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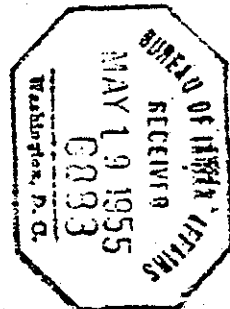
STEWART E. MCCLURE, STAFF DIRECTOR

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE

May 17, 1955

Glenn L. Emmons, Commissioner
Bureau of Indian Affairs
Department of the Interior
Washington 25, D. C.



Dear Glenn:

It was a pleasure to meet with you today and discuss the various problems that we have concerning Arizona Indians.

I want to stress upon you the importance of withholding any final decision on Tribal Council government of the Hopis until we have had a full discussion of this with people who know the subject and are interested in achieving a solution. I have contacted Mr. Platt Cline of Flagstaff to invite him back here to visit with you on this, and I am sure you will find him a well-posted and brilliant man in the field. He has agreed to come and will contact you by telegram for a time and date, and would you please advise him, on receipt of this telegram, how he should go about obtaining government-paid transportation, as you remember we agreed he would come on an advisory basis.

Any decisions regarding the Hopis in any respect must be approached with great caution, and I must insist on being informed of any plans in this area well in advance of any final determination.

Regarding the Colorado River Indians, I am firmly convinced that the Indian Bureau has to agree to determine the entire issue and not just attempt to get legislation that will back up Ordinance Five. The question is the ownership of the entire Reservation, and I think that colonization has not worked out and I don't think we should try to justify any continuation of it. I am convinced that, if the Indian Bureau will give a little bit on this, that the Indians will give, and we can come to a solution to this problem by legislation that might otherwise take long and involved court action.

Sincerely,


Barry Goldwater

CONGRESSIONAL EXHIBIT 71



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
WASHINGTON 25, D. C.

FILE COPY
SURNAME:

May 20, 1955

Hon. Barry Goldwater
United States Senate
Washington, D. C.

My dear Barry:

With reference to your letter of May 17 I wish to advise that Mr. Matt Cline arrived in Washington today and we have spent the entire afternoon discussing the Hopi situation. We are taking care of his transportation and per diem. We had hoped that he would stay over until Monday evening but unfortunately he has to return tomorrow.

180 pages
566
I have designated Tom Reid, one of my assistants, to head a special team to dig into this Hopi situation, and I believe that a sensible and sound conclusion can be determined in this matter. I assure you that we will be working on this matter in full cooperation with you. This is another one of the John Collier matters, it appears, that we will have to unravel.

I think that with some horse sense and consideration of justice we can also work out some solution of the Colorado River situation.

Assuring you that I appreciate your cooperation and recommendations on these matters, I am

Very sincerely yours,

(SGD) GLENN L. EMMONS

Glenn L. Emmons
Commissioner

GLEMMONS :cef

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HON. BARRY *GOLDWATER
5-17-55 5-19

PHOENIX A. O.
RE DISCUSSION OF VARIOUS PROBLEMS OF THE ARIZONA
INDIANS

EXHIBIT 72a

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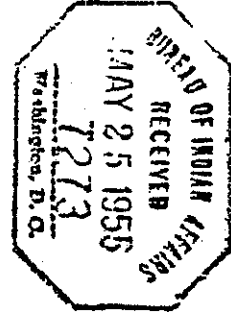
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STEWART E. MCCLURE, STAFF DIRECTOR

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE

May 23, 1955



Mr. Glenn L. Emmons
Commissioner of Indian Affairs
Department of the Interior
Washington 25, D. C.

Dear Glenn:

Thank you for the prompt attention you paid to the Hopi situation, particularly in the matter of receiving Mr. Platt Cline. This matter is not going to be ironed out by theorists, but must be met by practical-minded people who will recognize that the traditional leaders of the Hopis have a strong hold on the minds of all the people and that any government that is worked out among those Indians will have to take into consideration the religious impact of their ancient way of life.

Let me know of developments in this as they go along so that we can both benefit by mutual advice.

Sincerely,

Barry
Barry Goldwater

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file
566*

EXHIBIT 72 b

Barry Goldwater

COPY

Sep 2 1955

Memorandum

To: Commissioner

From: Thomas M. Reid, Assistant Commissioner

Subject: Report of official visit to the Hopi villages - July 14-29, 1955.

The committee assigned the special task of visiting the Hopi villages for the express purpose of hearing the Hopis discuss their problems present herewith a report resulting from the hearings. The report reflects the problems as presented by the Hopis and the recommendations of the committee.

Religious Freedom

1. A problem which consumed considerable time involved the conflict between Hopis known as:

(a) The traditional group who follow old beliefs and customs of Hopi culture. It is apparent that the religion of this group concerns itself with every phase of their life and is the great integrating force. Through set religious ceremonies, this group seeks to control their environment and to sanctify every act of life. They believe that any deviation from their traditional faith and ritual will result in economic and moral disaster.

(b) The progressive group who have largely abandoned the old "Hopi Way" of life. This group is in general support of the policies of the Bureau, and have usually discarded many of the old tribal religious teachings.

COPY

EXHIBIT 73a

Recommendation:

It is believed that the traditional group should be given assurance by the Indian Service that they have complete religious freedom such as is accorded to all other religious groups in this country. At the same time, Hopis who wish to follow another religion have the same freedom. It is our recommendation that you send a letter to each Hopi village, setting forth the fundamental concepts in this country relating to religious freedom.

Tribal Council

2. As a general rule, the traditionalists are opposed to the tribal government established under the IRA, believing that it is detrimental to the "Hopi Way" of life and is responsible for the establishment of Range Unit No. 6, the stock reduction program, the new Federal policy relative to alcoholic beverages, a general disregard of the village leaders, and the imposition of undesired policies and projects on the Hopi people without consultation with the villages.

The progressive group on the other hand are supporters of the tribal government and claim that a number of meetings were held explaining the IRA and that the constitution and bylaws were revised in accordance with the wishes of the people. This group feels that the constitution protects the traditional government of the villages and that several provisions of the constitution were designed to protect the traditional "Hopi Way." They also point out that without the constitution and bylaws, there would be no legal way in which the Hopi villages could take action on their common problems.

An examination of the files indicates that the constitution and bylaws were both approved by decisive majorities.

Recommendations:

It is the opinion of the committee that the Indian Office must recognize any tribal council which is legally elected. The constitution specifies a council of 17 members from the various villages and further stipulates that "no business shall be done unless at least a majority of the members are present." In our opinion, if 9 of the possible 17 members of the council are chosen or elected, there is a legal council and business can be legally transacted provided all 9 members are present. If you accept our views on this matter, we recommend that the Superintendent and the villages be so informed. It is further recommended that a study be made as to the extent to which the constitution and bylaws have been observed by the council and the degree to which the council has advised and consulted with the villages. This study should also determine whether or not the constitution and bylaws should be changed to strengthen and recognize even further the village government.

Range Unit No. 6

3. Hopis of both factions are bitterly critical of being restricted in their farming and grazing activities on Range Unit No. 6. They contend that since 1882 the Navajos have continuously encroached on their territory in spite of the protests of the Hopis and the officials in charge of the Hopi Executive Order Reservation. They claim that the Navajos have been favored by the Indian Service, and particularly by the Navajo Agency which had general supervision over the Hopi Reservation for a number of years. They claim that in spite of Indian Service denials, the Indian Service planned to establish Range Unit No. 6 as the total extent of the Hopi Reservation. They believe they are entitled to a much larger grazing and farming area than is contained in Grazing Unit No. 6

Recommendations:

The committee believes there is much justice to the Hopi complaints, and it is recommended that a historical resume be made of the factors leading to the establishment of Range Unit No. 6, the criteria used as a basis for establishing this range unit, and the part that Indian Service Navajo officials played in the establishment of the range unit. The study should also contain an analysis of the average number of stock units given to each Hopi family on Range Unit No. 6 as compared to the average number of stock units given to each Navajo family on the other range units of the Hopi Executive Order Reservation. In the event that this study shows the desirability of a reexamination of Range Unit No. 6, we suggest that an impartial committee be appointed to reconsider this matter.

Stock Reduction

4. The Hopis are practically unanimous in their denunciation of the stock reduction program of the early 1940's. They are critical of the alleged arbitrary manner in which the stock reduction program was put in effect. They claim the Indian Service sold or destroyed many animals for which the Hopis were never paid.

Recommendations:

In view of the seriousness of these charges, it is our recommendation that the facts relative to this stock reduction program be obtained and clearly set forth in a statement that will be released to the villages. The statement should include facts relative to percentage reductions among the Hopis and the nearby Navajos, the amounts paid for the animals taken or destroyed, the extent to which the Hopis were consulted as

to this program, and whether the Hopis are justified in their statement that the present stock program authorizes such a small number of stock units per family as to make it worthless to the families to carry on.

the

Reservation
Boundaries

5. A number of Hopis emphasized the need for a determination of a permanent Hopi Reservation. Many traditionalists lay claim to a very large area including all of the Executive Order Reservation of 1882, most of the present Navajo Reservation, and a considerable area now occupied by non-Indians and other citizens.

Recommendations:

We recommend that a review be made of the past efforts to establish permanent boundaries for the Hopi Reservation including the criteria used, the boundaries recommended, the reactions of the Hopis and the Navajos, the legal questions involved, and criteria that might be used in the consideration of the establishment of boundaries for the permanent reservation. It is believed that the most satisfactory way to settle the long-standing controversy as to the ownership of the Executive Order Reservation of 1882 is through court action. In the event that court solution is impracticable, we recommend that an impartial committee be appointed to evaluate the study suggested above and to assemble such other facts that might be useful in the determination of boundaries to be recommended by the committee to the Congress for its action.

Educational Needs

6. The Hopis recommended the early establishment of a State-accredited 4-year high school including several vocational courses, and the immediate construction of adequate physical facilities for such a plant.

Recommendations:

The committee agrees with the recommendation, and it is suggested that the Education Branch be requested to take the necessary steps to carry out this request.

Health Needs

7. The Hopis proposed the construction of a new hospital at Oraibi with better qualified staff. Some complaints were also voiced about the unsatisfactory clinic hours.

Recommendations:

We recommend that a copy of the hearings be sent to Public Health Service calling attention to the statements by the Hopis relative to the health program.

Rehabilitation Program

8. The Hopis expressed a feeling that they were not getting a fair share of the funds appropriated for the Navajo-Hopi Rehabilitation Program.

Recommendations:

We recommend that the Agency Superintendent inform all the Hopis as to the purposes of this program, including the total amounts appropriated by the Congress, the respective amounts expended or earmarked for Navajos and Hopis and the proposed Hopi projects.

Road Program

9. Although the general feeling was favorable to the road construction program, they pointed out the need and importance of finishing a hard-surface road to Holbrook. Criticism was directed at the alleged wanton destruction of trees and farms by road crews in the road program from Hotevilla villages.

Recommendations:

We recommend that in the future all road projects be discussed fully not only with the Tribal Council but also with the leaders and other citizens of the villages affected.

Termination
Rumors

10. These people were considerably disturbed over rumors that the Federal Government might withdraw its services under its termination program.

Recommendations:

We recommend that you write a letter to the Superintendent and the villages informing them that no early change in the present Federal program for the Hopis is contemplated.

Electric Power

11. A request was presented for Federal assistance in securing electric power for the villages.

Recommendations:

It is suggested that this proposed project be explored and information given to the Hopis as to whether such a project is practicable.

Public Law 277

12. The Hopis expressed unanimous concern and opposition to Public Law 277, 83d Congress, 1st Session (62 Stat. 757), which they maintained permitted the sale of intoxicants on the Hopi Reservation.

Recommendations:

We recommend that the Superintendent and the villages be informed by office letter that the Hopis themselves can decide as to whether liquor sales can ever be legalized on the Hopi Reservation.

Nonmembers
Activities

13. A feeling of concern was also expressed over the activities of nonmembers in the affairs of the Hopi villages. They are of the opinion that some of these nonmembers should be refused

access to the reservation. Since the Hopis are an unusual people whose homes, economy, and customs are unlike those to which touring Americans are accustomed, many visitors are attracted to the Hopi Reservation. While the Hopis are friendly to people who in their opinion visit them with some worthy objective, they are highly critical of a few of the people who come there and apparently are trouble-makers who tend to meddle in Hopi affairs.

Recommendations:

We recommend that a policy Indian Office letter as to this problem be sent to the Superintendent and the villages. Further, it is believed that the Hopis and Indian Office personnel might just as well accept the fact that visitors are going to pass through the villages in increasing numbers. The proper thing to do is to make plans to turn the presence of these strangers into an asset rather than a menace.

Water Needs

14. The need for additional water was pointed out by the Hopis, not only for supplementing the present limited supply at the schools but for wells for domestic and stock usage.

Recommendations:

We recommend the approval of a program designed to meet these needs.

Navajo Relations

15. There was general agreement by the Hopis in their claims that the Navajos have trespassed on their lands and have taken over a large part of their reservation with the knowledge of the Indian Service.

Recommendations:

We believe that a wise decision was made in placing the Hopi Agency under the Phoenix Area

EXHIBIT 73h

Office. We further believe that the approval of the recommendations of this report will do much to restore the confidence of the Hopis in the Indian Service.

Consultation

16. The general indictment that programs, policies, and rules and regulations were imposed upon the Hopis without their consent or previous consultation with them was repeatedly made. The belief of the Hopis that these complaints are based on fact has had a profound influence on their attitude toward Federal Government and particularly the Indian Service.

Recommendations:

It is suggested that an analysis be made of these complaints, and the facts discovered should be disclosed to the Hopis, regardless of whether the complaints are found to be true or false. It is felt that such an analysis will reveal strengths and weaknesses of Indian administration and will enable the Indian Office to correct administrative procedures to provide more Indian participation, if needed; and to re-examine any policies which are objectionable or faulty.

Minor Complaints

17. A number of complaints, mainly minor, and having to do with local administration, were voiced by these people.

Recommendations:

These complaints were discussed with Superintendent Pensoneau, and it was agreed that he would make the necessary investigations and take the necessary actions.

Adult Education

18. The records of these hearings reveal the confusion and lack of adequate information on the part of the Hopis relative to Indian Service

policies and programs including those functions and operations under their own leadership. This factor is indicative of Bureau deficiencies in imparting information to the Hopis and keeping them currently and understandably informed.

Recommendations:

Our observation points to a need for adult education and we recommend that consideration be given by the Indian Service, in consultation with the Tribal Council and the leaders of the Hopi villages, to the initiation and development of an adult education program having as the principal objective of keeping the Hopis informed and consulting with them as to all policies, programs, rules and regulations of the Indian Service, the Tribal Council, and the Hopis themselves.

Tribal Leadership

19. During these meetings, it was the observation of the committee that these groups had members who displayed excellent leadership ability. However, the tragedy of the Hopis is that the able men and women of both factions are engaged in a bitter intratribal struggle when they should be acting in unity to solve the many serious but not hopeless problems which beset their people.

Recommendations:

We recommend that the Indian Service make a concerted effort to minimize these differences. It is suggested that a committee consisting of representatives from the Indian Office, the Area Office, the Agency, the traditional group, and the progressive group be appointed to explore plans for securing better cooperation between these two groups.

This committee wishes to acknowledge the cooperative and helpful assistance extended to us by Assistant Area Director Stevens, Superintendent Penseneau, and his Agency staff members and the fine reception extended to us by the Hopi people.

/s/ Thomas M. Reid

Assistant Commissioner

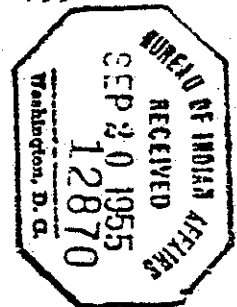


IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS

PHOENIX AREA OFFICE
P. O. BOX 7007
PHOENIX, ARIZONA

September 15, 1955



Commissioner, Bureau of Indian Affairs

Washington 25, D. C.

Dear Sir:

This letter has reference to the problems which arise in connection with the management of trust lands on the Hopi Executive Order Reservation. More particularly, I should like to discuss the proposal relating to the procedures which we suggest be followed with respect to mineral prospecting permits and leases.

350
As of the present time three valid prospecting permits exist on District No. 6 of the Hopi Reservation. These were issued to the Humble Oil and Refining Company, expiring December 6, 1955; General Petroleum Corporation, expiring May 4, 1956; and Sun Oil Company, expiring June 1, 1956. These permits were issued under authority contained in Indian Office telegram dated August 13, 1946 approved by Walter V. Woehlke, Acting Commissioner, which reads as follows:

4
"Reurtel 10, in view of inactive Hopi Council and lack Hopi Navajo Organization you are authorized issue new geophysical permit subject distinct understanding. It is not commitment to enter into lease. If at all feasible, suggest you discuss the problem with Hopi and Navajo leaders and obtain their approval your action."

Recent correspondence from the Indian Office has indicated that the desires of the Hopi Tribal Council, as it has been reconstituted, should be followed in matters affecting tribal interests. This group wishes to avoid any additional friction between themselves and those Hopis not specifically in agreement with the tribal council group. Therefore, they have requested the superintendent to issue no additional prospecting permits for minerals within the Hopi Executive Order Reservation. In view of this fact, and taking into

EXHIBIT 74 a
L. J. [Signature]

consideration the conditions under which Acting Commissioner Woehlke issued his telegram, i.e., the Hopi Tribal Council was not recognized at the time of Mr. Woehlke's telegram, we propose to discontinue acting under the authority of the August 13, 1946 telegram and comply with the instructions contained in the regulations of the Secretary of the Interior. Under such circumstances, and in the absence of approval of the Hopi Tribal Council or the representatives of the interested Navajos, prospecting permits could not be issued.

Will you please advise if this meets with your approval.

Sincerely yours,

F. M. Haverland

Area Director

EXHIBIT 74b

LISTER HILL, ALA., CHAIRMAN

JAMES E. MURRAY, MONT.
MATTHEW M. NEELY, W. VA.
PAUL H. DOUGLAS, ILL.
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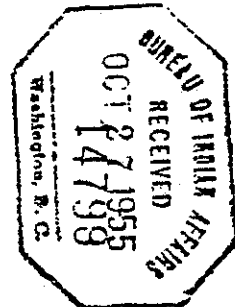
STEWART E. MCCLURE, STAFF DIRECTOR

United States Senate

COMMITTEE ON
LABOR AND PUBLIC WELFARE

October 24, 1955

Hon. Glenn L. Emmons, Commissioner
Bureau of Indian Affairs
Department of the Interior
Washington, D. C.



Dear Glenn:

Several days ago I met with representatives from seven of the twelve Hopi villages who are vitally concerned over the attitude of your Department on the subject of Tribal Government.

1411
These people, representing the traditionals, do not want a Tribal Council to be recognized and this feeling has been expressed to me so often by so many Hopis that I feel the only way to determine what is to be done about their Government is to allow them to hold another election to see whether or not they want to keep the Constitution and with it a provision for Tribal Council.

I therefore respectfully urge you to set up the mechanism whereby this referendum can be held.

As you know, I have spent my life near these people and I have a great respect for their ability to take care of their own Governmental matters and if this is their wish and it is so accomplished by a vote, then I believe the problems that now confront us, as developed in the hearings of July 15th through 30th, will be solved.

I would appreciate your earnest consideration of this request and an answer when you have reached a decision.

Sincerely,

Barry Goldwater
Barry Goldwater

CONGRESSIONAL

EXHIBIT 75

FILE COPY

SURNAME:

Program Coord. Staff
14799-55

October 31, 1955

Noted by
Holt
7/29
JMR

Commissioner

Joe Jennings, Program Officer

Hopi Constitution and By-laws

This concerns the letter of October 24, 1955, to you from Senator Barry Goldwater, relative to the Hopi Constitution and By-laws.

Senator Goldwater urges you to have an election called so that the Hopis can vote as to whether they wish to keep or abolish their Constitution and By-laws.

I shall present certain viewpoints and facts about the present Hopi tribal government organization which I believe represents substantially the views of the other two members of your committee appointed to conduct hearings in the Hopi villages during the latter part of July, as well as the Superintendent of the Agency and the representative from the Area Office designated to attend the meetings.

Senator Goldwater stresses in his letter the vital concern of the traditional representatives as to the attitude of the Bureau of Indian Affairs towards the Hopi tribal government. The Committee not only sensed the deep feeling and bitterness of the traditionalists toward the tribal government and the recognition of the tribal council, by office letter of July 17, 1953, but also noted the equally strong and frustrated feeling of the progressive group, relative to the alleged lack of cooperation of the Bureau of Indian Affairs with the tribal council group. The committee is convinced that a basic problem confronting the Hopis and the Indian Service is the need for a functioning tribal government that will receive the general support of the Hopis of all the villages. There is extreme bitterness between those who favor the tribal government established under the IRA and those opposed to it. Most of the traditionalists, though not all, are strongly opposed to this tribal government, as they believe it is detrimental to the Hopi way of life and is responsible for the establishment of Range Unit No. 6, the stock reduction program, the new Federal policy relative to alcoholic beverages, a general disregard of the village leaders, and the imposition of undesired policies and projects on the Hopi people without consultation with the villages. They also claim that the Indian Reorganization Act and their Constitution and By-laws were insufficiently and improperly explained to them.

EXHIBIT 76a

The supporters of the IRA and the Hopi Constitution and By-laws state that several weeks were spent by Mr. Oliver La Farge in discussing the Constitution and By-laws with the Hopi people and revising them in accordance with their wishes. They say that Mr. La Farge held several meetings in each of the villages and that every Hopi had an opportunity to consider and discuss the proposed Constitution. They also claim that the Constitution protects the traditional governments of the villages, and that several provisions of their Constitution were written for the express purpose of protecting the traditional "Hopi Way." They also point out that without the present Constitution and By-laws, there would be no legal way in which the Hopi villages could take action on common problems, such as the employment of attorneys to represent the Hopis, the institution of suits in the Court of Claims, law and order, advisory authority in reference to appropriations for the Hopis, etc. They also state that many of the traditional group are in favor of a tribal council.

We have examined the official files relative to the acceptance of the IRA by the Hopis and their approval of a Constitution and By-laws; both were approved by decisive majorities. The official records show that the Hopi Indians on June 15, 1935, accepted the Indian Organization Act by a vote of 519 for, and 299 against, and that on October 24, 1936, a Constitution and By-laws were adopted by a vote 361 for, and 104 against. The Secretary of the Interior officially approved the Constitution and By-laws on December 19, 1936.

Mr. Oliver La Farge of Santa Fe, who is well acquainted with the Hopi way of life, was appointed as Special Field Representative to consult and advise with the Hopis as to their Constitution and By-laws. He spent approximately three months on the Hopi Reservation working in the villages. The Constitution as finally approved by the Hopis was especially written to protect and to preserve the Hopi way of life and to retain the "traditional Hopi organization" for each village which possessed such an organization, until such villages decided to organize in another manner. There are several unique provisions in the Hopi Constitution and By-laws designed to protect the Hopis in their traditional rights, freedom to worship in their own way, and to speak and to write their opinions.

It is the committee's considered opinion that the Constitution and By-laws represent a sincere effort to preserve and protect the Hopi way of life and the village governments. It is probable that the Tribal Council and the Agency officials in years gone by have not always consulted with the traditional village leaders on important subjects of reservation-wide interest. Certainly the Indian Service officials should keep the leaders of the villages fully informed as to proposed policies of the Indian Service and seek their advice. The Indian Service officials and the Tribal Council should thoroughly discuss with the village leaders topics or resolutions to be taken up in Council, so that the village leaders can have an opportunity prior to council meetings to give their opinions. It is, of course, possible to change the Constitution so as to give the villages the privilege of instructing their council representatives as to how to vote on pending measures.

It is the opinion of the committee that the Indian Office must recognize any Tribal Council which is legally elected. The Constitution specifies that a council of 17 members from the various villages and further stipulates that "no business shall be done unless at least a majority of the members are present." In our opinion, if 9 of the possible 17 members of the council are chosen or elected, there is a legal council, and business can be legally transacted, provided all 9 members are present. The committee was of the opinion that a study be made as to the extent to which the Constitution and By-laws have been observed by the council and the degree to which the council has advised and consulted with the villages. This study should also determine whether or not the Constitution and By-laws should be changed to strengthen and recognize further the village governments, or even provide for separate organizations in the several villages. If this were done it would be necessary to have a central government composed of representatives of the village governments, which might be designated as the Hopi Legislature or Hopi Congress.

Article 10 of the Constitution which sets forth how the Constitution may be amended provides:

"Any representative may propose an amendment to this Constitution and By-laws at any meeting of the Council. Such proposed amendment may be discussed at that meeting, but no vote shall be taken on it until the next

following meeting of the Council. If the Council shall then approve such proposed amendment by a majority vote, it shall request the Secretary of the Interior to call such referendum, at which the proposed amendment may be adopted subject to the Secretary's approval, in the same manner as provided for the adoption and approval of this Constitution and By-laws."

If you approve the recommendation of the committee relative to the tribal council, it is our suggestion that a letter be sent to the Superintendent giving your decision. There is attached a suggested letter to the Superintendent for your consideration in the event that you decide to approve the recommendation of the committee.

It is the opinion of the committee that it would be unwise for the Secretary at this time to call an election on the question of amending or replacing the present Hopi Constitution and By-laws. In effect such an action would be a reversal of Office letter of June 17, 1953, recognizing the Tribal Council, would largely nullify the work of your committee, would make the job of the Agency Superintendent exceedingly difficult, and would only intensify the differences between the traditionalists and the progressives.

It is believed that the recommendation of the committee as to the tribal council should be approved. If you so decide, then it would logically follow that any proposed amendment or replacement of the Constitution should be first considered by the tribal council. If those Hopis from the seven villages who met with Senator Goldwater represent the majority sentiment of their respective villages, it should be a relatively easy matter to get these villages to recommend to the tribal council such amendments as they desire or a replacement of the Constitution and By-laws, if they so prefer. Such a procedure would give the council the opportunity to function as contemplated by the amendment clause of Article 10. If the council should be obdurate or unfair in its consideration of proposed amendments or replacement of the present Constitution, then you can give consideration to referring proposed amendments to the Secretary.

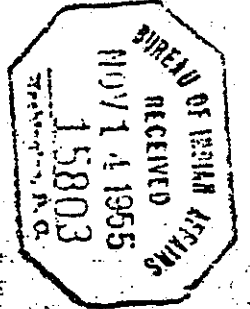
15/
Joe Jennings
Program Officer

JJennings:mk

EXHIBIT 76d

Hopi Indian Nation
Shungopavy, Arizona
Second Mesa

November 10, 1955



GLENN L. EMMONS
Commissioner of Indian Affairs
Department of the Interior
Washington 25, D.C.

Dear Sir:

On behalf of the Hopi Traditional Headmen who met Senator Barry Goldwater in Winslow recently and with their request I bring to you our protest against the idea of having the Hopi people to holding a new election to decide on whether the Hopi people be governed by the traditional Headmen or by a newly elected council men.

This act on the part of the Bureau of Indian Affairs or someone in forcing upon our Hopi people to creating a new form of government without their consent is in violation of all religious and traditional principles upon which we are standing. We already have our own form of government and a set of traditional leaders long before any white man comes upon our land. All Hopi people recognized these leaders as the true authorities with power in each village. They are still there so there is no need for any new leaders or new form of government for the Hopis at the present time.

In all of our meetings no suggestion or desire has ever been expressed by any Headmen to holding a new election. When we met Senator Goldwater in Winslow none of the traditional leader spoke except myself. Most of the time was taken up by young, educated Hopis who belong to Republican party and one or two merely suggest the idea. All the other Headmen did not speak. So it was a shock to us to learn later that a newspaper carried a story that

"the 35 tribal representatives petitioned Senator Goldwater to request the U. S. Bureau of Indian Affairs to call an election within the tribe to determine if the majority of Hopis prefer to be governed by the traditional tribal councils or by newly-elected commissions. Senator Goldwater immediately after the council luncheon, contacted U. S. Commissioner of Indian Affairs, Glenn Emmons, requesting that he arrange the election immediately."

At our meeting here in Shungopavy village on Tuesday night Nov. 8, 1955 all Headman came to a common agreement that no new election will be held and that they did not petitioned Goldwater to request it. The Hopi Constitution and Eylaws were forced upon us. The present tribal Council has been operating illegally and without our recognition. We also opposed to any prospecting on our Hopi land without our consent or knowledge.

Sincerely,

~~Andrew~~ Hermequaftewa

Andrew Hermequaftewa

EXHIBIT 77

COPY OF COPY ct 12/19/55

Law & Order
2528-55

Air Mail

DEC 1 1955

Mr. Fredrick M. Haverland

Area Director, Phoenix

My dear Mr. Haverland:

Reference is made to your letter of February 24, 1955, concerning the matter of recognition of the Hopi Tribal Council.

On the basis of information supplied by you, contained in our files here, and developed by the special committee which held meetings with the Hopi people this past summer, I have concluded that the election at which the Hopi Tribe accepted the provisions of the Indian Reorganization Act was regularly held, that the constitution and bylaws were duly adopted and approved by the Secretary of the Interior, and that no valid reason exists to withhold full recognition of the Hopi Tribal Council duly elected pursuant to the tribal constitution so long as the council conducts its business in accordance with the constitution and bylaws. The facts are that seven of the Hopi villages, which are entitled to nine representatives on the tribal council, are observing and abiding by the provisions of the tribal constitution and are selecting representatives to the council, while the five remaining villates, which are entitled to eight members on the council, are not observing the constitution and are not selecting representatives to the tribal council. The constitution provides that a majority, or nine members, of the council shall constitute a quorum and, therefore, the seven villages which select nine members have a duly constituted tribal council under the constitution for the purpose of conducting business when all nine members are present.

The failure of those villages not represented on the council to elect representatives as provided in the constitution should not operate to preclude official recognition of the tribal council

EXHIBIT 78 a

when considered in light of the fact that a majority of the villages with a majority of the population are acting pursuant to the tribal constitution. In the circumstances, since there is in existence a tribal council duly constituted under the provisions of the Hopi constitution, the limited recognition heretofore given to that council is hereby enlarged to the full recognition to which any duly constituted tribal governing body is entitled.

Since the full membership of the council as now constituted is a bare quorum as prescribed by the constitution as a prerequisite for conducting tribal business, it will be necessary that all nine members be present at any meeting where business is conducted in order that any action taken may be the official action of the tribal governing body.

We are in full agreement with the course of action taken by Superintendent Pensoneau of working with and informing the villages which have failed to elect representatives to the council, and urge that this be continued until these villages choose to send representatives to the tribal council as now provided in the Hopi Constitution or until the form of tribal government is changed through an amendment to the Constitution as provided in Article X, or otherwise.

Sincerely yours,

(Sgd.) Glenn L. Emmons

Commissioner

Copy to: Superintendent, Hopi Agency

EOHicks:WBBenge:rwr 3/21-24/55 [initials]

Holdup

P. S. It is suggested that the tribal council undertake consideration of appropriate amendments to the tribal constitution which would change the name of the tribal governing body to "Assembly," "Village Congress," or some other designation which would be more acceptable to all of the Hopi people.

EXHIBIT 78b

BEFORE THE INDIAN CLAIMS COMMISSION

FILED

NOV 26 1956

James H. ... Clerk
INDIAN CLAIMS COMMISSION

No. 210

HOPI VILLAGE OF SHUNGOPOVI

v.

UNITED STATES OF AMERICA

MOTION TO DISMISS

Comes now the defendant, by its Assistant Attorney General,
and moves the Commission to dismiss the petition in Docket No. 210
on the following grounds:

1. The petition fails to state a claim or cause of action
against the United States.
2. The petition fails to state a claim upon which relief may
be granted. The petition seeks to recover the land itself whereas
the Commission is only empowered to award relief which is compensable
in money.

WHEREFORE, defendant prays

- (1) That the Commission enter an order dismissing the
petition.
- (2) That oral argument be had hereon.

William H. Lundin
William H. Lundin
Attorney

Perry W. Morton
PERRY W. MORTON
Assistant Attorney General

EXHIBIT 80a

POINTS AND AUTHORITIES

I

THE PETITION FAILS TO STATE A CLAIM OR CAUSE OF ACTION.

The term "cause of action" has been held to be synonymous with the term "claim". Newberry v. Wilkinson, 190 F. 62, 67, affirmed 199 F. 673 (C.A. 9, 1912); Harvey Aluminum Inc. v. American Cyanamid Co. (CA, 2, 1953) 203 F.2d 105, 108, cert. den. 345 U.S. 964, 97 L. Ed. 1383.

The courts have defined the phrase "cause of action" and have held that a "cause of action" must be stated in a complaint or petition in order to enable a court to render judgment. In F. L. Mendez & Co. v. General Motors Corporation, 161 F.2d 695, 696 (C.A. 7, 1947) the court said:

Every legally valid cause of action must involve a right possessed by the plaintiff and a duty devolving upon defendant to observe that right; a wrong done by defendant which results in a breach of defendants' duty and violation of the right of the plaintiff; a remedial right recognized by the law in favor of plaintiff and a corresponding reciprocal duty resting on the defendant and finally the relief to be rendered by the court.

In Vinson v. Graham, 44 F.2d 772, 776, 777 (C.A. 10, 1930) the court discussed at length the elements required to constitute a cause of action, and stated as follows:

Perhaps no definition of the phrase "cause of action" could be framed which would be entirely free from criticism. The courts and textbook writers have expressed divergent views in respect to the meaning of the phrase "cause of

EXHIBIT 806

action," and the definitions which have been given have been generally subjected to criticism. See "The Code Cause of Action," Columbia Law Review, vol. 30, No. 6, June, 1930; 1 C. J., p. 935, § 28.

However, the definition which has met most frequently with judicial approval, and which seems to us to define most accurately the phrase "cause of action," is that given by Mr. Pomeroy in his treatise on Code Remedies. At section 347 of the fifth edition thereof, Mr. Pomeroy, in discussing this phrase, says:

"Every action is brought in order to obtain some particular result which we term the remedy, which the code calls 'relief', and which, when granted, is summed up or embodied in the judgment of the court. This result is not the 'cause of action' as that term is used in the codes. It is true this final result, or rather the desire of obtaining it, is the primary motive which acts upon the will of the plaintiff and impels him to commence the proceeding, and in the metaphysical sense it can properly be called the cause of this action, but it is certainly not so in the legal sense of the phrase. This final result is the 'object of the action' as that term is frequently used in the codes and in modern legal terminology. It was shown in the introduction that every remedial right arises out of an antecedent primary right and corresponding duty and a delict or breach of such primary right and duty by the person on whom the duty rests. Every judicial action must therefore involve the following elements: a primary right possessed by the plaintiff, and a corresponding primary duty devolving upon the defendant; a delict or wrong done by the defendant which consisted in a breach of such primary right and duty; a remedial right in favor of the plaintiff, and a remedial duty resting on the defendant springing from this delict, and finally the remedy or relief itself. Every action, however complicated or however simple, must contain these essential elements. Of these elements, the primary right and duty and the delict or wrong combined constitute the cause of action in the legal sense of the term, and as it is used in the codes of the several States. They are the legal cause or foundation whence the right of action springs, this right of action being identical with the 'remedial right' as designated in my analysis. In accordance with the principles of pleading adopted in the new American system, the existence of a legal right in an abstract form is never alleged by the plaintiff; but, instead thereof, the facts from which that right arises are set forth, and the right itself is inferred therefrom. The cause of action, as it appears in the complaint when properly pleaded, will therefore always be the facts from which the plaintiff's primary right and the defendant's corresponding primary duty have arisen, together with the facts which constitute the defendant's delict or act or wrong.

EXHIBIT 80c

The petition in Docket No. 210 lacks every one of the elements of a cause of action as these elements are set forth in the cases cited above.

The petition does not state, nor can it be inferred from the petition's language, that there was any duty owed by the defendant to the petitioner, that the defendant breached any duty to petitioner, or that defendant committed any wrong or injury whatsoever.

The petition states, at pages 5 and 6, that "our claim . . . is for our rights to the full use of our resources, our ceremonial shrines and hunting areas." Nowhere in the petition is there any statement that defendant has prevented or is preventing or hindering the petitioner in the full use of their resources, shrines and hunting areas.

II

The petition in Docket No. 210 is in narrative form and on page 5 thereof the petition states: "Our petition to you is for full restoration of the land to us and the freedom to govern its use. We cannot, by our tradition, accept coins or money for this land, but must persist in our prayers and words for repossession of the land itself, to preserve the Hopi life."

The Commission has already ruled that it lacks the power to give any type of relief other than that which is compensable in money. In Osage Nation of Indians v. United States, 1 Ind. Cls. Comm. 43, 65, 66, the Commission said:

The Indian Claims Commission Act does not specifically state the character of relief the Commission may grant, but this lack of specificity

EXHIBIT 80d

is not vital, for its provisions plainly limit the relief to that which is compensable in money. That this must be so is shown by the following provisions of the Act:

(a) In the third paragraph of Section 2 the Commission is required to make certain deductions "in determining the quantum of relief:"

(b) In Section 19 it is required that the "final determination" shall state the "amount" of relief;

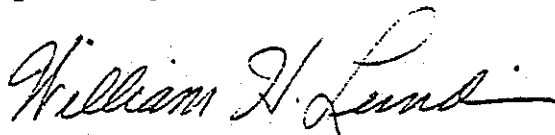
(c) And in Section 22 provision is made for the appropriation of "such sums as are necessary to pay the final determination of the Commission" and that the "payment of any claim * * * shall be a full discharge" of all claims and demands, etc.
[Italics ours.]

No other kind of relief is provided in the act.

III

An order should be entered dismissing the petition on the ground that the petition fails to state a claim or cause of action and that petition fails to state a claim upon which relief may be granted.


Respectfully submitted,



William H. Lundin
Attorney

EXHIBIT 80e

I hereby certify that on the 2/ day of November, 1956,
one copy of the foregoing motion, together with Points and
Authorities, was mailed to Wadsworth Nuvangoitewa, Shungopovi,
Second Mesa, Arizona, one of the signers of the petition in
Docket No. 210.


William H. Lundin
Attorney