27. 1970: THE FIRST DECISION IN DOCKET 196 ON THE "EXTINGUISHMENT" OF HOPI LAND RIGHTS

On September 23, 1968, traditional leaders of Shungopovy sent President Lyndon B. Johnson another invitation to meet with them to discuss their problems. The President referred the matter to his Secretary of the Interior as all other presidents have done with requests for such meetings. (Exhibit 118 C.)

Two major problems which traditional Hopis wanted to discuss continued to fester and grow during the 1960s. One problem was the continuing Docket 196 case in the Indian Claims Commission which was quietly moving toward its conclusion. The other was the increase in mineral leasing, including the strip-mining of Black Mesa coal, which had been authorized by the Hopi Tribal Council and the BIA. In the early 1970s, there were significant legal developments pertaining to both of these problems.

The first of these developments came in Docket 196. On June 29, 1970, the Indian Claims Commission rendered its first major decision in the Docket 196 case. Its "Opinion on Title" ruled that the Presidential Order establishing the 1882 Hopi Reservation had the legal effect of extinguishing Hopi Indian title to all lands lying outside the boundaries of that reservation, some 2,191,304 acres according to the Commission. The Commission further ruled that the United States government had extinguished Hopi aboriginal title to all lands within the 1882 Hopi Reservation except for the District 6 "Exclusive Hopi

reservation" area. The second extinguishment was said to have occurred in 1937, at the time the grazing districts were being created and the Navajos were being officially "settled" on the 1882 Hopi Reservation. Hopi land rights which, according to the Commission's ruling, were thus extinguished in 1937 totalled 1,868,364 acres.

On behalf of the Hopi Tribal Council, John S. Boyden would appeal this ruling and argue unsuccessfully that Hopi title to additional thousands of acres of land had been extinguished by the United States. The theory of Boyden's case was that the United States had exercised its authority to take Hopi land, and having thus legally terminated the Hopi rights to the land, the United States must now pay compensation. Here again one sees both the Hopi Tribal Council claimants and the United States government arguing that Hopi title to land had been extinguished by the United States. They differed only as to the number of acres lost.

A result of this theory is that the more land Boyden and the Council concede to have been legally taken, the greater the claim award and the greater Boyden's fee.

The traditional Hopis remained firm in their opposition to any monetary payment for loss of historic land rights. Their position was, and remains, that Hopi aboriginal land title had not lawfully been extinguished or surrendered, and that all Hopi land rights--whether or not presently recognized or acknowledged by the United States government or its courts--should be carefully preserved.

Continuing their unflagging opposition to Docket 196, letters of protest over the new developments in the case were sent by traditional leaders to the Indian Claims Commission. A letter of July 15, 1970, from Dan Katchongva of Hotevilla (Exhibit 119) included this paragraph:

> We the Hopi Indian Nation did not at any time file the claim for compensation for our land in the land claim department. Much we regret that our honorable name has been shamelessly used.

A letter of the same date signed by traditional leaders Starlie Lomayaktewa of Minshongnovi, Claude Kewanyama of Shungopavi, and Mina Lansa of Old Oraibi included these specific objects among others:

> Dear Commissioners:
>
> We have read in the Navajo Times, Hopi Action News, and other news papers, of your decision to recognize the Hopi Indian Tribe's Claim to the aboriginal use and ownership of approximately 4.4 million acres in Northeastern Arizona.
>
> We, the Traditional religious leaders and Chiefs of the Hopi Indian Nation want you to be informed of our united view which is as follows:
>
> 1. The Hopi tribal council which submitted this so-called Hopi tribal land claim to your Commission does not and never has, represented us, the Hopi traditional chiefs and our people and our villages. The Hopi tribal council has no authority as far as the Hopi original aboriginal land is concerned. We, the Hopi traditional chiefs, have this authority and we have never and will not recognize the so-called Hopi tribal council to be the government of the Hopi people.
>
> 2. We, the Hopi traditional chiefs, will not accept any land settlement wherein the United States government will pay us for our land. This is against our traditions and religious beliefs. Therefore, this decision by your Commission is unacceptable to us and our people and our villages.
>
> 3. The so-called Hopi Indian Tribal claim as submitted by the so-called Hopi tribal council through its attorney, Mr. John Boyden, is therefore illegal. It is, further, only a small portion of our true original aboriginal land area.
>
> We, the Hopi traditional chiefs are now working on what we consider to be our true, original aboriginal land area prior to the

establishment of these United States. At the proper time, we will submit this to the Congress of the United States. Therefore, we respectfully ask that all consideration on the so-called Hopi tribal land claim stop and no further consideration be given to it. [Exhibit 119A.]

Another written objection to the continuation of Docket 196 was sent to the Indian Claims Commission by Dan Katchongva on January 8, 1971. (Exhibit 120.) As with all previous traditional Hopi objections to Docket 196, the Indian Claims Commission appears to have filed these letters without taking any other action. Ignoring the protests and claims of illegality, the Commission simply prepared to move on to the next stage of the proceedings during which it would make a determination of the value of the Hopi lands at the time they were taken. This determination of value would form the basis of the final award of $5 million.

28. THE SECOND COURT CHALLENGE TO MINERAL LEASES: STARLIE LOMAYAKTEWA ET AL. V. ROGERS MORTON AND PEABODY COAL COMPANY

On August 4, 1970, another letter was sent to the United States President. By this time, Richard M. Nixon was in the White House. The same traditional Hopi leaders who had sent the 1970 protests about the developments in Docket 196 protested to President Nixon about the environmental destruction caused by the white society around them:

> The white man, through his insensitivity to the way of Nature, has desecrated the face of Mother Earth. The white man's advanced technological capacity has occurred as a result of his lack of regard for the spiritual path and for the way of all living things.

> The white man's desire for material possessions and power has blinded him to the pain he has caused Mother Earth by his quest for what he calls natural resources. All over the country, the waters have been tainted, the soil broken and defiled, the air polluted. Living creatures die from poisons left because of industry. And the path of the Great Spirit has become difficult to see by almost all men, even by many Indians who have chosen instead to follow the path of the white man.
>
> .....
>
> Today the sacred lands where the Hopi live are being desecrated by men who seek coal and water from our soil that they may create more power for the white man's cities. This must not be allowed to continue for if it does, Mother Nature will react in such a way that almost all men will suffer the end of life as they now know it.

As "rightful spokesmen for the Hopi Independent Nation," they called for a meeting with the President. (Exhibit 121.)

The response from the White House was from Nixon's lawyer, Leonard Garment, who wrote a patronizing letter full of platitudes about the pros and cons of strip-mining and the possibility of democratic change through participation in Hopi elections (Exhibit 122):

> The President has asked me to thank you for your letter of August 4, and Mr. [Bradley] Patterson has told me of his conversations with you and Miss Evening Thunder about the coal enterprise in the Hopi area.
>
> I share your concern about the physical ugliness resulting from strip-mining. Yet the concern about this aspect of the mining venture surely must have been weighed by the Tribal Council along with the other pros and cons involved in granting the lease.
>
> In our democratic society--and the Hopi tribe has elections--the place for the resolution of issues between majorities and minorities is first of all the ballot box. It would not be proper, or even consistent with our common hope for Indian self-determination, for either the Bureau of Indian Affairs or the White House to intervene in this an essentially internal, tribal matter. A balancing of relative goods and evils is involved, but the only forum for that balancing as I see it is the Hopi Tribe itself and its elected institutions.

The new Commissioner of Indian Affairs, Calvin N. Brice, also sent a letter in response. (Exhibit 123.) His was even more patronizing:

> Thank you for your August 4 letter. The President has requested that we respond to your expressions of concern with the present trend of abuse to our environment.
>
> The President has repeatedly stressed a need for the protection of our environment including all factors such as air, land, water, and people. Many programs have been initiated toward the goal of people living in harmony with their surroundings. It is very gratifying to see the unified response which the American people are giving the President in support of these control and corrective programs.
>
> There is a great need to make people aware of the dangers from air and water pollution, waste disposal, and uncontrolled exploitation of the natural resources. The greater task, however, is to generate action from the people who can and should be active in obtaining harmonious controls and conditions within which man can continue to live fruitfully in his environment.
>
> The Hopi Traditional Village Leaders are to be congratulated for their awareness of the environmental pollution problems. We are certain your contribution and active participation with ongoing programs will be welcomed.

It is clear that the traditional Hopi leaders were no longer being taken seriously, that they were being addressed like school children.

The traditional Hopis were not, however, discouraged. They continued to make their position known by registering a protest directly with the Hopi Tribal Council and attorney John S. Boyden in a letter of August 6, 1970, challenging the strip-mining leases. (Exhibit 124.)

The Hopi Tribal Council and attorney Boyden also ignored the protests. They continued their efforts to expand coal leasing by pressing forward their legal battle with the Navajo Tribal Council.

On January 12, 1971, traditional Hopi leaders sent another petition of protest to President Nixon, this time focusing their attention on new legislation which was being considered to authorize a formal partitioning of all of the 1882 Hopi Reservation between Hopis and Navajos. (Exhibit 125.)

Looking for a remedy, the traditional Hopi leaders contacted the Native American Rights Fund (NARF) and asked for legal assistance. The NARF attorneys agreed to handle a lawsuit to challenge the Black Mesa leases and the Hopi Tribal Council's misuse of authority. On May 14, 1971, a lawsuit known as Starlie Lomayaktewa et al. v. Rogers Morton and Peabody Coal Company was filed in the U.S. District Court for the District of Columbia. This was the second time the traditional Hopi leaders had gone to court to challenge the leasing of Hopi land to mineral interests. (See part 22 above.)

The plaintiffs in the case were some sixty traditional Hopis, including Kikmongwis and other religious leaders from the respective Hopi villages. Included in this carefully prepared lawsuit was a Statement of Hopi Religious Leaders which was attached as Exhibit A:

STATEMENT OF HOPI RELIGIOUS LEADERS

> Hopi land is held in trust in a spiritual way for the Great Spirit, Massau'u. Sacred Hopi ruins are planted all over the Four Corners area, including Black Mesa. This land is like the sacred inner chamber of a church--our Jerusalem.
>
> The area we call "Tukunavi" (which includes Black Mesa) is part of the heart of our Mother Earth. Within this heart, the Hopi has left his seal by leaving religious items and clan markings and plantings and ancient burial grounds as his landmarks and shrines and as his directions to others that the land is his. The ruins

are the Hopi's landmark. Only the Hopi will know what is here for him to identify--others will not know.

This land was granted to the Hopi by a power greater than man can explain. Title is invested in the whole makeup of Hopi life. Everything is dependent on it. The land is sacred and if the land is abused, the sacredness of Hopi life will disappear and all other life as well.

The Great Spirit has told the Hopi Leaders that the great wealth and resources beneath the lands at Black Mesa must not be disturbed or taken out until after purification when mankind will know how to live in harmony among themselves and within nature. The Hopi were given special guidance in caring for our sacred lands so as not to disrupt the fragile harmony that holds things together.

Hopi clans have traveled all over the Black Mesa area leaving our sacred shrines, ruins, burial grounds and prayer feathers behind. Today, our sacred ceremonies, during which we pray for such things as rain, good crops, and a long and good life, depend on spiritual contact with these forces left behind on Black Mesa. Our prayers, songs, ceremonies, and rituals draw their strength and vitality from the spiritual forces left by our ancestors. Each year, after our ceremonies in the Kiva of each village, Hopi messengers carry our sacred prayer feathers and cornmeal and plant them at these spiritual places and shrines. This is our contact with the spirit, people who are our ancestors who lived and traveled in these areas. The purpose is to bring rain so that our crops will grow. If these places are disturbed or destroyed, our prayers and ceremonies will lose their force and a great calamity will befall not only the Hopi, but all of mankind.

Hopis are the caretakers for all the world, for all mankind. Hopi lands extend all over the continents, from sea to sea. But the lands at the sacred center are the key to life. By caring for these lands in the Hopi way, in accordance with instructions from the Great Spirit, we keep the rest of the world in balance.

To us, it is unthinkable to give up control over our sacred lands to non-Hopis. We have no way to express exchange of sacred lands for money. It is alien to our ways. The Hopis never gave authority and never will give authority to anyone to dispose of our lands and heritage and religion for any price. We received these lands from the Great Spirit and we must hold them for him, as a steward, a caretaker, until he returns.

Eagle shrines are located throughout the Black Mesa area. The prayer feathers that are so essential to our religious life and all our ceremonies must be Eagle feathers. Without them, we can-

not place and carry our sacred messages to the spiritual world, we cannot hold the land for the Great Spirit. If the eagles are forced to flee the heart of our Mother Earth because of man's activity, it will no longer be possible for us to live in our spiritual and religious way. The life of all people as well as animal and plant life depend on the Hopi spiritual prayers and song. The world will end in doom.

Water under the ground has much to do with rain clouds. Everything depends upon the proper balance being maintained. The water under the ground acts like a magnet attracting rain from the clouds; and the rain in the clouds also acts as a magnet raising the water table under the ground to the roots of our crops and plants. Drawing huge amounts of water from beneath Black Mesa in connection with the strip-mining will destroy the harmony, throw everything we have strived to maintain out of kilter. Should this happen, our lands will shake like the Hopi rattle; land will sink, land will dry up. Rains will be barred by unseen forces because we Hopis have failed to protect the land given us, as we were instructed. Plants will not grow; our corn will not yield and animals will die. When the corn will not grow, we will die; not only Hopis, but all will disintegrate to nothing.

We, the Hopi religious leaders, have watched as the white man has destroyed his lands, his water and his air. The white man has made it harder and harder for us to maintain our traditional ways and religious life. Now--for the first time--we have decided to intervene actively in the white man's courts to prevent the final devastation. We should not have had to go this far. Our words have not been heeded. This might be the last chance. We can no longer watch as our sacred lands are wrested from our control, as our spiritual center disintegrates. We cannot allow our control over our spiritual homelands to be taken from us. The hour is already very late.

Signed:

Starlie Lomayaktewa,
Kikmongwi of Mishongnovi

Ned Nayatewa,
Kikmongwi of First Mesa

Jack Pongayesvia,
David Monongye,
Religious Leaders of Hotevilla

Mina Lansa, Kikmongwi of
Oraibi, Kyakotsmovi and
Lower Moenkopi

Claude Kewanyama,
Kikmongwi of Shungopavi
and Sipaulovi

Thomas Banyacya, Sr.,
Official Interpreter,
Village of Kyakotsmovi

Carlotta Shattuck,
Recorder,
Village of Walpi

In their complaint, the NARF attorneys first argued that the Secretary of the Interior did not have the legal authority to delegate leasing powers to the Hopi Tribal Council as he had done in 1961, 1964, and 1966. (See, pp. 124, 135.) Second, it was argued that the Hopi Tribal Council was illegally constituted when it approved the Peabody leases in 1966 because only six of its members (four less than a legal quorum) were properly certified in accordance with the Hopi Constitution. The other five individuals who voted as members of the Council at that time had never been certified by the Kikmongwi of their respective villages as required by the Constitution. Third, it was argued that the Secretary of the Interior had systematically discriminated against the traditional Hopis and had violated their most fundamental religious rights. Fourth, it was argued that the Peabody leases were arbitrary, capricious, and violative of fiduciary obligations since one agency of the Department of the Interior, the Bureau of Reclamation, was purchasing the largest part of the electric power generated by the coal which was being strip-mined on Hopi land. The Secretary of the Interior had therefore been the buyer of the coal at the same time that he was, as the seller, obligated to approve the leases and assure the Hopis the best possible price for their resources!

The United States Courts refused to address any of these important issues. Instead, after the case was transferred from Washington, D.C., to an Arizona federal court, a decision was made dismissing the

case on a procedural ground. In its decision the court reasoned that the Hopi Tribal Council was an indispensable party to the lawsuit because it had signed the Peabody lease. But since the court also found that the Hopi Tribal Council had sovereign immunity and would not voluntarily become part of the case, the action could not be heard by the court.

The United States had avoided a court challenge to the legality of the Hopi Tribal Council and its dealings with the BIA and Peabody Coal Company, by giving the Council full recognition as the legitimate, sovereign Indian government, and thereby immunizing its dealings from court review.

The U.S. Court of Appeals approved the dismissal of the case in 1975 and the Supreme Court declined to hear it in 1976.* The United States courts had thus ruled that there was no judicial forum in which the Hopi traditional leaders could have their day in court to challenge the strip-mining leases. In weighing the interests of all concerned, the courts had expressly decided that it was more important to keep the Peabody lease in operation than to test the allegations of illegality made by the traditional Hopi leaders. The Court of Appeals wrote:

Here, it seems to us, that the adverse effects of a cancellation

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*Lomayaktewa v. Hathaway, 520 F.2d 1324, 1327 (9th Cir., 1975). The case was affirmed by the Court of Appeals under the case name just given. The Supreme Court declined to review under the case name of Susenkewa v. Kleppe, 425 U.S. 903 (1976).

> of the lease on the Hopi Tribe far outweigh the adverse effects visited upon the 62 dissident traditional Hopis by reason of the failure to provide another forum for them.

In using the label of "dissident," the court completely discounted the fact that the 62 named plaintiffs included several Kikmongwis and many other religious leaders who spoke not only for themselves but for all of their people.

29. PUBLIC LAW 93-531 AND THE PARTITIONING OF THE 1882 HOPI RESERVATION

During the first half of the 1970s, the Indian Claims Commission continued its consideration of the Docket 196 case. Proceedings were held to determine the value of the "extinguished" lands, and various appeals were processed.

Meanwhile the Hopi Tribal Council and attorney John S. Boyden pressed ahead with their plan to formally partition the 1882 Hopi Reservation into exclusive Hopi and exclusive Navajo areas. By December 1974, they obtained approval of elaborate legislation, commonly known as Public Law 93-531, which authorized the partitioning of these lands. The legislative scheme provided for a short period of time during which mediation would be attempted followed by a formal adjudication by a United States court. Under this legislation, the surface of the Joint Use Area would be divided but the mineral interests would continue to be jointly owned by the Navajos and the Hopis.*

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*Needless to say, whoever controlled surface rights effectively controlled all prospecting permits, strip-mining leases and ancillary development of roads, pipelines, etc.

The same legislation authorized "either tribe, acting through the chairman of its tribal council for and on behalf of the tribe" to sue the other over their respective rights within the Navajo Reservation as established by Congress in 1934. When Congress confirmed the boundaries of the "1934 Navajo Reservation," all of the patchwork of Executive Order Navajo reservations were included within its boundaries, but an unspecified possible Hopi interest had also been approved at that time. (Specifically, the 1882 Hopi Reservation had been drawn in such a way that its western boundary failed to include long-established Hopi communities, and possible Hopi rights in this area were preserved.)

Also provided for was a Navajo and Hopi Relocation Commission to effect the relocation of any Navajos or Hopis found on the wrong side of the final partition line. Congress authorized $31,500,000 to accomplish relocation.

The legislation also authorized the tribal council chairmen of the Hopi and Navajo Councils to bring any other lawsuits against each other to "insure the quiet and peaceful enjoyment of the reservation lands of the tribes." But the same legislation made sure that the United States government would not be held responsible: "Any judgment or judgments by the District Court in such action or actions shall not be regarded as a claim or claims against the United States." In short, Congress said let the Hopi and Navajo Tribal Councils fight each other in our courts, but don't pin any of the legal blame on the United States government.

At the time this legislation was being approved by Congress, the Hopi-Navajo situation received much attention in the news media. One notable newspaper article appeared in the Washington Post. "Whose Home on the Range?" by Mark Panitch, Washington Post, July 21, 1974, reviewed some of the developments leading up to P.L.93-531, and included the following analysis of some of the Hopi-Navajo issues:

> While the Navajo leaders seem to decide their own policy in the Navajo capital of Window Rock, the locus of Hopi policy seems to be in Salt Lake City, almost 500 miles from the Hopi Mesas. Both the Hopi's energetic and effective lawyer, John Boyden, and their public relations counsel, Evans and Associates, are headquartered in Salt Lake City. And much of the Hopi success can be attributed to their Mormon allies.
>
> The Church of Jesus Christ of Latter Day Saints has had a close association since the 1890s with the "progressive" faction of Hopis. Mormons were the first missionaries to be allowed to preach on the Hopi Mesas after the Spanish friars were driven off. Many "progressive" Mormon Hopis have sat on the tribal council in the past 40 years. "The Mormon religion is the predominate Hopi (Christian) religion," says John Dwan, director of public relations for Evans and Associates.
>
> Through their Mormon allies, the Hopis also have developed allies in the worlds of industry and government.
>
> .....
>
> While Boyden was lobbying in Congress and arguing in the courts, Evans and Associates virtually stage-managed a range war on the borders of the Hopi reservation.
>
> During 1970-1972, few papers in the Southwest escaped having a Sunday feature on the "range war" about to break out between the two tribes. Photos of burned corrals and shot up stock tanks and wells were printed although such incidents were not widespread.
>
> .....
>
> By calling Evans and Associates, a TV crew often could arrange a roundup of trespassing Navajo stock. Occasionally when a roundup was in progress, Southwestern newsmen would be telephoned by Evans and notified of the event.
>
> A print reporter could arrange a tour of the disputed area in a BIA pickup truck driven by the ranger [a white former rodeo cowboy hired by the Hopi Tribal Council to patrol their fenceline].

> Interviews with then Hopi Chairman Clarence Hamilton could also be arranged through Salt Lake City. But they were granted only when BIA officials could be present and the officials usually answered the questions. At the height of the "range war" tribal officials apparently lost whatever control they had to Salt Lake City and BIA.
>
> .....
>
> The issue generally was, and still is, that the BIA has "frozen" construction, including well drilling, in the joint use area as a way to force Navajos to comply with the stock reduction order. Instead, many Navajos simply drive their stock to water inside the Hopi exclusive-use areas.

The "stage-managed range war" was linked directly to the drive for control of mineral resources. Further questions about possible conflicts of interest with respect to mineral development were raised in the same article's discussion of the Evans and Associates public relations firm:

> At the same time Evans and Associates were representing the Hopi Tribe in 1970-'73, they also represented a trade association of 23 utility companies engaged in building power plants and strip mines in the Four Corners area. The group was called WEST Associates and their mailing address was the same as Evans and Associates.
>
> "The Indians have resources to sell and our other clients have money to buy these resources," an Evans-for-Hamilton spokesman told a reporter. "There is no conflict of interest there." Besides, he said, the BIA had to approve the contract between the Hopis and Evans.
>
> The arrangement was convenient, however. The relationship between the Hopi council and the power companies strip mining their land became almost symbiotic. On the one hand, Hamilton speeches written by Evans would be distributed through the public relations machinery of 23 major Western utilities. On the other hand, these utilities would tell their customers, often through local media contacts, that the Hopis were 'good Indians" who wouldn't shut off the juice that ran their air conditioners.

The link of the partitioning to the control of development of coal

resources was obvious:

> Navajo Tribal Chairman MacDonald noted that the tribe which controls the surface controls access to the minerals. That tribe can grant such things as leases, exploration rights and rights of way for roads.

And the economic importance of the partitioned surface rights to "progressive" Hopi cattlemen was also commented upon in the same article:

> Bureau of Indian Affairs officials at the Hopi Agency at Keams Canyon, Arizona, say that land recovered in the dispute will be used by "progressive" Hopi to raise beef cattle for market. The establishment of a beef industry among the traditionally agricultural Hopi is a BIA goal that goes back almost 100 years.

The same newspaper article concluded with a discussion of the split between "progressive" and "traditional" Hopis over all of these developments:

> The Hopi Tribal Council, which is pressing a traditional Hopi quest for land rights, is largely composed of Hopis who have been influenced by whites. The Bureau of Indian Affairs officials and the missionaries who are close to many council members represent the forces that have sought for about 80 years through schools and economic pressure to deculturate the Hopi.
>
> Many Hopi traditionals are now ridiculed by the council members. Some Hopi traditionals today are more comfortable with their traditional enemies, the Navajo, who maintain their ceremonial cycle and native language, than they are with their Anglicized Hopi relatives. Many of the traditionals have in fact sided with the Navajo in the land dispute.

Although the eventual relocation plan would most drastically affect the Navajos, some 3,500 of whom were slated for relocation, as opposed to only 40 Hopis, the traditional Hopi leaders would continue their opposition to the partitioning and relocation program and would form instead a Hopi-Navajo Unity Committee.

In the 1970s there was an enormous amount of litigation (and attorneys fees) in the wake of Healing v. Jones and this new legislation, as the attorneys for the respective tribal councils fought it out in the federal courts.*

By early 1978, the partitioning process had been declared constitutional and a partitioning plan first recommended by the federal mediator William E. Simkin had been approved (see map below, page 163).

The position of the traditional leaders on this partitioning of Indian land had been expressed many times, even as early as 1972 when the lobbying efforts of Boyden and the Council became known. A 1972 letter from traditional leaders to Congressman Sam Steiger included the following paragraph explaining their opposition:

> On April 5, 1972, we want to meet with the Navajo Traditional and religious Headmen to work out a common stand against this bill which will again cut up our homeland and to create more division. We want the Navajo Elders to sit down with us to look seriously into our Way of Life, Religion and Land in the light of our traditional and religious knowledge. We want no interference from outside people until we come up with a solution among ourselves as the First People on this land. We do not want any more cutting up of our Sacred Homeland by anyone. Those who claimed to represent the Hopi People now in Washington, D.C. do not represent

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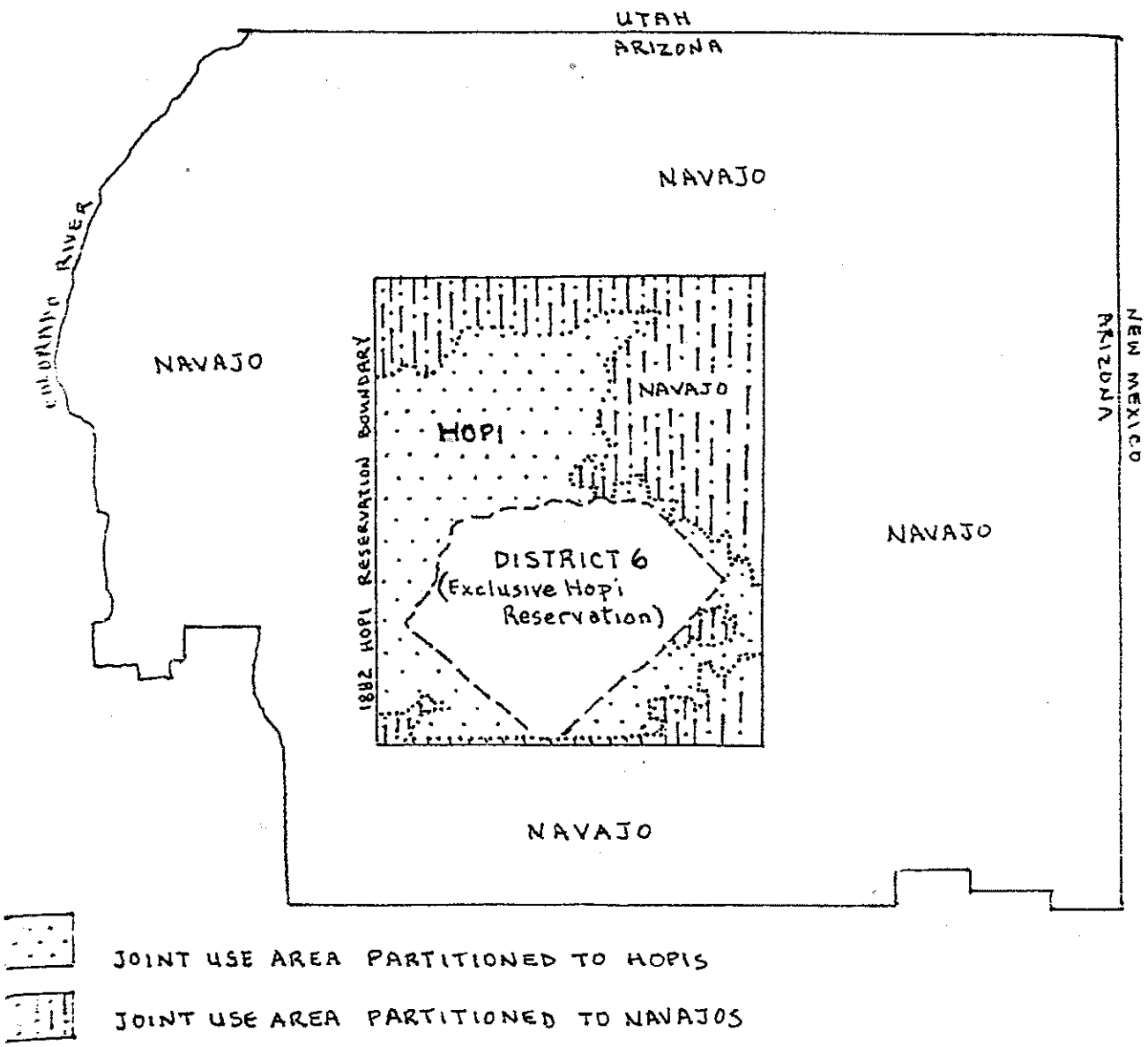
*For example, there were five decisions by the 9th Circuit Court of Appeals pertaining to the efforts to segregate the Navajos from the Hopis. Hamilton v. Nakai, 453 F.2d 152 (9th Cir., 1972); United States v. Kabinto, 456 F.2d 1087 (9th Cir., 1972); Hamilton v. MacDonald, 503 F.2d 1138 (9th Cir., 1974); Sekaquaptewa v. MacDonald, 544 F.2d 396 (9th Cir., 1976); Sekaquaptewa v. MacDonald, F.2d (9th Cir., May 15, 1978). Many other matters were heard at the District Court level.



either we Kikmongwis or the majority of the Hopi People. (Exhibit 125A.)

This letter was signed by Mina Lansa, Kikmongwi from Oraibi; Starlie Lomayaktewa, Kikmongwi from Mushongnovi; Claude Kewanyama, Kikmongwi from Shungopavy; Ned Nayatewa, Kikmongwi from the Consolidated Villages of First Mesa; David Monongye, Traditional religious leader from Hote-

villa; and Thomas Banyacya, Interpreter for traditional Hopi leaders.

In choosing to ignore and undermine the authority of traditional Hopi Leaders such as these, the United States government had consciously cut out of the decision-making process those Indian leaders who were most dedicated to a non-divisive solution to Hopi-Navajo problems.

30. THE $5 MILLION SETTLEMENT IN DOCKET 196

During the early 1970s, the traditional Hopi leaders continued to protest the strip-mining of Black Mesa and all of the other problems flowing from the ever-broader assertion of power by the Hopi Tribal Council. (Exhibit 126.) In the name of the Hopi Independent Nation they sought to bring both national and international attention to the abuse they and their country were suffering at the hands of the BIA, the Council, and Peabody Coal. Concerned non-Indians joined in many of these protests, some focusing on the environmental issues, others challenging the legality of the Hopi Tribal Council as well. (Exhibit 127.)

In response, a weekly Hopi newspaper, Qua' Toqui, carried out a fairly consistent campaign to disparage the traditional Hopis. Published by a staunch Mormon who is the brother of the Hopi Tribal Council chairman, the newspaper has served as a mouthpiece for "progressives" and for the Council. For example, an editorial headlined "Time is running out on Hopi Traditionalists" appeared in a November 1973 edition of the newspaper. (Exhibit 128.) It writes an epitaph for tradi-

tional Hopi leaders, and it is reminiscent of Oliver LaFarge's flippant prediction of 1935 when he wrote, "I believe that within twenty years the conservative faction will have dissolved." (See p. 43, above.)

In the mid-1970s, forty years after LaFarge's prediction, the traditional Hopi leaders had overcome by refusing to disappear. They continued to command widespread respect, and they mounted counter-attacks on the legitimacy of the Council. (Exhibit 129.) The strength of the traditional leaders would be demonstrated at the time attorney John S. Boyden would propose a settlement of Docket 196 in 1976.

The final days of the Docket 196 case began at a secret meeting of August 4, 1976, attended by the Hopi Tribal Council, the Superintendent of the BIA Hopi Agency, and attorney John S. Boyden. No minutes of that meeting have been made public. The following discussion of what transpired was reported by the BIA Superintendent to the Secretary of the Interior in a memorandum prepared some three months later (Exhibit 130):

> [Mr. Boyden] had discussed [a proposed settlement of Docket 196] in detail with the Hopi Tribal Council at an August 4, 1976 meeting wherein authorization was given to settle the case at a figure not less than $5,000,000.00. Detailed minutes of that meeting were not taken as the authority was considered as a matter of confidential attorney and client relationships not to be disclosed until after negotiations had been completed. I attended the said August 4, 1976 meeting at the invitation of the Chairman of the Hopi Tribe.

Once again it is seen that attorney Boyden considered only the Hopi Tribal Council as his clients. The rest of the Hopi people were

excluded from this highly important "confidential attorney and client matter."

Despite the fact that settlement efforts in the Docket 196 case were well under way at the beginning of August 1976, no public notice of that fact was made until October 14, two and one-half months later.

Beginning on October 14, 1976, a well-orchestrated plan was begun to rush the settlement through a rubber-stamp approval process which would give the appearance of widespread approval by the Hopi people. The proposed settlement was first made public at a "regularly called" Hopi Tribal Council meeting held on October 14 and 15, during which Boyden advised the Council to accept a $5,000,000 offer made by the United States in the Docket 196 case. According to a BIA report of that meeting, the Council voted unanimously to accept the settlement offer.

The BIA Superintendent then issued a call for a general Hopi meeting to be held on October 30, 1976, "to consider and vote upon a proposal to settle" the Docket 196 claims. Notices were immediately posted announcing the meeting.

In response to these sudden developments, 35 traditional Hopi leaders met at Kyakotsmovi on Sunday, October 24, 1976. They called the meeting in order to give the Hopi Tribal Council chairman and the BIA Superintendent an opportunity to explain why the Hopi people were being asked to vote on the proposed settlement. Both of these officials refused to attend. The day after their meeting, the traditional leaders

sent a letter to both the Council chairman and the BIA Superintendent, which demanded that no vote be held on October 30. First, the letter criticized the refusal of the two men to attend the meeting called by traditional leaders. Second, it challenged the BIA Superintendent's claimed impartiality:

> We found that BIA Supt. Secakuku in his letter of Oct. 23, 1976, stated, "I do not wish to prematurely make my personal views known so as not to unduly influence anyone."
>
> As an official of the Bureau of Indian Affairs (BIA) you have no business meddling with our Hopi Affairs.
>
> We have learned that you are not telling the truth in your letter for we now know that you have already held a meeting with the government Hopi employees and some people from First Mesa. You have already "unduly influenced" some of the people you talked to in Keams Canyon. [Exhibit 130A.]

Added to this "undue influence" of the BIA Superintendent was his involvement in the secret Council meeting of August 4, 1976, and his cooperation in planning and calling an early meeting as requested by Boyden and the Council. The BIA had been clearly partial, willing to work and meet only with the Council group.

The same letter included specific traditional Hopi objections to the planned October 30 meeting, including a protest over the fact that it was being held on the day of an important religious ceremony in the strongly traditional village of Shungopavy:

> Following our serious consideration of the proposed settlement and other related issues, we have been asked by our religious headmen and people that:
>
> 1.) As Hopi Kikmongwis, we strongly oppose this proposed settlement of John S. Boyden and that we will never sell our sacred homeland.

2.) Both Hopi Supt. Alph Secakuku and Chairman of the Tribal Council Abbott Sekaquiptewa be informed by letter that there will be no voting by any Hopi on Oct. 30, 1976 on this proposed settlement, as was scheduled.

3.) We have just been informed about this proposed settlement of John S. Boyden's a week ago and since none of the Councilmen have up to the present time, fulfilled their duties by fully explaining this vital issue, it is too late for any Hopi, especially traditional elders, to fully understand this lawyer's written language within two weeks.

Therefore, there must be no voting on this proposed settlement at this time or in the future.

4.) On Oct. 30, 1976, there will be a Women's Religious Society performing in Shungopavy Pueblo and our religious Hopi leaders all have asked that this Lollcon Ceremony be respected by all Hopi people, by members of the Council and the BIA.

5.) Since the majority of the people in traditionally established Pueblos have never accepted the Hopi Tribal Council Constitution and By-Laws, never signed a contract or contracts of John S. Boyden's and have never sent anyone to the Tribal Council, we will never accept the $5,000,000 by voting, as we do not vote.

6.) It is your responsibility as servants to the Hopi people to do what the Hopi people want and not what you want.

On October 28, 1978, the newspaper Qua' Toqti carried a headline story about this letter and the opposition of the traditional Hopi leaders to the October 30 meeting. The meeting was not, however, cancelled. Instead the BIA Superintendent continued to broadly advertise the meeting, placing written notices as far away as Phoenix, Arizona, and running announcements on the local radio and television networks.

Despite all of these publicity efforts, an official total of only about 400 people attended the October 30 meeting, out of a total population of about 8,000 Hopis, and only 250 stayed to vote at the end of the meeting.

At the meeting attorney John S. Boyden distributed a variety of written materials in support of the settlement proposal. An extremely noteworthy inclusion in these materials addresses the possible damag-

ing effect which Docket 196 might have on Hopi land rights if allowed to continue in the courts. At the time of the October 30 meeting, the Docket 196 case was pending in the United States Supreme Court, and Boyden was afraid that a Supreme Court ruling would be a "considerable danger" to the Hopis because it might give more support to the Indian Claims Commission's findings on the extent of Hopi aboriginal lands and the extinguishment of Hopi title to those lands. Such a ruling could, Boyden reasoned, be used against the Hopi Tribal Council in their suit against the Navajos.

In short, Boyden admitted that the actions already taken by the Indian Claims Commission in Docket 196 were damaging to Hopi aboriginal land rights. He hoped to minimize the damage by settling the case before the Supreme Court placed its final imprimatur on the decisions already made by the Indian Claims Commission and the Court of Claims in Docket 196.

In admitting that Docket 196 presented a legal threat to Hopi land rights, Boyden was acknowledging what traditional Hopi leaders had feared all along. Traditional Hopi leaders had not believed Boyden's earlier arguments that Docket 196 posed no threat to Hopi land rights, and they were certainly not going to agree with his new argument that it would be necessary for the Hopis to take the settlement money in order to preserve whatever legal rights remained before the Supreme Court did further damage in the Docket 196 case.

One Qua' Toqti account shows how the Hopis were presented with this confusing and perplexing legal advice by this strongly "progressive" newspaper:

> The Tribal attorney Boyden stressed the fact that although the Hopis are being offered money for the land, that does not mean the Hopis are selling the land because the Hopis by going to court to recover some of the 1934 Reservation land, they stand to recover some of the land for which they would have already been paid.
>
> He urged the Hopis to consider the offer of cash settlement* carefully and consider what might be the consequences if they preferred to go to court and lost the case.[Qua' Toqti, October 14, 1976]

An editorial from Qua' Toqti which appeared two days before the October 30 meeting also urged approval of the settlement on the ground that it would help preserve Hopi land rights. It took issue with the traditional Hopi leaders who continued to categorically oppose any payment of money in Docket 196, but it acknowledged that there was a consensus among the Hopi people against exchanging land rights for money:

> Many of the people, particularly the "so-called traditionalists" are saying that they will never consent to selling our Mother (our land) for any amount of money. But then, that is the general feeling among all the people.
>
> However, the big problem is that, unless we accept the negotiated cash settlement, we may greatly lessen our chances to recover any of the aboriginal land.[Exhibit 131]

With traditional Hopis boycotting the meeting of October 30, with some 2,500 Hopis reportedly attending the religious ceremonies at Shungopavy, and with those Hopis in attendance at the meeting being told that they must immediately accept the money settlement if they wished to preserve Hopi land rights, it is understandable that the final vote favored approval of the settlement. Yet, by the end of the

*In recommending approval of the $5 million settlement, Boyden estimated that the Indian Claims Commission would award about sixty cents ($.60) per acre for the 2,191,304 acres of land extinguished in 1882, and about one dollar ($1.00) per acre for the 1,868,364 acres extinguished in 1937 when District 6 was established.

meeting many of the 400 in attendance had left, leaving only 250 present to vote. The final official tally was 229 in favor and 21 opposed to the settlement.

This vote of approval was a foregone conclusion but hardly a show of strength. Rather, it was another demonstration that in Hopi country, voting and democracy have had little in common.

On the strength of these results, a hearing on the settlement was scheduled for November 11, 1976, at the Indian Claims Commission's offices in Washington, D.C. Those who were present at that meeting in support of the settlement were attorney John S. Boyden, BIA Superintendent Alph H. Secakuku, BIA employee Nathan Begay, Hopi Tribal Council chairman Albert Sekaquaptewa, and several other delegates from the Hopi Tribal Council, including Samuel Shingoitewa, Roger Honahni, Dewey Healing, George Nasanotie, and Logan Koopee. It goes without saying that travel funds were not supplied to those traditional leaders who might have wished to be present to express their opposition to the settlement.

Opposition was, however, clearly expressed in a telegram of November 9, 1976, which was sent from Mina Lansa, Kikmongwi of Old Oraibi, Claude Kewanyema, Kikmongwi of Shungopavi, Ned Nayatewa, Kikmongwi of First Mesa Villages, and Guy Kolchaftewa, religious leader of Mishongnovi. Their telegram to the Indian Claims Commission, the Secretary of the Interior and the U.S. Department of Justice, reads as follows:

On behalf of all the Hopi traditional Kikmongwis, religious society Mongwis and all the Hopi people who follow the old traditional Hopi way, we solemnly express our disapproval of the proposed settlement between the Hopi Tribe and the United States of America, in Docket No. 196.

We do not accept the authority of the Hopi Tribal Council to represent the Hopi people. We have never signed or authorized the contract of Mr. John S. Boyden, nor have we ever authorized him or the Hopi Tribal Council to enter into any land settlement. We have not authorized five or more Hopi individuals who will appear before you on this proposed settlement. We solemnly declare now that whatever they agree to, will not be binding on all of us and the Hopi people whom we represent.

Our respective villages have exercised their own sovereignty since the beginning of our time. We have never given up our sovereignty by treaty, nor have we lost it by war or otherwise. We have always exercised the right of sovereign civil government over our village and clan lands through our religious organizations.

The publicity given for only one week and the hearing held regarding the proposed settlement was clearly inadequate to inform all the Hopi people or to allow them to express their opinions. In addition, all of the religious leaders and many of the Hopi people were deeply involved in a religious ceremony which conflicted with the date of the hearing and prevented their appearance. Claude Kewanyama, Kikmongwi of Shungopovi so stated to the chairman of the Tribal Council but this was ignored. We therefore submit that the vote of some 250 Hopis out of a tribe of 8,000 members, taken at the hearing is not truly representative of the opinions of the majority of the Hopi people.

Our religious traditions and prophecies prohibit the Hopi people from giving up any claim to our ancestral lands for mere monetary consideration and letters and petitions from hundreds of Hopi people who oppose the proposed settlement and in support of this message will follow shortly. [Exhibit 131A.]

At the November 11, 1976, hearing before the Indian Claims Commission, this telegram was discussed by those present.* This telegram was

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*A letter of protest from an American Indian Movement observer of the October 30 meeting was also discussed at that time.

totally disparaged as evidenced by these comments made by one of the Commissioners at the hearing:

> I would not want the record to show that that is anything--that this sort of evidentiary material is anything the Commission should give any consideration to.
>
> This is the time for hearing the question of whether or not the settlement should be approved. And I think that clearly, the Chairman, Mr. Sekaquaptewa, has ably represented the Tribe for years, as have you, Mr. Boyden, and I have no doubts at all that the matter was done in a perfectly proper way.
>
> I think this sort of thing causes the Commission and the whole process of the settlement of Indian claims a great deal of difficulty.
>
> I think the Government has acted in a very mature way in settling this case and, of course, we are grateful to all of the matters that pertain to it, but this really came in from left field--and it's nothing but a red herring.
>
> If Mina Lansa is intelligent enough to debate these matters on television, before the members of the Tribe, she certainly knows the place to oppose this hearing. This is simply propaganda.[Docket 196 Hearing transcript, November 11, 1976, pp. 41-42; emphasis added]

None of the Hopi Tribal Council representatives present made any statement to challenge this biased and disrespectful slur on traditional Hopi leaders. Rather, through their silence and their own references to the traditional Hopi leaders as "the dissident group," these Council representatives helped create the atmosphere in which a protest statement of Hopi Kikmongwis was dismissed out of hand as "a red herring" which was "simply propaganda."

As promised in the telegram, a petition signed by over 1,000 Hopis did follow. On December 13, 1976, the Indian Claims Commission

received a petition opposing the settlement of Docket 196 which was signed by 1,047 Hopis, almost five times the number who had voted in support of the settlement at the October 30 meeting. (Exhibit 132.)

The traditional Hopi leaders who submitted this petition to the Indian Claims Commission, the Secretary of the Interior and the Department of Justice, expressed the same views as those set forth in the telegram of November 9. In addition, they once again explained that the low vote of 250 in favor of the settlement had in fact been evidence of widespread Hopi opposition to the settlement:

> It is also our Hopi custom that when we object and reject a proposal, we stay away from it to express our profound disapproval in a more personal way. To the Hopi People, this behavior and trait indicates not a matter of indifference or "we don't care attitude," but in a deeper sense, our tribal vote against a proposed settlement. This was another reason why so few Hopi People attended the hearing on October 30, 1976. In order to prove that this disapproval was indeed the case, we have asked our people to sign petitions so that our disapproval of the proposed settlement could be expressed in a more acceptable manner to the United States of America. We realize that it is difficult for you, members of a foreign people, to understand our Hopi custom but it is also true that we have a diffult time understanding your customs.

The traditional Hopi leaders once again challenged the legitimacy of the Hopi Tribal Council, and ended their letter and petition with these words:

> Finally, we solemnly and cordially invite you to come to our homeland, to sit down with us and consider this whole matter with us. This invitation is again in accordance with our Hopi Traditions. We were told that when the time came for land to be considered, you will come to us and so in accordance with that tradition, we cordially invite you to come.

The petitions were filed in Washington and ignored. When the Indian Claims Commission's approval of the settlement was submitted to Congress on December 30, 1976, there was no mention of the traditional Hopis' position.

31. ANOTHER TRADITIONAL HOPI PETITION TO THE UNITED STATES PRESIDENT

A few weeks after the settlement was approved by the Indian Claims Commission in Docket 196, another petition of protest was sent to another United States President. Jimmy Carter had just been sworn in to office when a letter of January 31, 1977 was sent to him from the Hopi Independent Nation by Thomas Banyacya, Interpreter for the traditional leaders. (Exhibit 133.) Included in his letter are the following requests:

> We urgently and respectfully request your new administration to review the entire scope of relations with the Hopi.
>
> The Hopi never fought against the United States Government, were never conquered, and never signed a treaty or surrendered autonomy. The peaceful Hopi Independent Nation does not consider itself lawfully subject to the United States Government. We respect the laws of the Supreme Creator.
>
> Mr. President, our Black Mesa is being strip-mined, the original Hopiland devastated by Federal imposition, and our people--strong spiritually but weak economically--are at the desperate point of a last stand. Court decisions are being made without reference to the concurrence of the majority of those governed by the court. The most urgent and immediate concern is a pending decision for February by the Tucson Federal Court to disrupt the entire Hopi land and life, uprooting us, and promoting violent resistance as a last recourse. Also the Land Claims Commission is forcing a settlement under the guise of the Tribal Council which will

destroy the spiritual land base of the Hopi people. The spiritual leaders would no more think of selling their mother earth than the United States would give up its national historical shrines.

Only you, Mr. President, can begin an investigation to ascertain for yourself the facts of our plight.

No investigation was undertaken by the President. One month later, United States District Judge James A. Walsh ordered the partitioning of the Joint Use Area of the 1882 Hopi Reservation under Public Law 93-153. (See p. 163.)

Friction and boundary disputes increased as the Hopi Tribal Council police impounded Navajo cattle and took other steps to secure the lands they were fighting over.

And at the same time, on February 28, 1977, President Carter submitted to Congress a request for appropriation of the $5,000,000 settlement in Docket 196. The Docket 196 appropriation request was listed in his submission as "Compensation for land."

Once again, traditional Hopi leaders had petitioned a United States President, and once again their petition had fallen on remarkably deaf ears.

32. ATTORNEY'S FEES FOR JOHN S. BOYDEN

On April 22, 1977, attorney John S. Boyden submitted his application for attorney's fees to the Indian Claims Commission. His lengthy Petition for Attorney's Fees asked for the maximum allowable: 10% of the $5,000,000 settlement award in Docket 196.*

In his petition, Boyden lists a number of factors in support of his request for the maximum fees. Among these factors is the resistance he encountered from the traditional Hopi community:

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*The Washington, D.C. law firm of Wilkinson, Cragun & Barker had been of counsel in Docket 196. They joined Boyden and his firm of Boyden, Kennedy, Romney & Howard of Salt Lake City, Utah, in the Petition.

> Additional complications were presented to the attorneys by the conflicting Navajo claims and by the factional division of a major segment of the Hopi population and the refusal of the majority of the tribal members associated with the so-called "traditional" faction to cooperate in any way with the preparation and presentation of this claim.
>
> .....
>
> Counsel was also confronted with a complete lack of cooperation from a major, traditional faction of the Hopi Tribe.

This argument is identical to the argument made in support of his first million-dollar fee which the Hopi Tribal Council approved in December 1964, after the first mineral leases were obtained. (See p. 137.) It demonstrates that Boyden still saw himself as counsel for only one group of the Hopis, the Hopi Tribal Council "progressive" faction. And it shows again that he had full knowledge of the fact that the traditional Hopis did not accept him as their counsel or approve of his work in the Docket 196 case. Moreover, Boyden's own words confirm that the traditional Hopis continued to be a "major segment" or "major faction" of the Hopi people, an admission that they were not a small, dissident group as they had often been characterized.

On July 27, 1977, the Indian Claims Commission approved a 10% attorney's fee award of $500,000 for John S. Boyden and the attorneys associated with him in the case. In October 1977 Boyden received this money. He also received an additional payment of $20,000 which had been authorized as "attorney's expenses" for the expert witness fees of anthropologist Dr. Fred Eggan who assisted Boyden in Docket 196. This left a total of $4,480,000 to be paid to the Hopis.

The work which John S. Boyden had done over the years for the Hopi Tribal Council has proved to be extremely remunerative. Apart from the million-dollar fee approved by the Council in 1964, and the $54,000 award of back attorney's fees budgeted by the Council in 1965 (see p. 142), and the $500,000 received in 1977, Boyden had also successfully lobbied for statutory attorney's fees in Public Law 94-531. He has received from the U.S. government a reported $350,000 for his work in the litigation he has brought against the Navajos on behalf of the Hopi Tribal Council. Added to these considerable sums are the regular attorney's fees and expenses Boyden has received each year as general counsel to the Hopi Tribal Council and any special fees which may have been authorized for his work on mineral leases, the enforcement of the Healing v. Jones decision, and other matters of concern to the Council. In the fall of 1978 the Hopi Tribal Council passed a resolution authorizing attorney's fees of $140.00 per hour for Boyden's legal work against the Navajos.

A Freedom of Information Act demand for a specification of all attorney's fees paid to the Council's attorney has been denied by the BIA on the ground that it is a confidential matter which the BIA must keep secret as a part of its "trust responsibility" to the Hopis. This secrecy is completely inconsistent with the Hopi Constitution which provides that "all payments from the tribal council fund shall be a matter of public record at all times." [Article VI, Section 1(f).] Since the Secretary of the Interior expressly approved the Hopi Constitution and made it law in 1936, and since he has also approved all of the attorney contracts made between the Hopi Tribal Council and John S.

Boyden, and since he has also reviewed and approved all attorney's fees paid to Boyden under these attorney contracts, it is strange and even suspicious that the Department of the Interior suddenly takes the position that this information is secret or confidential. The Indian Law Resource Center has filed suit against the Secretary of the Interior to compel disclosure of the attorneys fees information.

33. THE PAYMENT OF THE DOCKET 196 AWARD THREATENS HOPI LAND RIGHTS

As interest in the traditional Hopis has grown in the non-Indian community, more and more protests and requests for information have been sent to the Indian Claims Commission, to Congress and to the President. The most recent actions in Docket 196 and the partitioning case have been followed by thousands of protest letters, telegrams, and petitions to Washington, D.C.

The catch phrases in the official answers to these letters, petitions, and requests for information show that the United States intends to continue obfuscating the issues by telling only half-truths about the effect of payment of the Docket 196 award. Some of the standard responses issued by the BIA and the Indian Claims Commission are the following:

> The settlement of Docket 196 does not involve the sale, disposition, lease or encumbrance of any tribal lands or other property. The settlement can have no effect on the Hopi Tribe's existing interest in land or the uses to which its land is put.
> ...
> In the settlement of Docket 196, the Hopi Tribe did not forego claims for land--no claim for the return of land was involved in the case.
> ...
> The settlement of the case does not involve the sale or other disposition of any land or other Hopi property.

It is true that no "sale" of Hopi land is taking place in the strict legal sense of that word. There is no deed changing hands; no document will be filed in a courthouse showing a transfer of title

from the Hopis to the United States, if payment of the Docket 196 award is made.

It is also understandable that the United States government takes the position that the settlement will have no effect on the Hopis' "existing" interest in their aboriginal land, because the United States asserts there is no Hopi interest in aboriginal land which still exists today. Although there has been no legal test of Hopi aboriginal land rights under domestic and international law*, the United States government rests its position on the assumption that all Hopi aboriginal land rights have already been legally extinguished by the United States government. If discussion of the possible adverse consequences flowing from Docket 196 begins with that premise, it is "truthful" to conclude that payment of the Docket 196 award does no damage to Hopi land rights, for there are no rights to damage.

However, if one begins a discussion of the effect of Docket 196 on Hopi land rights with an open mind which recognizes that there has been no definitive test of Hopi aboriginal land rights, that Hopi land claims may still be valid legal claims under United States law and international law, the possible effect of payment of the Docket 196 award is readily seen as disastrous. The threat comes from the Indian Claims Commission Act (25 U.S.C. 70u), which specifically bars any further Hopi claims once payment of the award is made:

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*In Docket 196 both sides argued that Hopi aboriginal land rights have been legally extinguished.

> The payment of any claim, after its determination in accordance with this chapter, shall be a full discharge of the United States of all claims and demands touching any of the matters involved in the controversy. (25 U.S.C. 70u.)

Under this statute, the payment of the Docket 196 award discharges all legal obligations which the United States has toward any matters touched upon during the Docket 196 proceedings. Since those proceedings determine that virtually all Hopi aboriginal land rights have been extinguished, that determination threatens to stand as a final and permanent conclusion of law which Hopis may not again be allowed to test in any other legal proceeding in United States Court.

Moreover, some United States courts have ruled that the Indian Claims Commission's findings of extinguishment are binding in other court proceedings where rights to that "extinguished" land are being contested by Indians seeking return of that land. This danger was disclosed by attorney Boyden in the October 30, 1976, meeting at which he expressed his fears about the Supreme Court adding its approval to the extinguishment findings already made in Docket 196 by the Indian Claims Commission and the Court of Claims.*

Thus, as a matter of law, it is only a half-truth to say that no "sale" of Hopi land rights are involved in Docket 196. The payment of the Docket 196 settlement award would extinguish or substantially impair any Hopi legal claims to the return of their aboriginal lands. The net

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*In fact, the Navajos have sought to use the extinguishment findings against the Hopi Tribal Council in their litigation over land rights in the 1934 Navajo Reservation.

legal effect would be an exchange of money for land as the traditional Hopi leaders have always feared.

Although the United States government and the BIA have never squarely faced this issue and formally admitted these possible severe adverse consequences, the Solicitor's Office of the Department of the Interior has expressed its "tentative" conclusion in a hearing before a U.S. Senate committee at which payment of a Seminole award by the Indian Claims Commission was at issue:

> We feel tentatively that it would be inconsistent with the whole purpose of the Indian Claims Commission Act to grant awards of money for aboriginal rights and then keep those rights intact after that award was completed and the moneys were distributed.*

This is as candid and truthful as the United States has been in its official pronouncements on the effect of payments of claims awards such as Docket 196 on Indian land rights.

If payment of the Docket 196 award is made over their objection, the traditional Hopi people and the Hopi Kikmongwis will have many strong legal arguments to make in any future proceedings at which the Docket 196 case is used against them. There is a clear documentary history of traditional Hopi objection to the Docket 196 claim and to the actions of the attorney who asserted the claim on behalf of the Hopi Tribal Council. The illegality of the Hopi Tribal Council which prosecuted the claim has been established. It can be shown that the Docket 196 case was begun with misleading assurances that it might lead to recovery of land, and it can further be demonstrated that the Hopi

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*Distribution of Seminole Judgment Funds, Hearing before the United States Senate Select Committee on Indian Affairs, 95th Congress, 2nd Session, March 2, 1978, p. 58.

people have been deliberately misled about its possible adverse consequences to their land rights. The very settlement approval vote was demonstrably a sham. Finally, the historical record shows that all attempts on the part of traditional Hopi leaders to intervene in the Docket 196 proceedings and to stop the continuance of those proceedings were dismissed or disregarded out of hand. There has been a total denial of due process under United States law, and a subversion of Hopi rights and sovereignty under international law.

While all of these arguments of illegality could be made if payment of the Docket 196 award is made, it would not be necessary for the traditional Hopis to make these arguments if payment can be stopped. For that reason, the traditional Hopis and their supporter have continued and intensified their opposition to payment.

34. ANOTHER PETITION SENT TO PRESIDENT CARTER

The traditional Hopi leaders have recognized the legal damage which payment of the Docket 196 award could inflict on aboriginal Hopi land rights. They have also recognized the practical adverse consequences which would flow from acceptance of money, for they recognize that the general public would view the payment as the final settling of an old debt.

However, the principal objection which the traditional Hopi leaders have always made to the payment of such a claim award has

been based on their sovereignty and the interrelated religious obligation to avoid any actions which may be construed as a sale, division, or surrender of any of their historic and sacred lands. These principles are the central theme which has run through all Hopi resistance to United States interference with Hopi land rights. It was the core of the fight against allotment in the early 1900s, against the establishment of the Hopi Tribal Council in the 1930s and 1950s, against mineral leases and strip-mining in the 1960s, against the division and partitioning of Hopi land in the litigation between the Hopi Tribal Council and the Navajo Tribal Council in the 1960s and 1970s, and against Docket 196 from its inception in 1951 to the present.

One of the most eloquent and concise statements of these traditional Hopi principles is found in a petition sent to President Jimmy Carter in October 1977.

> Mr. President:
>
> We address you as a representative of all citizens of the United States in a final attempt to establish right relations between our religious, traditional, sovereign nation and yours. We are the spokesmen and clan guardians for the Kikmongwi and other leaders of the highest religious societies of the village of Shungopavi, in the Hopi Nation. Our Hopi Kikmongwis have appealed to the Presidency and government agencies many times in the past, but their earnest pleas, statements, invitations and warnings have not received any reciprocally thoughtful response.
>
> As our prophecies have foretold, we now find we have reached very perilous times. Our way of living in harmony with the earth and all other life forms and our way of holding our land in common and in trust for all people and all future generations is in immediate danger of extinction. As a result of the Indian Reorganization Act of 1934, a "Hopi Constitution" was drawn up by B.I.A. anthropologists and aides and imposed upon the Hopi people through

a fraudulent election which has never been investigated. It is important for you to understand that we already have our own form of government and decision-making, and that your "democratic" way of majority rule is alien to us. Also foreign to us is your "separation of church and state". Our Hopi way is to recognize the Great Spirit as our supreme leader in all facets of life. We do not divide God and man, religion and politics. All aspects of our relationship to land and life are intertwined.

As a result of the "Hopi Constitution," a "Hopi Tribal Council" was created. During its first year of operation, representatives were sent from two of the traditional villages to determine if this council would be operating as promised, by consulting with the Kikmongwis before making any decisions affecting the Hopi people. When it was discovered that they were to function basically as a branch of the United States Government, in effect a puppet government, with the Secretary of Interior as their ultimate authority, those villages withdrew their representatives. The "Hopi Tribal Council" has never been a legally constituted body according to their own constitution since 1937. However, it is through that body that we are now brought to these critical times. Their attorney and main advisor, since 1951, has been Mr. John S. Boyden, whose contract has never been authorized by the Kikmongwis. In all actions, legal and political, that the council has undertaken in the name of the Hopi Tribe they have not had the authorization of the true and rightful Hopi Leaders. It is now clear to us that the Tribal Council, in concert with Boyden, have conspired to divide, fence, and sell this land, our birthright, and to profit thereby. To us, it is unthinkable to give up control over our sacred lands. We have no way to express exchange of sacred lands for money. The Hopis never gave authority to anyone to dispose of our lands and heritage and religion for any price, and never will. The Hopi were given special guidance in caring for our sacred lands so as not to disrupt the fragile harmony that holds things together. We received these lands from the Great spirit and we must hold them for Him, as a steward, a caretaker, until He returns.

Now we have been made fully aware that their ultimate intention is to strip the Kikmongwis and traditional, religious leaders of all power and authority over our land and life. It is felt by most of the Hopi elders and people that something must be done now to stop the dictatorial manner in which the "Tribal Council" has been operating. The views, opinions, and wishes of the traditionally established village people have been totally ignored and this is a violation of freedom of speech and religion, our basic human rights.

We are writing to you now in respect to, and support of, our Kikmongwis and Traditional, Religious Leaders and their many patient

and peaceful appeals. We feel another communication from them should not be necessary. Further, we write you because you have often expressed your commitment to human rights and protection of the environment and we find our rights, indeed our very existence as a people, on the land, in jeopardy. We would like to remind you of a promise made by your predecessor Harry Truman, in 1946, when he said, ". . . It would be a miracle if . . . we had not made some mistakes and occasionally failed to live up to the precise terms of our treaties and agreements with some 200 tribes. But we stand ready to submit all such controversies to the judgment of impartial tribunals. We stand ready to correct any mistakes we have made." We know there have been many treaties made between the United States and Native Peoples, a treaty with the Navajo Nation and a treaty of Guadalupe Hidalgo made between the United States and Mexico in 1848. We want to know if you are still honoring these treaties. Because it is within the authority of your office to correct any unjust laws and acts we urgently request that you meet with the Traditional Hopi Leaders, and in addition, call for a Congressional investigation into all U.S. Government dealings with the Hopi People.

We feel that for a full understanding of our plight, the nature of our religious society, and the basis upon which our Kikmongwis' authority rests, and as a fulfillment to our prophecy, you must come to our villages in person to meet with our leaders and our people. As our Kikmongwis are concerned about all Hopi people and you are concerned for all your people, it is important that you meet together now to prevent the dangers we foresee for this land and life if things are not worked out. We ask that you deal honorably with us and see that justice is done. The hour is very late.

We, the spokesmen and clan guardians for the true traditional Religious leader, Kikmongwi Kewanyama, stand bound together, state and affirm the above and apply our signatures below: [Exhibit 134.]

This petition was signed by four traditional Hopi leaders, Harold Koruh, Otis Polelonema, Herbert Talaheftewa, and Earl Pela.

No action was taken by President Carter.

CONCLUSION

It has been one hundred thirty years since the Treaty of Guadalupe Hidalgo, and almost one hundred years since President Chester A. Arthur established the 1882 Hopi Reservation. During that time the traditional Hopi leaders have time and again registered their complaints and protests with the United States government. During the past thirty years each United States President has received petitions from these Hopi leaders.

Routinely these petitions have been channeled for response and action to the Bureau of Indian Affairs of the Department of the Interior, the very source of most of the policies and practices which have been the subject of these Hopi grievances. It is the BIA which deliberately undermined Hopi sovereignty and failed to guarantee Hopi territorial integrity and human rights, and it is the BIA which imposed a fraudulent election in order to create the Hopi Tribal Council in 1936. The BIA has consistently worked with attorney John S. Boyden to advise, shore up and maintain the Council and the "progressive" faction of the Hopi people.

As a part of the Department of the Interior, the BIA has always been committed to the strip-mining of Hopi coal in the "national interest." With the blessing of the federal courts, the BIA and the Department of the Interior have repeatedly subverted and deprecated all legitimate Hopi opposition to the blatant exploitation of their sacred lands and resources. Moreover, it appears that the BIA has been wilfully blind to conflicts of interest and perhaps even fraud in the Hopi mineral development business.

To accomplish its goals, the BIA has over the years adopted policies which have aggravated Hopi-Navajo competition and friction. These policies have been beneficial only to lawyers and mineral development interests. They have created perpetual turmoil and hardship for thousands of Hopis and Navajos.

To create the appearance of fair dealing and restitution for past wrongs -- and to remove the clouds on land titles caused by Indian land claims -- the BIA fostered and nurtured the Docket 196 claim in the Indian Claims Commission. This claim, handled by attorney Boyden, has resulted in a judgment of $5 million as compensation for the wrongful taking of some four million acres of valuable Hopi lands. The BIA is unconcerned by the fact that payment of this judgment threatens to extinguish Hopi title and claims for return of Hopi lands, and the BIA has actively sought to obscure this fact.

If the most recent Hopi requests for remedial action by the United States President are once again simply referred to the sole attention of the Department of the Interior and its Bureau of Indian Affairs, the refusal of the United States government to deal in good faith with the Hopi people will be amply and conclusively demonstrated. On the other hand, the Hopi situation presents an opportunity for new directions in Indian Affairs. If the present Administration chooses to change course and discard the colonialist policies and practices which have so frequently characterized the U.S. Indian program in Hopi country, there is every opportunity for the establishment of a new and mutually beneficial United States-Hopi relationship.