

NATIONAL ARCHIVES, BIA. Record Group 75
Classified Files, 1907--. File Mark
10527-37-066 Navajo.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

March 5, 1937.

MEMORANDUM: Recommending Plan of Administration for Hopi
and Navajo Reservations.

* * * * *

III

General Principles Underlying Proposed Set-up: With these factors conditioning the problem as outlined in Section II, and with the general background of the problem, as outlined in Section I, it is intended that this plan shall rest upon the following principles:

* * * *

2. That all administrative matters which affect the Hopis and Navajo Indians jointly shall be distributed between the two superintendents on the principle that the Hopi Superintendent will have jurisdiction throughout District #6, and that the Navajo Superintendent will have jurisdiction in the other land management districts. This arrangement will be tentative until the definite boundary of the Hopi-Navajo reservation shall have been determined. This arrangement is established as a matter of administrative expediency and convenience and shall not be construed in any way as fixing an official boundary between the two tribes, or as prejudging in any way the boundary which is ultimately established. (emphasis added)

* * * *

Recommended for approval by the undersigned:

W. G. McGINNIES
W. G. McGinnies, Director, Land
Management Service, Navajo Service

E. REESEMAN FRYER
E. Reeseman Fryer, Supt. Navajo Service

ALLAN G. HARPER
Allan G. Harper, Field Representative

A. G. HUTTON
A. G. Hutton, Supt. Hopi Reservation

Approved: JOHN COLLIER, Commissioner

Date: 3-3-37

EXHIBIT 16a

Wilmington Federal Records Center.
BIA. Field Records. Navajo Service,
Window Rock, Ariz. FRC No. 72954.

62000-35-301
(Amended 1-28-38)

16092

UNITED STATES
DEPARTMENT OF THE INTERIOR
Office of Indian Affairs
Washington

GRAZING REGULATIONS
FOR THE NAVAJO AND HOPI RESERVATIONS

(Approved June 2, 1937)

Authority:

The Secretary of the Interior has the authority to regulate the grazing of livestock on tribal lands within Indian reservations so as to prevent overgrazing and the destruction of the soil through erosion. * * *

Hopi Reservation:

For the purpose of these regulations District 6, as now established by the Navajo Service, shall constitute the Hopi Reservation until such time as the boundaries thereof are definitely determined in accordance with Article I of the Constitution and By-laws of the Hopi Tribe. (emphasis added)

(Sgd)

JOHN COLLIER

Commissioner of Indian Affairs

Approved: June 2, 1937

(Sgd) OSCAR L. CHAPMAN,

Assistant Secretary of the Interior

EXHIBIT 16b

Gallup Area
Off. Files

Window Rock, Ariz.
July 20, 1937.

Mr. A.G. Hutton, Superintendent
Hopi Indian Agency
Keams Canyon, Arizona

Dear Mr. Hutton:

I feel rather negligent in this Hopi-Navajo Boundary matter. I had intended, long before this, to make a trip over to Keams Canyon and discuss with you a number of things which need to be "ironed out" relative to Navajo and Hopi use. As you perhaps know, I went in to Washington for what was presumed to be a week's business, and was held over for the Senate Committee's inquisition which lasted, in all, almost six weeks.

None of our people have any authority beyond that which has been recognized by both you and myself to make any decision relative to Navajo-Hopi boundary matters.

The new Grazing regulations provide that, for the purpose of the regulations only, District 6 shall be considered as the Hopi Reservation. These regulations, as you will note, were also drawn with careful consideration of Article I of the Hopi Constitution, which provides for the determination of the reservation in fact only by triangular action of the Hopi Council, the Navajo Tribal Council, and the Commissioner of Indian Affairs.

District 6 should not be recognized by any of our people as being a reservation. It is merely an area which defines land use as between Navajo and Hopi Indians. If you will let me know when it is convenient for you, Mr. McGinnies and I will come over to Keams Canyon, and attempt to work out with you a scheme which, as nearly as possible, will be agreeable to both sides. (emphasis added)

E.R. Fryer
General Superintendent

cc-W.G. McGinnies

EXHIBIT 16c

BIA, Classified File
15175-38-301 Hopi

NAVAJO SERVICE
Window Rock, Arizona
August 25, 1937

MEMORANDUM TO: Mr. Hutton, and District Supervisors Frazer, Griffin, Thomason, and Stocks

At a meeting which Mr. McGinnies and I held on August 12 with Superintendent Hutton and the Hopi Council, it was evident that much confusion exists as to the exact meaning of the boundaries of District 6. The belief seems to exist, among the Hopis, that the Navajo Service has created a reservation for the Hopi Indians; that, as a consequence to this assumed action, all Hopi Indians living outside of District 6 would be forced back inside of this boundary. Nothing is further from the truth.

District 6 is just another Land Management District. We did attempt to include all Hopi range use. In several instances, however, this was impossible and there are still Hopi Indians living outside of District 6 ranging their stock and farming in other land management districts.

Hopis living in Districts 3, 4, 5 or 7 would have range rights equal to the Navajos in those districts. By the same token, Navajos living in District 6 (and there are many of them ranging their sheep well within the boundaries) would have the same rights and privileges as the Hopis. District boundaries merely hold existing use in status quo.

While from the land management standpoint District 6 is identical to all other districts, from a strictly administrative standpoint it is entirely separate from all other districts. Hopi Indians are responsible only to Superintendent Hutton, who is in no way administratively responsible to the Navajo Agency.

As previously stated, Hopis living in Districts 3, 4, 5, and 7 would have status identical to that of the Navajos: their livestock will be charged to those districts. They will therefore be subject to the maximum limits of the districts in which they range.

Land Management Districts were set up primarily for the purpose of controlling range use. District lines do not prevent the free movement of people from one district to another to get wood, or for social purposes. Therefore, Hopi Indians can go outside District 6 for wood. We shall, however, attempt to set aside an area somewhere adjoining District 6 for the exclusive use of the Hopi Indians. In order to do this, it will be necessary to obtain the consent of the Navajo Tribal Council. Until this is done, no attempt should be made to restrict the Hopis or Navajos from cutting dry wood. The cutting of green timber has been covered in previous memoranda from the Forestry Division.

EXHIBIT 16d

The following are examples of some of the complaints made by the Hopis:

1. A Hopi Indian, who claimed to be ranging in District 4, complained that he had been refused the right to place his bucks in one of our buck pastures.
2. Another Indian complained that when he attempted to cultivate his farm on the Dinnebito, he was told most emphatically to "get back inside of the boundary." According to Supt. Hutton, this man has farmed the place in question for a number of years.
3. The Hopis are being refused the use of a stock tank nine miles southwest of the Moencopi village.
4. Tribal delegates complained that they have not been notified of the location of District boundaries.
5. "A Navajo ate my green watermelons; then he stole my corn. But that isn't all; he sold me his hogan."

SUMMARY:

1. Navajos in District 6 remain where they are.
2. Hopis outside District 6 remain where they are.
3. The boundaries of District 6 do not prevent Hopis from going outside the District for wood.
4. Hopis ranging in Districts other than District 6 can participate in buck pastures and any other project offered Navajo stockmen.

Unquestionably, many controversies will arise between the Navajos and the Hopis until a reservation boundary for the Hopis is actually established and fenced. The Hopis, at this meeting, showed little inclination to consider a specific Hopi boundary. Most of them think only of their traditional "boundary", and may not wish, for some time, to consider objectively conditions as they actually exist. In the meantime, when controversies arise, it is suggested that the District Supervisor concerned get in touch with Superintendent Hutton and "iron out" the trouble on the ground. Settle the controversy and mail this office a memorandum stating the action taken.

E.R. Fryer

E.R. Fryer,
General Superintendent

EXHIBIT 16e

Wilmington Federal Records Center.
BIA Field Records. Navajo Service,
Window Rock, Ariz. FRC No. 72920,
File 080.

COMMISSIONER JOHN COLLIER'S MEETING WITH
THE HOPI INDIANS AT ORAIBI, ARIZONA
JULY 14, 1938

* * * * *

(Commissioner Collier)

* * * Next comes the boundary question. Nothing in the above paragraphs which I have read pre-determines or settles anything with regard to the ultimate Hopi Tribal boundary. It is suggested that the Hopi Council shall designate a committee on boundary and that the Navajo Tribal Council shall designate a committee on boundary and that these committees enter into negotiations upon the matter of boundary. The Commissioner of Indian Affairs will be prepared to designate a representative to work with these negotiation committees. You see, the question of a boundary has to be approached from both sides, both tribes, and it has to be handled with some kind of help with both sides taking part. The Council could appoint such a committee and could limit the authority of such a committee any way it wanted to. I would not have the least idea that complete agreement could be reached between the Hopi and Navajo, but they might make some agreement. I am sure that in the long run the thing has to be settled by the Secretary of the Interior, but it ought to be preceded by a negotiation between the two tribes.

Now in the matter of the shrines and certain other things, I have this to suggest -- It is suggested the boundary negotiating committees above proposed, that is the committee of the Hopi Council when appointed, shall go to work and prepare the description of each Hopi shrine and eagle hunting ground and any timber and wood privileges which are needed by the Hopis, with a view to negotiating for any needed protection or privilege in these matters.

I want to throw in just one remark aside from this paper about the boundary question which I have been hearing about for fifteen years at least. Almost everywhere that I go among Indian tribes, almost everywhere, or everywhere, I find that the tribes assert that they have by ancient right occupied, & all that, an area of land much larger than their reservation. I do not believe that there is a single exception to that. Frequently the boundary that they claim lies way off among lands owned by whites; sometimes it even includes great cities within its boundary. The Hopis are not very differently situated from all the tribes. They have a rightful claim to a larger area than it is possible for them to get, so a complete fulfillment of the Hopi wishes in regard to the boundary is not to be expected. The boundary that the Navajos claim goes clear out to the city of Albuquerque and includes the Jicarilla Apache Reservation. They can't have that, but we are trying to get more for the Navajo and I believe that the Hopi jurisdiction can be made to include more than District Six.

EXHIBIT 17a

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(Commissioner Collier)

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In the Navajo we have had a strong and very able, determined Superintendent and an able staff and they have been looking out after the Navajo interests with great strength, while in the Hopi for a good while past we have not had a strong, capable superintendent and because we did not have a good superintendent your requests did not reach us, explanations were not given to you and you were not taken into the confidence of your Indian Service friends. I do not mean that a lot of good things have not been going on. You have been getting all kinds of improvements in the last three years -- roads, schools, etc., but the Hopis themselves have not been taken into the confidence of the Indian Bureau and they have felt that they were in the dark.

* * *

(Byron Adams:)

Of all the things presented this morning the most important one is the matter of the Hopi reservation boundary. The final statement that in the end the Secretary of the Interior will have to determine those boundaries, I admit that I think that will be the case, but we feel that we have a right to voice what we believe is necessary and right. I want to take up the matter of the district units outlined by the Navajo Agency. From time immemorial the Hopi has looked back to the beginning of life when their prophets told them the conditions and advised them not to take any land to live on that was rich or fertile soil but to take land where they would have a hard time making a living and because of such conditions no one would try to take the land away from them. This message is sacred to the people. It is sacred to the chiefs and in the worship of their gods they hold and that are dear to their hearts.

The original executive Hopi reservation records 38,060 square miles or 227,220 acres. That is the area of the original executive order and now the present district 6 just takes in the actual land that the Hopis are using, regardless of the fact that a certain government organization signed a contract that any area used outside of District #6 would be fully protected and recognized. That contract was drawn and we know that 30% of the Hopi interests are outside of District #6. We have been assured that we must not confuse this district line with the Hopi boundary line. I believe all the people are in favor of asking the Commissioner and the superintendent and representatives from the Navajo Agency, before the boundary lines are definitely settled, would it not be a good plan to take the boundary lines of the executive order as the district lines also. It would mean nothing to those living in District #6 because the Navajos will continue to be there and the Hopis will be there also and be benefitted by the removal of the small areas such as District #6. We believe that the Government recognized the fact that when this area was laid out the Government sent men out here, men that had sense, men who possessed physical capacity for endurance as there were no roads over which to travel. This

was not easy. They proceeded with burros over these hills to survey same and to secure other valuable data and it took time and courage to go over these mountains and hills. We must give credit to these men in laying out this big area and country.

No doubt consideration was given to the natural watersheds in this northern district. Here are the Hopi lands and these natural watersheds are composed of five big washes which in the early days supplied the means for farming in this small district. If you combined this small area with the present area and diverted these dams that supply the Hopis, what is going to become of the Hopis with their natural supply of flood waters shut off? The allotment of funds for various developments in District #6 should be combined with that of District #4 and used on the Executive Order reservation as one district unit for the benefit of the Indians in that district, with the provision that it is a Hopi unit and in the selection of grazing range the Hopi shall have first choice. We must remember this, we are at the village of Oraibi, right out here is that big rock hill on which no vegetation will grow. These things must be taken into consideration. I believe our cause is just in asking that the whole area be assigned to us as a land management district instead of the small circle as given us now.

Two years ago Mr. Collier told us that the Hopis were just as important as the Navajos. We feel it too, and in this new day and age I believe our humble request should receive due consideration and the people dealt with through fairness and sympathy by the Government -- the fairness that has been broken down in the last three years. We are too easy that we take the white man at his word too often. Mr. Collier has been fair in the policy which he said would be put on record and copies made and handed out so that "you will hold me at my word". Never in all my contact with "civilized life" have I met a man that made such a statement when it involves people who are still ignorant in the ways of civilized life and who depend on the administration for the improvement of conditions on the reservation. If that will be considered in the light of a request when the matter of the boundary and districts is settled we want it to receive some consideration.

Outside of what has been given us in District #6 there is very little hope and you may say "you Hopis are to blame for not taking advantage of the area given you". True, but don't condemn us too easily, because we are a peace-loving people and the Navajo is a fighter and because we do not want to commit murder we have withdrawn in order to have peace with the Navajo and he has taken advantage of us and has been given preference over all former rights that the Hopis had. When the Government confirms all this settlement of the Navajo the Government approves the illegitimacy of children. The Navajos are polygamous and because of the rapid increase of the tribe we have been made to suffer because the Government has not done its duty in demanding proper family life of the Navajo.

And another thing, the Executive Order of 1882 very plainly states that it is set aside for the Hopi and any other Indians that the Secretary of the Interior may designate. We do not know what that wording means, but our

people know this; that at the time that order was made there were two tribes of Indians among the Hopis who had established residence here. The first is Hano, the second is Tewa. The Tewa still maintain their own language and characteristics. How do we know but what the wording means these two tribes. If it had meant the Navajo, can the Government produce an instrument which plainly designates the Navajo as the other tribe? If it can not, the Hopis think that the Navajos who are residing on the reservation are trespassing. Those are our complaints that our older men would like to make to you representatives from Washington. It is far from us to say anything that would be disagreeable to you, and if anything has been said that is amiss we want you to overlook our ignorance and view it from the point of what we try to say to you. I did not intend to say anything but pressure was brought to bear that I speak for them and I am sure that I have spoken the sentiment of the Indians here, and I hope that in the matter of the boundary and the district line, this little appeal should be thoroughly considered for the benefit of the Hopi tribe.

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(Commissioner Collier)

Now, the matter of the district and boundary. I am glad that Mr. Adams brought that up. We all know that the matter can not be settled today. What I would point out is this -- Suppose, as a practical matter, that we make your Superintendent the Superintendent of the same area that Mr. Miller was superintendent of. You would have a condition where he would be Superintendent of the Hopis and about as many Navajos, and, as in the old situation, would be economically responsible for the Hopis and the Navajos in that area -- the very things you wouldn't want because the Navajos are there. What we are trying to do is to devise an arrangement whereby the Hopis will be administered by the Hopi Superintendent in cooperation with the Hopi Council. Then when the final boundary is laid down, whatever it is, that will be the jurisdiction of the Hopi Superintendent. In the mean time, there would be nothing but grief to try to make him Superintendent of about 3,000 Navajos now living on the so-called Hopi Reservation.

My information may not be correct. At the time it was created, the area was occupied by Hopis and Navajos, way back in 1881. It was not created exclusively for the Hopis, and that fact was recognized by Congress through successive statutes as you will find in the Appropriation Act year after year. Appropriations made for this jurisdiction were for Navajos and Hopis.

All of that has no bearing on the question of what the ultimate boundary will be. I am sure that the first step in arriving at a satisfactory solution will be the appointment of this boundary committee to negotiate with the boundary committee of the Navajos with a representative of the Commissioner helping them. In the meantime, that boundary committee of the Hopis can take steps necessary to protect their shrines. That does not have to wait the final settlement of the boundary question.

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(Chairman)

In connection with the district unit No. 6, it has been told to me by

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EXHIBIT 17d

one of the Government officials that those grazing permits still can be given to us beyond the district line. Permits have been given to stockmen to establish their ranch houses. If the Navajos residing outside of that district line would come to the Hopis and say to these men they can not build their ranch houses, then it would have to come back to the Council and I want to know whether I have the authority back of me to back me on that. I am not positive and I would like to get more information.

(Collier)

I think that can be answered. The Council will have authority and the Government will back them. There are Hopis who do graze their animals beyond the boundary and they graze them under permits reaching beyond the boundary. Not only will the Hopi Superintendent have the power and the duty of protecting them in those permits, but it will be the duty of the Navajo Superintendent, also, to protect them in those permits. You have authority to protect them and your Superintendent will help you. If the Hopi goes beyond the boundary he must have permission from the Government. I understand that these permits are issued from the Government. If they build houses on their ranches to live in while they are with the sheep on the range I can not see that there would be any objection to that.

(Chairman)

Also, I want to ask in regard to the question between the district and the reservation. As I understand it, the district does not mean our reservation. It was to be used only as a unit so that it would be recognized as a number to work on. Now, we have in the past passed a resolution in regard to the district set-up but we have not been given any definite answer from it and the reservation beyond that is inhabited by the Navajos. Could it be recognized as a district unit?

(Commissioner Collier)

It could be, but it would not solve your problem any because you would still have the problem of the Navajos who are there.

(Chairman)

Now we have this to speak about. The Navajo. As long as we have the Navajos residing on our reservation there is going to be trouble between the Navajos and the Hopis. Therefore, the reservation ought to be defined first and whatever policy comes from the Indian Office to our reservation we will be very glad to take up, but as the situation is, we can not be happy in dealing with the problem of definite progress on the so-called reservation. I do not believe there is any way we can thrash this thing out until we get a definite boundary.

* * * * *

(Fred Lomayesva, in Hopi language)

Why should we settle this with the Navajos? It is our land and we should be able to settle it ourselves. It is ours and why must we get permits from them to graze on our own land.

(George, in Hopi language)

I am going to ask the Commissioner this question. We have been discussing District #6 and we have District #6 on our minds. Do I get it that we must recognize District #6 as the Hopi reservation? Do we have no access to the land outside of District #6? Some of the Hopis have established homes outside of District #6. I want you to answer my question, Commissioner. Here is the question -- Isn't it right that those having established homes outside of District #6 have a right to there. I thought that the land that these Hopis have occupied and established homes on belonged rightfully to the Hopis. Why is it that they have to have a permit to live outside of District #6. You mentioned about having a negotiation with the Navajos and a Government representative about determining the Hopi reservation. Well, it seems that you are stressing that same thing in our minds -- that we have to get permits even to get out of District #6. It seems that we are negotiating now. I would like to have an answer to that.

(Commissioner Collier)

I will try to answer that again. District #6, which I call the Hopi Land Management District, is at present the area over which the Hopi Superintendent has administrative control. Any land lying outside of what you call District #6 is under the jurisdiction of the Navajo Superintendent for the present. Whenever a final boundary is decreed, then in that final boundary the jurisdiction will be with the Hopi Superintendent and outside of it will be the Navajo Service. The matter of permits is quite distinct. Under the grazing regulations promulgated by the Secretary of the Interior ultimately all grazing of livestock on the Hopi as well as on the Navajo will be governed by permits issued to the owner of the livestock, just as it is done in every part of the Indian and white country. Where an Indian resident in one land management district needs to move across into another district he gets authority and that comes from the Government. This authority is attested by a paper -- a permit. Eventually all grazing will be under permit. That has nothing to do with the reservation boundary. I am afraid the matter is still confused, but I have given you the best answer that I am able.

(Mr. Willard W. Beatty)

The question was, if I have a home outside of District #6, do I own it or don't I?

(Commissioner Collier)

Inside of District #6 you have some Navajos. If there is a Navajo in

this district who has an established right to stay there that right is not affected. If a Hopi has a property right established for grazing or farming outside of District #6 he stays there and it will be the duty of the Hopi Council and the Superintendent to look after him. Where disagreement arises between him and a Navajo the matter will be referred to the Hopi Superintendent.

(Rep. Pabanale)

We had a meeting with the Navajo Superintendent last summer and it was thoroughly understood between the two superintendents and the people in general that an agreement was made and that those who had established homes outside of the district line are to stay there, and it was also thoroughly understood that those who do not belong within the district lines should be moved. Since this agreement was made no effort has been made to get those who have drifted in removed. The Navajos are the favorites of this controversy now. Whenever a Hopi wanted to get of District #6 always a word came back and he would not be permitted to do so.

(Commissioner Collier)

Yesterday I saw Mr. Fryer and he told me what steps they had been taking to remove one Navajo family that had drifted in here and had been put back. That agreement referred to is obviously the right agreement, and if it has not been enforced it should be and will be.

* * * * *

Announcement to Hopis of Certain Hopi Jurisdiction
Policies in Effect Henceforward

by Commr

(Read, with discussion, to Council and people at Oraibi, July 14, 1939)

1. Under the new Superintendent, Mr. Seth Wilson, the Keams Canyon school and plant will be returned to the jurisdiction of the Hopi Superintendent.
2. The new Superintendent will be administratively in charge of all activities carried out within the Hopi land management district.
3. All projects of land development, water development, and other projects of development within the Hopi land management district will be prepared in conjunction with the Hopi Superintendent and the Hopi Council and will be presented to the council for final approval.
4. To make possible more work projects, and the payment to labor of a larger proportion of the total amount appropriated for such projects, the irrigation and road projects in the Hopi land management district will make use of the technical and supervisory personnel and the equipment of the Navajo service, with the understanding that the work will be performed under the administrative control of the Hopi Superintendent; and for such projects the labor used will be exclusively resident within the Hopi land Management District.
5. The Soil Conservation Service, whose headquarters are at Gallup, N. M., will:
 - (a) Assist in the finding of facts and the formulating of plans for land and water improvement and for range management, such plans to be submitted to the Hopi Council through the Hopi Superintendent.
 - (b) Supply conditional upon Hopi cooperation, funds and supervision for water and range developments other than irrigation.

EXHIBIT 17h

(c) Will carry on in addition to the above water and range development such erosion control work as is feasible within Soil Conservation policy which requires a certain contribution and cooperation upon the part of the Indians.

(d) Conditional upon (b) and (c), place in the Hopi Agency a representative of the Soil Conservation Service who will be administratively a member of the Hopi Superintendent's staff in carrying out the Soil Conservation work.

6. Nothing in the above (paragraphs 1 to 5 inclusive) predetermines anything with respect to the ultimate Hopi-Mavaajo boundary. It is suggested that the Hopi Council shall designate a Committee and that the Mavaajo Tribal Council shall designate a Committee, and that these Committees shall enter into negotiations upon the matter of a boundary. The Commissioner of Indian Affairs will be prepared to designate a representative to work with these negotiating Committees.

7. It is suggested that the Boundary Negotiation Committee of the Hopi Council, when designated, shall prepare a description of the location of each Hopi shrine and eagle hunting ground and of any area where wood privileges are needed by the Hopis, with a view to negotiating for any needed protection or privilege in these matters.

8. The laws of the United States require the conservation of the tribal soil and grass. Likewise, the expenditures on water and on land improvement on the Hopi land management district are conditioned upon the adoption of the right land use practices, necessitating certain reductions in the number of livestock carried on this range. This reduction can be accomplished in part through the selling of old ewes, unnecessary horses, old cows and steers and other unproductive stock.

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
FIELD SERVICE

JAN 13 1938

CONFIDENTIAL

Hopi Indian Agency
Keams Canyon, Arizona
January 5, 1939

Commissioner of Indian Affairs
Washington, D. C.

Dear Mr. Collier:

You will recall our discussion of the proper construction of the Hopi Constitution and Bylaws at the Phoenix meeting. I am enclosing a statement by Dr. Edward Kennard with what he believes to be the construction that should be followed until such time as the villages are ready for representative government, as we understand it.

Dr. Kennard was present on the reservation during the period, before and after, the adoption of the constitution. He was consulted often on various points concerning the constitution. His explanation of what the Hopi thought the various articles in the constitution meant, agrees with the experience I have had in attempting to administer the constitution.

All the villages except the upper village of Moencopi and Zyahotsomovi have the traditional form of government. Their traditions do not permit them to punish except by "gossip". They flatly refuse to have anything to do with courts or law enforcement, as we know them. However, they are very much pleased to have someone to turn to when a problem arises that cannot be settled by custom. I have discussed with the leaders of these villages, a plan to have a Hopi "Mediator" that could give full time to settling troubles in the various villages in the Hopi way. I feel that this plan would work satisfactorily.

I have found that it is necessary to deal with each village in a different manner. First Mesa, Zyahotsomovi, and upper Moencopi wish to be consulted about everything in detail, while the other six villages do not wish to be bothered at all. These villages are governed by the "Hopi Path", which has everything predetermined for them. Any change must be forced by a force too

EXHIBIT 18a

strong for them to resist. They cannot accept schools, conservation, or any of the other programs; but if we insist the tradition, "that they must not resist", makes it easy for them to accept and I find them more cooperative than the other villages. One of their prophecies is that a white brother will come along and fix everything for them. I was discussing the advantage of a drift fence with the members of the village of Shungopovi. They told me quite frankly that if I was the proper person, I would not have to ask them, but would know what was best for them.

Because of the wide differences among the villages it is next to impossible to deal with them collectively. I feel if we attempt to force representative government before the villages are ready, we shall do considerable harm.

If it is possible to have the construction, we are proposing, of the various sections and articles approved, I believe we can deal effectively with the villages without breaking down their present form of government.

I should appreciate early action.

Yours truly,

Seth Wilson

Seth Wilson,
Superintendent

EWL:

EXHIBIT 186

BACKGROUND FOR INTERPRETATION OF THE HOPI
CONSTITUTION

by
Dr. Edward A. Kennard

Realizing that every interpretation of a statute in the United States is made with full knowledge of the social milieu, and the conditions under which it is to operate, the following information is offered in explanation of the interpretations of the Hopi Constitution which are appended.

The Hopi, in contrast to most of the tribes in the United States, have never been moved from their original territory, nor has their way of life been broken. Despite compulsory schooling, Government supervision for about forty years, and certain changes in the material side of their life, the fundamental organization, the value, the processes of thought, and the most important activities have remained unchanged. Because they have a sound economy based on agriculture and sheep and are for the most part self supporting and because their interests did not conflict with the policy of the U. S. Government, the government still plays a minor role in their lives. Their primary interests and activities are in the religious and ceremonial sphere, not in the political.

Each Hopi village is a completely autonomous unit, but it is not a political unit, such as a town, county, or state. Its only village organization is a ceremonial one, headed by the village chief, the Kikmongwi. Assisting him are other chiefs, the leaders of specific religious societies, who perform their ceremonies at specific times during the year, and who are in a sense his "advisers". Their power is not a power over persons, but a power over the supernatural. And this power is never exercised individually, but as the leader of a cooperative group.

Each village has its own land, a small part of it divided into clan holdings, the rest free for the use of anyone in that village either for agriculture or for grazing. In native theory, the Kikmongwi has control over part of the land, but this is a power which is never exercised. It must be realized that there are no Tribal lands, referred to in Article VII, as now worded. It makes the terms clan lands and village lands mutually exclusive, applying the former to land east of the Oraibi wash, and the latter west of the Oraibi wash. Actually, they are complementary terms, and take in all the land now used by the Hopi. What the Hopi referred to when inserting the term "tribal lands" was an area outside of any now occupied or any ever occupied by them according to their migration traditions.

EXHIBIT 18c

The expression, "beyond the clan and village holdings," meant to the majority of the Hopi, lands beyond the San Francisco Peaks to the west, Navajo Mountain to the north, the Buttes South of Holbrook, and an indefinite point to the east somewhere east of Canada.

Therefore, the Tribal Council has no control over these lands, and the conservation and development program will have to be taken up with the villages. And since this is outside of the Kikmongwi's sphere, it will be taken up with whatever individuals or groups are utilizing the land at the present time.

It must be realized that the intention of the Hopi in reserving powers to the village and to the Kikmongwi, was to protect their ceremonial life, not to endow the office with power it does not possess according to tradition and past usage. The Hopi as a people, the Kikmongwis, and the delegates to the Council are more concerned with preventing acting than in taking action.

Within the village, social and economic obligations are based upon kinship, and the primary kin group is the matrilineal clan. These important relations are settled by birth, and nothing ever changes them. This automatically takes care of such problems as the custody of children in a divorce case, inheritance of property, and many other matters that are settled by law in our society.

But more important than the factors of village organization is understanding the application of the provisions of the Hopi Constitution is the psychology of the people. The real policing medium of the village is gossip. The Hopi have been conditioned since childhood to be extremely sensitive to criticism and they are. They fear being talked about more than anything else. Furthermore, all criticism is of a derogatory character. It is for this reason, that a Kikmongwi will not make any decision about his village, that delegates to the Council will not take positive action, for then they are in a vulnerable position. They are held responsible for whatever consequences follow in the eyes of the people.

It is for this reason that people who are opposed to measures do not vote against them, but do nothing. The Hopi as far as all secular matters are concerned will not agree to abide by the decisions of the majority. They are not accustomed to binding upon anyone but himself, not even a Kikmongwi. In the past whenever a program was to be taken up with the Hopi, it was explained at a village meeting. Those who wanted to cooperate did so, and those who did not, did not. As long as no one has to make any formal commitment he is safe in taking whatever action seems best to him.

EXHIBIT 18d

It is with all these factors in mind, that the interpretations have been made permitting the village or part of it to act for its own interest. This is nothing more than a legal recognition of an existing practice, and one that has been followed by

Superintendents and other Government officials for many years in the past.

As far as the provisions concerning Law and Order are concerned, there is no apparent need for them at the present time. Most cases are settled by the parties to a dispute in their own way in the village. Many times they are not settled at all, but it does not interfere with anything, for bickering and quarreling is the rule rather than the exception. Sometimes a dispute is brought to the Agency for settlement, with the Superintendent acting as referee. Most of the people would prefer to continue this system, for the system of laws, courts, and judges is far beyond their comprehension.

The custom of trade among the Hopi is of long standing. There seems to be no need of regulations governing this activity of the Hopi. If there are to be regulations these should be carefully worked out with the council and Indian storekeepers. The regulations should only apply to non-members of the tribe.

EXHIBIT 18e

January 19, 1939.

Memorandum to Mr. Woehlke:

Subject: Hopi Constitution

I see no need for incorporation or revision of articles as Mr. Kennard suggests, except Art. IV, Sec. 5. As two or three villages do not send council delegates, this should be amended to read, "No business shall be done unless at least a majority of the members from the villages, which have been participating in the Tribal Council for the electoral year, are present."

Mr. Kennard's interpretation of villages lands is incorrect for the Constitution. Perhaps Mr. La Farge was unaware of village claims to territories running out to traditional boundaries, as these were not recognized in the Constitution. However, it is explicit as to what Tribal Lands mean. Second Mesa is bringing up the issue, for religious reasons, as they can not accept cattle grazing at present. I believe it is partly a new interpretation as they wish to retain hold of their large traditional sheep ranges for exclusive use.

The Law and Order Code for Navajo and Hopi should not be adopted now. The "mediator" is a good suggestion by Superintendent Wilson, but this official must not submit village law and order. This is more than "gossip" obviously. Although public opinion sanctions most law and gives it basic authority, there are other mechanisms for social controls. Among the Hopi the Council once sat in judgment and a police or war officer publicly whipped offenders. The public spectacle was the severest part of the penalty. Perhaps this machinery can be bolstered in the villages still practicing old social customs and the old police officer, be a public fine collector, etc. This should be well investigated before a mediator or judge is established. By all means he should sit with the village authorities as his advisers, but he can accept the responsibility of decision.

Most of Kennard's suggestions are to me completely subversive to the intentions of Hopi tribal organization, and a change to more tribal solidarity and cooperation should be worked for.

EXHIBIT 19 a

It must be remembered a constitutional amendment calls for a public vote. Any such questioning of the Constitution now, may give many Hopis to feel that it and the Council are not worthwhile institutions, even from the Government point of view. Such action should be withheld for a year or two, when other amendments necessary can be offered.

As regard village grazing lands, the Superintendent and S.C.S. can work out village or group established grazing rights without constitutional amendments.

G. Magregor.

EXHIBIT 196

Cl. File
15175-1938-301
Hopi

Hopi Indian Agency
Keams Canyon, Arizona
March 10, 1939

Commissioner of Indian Affairs
Washington, D.C.

Attention: Mr. W.V. Woehlke

Dear Sir:

In discussing Soil Conservation projects with the Hopi people, we find them quite disturbed because the work so far as they are concerned is confined to District six.

They are especially reluctant to approve drift fences. It is my opinion, and the opinion of the Soil Conservation technicians, that for better range management, some drift fences are necessary. The Hopis seem to feel that any fence may become a part of the boundary for the Hopis. I have reassured them that no project undertaken by the Soil Conservation will in any way affect the final boundary settlement.

I believe that it would aid us greatly, and set the minds of the Hopis at peace, if you would write and assure the Tribal Council that nothing the Soil Conservation, or that any of the other Government agencies does in the way of developing work projects in District six will have any effect on the boundary settlement. (emphasis added)

I should appreciate an answer by return mail, if possible.

Seth Wilson

Seth Wilson,
Superintendent

SW:rm
air-mail

EXHIBIT 20