

INDIAN LAW RESOURCE CENTER

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REPORT TO THE HOPI KIKMONGWIS  
AND OTHER TRADITIONAL HOPI LEADERS  
ON DOCKET 196 AND THE CONTINUING  
THREAT TO HOPI LAND AND SOVEREIGNTY

March 1979

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## INTRODUCTION

In the spring of 1977, a delegation of traditional Hopi leaders came to Washington, D.C. and asked for our assistance in their fight against a claim which was coming to a conclusion in the Indian Claims Commission. Speaking on behalf of the Hopi Kikmongwis (the traditional Hopi spiritual leaders of the various Hopi villages) they asked for legal help in stopping the claim proceedings. They had heard about similar legal work we had undertaken on behalf of the Six Nations Iroquois Confederacy, Lakota (Sioux) and the traditional Seminoles, who likewise were attempting to stop payment of claim judgments in order to preserve the underlying Indian land rights.

At first blush it may seem strange that these Indian peoples wish to prevent the United States from giving them money in apparent redress for past wrongful taking of their lands. The logic of their resistance becomes apparent only when it is understood that under United States law the payment of these claims is in effect a sale of the right to the return of the lands. In legal parlance, the payment threatens to "extinguish" Indian title to these lands. A particularly insidious and racially discriminatory doctrine of United States law gives the government the authority to extinguish Indian title to lands without due process and without any compensation whatsoever. The Supreme Court of the United States has recently upheld this extinguishment doctrine in the case of Tee-Hit-Ton Indians v. United States.

After consulting with the Hopi representatives in 1977, we agreed to seek funding for research on behalf of the Hopi Kikmongwis concerning

the claim which is known as the "Docket 196 claim." We also agreed to investigate the work of the attorney who has prosecuted the Docket 196 claim in the name of the Hopi Tribe. Support from foundations and churches has permitted the Center to carry out this work.

Steven M. Tullberg, a Center attorney, has been primarily responsible for the coordination of the research and writing of the report. Brinton Dillingham, a Center investigator, was a principal researcher. They and other members of the Center's staff have spent many hours preparing this report. They have examined hundreds of files from the National Archives, the Bureau of Indian Affairs, and court repositories. They have studied a broad variety of primary and secondary source materials and interviewed a number of people familiar with the Hopi situation. Some materials were obtained through the Freedom of Information Act, and others were supplied by friendly sources. Through all of these efforts, much new information was brought to light. Needless to say, many fruitless avenues were explored. More remains to be investigated, and our research is continuing even as this report is released.

Our report to the Hopi Kikmongwis is unique in that it relies largely on materials obtained from U.S. government files. Throughout the report there are references to exhibits which are the source documents for quotations and factual statements. The exhibits are in effect documentary footnotes. These exhibits have been compiled into a bulky appendix which will be helpful to those who want to examine in depth the matters discussed in the report.

The report is a chronicle of abuse which the traditional Hopi leaders have suffered at the hands of United States governmental officials and others. It graphically demonstrates the consistent and dogged opposition to the Docket 196 claim which the Kikmongwis and other traditional Hopi leaders have mounted over the past thirty years, and it explains the danger of extinguishment which payment of the \$5 million claim award presents to the Hopi people. In sum, our report concludes that the Docket 196 case was initiated, pursued, and settled without any legitimate authority of the Hopi people.

In addition to the need to stop payment of the Docket 196 claim award, the report spotlights a number of other fundamentally important issues. One of these issues is the continuation of the rule of the Hopi Tribal Council, an organization representing the so-called "progressive" faction of the Hopis which was first created through a fraudulent election conducted by the Bureau of Indian Affairs. Faced with a traditional Hopi leadership which was unwilling to do the bidding of the U.S. government, the BIA deliberately subverted and undermined the authority of the Kikmongwis and other traditional leaders by establishing the Council and giving exclusive recognition to this alien governmental structure. The report makes clear that the United States government's desire to exploit Hopi mineral resources is the primary motive for the creation and maintenance of the Hopi Tribal Council, an organization which has, as requested, signed the leases authorizing the massive strip-mining of Black Mesa coal, an unthinkable outrage to traditional Hopi leaders. The same Council has agreed to the \$5 million settlement of the Docket 196 claim case.

A second issue highlighted in this report concerns the continuation of the strip-mining by Peabody Coal Company which has already created much destruction to Black Mesa, an area sacred to traditional Hopis and to many Navajos. The Hopi Tribal Council, its attorney and the BIA have agreed to sell these valuable coal reserves at a fraction of their true value to a far-off electrical generating station which supplies power to Los Angeles, Las Vegas and other parts of the southwest. Billions of gallons of precious Hopi water are simultaneously being "mined" from aquifers deep below the surface of Hopi country in order to flush the pulverized coal to Nevada in slurry pipelines. Only the mineral companies, the lawyers, the U.S. government, and a small Hopi elite dominated by the "progressive" faction have made any gain from this destruction and waste.

A third issue demanding special attention involves the work of John S. Boyden, the attorney who has handled the Docket 196 case from its inception and who has also been the BIA-approved general counsel for the Hopi Tribal Council. He worked with the BIA to create and sustain the Hopi Tribal Council over the past twenty-five years. This report documents that Mr. Boyden was in fact working for the very mineral companies strip-mining Black Mesa during the same period that they were doing business with his Hopi clients. The report documents an apparent conflict of interest so gross as to cry out for immediate investigation and action by all appropriate governmental and law enforcement agencies. If this apparent conflict of interest is conclusively established, there is even more reason why the traditional Hopis demand to stop the strip-mining must be heeded.



These issues are among the most important of the many issues discussed at length in the report. They are part of the pattern of BIA colonialist policies and practices which a federal judge in a similar case has labeled "bureaucratic imperialism." Hopi complaints to Washington about such BIA mistreatment have repeatedly fallen on deaf ears.

It is the hope of those who worked on this report that the detail and documentation which are synthesized and provided to the Kikmongwis for the first time in this report might help stimulate a fresh look at the problems facing the Hopi people. The Center will continue providing legal assistance to the Hopi Kikmongwis in an effort to help rectify the past and ongoing abuses. It is our hope that the Hopi people may in the near future find themselves in a new era in which the Hopi Nation regains its full measure of sovereignty within the international community, including its right to self-determination, the right to control its own territory and resources, and the full protection of the human rights to which the Hopi people are entitled.

Robert T. Coulter  
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## 1. BRIEF HISTORICAL BACKGROUND

Although Docket 196 of the Indian Claims Commission was not officially begun until the filing of the petition in 1951, an understanding of the significance of this matter to Hopi people today requires some knowledge of earlier Hopi history.

The hold of the Hopi Kikmongwis (the traditional Hopi religious leaders) and the Hopi people on their land and way of life reaches far back into time. Perhaps no other inhabitants of this continent have sunk deeper roots into their homeland. There is firm archaeological evidence that the Hopis have been continuous inhabitants of their land for well over a thousand years, and that the Hopi villages of Oraibi and Shungopavi may be the oldest continuously inhabited villages in North America. Hopi rights to their homeland clearly antedate the rights of all others who lay claim to it.

The first serious threat by outsiders seeking to dominate and subjugate the Hopis was presented in the early sixteenth century by the Spanish. The arrival of Coronado in 1540 signaled the beginning of 140 years of Spanish colonial rule. The Spanish Franciscan missions which

were established in Hopi country in the early seventeenth century operated under the same brutal and repressive policies as those which characterized the Spanish Inquisition against the Moslems and Jews of Spain. The Spanish authorities sought to suppress Hopi religion and culture.

The Spanish lost their colonial hold on the Hopis when the Hopis joined in the Pueblo Revolt of 1680 and drove the Spanish regime back into Mexico. In the 1690s, the Spanish renewed their effort to establish dominion over the Hopis and other Pueblos through the efforts of conquistador Don Diego de Vargas. De Vargas, together with other conquistadors and priests, successfully reasserted the authority of the Catholic Church in much of the territory of New Mexico. De Vargas was primarily a military leader, but the military authority of Spain was tightly fused with the religious authority of the Catholic Church at this period of Spanish history. This union of military and religious authority is demonstrated in a written plea for additional troops which de Vargas made to his superiors in 1693: "You might as well try to convert Jews without the Inquisition as Indians without Soldiers." Raw military power would be needed and used to convert the Pueblo Indians into Catholic colonial subjects.

The Hopis were the most successful of the Pueblos in resisting the return of Spanish Catholic rule. They managed to maintain their traditional culture, religion and government through the following century during which the Spanish asserted dominion over much of the

surrounding territory of new Mexico. Catholic missions and schools were never again built in Hopi country. In 1700, when the Hopi village of Awatobi permitted the return of Catholicism, it was sacked by the other Hopi villages. The Hopis would not allow the "slave church" back into their country.\* Despite continuing pressures for conversion and occasional depredations by the Spanish military, the Hopi people held fast to their religion, culture, and sovereignty.

Hopi land rights during this early colonial era were never seriously threatened since Spain acknowledged Pueblo Indian land rights and recognized the title which the Hopis and other Pueblo Indians had in their lands. Neither did the transfer of European claims to the territory of New Mexico from Spain to Mexico in the early nineteenth century pose a threat to the title which the Hopis held to their land. The treaty between Spain and Mexico respected the property rights of all of the Pueblo Indians, including the Hopis.

Likewise, there was no immediate repercussion in Hopi country when the European colonial claims to the territory passed from Mexico to the United States pursuant to the Treaty of Guadalupe Hidalgo\*\* which ended the Mexican War in 1848. This treaty also guaranteed Hopi land rights. From the beginning of its asserted jurisdiction over the territory, the United States was legally bound by the engagements of the Treaty of Guadalupe Hidalgo to respect and protect the rights of the Hopi Indians to their land.

After the 1848 Treaty of Guadalupe Hidalgo, there was no immed-

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\*At about this same time in history, the Hopis invited the Tewa Indians, who were fleeing from Spanish oppression along the Rio Grande, to live on First Mesa in Hopi country.

\*\*g Stat. 922 (1848).

iate attempt by the United States to interfere with the independence which the Hopi people had enjoyed since the Pueblo Revolt of 1680. Not until the 1860s and 1870s did the first agents of the Bureau of Indian Affairs (BIA) begin to work in earnest in Hopi country. It was only then that the Hopi people were subjected to efforts of the United States to undermine Hopi self-government. From that time to the present, the United States government has carried on a systematic campaign to uproot Hopi culture, religion and traditional authority, as had the Spanish before.

In one most significant respect the rule of the United States government would prove to be even more callous and ruthless than that of the Spanish and Mexicans, for the United States would be the first colonial power to threaten the rights of the Hopis to the land which had been theirs for over a thousand years. This threat first became clear in the 1840s and 1850s when the United States authorized a massive invasion by its citizens of Indian country west of the Mississippi River. After the discovery of Western gold and fertile soil, the United States government declared that it was God's will, Manifest Destiny, that virtually all lands and natural resources from the Atlantic to the Pacific be taken for its white citizens and incorporated into the United States.

The Hopis were not spared the pressures which these white settlers and prospectors created on all Indian lands. Mormon settlers and other whites moved onto land which for centuries had belonged to the Hopis.

Friction developed between these newcomers and the Hopis as some of the best of Hopi farmlands were appropriated by the whites. The BIA Agents became concerned that the white intrusion might cause trouble, that the Hopis might be "driven to the wall."

This direct white threat to Hopi lands was compounded by Navajo relations with the United States. While Hopi resistance to white intrusion was generally passive, their neighbors to the East, the Navajos, resisted the expansion of the United States with military force. To terminate this Navajo resistance, General James Carleton, Kit Carson and the U.S. Cavalry began in the 1860s a military campaign which resulted in the capture of about eight thousand Navajos who were marched to a concentration camp near Fort Sumner, New Mexico. Here the survivors of the "Long Walk" were confined for about four years. However, thousands of Navajos avoided capture and internment by dispersing to lands further west, toward Hopi country. Thus, as a direct result of the military campaign, there was a dramatic increase in the number of Navajos in and around Hopi country.

When the imprisoned Navajos were finally released in 1868, they were left by the United States in a state of dire poverty. They were given only two sheep per person with which to support themselves and reconstruct their nation's economic base. The only government-approved land holding for them was a small, infertile reservation established by Executive Order of 1868 in northeast Arizona. Almost incredibly, the Navajos survived this ordeal and rapidly grew in number.

The military campaign against the Navajos, their growing movement westward into Hopi country, their dire economic condition upon release from confinement, and their expanding population increased tensions between the Hopis and Navajos. These problems were aggravated by the fact that the Hopis were primarily farmers who cultivated the soil while the Navajos were primarily herdsmen whose sheep were prospering. There was some competition among them over limited grasslands and water supplies, as there was among non-Indian dirt-farmers and ranchers throughout the West.

Despite these pressures and strains, relations between the Hopis and Navajos appear to have been generally friendly, characterized by both social intercourse and commercial trade. An 1884 report by the BIA Hopi Agent points out some of the elements of competition and cooperation which existed between these two Indian peoples at that time:

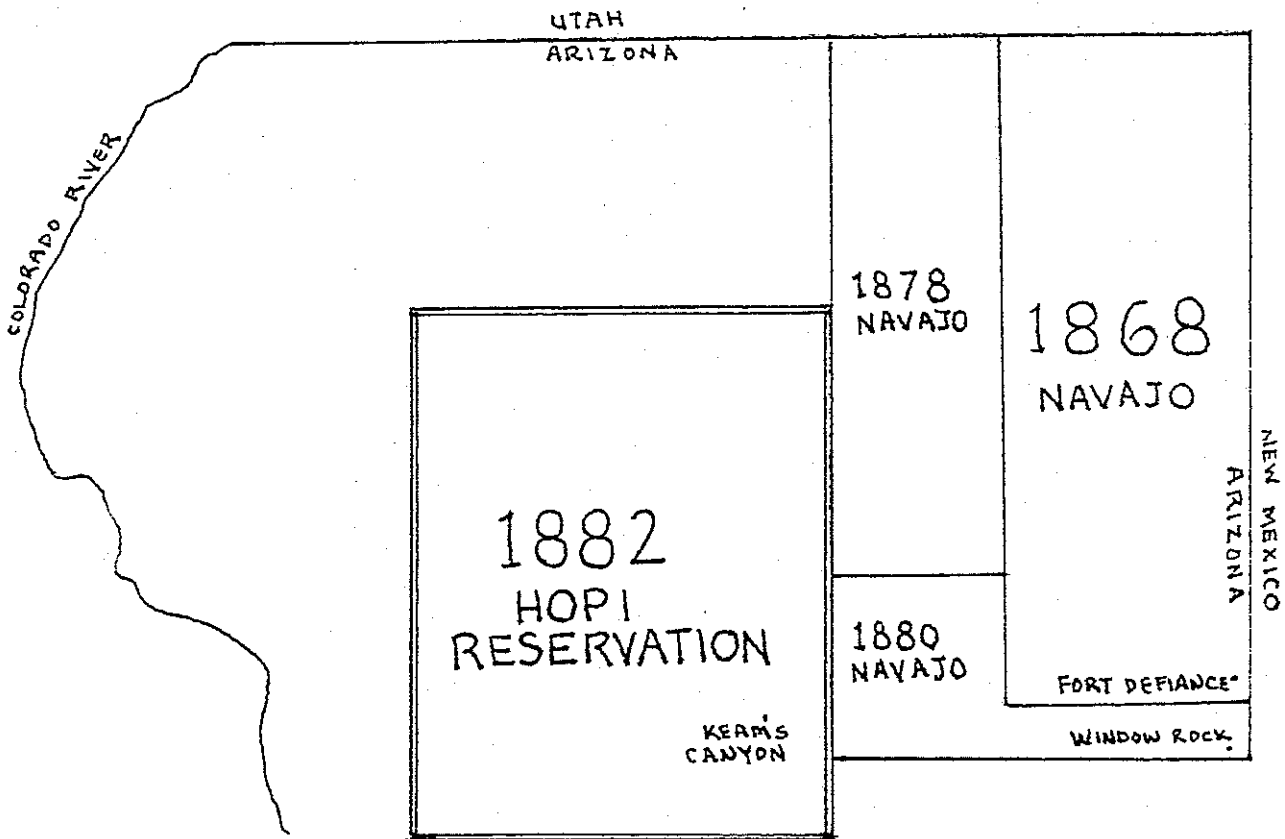
Quite frequently trifling quarrels arise between members of the two tribes; these are usually caused by careless herding of the young Navajos, who allow their herds to overrun these outlying Moki [Hopi] gardens. . . . The best of good feeling generally exists between these tribes; they constantly mingle together at festivals, dances, &c. . . . [The Hopi] barter his surplus melons and peaches with his old pastoral neighbors for their mutton.

Although traditional Hopi leaders occasionally called upon the BIA to assume some responsibility for the growing Navajo presence in Hopi country, they were most immediately concerned about the increasing white settlements on prime Hopi farmland and the increasing interference of the United States government in Hopi affairs.



2. THE EXECUTIVE ORDER HOPI RESERVATION OF 1882

In 1882, the President of the United States designated by Executive Order a reservation for the "use and occupancy of the Moqui [Hopi] and such other Indians as the Secretary of the Interior may see fit to settle thereon." This order withdrew from white settlement and sale a rectangular-shaped reservation, about 70 miles long and 55 miles wide, within the boundaries of the present state of Arizona. It has been



estimated that 1,800 Hopis and 300 Navajos lived within the boundaries of the Hopi Reservation when it was established in 1882. Its eastern boundary was the western boundary of the Navajo reservation as it had been extended by Executive Orders of 1878 and 1880 to accommodate Navajo expansion. The Executive Order creating the 1882 Hopi Reservation is the first of many laws which the United States would make over the next century to regulate and interfere with the affairs of the Hopi people and their land.

Although there are those who argue that the 1882 Hopi Reservation was created to resolve Hopi-Navajo disputes, this argument does not hold up when the historical facts are examined. Historical documents demonstrate that the 1882 Hopi Reservation was created at the urging of BIA officials who needed to have the area declared a formal reservation in order to give them legal authority over whites who were moving into the area and interfering with BIA programs.

In the 1870s, the BIA field office responsible for Hopi affairs became increasingly concerned by the fact that Mormon settlers were moving onto some of the best Hopi farm land to the south and west of the principal Hopi villages. This concern is expressed in a report by BIA Agent W. B. Truax in a letter he sent to the Commissioner of Indian Affairs on September 25, 1876:

The Mormons are also encroaching upon them [the Hopis] on the West and South West. About five hundred of them have settled not far from the lands claimed by the Moquis [Hopis] & they are a peaceable, inoffensive tribe of Indians, their rights will be invaded with impunity, unless protected by an Agent. They would soon drive these Indians to the Wall.

Another report on Mormon encroachment was written by BIA Agent William R. Mateer to the Commissioner of Indian Affairs on May 1, 1879. His report asked for information about legal authority to take action to control this white intrusion.

\*

Tu-bee, formerly a chief of the Oraibi Village, is here and complains that the Mormons are intruding upon their farming lands at Moen Kappi and interfering with their planting. He states that his father planted there when he was a boy as well as many other Oraibies and that it is their ground. At Moen-av-ee eight miles above, in the same Cañon they had another place of planting where they lived during the summer. A few years ago Jacob Hamlin, one of the Mormon Apostles, came in there and asked permission to plant that season and water his stock, which was granted. In the spring when the Indians returned to plant, as usual, they found other Mormons in possession and when they attempted to go to work the Mormons said, oh, no! we have bought this place from Mr. Hamlin and you can't plant here. . . . I would respectfully inquire whether there is not some law by which the Indians can be protected in their rights to lands, which they have cultivated for a century or more?

The Commissioner of Indian Affairs wrote back to Agent Mateer on August 14, 1879. In his letter he outlined the government's view of the relevant United States law: Since the Hopis had no recognized legal rights to their land under United States law, their lands had the legal status of "public lands." The Indian Agent had no legal authority to control, arrest, or evict whites found on these "public lands" unless and until the lands were designated as Indian reservation lands pursuant to United States law:

As the Moqui [Hopi] Indians occupy the public lands without any authority of law, the provisions of the statutes enacted by Congress for the protection of Indians in their occupancy of lands within a reservation, cannot be invoked to protect the Moquis, and remove and punish white settlers.

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\* Traditional Hopi leaders disagree with the suggestion that "Tu-bee" was a former chief of Oraibi. The encroachment of Mormon settlers on Hopi lands is, however, established historical fact.

Thus, only thirty years after having agreed to protect Hopi lands in the Treaty of Guadalupe Hidalgo, the United States government took the position that it could not control its own citizens who were abusing Hopi land rights because those rights were not protected by law! It need not be emphasized that treaties have always been the supreme law of the land under the United States Constitution.

It is also clearly implicit that the United States asserted absolute political sovereignty over the entire area ceded by Mexico in the Treaty of Guadalupe Hidalgo. The United States asserted general governmental authority over the territory, though the Hopi people had not assented to that authority nor ceded any of their own governmental authority by treaty or otherwise. Thus, the asserted legal authority of the United States over the Hopi territory was a bare arrogation of power, unsupported by any legal agreement, treaty, or other authority.

There were other whites besides the Mormon settlers who were vexing the BIA Agents in Hopi country. A few whites were living among the Hopis and supporting Hopi opposition to government programs. One of these programs to which many Hopis were openly hostile was a program for the education of Hopi children in boarding schools which were to be found as far away as Albuquerque, over 175 miles from the nearest Hopi village.

In a letter written by BIA Agent J. H. Fleming on November 11, 1882, an urgent plea was made for authority to evict the whites who were sabotaging the BIA's programs. (Exhibit 1.) The whites he spe-

cifically named were Dr. J. Sullivan and E. S. Merritt. According to Agent Fleming's letter, the BIA Agent had threatened Dr. Sullivan with arrest unless he ceased all dealings with the Hopis. Dr. Sullivan apparently obtained legal counsel and informed Agent Fleming that the government had no power to arrest or remove him from the Hopi villages since the Hopis were not, according to United States law, on Indian reservation land. It soon became apparent to the Hopis that Dr. Sullivan and Mr. Merritt could thumb their noses at Agent Fleming with impunity. This loss of face was more than Agent Fleming could tolerate.

In Agent Fleming's letter to the Commissioner of Indian Affairs, he states that the Hopis "seem to regard [Dr. Sullivan] as a bigger man than the Agent, and my influence over them will be greatly weakened if not destroyed, unless this man can be effectually prevented from all intercourse with them." Fleming then recounts how Dr. Sullivan and Merritt had been undermining his compulsory boarding school program by allying themselves with hostile Hopis:

The Moquis [Hopis], now, say they do not want a school, and it is of no use to try to induce them to send their children to Albuquerque at present. They say the white men tell them the goods here were sent for them and not for the school, and, because I do not give them these goods, they believe they are being cheated out of them.

At the end of his letter Agent Fleming stated that unless he is given authority to evict these whites from Hopi country, he would have "no hopes of accomplishing anything." He threatened to summarily resign if not given the authority he demanded.

This letter brought an immediate response from Washington. The day it was received, a reply telegram was sent to Agent Fleming requesting a description of proposed boundaries for a Hopi reservation. One month later the proposed boundaries submitted by Fleming were accepted and became the boundaries of the Executive Order reservation approved by President Chester A. Arthur on December 16, 1882.

Five days later, on December 21, 1882, the Commissioner of Indian Affairs sent Fleming a telegram which reads as follows:

President issued order dated sixteenth, setting apart land for Moquis [Hopis] recommended by you. Take steps at once to remove intruders.

In a confirming letter sent the same day, the Commissioner included his directive about the newly gained power to evict unwanted whites from Hopi country:

The establishment of the reservation will enable you hereafter to act intelligently and authoritatively in dealing with intruders and mischief-makers, and as instructed in telegram before mentioned, you will take immediate steps to rid the reservation of all objectionable persons.

As soon as he had this supposed legal authority in hand, Agent Fleming asked the commanding officer of Fort Wingate to evict the unwanted whites from the Hopi villages.

The history of these events shows that there is little support for the notion that Hopi-Navajo problems were behind the creation of the 1882 Hopi Reservation. The BIA wanted the area to be formally declared an Indian reservation in order to give the BIA agent legal authority over unwanted white intruders and "mischief-makers." Since

the government already took the position that there was ample authority under United States law to handle disputes between Indian peoples before the reservation was established, the settlement of Hopi-Navajo problems was in no material way affected by the creation of the 1882 Hopi Reservation.

The BIA made no effort after the creation of this reservation to in any way reduce or restrict the number of Navajos on this reservation. In fact, Agent Fleming resigned and the Hopi Agency was closed up in a matter of weeks after the 1882 Reservation was created. The United States government continued its policy of favoring an increase of the Navajo population on the 1882 Hopi Reservation until, only fifty years later, the Navajos outnumbered the Hopis three to one.

Throughout the early decades of United States administration, the BIA adopted many hopeless stopgap measures for handling legitimate Hopi and Navajo needs. For example, in the 1870s BIA agents toyed with the idea of moving all Hopis from their mesa villages to a reservation along the Colorado River. In the 1880s and later in the early 1900s, there were several abortive attempts by the BIA to segregate Hopis from Navajos by creating a small, exclusive enclave for Hopis within the 1882 Hopi Reservation. The many other Hopi-Navajo measures which would be undertaken by the United States would all prove to be failures as a continuing (and some would say growing) controversy continues today between some factions of the Hopi and Navajo Nations.

The 1882 Hopi Reservation did offer the Hopis the benefit of

legal restriction of further white settlement in part of their country, but the net effect of the creation of that reservation was a significant loss to the Hopis. The United States Indian Claims Commission would later rule in Docket 196 that the creation of that reservation "effectively terminated and extinguished, without the payment of any compensation to the Hopi Tribe, its aboriginal title claims to all lands situated outside of said reservation." Under United States law the Hopis suffered in 1882 a dramatic loss of at least 2,000,000 acres of land and a severe blow to their sovereignty. The BIA, on the other hand, gained additional legal authority under United States law to promote and control its program without opposition from whites who might interfere. In sum, the 1882 Hopi Reservation was not primarily intended to reserve and protect Hopi rights, but to augment United States power over the Hopis and their land.

The United States took this action despite the fact that the Hopis were never at war with the United States, were never conquered by the United States, and never signed a treaty with the United States. The Hopis never agreed to the creation of the 1882 Hopi Reservation and never authorized the United States to take any action which would in any way impair Hopi land rights or the right of the Hopi people to govern their own affairs.



### 3. FROM 1882 TO 1934: THE UNITED STATES INTENSIFIES ITS EFFORTS TO UNDERMINE HOPI SOVEREIGNTY

After the creation of the 1882 Hopi Reservation, the United States government intensified its efforts to influence and control all aspects of Hopi life. Some of the most important of these efforts are those pertaining to compulsory schooling, allotment, and Hopi-Navajo disputes.

#### A. Compulsory Boarding Schools for Hopi Children

An important part of the United States government's program to subjugate Indians was its program of compulsory attendance at government-sponsored boarding schools for Indian children. This program was put into effect for Hopis as it was for many Indian children throughout the continent. The purpose of having the schooling of Indian children take place at boarding schools, far away from Indian homes, was to minimize parental influence and thereby facilitate the "Americanization" of the children. This motivation is made evident in an 1884 report from the BIA Hopi Agent to the Commissioner of Indian Affairs:

Keams Cañon is 12 miles east from the Moki [Hopi] village. The Children being removed to school at this place it would preserve them from the annoyance and interruption of daily visits from parents and relatives.

Although Keams Canyon was not as far from parents as the proposed Albuquerque school which Hopi parents had resisted with the assistance of Dr. J. Sullivan and Mr. Merritt in 1882 (See Part 1, above), it was far enough removed in that pre-automotive age to allow the government

teachers a fairly free hand.

The Keams Canyon boarding school was opened in 1887. It was a boarding school designed to strip Hopi children of their culture. They were forbidden to speak the Hopi language, to wear Hopi clothes, and to keep their traditional long hair styles. They were given English names to replace their Hopi names and were not allowed to practice Hopi customs. Taking up where the Spanish priests had left off, the school officials forced the Hopi children to undergo religious indoctrination conducted by Christian missionaries who had been approved by the United States government.

The tradition of resistance to such policies which had begun under Spanish rule continued under this threat from the United States. Passive resistance to school attendance was widespread and the BIA took severe measures. To overcome the resistance, United States Cavalry units were sent into Hopi villages. Children were literally torn from the arms of their parents by soldiers who were assigned to haul the captive children on wagons to the boarding school. Resisting parents were assaulted and, in some cases, given criminal punishment. In 1894, nineteen Hopi men were imprisoned for eight months for refusing to agree to the surrender of their children to this United States school system. From 1890 to 1911, United States troops were periodically called upon to enforce the compulsory schooling edict. Within the next two decades, more convenient and less oppressive day schools

were established for Hopi children and most resistance to schooling ended, although the boarding school policy remained a central part of the BIA's general policy well into the 1930s.

Using divide-and-conquer tactics, the U.S. government officials of the BIA labeled as "Hostiles" those Hopis who resisted the government's policies and practices. Those Hopis who were willing to cooperate were labeled "Friendlies." Government patronage, support, and favors went to the "Friendlies," but not to the "Hostiles" (who not infrequently were jailed). These tactics created serious rifts in Hopi society. Perhaps the most dramatic and well-known of these rifts is the confrontation between "Hostiles" and "Friendlies" which resulted in the split of the village of Oraibi in 1906. Countless other disputes erupted as the United States routinely required Hopis to choose between allegiance to United States programs and fidelity to traditional Hopi authority and values. In later years, the labels "Hostiles" and "Friendlies" would be replaced by the labels "Traditionals" and "Progressives."

#### B. The Allotment Act

Moving into an area of colonial rule which the Spanish and Mexicans had left untouched, the United States soon began to assert dominion and control over Hopi property rights. As already discussed in Part 1, above, the very act of creating the 1882 Hopi Reservation has been deemed by some U.S. governmental authorities to constitute under U.S. law a taking and extinguishment of all of Hopi aboriginal lands

lying outside the reservation boundaries.

In 1892 the United States government began to move against Hopi land holdings within the 1882 Hopi Reservation. In that year, officials of the BIA sent out their survey crews to implement the infamous Allotment Act of 1887, also known as the "Dawes Act," named after its sponsor, a congressman who favored "breaking up the tribal mass" of all Indians by forceably dividing up all communally-held Indian lands into small, individually held Indian homesteads. The theory was that these individual Indian land owners would become small farmers who would learn the value of competitive selfishness which would make them better Americans.

The allotment policy was a direct assault on the sovereignty and unity of all Indian governments. Its impact on many Indian tribes and nations was devastating. Because of the Allotment Act, over two-thirds of all Indian land was lost to whites. This loss was principally due to the fact that under the Act, all Indian lands not allotted to Indians in individual, 160-acre parcels was labelled "surplus" and sold to whites by the federal government.

When the United States finally abandoned the allotment policy in 1934, the Commissioner's report to Congress (which called the Allotment Act the "backbone of Indian law" from 1887 to 1934) included these specifics on the effect of allotment in the Indian community:

The total of Indian landholdings has been cut from 130,000,000 acres in 1887 to 48,000,000 acres in 1934. . . . Furthermore, that part of the allotted lands which has been lost is the most valuable

part of the residual lands, taking all Indian-owned lands into account, nearly one half, or nearly 20,000,000 acres, are desert or semidesert lands.

In Hopi country, the government attempted to survey and allot land to individual Hopi families from 1892 to 1911 when the effort was finally abandoned. During these two decades, the Hopi people almost uniformly refused to cooperate in the surveying and parcelling out of their land. The Kikmongwis all opposed allotment. Their resistance was too strong for the United States to overcome. When the allotment surveyors left, the Hopis pulled their survey stakes out of the ground. Forced allotment proved to be an unworkable policy in Hopi country because communal land tenure was tightly interwoven in the fabric of traditional clan structures and religious beliefs. That traditional fabric of Hopi culture remained too strong to be destroyed despite the best efforts of the BIA, and the Hopis were spared the disaster of allotment.

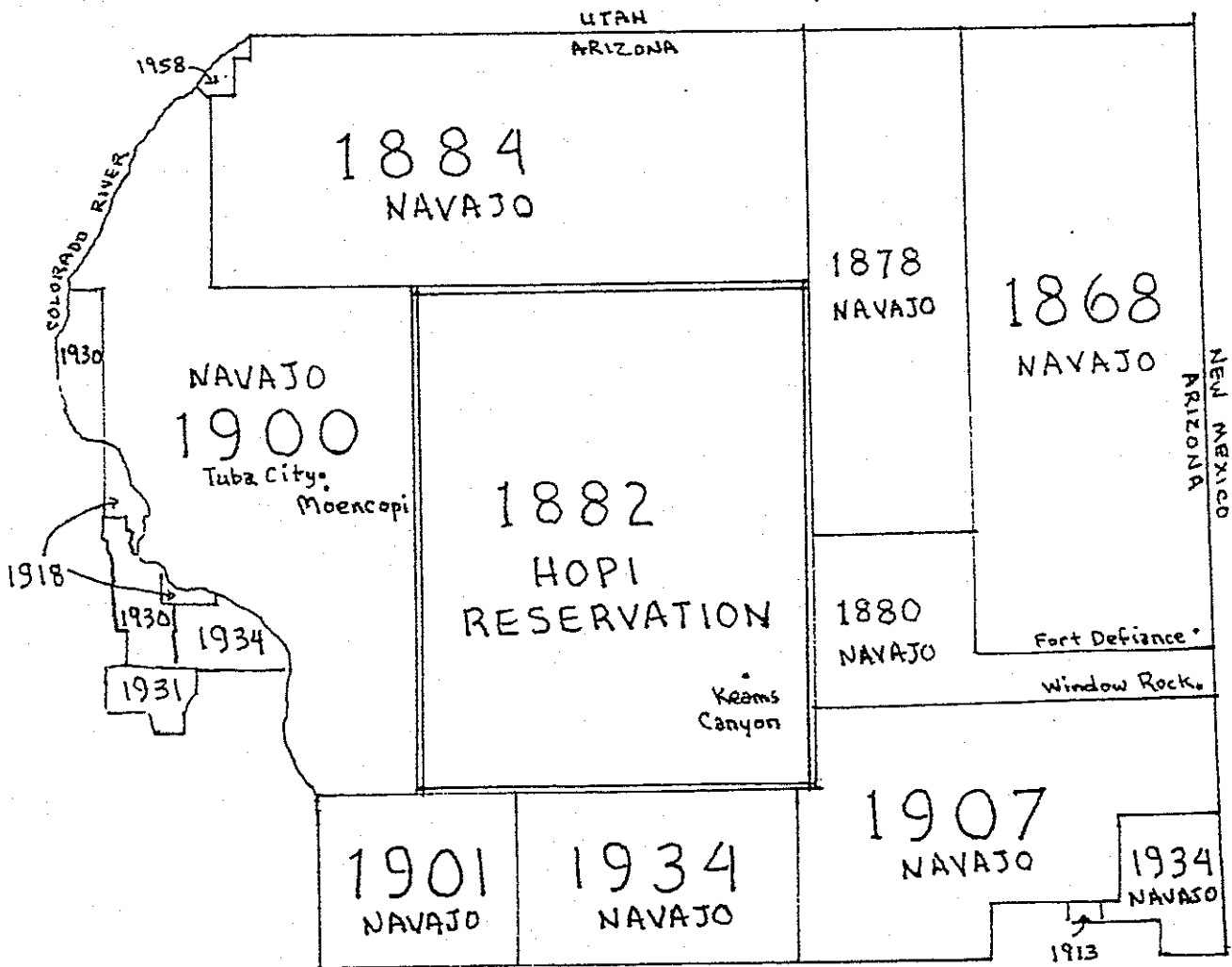
One commentator notes that other Indian peoples shared the benefits of the Hopis' successful resistance to allotment:

The Third Mesa Hopis' resistance appears to have saved not only the Hopi but also the other Pueblos, the Navaho, the Mescalero, White River and San Carlos Apache, and the Papago, from allotment and its disastrous consequences [Laura Thompson, Culture in Crisis (New York: 1950), p. 197].

### C. The Hopi-Navajo Issue

Again, there are those who argue that the United States interference in Hopi affairs was motivated by a good faith desire to resolve Hopi-Navajo differences. The historical record does not support these

arguments. Policies of the United States have exacerbated Hopi-Navajo problems rather than resolving them. The United States met the need for more land for the growing Navajo nation by extending Navajo reservation lands in a series of Executive Orders which increased Navajo pressures on Hopi land. Presidential orders of 1878, 1880, 1884, 1900, 1901, and 1907 expanded the Navajo nation until it almost completely surrounded the 1882 Hopi Reservation. By 1934 the 1882 Hopi Reserva-



tion was an island in the Navajo Nation. The lands which the United States designated for the Navajos incorporated all of the aboriginal Hopi land which was found outside the Hopi Reservation and which has been said to have been taken at the time the reservation was created in 1882.

Hopi aboriginal land which lies outside both the 1882 Hopi Reservation and the Navajo Reservation was given over to white settlement by the United States government, again without the consent of the Hopis and without any compensation.

As the white population of the southwestern United States expanded, there was a growing demand to stop the "return" of lands to Indians, including the Navajos. This demand led the United States Congress in 1918 to enact a law forbidding the creation of any additional Executive Order reservations in New Mexico or Arizona. Henceforth, only Congress could designate Indian reservation land in this area.\* Since any new Indian reservation would require the approval of Congress, it became less and less politically acceptable for the United States government to meet Navajo needs for more land. Rather than continue the past practice of adding more lands to the Navajo reservation, the United States found it more expedient to relieve some of the pressure of the expanding Navajo population by encouraging Navajos to move

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\*25 U.S.C. 211. In 1927 Congress prohibited the creation of Executive Order Indian reservations anywhere within the geographical boundaries of the United States. 25 U.S.C. 398(d).

onto the 1882 Hopi Reservation.

Despite the fact that the 1882 Executive Order explicitly gave the Secretary of the Interior the legal authority and complete discretion under United States law to approve or disapprove the settlement of "other Indians" on the Hopi Reservation, it was not until 1936 that further Navajo settlement in the 1882 Hopi Reservation was in any way officially curtailed. By that time the number of Navajos in the area far exceeded the number of Hopis. It is estimated that by 1930 some 3,319 Navajos resided in the 1882 Hopi Reservation, a total eleven times greater than the number of Navajos who lived there in 1882.

Traditional Hopi leaders were convinced that the United States would not resolve Hopi-Navajo problems, and they were fearful that United States intervention in this problem would further undermine Hopi sovereignty. Accordingly, they gave little cooperation to BIA programs which were ostensibly designed to alleviate Hopi-Navajo disputes. Rather, Hopi leaders argued that they would themselves eventually be able to reach a just settlement with the Navajos on the basis of agreements which had been made between Hopi and Navajo leaders after the release of the Navajos from Fort Summer in 1868. It would not, however, be possible to come to a just settlement if the United States continued to exacerbate the problem by encouraging further Navajo settlement on Hopi land.



A more thorough history of Hopi resistance to United States efforts at domination during the fifty-year period after 1882 would include discussion of more than Hopi resistance to compulsory boarding schools, allotments, and intervention in Hopi-Navajo affairs. Since the BIA program pervaded almost every aspect of Hopi life, including prohibitions on Hopi religious beliefs and practices, there were repeated instances where Hopi leaders were imprisoned for refusing to follow the dictates of the various U.S. Indian officers. Their offenses included everything from general insubordination to refusal to submit to induction into the United States military service.

The lesson which these early confrontations with the United States taught to traditional Hopi leaders was clear: The United States was prepared, willing, and even eager to treat the Hopi people as colonial subjects and to completely ignore Hopi governmental and property rights. These Hopi leaders determined to maintain their culture and sovereignty by mounting sustained resistance whenever new efforts were made to interfere with Hopi affairs. This determination set the stage for Hopi resistance to the new United States Indian program of the 1930s, a program which would have direct relevance to Docket 196 of the Indian Claims Commission.