there would be maybe 1,000 or 1,100 families that needed to be moved. The deadline of 1985 then 1986 came about because the law required the Office to submit a plan, have plan approved, and then 5 years later the project was supposed to be done. That was 1985. And then because of some legal issues, it became 1986.

So July 7, 1986, this project was supposed to be done and originally it had been contemplated there would be 1,100 families, 1,000 or 1,100 families to be moved. Interestingly enough, in 1986 1,100 families had been moved. However, because for a whole variety of reasons, ultimately 3,600 families had been certified, or ultimately had been certified. So that is certainly one reason that it has taken this long.

Another reason I think is that this has been purported to be something less than a voluntary program. But in fact, it has always been operated as a voluntary program. So some folks did not see the urgency to move through the program perhaps as quickly as they would otherwise.

The CHAIRMAN. So no one has ever been forced off of their land?

Mr. BAVASI. No, sir; it has never happened. I will visit with you later, if I am able to, about how we think we can come to a conclusion so no one will ever be forced off their land.

So I think those two issues would be one reason we are where we are today.

The CHAIRMAN. How would you account for gross miscalculation of costs from a $40 million original cost to a one-half-billion dollars actual cost?

Mr. BAVASI. I am not sure I can because I do not know what the theory was or the thought process was 30 years ago that it would cost $40 million. We believe, and I think we can show that we have been fairly frugal in terms of the expenditure of money, we are able to even today, in today's housing market, we are able to build a home for slightly over $100,000 in 2004. It will be slightly higher this coming year.

The CHAIRMAN. I think Mr. Tessler might testify that there has been huge, huge amount of legal costs associated with this issue. Is that right, Mr. Tessler?

Mr. TESSLER. That is correct.

The CHAIRMAN. Could you estimate out of this one-half billion dollars how much has just been expended in continuous court battles? I think there have been continuous court battles from the day that this bill was passed.

Mr. TESSLER. Yes; there have. I know we provided the figure to your staff. I do not have it in front of me, but all through this process, the relocatees, if they have been denied eligibility for benefits, have been entitled to administrative hearings, and the Navajo Nation has provided a legal services program to represent them all through that process, which involved not only the administrative stage, but also appeals to the U.S. District Court, which generated much expense.

The CHAIRMAN. In all due respect to our friends in the legal profession, this has been quite a windfall for them.

Mr. TESSLER. Yes; it has.

Mr. BAVASI. We can get you that number for the record, Senator.

The CHAIRMAN. Would you please for the record give us an estimate of the legal costs associated with this? I think it has really been horrendous. Again, maybe with the benefit of 31-year hindsight, maybe we should have never passed the law to start with.

Mr. Bavasi, using your expertise, what do you think we ought to do about the Bennett Freeze situation, which we all know has turned into, with all good intentions, into a deplorable economic disaster area.

Mr. BAVASI. Senator, I do not think there is any easy answer to it. As you suggest, it is a deplorable, awful situation.

I think if we all work together, the Navajos, the Hopis and Congress, the Federal Government, we can come to some conclusion on how that area can be rehabilitated.

The CHAIRMAN. Which I think Congress, by the way, would be more than willing to provide funds for, but first we have to have a resolution. What if we passed a law tomorrow that said Bennett Freeze is lifted? What would happen then?

Mr. BAVASI. Number one, I do not think that would be wise. I think that we should all work together to come to some meeting of the minds.

The CHAIRMAN. Wouldn't be wise because what would happen?

Mr. BAVASI. Chaos might be an appropriate term. I do not have any idea what would happen, but I do not think it would be good because everyone would be scrambling to get the upper hand, and I do not think that is the proper way to handle it.

The CHAIRMAN. But negotiations between the tribes for 31 years have not succeeded.

Mr. BAVASI. I am not sure we have tried that hard. I am not sure we have tried that hard on the Bennett Freeze issue. I could be completely wrong. I am not involved in that, but I suspect that we can come to some conclusions, frankly, using the relocation as a benchmark of perhaps what not to do going in.

The CHAIRMAN. Senator Inouye.

Senator INOUYE. As I have indicated earlier, I am very optimistic because I recall the first meeting that this committee held during which time the chairman of the Hopi and the chairman of the Navajo sat at the same table, and that had never happened before. Today, I note that for over 3 years, I believe, negotiators and the leaders of both tribes have been looking into the access to sacred sites in each other's camps. Now, if we can go that far, I am certain all of these matters can be resolved.

I share the chairman's optimism and his directness that this be resolved. I am with him.

Mr. BAVASI. Senator, may I add that I hope I did not leave the wrong impression. There is no relocation on the Bennett Freeze.

The CHAIRMAN. Yes; but the Bennett Freeze continues to be a source of major friction between tribes, and the deplorable economic conditions that exist are just, you know, it is an outrage that any citizen of the United States should live in the conditions that

exist on the Bennett Freeze. That was created by the Federal Government. Is that an inaccurate statement?

Mr. BAVASI. No; it is not.

The CHAIRMAN. Mr. Ragsdale, do you have any comment on that?

Mr. RAGSDALE. No, sir. I think it would have to be addressed in separate legislation.

The CHAIRMAN. Mr. Tessler.

Mr. TESSLER. No, sir.

The CHAIRMAN. You guys are surprisingly reticent.

Mr. BAVASI. We are not a party to that suit, nor have we been.

The CHAIRMAN. No; but you are very familiar with the impact that the Bennett Freeze has had on this whole issue.

Mr. BAVASI. That part of the reservation has fallen behind even the former joint use area that we are dealing with now in terms of development and lack of infrastructure. I do believe it is very close to resolution. I believe the tribes are considering the compacts which may resolve it anytime now.

The CHAIRMAN. Good.

Mr. RAGSDALE. Mr. Chairman, the freeze was put in place in 1964 and 1965, about the time I graduated from high school.

When I learned the other day when I was being briefed on the matter that the freeze was essentially still the status quo, I was somewhat surprised.

The CHAIRMAN. As I remember history, it was put in as a temporary measure that would be an incentive to not have one tribe take advantage over the other while the dispute was going to be resolved within a short period of time, and here we are 50 years later, whatever 40-some years later.

Again, I go back, Senator Inouye. I think that Congress ought to be more careful about, and Administrations ought to be more careful, as we all know, it was an Executive order, the Bennett Freeze, as to how we interfere in these disputes because sometimes the laws of unintended consequences prevail in an incredible fashion.

One other issue I had for you, Mr. Bavasi, construction and maintenance problems with relocation housing. How severe are they?

Mr. BAVASI. Construction and maintenance problems?

The CHAIRMAN. Yes.

Mr. BAVASI. Construction problems are minimal. We have either purchased or constructed over 3,400 houses. We have a program on the new lands, that is an area in Sanders, about 350,000 acres, there are almost 400 homes there, 397 homes.

We have a very small portion that originally were started by BIA a number of years ago. One of the previous, it was not called "director" then.

Mr. RAGSDALE. Assistant Secretary.

Mr. BAVASI. Assistant Secretary then had about $25 million to build houses, and decided that BIA wanted to do it themselves. There were some earth problems. The houses that were begun to be built there, 12 or 13, and then the program came back to us. We finished the houses. To make a long story short, there are 36 houses there. About 12 of them have had some foundation problems. We are now going in and evaluating all of that, and we will fix whatever needs to be fixed.

The point I am making is that besides those, there are very few houses, not none, but very few houses over the course of these years that have needed to be fixed because of latent defects in the construction.

Maintenance is an entirely different story. We expect our clients to take care of the houses, as anybody else would. So we frequently get complaints about shingles off the roof, broken windows, those kinds of things.

The CHAIRMAN. Mr. Ragsdale, finally, the reason why the Office of Navajo and Hopi Indian Relocation was created originally was because of the belief that the Bureau of Indian Affairs could not handle it. Now, we are going to I guess turn over a few loose ends to you, hopefully a minimum. But I hope that you will give this issue the attention it deserves as we complete this, in my view, unhappy chapter in many ways in American governmental relations with Native Americans.

So I hope that I can get a commitment from you that you will place this as a very high priority whatever responsibilities may remain, including actively involved in how we can get the Bennett Freeze lifted and be equitable to all parties.

Mr. RAGSDALE. I will place that, Senator.

The CHAIRMAN. Thank you very much.

Again, Mr. Bavasi, I know you have been involved in this issue for a very long time. I have heard nothing but praise from Navajo and Hopi alike. You have been involved in some very incredibly traumatic issues for some families who have had to move off of land that they occupied for centuries thank you for the job that you and the Commission have done.

Mr. BAVASI. Thank you, Senator. That is very kind of you.

The CHAIRMAN. Thanks very much.

Mr. RAGSDALE. Mr. Chairman.

The CHAIRMAN. Yes; go ahead.

Mr. RAGSDALE. I might say, just to express one reservation that is included in my formal testimony, that our optimism, and I am optimistic that we will be able to effect an orderly transition and can work with the Commission, but we do have reservations if the activities are not concluded with respect to the relocation of individuals. The Bureau of Indian Affairs is very reluctant, the Department of the Interior is very reluctant to be engaged in the movement and responsible for the relocation of individuals from these lands, which was one of the purposes of this act initially to put somebody neutral in charge of that activity.

The CHAIRMAN. I understand that. Again, it has been 31 years. People have grown old.

I thank you.

Our next panel is Wayne Taylor, who is the tribal chairman of the Hopi Tribe; Joe Shirley, who is the president of the Navajo Nation. He is accompanied by Louis Denetsosie, who is the attorney general of the Navajo Nation. Our other witness is Roman Bitsuie, who is executive director of the Navajo-Hopi Land Commission Office in Window Rock, AZ.

I do not know who is older, between Chairman Taylor and President Shirley, but President Shirley looks older, so we will begin with you. [Laughter.]

Welcome to the witnesses.

STATEMENT OF JOE SHIRLEY, JR., PRESIDENT, THE NAVAJO NATION

Mr. SHIRLEY. Thank you, sir. Good morning, Mr. Chairman and Senator McCain, and the rest of the members of the committee.

I thank you for the opportunity to discuss the Navajo-Hopi Land Settlement Amendments with the committee this morning.

My name is Joe Shirley, Jr. I am president of the Navajo Nation. The Navajo Nation last appeared before this committee regarding the Navajo-Hopi land dispute in 1996. Since then, five Congresses and two Administrations have had little interest in the Navajo-Hopi land dispute. The Navajo Nation and the Hopi Tribe during that same period have made significant progress by working in a more collaborative approach with each other to resolve aspects of the land dispute. These joints efforts between the Navajos and the Hopis appears to be moving both tribes to the conclusion of the land dispute.

Following passage of the Navajo-Hopi Land Dispute Settlement Act of 1996 and this committee's consideration in the 104th Congress of S. 2111, that bill with a similar intent to this bill, there has been no action by this committee regarding the land dispute. I welcome this opportunity to discuss the current status of these matters with the committee.

The Navajo Nation understands from the introductory comments of Chairman McCain that he is concerned that the relocation process has cost far more than originally estimated and taken too long to complete. The Navajo Nation vigorously opposed the Navajo-Hopi Land Settlement Act of 1974 before its passage and actively sought its repeal for years afterwards. The Navajo Nation unfortunately failed in these efforts. Had the Navajo Nation been successful, the Navajo people would have been spared a tremendous harm and the Federal Government would have been spared a great expense.

That said, now that the Navajo people have had to live through the nightmare of relocation, we do not think Federal budgetary issues alone should be a basis for limiting funds to complete the program, and doing so in a way that brings humanity to what has otherwise been an inhumane process.

The chairman is concerned with costs. I ask the committee to consider how they would estimate the costs of moving an entire town and how they would value the economic and social upheaval such a move would impose. This is what happened to the 12,000 Navajos who lost their land, their livelihood and their identity; 12,000 people, which is approximately the population of Kingman, AZ. How much would it cost to relocate the entire population of Kingman to the Phoenix area? One billion dollars? Two billion dollars? How long would it take if the funds were appropriated bit by bit over 30 years? What would be the impact if the land that these people were expected to relocate to was already populated? What would happen if these people suddenly had to unlearn their skills as farmers and learn to survive in a cash economy? How long would be too long? How much would be too much?

The CHAIRMAN. Let me answer to that: One-half billion would be too much and 31 years would be too long. That is my response to you, Mr. President, and I think most of my citizens, including your constituents, would agree with that.

Mr. SHIRLEY. Since 1996, the Navajo Nation and the Hopi Tribe have settled three major pieces of litigation: The *Use* Case that arose from 25 U.S.C. 640(d)-17(a)(2); the *Damage* Case that arose from 25 U.S.C. 640(d)-17(a)(3); and the *Tax* Case that arose from 25 U.S.C. 640(d)(7), and the continued joint ownership of minerals between the Navajo Nation and the Hopi Tribe.

The *Use* and *Damage* Cases concluded in 1999 when the Navajo Nation paid the Hopi Tribe $29.1 million, and the Hopi provided the Nation with satisfactions of judgment in both the *Use* and *Damage* Cases. Nothing remains of these lawsuits.

Similarly in 2002, the Navajo Nation and the Hopi Tribe settled the *Tax* Case with a significant payment equal to one-half of the taxes from the Black Mesa Mine through 2007 were paid by the Nation to the Hopi Tribe.

Currently, with some assistance from the Office of Navajo and Hopi Indian Relocation, ONHIR, the Hopi Tribe and the Navajo Nation are near resolving the final aspects of relocation without any Navajo evictions from the Hopi partitioned land.

One of the more significant issues presented by S. 1003 in relation to this potential for forced evictions is one of timing. Currently, S. 1003 requires ONHIR to certify eligibility of all outstanding claims by September 30, 2005.

I understand that this date will be revised to September 30, 2008. Such a change should avoid the need for any forced relocation of Navajos because the contemplated agreement can be implemented.

Ideally, if more time is needed to complete these efforts, with the specter of eviction, that time should be afforded.

This is especially true for interested parties who are working together to complete difficult tasks.

S. 1003 raises other areas of specific concern including, first, rehabilitation efforts should be focused on the Navajo partitioned land. 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, already overtaxed by the influx of relocatees, was further constrained by the construction freeze that was in place from 1963 until approximately 1979. This infrastructure continues to be grossly insufficient to meet the current needs resulting from the relocation law.

Second, the relocation law currently 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. S. 1003 would strike this provision, but this is the very provision that provides ONHIR the flexibility to address the needs of families and communities 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 im-

provement, power line extensions, and some housing improvements for heavily impacted NPL host families.

Third, the Navajo land selections in New Mexico should not be prejudiced. Section 107(c) of S. 2003 provides that the authority of the Commissioner to select lands in New Mexico shall terminated on September 30, 2008. Since the Commissioner's authority would terminate on that date, it is not clear that this authority would continue in the new Office of Relocation at the Department of the 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 in this Congress, specifically S. 692, the Bisti/PRLA Dispute Resolution Act. The Navajo Nation is concerned that this provision in S. 1003 could impact that selection process and potentially prejudice Navajo interests.

This authority should be carried over into the Department of the Interior if the selections are not completed by September 30, 2008.

Fourth, the transfer of ONHIR's responsibilities to the Department of the Interior. ONHIR has developed critical and hard-won experience in working on and near the Navajo Nation and is ideally suited to addressing the rehabilitation of the Bennett and Statutory Freeze areas. Based on this institutional knowledge, ONHIR should not be eliminated, although it certainly can be downsized.

I strongly believe that all Navajos want to put the land dispute with the Hopis behind and move forward. In order for the Nation to do that, the final tasks that will complete relocation in a just and human fashion must be accomplished.

One alternative approach that the committee may want to consider, rather than S. 1003 as presently crafted, would be to evaluate and enumerate all the tasks the ONHIR needs to perform to finish its tasks, with input from the Navajo Nation and the Hopi Tribe, then set out a reasonable timeframe to accomplish those tasks. That timeframe could be used as a period that begins after passage of the legislation to complete the tasks identified.

Such an approach may not have worked prior to 1996, but in the present collaborative era, the Nation, ONHIR and the Hopi Tribe can devise a plan to take these final steps. The Navajo Nation wants this dispute behind us, but we do not want to leave individuals behind.

In addition to my comments, the Navajo Nation attorney general has prepared comments on certain specific legal issues presented by S. 1003. Those matters are also of special concern because of their impact on cases currently pending in the courts of the impact these provisions may have on individuals seeking relocation benefits. Roman Bitsuie, the executive director of the Navajo-Hopi Land Commission Office, will discuss the efforts of the Office to serve the relocatees in the Bennett Freeze area.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Shirley appears in appendix.]

The CHAIRMAN. Thank you.

Before we go with you, Chairman Taylor, we will go with Mr. Bitsuie since it follows. Go ahead. Mr. Attorney General, please

proceed. I mean, Mr. Bitsuie, the executive director, please go ahead.

STATEMENT OF ROMAN BITSUIE, EXECUTIVE DIRECTOR, THE NAVAJO-HOPI LAND COMMISSION OFFICE

Mr. BITSUIE. 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.

The introduction of S. 1003 provides an important and timely opportunity 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.

I am from the Hardrock Chapter of the Navajo Nation which was divided in half between the Hopi partitioned land and the Navajo partitioned lands. I can testify first-hand to the many hardships resulting from the relocation law. 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 matters.

Every day, Navajo tribal members come into my office to tell me of the hardships that they have suffered because of the relocation law, including lots of young people whose families relocated and now are homeless and landless. The impact of the land dispute will be with the Navajo Nation for many generations to come. Although we may not agree with everything that will be discussed today, I am sure that we can agree that relocation has been a fiasco. At a cost of nearly $500 million, the Federal Government has destroyed the subsistence lifestyle of thousands of Navajos, uprooted whole communities, and left the Navajo Nation and the Navajo people to bear much of the burden of addressing the extraordinary economic, social and psychological consequences of relocation.

If the Navajo Nation could have its dream bill, it would overturn the relocation law and provide for a right of return 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 I did not again remind the committee of the nature of the sacrifice the Navajo families who have left their ancestral lands had to make.

From the beginning, Federal policy in this area has been plagued by lack of understanding of the true situation of the land. When the 1882 Executive Order Reservation was established, it was an arbitrarily drawn rectangle, one degree of longitude wide, one degree of latitude high, containing both Navajo and Hopi populations. In the early 1970's when the relocation law was under consideration, the Federal Government grossly underestimated the costs of relocation, again because they did not take the time to understand properly the situation on the land.

Now, with the relocation process approaching its end, it is critically important to not repeat past mistakes and take action without proper understanding of the situation. We urge that a study be

undertaken to assess the impact of the relocation law and to serve as a policy and fact-based tool for developing a humane closure plan. The Navajo Nation began pushing for a study in the mid-1990's. In the 107th Congress, this committee actually considered two pieces of legislation that would have provided for such a study. Unfortunately, the Hopis opposed the study provision and it was dropped. If either of these initiatives had been acted upon, we would be sitting here today with quantifiable data about what has transpired and what is needed to close out the relocation in a humane manner.

Well, we do not have the empirical data, but we do have loads of anecdotal information that tells us that many relocated families have been traumatized and suffer from a much higher incidence of alcoholism, poverty, suicide, depression and physical illness than the rest of the local population.

In addition, the burden of caring for these families has fallen on the surrounding communities, as well as the Navajo Nation. In my written testimony, I describe at length the hardships imposed by the relocation law and the related construction freeze.

Further funding of the Navajo Rehabilitation Trust Fund should be undertaken to complete its mission of addressing impacts from the relocation law. The Nation has viewed the trust fund as a resource for addressing unforeseen and unintended consequences of the land dispute, not only over the short term, but also over the long term. When initially created through the 1980 amendments to the act, it was presumed that the authorized amount of $60 million 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 Paragon Ranch energy resources. However, the Navajo Nation received only $16 million through the trust fund. 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 since 1999, and it currently has obligated for near-term expenditure another $2 million, leaving about $9 million in the trust fund, roughly the amount of interest earned on the account. Of the $9 million, about $8.3 million has been committed for the purchase of land in Arizona, some 13,000 acres remaining to complete the land selection provision in section 640(d)(10)(a)(2) of the current law.

As you know, when the 1882 land was partitioned, the Navajo Nation lost 911,000 acres of land upon which Navajo families resided, and only received as compensation 250,000 acres, plus the right to purchase up to 150,000 acres. Land is extremely important in Navajo culture. The commitment to purchase additional land with trust fund moneys falls within the statutory requirement of the law which is that the moneys are solely for purposes which will contribute to continuing rehabilitation and improvement of the economic, educational and social condition of families in Navajo communities affected by the law's provision.

The Navajo Nation has considered and is currently considering several properties. However, because it is critically important that any newly acquired lands truly benefit the affected Navajo families, the Navajo Nation is exercising due caution. Until the land pur-

chases are made, the Navajo Nation is using the interest from the trust fund to pay for ongoing projects to mitigate the effects of the relocation.

We were encouraged that S. 1003 would authorize additional appropriations for the trust fund. We now understand that this was a mistake. We would ask that the trust fund in fact be reauthorized and that it receive full funding, and that the obligation of the Navajo Nation to repay the Navajo Rehabilitation Trust Fund be lifted. The coal resources at 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 lawsuit authorized by the relocation law which created unexpected liabilities of the Navajo Nation, the Navajo Nation has already paid the Hopi Tribe approximately $40 million to settle several cases. The Navajo Nation is not in a position to pay back the trust fund. 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 burden imposed by the relocation law and are therefore very important.

Unfortunately, only a small fraction of the budget of the Office of Navajo Indian Relocations has been spent on this important component of the relocation process. We believe that the United States must finish the job with regard to 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 matter of comparison, I would like to note that the entire cost of 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.

Another high priority of the Navajo Nation is rehabilitating the Bennett Freeze area. I do support the statement that has been made by the chairman and Senator Inouye regarding that.

Due to a 39-year Federal construction freeze, the Bennett Freeze Navajos are the poorest of the poor. We hope that all parts of the Freeze will be lifted in the near future and truly rehabilitation of this area can begin. I am happy to learn from your staff of your support for addressing this issue. The sooner we can develop a specific approach, the better. It would make sense to make the Office of Navajo-Hopi Indian Relocation to carry out the Bennett Freeze rehabilitation as they have hard-won expertise at working in the western Navajo area.

Of course, there should be no forced relocation of Navajo families. About eight Navajo families who continue to live on HPL have refused to sign the accommodation agreement. There is real hope that arrangement among the parties can be made to allow these families to remain on their ancestral land. We believe S. 1003 should support this approach, rather than reinforce the deeply troubling idea that Navajo families will be forcefully removed from land that they have called home for generations.

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 to visit affected areas and families in order to deepen the committee's understanding of the long-lasting effects of this relocation law.

Thank you for your consideration of these remarks. I look forward to working with the Committee as it considers S. 1003.

Thank you.

[Prepared statement of Mr. Bitsuie appears in appendix.]

The CHAIRMAN. Thank you very much.

Chairman Taylor, welcome.

Mr. Attorney General, did you have an opening statement?

Mr. DENETSOSIE. Yes; I do.

The CHAIRMAN. It better be a short one.

STATEMENT OF LOUIS DENETSOSIE, ATTORNEY GENERAL, THE NAVAJO NATION

Mr. DENETSOSIE. Thank you, Senator McCain and members of the Senate Committee on Indian Affairs.

I would just like to summarize my testimony.

The CHAIRMAN. Without objection, your full statement will be made part of the record.

Mr. DENETSOSIE. I will submit the written testimony for the record.

I would just like to address four aspects of the legislation. I think that on the existing land claims litigation between the two tribes, we would agree with the committee, and also I have had a chance to review Chairman Taylor's testimony that the legislation should not amend the laws with respect to that ongoing litigation, specifically the so-called *Owelty* case. That case is near completion and we just need to complete that. Judgments have been entered twice by the Court of Appeals and litigation should just continue. We ask that section 2 of the bill be deleted.

With regard to 640(d)(11)(f) and (g), the legislation creates two offices. I think that causes a lot of confusion for everyone concerned. The Department of the Interior office should follow sequentially after the Navajo-Hopi Indian Relocation Office is taken out of commission. With regard to 640(d)(13)(d) and 640(d)(14)(i), we do have a problem with the September 30, 2005 date for close of certification. We understand that that will be extended to 2008. We would agree with that.

And finally, the legislation creates a new appeals process to take the appeals of benefit certifications to the Court of Appeals. We believe that is unnecessarily cumbersome and probably not the best use of judicial resources. We believe that the current procedures should be kept in place to allow for appeal to the Federal District Court.

With that, Senator, I agree with you. A lot of good men have tried to resolve this dispute. I think the dispute has proven to be bigger than any of them.

Thank you.

[Prepared statement of Mr. Denetsosie appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Attorney General.

I would like to say that we would like to be in close communication with you as we move forward with developing this legislation,

particularly in the form of amendments. I thank you for those recommendations. They sound like they are very important and helpful ones. And thank you for being here today.

Mr. DENETSOSIE. Yes; and we look forward to working with the staff on that during the break.

The CHAIRMAN. Thank you, sir.

Chairman Taylor, welcome.

STATEMENT OF WAYNE TAYLOR, JR., TRIBAL CHAIRMAN, THE HOPI TRIBE

Mr. TAYLOR. Thank you, Chairman McCain.

The Hopi Tribe appreciates the opportunity to appear before you today to offer testimony on S. 1003. My name is Wayne Taylor, Jr. I am the democratically elected chairman of the Hopi Tribe of Arizona. The tribe has submitted written testimony in reply to specific provisions of S. 1003.

The Hopi Tribe is grateful for the committee's effort in attempting to bring to a close the long struggle by the Hopi people to both protect our aboriginal lands from encroachment and secure jurisdictional control over those lands. The Hopi people have lived on our northeastern Arizona homeland since ancient times. Our original reservation of more than 2.6 million acres established in 1882 by Executive order of then-President Chester Arthur was only a small portion of our aboriginal homeland. Since that time, because of encroachment by the Navajo and action and inaction by the United States, we have lost over 40 percent of our reservation. We are today completely surrounded by the Navajo Nation, which overlaps three States. Many of our sacred and archaeological sites are no longer on the Hopi lands.

The Navajo-Hopi Indian Settlement Act of 1974 was intended to resolve more than a century of land disputes between the Hopi and Navajo Nations. It partitioned disputed lands and required Hopi and Navajo to relocate off property that belonged to one tribe or the other. Hopi people years ago moved off disputed Navajo land. However, more than 30 years after passage of the 1974 Act, we are still waiting for the Navajo to move off Hopi land.

S. 1003 should not rewrite existing dispute resolution provisions between the Hopi Tribe and the Navajo Nation.

Section 102 of S. 1003 could undo years of litigation between the Hopi and Navajo in the courts of the United States. The bill affects the Owelty lawsuit provision of the 1974 Act by changing the Owelty decisionmaker from the Federal District Court to the Secretary of the Interior.

The bill also changes how *Owelty* is calculated. The *Owelty* case was decided at the District Court level by two judgments, both of which were appealed to the Ninth Circuit Court of Appeals. The case is now on remand to the District Court for further proceedings. The Hopi Tribe opposes any changes to the *Owelty* provision of the 1974 Settlement Act.

S. 1003 is intended to complete the work of relocating Navajo off Hopi lands and close off the Navajo-Hopi Indian relocation by 2008. We certainly welcome those goals, which under the 1996 Settlement Act were supposed to be completed in 2000.

However, we are concerned that the deadline will prejudice the rights and interests of the Hopi Tribe.

S. 1003 will be effective only so long as it enables the Hopi Tribe to retain complete jurisdiction over all its reservation lands are provided in 1974 Act. S. 1003 states that relocation duties remaining after 2008 be turned over to the Department of the Interior, Bureau of Indian Affairs. The Hopi Tribe believes all relocation be completed before the Office is closed. We do not believe the BIA, which is already overburdened, is equipped to handle relocation. In addition, the BIA has trust responsibility to both the Hopi and Navajo Nations. Injecting the BIA into the relocation matter may be a breach of the Federal trust responsibility that BIA has to both tribes.

The Hopi Tribe fears that provisions of S. 1003 may delay final relocation. The bill provides that relocation funds may be placed into a trust for heirs of those who refused to relocate, rewarding them for continued illegal occupation of Hopi lands. While the bill establishes removal eviction requirements, it leaves much to the discretion of the U.S. Attorney. Evictions should be mandatory and deadlines or appeals should not stretch the process beyond 2008.

Finally, we are concerned that the Office of Relocation receives sufficient time and funding necessary to complete its work. Certification deadlines for applying for relocation benefits must be reasonable and not arbitrary as to encourage legal challenges and other delays. Congress must provide the Office of Relocation with funding necessary for such substantive work as building houses for relocated families.

My people are faced with many challenges, Senator, some of which you have described, high unemployment, inadequate housing, lack of economic development on a semi-arid and remote homeland, and the erosion of our cultural traditions and our way of life. We are faced with a very real thirst for survival. Too much of our time and resources have been spent in a seemingly endless struggle to preserve and protect what has been ours for two millennium, what is most precious to us than life itself, our homeland.

The Hopi people ask that this committee help us in ending this tortured chapter in our existence so that we may finally move on to the creation of a viable homeland for future generations.

Chairman McCain, let me again thank you and members of this esteemed committee for this opportunity to testify before you today. I am ready for any questions.

[Prepared statement of Mr. Taylor appears in appendix.]

The CHAIRMAN. Thank you very much.

President Shirley and Chairman Taylor, suppose that you had dictatorial powers. What would you do about the Bennett Freeze? What would be your solution to the Bennett Freeze issue? We will begin with you, President Shirley.

Mr. SHIRLEY. I do not know if I want dictatorial powers, Senator

The CHAIRMAN. Some say the president of the Navajo Nation has close to it. [Laughter.]

Seriously, in other words, if you had a magic wand and said, okay, this is the way we settle the Bennett Freeze. This is important because we are going to try to address that issue.

Mr. SHIRLEY. I hope there is a time, Senator, when the Hopi Nation and the Navajo Nations live together harmoniously. I guess I would like to get back to that. I know many of our children are inter-married, meaning that Navajo people are married to Hopi people, and so we have children who are Hopi and Navajo. I think also with the Hopi Nation. I think the two nations at this point in time, and working with Chairman Taylor and with the Council to try to resolve just that, the Bennett Freeze. We have not resolved it. Hopefully, we begin to see the harmonious relationship that has gotten away from us and to begin to develop our lands the way we should. That is what I would like to see.

The CHAIRMAN. You would like to see it lifted?

Mr. SHIRLEY. Yes; I would like to see it lifted, sir. I think that is what we need.

The CHAIRMAN. Chairman Taylor.

Mr. TAYLOR. Chairman McCain, the 1934 Land Settlement Act is in litigation between the two tribes, as you well know. We have been waiting on the District Court to pick this matter back up. We have waited for a very long time. It is still on the docket.

The CHAIRMAN. Let me ask you this. Suppose we lifted the Bennett Freeze tomorrow. What do you think would ensue on the Bennett Freeze? Would it be chaos? Would it be people trying to move in on other people's land? What do you think would happen?

Mr. TAYLOR. Chairman McCain, in fact what I was getting ready to say is we have been in the negotiations, and in fact have reached agreement and have developed a compact which would settle this lawsuit. In fact, the Hopi Tribal Council has already ratified this agreement and we are awaiting on the Navajo Council to do likewise.

The CHAIRMAN. And roughly the outlines of that agreement would be?

Mr. TAYLOR. The lands have been largely partitioned. What is remaining, Chairman McCain, are in the case of the Hopi, the sacred sites, the religious sites that we have remaining on the Navajo 1934 areas. We want those areas to be protected and we want to have access to all those areas so that we can continue to practice our religious duties and responsibilities.

The CHAIRMAN. President Shirley, your version of this compact?

Mr. SHIRLEY. We are very diligently working together, the two nations, to come to agreement about the compact, sir. I think if we can continue to do that, I think in short order we will have that agreement. The Navajo Nation Council has been apprised of it. They are looking at it. I think, God willing, maybe we will have an agreement.

The CHAIRMAN. Within the year?

Mr. SHIRLEY. Giving caution, I would like to see it within the year.

Mr. TAYLOR. Chairman McCain, again the Hopi Tribal Council has already approved the compact. We are anxious to see it happen this year. That would, in effect, also lift the Bennett Freeze.

The CHAIRMAN. Mr. Attorney General, do you have a comment on that?

Mr. DENETSOSIE. Thank you, Senator. The terms of the compact are subject to a confidentiality agreement. Unfortunately, we can-

not really divulge the details in it. The negotiations involve a senior judge of the Ninth Circuit Court of Appeals as the mediator. He also signed onto the confidentiality agreement, so we are very cautious about that.

It is impossible to predict when the two tribes will carve out the final terms. Like we said, it could be this year or it could be next year. That is the best we can say, but we look forward to the assistance of the United States, not only the Department of the Interior, Fish and Wildlife, and the United States Senate in helping us resolve this quite in the near future, I hope.

The CHAIRMAN. Well, I do not have to tell any of the witnesses that it is a national shame and disgrace the conditions that exist in the Bennett Freeze area. It is long overdue that addressed it, and I hope that this compact or agreement may be consummated as soon as possible so we can let those people get on with some kind of development. President Shirley, so keep us informed, would you?

The Paragon Ranch in New Mexico was purchased with the intent that the coal reserves would generate revenues that would in turn reimburse the Navajo Rehabilitation Trust Fund. It is my understanding there is no coal resources that are producing.

What do you intend to do with this land?

Mr. SHIRLEY. I will go ahead and have our Attorney General answer that, sir.

The CHAIRMAN. Sure, whichever you want to.

Mr. DENETSOSIE. Honorable Senator, the land has not been transferred to us at this point in time because of appeals by the existing owners of the preference right lease applications. It is not for lack of effort on our part, but there have been appeals within the Bureau of Land Management and the appeals involve litigation. For those reasons, we still have not acquired the resources. When we do get the resources, then we can look at the opportunities available for development of the coal resources. It is something that is ongoing. There is a separate bill, as you are aware, through the Natural Resource Committee of the Senate to try and resolve that issue at this time.

The CHAIRMAN. Mr. Bitsuie, $16 million was appropriated for the Rehabilitation Trust Fund. I understand that after the conceptual framework was signed, these funds went into an interest-bearing account that accrued an additional $8 million. I understand that $11 million of that fund remains.

The appropriations were made between 1990 and 1995. Why has there been a 10-year delay in spending that money?

Mr. BITSUIE. Mr. Chairman, the Federal Government loaned the Navajo Nation $16 million to fund the trust fund. We have spent on community housing and other similar projects about $15 million to $16 million. But the original loan has also generated another $8 million in interest, which is roughly the unexpended amount remaining in the account. We are using the interest from the $8 million to fund further projects. The $8 million itself has been earmarked by the Navajo Nation for critical land purchases. Those land purchases have not been completed as the Navajo Nation is being extremely careful in seeking to acquire lands that will actu-

ally generate revenue for addressing the adverse impact of the land dispute for years to come.

We are stretching out and maximizing the value of the trust fund. Land is very important in Navajo culture. For years, the policy of the Federal Government has been to increase tribal self-determination. In our judgment, we have appropriately allocated the resources from the trust fund.

The CHAIRMAN. Well, in my view, you haven't. It was appropriated 10 and 15 years ago, and it has not been spent.

I am sure that if that had been the conditions under which it was appropriated, the money would not have been appropriated.

Mr. Bitsuie, the Land Commission received $1.5 million in 1998 from the Trust Fund to build or improve 48 replacement homes on the HPL. What is the status of this project? That has only been 7 years.

Mr. BITSUIE. The Navajo Nation allocated $1.5 million from the Trust Fund for the construction of 48 homes on Hopi partitioned land. Under the accommodation agreement that has been entered between the Navajo Nation and the Hopi Tribe, we were instructed to use or identify the land or have the land withdrawn for the accommodation signers to use the land within a certain period of time. So the money was made available.

The $1.5 million only represents about one-half the cost of those homes. In an effort to stretch trust fund dollars, we reached an agreement with the Navajo Housing Services that they would provide labor. Unfortunately for their own financial reasons, the Navajo Housing Services was not able to fulfill its contractual commitment. Six homes were not built, but most of the other 42 have significant problems.

The Navajo Nation recently has committed another $800,000 to fix the homes and complete the projects. When complete, the total cost of this project to the trust fund for 48 homes of $2.3 million is still a bargain. Today, it would cost about $100,000 per home, as was provided by the Relocation Commission, Mr. Bavasi. To build these homes, it would cost approximately $4.8 million. But we will complete the homes at a cost of one-half of that amount, Mr. Chairman.

The CHAIRMAN. So if we waited another 20 years, it would probably cost $1 million per home, so we should wait longer. Is that the logic that you are giving me, Mr. Bitsuie?

Mr. BITSUIE. We are on a timeframe that we will complete the renovation of these homes by the end of this year, as well as the six homes that were not constructed, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Could I just ask, how often, President Shirley, do you and Chairman Taylor communicate with each other?

Mr. SHIRLEY. We communicate as often as is needed, sir, on the different issues relative to the Bennett Freeze or whatever.

The CHAIRMAN. So you have good lines of communication?

Mr. SHIRLEY. Yes; we do.

The CHAIRMAN. Chairman Taylor.

Mr. TAYLOR. We do. Mr. Chairman, we do communicate quite frequently. This is just one of a number of issues that we are dealing with. We are working together to preserve the Mojave plant, which

is a major part of the economic revenue stream for the two nations. That also is another matter that takes tremendous amounts of our time. We do work together with our teams on those projects.

The CHAIRMAN. I suggest that there are a lot of issues now, maybe more than in the past, that exist that are in the mutual interests of both tribes. As you mentioned, the Mojave powerplant situation, housing, the Bennett Freeze, pending compacts between the two tribes. I would suggest that you two schedule a regularly scheduled meeting as happens between leaders that have issues of mutual interest, so that you can have an agenda, meet and see what can be resolved and report back to the tribal councils and the Hopi and Navajo people.

It is my suggestion, given the number of issues that exist that are in the mutual interest of both tribes that you establish a set of regularly scheduled meetings between the two of you, at least in this period while we are addressing major issues that affect both tribes. I encourage it. I am not saying that you must. I am just saying that it would be helpful to us to know the agenda that both tribes are pursuing, the Navajo Nation and the Hopi Tribe are pursuing, in order to try to achieve some of these goals.

I think I started this hearing, and maybe I should close it by saying that when Congress gets involved in issues such as a land dispute, many times the law of unintended consequences is going to prevail. I do not think anyone thought that in 1974 that we would be sitting here 31 years later without some of these issues having been resolved. I think that if in 1974 if the two tribal leaders had been able to sit down and negotiate these issues out that we would be discussing other important and compelling issues like education, like health care, like housing. There are a number of issues that clearly the Federal Government has not fulfilled its responsibilities to either tribe. I would like to be able to put these issues behind us so that we can concentrate on providing proper health care, education and housing to both tribes, which we all know is terribly lacking and behind the rest of the Nation.

Do you have any comment, Chairman Taylor.

Mr. TAYLOR. Mr. Senator, I think you are very much on point. I could not agree with you more.

The CHAIRMAN. President Shirley.

Mr. SHIRLEY. A point well taken, sir. I totally agree.

The CHAIRMAN. It all, I think, is going to depend on, a lot of this is going to depend on the cooperation between the two or you elected leaders. I am pleased to see that this relationship has matured in a way that perhaps was not the case in previous Administrations in both organizations.

Mr. Attorney General, it is always a pleasure to see you again. Do you have any other comments you would like to make?

Mr. DENETSOSIE. I am ready to leave for the Southwest. [Laughter.]

The CHAIRMAN. Mr. Bitsuie.

Mr. BITSUIE. Thank you very much, sir.

The CHAIRMAN. Thank you very much. We will work very closely with you as we proceed on this issue. Thank you very much.

This hearing is adjourned.

[Whereupon at 10:47 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF CHRISTOPHER J. BAVASI, EXECUTIVE DIRECTOR, OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Mr. Chairman and members of the committee, good morning. I appreciate the opportunity to come before you today to provide testimony and answer any questions you may have regarding the Office of Navajo and Hopi Indian Relocation and its position on the pending legislation.

In early June of this year, I and my staff met with members of the committee staff, in Flagstaff, AZ for the purpose of giving comments on the original draft of S. 1003. The Office is in agreement with the legislation's projected date for completion of relocation and transfer of any remaining functions to a newly created Office of Relocation within the Department of the Interior. I understand that the Administration opposes the language concerning enhanced retirement computation and the Office of Personnel Management will be in touch with the committee in regards to these concerns. Committee staff have already made some changes to the proposed legislation based on recommendations from the Office and we believe the remaining recommendations that the Office will put forth below are sufficiently important to the efficient and timely completion of our mission and the closure of the Office, that they should be implemented.

For convenience, the comments below are made by reference to page and line numbers of the most recent version of S. 1003.

Page 13, lines 3–7. This change carries forward the Secretary's authority to take lands into trust acquired under section 1B, but has omitted the authority to take into trust lands described under section 1A. Land selection has not been completed in either of these categories and therefore, the Secretary's authority to take lands into trust should extend to both categories. The Office would therefore, recommend that page 13, line 5 read, (1)(A) (1)(B).

Page 19, lines 11–13 and lines 23–25, page 52, lines 22–24 and page 59, line 25. These three citations all deal with the termination of ONHIR authority, the establishment of the Office of Relocation within the Department of the Interior and the date of commencement of the Secretary's authority over transferred relocation activities. The original draft of the legislation included a date of September 30, 2008 for the termination of ONHIR and the transfer of the functions to the Secretary. The original draft of the legislation stated that the Secretary's authority commenced with the enactment of the legislation. In the most recent version of the proposed legislation that has been corrected to indicate that the effective date of the Secretary's authority will be September 30, 2008. The only date not in synch with these two dates is the date of the establishment of the Office of Relocation within DOI which still reads October 1, 2006. The Office recommends that the date for the establishment of the Office of Relocation within the Department of the Interior be changed to September 30, 2008 so that all three dates are consistent.

Page 22, line 16–19. This section states; "(d) P Prohibition.—No payment for benefits under this act may be made to any head of household, if as of September 30,

2005, that head of household has not been certified as eligible to receive the payment." The Office has several comments in regard to this language.

(a) The prohibition conflicts with page 20, line 10–24 and page 30, line 1–2 of S. 1003 which provides that "a final determination is made by ONHIR for each appeal described in paragraph (1) by not later than January 1, 2008.

(b) The prohibition conflicts with page 28, Line 15–23 of S. 1003 which requires that eligibility determinations be made by ONHIR, "before July 1, 2008, but not later than 90 days after receiving a notice of the imminent removal of a relocatee. . . ."

(c) The prohibition conflicts with page 30, line 4–25 which requires the Commissioner to provide notice not later than 30 days after the enactment of the Navajo Hopi Settlement Act of 2005 to individuals who may have a right to a determination of eligibility.

(d) This prohibition also conflicts with the Office's recently arrived at agreement with the Navajo-Hopi Legal Services Program to accept certain late applications and certain appeals under very strict guidelines to prevent the possibility of litigation on these clients. It is anticipated that fewer than 20 heads of household will become eligible under this agreement with the Navajo-Hopi Legal Services Program. However, more time is required to complete the review of these cases and the prohibition as stated above, would not allow the Office to fulfill its side of the agreement.

(e) The Office, therefore, recommends that the date in the above citation be changed to September 30, 2008 for all of the reasons stated above, as well as for the reason that it makes all of the transition and completion dates consistent.

4. Page 30, lines 4–25. The steps outlined in the referenced sections have already been accomplished. The Office recommended this language in the 1996 legislation in order to provide an organized vehicle for completing notifications and certifications prior to termination of the agency. Since the legislation was not enacted, the Office implemented these steps under its regulations. To include this language might necessitate the Office repeat steps already taken and might open the door to further relocations and/or litigation. The Office recommends eliminating this entire section.

5. Pages 47 and 48, section 202. The draft legislation cites an outdated section of title 5 (5 U.S.C. 5597) which was DOD's original authorization to provide separation incentives without OPM approval. DoD has since updated their Voluntary Separation authority under the NSPS law, 5 U.S.C. 9902 (see P.L. 108–136, sec. 1101). We can use the existing voluntary separation authority under 5 U.S.C. 3523, recently updated under the Homeland Security Act (P.L. 107–296, sec. 1313). This updated separation authority gives the agency head the option of offering $25,000 or less for separations and provides the agency great flexibility in determining how, when, and under what conditions these incentives will be offered—with OPM approval.

Mr. Chairman, That concludes my formal statement. I would be happy to try to answer any questions the committee has for me and we look forward to working with the committee to refine this legislation.

PREPARED STATEMENT OF WILLIAM P. RAGSDALE, DIRECTOR, BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the committee, my name is William P. Ragsdale. I am the Director of the Bureau of Indian Affairs (BIA). I am pleased to be here today to provide the Department's views on S. 1003, a bill to amend the Navajo Hopi Land Settlement Act of 1974. We applaud Senator McCain for his efforts to bring this 150 year dispute to a close. Although, we cannot support the bill as written, we would like to work with the committee to achieve a favorable result.

On December 16, 1882, President Chester Arthur signed an Executive order that set aside approximately 2.5 million acres of land in northern Arizona for the Hopi Tribe and "such other Indians as the Secretary may see fit to settle thereon." At the time of the 1882 Executive order, there was a small but indeterminate number of Navajos residing on the portions of the reserved lands. Throughout the 1890's and to this day, members of the Hopi tribe and the Navajo Nation have disputed the right to occupy lands within the 1882 reservation. In 1962, the Federal District Court ruled that both the Hopi Tribe and the Navajo Nation had joint rights to use the 1882 Executive order reservation lands. The joint use proved unworkable. In 1974, Congress enacted legislation to resolve the joint use rights by partitioning the land and relocating members of each tribe from lands adjudicated to the other tribe. The 1974 Act provided relocation benefits to tribal members residing on lands partitioned to the other tribe, and established the Navajo and Hopi Relocation Commis-

sion to provide those benefits. To date, all Hopi families that were residing on Navajo land have been relocated and approximately 90 Navajo families are in some stage of the relocation process.

S. 1003 The Department has several concerns with S. 1003. S. 1003, proposes to terminate the Navajo and Hopi Indian Relocation Office (Relocation Office) in 2008 and transfer any remaining responsibilities of the Relocation Office to the BIA. At this point, as the Relocation Office is an independent agency, we are uncertain what responsibilities would be transferred or the policies in effect at the Relocation Office and therefore, we do not know exactly how this legislation would impact the BIA. In addition, in light of not knowing the universe of responsibilities that the BIA would be responsible for, we are concerned that the BIA does not have the necessary expertise or resources to complete the work of the office. We have recently started a dialog with the Relocation Office to determine the work the Office has accomplished and the manner in which it operates. We expect to learn the funding details for these activities from the Relocation Office which will assist us in identifying any limitations.

Furthermore, any transition would take time and could further delay any relocation activity. There are currently about 90 families that are in some phase of the relocation process. Eight of these families are resistant to signing an accommodation agreement, and a number of appeals are also in various phases of the appeals process. Any agreements will require significant coordination with the Navajo Nation. It is difficult to predict how many of these cases will be resolved prior to relocating and then ultimately terminating the Relocation Office, especially considering the complex history of this relocation effort. Although under the Commission's published regulations the time for filing applications for relocation assistance has expired, applications continue to be filed. Therefore, we suggest specific deadlines be included in the bill of when applications for new housing and any appeals have to be filed. Without some specific timeframe, it will be extremely difficult to assess the BIA's future workload.

The BIA is also concerned with building houses for the relocated families. The BIA has a very small program to assist tribes in their pursuit of funding for housing repairs or renovations. We would suggest including the Department of Housing and Urban Development in any discussions pertaining to housing assistance.

The Administration objects to the proposed language which would provide enhanced retirement benefits to Office of Navajo and Hopi Relocation employees as this is unfair compared to the benefits available to other similarly situated Federal employees. The legislation also does not keep the Retirement Trust Fund whole for the increased cost of these benefits. In addition to the Administration's objection to the retirement provisions, the Administration also has concerns with the new separation pay authorized in section 202. S. 1003 cites an outdated section of title 5 (5 U.S.C. 5597), which was the Department of the Defense's (DOD) original authorization to provide separation incentives without Office of Personnel Management approval. DOD has since updated their Voluntary Separation authority under the National Security Personnel System law, 5 U.S.C. 9902 (see P.L. 108–136, sec. 1101). Instead, existing voluntary separation authority under 5 U.S.C. 3523, recently updated under the Homeland Security Act (P.L. 107–296, sec. 1313), should be used. This updated separation authority gives the agency head the option of offering $25,000 or less for separations and provides the agency flexibility in determining how, when, and under what conditions these incentives will be offered—with OPM approval.

Finally, we request that great care be taken to ensure that property interests are not impacted by any changes contained in the legislation.

This concludes my prepared statement. I will be happy to answer any questions you may have.

PREPARED STATEMENT OF JOE SHIRLEY, JR., PRESIDENT, NAVAJO NATION

Good Morning Chairman McCain and Ranking Member Dorgan. I thank you for the opportunity to discuss the Navajo-Hopi Land Settlement Amendments with the committee this morning. My name is Joe Shirley, Jr., I am the president of the Navajo Nation. The Navajo Nation last appeared before this committee regarding the Navajo—Hopi Land Dispute in 1996. Since then five Congresses and two Administrations have had little interest in the Navajo-Hopi Land Dispute. The Navajo Nation and the Hopi Tribe, during that same period, have made significant progress by working in a more collaborative approach with each other to resolve aspects of the land dispute. These joint efforts between the Navajos and Hopis appears to be moving both tribes to the conclusion of the land dispute. Following passage of the

Navajo-Hopi Land Dispute Settlement Act of 1996 and this committee's consideration in the 104th Congress of S. 2111, a bill with similar intent to this bill, there has been no action by this committee regarding the Land Dispute. I welcome this opportunity to discuss the current status of these matters with the committee.

The Navajo Nation understands from the introductory comments of Chairman McCain that he is concerned that the relocation process has cost far more than originally estimated and taken too long to complete. The Navajo Nation vigorously opposed the Navajo-Hopi Land Settlement Act of 1974 ("relocation law") before its passage and actively sought its repeal for years afterward. The Navajo Nation unfortunately failed in these efforts. Had the Navajo Nation been successful, the Navajo people would have been spared a tremendous harm and the Federal Government would have been spared a great expense. That said, now that the Navajo people have had to live through the nightmare of relocation, we do not think Federal budgetary issues alone should be a basis for limiting funds to complete the program, and doing so in a way that brings humanity to what has otherwise been an inhumane process. The chairman is concerned with cost. I ask the committee to consider how they would estimate the cost of moving an entire town, and how they would value the economic and social upheaval such a move would impose? This is what happened to the 12,000 Navajos who lost their land, their livelihood, and their identity; 12,000 people; approximately the population of Kingman, AZ. How much would it cost to relocate the entire population of Kingman, to the Phoenix area? One billion dollars? Two billion dollars? How long would it take if the funds were appropriated bit-by-bit over 30 years? What would be the impact if the land these people were expected to relocate to was already populated? What would happen if these people suddenly had to unlearn their skills as farmers and learn to survive in a cash economy? How long would be too long? How much would be too much?

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.

Since 1996, the Navajo Nation and the Hopi Tribe have settled three major pieces of litigation: The *Use* Case that arose from 25 U.S.C. §640d—17(a) (2); the *Damage* Case that arose from 25 U.S.C. §640d—17 (a) (3); and the *Tax* case that arose from 25 U.S.C. §640-d7 and the continued joint ownership of minerals between the Navajo Nation and the Hopi Tribe. The *Use* and *Damage* Cases concluded in 1999 when the Navajo Nation paid the Hopi Tribe $29.1 million, and the Hopi provided the Nation with Satisfactions of Judgment in both the *Use* and *Damage* Cases. Nothing remains of these lawsuits. Similarly, in 2002, the Navajo Nation and the Hopi Tribe settled the *Tax* Case with a significant payment, equal to one-half of the taxes from the Black Mesa Mine through 2007 were paid by the Nation to the Hopi Tribe.

Currently, with some assistance from the Office of Navajo and Hopi Indian Relocation (OHNIR) the Hopi Tribe and the Navajo Nation are near resolving the final aspects of relocation without any Navajo evictions from the Hopi Partitioned Land (HPL). One of the more significant issues presented by S. 1003 in relation to this potential for forced evictions is one of timing. Currently, S. 1003 requires OHNIR to certify eligibility of all outstanding claims by September 30, 2005. I understand that this date will be revised to September 30, 2008, such a change should avoid the need for any forced relocation of Navajos because the contemplated agreement can be implemented. Ideally, if more time is needed to complete these efforts with the specter of eviction that time should be afforded. This is especially true where interested parties are working together to complete difficult tasks.

Another major concern of S. 1003 relates to the Navajo Nation's need and ability to address the impacts of both the 1966 Bennett Freeze, and the 1980 Statutory Freeze in the western portion of the Navajo Nation. Between the administrative and statutory prohibitions on development the Nation is faced with approximately 1.5 million acres of its reservation that have had no meaningful development since before 1966. In 1997, The Navajo Nation and the Hopi Tribe entered into a stipulation in the District Court that limited the development ban to approximately 700,000 acres that are currently subject to pending litigation. Upon resolution of the *1934 Act Reservation* Case presumably the ban on development will cease, but these lands and its approximately 5,000 residents will require special attention to bring them up to the standards of other parts of the Navajo Nation. It is my understanding that the committee has chosen to address the Bennett and Statutory Freeze issues in subsequent legislation and not in S. 1003. I therefore raise these issues to reinforce their importance to the Navajo Nation.

S. 1003 raises other areas of specific concern including:

First, rehabilitation efforts should 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, already overtaxed by the influx of relocatees, was further constrained by the construction freeze that was in place from 1963 until approximately 1979. This infrastructure continues to be grossly insufficient to meet the current needs resulting from the relocation law.

Second, the relocation law currently 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 ONHIR the flexibility to address the needs of families and communities 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 OHNIR has not yet approved any of these proposals, they are exactly the kind of projects that bring humanity to the relocation process while addressing the real needs that resulting from the process. 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. The legislation should preserve this guidance.

Third, the 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 is not clear that this authority would continue in the new Office of Relocation at the Department of the 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 in this Congress, specifically S. 692, the Bisti/PRLA Dispute Resolution Act. The Navajo Nation is concerned that this provision in S. 1003 could impact that selection process and potentially prejudice Navajo interests. This authority should be carried over in to the Department of the Interior if the selections are not completed by September 30, 2008.

Fourth, the transfer of ONHIR's Responsibilities to the Department of the Interior. ONHIR has developed critical and hard-won experience in working on and near the Navajo Nation and is ideally suited to addressing the rehabilitation of the Bennett and Statutory Freeze areas. Based on this institutional knowledge 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 and fully addressed. Only by completing all the necessary tasks can this chapter be closed without future repercussions.

I strongly believe that all Navajos want to put the Land Dispute with the Hopis behind and move forward. In order for the Nation to do that, the final tasks that will complete Relocation in a just and humane fashion must be accomplished. One alternative approach that the committee may want to consider rather than S. 1003 as presently crafted, would be to evaluate and enumerate all the tasks that ONHIR needs to perform to finish its tasks, with input from the Navajo Nation and the Hopi Tribe, then set out a reasonable timeframe to accomplish those tasks. That timeframe could be used as a period that begins after passage of the legislation to complete the tasks identified. Such an approach may not have worked prior to 1996, but in the present collaborative era the Nation, ONHIR, and the Hopi Tribe can devise a plan to take these final steps. The Navajo Nation wants this dispute behind us, but we do not want to leave individuals behind.

In addition to my comments, the Navajo Nation attorney general has prepared comments on certain specific legal issues presented by S. 1003. Those matters are also of special concern because of their impact on cases currently pending in the Courts or the impact these provisions may have on individuals seeking relocation benefits. Roman Bitsuie, the executive director of the Navajo-Hopi Land Commission Office, will discuss the efforts of the Office to serve the relocatees.

Written Testimony of
Roman Bitsuie, Executive Director
Navajo-Hopi Land Commission Office
Navajo Nation

On the

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

Before the

U.S. Senate Committee on Indian Affairs

July 21, 2005

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:

- 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;
- Economic adaptation and financial problems facing relocatees;
- Identification of substance abuse problems in the various relocatee populations and determination of the need for treatment facilities;
- Investigation of the availability of traditional religious practitioners to serve the relocated populations;
- Determination of the current job training status of each relocatee population with recommendations for future job training;
- Identification of the special needs of the elderly or handicapped relocatees; and
- 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 crowed 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 by 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 at 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 at 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 sparely 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 in 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 note 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 humbler,*
- *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 Governador 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 Betsie[40]

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 University[45]

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.

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.

[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).

4/1/05

THE NAVAJO NATION

Balance Sheets as of March 31, 2005 (Unaudited)
Navajo Rehabilitation Trust Fund

Assets and Other Debits	Rehab Trust 1990 Appropriation	Rehab Trust 1991 to 1995 Appropriation	Total Rehab Trust
Cash and cash equivalents:			
Commercial depositories managed by FSD	$ 0	$ (5,016)	$ (5,016)
Managed by BIA, as trustee	0	0	0
Total cash and cash equivalents	$ 0	$ (5,016)	$ (5,016)
Investments:			
Managed by the Navajo Nation FSD	0	11,289,952	11,289,952
Managed by BIA, as trustee	0	0	0
Managed by Others, Invesment Managers		0	0
Total investments	$ 0	$ 11,289,952	$ 11,289,952
Receivables:			
Accrued interest receivable, FSD	0	37,275	37,275
Accrued interest receivable, BIA	0	0	0
Other Receivables - Advances	0	0	0
Total receivables	$ 0	$ 37,275	$ 37,275
Others assets	0	0	0
Total assets and other debits	$ 0	$ 11,322,211	$ 11,322,211
Liabilities and Fund Balance			
Liabilities - Accounts Payable and accrued expen:	$ 0	$ 24,846	$ 24,846
Fund balance - reserved for:			
Encumbrances	$ 0	$ 313,251	$ 313,251
Land Purchase Budget Balance	0	8,360,855	8,360,855 **
Other Expenditure Budget Balance	0	1,241,105	1,241,105 **
Unbudgeted Balance	0 *	1,382,154 *	1,382,154
Total fund equity	$ 0	$ 11,297,365	$ 11,297,365
Total liabilities and fund equity	$ 0	$ 11,322,211	$ 11,322,211

* Note: Amount indicated is unappropriated investment income.
**Land Purchase and other Expenditure Budget Balance totals $9,601,960 (see summary on page 7)

NAVAJO REHABILITATION TRUST FUNDS

4/1/05

Initial Appropriation, Investment Income and Expenditures
Fund Balance as of March 31, 2005

		NAVAJO REHABILITATION FUNDS			TOTAL
		APPROP. 7360		APPROP. 8368	
APPROPRIATIONS BY CONGRESS:					
Federal FY-90 (BFMA-17-91)	12/89	800,000		0	800,000
Federal FY-91 (IGRJA-17-92)		0	5/91	2,984,280	2,984,280
Federal FY-92 (IGRS-199-92)		0	12/91	3,949,600	3,949,600
Federal FY-93 (IGRJN-101-93)		0	10/92	3,966,000	3,966,000
Federal FY-94 (IGRMY-107-94		0	11/93	2,466,000	2,466,000
Federal FY-95 (IGRD-274-95)		0	1/95	1,996,180	1,996,180
Total Appropriations		**800,000**		**15,362,060**	**16,162,060**
Investment Income:					
1990		17,896		0	17,896
1991		60,306		0	60,306
1992		44,571		224,345	268,916
1993		10,555		556,566	567,121
1994		2,239		523,276	525,515
1995		0		692,846	692,846
1996A April '95 to March '96		3,411		750,521	753,932
1996B April '96 to Sept. '96		2,870		384,370	387,240
1997 Oct. '96 to Sept. '97		4,984		755,060	760,044
1998 Oct. '97 to Sept. '98		3,729		822,537	826,266
1999 Oct. '98 to Sept. '99 - 12 mos.		1,124		773,886	775,010
2000 Oct. '99 to Sept. '00 - 12 mos.		0		830,406	830,406
2001 Oct. '00 to Sept '01		0		714,011	714,011
2002 Oct. '01 to Sept '02		0		284,310	284,310
2003 Oct. '02 to Sept '03		0		176,768	176,768
2004 Oct. 03 to Sept '04		0		146,119	146,119
2005 Oct. 04 to Mar '05		0		123,891	123,891
Total Income		**151,685**		**7,758,912**	**7,910,597**
Expenditures:					
1990/91 No Expenses		0		0	0
1992		482,413		18,844	501,257
1993		194,315		221,455	415,770
1994		152,244		737,075	889,319
1995		1,294		2,252,803	2,254,097
1996A April '95 to March '96		1,746		550,024	551,770
1996B April '96 to Sept. '96		0		402,072	402,072
1997 Oct. '96 to Sept. '97		29,000		342,134	371,134
1998 Oct. '97 to Sept. '98		44,204		501,016	545,220
1999 Oct. '98 to Sept. '99 - 12 mos.		46,469		2,241,052	2,287,521
2000 Oct. '99 to Sept. '00 - 12 mos.		0		302,695	302,695
2001 Oct. '00 to Sept '01		0		639,479	639,479
2002 Oct. '01 to Sept '02		0		629,417	629,417
2003 Oct. '02 to Sept '03		0		1,425,048	1,425,048
2004 Oct. '03 to Sept '04		0		1,304,206	1,304,206
2005 Oct. '04 to Mar '05		0		256,287	256,287
Total Expenditures		**951,685**		**11,823,607**	**12,775,292**
Excess(Deficit) Income over Expend.		**(800,000)**		**(4,064,695)**	**(4,864,695)**
Fund Balance as of 3-31-05		**0 ***		**11,297,365**	**11,297,365**
Fund Balance Detail as of 3-31-05					
Encumbrance		0		313,251	313,251
Land Purchase Budget Balance		0		8,360,855	8,360,855
Other Expenditure Budget Balance		0		1,241,105	1,241,105
Unbudgeted Balance		0		1,382,154	1,382,154
Total:		**0**		**11,297,365**	**11,297,365**

* Fund Balance of $6227 transferred to 1991 -1995 Appropriation Fund Balance in FY-99

4/1/05

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
1990 APPROPRIATION
As of March 31, 2005

PROJECT NAME	ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
NRTF-Headstart Centers	8-83001	267,663	267,663	0	0
NRTF-Vocational Training	8-83002	171,515	171,515	0	0
NRTF-Range Mgt. Scholar.	8-83003	34,025	34,025	0	0
NRTF-Home Planning Const.	8-83004	231,172	231,172	0	0
NRTF-Economic Dev. Planning	8-83005	99,706	99,706	0	0
NRTF-Bennett Freeze	8-83006	74,876	74,876	0	0
NRTF-Lewis Hsg. Constr.	8-83006	23,000	23,000	0	0
NRTF-T/C Office Bldg.	8-83007	29,000	29,000	0	0
NRTF-Goodluck Burnout	8-83008	14,500	14,500	0	0
TOTAL		$945,457	$945,457	$0	$0

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
1991 APPROPRIATION
As of March 31, 2005

PROJECT NAME		ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
NRTF-Repair Emer. Housing		8-83101	272,783	272,783	0	0
NRTF-Comm. Housing Planning		8-83102	90,902	90,902	0	0
NRTF-Economic Dev. Planning		8-83103	49,667	49,667	0	0
NRTF-Sanders Clinic		8-83104	75,000	75,000	0	0
NRTF-Land Purchase	C01140	8-83105	2,489,754	50,000	0	2,439,754
TOTAL			$2,978,106	$538,352	$0	$2,439,754

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
1992 APPROPRIATION
As of March 31, 2005

PROPOSED PROJECT		ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
NRTF-Land Purchase	C01141	8-83106	2,805,727	0	0	2,805,727
NRTF-Pinion Fire -Flow		8-83107	500,000	500,000	0	0
NRTF-Headstart Schools		8-83108	142,500	142,500	0	0
NRTF-HPL Nav. Housing		8-83108	1,500,000	1,500,000	0	0
NRTF-Economic Development		8-83109	48,021	48,021	0	0
NRTF-Regional Plan Update		8-83110	47,125	47,125	0	0
NRTF-Cultural Resources		8-83111	14,946	14,946	0	0
NRTF- T/C Vet. Admin. Bldg.		8-83112	315,884	315,884	0	0
NRTF-Housing Repair		8-83113	98,564	98,564	0	0
NRTF-Community Projects		8-83120	185,043	185,043	0	0
TOTAL			$5,657,810	$2,852,083	$0	$2,805,727

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
1993 APPROPRIATION
As of March 31, 2005

PROPOSED PROJECT		ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
NRTF-Community Projects		8-83114	986,115	986,115	0	0
NRTF-Land Purchase	C01142	8-83115	3,000,000	0	0	3,000,000
TOTAL			$3,986,115	$986,115	$0	$3,000,000

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
1994 APPROPRIATION
As of March 31, 2005

PROPOSED PROJECT		ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
NRTF-Community Projects	C01143	8-83116	1,634,965	1,552,512	49,280	33,173
NRTR-Whitecone Sen. Cit. Cntr	C01144	8-83117	250,000	247,763	1,776	461
NRTF-Hardrock Sen. Cit. Cntr.	N01127	8-83118	249,881	249,881	0	0
NRTF-Hardrock Sen. Cit. Cntr.	N01127	8-83118	31,034	0	0	31,034
NRTF-Forest Lake Sen. Cit. Cntr.		8-83119	249,427	249,427	0	0
TOTAL			$2,415,307	$2,299,583	$51,056	$64,668

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
1995 APPROPRIATION
As of March 31, 2005

PROPOSED PROJECT		ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
NRTF-1995 Appropriation	C01145	8-83121	1,732,640	1,503,936	29,219	199,485
NRTF-1995 Land Appro.		883121	162,499	162,499	0	0
NRTF-Hopi Land Grazing	N01128	8-83123	56,876	0	0	56,876
NRTF-Winslow Track	N01137	8-83137	199,660	79,428	106,894	13,338
TOTAL			$2,151,675	$1,745,863	$136,113	$269,699

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
APPROPRIATION FROM INTEREST INCOME
As of March 31, 2005

PROPOSED PROJECT		ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
NRTF-Pinon Housing Const.	N01129	8-83125	250,000	252,991	0	-2,991
NRTF-Leupp Hse Const.	N01130	8-83126	250,000	214,954	0	35,046
NRTF-Whitecone Chpt Equip	C01146	8-83127	175,000	175,000	0	0
NRTF-Coppermine HSWG/PWI	N01131	8-83128	156,520	111,113	30,795	14,612
NRTF-Winslow Guid. Assoc.	N01132	8-83129	30,000	0	0	30,000
NRTF-Kabinto Support Grop	N01133	8-83130	30,000	0	0	30,000
NRTF-Camron Bedrm Const.	N01134	8-83131	250,000	250,000	0	0
NRTF-Nahhata Dziil Housing	N01135	8-83132	130,800	128,498	0	2,302
NRTF-Coalmine CYN CHP CO	C01147	8-83133	250,000	250,000	0	0
NRTF-Low Mountain Sr Ctzn	C01148	8-83134	250,000	250,000	0	0
NRTF-Tolani Lake Elem		8-83135	250,000	250,000	0	0
NRTF-Tuba City Rare Metal	N01136	8-83136	36,150	0	0	36,150
NRTF-Cameron Senior Ctr	C01154	8-83150	63,462	63,462	0	0
TOTAL			$2,121,932	$1,946,018	$30,795	$145,119

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
FY- 2000 and FY- 2001
NHLCD-13-01
Project List
As of March 31, 2005

Description		ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
Whippoorwill Chapter	N01137	8-83137	199,660	79,428	0	120,232
Tuba City Curtural	N01138	8-83138	30,000	0	0	30,000
Dilkon-Birdsprings Chpt	N01139	8-83139	250,000	0	0	250,000
Shonto Chapter	N01140	8-83140	250,000	250,000	0	0
Teesto Chapter	N01141	8-83141	250,000	215,975	6,232	27,793
Tolani Lake Chapter	N01142	8-83142	44,797	34,927	4,035	5,835
Tolani Lake Chapter	N0143	8-83143	47,703	46,131	0	1,572
Nataha Dziil Chapter	C01149	8-83144	85,600	85,205	0	395
Tolani Lake Chapter	C01150	8-83145	157,500	150,450	0	7,050
Pinon Chapter	C01151	8-83146	250,000	6,000	3,373	240,627
Cameron Chapter	N01144	8-83147	250,000	250,000	0	0
Nataha Dziil Chapter	C01152	8-83148	75,600	0	75,600	0
Hardrock Chapter	C01153	8-83149	250,000	44,072	0	205,928
Leupp Chapter	C01155	8-83151	250,000	232,370	6,047	11,583
Echo Canyon D-6	N01145	8-83152	30,000	0	0	30,000
Coppermine Chapter	N01146	8-83153	111,100	0	0	111,100
			$2,531,960	$1,394,558	$95,287	$1,042,115

NAVAJO REHABILIATION TRUST FUND
BUDGET INFORMATION
FY- 2002
NHLCA-04, Project List
as of 3-31-05

Description		ACCOUNT NO.	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
Cameron Chp Hse Renv	N01147	8-83154	30,000	30,000	0	0
Cameron Chp Grg Rpr	N01148	8-83155	5,000	5,000	0	0
Cameron Chp Bldg Rpr	N01149	8-83156	10,000	10,000	0	0
Cameron Chp HS Septic	N01150	8-83157	5,000	5,000	0	0
			$50,000	$50,000	$0	$0

NHLCJ-03-03, Project List
as of 12-31-04

Pinon Headstart Bldg	C01156	8-83158	114,319	0	0	114,319
			$114,319	$0	0	$114,319

FY- 2003
NHLCJ-01-03, Project List
as of 3-31-05

T/C Moenave Hsewiring	N01151	8-83159	5,775	5,669	0	106
			$5,775	$5,669	0	$106
						0
Jeddito Chapter Drought Relief	N01215	8-83116	10,000	3,344	0	6,656
			10,000	3,344	0	6,656
District Grazing Committee	N01221		36,876	8,250	0	28,626
			36,876	8,250	0	28,626

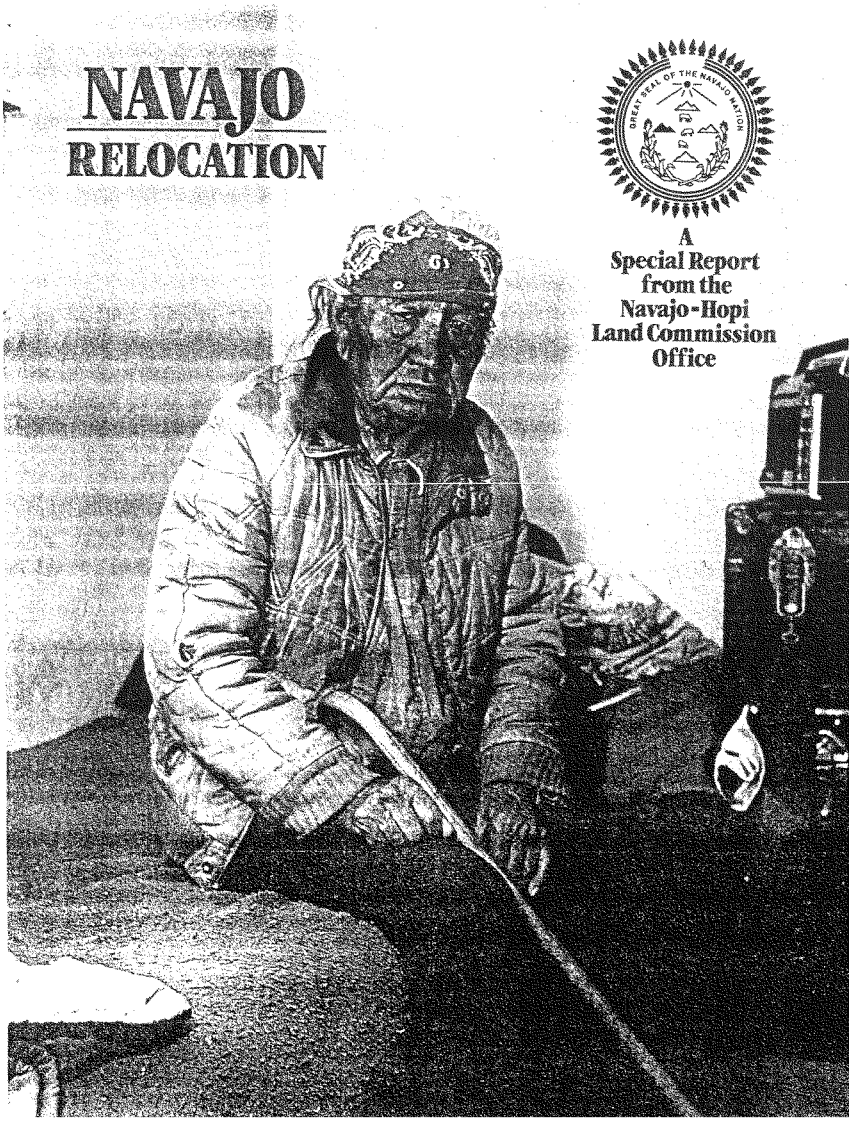
NAVAJO REHABILIATION TRUST FUND
SUMMARY INFORMATION
As of March 31, 2005

4/1/05

APPROPRIATION	BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
1990 Appropriation plus $145,752 income	$945,457	$945,457	$0	0
1991 Appropriation plus $3,977 income	$2,978,106	$538,352	0	2,439,754
1992 Appropriation plus $1,677,685 income	$5,341,926	$2,852,083	0	2,489,843
1993 Appropriation plus $198,300 income	3,986,115	986,115	0	3,000,000
1994 Appropriation	2,415,307	2,299,583	51,056	64,668
1995 Appropriation plus $31,546 income	2,152,730	1,745,863	136,113	270,754
Appropriation From Interest Income	2,121,932	1,946,018	30,795	145,119
2000/2001 Appropriation income	2,531,960	1,394,558	95,287	1,042,115
2002 Appropriation income	50,000	50,000	0	0
2003 Appropriation income	166,970	17,263	0	149,707
Sub-Total 1991 to 2004	21,745,046	11,829,835	313,251	9,601,960
Grand Total	22,690,503	12,775,292	313,251	9,601,960

SUMMARY INFORMATION
LAND PURCHASE

APPROPRIATION			BUDGET	EXPENDITURE	ENCUMBRANCE	BALANCE
Land Purchase '91 Appro.	C01140	8-83105	2,489,754	60,210	0	2,429,544
Land Purchase '92 Appro.	C01141	8-83106	2,805,727	0	0	2,805,727
Land Purchase '93 Appro.	C01142	8-83115	3,000,000	0	0	3,000,000
Land Purchase '94 Appro.	C01143	8-83116	0	0	0	0
Land Purchase '95 Appro.	C01145	8-83121	125,584	0	0	125,584
TOTAL AVAILABLE LAND PUR.			$8,421,065	$60,210	$0	$8,360,855


NAVAJO
RELOCATION
GREAT SEAL OF THE NAVAJO NATION
A
Special Report
from the
Navajo-Hopi
Land Commission
Office

OVERVIEW

Imagine that you are living at the turn of the century. You live in the same community, maybe the same home, that your parents and grandparents had grown up in. Your family has lived for several generations off the modest income of the family farm. By the grace of God, the land was generous and your livestock increased. Your family flourished and you gave your thanks to God for sustaining you and this land that you loved. You have several children and have always anticipated that your children would, in their turn, establish homes and take care of the farm.

Suddenly, a law is enacted. Your family's home and land have been given to someone else. The law requires that everyone leave the traditional home. Everybody will be provided with a house – but no one knows where or when. It could be many years.

Some family members are moved to a strange community. They do not understand the customs or even speak the language. They are ostracized by their neighbors. The new house they are given requires a lot of upkeep and this costs a great deal of money. But they cannot farm here and have no jobs and receive no job training.

How would you feel about leaving the home and community that you, your parents and grandparents had grown up in? How would you feel if you moved and were not provided with a new home or job? What if your new neighbors did not speak your language or share your customs? Finally, how would you feel seeing the land that your family tended for generations given over to strangers for cattle ranching while you and your family moved from place to place waiting to be able finally to put down roots again?

This has been the fate of the roughly 10,000 Navajo people who were living on the Hopi-Partitioned Lands in 1974. These people found themselves on the wrong side of a line drawn after Congress called for a division of the Joint Use Area of the 1882 Reservation.

> *I am from the disputed lands and I have been told constantly that I am on the wrong side of the fence. But this makes no difference to me because I was born and raised here. My forefathers were also born on this land; now they have passed on into the spiritual world. Their bodies are buried here on this land and have become part of the earth again. I intend to stay as they had.*
>
> (Resister)

The relocation policy has been roundly criticized by key legislators, legal scholars, anthropologists, human rights observers, the United Nations, and even the federal agency charged with implementing the law. Testifying before the House Interior and Insular Affairs Committee, Navajo and Hopi Indian Relocation Commission Chairman Ralph Watkins noted that "*in modern times, other than in the context of eminent domain actions, we can recall no other instances where relocation of Indians has been required in order to settle a land related issue....Relocation, as a policy of the United States Government, went out with the 1800s.*"

For more than sixteen years, the Navajo Nation has argued that the humane and generous relocation program envisioned by Congress in 1974 could not be transformed from idea into reality. Sixteen years of experience bear sad witness to the wisdom of that prediction.

What started out as a temporary program that was to cost $41 million and be completed by 1986 has burgeoned into a seemingly bottomless pit that will cost the federal government more than $600 million before it is possibly completed in 1995.

Still unknown is the ultimate cost of settling the dispute over the 1934 Reservation. Once the court has resolved the issue as to which tribe owns the disputed land in the 1934 Reservation, the relocation law authorizes the court to partition the land. Thus, yet another partition and relocation await the Navajo people.

In addition to the 1934 Act case and litigation connected with eligibility for relocation benefits, many administrative proceedings and court cases have resulted from the 1974 relocation law, and construction and repair freezes in the 1934 Act Reservation and the Hopi-Partitioned Lands.

The freeze in the 1934 Act Reservation was imposed by Indian Commissioner Robert Bennett in 1966. The freeze prohibited construction and improvements in most of this area. It was hoped that such a freeze would force the tribes to resolve their differences. No resolution occurred, and the "Bennett Freeze" still exists today. Imagine living in a community which has not been able to expand or improve housing and infrastructure for almost 25 years.

Another repair and construction freeze has been imposed on Navajos residing on the Hopi-Partitioned Lands. In order for a Navajo family to repair a residence there, the Navajo Nation must receive permission from the Hopi Tribe or the Federal District Court in Arizona. Often a family will wait months or even years to get approval for minor work, such as replacing broken windows or insulating a home.

Instead of solving a simple land dispute between neighbors, federal policies have escalated the situation into a major human rights issue that is now a matter of international as well as national concern. The Navajo Nation believes that the relocation of the Navajo people must end and that a settlement of all land-related disputes between the Navajo and Hopi tribes must be found. It is time to redress errors of the past and chart a new course which honors the humanity and cultural integrity of all parties.

Specifically, the Navajo Nation recommends that:

1. Traditional Navajos who cannot leave their ancestral homes must be relieved from coercion and the threat of forced relocation.
2. Move-processing priorities reflect condsiderations of fairness to Navajos who voluntarily complied with the law and are awaiting their relocation benefits.
3. Construction freezes should be lifted to the maximum extent possible and, if necesssary, guidelines on permissible repairs should be promulgated.
4. A detailed plan for community infrastructure, economic development, and job training should be developed for relocation-impacted communities.
5. The Navajo Nation should be assisted with the acquisition of 500,000 acres of land to help replace the more than 900,000 acres that were partitioned to the Hopi Tribe. (Roughly 400,000 acres were provided under the 1980 Admendments.)

Message from the Executive Director

For more than thirteen years I have worked as an employee or representative of the Navajo Nation. During those years I have seen the fabric of traditional Navajo life torn apart as a result of the federal relocation law.

Families have been split up. People remaining on the land have been forced to live without the benefit of minor home repairs for as long as 25 years. Older people have been moved to border towns where they then lost homes because the federal government took no measures to prepare them for life in a cash economy.

I have seen hundreds of Navajo families become practically homeless. They left their ancestral homes on the Hopi-Partitioned Land in order to comply with the federal government's directive. These families, the so-called Navajo "refugees," have drifted about from place to place for many years. Some live in shacks, some live in vehicles, while the lucky ones squeeze in with other family members.

In October of 1989, a new policy was announced by the Department of Interior. This policy prevented the Navajo refugees from receiving the homes they had waited so many years for. It directed that the Relocation Commission, as a prerequisite to providing homes to refugees, first remove and resettle all of the Navajos still living at their ancestral homes in the Hopi-Partitioned Lands.

Over the years, I have devoted much of my strength to resolving a never-ending stream of disputes with the Relocation Commission, other federal representatives, and the Hopi Tribe – all arising from the implementation of the federal relocation law. I have devoted all of my creativity to finding alternatives to the federal relocation law – ways for the Hopi to fulfill their needs for additional land for their people; ways for both tribes to adapt their traditional lifestyles to growing populations and pressing economic needs.

In sadness, I must report that the generous and humane relocation program which Congress envisioned in 1974 has been, in reality, an obstacle to the economic development and the social and cultural advancement of both tribes. The implementation of the relocation program has always been accompanied by tragedy and loss. Its cost to the federal government and the tribes has been staggering. And I am afraid that, if the federal government insists on relocating traditional Navajos who resist relocation, this program may one day result in bloodshed.

It is critical that members of Congress continue with renewed vigor their oversight of relocation-related issues. The Administration and the Office of Navajo and Hopi Indian Relocation must be aware that this is an area in which Congress has a will to act and will not tolerate injustice and unnecessary suffering.

This report has been developed to describe current problems with the implementation of the federal relocation law. As always, the Navajo Nation looks forward to working closely with Congress and the Hopi Tribe in order to find mutually acceptable solutions to these problems.

Sincerely,

Roman Bitsuie

Roman Bitsuie
Executive Director
Navajo-Hopi Land Commission

NAVAJO RELIGIOUS BELIEFS AND THE RELOCATION ISSUE

Navajo people believe that they came out of the womb of the Earth onto the surface of the world. The universe is, to them, a physical dimension of creation. Thus, in the practical aspects of existence, reliance on the guidance and direction of the natural laws maintains equilibrium within the Navajo culture. Man is understood as a part of nature along with physical places, animals, insects, and other physical manifestations of the spiritual life.

Navajo religious practices focus upon the land and the livestock which 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."

> *Our livestock are part of our everyday lives. It is also our prayers, our everyday thoughts, and our food when we get hungry. We use our livestock in many ways, and for those reasons I refuse to let go.*
>
> (Resister)

Specific sites, often undistinguishable to non-Indians and even to Navajos outside a particular family, can take on a high degree of religious significance by virtue of the events which have occurred there. These become ceremonial sites where family members worship. They cannot be duplicated elsewhere.

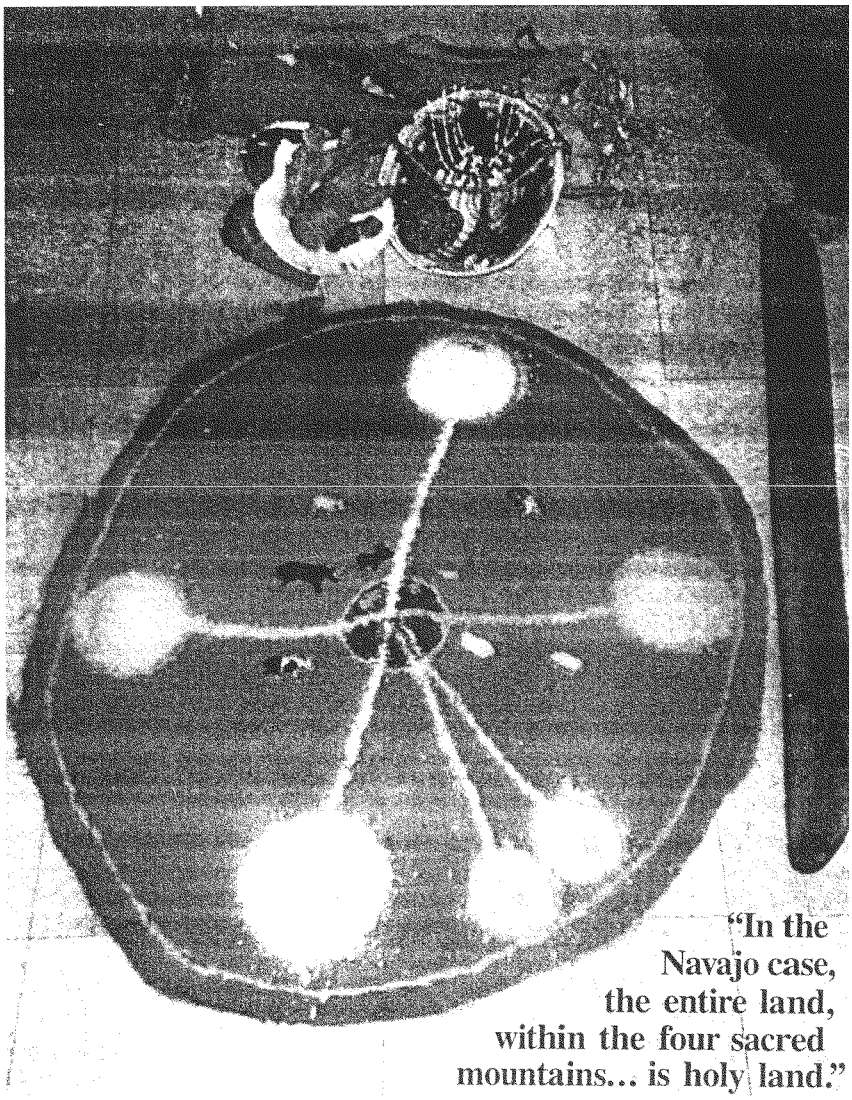
> *In our Judeo-Christian culture, we have sacred sites. People make pilgrimages to places considered to be holy. But, in the Navajo case, the entire land, within the four sacred mountains, as they have defined it in their tradition and their mythology, is holy land. So, if you were to take a traditional 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 feelings for our land, but they don't usually involve this matter of daily ritual or weekly or yearly ritual, and so on.*
>
> (John Wood, Professor of Anthropology and expert on traditional Navajo lifestyles, Northern Arizona University, testifying before Navajo and Hopi Indian Relocation Commission)

The loss of their ancestral lands and livestock has destroyed the foundation of traditional Navajo life. Not surprisingly, the relocation program has come to be identified as the cause of 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 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.*
>
> (Relocatee)

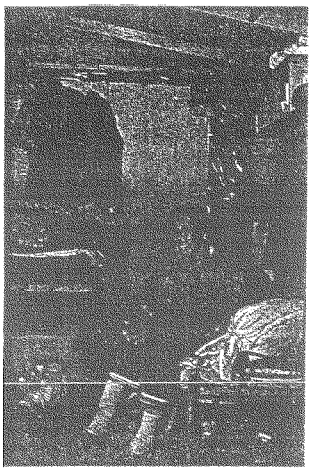
Because the Navajo religion is deeply tied to Mother Earth and the very foundation of Navajo life has its roots in ancient tribal customs and close family ties, separating these people from their homes and culture has meant far more than simply moving them to new homes. Increased physical illness, alcoholism, depression, and family breakups have plagued the relocatees. Not surprisingly, many of them have returned to the reservation.



"In the Navajo case, the entire land, within the four sacred mountains... is holy land."

"We will not give up our land. I will have to be dragged across the fence. This is the only way I will be moved."

THE NAVAJO RESISTERS



Many Navajo families cannot leave their traditional homes on the Hopi-Partitioned Lands. The families remaining on these lands tend to be older – with less hope of adapting to a new way of life. They associate relocation with sickness and death. Most of these Navajos speak little or no English. As a rule, they have had little contact with a cash economy and have no wish to change that. The land upon which they live is sacred. To leave it would be to sever their connection with all of their ancestors and their way of life.

They tell us we have a lot of benefits, but for us it is nothing. We can use it up in one day. Now, we have our land, cornfield and sheep. It is a source of income. It recycles, it regenerates, it will keep on going, no matter what. Livestock is like a bank: you have something to back you up when you run out of groceries. All you have to do is walk out to the corral, grab a leg, and you have food. It's like taking some money out of a bank. It is the same with the cornfield. You can stash away your crop, use it in the winter. We still have some left from the last winter.

(Resister)

I am a 65-year-old widow. I do not own a home, but reside with my mother in a small hogan. I love my land. I don't think I will ever adapt to a different environment. I own a few sheep and goats. I don't know what to do with them if I relocate.

(Resister)

The resisters remain on their customary use lands despite incredible pressures to move. These pressures result from being unable to repair or expand their hogans, from constant confrontations with BIA and Hopi tribal officials regarding their livestock, and from efforts by Relocation Commission staff to persuade them to leave the Hopi- Partitioned Lands.

We are not moving from here. We have complied with the government to reduce our livestock and have had to live in a rundown home to comply with the construction freeze, and have just lived in disarray...just to please someone, hoping we would be given the chance to continue our lifestyle. My brothers were even shot at when they crossed the fence to bring back the sheep who had gone over the fence.

(Resister)

In my home I have no running water or heat. I have to buy kerosene for light. I have no sheep, no horses. I used to own many. The Hopis have taken my grazing permit. We will not move from this land because our ancestors are buried here. We will stay on this land for this reason. There are no Hopis around here. I object to the Hopis wanting this land because their ancestors are not buried here. We will not give up our land. I will have to be dragged across the fence. This is the only way I will be moved.

(Resister)

Even when the relocation law was first passed in 1974, Congress recognized that some accommodation would have to be made for those Navajos who could not leave their traditional lands. At that time, Congress enacted a provision in the statute to provide life estates to Navajos who could not leave the Hopi-Partitioned Lands. (25 U.S.C.A. U 640d-28) But the Navajo resisters, as a result of Navajo cultural taboos regarding death, considered the life estates to be tainted by death. Not a single family applied to stay on the Hopi-Partitioned Land pursuant to this provision.

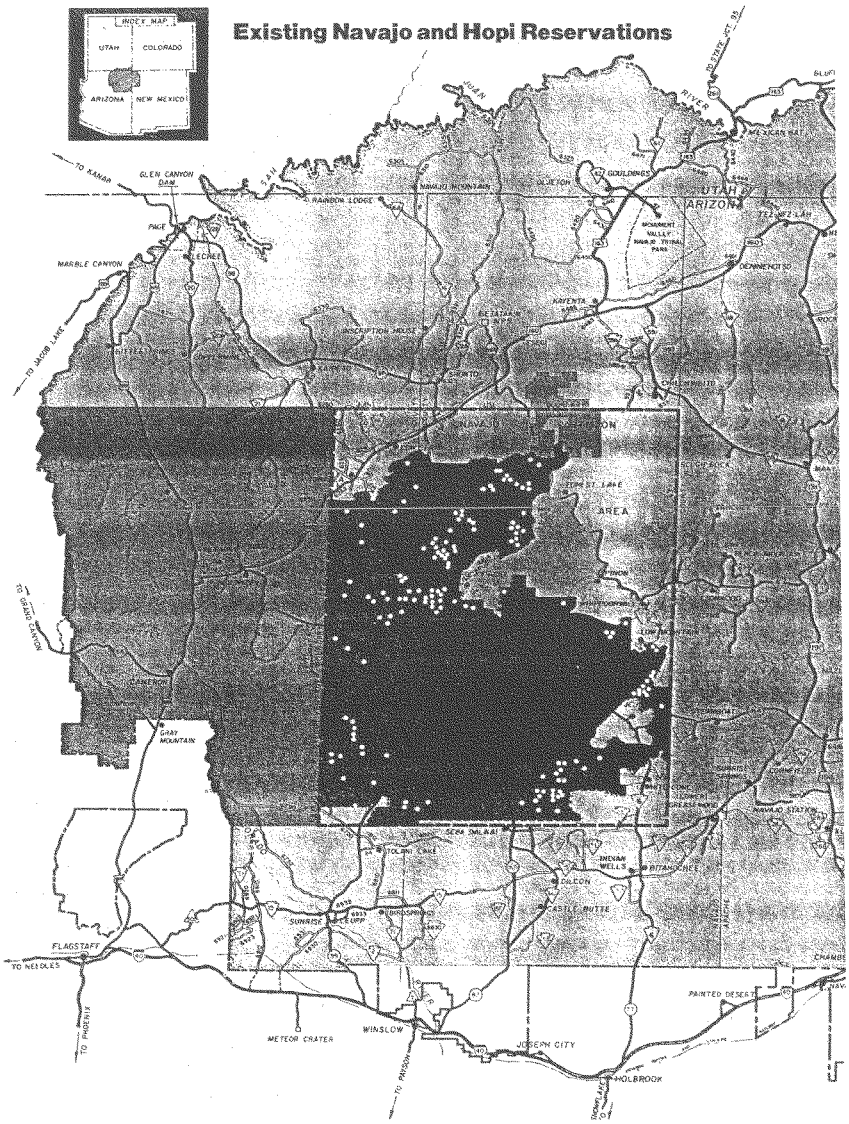
New ways of providing for these traditional families must be explored. The resisters must be released from the inhumanity of being prohibited from repairing their homes. They must be protected from constant intrusions upon their day-to-day activities.

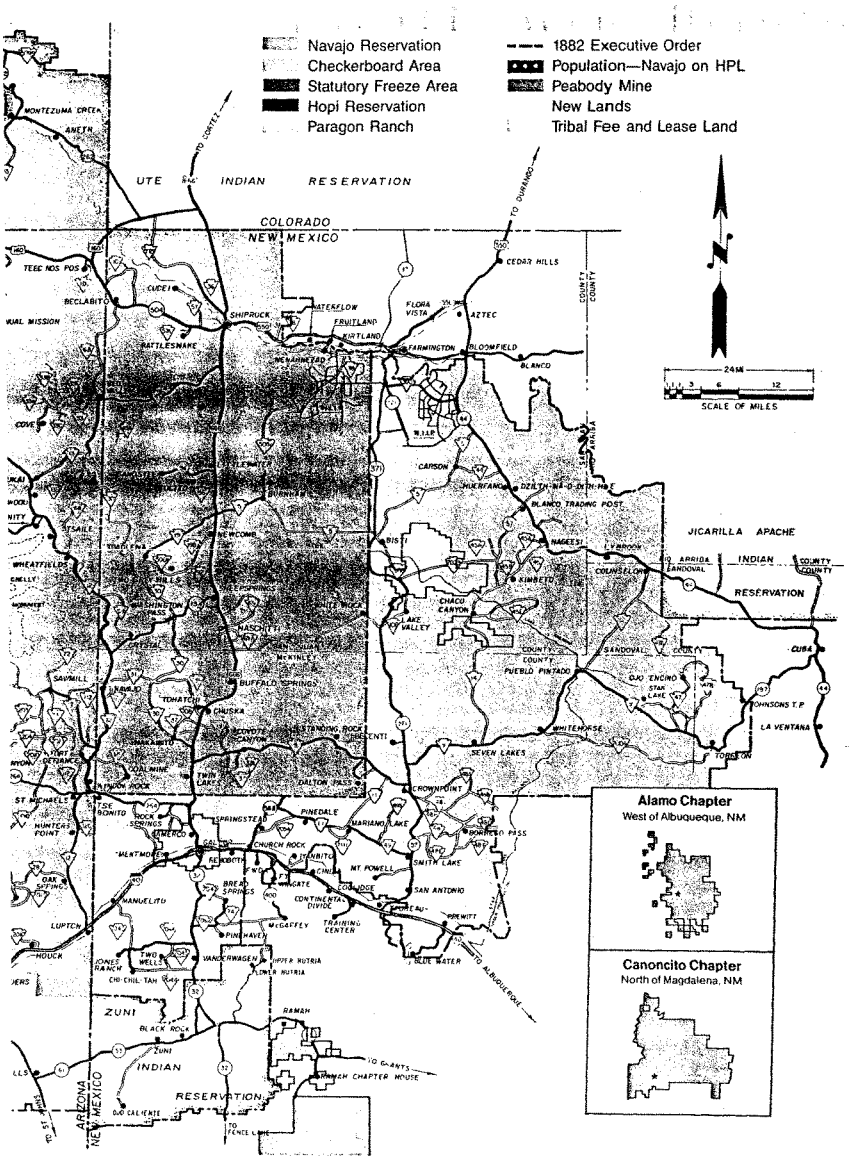
There are no lands to move to. I was born here in Howell Mesa. My umbilical cord is buried nearby. I do not intend to move anywhere. My ancestors are buried in this area. For this reason I will not relocate.

The crops that we grow on our farm are our only source of food; our once large sheep herd is decimated. We have no firewood because our neighbors prohibit us from gathering it. Our water supply is sometimes cut off. We have to truck in water from Tuba City. The Hopis do this to us.

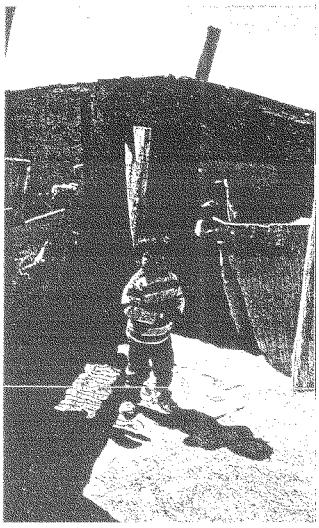
Life here is ideal despite the threat of relocation. We make potteries, wedding baskets, utilizing native plants. We are not so dependent on money income. I intend to stay here, even though I am told to relocate.

(Resister)


Existing Navajo and Hopi Reservations
INDEX MAP
UTAH
COLORADO
ARIZONA
NEW MEXICO
TO KANAB
GLEN CANYON DAM
PAGE
MARBLE CANYON
TO JACOB LAKE
TO GRAND CANYON
RAINBOW LODGE
NAVAJO MOUNTAIN
GOULDINGS
UTAH
ARIZONA
MONUMENT VALLEY NAVAJO TRIBAL PARK
TUBA CITY
DENNEHOTSO
KAYENTA
INDIAN WELLS
BITTANCOURT
DILCON
CASTLE BUTTE
GRAY MOUNTAIN
SUNRISE
FLAGSTAFF
TO NEEDLES
TO PHOENIX
METEOR CRATER
WINSLOW
TO PRESCOTT
JOSEPH CITY
HOLBROOK
PAINTED DESERT


Navajo Reservation
Checkerboard Area
Statutory Freeze Area
Hopi Reservation
Paragon Ranch
1882 Executive Order
Population—Navajo on HPL
Peabody Mine
New Lands
Tribal Fee and Lease Land
UTE INDIAN RESERVATION
COLORADO
NEW MEXICO
JICARILLA APACHE INDIAN RESERVATION
ZUNI INDIAN RESERVATION
ARIZONA
NEW MEXICO
SCALE OF MILES
Alamo Chapter
West of Albuquerque, NM
Canoncito Chapter
North of Magdalena, NM

THE NAVAJO REFUGEES



More than 2,000 of the Navajo families who have left the Hopi-Partitioned Lands due to the pressures of the construction freeze and the relocation program have not yet received replacement housing. We call these families the Navajo refugees.

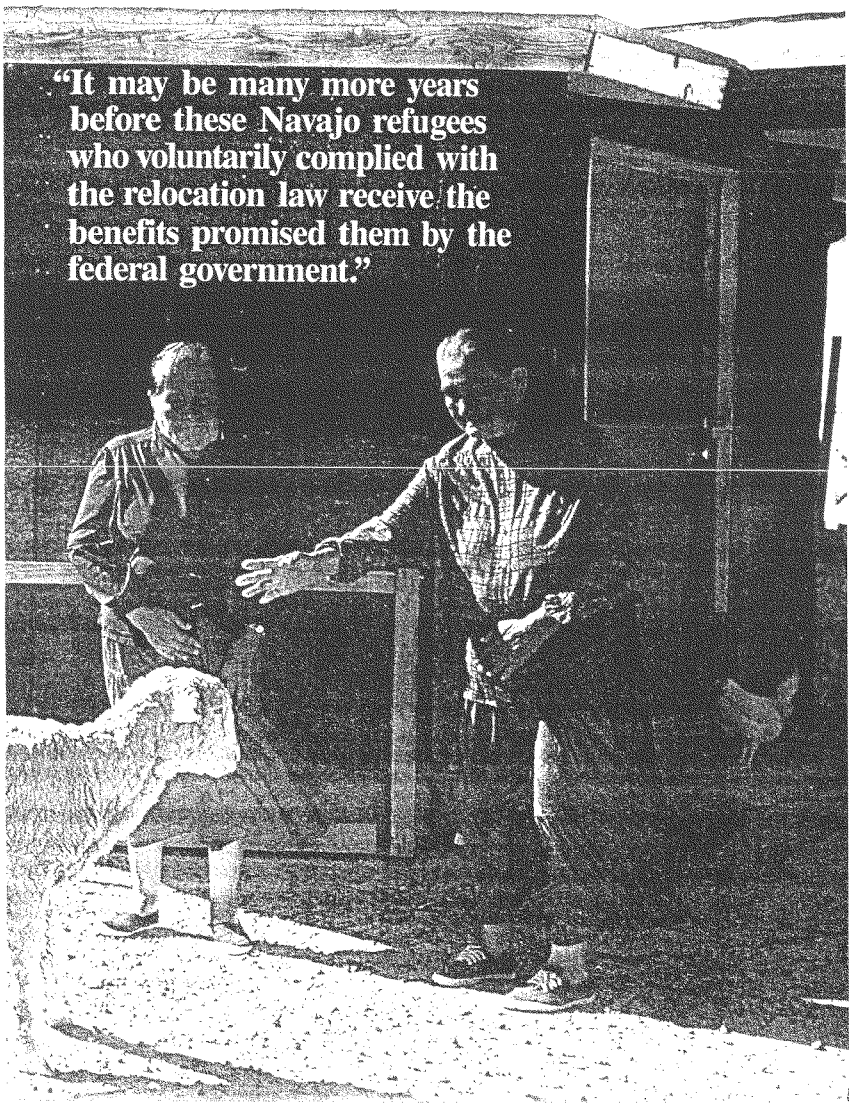
Roughly 700 of these families have been certified by the Relocation Commission as eligible to receive their relocation benefits. It is anticipated that several hundred more will be certified before the eligibility applications and appeals are finally decided.

Many of the families already certified to receive replacement houses have been waiting several years to receive and become settled in their new homes. Some of these families have been waiting as long as ten years or even longer.

According to Relocation Commission statistics, more than one-third of the refugees are living in substandard housing. Some are living under conditions which pose an extreme risk to personal health and safety. In addition, considerable numbers have had no recourse but to move in with extended family members still on the Navajo reservation. As a result, many are living in severely overcrowded homes. A recent survey found that among both groups of refugees, almost 40%, or 800 families, do not have a home of their own. Such intolerable living conditions have led a few families to return to Hopi-Partitioned Lands.

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.*
>
> (Before the House Committee on Interior and Insular Affairs, July 19, 1986)


"It may be many more years before these Navajo refugees who voluntarily complied with the relocation law receive the benefits promised them by the federal government."

THE NAVAJO RELOCATEES

The early relocations were disastrous. Older, traditional Navajos speaking little or no English - people who had no experience with a cash economy - were moved into border towns. These Navajos were warehoused in substandard housing. They received little or no counseling to help them make the radical changes that federal law required. They were cut off from family and friends, and they were cut off from the land that gave birth to them and sustained them throughout their lives.

The NHIRC didn't tell us about property taxes until a year after we moved. It was $258 a year, then it went up and we got two years behind. They didn't tell us about insurance. It cost $290 a year for the house. We just found out from my brother-in-law that we had to have insurance. The heating was expensive, between $100-$200 a month. We moved out because all the utilities were shut off, and then we moved back to my husband's mother's house in Teesto. We had no way to cope with the back bills, the shut off utilities, and the credit bureau other than to sell our house. A lawyer kept on calling us to see when we would pay our bills. The Commission took no responsibility in advising us what to do in this debt situation.

We lost our home to pay bills. We owed close to $6,000. We sold the house for $52,000. We were forced into selling it because of bills. The realtor said he would give me $18,000, and would trade land in Beaver, Utah, one acre, worth $26,000. He told me also he would throw in his Subaru to make up the difference. He said the car was worth $12,000. After the closing costs and paying off my bills, there was little money left, and the land and car were not worth what he had told me. Another realtor said the land in Utah was not worth a thing. I went to the Commission; they referred me to legal aid.

(Relocatee)

We made a mistake when we moved here. It's lonely here. There is no one to talk to. We do not speak English. We can't communicate, but on the reservation we can communicate with people in the Navajo way. Here we just stay inside. The hospitals are too far. The ground is too hard and I am not strong enough to till the soil and it costs too much to rent a tiller. We want to plant some corn and raise sheep again. There is nothing to do but sit inside. We are having problems with the neighbors. They tell us to keep our kids off their property.

(Relocatee)

In the mid-1980s, the Relocation Commission reevaluated the relocation program and began to develop criteria to apply in determining whether particular relocatees could "successfully" relocate off-reservation. In addition, counseling services were expanded, a housing repair program was instituted to fix defective homes which had been supplied through the Commission, and the Commission began to implement a policy to relocate extended families together to the greatest extent possible. This policy was carried out through what is known as the group move program.

One of the most significant changes in the implementation of the relocation law was the acquisition and development of the Navajo New Lands. These lands were designated as an area in which relocatees would be able to duplicate in large measure the traditional patterns of Navajo life. The New Lands are comprised of roughly 365,000 acres of range land adjacent to the main Navajo reservation in Sanders, Arizona. The land is divided into 18 range clusters, where certain relocatees are allowed to graze a limited amount of livestock, and a rural community containing 255 homesites.

Many Navajo families have preferred to relocate close to their relatives and their customary use lands. As a result, the chapters adjacent to the Hopi-Partitioned Land have suffered from a large influx of relocatee families. While the relocation law required the federal government to provide community facilities and services and to minimize the adverse social, cultural, and economic effects of relocation, that promise remains unfulfilled 15 years later. This is true for both the New Lands communities and the on-reservation communities that opened their arms to accommodate relocatees despite their limited resources. As a result, schools and health facilities, public safety services (such as fire and police protection), and community infrastructure in relocation-impacted communities are extremely over-taxed. In the Navajo New Lands, many of these basic services are simply non-existent.

Several actions are necessary before those Navajo families wishing to move can be successfully relocated.

First, more land must be acquired. When the Joint Use Area was partitioned in 1977, members of the Navajo Tribe were required to relocate from more than 900,000 acres of range land. Pursuant to the 1980 amendments, the Navajo Tribe acquired roughly 400,000 acres to replace those lost lands. More land is needed. There are already nearly 700 Navajo families awaiting relocation. In addition, there are likely to be approximately 300 more relocatees certified before the program is completed.

Second, health, education, public safety, and sanitary facilities must be provided to relocatees and relocation-impacted communities.

Finally, job training and economic development planning must be provided for the relocatees. Full resettlement of these families cannot be accomplished without planning for the economic self-sufficiency of their communities. Only a small fraction of the relocatee families can support themselves in the traditional manner of subsistence livestock management and agriculture. The remainder need training and economic development before they can be truly resettled from their traditional homelands.

We had a good life on the reservation. We lived in harmony with the land. Now we live with the enemy. Our ways are gone. Relocation is termination of Indian people. It is like a storm which sweeps through a field of grass, blowing chafe here and there, uprooting plants, making them become tumbleweeds, like the Anglos.

(Relocatee)

"Relocation...is like
a storm which sweeps
through a field of
grass, blowing chafe
here and there,
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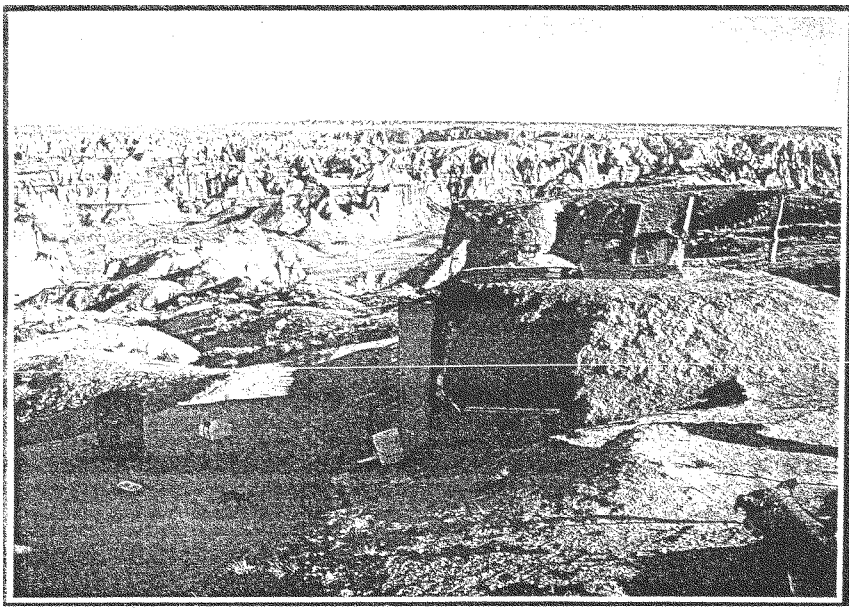

Navajo-Hopi Land Commission Office
Window Rock, Arizona 86515-2549
602-871-6446

QUESTIONS FROM SENATOR MCCAIN FOR ROMAN BITSUIE

1. I understand that the Navajo Nation has earmarked $8.3 million of the Rehabilitation Trust Funds to buy additional land. This is partially correct. Technically, only about half of this amount is for the land purchase itself; the other half is for development of the newly acquired lands so that they will be economically viable. It should also be noted that this amount represents approximately the interest that the Rehabilitation Trust Fund has generated which, through March 31, 2005, was $7.9 million.

A. What is the status of this purchase? Over the course of the last ten years, the Navajo Nation has reviewed a number of parcels of land for acquisition using Rehabilitation Trust Funds. The criteria for acquiring lands using these funds is that the land and any revenue it generates must be "solely for purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational, and social condition of families, and Navajo communities" effected by the relocation law as set forth in 25 U.S.C. Section 640d-30(d). Principally, this means that the lands must have economic and/or grazing potential that can be used for the benefit of eligible families and communities.

In addition, under 25 U.S.C. 640d-10, the United States has provided for the transfer of 400,000 acres of land into trust for the Navajo Nation to replace the 900,000 acres of land transferred to Hopi control and formerly inhabited by Navajos displaced by the relocation law. Of those 400,000 acres, the United States was to transfer 250,000 acres of BLM lands into trust for the Navajo Nation, with the Navajo Nation having the right to acquire the remaining 150,000 acres from private parties to be placed into trust for its benefit. See 25 U.S.C. Section 640d-10. Of the 150,000 acres, the Navajo Nation has placed into trust 137,000 acres of land that it had acquired in fee simple status. Therefore, the Navajo Nation still has the right to place 13,000 more acres of land into trust, provided that the land is within 18 miles of the reservation border. The Navajo Nation intends to complete the acquisition of the 13,000 acres using the

Rehabilitation Trust Fund, implementing the intent of both Section 640d-30 and 640d-10.

Obviously, these purchases have not gone swiftly. In some cases, proposals have been rejected because they do not meet the requirements of the law (i.e., they would not provide benefits to the eligible families and communities). In other cases, before the Navajo Nation could acquire an eligible property another party purchased it. Some of the delay is also attributable to the fact that the Navajo Nation has spent substantial time evaluating and overseeing the nearly $13 million in other projects that have been funded out of the Trust Fund. As a result of all of these factors, no actual land purchases have been made yet using the Rehabilitation Trust Fund.

One benefit that has come from the slow place of land acquisition has been a steady, predictable funding source for projects in the form of trust fund interest. This funding source means that even though most of the original appropriated dollars of the trust fund have been spent ($13 million out of the $16 million), the fund still carries a large balance and is able to support ongoing projects.

Currently, the Navajo Nation has several properties under active consideration including the Lombardy Ranch, the Lynch Ranch and several parcels within the city of Winslow. The Navajo-Hopi Land Commission is considering resolutions to authorize putting down earnest money on the Lombardy and Lynch Ranches. As a condition of purchase, the Nation will seek an independent appraisal of the value of these lands, as well as whether the water resources are available as described by the sellers. The Navajo Nation is also investigating lands along the Interstate 40 corridor and Highway 89. Depending on the results of those investigations, the Nation will follow up as appropriate.

B. Where does this acquisition fit into the priorities laid out in the "Conceptual Framework" agreed to by the Department of Interior and Navajo Nation? By its own terms, the Conceptual Framework is broad in scope:

> "Because of the broad purposes for which the trust fund was created, we have prepared a conceptual plan for its use which is equally broad in scope. The impacts which the trust fund is meant to address are evident in varying degrees and kind throughout the western Navajo reservation."

The Conceptual Framework identifies priority needs in the following areas:

- Navajo Partitioned Lands
- 1934 Boundary Act ("Bennett Freeze") Area
- Chambers/Sanders Trust Lands (New Lands)
- Paragon Resources Ranch/Dineh Power Project
- Off-Reservation Communities

Under virtually all of these areas, the Conceptual Framework lists economic development and various livestock and range management issues as priority items. The land purchases are intended to directly address these two needs by:

> (1) Acquiring land that has economic value as compared to the land where these families and communities are currently situated. In most of the areas where families have been relocated there is virtually no opportunity for significant economic development. By acquiring land that can generate revenue, that revenue can be placed back into the trust fund to support other projects as well as create job opportunities for these communities.
>
> (2) Acquiring land that can be used for livestock, which is both an economic and cultural mainstay for many Navajo families. In areas where overgrazing is a problem, or where there is limited room to accommodate both relocatees and livestock, extra land provides a place for relocatee livestock to be grazed. This allows the relocatees to continue an important traditional, subsistence activity as well as alleviates intra-community conflicts over land resources due to the crowding effects resulting from the relocation law.

C. Are these land resources being sought to reimburse the Rehabilitation Trust Fund as provided by the act or for other reasons? These land resources are being sought to sustain the Trust Fund for future generations as a viable source of funding to mitigate the effects of the relocation law. The Navajo Nation intends to use the lands, and any proceeds from the lands, to provide an ongoing, multi-generation source of revenue and land resources for the eligible families and communities affected by the land dispute. Revenues generated by these land resources will go into the Trust Fund and then be reallocated back for various projects. The revenues from these land purchases will not be used to pay back the United States for its appropriation of $16 million to the Trust Fund. As noted in the Conceptual Framework, the Rehabilitation Trust Fund "must be repaid from revenues from resource development on lands in New Mexico acquired under Public Law 96-305 (Paragon Ranch)." Unless the Congress chooses to forgive the funds it has appropriated to the Trust Fund, the Navajo Nation will repay the United States when the Paragon Ranch is finally developed (no time in the foreseeable future).

2. Your Office has requested that a study to assess the effects of the relocation program on individuals and families be included in the bill.

A. In the absence of a study, how has the Navajo-Hopi Land Commission and Office determined where to direct funding and services from the Rehabilitation Trust Fund? The Navajo-Hopi Land Commission and Office rely on four principal sources for guidance. First, as a general planning document, we have relied upon the "Rehabilitation Planning for Western Navajo Land" study (also known as the Western Area Regional Plan or WARP), which is a Navajo-funded study prepared for the Navajo-Hopi Land Commission, released October 31, 1994. A copy of the WARP has been provided to the Senate Committee on Indian Affairs. Although somewhat dated, it is the best source of quantified data on the effects of the relocation law and the needs of the people.

Second, we retain consultants, such as the Southwest Research Information Center, in Albuquerque, to assist

us in economic development and land acquisition activities.

Third, the members of the Navajo-Hopi Land Commission are Navajo Nation Council Delegates for the Navajo chapters most heavily affected by the relocation law. They provide direct representation, and have personal knowledge of, the needs of the local communities and families.

Fourth, we are in constant direct dialogue with the local communities as well as the Office of Navajo and Hopi Indian Relocation. This dialogue, by its very nature, is somewhat anecdotal, but gives us a human perspective on the needs and often tells us that the needs are far greater than our resources could ever adequately address.

From these four sources, the Navajo-Hopi Land Commission Office makes its best efforts to expend its limited resources in a way that maximizes their value as well as provides for their distribution in a fair and even-handed manner. It is because of the anecdotal or dated nature of our sources of guidance that we believe a study is warranted both as an assessment and as a planning tool.

Testimony of Louis Denetsosie, Attorney General
Navajo Nation
Before
The Senate Committee on Indian Affairs
on
S. 1003 - The Navajo-Hopi Land Settlement Amendments of 2005

Good morning Chairman McCain, Ranking Member Dorgan, and members of the Committee. My name is Louis Denetsosie, I am the Attorney General of the Navajo Nation. I appreciate the opportunity to speak with today concerning the Navajo-Hopi Land Settlement Amendments. The following comments are designed to focus on specific legal issues in S. 1003 that relate to the impact the proposed amendments make either on specific cases or the rights of the Nation or its members. These comments are designed to complement the materials and testimony submitted by President Joe Shirley, Jr., on behalf of the Navajo Nation.

Section 2 of the Bill

A new provision entitled Division of Land, appears to replace current provisions in 25 U. S. C. § 640d - 5 (d), that is to be repealed. That proposed new section addresses issues that the current Owelty case has already focused upon. As proposed there is a completely new process to determine any difference in value between the partitioned parcels awarded to the Navajo Nation and the Hopi Tribe. In 1993 the District Court in the Owelty case entered a judgment that there was no difference in value and that there was no need for an owelty award to either tribe. On appeal in 1997, the U.S. Court of Appeals for the Ninth Circuit remanded that portion of the Owelty case to determine "if any payment is due to the Hopi Tribe based upon the contributing value of all improvements" and "not just the improvements necessary to fully restore the grazing

capacity of the land."

On September 29, 2000 the District Court ruled that no Owelty was awarded because the Hopi experts valued only the improvements and did not determine whether the improvements enhanced the value of the land itself.

The case was then again appealed to the U. S. Court of Appeals for the Ninth Circuit. That Court ruled on August 12, 2002 stating: " We conclude that the district court did not err in finding that the schools, chapter houses, medical facility, and airstrip on the Navajo partitioned land added no value to the land itself. As we held in our prior opinion, because those facilities are not owned by the tribe, their contributing value cannot be calculated by determining the value of the facilities themselves." Id. at 1381. Rather, in determining whether any owelty is due, the court can only examine "the land's enhanced value because those improvements are on it." Id. "The Hopi's expert calculated the value of those improvements by determining their replacement cost and reducing that amount to account for depreciation over the life of the structures. This is precisely the methodology deemed inappropriate by this court. ...We remand for an award of owelty to the Hopi to compensate for the partition of the nine trading posts to the Navajo."

Since February 2003, this case has been under advisement in the District Court in Phoenix on the question of whether to award Owelty and if so, in what amount for the trading posts. If the provision included in Section 2 of the Bill is made law it will further confuse the situation, including presenting the constitutional and separation of power question of whether the courts can be divested of jurisdiction by the Congress at this late stage. Nothing in the Bill purports to divest the Court of jurisdiction nor does it address in any fashion the Judgments noted above, which may now have the effect of res judicata. It simply makes no sense to have the

Hopi Tribe and the Navajo Nation begin again a process to determine whether the partitioning of the 1882 Executive Order Reservation resulted in unequal value between the partitioned parcels. The Navajo Nation has already expended approximately $800,000.00 for attorney's fees and costs in litigating the owelty issue, a case that was authorized in 1974 and filed in 1979. For this reason I would strongly suggest that Section 2 be stricken from the Bill and that 25 U. S. C. § 640d -5(d) be retained.

§6404-11 (f) and (g).

The bill calls for termination of the Office of Navajo and Hopi Indian Relocation by September 30, 2008 and transfer any duties still remaining to be carried out to the Office of the Secretary of Interior. Yet, two years prior to the ONHIR termination, an Office of Relocation is to be created within the Department of Interior in Washington. As of October 1, 2006, two relocation agencies will exist, giving rise to possible conflicts of interest regarding duties and responsibilities. In 1986 similar actions occurred and resulted in problems for both the BIA and the Commission. While there is a need for the Department of Interior to gain knowledge prior to assuming responsibility for the ONHIR functions clear lines of authority must be established and maintained..

Section 640d-13(d) and Section 640d-14(i).

These two provisions are in conflict. The former requires certification by September 30, 2005, a timetable impossible to meet even for individuals currently identified by ONHIR as late applicants eligible to apply for benefits. The latter permits a final determination of eligibility, essentially certification or denial after hearing, to be made as late as January 1, 2008. The

receipt of benefits requires certification, and this can be accomplished in two ways: administratively by ONHIR without the need for a hearing; or more commonly, after hearing and decision. There are 296 late applicants currently in process before ONHIR that may be certified after hearing and after possible decision; almost none of the 296 could be certified by the September 30, 2005, deadline imposed by §640d-13(d). A second reason for recommending §640d-13(d) be deleted is its conflict with §640d-14(i). These dates should be consistent and as we understand from the Committee staff the §640d-13 date has been extended to September 30, 2008.

Section 640d-13 (c) and Section 640d-14(c) (2).

Section 640d-13 (c) prohibiting payments to anyone moving into the areas partitioned to a tribe of which he is not a member after May 29, 1974 conflicts with Section 640d-14(c)(2) prohibiting payments to anyone moving into the partitioned area after December 22, 1973. The latter provision is the one used in practice. If HPL residents moved into the HPL anytime after December 22, 1973, they are ineligible. The relevance of references to §§ 640d-2, 640d-3 and 640d-7 in the Section 640d-13(c) provision, and of Sections 1 and 4 in the Section 640d-14(c)(2) provision is unclear.

Any certified client who has not as of September 30, 2008 received a relocation home and who resides off the Navajo Reservation or on the HPL will be referred to the Secretary of the Interior so that funds for the building of a replacement home can be provided to him or her. Item (I)(B) is problematic because it restricts these payments to individuals who don't reside on the Navajo Reservation. Many Navajos that left the HPL will become certified under the new late

applicant rules; most of these will be Navajo Reservation residents, either NPL or elsewhere on the Navajo Nation. A smaller percentage will reside off-reservation or are current AA signers on the HPL who have since decided to relinquish. We recommend deletion of paragraph (l) (B) because the current residence of any of these individuals is unrelated to eligibility for trust fund money.

Paragraph (g) (3) (C) provides that upon the death of a head of household, the Secretary shall identify "any" heir and distribute the funds to him or her. There is no provision for dividing the proceeds between all the eligible heirs of a head of household, and this is the more likely Navajo scenario. This language should be more carefully worded to provide that all eligible heirs would share the proceeds, not that just "any" heir or "one" heir would be entitled to everything, unless of course there is only one heir. Ultimately, our biggest concern under Section 640d-14(g) is that there is no guarantee the money will be used for homes after September 30, 2008. A head of household may request distribution of his or her trust fund allocation on the premises it will be used for a replacement home, but there is no guarantee that a home will actually be built. If homes are not built with the relocation funds the Nation will likely be expected to assist such individuals.

Section 640d-14(h).

Paragraph (h) Notification provides that the eligible relocatees who 6 months after passage of the Act have not entered an AA agreement with the Hopi Tribe will be notified pursuant to §700.138 and will therefore be subject to eviction. After a notice period expires, the names and addresses of these individuals will be sent to the Secretary of Interior. No later than July 1, 2008, ONHIR may begin construction of replacement homes after receiving "notice of imminent removal of relocatee from land provided to the Hopi Tribe." As President Shirley noted in his

testimony the Navajo Nation, the Hopi Tribe and ONHIR are addressing these issues to avoid any "forced relocation" or "eviction." Those entities should be given sufficient time to solve this issue before a provision such as this is operational. Delaying this provision's effective date until a later time if no agreement is reached might be a method to avoid such harsh measures.

Similarly, §640d-14(I), provides that all eligibility determinations be made no later than January 1, 2008. For the Navajo Nation through its Navajo-Hopi Legal Services Program to assist all 296 new post-1986 clients, 12 hearings per month would have to be processed beginning October 1, 2005. This would not include continuances. This timetable gives the Program 25 months or until November 15, 2007 to complete all 296 hearings if the final determination must be made by January 1, 2008. After a hearing closes, two weeks are allowed for submission of written closing arguments. Subsequent to those submissions, the Hearing Officer has 60 days to make a written decision. All of the Hearing Officer's written decisions would have to be made by January 1, 2008 under this provision.

It does not seem likely that the Navajo Hopi Legal Services Program can handle that many cases for the 296 individuals let alone any other cases by the deadline with current staffing levels. Presently, funds do not exist to address these problems. Changing the date of certification alone will not solve these problems.

§640d-14(i) (3).

This section provides a separate notice period for anyone who may be eligible for relocation. §1290 of the current ONHIR Management Manual was written specifically to cover all of the procedures used in processing the 296 post-1986 clients. It parallels the procedures

used in the Sands v. ONHIR litigation of 1990 where 700 individuals were given a second opportunity to apply for relocation as a result of defective notice. We believe the Paragraph (3) Notice can be deleted entirely. There are no current clients in the pipeline awaiting eligibility except for the 296 post-1986 individuals and approximately 150 rejected appeals which are covered by a separate ONHIR policy, also recently renegotiated. Other clients would be covered by current policy or have federal court appeals rights.

§640d-14(k).

The Navajo Nation asks that this provision be deleted in its entirety. This section deletes the guarantee of automatic appeal to the U.S. District Court, as guaranteed by P.L.100-666 (1988). It is currently codified at 25 U. S. C. § 640d-14(g); such appeals are subject to the general federal six-year statute of limitations. In its place is an abbreviated appeal to the Ninth Circuit. Within 30 days after a written denial, the client must file a Notice of Appeal with the Ninth Circuit. ONHIR would then submit the certified record, and within 60 days of receipt, the Court would render a final decision. There would be no right to petition the U.S. Supreme Court. We believe this section should be deleted, in order to allow the current appeals processes to remain in place. First and foremost this proposed truncated appeals process has to potential to focus on a timeline rather than the merits of a case. It will create a sub-class of benefit applicants that is treated differently. Appeals from benefits determinations are highly fact intensive cases in most instances; this section removes the District Court, the court in the federal court system best prepared for fact-finding, from the appeal process. Removing the District Court simply lacks merit and this provision should be removed from the Bill.

Section 304.

This section is confusing. Any proceedings pending before ONHIR on the date of passage of this Act would not be affected although their functions might have been transferred to the Office of Relocation in Washington. Any legal documents relating to functions transferred to Washington would remain in effect until modified or terminated by the President or Secretary. Therefore, once a function is are transferred to the Secretary, the continuation of that function will become subject to the discretion of the Secretary. The only positive in the transfer is the preservation of funds for those relocatees not receiving homes by December 1, 2008.

United States Senate-- Committee on Indian Affairs
Hearing on S. 1003: Navajo-Hopi Land Settlement Amendments of 2005
July 21, 2005

Testimony of the Hopi Tribe--Chairman Wayne Taylor Jr.

Chairman McCain and members of the Senate Committee on Indian Affairs, the Hopi Tribe appreciates the opportunity to provide testimony on S. 1003, the Navajo-Hopi Land Settlement Amendments of 2005. My name is Wayne Taylor Jr., and I am Chairman of the Hopi Tribal Council. My testimony before the Committee today will be limited to a summary of the Hopi Tribe's overall testimony. A complete recitation of the Hopi Tribe's views concerning S. 1003 is set out in the written testimony of the Hopi Tribe, including a section-by-section analysis and comments, which has been previously provided to Committee staff for inclusion in the record of this Hearing.

Summary Of Testimony

The Hopi Tribe supports the Committee's efforts through S. 1003 to bring to a close one more chapter in the long struggle of the Hopi Tribe to protect its Reservation from encroachment and to regain full jurisdictional control over those lands. The Hopi Tribe is situated on a Reservation in Northern Arizona set aside by Executive Order of President Chester Arthur in 1882. The current Reservation is but a small part of the Hopi's aboriginal lands and only slightly more than 60 percent of the land originally set aside for the Hopi by President Arthur almost 125 years ago. Through a long history of action and inaction by the United States, the Hopi Tribe lost 40 percent of its Reservation—approximately 911,000 acres--to the Navajo Nation. The Navajo Nation occupies a Reservation of over 17 million acres stretching across parts of Arizona, Utah and New Mexico. The Navajo Reservation completely surrounds the much smaller Hopi Reservation.

For more than 100 years, the Hopi Tribe has worked to prevent the loss of its lands to the much larger Navajo Nation and to preserve the Hopis' right to control its lands against intrusion. Beginning in 1958 the United States Congress enacted a series of laws intended to lead to a final resolution of the disputes between the Hopi and Navajo over the Lands of the 1882 Hopi Reservation. The Navajo-Hopi Land Settlement Act of 1974 authorized litigation between the Hopi and Navajo to determine the Tribes' respective rights in the 1882 Reservation. The litigation resulted in a partition of the Reservation into lands held exclusively by the Hopi and lands held exclusively by the Navajo. Other provisions of the 1974 Act provided for the relocation of Hopi and Navajo individuals residing on that part of the Reservation partitioned to the Tribe of whom that individual was not a member. Since 1974, the Hopi have waited patiently for the Relocation process to be completed and for the restoration of our full jurisdictional authority over the Hopi Reservation. We are still waiting. Perhaps we have been too patient and too accommodating. All members of the Hopi Tribe who were required to relocate off Navajo partitioned land completed the relocation process many years ago. However, more than 30 years following passage of the 1974 Act, we are still waiting for completion of Navajo Relocation off Hopi land.

The principal objectives of S. 1003 are to provide for completion of the work of relocation, as originally authorized in the Navajo-Hopi Land Settlement Act of 1974, and to provide for termination by a date certain of the Office of Navajo-Hopi Indian Relocation (ONHIR). The Hopi Tribe supports timely completion of the relocation obligations of the United States and eventual closure of ONHIR. However, the Hopi Tribe believes that the objectives of S. 1003 must be accomplished in ways that do not prejudice the rights and interests of the Hopi Tribe established under existing laws of the United States. S. 1003 proposes to modify certain provisions of the 1974 Act in ways that may undo years of litigation between the Hopi and Navajo in the Courts of the United States; litigation that has already produced a judgment is currently awaiting further court action. In addition, the Hopi Tribe is concerned that S. 1003, in addressing issues that were the subject of the 1995 Settlement Agreement between the Hopi Tribe and the United States, may undercut prior but unfulfilled commitments of the United States to complete the Relocation process by the year 2000. In 1995, the United States entered into a Settlement Agreement with the Hopi Tribe under which the United States committed to complete the relocation process by February 1, 2000. Congress ratified and approved that Settlement Agreement by enacting the Navajo-Hopi Land Dispute Settlement Act of 1996. That commitment has not yet been kept. S. 1003 should not become the means for further weakening that commitment. The Hopi Tribe believes that S. 1003 will be effective only so long as it provides, finally, for the Hopi Tribe to regain complete jurisdiction over all of its Reservation lands as provided by Congress in the 1974 Act.

While termination of the Office of Relocation is certainly the ultimate goal, that goal should not become a substitute for full and efficient accomplishment of the relocation obligations of the United States. The Hopi Tribe believes that, to the greatest extent possible, the existing office of Navajo-Hopi Indian Relocation should carry out the work of wrapping up federal relocation responsibilities under existing law. The Office of Navajo-Hopi Indian Relocation has the experience and the on the ground know how necessary to complete the relocation obligations of the United States. The Hopi Tribe is concerned that the result of S. 1003 may be to push off onto an already overburdened and under funded Bureau of Indian Affairs responsibility for the unfinished work of the Office of Relocation. The Hopi Tribe is acutely aware of the difficulties that the BIA has in accomplishing its currently assigned responsibilities. Funding shortages produce staff shortages and the result is that some work is unavoidably shifted to the very lowest priority and may in fact never be completed. Given the Hopi Tribe's interests in obtaining full jurisdiction over all of its Reservation lands, we would not want to see the work of completing relocation drop into some black hole within the Interior Department. Another issue that should not be lightly considered is whether the BIA is suited to carry out relocation responsibilities that may in fact adversely affect the interest of either the Hopi Tribe or the Navajo Nation. Will the BIA be willing to step into a situation that it might view as a conflict of interests and perhaps a breach of the federal trust responsibility that it has to both Tribes? Under such circumstances, can the BIA adequately carry out the relocation responsibilities that might remain post 2008?

The Hopi Tribe is concerned that S. 1003 includes provisions that will only delay final completion of relocation rather than bring it to a speedy end. The Bill provides that relocation funds may be placed into a trust fund for the benefit of the heirs of individuals who have not relocated. This provision creates a safe harbor for individuals who refuse to relocate off Hopi land by giving them the assurance that their relocation benefits will in fact go to their next of kin when they die. These individuals and their families should not be rewarded for their continued illegal occupation of Hopi land, especially under circumstances where the United States has failed to carry out its commitments to the Hopi Tribe concerning the relocation of individuals from Hopi land. The problem is compounded in other provisions of the Bill that on one hand seem to establish removal/eviction requirements, but then on the other hand leave it to the discretion of the U.S. Attorney whether a relocation resister is actually removed from Hopi land. The Hopi believe that removal should be mandatory. Finally, the eligibility appeals process should be carefully crafted to avoid the delays inherent in a complicated process that might stretch out through September 30, 2008.

In order to complete the work of Relocation, the Office of Relocation will need sufficient time and funding. The Hopi Tribe believes that a date certain for termination must be set and we support the 2008 deadline, however we are concerned that the time allowed for completing the certification process is inadequate. We believe it is simply impossible for the certification process to be completed by September 30, 2005. The Relocation issue can be fully and finally resolved only to the extent that all Navajos potentially qualifying for Relocation benefits have an opportunity to apply for those benefits. Making the certification deadlines unreasonably short only opens up the possibility of legal challenges and delays by those who believe their circumstances were not fairly considered. Adequate funding should of course be provided to carry out all relocation obligations within the Termination deadline of September 30, 2008. Funding should be sufficient to staff the Relocation Office at levels necessary to complete the work efficiently and on time. Funding must also be sufficient to carry out the substantive work of the Office of Relocation, in other words, the actual work of building houses. The Relocation Program cannot be closed out unless houses are actually built for those families and individuals entitled to Relocation benefits. We urge Congress to coordinate with the Office of Relocation in determining an annual budget that will cover the costs of constructing a sufficient number of houses each year to satisfy the full relocation-housing requirement by the end of 2008.

In addition, the Office of Relocation should continue to have discretion to utilize a portion of the annual funding allocation in ways that address the unique burdens imposed by existing relocation law on the Hopi and Navajo people. For example, when a homesite on Hopi land is vacated because of relocation, that homesite must be dismantled. In addition, all of these homesites are associated with open solid waste dumpsites that must be cleaned up. In years past, the Hopi Tribe has contracted with ONHIR to cover the cost of dismantling and cleanup by the Hopi. We would want funding to continue to be available for these important activities. Finally, there are six planned communities on Hopi Partitioned Lands, all of which could benefit from infrastructure improvements made possible by relocation funds. These communities provide opportunities for Hopi people to

build new homes to accommodate a growing population and to move out onto the Hopi Partitioned Lands that make up the bulk of the Hopi homeland. Two of these communities, Spider Mound and Tawaovi are now in the development phase. Hopi people are living at Spider Mound and it is only a matter of time before they will be living at Tawaovi. We hope that S.1003 does not limit the discretion of ONHIR to assist these communities with various infrastructure improvements such as roads, electricity, water and sewer.

Chairman McCain, let me again thank you and the members of this esteemed committee for the opportunity on behalf of the Hopi Tribe to testify concerning S.1003. We look forward to working with the Committee in resolving the issues raised by the Bill. The analysis and comments of the Hopi Tribe concerning specific provisions of S.1003 are set out in our Written Testimony. I am happy to answer any question that the members of the Committee may have.

Section-by-Section Analysis and Comment on S. 1003

S. 1003 Section	**Affecting 25 U.S.C § 640d et seq. Section**	**Hopi Tribe's Comments**
1		This provision names the Act and establishes a Table of Contents. This section does not adversely affect the Hopi Tribe.
101	640d, d-1, d-2, d-3, d-4, d-28	The Hopi Tribe understands that the Bill would repeal all these sections. This repeal is in the nature of housekeeping and does not adversely affect the Hopi Tribe.
102	640d-5	The 1974 Act authorized certain litigation between the Hopi Tribe and Navajo Nation. The Owelty litigation involves the issue of whether one tribe or the other received greater value attributable to the land and its improvements on partition of the Hopi 1882 Reservation by the federal court. This section affects the Owelty provision already provided for in the 1974 Act by changing who currently makes the Owelty determination--the federal District Court and substituting the Secretary of Interior. The Bill also changes how Owelty is calculated. The Owelty case is currently in litigation and it would be inappropriate to change how Owelty is calculated and who makes the calculation. The case has been partially decided at the District Court level by two judgments, both of which have gone through appeals to the Ninth Circuit Court of Appeals. The case is now back before the District Court on remand for further proceedings. The Hopi Tribe opposes any changes to the Owelty provisions of the 1974 Act. There is no reason to start the Owelty case again from square

S. 1003 Section	Affecting 25 U.S.C § 640d et seq. Section	Hopi Tribe's Comments
		one. To do so would prejudice the interest of the Hopi Tribe. In connection with this section, we also note that on page 4, line 7, the date of creation of the Hopi reservation should be 1882, not 1982.
103	640d-6	No substantive change is proposed. (All non-substantive changes consisting principally of renumbering, reorganization, insertion of headings for clarification, etc.)
104	640d-7	No substantive change is proposed.
105	640d-8	No substantive change is proposed.
106	640d-9	No substantive change is proposed. (However, note that the renumbering set out at page 5, lines 20-23, should also be made in subsection (a)).
107	640d-10	The Hopi Tribe understands this provision to extend the time for the U.S. to take land into trust for the Navajo Tribe through September 30, 2008 and allows ONHIR to grant leases of Navajo land designated for resettlement to members of a relocatee's extended family. However, ONHIR may not use relocation funds to provide housing on said leasehold. The Hopi Tribe takes no position on this provision.
108	640d-11	The Hopi Tribe understands that this section closes down ONHIR on September 30, 2008 and transitions all of its functions to the Department of Interior. This section establishes an Office of Relocation in Interior on October 1, 2006. The Hopi Tribe believes that the Interior "Office of Relocation" should not be established until October 1, 2008, immediately on the termination of ONHIR. This would be in keeping with the Secretary's authority in (g) to carry out remaining duties on or after the termination of ONHIR as provided in (f) (2). While termination of the Office of Relocation is certainly the ultimate goal, that goal should not become a substitute for full and efficient accomplishment of the relocation obligations of the United States. The Hopi Tribe believes that, to the greatest extent possible, the work of wrapping up Federal relocation responsibilities under existing law should be carried out by

S. 1003 Section	Affecting 25 U.S.C § 640d et seq. Section	Hopi Tribe's Comments
		ONHIR prior to its termination in 2008. ONHIR has the experience and the on the ground know how needed to complete federal relocation obligations. The Hopi Tribe is concerned that the result of S. 1003 may be to push off onto an already overburdened and under funded Bureau of Indian Affairs responsibility for the unfinished work of ONHIR. The Hopi Tribe is acutely aware of the difficulties that the BIA has in accomplishing its currently assigned responsibilities. Funding shortages produce staff shortages and the result is that some work is unavoidably shifted to the very lowest priority and may in fact never be done. Given the Hopi Tribe's interests in obtaining full jurisdiction over all of its Reservation lands, we would not want to see the work of completing relocation drop into some black hole within the Interior Department. Another issue that should not be lightly considered is whether the BIA is suited to carry out relocation responsibilities that may in fact adversely affect the interests of either the Hopi Tribe or the Navajo Nation. Will the BIA be willing to step into a situation that it might view as a conflict of interests and perhaps a breach of the federal trust responsibility that it has to both Tribes? The Hopi believe that the BIA will be unwilling to take action that might put it in the middle of a Navajo-Hopi dispute over relocation. Under such circumstances, can the BIA adequately carry out the relocation responsibilities that might remain post 2008? The Hopi believe that any conflict on the part of the BIA in enforcing federal relocation responsibilities will lead to a complete failure to fulfill those responsibilities. This would be detrimental to the interests of the Hopi Tribe.
109	640d-12	No substantive change is proposed.
110	640d-13	The Hopi Tribe understands this provision to require that in order to receive relocation benefits each head of household must be certified eligible as of September 30, 2005. The Hopi Tribe believes that this provision is too restrictive and sets an unrealistic deadline for completion of certification. ONHIR should be given adequate time to complete the certification process. In recent discussions with ONHIR, the Hopi Tribe has learned that there may be hundreds of individuals potentially eligible for relocation benefits. Some of these individuals continue to reside on the Hopi Reservation. We would not want

S. 1003 Section	Affecting 25 U.S.C § 640d et seq. Section	Hopi Tribe's Comments
		these individuals to be disqualified for relocation benefits by failure to meet the deadline. If there are Navajo heads of household on the Hopi Reservation who are not yet certified eligible (perhaps because they never applied), such individuals may be disqualified for failing to be certified by the deadline. This would be contrary to the interests of the Hopi Tribe in completing relocation and obtaining full jurisdictional authority over the Hopi Reservation. The Hopi Tribe believes that this section should be revised so that HPL Navajos can be relocated in the future even if they are not certified today or by September 30, 2005.
111	640d-14	This section has several problematic provisions. First, it adds subsection (g), which directs the Secretary of the Interior to hold relocation funds in trust for heads of household who have not relocated and to pay the funds to their heirs if the head of household dies. This rewards families who resist relocation by not making them move and nonetheless providing for the payment of relocation funds to their family when the head of household dies. There should be no incentive for resisting Navajo to remain on the Hopi Reservation. Second, this section adds what appears to be a removal/eviction provision, subsection (h), but then apparently still leaves it to the discretion of the U.S. Attorney as to whether a resister is actually removed from Hopi land. Removal should be mandatory. We remind the Committee that in 1995 the United States entered into a Settlement Agreement with the Hopi Tribe under which the United Stated committed to complete the Relocation process no later than February 1, 2000. (See section 9(d) of the 1995 Settlement Agreement). The 1995 Settlement Agreement was approved and ratified by the Congress with passage of the Navajo-Hopi land Dispute Settlement Act of 1996. See 25 U.S.C. 640d-note. The Hopi Tribe believes that the United States should keep its commitment to the Hopi Tribe as set out in the 1995 Agreement and the 1996 Act. The Hopi Tribe believes that this provision of S. 1003 further undercuts the prior commitments of the United States on the matter of completing the relocation process. Finally, this section adds subsection (i), which spells out elaborate procedures for appeals of denials of benefits and requires ONHIR to make a final determination on all eligibility decisions by January 1, 2008. The Hopi Tribe supports a firm

S. 1003 Section	Affecting 25 U.S.C § 640d et seq. Section	Hopi Tribe's Comments
		deadline for final determinations of eligibility.
112	640d-15	No substantive change is proposed.
113	640d-16	No substantive change is proposed.
114	640d-17	No substantive change is proposed.
115	640d-18	No substantive change is proposed.
116	640d-19	No substantive change is proposed.
117	640d-20	No substantive change is proposed.
118	640d-21	No substantive change is proposed.
119	640d-22	No substantive change is proposed.
120	640d-23	No substantive change is proposed.
121	640d-24 (This section was apparently moved to section 27)	This provision authorizes certain appropriations, some of which seem questionable. First, this section authorizes $13,000,000 to make relocation bonus payments under section 10(b) that are in addition to the payments made for relocation housing under section 11. These bonus payments were supposed to be made to relocatees who contracted to relocate a number of years ago. It appears that the timelines established in the statute for payment of these bonuses have all lapsed. Perhaps it is appropriate to make such payments only to the Navajos who remain on Hopi land and who contract to relocate. It may be a waste of taxpayer money to pay the bonuses to those who are not on Hopi land but nevertheless contract to relocate. Second, this section authorizes $10,000,000 to institute "conservation practices and methods" necessary to return the grazing capacity of the land within the former Joint Use Area to its maximum grazing potential. The Committee has not consulted with the Hopi Tribe to determine what is necessary to return the Hopi portion of these lands to the specified grazing capacity. This consultation should take place before limiting appropriations for such purposes. Finally, this Section authorizes $500,000 for surveying and fencing. The Committee should consult with the Hopi Tribe to determine whether this is enough funding to pay for fencing the Hopi Reservation under both the 1882 and the 1934 cases.

S. 1003 Section	Affecting 25 U.S.C § 640d et seq. Section	Hopi Tribe's Comments
122	640d-25	This section apparently takes away ONHIR's ability to use money to "assist [the tribes] in meeting the burdens imposed by the" Act. We are not certain that this is the intent or whether the change is driven by a desire for word economy. In any event, if the proposed change is intended to limit the discretion of the commissioner (ONHIR) to contract with the Hopi Tribe or to enter into grant agreements with the Hopi Tribe or to otherwise use the discretionary fund to assist the Hopi Tribe in meeting the burdens imposed by the Act, the Hopi Tribe opposes the change. The ONHIR should continue to have discretion to enter into agreements with the Hopi Tribe or otherwise assist the Hopi Tribe in resolving issues arising out of the Relocation requirements of the 1974 Act. For example, the Hopi Tribe has contracted with ONHIR in the past for the costs of dismantling homesites vacated by the relocation process and cleanup of the open dumpsites associated with these homesites. These cleanup costs will continue to be a part of the burden born by the Hopi Tribe until the relocation process is completed.
123	640d-26	This section makes clear that construction activity has to be carried out in accordance with the Historic Preservation Act. The Hopi Tribe supports this provision and believes it to be a codification of the existing practice of ONHIR.
124	640d-27	No substantive change is proposed.
125	640d-29	No substantive change is proposed.
126	640d-30	The Hopi Tribe understands this provision to extend the $10,000,000 annual authorization for the Navajo Rehabilitation Trust Fund through 2008. The Hopi Tribe would like to see a status report on the Trust Fund included in the report of this hearing. We would like to see a summary of the original deposit into the fund, all subsequent deposits, all withdrawals and repayments. We note that the Hopi Tribe does not have access to a similar trust fund for use in making improvements to Hopi land or for purposes associated with relocation. The Committee should consider establishing a similar fund for the Hopi.
127	640d-31	No substantive change is proposed.
201-3		The Hopi Tribe understands this provision to provide personnel changes allowing ONHIR to provide for separation pay,

S. 1003 Section	Affecting 25 U.S.C § 640d et seq. Section	Hopi Tribe's Comments
		retirement annuities, etc. The Hopi Tribe supports this provision
301-17		The Hopi Tribe understands this provision to give the Secretary of the Interior authority to set up the Office of Relocation, hire staff, etc., and requiring the Secretary to file a report by September 2009. The Hopi Tribe supports this provision.

John McCain
United States Senate
Chairman--Committee on Indian Affairs
Washington, D.C. 20510-6450

Dear Senator McCain:

This is written in response to your letter of July 22, 2005 in which you pose eight questions arising out of my July 21, 2005 testimony before the Senate Committee on Indian Affairs concerning S. 1003, Navajo-Hopi Land Settlement Amendments of 2005. What follows is a verbatim statement of each question, followed by the Hopi Tribe's response.

1. In 1996 the Hopi Tribe testified in support of my bill that would have completed relocation by 2001, but for approval and codification of the Accommodation Lease Agreements. Why has the tribe's position changed?

Hopi Response: The Hopi Tribe's position has not changed; we want relocation to be completed and jurisdiction over all Hopi land returned to the Hopi Tribe. The problem is that the United States has so far failed to keep its commitment--as set out in the 1995 Settlement Agreement and confirmed in the 1996 Settlement Act--to relocate all remaining Navajo off of Hopi land. In the 1996 Settlement Agreement, see Section 9(d), the United States agreed to complete the relocation process by February 1, 2000. Instead, there remain at least eight Navajo families on Hopi Partitioned Land who should have been relocated but were not. In addition, we understand from discussions with ONHIR that there are several classes of Navajo families who are or may be eligible for relocation benefits, including: a) Navajo who have been determined eligible for relocation benefits but have not yet received those benefits, b) Navajo who signed Accommodation Agreements with the Hopi Tribe but later relinquished those Agreements in order to accept relocation benefits, c) Navajo who live on Hopi Partitioned Lands who have never signed an Accommodation Agreement or accepted relocation benefits but who are eligible for relocation benefits, d) Navajo who are not now living on Hopi Partitioned Land, who were not eligible to sign Accommodation Agreements but are or may be eligible for relocation benefits, and e) Navajo living on Hopi Partitioned Land under an Accommodation Agreement who now wish to relinquish their Accommodation Agreement and who, according to ONHIR, are or may be eligible for relocation benefits.

The Hopi Tribe has taken the position that all of these classes of Navajo should receive relocation benefits. The rights of these classes of Navajo under the relocation provisions of the 1974 Settlement Act is a legal question to be determined between the Navajo and the United States. The Hopi Tribe has fulfilled its obligations under the 1995 Settlement Agreement and the 1996 Settlement Act. We believe that the United States should keep its commitments as set out in the 1995 Settlement Agreement and in the 1974 and 1996 Settlement Acts.

2. As noted by a couple of the court cases, ineligible families have voluntarily moved to undeveloped areas affected by the land dispute well after the eligibility or court imposed deadlines. Doesn't this make it difficult to address impact? How can you assure the Committee that discretionary funding for relocation activity is going to that activity rather than the general infrastructure or economic development need created by these later voluntary settlers?

Hopi Response: The Hopi Tribe is not aware of any ineligible Navajo families living on Hopi Partitioned Land. The Hopi Tribe has kept its commitment, as set out in the 1995 Settlement Agreement with the United States, as ratified by the 1996 Settlement Act, to accommodate on Hopi Partitioned Land all Navajo who were eligible for an Accommodation Agreement and who in fact signed an Agreement. The Hopi Tribe is not aware of the varying circumstances that may exist on the Navajo Reservation. There are only two classes of Navajo living on Hopi Partitioned Land; a) those Navajo who have signed Accommodation Agreements under the 1995 Settlement Agreement and b) those Navajo who refused to sign an Accommodation Agreement and now refer to themselves as resistors. As to this latter group, the United States committed in Section 9(d) of the 1995 Settlement Agreement to complete their relocation by February 1, 2000. Any funds expended in connection with relocating these individuals would be expended in carrying out the purposes of the relocation provisions of the 1974 Act. Any dollars that would go to the Hopi Tribe from the discretionary fund would be expended to (i) remove/clean up the homesites and dumpsites left behind by all Navajo who have relocated or will be relocated from Hopi Land, and (ii) provide improvements on Hopi Partitioned Land in an area where Hopi have relocated—the community of Spider Mound—and similar improvements in one other area—the community of Tawaovi--on Hopi Partitioned Land, an area where Hopi now wish to move and establish a community.

3. How do you intend to address the circumstances that many Accommodation Lease Agreement Signers are ineligible to receive relocation benefits but are seeking to leave and relocate elsewhere?

Hopi Response: The Hopi Tribe has kept its commitment as set out in the 1995 Settlement Agreement to Accommodate on Hopi Partitioned Land all Navajo who were eligible for an Accommodation Agreement and who in fact entered into an Agreement. The Hopi Tribe has been advised by ONHIR that a number of Accommodation Agreement signatories wish to relinquish their Agreements and

receive relocation benefits and that in the opinion of ONHIR these signers may be eligible for relocation benefits. To the extent that these Navajo now wish to relinquish their Accommodation Agreements and receive relocation benefits, the Hopi Tribe supports their decision to do so. The Hopi Tribe notes that the Accommodation Agreement signatories were not party to the 1995 Settlement Agreement between the Hopi Tribe and the United States and that the 1996 Settlement Act does not purport to modify the relocation provisions of the 1974 Act. Whether the rights of Accommodation Agreement signatories to relocation benefits under the 1974 Settlement Act survived their signing of the Accommodation Agreement—as against the United States—is a legal question for resolution between the United States and the Navajo.

4. What, in your view, remains to be done for OHNIR's work to be complete?

Hopi Response: In order to complete the relocation process ONHIR must: a) Provide relocation benefits to all Navajo and Hopi who are eligible for such benefits, b) clean up the abandoned homesites and dumpsites left behind on Hopi Partitioned Lands by Navajo relocating off those lands, and c) complete the rangeland restoration projects on Hopi Partitioned Land as provided for under the 1974 Settlement Act. These projects encompass 18 range units where the work has not yet been completed. The range improvements include water projects, earthen dams, cross-fencing and windmill repair/replacement.

5. The Hopi Tribe expressed concerns that not all relocatee dumpsites have been cleaned up. I understood that ONHIR has provided the tribe funding to accomplish this. What more is needed to complete this work?

Hopi Response: To date, ONHIR has provided clean up funding only for those homesites where Navajo families have relocated and quitclaimed the improvements to the Hopi Tribe, approximately 1,455 quitclaimed homesites. Cleanup has been completed at 1,312 of these sites and another 151 are yet to be completed, pending receipt of additional funding. In addition, there are over 100 homesites and dumpsites associated with those sites where Accommodation Agreement signatories, approximately 95 families, have relinquished their Agreements in order to take relocation benefits. In some cases these individuals have been relocated off of Hopi Partitioned Land and in others they are still on Hopi Partitioned Land awaiting completion of the ONHIR administrative process and receipt of their relocation benefits. Finally, the cleanup costs associated with relocation of the eight remaining Navajo families who have not signed Accommodation Agreements and those who have signed but now wish to relinquish must be taken into account.

6. Is Hopi satisfied that all eligible Hopi families have been relocated or received relocation benefits?

Hopi Response: The Hopi Tribe understands that there may be as many as 30 Hopi individuals who may be entitled to relocation benefits. Many of these individuals

were away in the military or in school during relevant benefit application periods and were either denied benefits as a result of their absence, or otherwise never had the opportunity to submit applications for benefits. The Hopi Tribe believes that these individuals should have the opportunity to apply for and receive a determination of their eligibility for relocation benefits. These individuals must be included in any final review process being undertaken by ONHIR in connection with closeout of the relocation program.

7. What should be done about the 8 Navajo families who remain on the Hopi Partitioned Lands but refuse to sign Accommodation Lease Agreements?

Hopi Response: Because the United States has failed to carry out its relocation obligations under the 1995 Settlement Agreement and the 1996 Settlement Act, the Hopi Tribe and ONHIR have proposed a solution to the problem of the eight remaining Navajo families. The proposal has been preliminarily vetted with the United States Department of Justice and indirectly with the Navajo Nation. Under the Proposal, the Hopi Tribe would agree to offer Accommodation Agreements to the eight families or to otherwise accommodate the families should they refuse to sign Accommodation Agreements (Hopi may be willing to accept a Navajo Nation signature on behalf of any families refusing to sign) In addition, ONHIR continues to hold open the option of providing relocation benefits to these families. In exchange for Hopi accommodation of these families, ONHIR would agree: a) to provide relocation benefits to any Accommodation Agreement signatories who now wish to relinquish their Agreements and receive relocation benefits, b) provide funding to cover the costs of cleaning up all abandoned homesites and dumpsites on Hopi Partitioned Land, and c) provide the Hopi Tribe $6 million dollars—payable $2 million annually over three years—for use in developing the two communities on Hopi Partitioned Land referenced above in question 2 above, Spider Mound and Tawaovi.

8. Your testimony describes anticipated development projects, including for 6 new communities, for which the tribe is seeking to use OHNIR's discretionary fund. Considering 27 Hopi families were eligible for relocation, how are these 6 communities directly tied to relocation?

Hopi Response: The Hopi Tribe would use the discretionary funds only in the two Hopi Partitioned Land communities referenced above in questions 2 and 7.

A. Is the tribe seeking other funding to address this?

Hopi Response: The Hopi Tribe is continually searching for funds to assist in community development. The four community projects—apart from Spider Mound and Tawaovi--referred to in my testimony will need to rely on funds outside of the ONHIR discretionary fund for further development. The Hopi Tribe intends that only the Hopi Partitioned Land communities of Spider Mound and Tawaovi will benefit

from the discretionary fund under the proposed agreement described in question 7 above.

I hope that this letter has been responsive to your questions. We will be happy to assist you with any additional follow-up you may need. Please keep me advised concerning the status of S. 1003.

Respectfully,

_____
Wayne Taylor Jr.,
Chairman, The Hopi Tribe

XC:
Hopi Land Team
Scott Canty, General Counsel
Clayton Honyumptewa, Office of Hopi Lands

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