NAVAJO – HOPI LAND DISPUTE

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Navajo – Hopi Land Dispute
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ABSTRACT

This thesis presents a case study of the policy formation that is intended to shed light on important aspects of the Federal Governments' involvement with Big Business concerning the alleged Navajo-Hopi land dispute. The federal law to be examined is Public Law 93-531: The Navajo and Hopi Land Settlement Act of 1974. The federal law was instituted in an effort to settle the decades old "problem" concerning land issues that arose between members of the two tribes. A prodding from Big Business in interests led the federal government to become involved, supposedly because the two tribes could not remedy the situation.

I postulate that a mixture of government involvement at all levels with Big Business was involved to reach the eventual outcome. The study looks at the solution from multiple perspectives, including federal and state governments, tribal governments, Big Business interests, and natives who were impacted by the enacted decisions. Further, I postulate that this is not a dispute between two tribes, but a dispute between the tribes and the government.

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Chapter 1
Introduction

The Four Corners region of the United States is a unique area in the country. At no one place in the country do four states come together and share such a desolate, awe inspiring terrain.[1]

The Hopis had lived in this area for centuries before the Europeans arrived and the Navajo arrived around the time of Columbus' entrada in the New World. The Hopi are believed, by some, to be the descendants of the ancient ones, the Anasazi. The Navajo are Athabascan in origin and are closely aligned with those of north-central Canada.[2]

Not only are there differences in language, but there are also differences in culture and their accounts of their arrival to this area. Many present day Hopi believe that when the Navajo arrived, they drove the Hopi up on the mesas where they live today. However, historians argue about the antagonism between the two tribes.[3]

Charles Wilkinson, former Native American Rights Fund attorney and a University of Colorado Law School professor, has described the tribal differences as: "...The historical antagonisms between the Hopi and the Navajo are sometimes exaggerated. Many Hopi and Navajo families have lived near each other in amity for many generations. Yet, the fact remains that these are two very different people. The Navajo are a herding and hunting tribe, assertive and aggressive, able to change in order to meet new circumstances, quick to move into new territory and defend it. The Hopi are farmers rooted in one place. Navajo see their tribal personality as firm and strong, the Hopi view theirs as peaceful."[4]

Over the past century, the Navajo-Hopi relations have been punctuated by times of territorial fights. The land dispute of the mid-twentieth century can be traced back to the late nineteenth century. Originally, the Hopi did not sign a reservation treaty with the United States government, but they asked the government for land that would be exclusively theirs. They had accused the Navajo herders for trespassing on to their ancestral land.[5]

In 1882, by executive order, President Chester A. Arthur created a reservation for the Hopi. This didn't resolve grazing land issues or the use and availability of water over which the two nations continually fought. The matter eventually found its way into the court system and was meant to be a friendly negotiation, started by Arizona Congressman Stewart Udall in 1958.[6]

The lawsuit *Healing v. Jones,* named after the two tribal leaders, was supposed to be only a formality, but it took on a life of its own since the court made public its decision in 1962. In its decision, the court ruled that the Hopi were given exclusive rights to the surface and subsurface area of District 6, while the rest of the area set up by the 1882 executive agreement would have joint rights to surface and subsurface resources. In 1974, Congress passed the Navajo-Hopi Settlement Act. This act officially partitioned the Hopi and Navajo lands and began the relocation of tribal members. Some tribal members accepted the relocation, but others did not.[7]

Over time, the animosity between the involved individuals and tribes became more apparent and vocal. Challenges and counter-challenges were brought by both sides. In the early 1990s, both tribes began to think that an end was not in sight because the two new tribal presidents, Vernon Masayesva (Hopi) and Peterson Zah (Navajo) were well

acquainted with each other, sometimes socialized together, and were worked aggressively to end the discontent among their tribes.

Instead of making the situation better, the antagonism continued to grow until Navajo President Peterson Zah spoke before the Hopi tribal council in 1993. He stated, "This is your land. I've got people living on it who are attached to it. They'd like to stay there. I'd like to see them accommodated."[8] In answer to Zah's statement, Hopi President Vernon Mesayesva stated, "The Navajo president did the Hopi thing. Because that's how the Hopi were admitted into the villages. They asked permission. They didn't just say 'we're here, we're going to stay'"[9]

While the government tried to keep the negotiations between the two tribes going, mediators from the Ninth Circuit Court were also used. The mediators allowed negotiations to continue as the tribes wanted, without pressure from the federal government. The process ended in 1996 with the signing of the Accommodation Agreement by President Bill Clinton. The act officially ended the land dispute with only minor adjustments needing to be made. What all those involved did not realize was the role mining was about to play in the dispute.[10]

A Tale of Uranium and Coal

For more than fifty years, a small group of determined mining companies have been involved in the political and social activities on the Navajo and Hopi lands. The companies injecting themselves into the day to day lives were looking for two different minerals, coal and uranium.[11] While both have had their periods of significance, coal is the big mineral on the tribal lands. However, uranium did play a part in the land dispute area.

Uranium mining on Navajo land began in 1918, west of Shiprock in the Carrizo Mountains. Initially, the miners were looking for vanadium, "a soft, ductile gray-white element found combined in certain minerals and used mainly to produce certain alloys. Vanadium resists corrosion due to protective film of oxide on the surface…it is mainly used in steel and mixed with aluminum in titanium alloys, used in jet engines and high speed air-frames."[12] It is also used in nuclear reactors, which lay in the future. The uranium mined during this process was simply considered a by-product.

The United States opened up Navajo lands for uranium mining in the early 1920s. These first mines were shut down after only a couple of years because cheap uranium was found half a world away in the Belgian Congo. After World War II, uranium mining became the mining focus in the American Southwest because of the development of atomic weapons. The Cold War between the United States and the Soviet Union made uranium mining a key part of the United States' defense plans. Almost thirteen million tons of uranium ore was mined when these mines were in existence. The key figure in these operations were Vanadium Corporation of America and Kerr-McGee[13]

Under the Dawes Allotment Act of 1887, certain native groups were allotted land as a way to do away with the reservation system and acculturate the Indians into the American way of life.[14] Once the dangers involved in uranium mining surfaced, a few Navajo began to question the government. In December 1978, a hundred Navajo, mostly allottees, joined with Friends of the Earth and sued six federal agencies, demanding a study of the impact of uranium mining. The federal court would not stop the mining; instead blaming the Navajo for wanting to remain in a pastoral way of life instead of advancing to become miners and mill workers. The case became moot when dropping uranium prices closed the mines.[15] Even after uranium mining ceased on Navajo lands, the nightmare didn't come to an end. On July 16, 1979, a tailings dam at Calvech Rock, New Mexico, broke, sending over a thousand tons of radioactive waste and ninety million gallons of contaminated liquid racing down the Puerco River toward Arizona.[16]

Shortly after the spill, U.S. Representative Morris Udall (D-Ariz) blamed at least three and maybe more federal and state regulatory agencies for their lack of diligence concerning the threat of an impending spill.[17]

Coal mining on Navajo lands began in 1963 with the opening of the Navajo mine on the eastern edge of the reservation. For the purpose of this paper, the focus will be on the Black Mesa and Kayenta mining areas. These mines are in the western part of the reservation are environmentally questionable, and there is a debate over who owns the land.[18] The tribes involved in the land dispute, the Navajo and the Hopi, do not believe in individual land ownership. Instead, the tribe owns the land and permits one to use it. The land was leased to Peabody Coal. The monies from minerals under District 6 would

go to the Hopi Tribe, while monies from minerals under Joint Use Area was split equally by the tribes.[19]

In 1966, the Navajo and Hopi tribal councils signed mining leases with twenty companies that had workers together designing a new coal-firm energy grid for the rapidly growing urban southwest. The terms were very one-sided, giving the companies, especially the coal company, unprecedented concessions. They were given control of more land than the federal government suggested for Indian leasing. The tribes' royalty rate, which was split equally between the Navajo and Hopi, was one-fifth of the government royalty rate. There were few environmental safeguards and no provisions for re-negotiating the contracts. Peabody Coal was allowed to pump four-thousand-acre feet (about one billion gallons) of water a year to run a coal slurry 273 miles from Black Mesa to the Mojave Generating Station. The company was to pay the Hopi $1.67 per acre foot.[20]

In addition to the confusion, possible conflict of interest claims emerged, as the lawyer representing the Hopi was also working on behalf of Peabody Coal. John Boyden corresponded with both parties, and evidence showed that he was hired by both parties.[21] While the issue may be ethically questionable, the correspondence between Boyden and the two parties is supported by evidence, "There is no convincing evidence of a broad-based conspiracy behind the land dispute. The Hopis unhappiness with the Navajo presence on the land is well established in the historical record. It is more accurate to say that the energy interests provided the Hopi lawyer with an extremely powerful tool with which to bring attention to the problem, and ammunition with which to push for partition."[22]

It wasn't until 1969 that the coal around Black Mesa was mined, though anyone could see that some of it lay close to the surface.[23] This coal deposit lies totally under reservation lands but the question of whose reservation persisted and became the crux of the land dispute between Hopi and Navajo. The two coal mines in the area, Black Mesa mine and Kayenta mine, are operated by Peabody Coal. The two mines envelop over 60,000 acres of Navajo and Hopi tribal lands, which includes 6,137 acres of Hopi surface ownership and 56,616 acres of Navajo surface ownership.[24]

No private land ownership exists in the Navajo Nation. As a result, the tribe has eminent domain over all reservation lands. This means that Peabody Coal had to negotiate with the tribe, rather than individual land owners. Because of this circumstance, more than fifty families were relocated without the opportunity to fight for their land because of their residential location (within one thousand feet of mining operations).

In 1987, the tribes re-negotiated the lease and had the opportunity to veto the project, but they chose to continue with the re-negotiated lease. The new lease gave Peabody permission to mine until 2005.[25]

Peabody Coal was founded in 1883 by Francis Peabody and was the world's largest coal company. It provided projects and services to over 180 power plants and forty industrial facilities in the United States and around the world. They were sold to British owned Hanson Group in 1998.[26]

Peabody Coal's huge coal mine project came to an abrupt halt on January 5, 2010, when Administrative Judge Robert Holt in Salt Lake City revoked their permit when an environmental impact statement was not provided.[27]

The current land dispute evolved, initially, out of clarifying the boundaries of the Hopi and Navajo Nations. It has evolved into a resource grab by big business augmented by Congress and, at times, by the Mormon Church. The displacement of First Nations Peoples and the seizing of their lands and resources, popularly imagined as a 19th Century phenomenon, continue with no apparent end in sight.

Chapter 2

The Origins of Public Law 93-531

This chapter will examine the background of Public Law 93-531, the Navajo-Hopi relocation Act. Under this act, certain Navajo and Hopi were forcibly removed from their ancestral lands because they lived in the area immediately surrounding Black Mesa. This was the last in a long line of proposed legislation that Congress considered when trying to solve the land dispute. The previous proposals were all different and voted down. Public Law 93-531 illustrates what happens when the federal government partners with mining and energy companies to rid a select group of people from their land.

While there were problems and difficult situations to work through, the two tribes managed to work together and benefit both tribes. Under the 1882 Reservation Act, both tribes had to get permission from the Secretary of Interior to start construction projects or graze their livestock. Both tribes wanted to improve the living conditions, but were unwilling to allow the other tribe to improve their situation. As a result, there was limited improvement for both tribes.

Called by a federal court the greatest title problem in the West[1], the over one hundred-year old Navajo-Hopi-United States land dispute is more than the title indicates. It is a human tragedy of epic proportions and a sad example of the federal government's mistreatment of Native Americans. The eventual land dispute led to the largest forced relocation of an ethnic group since the Japanese-Americans were relocated during World War II.[2]

The Navajo-Hopi relocation Act changed the dynamics of the two tribes. The act brought devastation, spiritual, psychological, and economic woes for thousands of the

Navajo. While the U.S. decried ethnic cleansing in other parts of the world, it authorizes it as the solution to the land conflict it created inside its own boundaries.[3]

Origins of the Land Dispute

The Navajo and Hopi got along well in the early 1600s. Intermarriage took place between the two tribes. Trouble became more apparent during the 1700s as pressure from the East began to push the Navajo into Hopi country.[4] Over time, tensions grew between the Navajo sheepherders and the Hopi farmers.[5]

During the Navajo war and their final defeat by Christopher "Kit" Carson in 1864, the Hopi aided the American Army. "The Hopi were pleased that their enemies, who were encroaching on their land, were being remanded by the Great Father. They believed their prayers had caused the removal of the Navajo, and they wanted to make certain that the remainder also would be taken away."[6]

When the Navajo returned from Bosque Redondo, they again closed in on the Hopi and limited the use of their land. The Hopi made frequent requests to the United States government for aid in removing the Navajos, but no steps were taken until the 1900s.[7]

In 1882, at the request of a local bureau of Indian affairs agent who was asking for permission to remove two white missionaries from among the Hopi, President Chester A. Arthur signed an executive order establishing the reservation for the use and occupancy of Moqui (Hopi) and any other Indians that the Secretary of Interior saw fit to include. At the time of its creation, the new reservation had around 500 Navajo and 1,600 Hopi living within its boundaries.[8] President Arthur's order, which included "any other Indians", clearly gives the Navajo the right to remain on the new reservation. Within the boundaries of the new reservation set up for the Hopi, the majority of the population was Navajo.[9]

To help settle the problem of who belonged on the reservation, the federal government, through Public Law 85-547 passed in 1958, allowed the two tribes to sue each other in 1958 (both sides are immune from suits, unless given permission by the federal government because they are considered sovereign nations). Within two weeks of the directive, the Hopi filed suit, claiming exclusive ownership of the land given by President Arthur's 1882 executive order.[10] In 1962, a federal court ruled, "the Hopi and Navajo tribes have joint, undivided, and equal interests as to the surface and sub-surface including all resources appertaining thereto, subject to the trust title of the United States."[11]

Before the Healing ruling, there were efforts to remove the Navajo from the 1882 executive order area. One such attempt was building a boundary marked with stones and monuments named after the creators, Parker and Keams. However, Washington never confirmed the boundary. Another attempt was made at the turn of the century much like the Allotment Act (Dawes Act) of 1887.[12] Members of both tribes were interested in obtaining land parcels, but the program was abandoned when the federal government failed to approve the idea.[13]

In 1911, the Navajo population was so great on the Hopi land that the first formal proposal for partitioning was heard. However, once again, no action was taken. Instead, two laws were introduced and enacted that affected any potential change in the boundaries.

A 1918 act stated that no new reservations would be created nor would existing reservations be expanded in Arizona and New Mexico except by an act of Congress. The

act of March 3, 1927 also declared that there would be no changes in the boundaries of executive order reservations except, again, by an act of Congress. [14]

The 1920s brought about the first serious attempt by the Hopi to make use of the rangeland beyond the mesas. Breaking the centuries of old pattern of Hopi life, a few families recognized cattle raising as an alternative to the traditional farming.[15]

According to Jerry Kammer, "It must be emphasized that only a few Hopi tried to move from the mesas, that the majority of the people stayed in the agricultural economy, and that the Navajo threat to the Hopi farming lands was checked with the establishment and subsequent enlargement of District 6. The Navajo now living on the JUA (Joint Use Area) represent no threat to the Hopi culture. Instead, they are a hindrance only to what might be called a new Hopi elite, most of whom are relatively affluent and who want to expand their cattle holdings."[16]

In a failed attempt to clarify the boundaries of the Navajo Nation, Congress passed the Arizona Boundary Bill on June 14, 1934. It gave three sections of land to the Navajo tribe, including the Hopi village or Moenhopi.[17] This helped out the Navajo because they no longer needed to spend resources for legal actions to protect their continually growing population. The act also "strengthened the Navajo claim to the region that would become embroiled in the Navajo-Hopi land dispute, and perhaps most significantly, the bill ensured that the land would be considered with the status of tribal trust."[18]

The original 1882 executive order did not give the Hopi unilateral control of the reservation, but at the same time, the order did not explain the legal standing of the Navajo on the reservation land.[19] The reservation boundary was set up hastily and with

no consideration to who lived there. The main consideration was for neatness rather than usefulness.[20]

After the disaster of Fort Sumner, the Navajo returned to their former home, causing the Hopi to become concerned about this new problem. At Fort Sumner, the federal government tried to Americanize the Navajo, but they fought off the concept of American ways of living. The returning Navajo took over their old homes, but now the Hopi looked at them as intruders. The Hopi complained to the local Indian agent, George Parker, who tried to solve the problem. He was greatly disappointed when the United States Army would not take the initiative against the Navajo because they feared the Navajo would respond violently.[21]

Others outside the tribes tried to settle the dispute, only to meet with failure. The Navajo ignored both outside intervention and the federal government. To stop a Navajo-Hopi war, the Interior Department set up a boundary line, separating the two tribes. This time, partition lines were established to protect the settlement areas of the time. This Parker-Keam line gave the Hopi some 600,000 areas and limited their reservation to three mesas.[22]

The Hopi were dissatisfied with the 1882 executive order and began petitioning Congress for partitioning the land. In 1974, the effort finally succeeded. However, according to the Federal Courts, "it was not repeated Hopi complaints about Navajo encroachments onto uninhabited 1882 – area lands that drove the federal government to action. It was the pressure of oil and gas companies to determine ownership of the area."[23] The disputed lands, if they were disputed lands, lie on top of one of the richest coal veins in the Western United States. Congress, at the time, was more interested in the

mysteries and revelations of Watergate than in a land issue involving two western tribes. Without investigating, the Congress adopted the Hopi solution, which became Public Law 93-531, which provided for the partitioning of the 1882 Reservation, except for an area known as District 6, which earlier had been decided to belong solely to the Hopi. Public Law 93-531 called for the appointment of a federal mediator to work out a settlement for the disputed land. Under the laws, the mediator was to work out an agreement. If he could not work out an agreement, which he didn't, he had 90 days to set a boundary partition line dividing the "disputed lands" in half, except for District 6, which would always remain Hopi. All the Hopi had to do was wait for 90 days, and the arbitrarily set boundary partitions and the relocation would take effect. The Hopi waited the required time.[24]

Had Public Law 93-531 only called for partition, then possibly today there would be no dispute. Today, many Indians live on reservations of other tribes across the United States. Public Law 93-531 called for something worse than living on another tribes' land. It called for forced relocation if one lived on land designated to the other tribe.

Otto von Feigenblatt identifies several crucial issues involved with the Navajo-Hopi land dispute. To the Hopi, the most important was sovereignty. They wanted the Navajo and others to accept their history, to accept that they were on the land before the Navajo, making the land theirs. A second issue involved Hopi identity and the preservation and protection of their culture. Because the tribe is relatively small, there is the constant fear that they will be swallowed up by the Navajo nation. The third issue to the Hopi was the need to make the Navajo be more like them. The Navajo value system did not condemn stealing or raiding, but the Hopi system did.[25]

The Navajo also considered identity as an important issue. Traditional Navajo have a religious connection to the land and their flocks. To be removed meant losing their identity and their culture. To the Navajo, usage, not ownership of the land, was paramount. It was equally important to be near ones' relatives so they could help them when the need arose.[26]

Some tribal members, on both sides, seemed to have had personal agendas. Some of the Hopi who were involved in ranching could benefit if the Navajo were removed. This would allow them exclusive use of the Hopi partition lands. Some politically minded Hopi changed their positions to benefit themselves. Some of the politically motivated Navajo did the same. Others, especially the radical young, found a cause to stand for and defend. The Hopi that benefitted the most from the land dispute was the family of Abbott Sekaquaptewa. They were the most progressive of the Hopi. They were also Mormons and close friends with John Boyden. The Hopis that suffered the most were the Kikmongwi who were the priests of the Hopi villages and the most traditional. They were the fathers of these villages and the priest for the most important village ceremony. [27]

Several years after the executive order creating the reservation in 1882, there was harmony between the Navajo and Hopi living on the contested land. The tribes continued to mingle together, have festivals together, and trade amongst each other.[28]

Violent clashes with the white ranchers in the area and the Atlantic and Pacific Railroad in the checkerboard area across the border in New Mexico forced many Navajo to leave their eastern grazing land and move onto the joint use area of the reservation. The railroad became part of the Atchison, Topeka and Santa Fe. Finally, it became a

segment of the Burlington Northern Santa Fe Railway. The federal government adopted four new executive orders to accommodate the influx of Navajo, expanding their reservation by 1907. This resulted in the Hopi being surrounded by the Navajo and their grazing flocks. This created pressure on the available grazing land.[29] Washington continues to interfere in the internal and domestic issues of the two tribes.

During the 1920s and 1930s, the federal government, at the urging of the Secretary of Interior, unilaterally created individual tribal council in order to approve mineral leases by outside business interests. The chairman of these two bodies would become the focal point in the Navajo-Hopi land dispute. The Dust Bowl of the 1930s arrived in the high desert country of Northern Arizona. While generally not included in the Dust Bowl of the Great Plains, the dust bowl in northeast Arizona was caused by over grazing. The drought and soil erosion changed Hopi and Navajo lifestyles and the habit of overgrazing became the accepted way of surviving during the rough times. The government refused to give more land to the tribes. Instead, they demanded massive stock reductions, which would bring reservation rangeland to the scientifically ordered livestock capacity.[30]

To control and run the stock reduction program, the government opened nineteen grazing districts covering both reservations. The area surround the Hopi mesa was given exclusively to the Hopi and defined as District 6 with only the Hopi allowed to graze their animals there. The rest was divided into Navajo and Hopi grazing districts. By 1943, District 6, belonging solely to the Hopi, had been enlarged to 631,000 acres, and all the Navajo living in the new boundary area were ordered to leave. Over 100 Navajo families were forcibly relocated and their animals destroyed.[31]

The dark shadow of the future for the two tribes happened in 1909 when coal was discovered on Black Mesa. Herein lies the problem, whether by accident or design. The newly created Hopi reservation is directly over a massive coal field. At the time, the U.S. Geological Survey believed there was 8 billion tons of recoverable coal beneath the surface.[32] In 1976, that tonnage was increased to over 21 billion tons and included untapped oil, natural gas, and ground water resources. There are also unknown quantities of uranium.[33] Thus, the Navajo-Hopi Land Dispute is politically tied to Black Mesa.

In the early 1920s, the Los Angeles Department of Water and Power started examining the potential for developing southwestern coal reserves to provide sufficient electricity for the radically increasing population in Southern California. To protect the air quality, the plants were situated in the Four Corners area of Arizona, New Mexico, Utah and Colorado.[34]

The 1882 Reservation was not static. In 1926, a second federal action took place. Its purpose was to resolve the Navajo-Hopi land dispute and set the West boundary for the Navajo reservation. Unable to resolve the dispute, in 1934, Congress passed a law defining the western boundary and created the "1934 Reservation". This act provided a reservation for the Navajo and other Indians that were residents of the area.[35]

Because land rights matters could not be resolved, Congress authorized the two tribes to sue each other in 1958 over who had rights to the land. The federal government decided the Hopi and the Navajo would have joint and equal interests concerning the surface and subsurface resources. As a result, the Hopi tribe petitioned Congress to partition the 1882 Reservation.[36]

In the 1950s, Arizona government and corporations began to seriously consider the coal resources on Navajo and Hopi land for easing the energy needs for its growing population. An all-out assault was made to access the coal and uranium on the Navajo and Hopi coal by 21 western utility companies in Arizona, California, New Mexico, Colorado, Nevada, Utah, and Texas. Their "grand plan" involved the construction of massive coal and nuclear power plants that would be fueled by coal and uranium mines in the Four Corners region on the Navajo and Hopi reservations.[37]

To get these needed resources, the combined efforts of all those involved against the Navajo and Hopi led to: "The creation of the Navajo and Hopi Tribal Council by the U.S. Government. The division of jointly used ancestral lands through the 1974 Navajo-Hopi Land Settlement Act; A federally imposed building moratorium and livestock reduction program for the Navajo living on Hopi partitioned land. The relocation of thousands of Navajo people from their homelands."[38]

Once the two tribes were given permission to sue each other over disputed land, the Supreme Court became involved. In *Healing v. Jones*, which was decided in 1962, the Hopi had taken the Navajo to court over rights to the land. The Supreme Court ruled that except for District 6, the two tribes had equal right to the land within the boundary of the 1882 Hopi reservation.[39]

An important finding by the court stated, "The Navajo had squatted Hopi land, and because of this, the Secretary of Interior had never taken action to remove them, they had acquired 'squatters' rights' to a one-half interest in the Hopi reservation, surface and subsurface on a share and share alike basis."[40]

Armed with the court decision, Peabody Coal thought an arrangement could be readily reached with the Navajo concerning the coal under Black Mesa. Long-time Navajo Chairman Peter McDonald had risen to power because of his coal deals. In 1963, McDonald had been appointed to head the office of Navajo Economic Opportunity. This was the beginning of his long tenure as tribal chairman, which started in 1970. In addition to joint equal rights for the two tribes, the court said that it had no authority to partition the land which both tribes had an interest. This was a legislature matter that only Congress could address.[41]

And so, instead of settling the Navajo Hopi land dispute, the Healing decision laid the legal foundation for many more years of struggle and controversy between the two tribes. In reality, joint use was not possible because thousands of Navajo were settled throughout the area, most of them eking out a subsistence with their flocks.[42]

The Healing court found that wherever mineral rights were found in the joint area, both tribes had to negotiate with the energy companies for development. An example of such a lease is the coal lease in the Black Mesa. Jerry Kammer summarizes this arrangement: "In 1966, the Peabody Coal Company signed a thirty-five-year lease with the Navajo and Hopi Tribal Council, allowing it to mine a large part of Black Mesa, thirty-three hundred square miles 'island in the sky' in the northern JUA."[43]

Navajo and Hopi Settlement Act
Public Law 93-531

The *Healing v. Jones* case is the heart of the legal wrangling that brought about the current phase of the Navajo-Hopi land dispute and turned a complex, long standing relationship between the two tribes, involving land possession, into a legal and legislative nightmare. The question involved the ownership of property where the individuals held no title. This arrangement is similar to the Hispano ejido, more commonly known as the commons. It allows the people to have access for hunting, grazing, fuel gathering, recreation and water use.[44]

The case was the end result of 1958 Public Law 85-547 that waived tribal sovereign immunity, allowing the two tribes to sue each other in order to determine property rights on the 1882 Reservation.[45] Both tribal councils, who assumed the role of property holders, under federal law, where the United States government holds the title to the property, approved the act.[46]

The case also opened the door to change the status of the 1882 Reservation from an executive reservation to a statute reservation, one authorized by Congress. The key distinction between the two is that an executive order reservation could be seized by the federal government and returned to public domain without compensation to the tribes. A statute, or treaty, reservation allowed the tribes to be compensated by the federal government.[47] In 1919 and 1927, Congress ended the creation of executive reservations, giving only themselves the power to create or expand reservations.

The federal government appointed two Anglo lawyers for the Healing case. John Boyden represented the Hopi and Norman Littell represented the Navajo. Mineral rights

on the 1882 Reservation were at the center of the litigation. The traditional Hopi were opposed to Boyden and the Hopi Tribal Council for pursuing litigation.[48] They believed the case was taking them away from their roots and what their ancestors and guiding spirits wanted of them.

In 1946, the solicitor of the Interior Department determined that both tribes together, held rights to the mineral resources.[49] John Boyden challenged the decision of Norman Littell. He suggested that the tribes sue each other over the mineral rights, and it should be up to the oil and gas companies to determine ownership. The mineral companies did not like the situation involving dual rights.[50]

The traditional Hopi produced evidence that the Hopi attorney, John Boyden was representing both the Hopi Tribe and Peabody Coal during the negotiation for the mineral leases on Back Mesa. On its face, such a practice may put the attorney in violation of rule 1.7 of the American Bar Association, for conflict of interest.[51]

In a 1996 article in the *Brigham Young University Law Review,* Charles Wilkinson wrote: "John Boyden's legal files, donated to the University of Utah after his death in 1980…show that Boyden had violated his high duty to the Hopi by working concurrently for Peabody Coal during the decisive years of the mid-1960s.[52] Boyden was never challenged for his duplicity because he was a pillar of Utah Democratic politics, a friend of Utah governors, an acquaintance of presidents, and a past Bishop in the Mormon Church.[53]

In the end, *Healing* officially created a Hopi statute reservation in the south-central part of the 1882 Reservation, the land including and surrounding these mesas where the Hopi had traditionally lived in their villages.[54] The *Healing* decisions also

stated that the tribes would equally share the surface and mineral rights on the rest of the 1882 reservation. This area became known as the Joint Use Area (JUA).[55]

In 1963, the Supreme Court upheld *Healing* even though the Navajo outnumbered the Hopi almost two to one. The Navajo resided outside the District 6 areas, which was created for the Hopi in the JUA. Almost no Hopi lived in the area because their living pattern was to live in villages on the three mesas. Their small herding and farming operations were conducted relatively close to their mesas.[56]

Conclusion

Public Law 93-531 went well beyond partitioning the land; it called for forced relocation of families who lived on the wrong side of the fence for generations.

These families became the accidental pawns of greed and personal agendas of tribal leaders on both sides, an arguably corrupt attorney, U.S. senators, power companies, a coal mining company, a church, western states, and a federal government who was more concerned about Watergate than land ownership by two tribes in Arizona.

At the center of Public Law 93-531 was the *Healing v. Jones* case. Because of this case, the Supreme Court allowed the Navajo and Hopi Tribes to sue each other. It opened the doors to nearly 40 years of lawsuits that only benefitted the attorneys while the power and coal mining companies continued to rake in huge profits.

Chapter 3

The Relationship of *Healing* and the Navajo-Hopi Land Settlement Acts of 1974 and 1996 within the context of the Politics of Livestock Management

The *Healing* decision was a disaster for the Navajo living within the boundaries of the 1882 Reservation, who happened to be the most traditional Navajo. This set the stage for Public Law 93-531, the Navajo-Hopi Land Settlement Act of 1974. The forced relocation of thousands of Navajo from their traditional homeland has cost the American taxpayer $400 million and is considered the Second Long Walk.[1]

From the beginning, the Healing decision opened the doors for more litigation and more unrest. The Hopi Tribal Council, through their attorney, John Boyden, pressed for the partitioning of the JUA in Congress and in the courts. Their argument was that the Hopi could not share the JUA because there were too many Navajo. They argued that the Navajo had too many sheep and goats. The Hopi used the land only for wood gathering, getting coal, and gathering plants for medicines and ceremonies.[2] For the most part, they did not live there, but the Hopi Tribal Council said that the Hopi use was deterred by the Navajo presence and the partitioning of JUA was the only solution.[3]

A small minority of modern Hopi, led by Tribal Chairman Abbott Sekaquaptewa, had large cattle operations and saw the Navajo herds as a drawback to development of their cattle operations, (a cow takes four times as much range as a sheep to graze).[4] Only the well-off Hopi would gain anything from the land settlement. The average Hopi would not see a significant benefit.[5] While there were few cattle owned by a relatively small group of Hopi in the area, the sheep population was near 3,000. According to the Accommodation Agreement, which is part of the 1996 Navajo-Hopi Land Settlement

Act, all the Navajo families were allowed 2,800 sheep units. This was more than double the original 1974 Relocation Law.[6] The Accommodation Agreement uses a measure developed by the Soil Conservation Service to control what is considered overgrazing by the sheep belonging to the Navajo. The act ordered the destruction of almost 200,000 head of Navajo livestock, mostly through slaughter.[7] Today, the Navajo look at the livestock slaughter in the same way they see the Long Walk.

Sheep are an important part of the Navajo idea of kinship.[8] Gary Witherspoon remembers interviewing a Navajo recounting the stock reduction: The words of Tall John, confronting the stock reduction officials, strongly testify to how one's own identity is irrevocably attached to his sheep: "If you take my sheep you will kill me. So kill me now. Let's fight right here and decide this thing."[9]

Because of the destruction of livestock, according to the 1974 Settlement Act, the land in question is improving, and most of the land is not being overgrazed. In the Hopi Partitioned Land (HPL), it seems that a very small minority of Hopi have grand plans for the area, either for cattle raising, mineral development or both. To accommodate this grand scheme, there has been a massive restricting of Navajo sheep raising, way below subsistence levels.[10]

John Boyden's Plan

When one looks at the problems surrounding the area in question, one might ponder what the land partition and stock reduction have in common. The common denominator in the entire tangled web is John Boyden. By 1970, he was moving forward with his private agenda, both in the courts and in Congress. He talked to Arizona Representative Sam Steiger to sponsor another partition bill, and at the same time, went to district court in Tucson, claiming the government had failed to provide the Hopi with half of the JUA.[11] The district court said it didn't have the power to enforce Healing. The Ninth Circuit Court overturned the lower court ruling, and the United States Supreme Court confirmed its decision.

In 1972, the district court heard the Hopi case that the Navajo livestock had damaged the rangeland. The judge ruled that the range was overstocked by 400 percent.[12] The judge ordered the Navajo to allow the Hopi complete and peaceful ownership of one-half interest in the JUA.[13] It must be remembered that only a small minority of Hopi was impacted by this decision. The judge's ruling to have the Navajo reduce their herds to half the land's carrying capacity, assaulted the Navajo's vigorous attempts to survive on the barren land.[14]

To make sure that the Hopi had free access to the land, the judge ordered a moratorium on new construction in the JUA, unless both tribes approved.[15]

Bennet Freeze

The Hopi gathered a powerful political machine because of John Boyden, and the Navajo were caught in the gears of that machine. Boyden depended on restrictions that were already in place: The Bennett Freeze. Dating back to 1966, the Commissioner of Indian Affairs, Robert Bennett, put a freeze on building and repairing existing structures. Bennett enacted the moratorium to, at least publicly, stop the ongoing land dispute between the Hopi and Navajo Tribes after the Hopi sued to acquire land specifically designated to them.[16] An artificial mistrust of the Navajo had been planted in the minds of government officials in order to have the Navajo removed. Don Yellowman, a Navajo, believed the land dispute was a divide and conquer tactic to allow outside industries to gain a foothold on reservation land.[17] Peabody Coal had already started moving into the area when the freeze went into effect. Some believe that the coal company helped enforce the freeze.

The major impact of the freeze hit the Navajo. The majority of the population in the freeze area was Navajo and a combination of BIA officials, and the Hopi tried to make sure that no building was taking place. The Navajo who tried to repair their buildings were constantly worried that either the BIA or the Hopi would fly over their buildings and see construction projects going on.[18]

On the other hand, Ivan Sidney, Hopi Tribal Chairman in the 1980s, said they never tried to enforce the freeze. He further said that the Hopi did everything in their power to help the Navajo in severe cases.[19]

With the freeze and John Boyden's plan to remove the Navajo from the HPL and reduce stock holding in the JUA in effect, everything was beginning to fall in place for

Peabody Coal. All that was needed was a powerful person in the legislature. Boyden was about to find such a person. Hopi Tribal Chairman, Abbott Sekaquaptewa, had been lobbying Congress for a partition bill, painting a picture of a range war with butchering Navajo, mutilating the Hopi and their herds. He, along with Boyden, convinced Congress that the vast Navajo reservation could easily handle the relocated Navajo. They went on to say that since the Navajo were nomads, the move wouldn't have an impact on them. They ignored the spiritual, social, and economic relationships between the Navajo and their land.[20]

The ignorance in Congress was overwhelming. One senator who was against the partition and relocation legislation, Senator James Abourezk of South Dakota, said, "Basically, Congress has no interest in Indians."[21]

Traditional vs Modern Hopi

The traditional Hopi supported the Navajo right to stay on the land, but the Hopi chairman successfully argued that the traditionalists were a very small minority, bent on causing unrest within the Hopi Tribe. The actual truth was just the opposite. The modernist Hopi Tribal Council was a very small minority.[22] The Navajo fate was sealed. Arizona Senators Barry Goldwater and Paul Fannin distributed a letter to all the senators warning them that the emotional campaign by the Navajo was only to prevent the relocation of the Navajo in the Joint Use Area. They continued to say that relocation was a perfect opportunity for families to better themselves with better educational and job opportunities.[23]

Attorney Richard Schifter, in an article in the *North Dakota Law Review,* pointed out that whites had never been forced to relocate in the case of wrongfully taking claims against them by Indians.[24]

With no fanfare and only a ripple of discussion of Public Law 93-531, the Navajo-Hopi Land Settlement Act was passed on December 22, 1974.[25] The act mandated that both tribes appoint a 5-person panel to mediate the tribes' differences. If they couldn't reach an agreement on partition within a six-month period after negotiations started, then the district court had the authority to draw the partition line.[26] On February 10, 1977, the court drew the partition line and relocation began. Upon the court's declaration, 3,500 Navajo were trespassing and had to be moved to other homes far from their ancestral homes and far from their sustaining, communal relationship with the land, greatly impacting their culture and splitting families and social networks. The relocation led to increases in violence, depression, illness, and substance abuse.[27]

The 1974 Act created the independent, executive branch office of the Navajo and Hopi Indian Relocation Commission whose job it was to oversee the removal of the Navajo. The agency was totally inept and insensitive toward the plight of the Navajo. They were also in charge of arranging housing for the relocatees, and the housing was substandard. They also were to provide counseling for those being relocated, but none was provided. Those being relocated found themselves in foreign environments and metropolitan areas, living as individual homeowners. These were totally foreign concepts to the Navajo.[28]

With Congress and the courts on their side, the modernist Hopi, with their lawyer John Boyden, were ready to take the next step.

DeConcini Bill

In 1978, Senator Dennis DeConcini introduced amendments to the 1974 Act to slow the relocation process. "DeConcini proposed that heads of households on the wrong side of the partition would be allowed to choose a 'life estate', during which they and their dependents could stay at home."[29] As the older Navajo died, their children would have to relocate, and the home site would be turned over to the tribe where it was partitioned.

Moving quickly through the committee and senate, the DeConcini Bill was introduced and passed in less than ten minutes. The bill was then referred to the House of Representatives and to Morris Udall, Chairman of the House Committee.[30]

The DeConcini amendment to Public Law 93-531 also passed the house and went to President Jimmy Carter for signature. He vetoed the bill because he questioned two of its provisions: "He objected first to the provision that neither House of Congress could veto the plan of the federal relocation commission to move the Navajo and Hopi. Second, Carter objected to the provision that would have made elected officials ineligible to serve on the relocation commission."[31]

In April 1979, Senator DeConcini reintroduced his life estate bill. At about the same time, Morris Udall also proposed a bill to limit life estate of 28 acres and allowed only families with heads at least seventy years old to remain in the partitioned area. Only fifty-seven tracts were made available. The bill also proposed the relocation commission to purchase 50,000 acres but prohibited the Navajo from buying land in the Arizona strip.[32]

The DeConcini Bill was a modified version of his first one. This bill granted up to 160 life estates of 150 acres each to the head of families at least forty-five years old. A 200,000-acre limit was included for what the relocation commission could buy.[33]

The DeConcini Bill passed the Senate, and the Udall Bill passed in the House of Representatives. An ad hoc Senate-House Conference Committee was formed to work out a compromise between the two bills. In June 1980, Congress finally passed legislation, which was a compromise of the Udall and DeConcini Bills.[34]

The Navajo and Hopi Relocation Amendment Act of 1980, Public Law 96-305, provided for the Navajo purchase of 250,000 acres of land under the Bureau of Land Management. A provision directing the Secretary of Interior to take in trust, as part of the Navajo reservation, an additional 150,000 acres to be purchased by the tribe. The Navajo were also prohibited to purchase any public land northwest of the Colorado River. It also limited the amount of land it could acquire in New Mexico, which was 35,000 acres.[35]

The life estate provision allowed by this bill was 120 life estates of 90 acres each for heads of households at least forty-nine years old in 1974 when the Land Settlement Act became law. Preference was also to be made to the disabled and the residents of Big Mountain.[36]

Public Law 96-305

Public Law 96-305, a new amendment to the Navajo-Hopi Land Dispute Settlement Act, forbade Navajo purchase of land above the Colorado River in an area known as the Arizona Strip. The Arizona Strip is a quarter million acres in the House Rock Valley and the Paria Plateau adjacent to the Navajo Reservation.[37]

The controversy of the proposed purchase was that twelve Mormon families owned the land. These people did not depend on the ranches for their livelihood because most worked in northern Arizona, southern Utah, or owned their own business. They drew a sense of individual worth and family unity from this land.[38]

Protests by the Mormons' "Save the Arizona Strip Committee" and pressure the Secretary of Interior Thomas Kleppe to measure the effects of Navajo settlement in the area slowed the process. This was a victory for the Mormons and a setback for the Navajo. In 1979, the Navajo application for the Arizona Strip was frozen, and later in 1980, the tribe was forbidden from purchasing the land.[39]

The Big Mountain Controversy is an area occupied by the Navajo, but because of the partition order, they would have to be relocated. The people, who live in the most prominent land features in the JUA, are said to be the most traditional and culturally intact of the entire Navajo tribe.[40]

A coalition of Big Mountain people noted that, "Many Big Mountain people don't speak or understand English, don't read or write English, don't understand the white man's laws and don't understand the Tribal Council laws. The only law they understand is the natural law. The prayers, the ceremonies, the songs, these are the laws that the people of Big Mountain live by."[41]

The Navajo that lived in this area did not want to move. There were heated discussions, but Public Law 96-309 could have possibly allowed some of these people to remain on the mountain by the Life Estate Amendment. The problem, though, that was on May 21, 1981, only one Navajo had applied for life estate.[42]

Peter McDonald made an attempt in May 1981 to buy the Hopi portion of the former JUA for $135 million. The Hopi vehemently rejected the offer. "I don't think there is enough money in the world to purchase the birth right of the Hopi people," Hopi Chairman Abbott Sekaquaptewa told the committee (Senate Select Committee on Indian Affairs) in response to McDonald's offer. "They have taken our blood. What do they want, our souls?"[43]

McDonald tried to purchase the Hopi land three months later for a much lower price, $75 million. This offer was also rejected. The Hopi proposed a land exchange to give the Big Mountain area to the Navajo for 16 smaller areas; Senator Barry Goldwater proposed legislation that would have forced the Navajo to accept,[44] and the Relocation Commission also proposed a land trade between the two tribes in order to lessen the number of people that would be relocated.

By September 1983, slightly more than 500 families had relocated since the relocation program had started in 1977. But this was only a small fraction of those needing to relocate. There were approximately 2,800 Navajo households and 31 Hopi households that had to relocate.[45]

Former Federal Relocation Commissioner, Roger Lewis, has been quoted as saying that the relocation of the Navajo is a tragic thing and said he sometimes feels the commission is "as bad as the people who ran the concentration camps in World War II.[46]

The Navajo who have been relocated are finding it difficult to adapt to the Anglo customs after living all their lives on the Navajo reservation. Many have been relocated to the cities, such as Winslow, Flagstaff, and Phoenix. The living expenses are driving the people to the poor house. It is so different than reservation living because on the reservation there are no property taxes, and the living expenses are minimal. And because the relocatees have had the government purchase a home for them, they are unable to receive welfare benefits and food stamps, even though they are living at the poverty level. Most of the relocatees want to return to their homes on the reservation.[47]

It has been documented that the Hopi family that has the most to gain from partition of the JUA is one of the least traditional families in the tribe, the family of Abbott and Wayne Sekaquaptewa.[48] In most cases, the Hopi in the villages did not want to move from the mesas and were not threatened by the Navajo on the range. Instead, the Hopi "elite" with large cattle holdings that benefits, not the average Hopi from the land settlement.[49]

Because of the political culture of the Hopi Tribal Government excluded many voices, it appeared to Congress, that all Hopi desired the disputed lands. The Big Mountain Support Group noted that, "In the 1973 elections, while the land dispute was flaring in Congress, 861 Hopi went to the polls. In the three villages of Shingopavi, Hotevilla, and Bakali, with a combined population of nearly 2,000, only 86 votes were recorded."[50]

It should be noted that the Settlement Act does not affect all mineral rights in the former JUA. The Navajo and Hopi Tribes still jointly hold the minerals. The consent and approval of both tribes is required for any development of these resources.[51]

There has been a change of tribal leaders for both Hopi and Navajo over the intervening years. Since 1982, the Navajo have held nine elections, electing seven new presidents, and the Hopi have elected six new chairmen. It had been rumored on the reservation that the Mormon Church and big business were behind the Hopi interest in obtaining half of the JUA.[52]

Conclusion

In 1958, the Hopi sued the Navajo for title of reservation lands. In 1962, the Hopi were given exclusive rights to the land, and the Navajo nightmare began. For a majority of the Hopi, it was also their nightmare. Since this United States Supreme Court ruling, legislation has been introduced and passed by greedy individuals, government, government representatives, attorneys, powerful industries, and a powerful church to steal land and resources away from the Navajo and a majority of the Hopi in order to garner huge profits for themselves.

Not all of the actions taken were necessarily bad. The livestock reduction imposed on the Navajo did have some merit. The land could handle only 20 percent of the livestock that the Navajo were raising. Without reduction, they could have lost their entire herds. However, government ordered reductions went too far, calling for almost total elimination of the sheep herds in the Joint Use Area. To the Navajo, this was the same as killing them. All things have come about because of the various land settlement acts and relocation act have helped a select few reap huge profits and the expense of a majority of the already poor population. The settlement favored the elite few over the many and created a knotted skein of future issues.

Chapter 4

The Tangled Web of Big Business, Attorneys, and the Mormon Church

The United Nations is clear: "Indigenous peoples shall not forcibly be removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned, and after agreement on just and fair compensation and, where possible, with the option to return."[1]

Natural resources, particularly coal, were the driving forces for the Navajo-Hopi Land Dispute. The coal riches up for grabs was located under Black Mesa. It is one of the richest low-sulfur coal deposits in the United States. The coal had been discovered in the latter part of the 1800s by U.S. government surveyors, but both the Navajo and Hopi refused to lease the land.[2]

The land remained untouched until the 1950s when Utah lawyer, John Boyden, offered to help the Hopi for little compensation. He was already the attorney of record for the coal company in the vast coal field, Peabody Coal Company. Boyden was a former U.S. Attorney and a Bishop in the Mormon Church, the same church that had an eight percent interest in the Peabody Coal Company.[3]

Big Business and the Mormon Church

The coalition of John Boyden, Peabody Coal, the Mormon Church, Senator Barry Goldwater, the illegitimate progressive Hopi Council, and the federal government was only the beginning of the nightmare for the Navajo and Hopi Tribes. This coalition not only forcibly moved tribal members, it also stripped the land of its religious significance, stole the agricultural opportunities by tapping into the Navajo aquifer to slurry the coal, and in the long run, polluted the air and the water.

Attorney Normal Littell was retained by the Navajo to protect their interests. His contract awarded him 10 percent of the coal reserves. Both Littell and Boyden were also motivated by the statutory fees of 10 percent awarded to the attorney in Indian Claims Commission (ICC) cases. What both tribes later found out was the ICC's purpose was to settle land claims by paying very little money for Indian lands taken wrongfully.[4]

Boyden quickly introduced a bill in Congress that created a special court to handle the situation of the Hopi, suing the Navajo to get clear title for the disputed coal lands. Since thousands of Navajo had settled in the Black Mesa area, no mining companies wanted to legally challenge the tribe for the land. The majority of the Hopi were also against giving up their land and losing their way of life, which was also their religion.[5]

The traditional Hopi opposed Boyden and believed the Hopi leadership and the boundary issues were closely connected. They further said that the Hopi chairman was not respected and had already been convicted of one felony in federal court. The Hopi and Navajo weren't the only ones to oppose Boyden's attempted bill introduction. U.S. Attorney General William Rogers fought the bill because he believed the Indian land

issues and reservations fell outside American property law. The special court ignored all objections and in 1966, the land leases were signed.[6]

The coal mined by Peabody at Black Mesa and Kayenta Mines supplied coal to the Four Corners Steam Plant on Navajo land in Fruitland, New Mexico, and the San Juan Generating Station in Farmington, New Mexico.

Pollutants

The Four Corners Steam Plant serves about 300,000 homes in New Mexico, Arizona, California, and Texas. Despite its location, 18,000 Navajo homes are not on the plant's grid. The American Lung Association estimates that 15 percent of the region's population (16,000 people) have some form of lung disease most likely caused by the plant's emissions.[7] Every year, "157 million pounds of sulfur dioxide, 122 million pounds of nitrogen oxides, 8 million pounds of soot, and 2,000 pounds of mercury"[8] are released into the atmosphere.

The San Juan Generating Station in Farmington adds to the growing physical maladies of the region's population. The plant emits about "100 million pounds of sulfur dioxide, 100 million pounds of nitrogen dioxides, 6 million pounds of soot, and at least 1,000 pounds of mercury per year."[9]

In addition to air pollution, waste from the mines supporting the generating stations contaminated the water with sulfates, which has led to the deaths of livestock and marine life.[10]

John Boyden remained the attorney for the Hopi for almost 30 years. He continually showed himself as a small-time country lawyer who gave his time working pro bono for the Hopi. He was paid more than $2.5 million. This figure was released because the Native American Plights Fund filed a Freedom of Information lawsuit.[11]

Instead of digging into the earth to find the coal seam, Peabody Coal chose the strip-mining technique. This involved stripping away the topsoil to expose the coal seam. By the time the coal was removed, the land was ruined, all vegetation had disappeared,

and the air was filled with toxic coal dust, and the groundwater was contaminated with toxic sulfates.[12]

Boyden had sold out his Hopi client concerning the lease agreement. He had secured low royalty rates and both tribes split thirty cents per ton. The royalty rate at the time, paid by the government for coal mining on public land, was $1.50 per ton. But even more damaging was a provision that allowed Peabody Coal four thousand acre feet, about one billion gallons of water per year, to run a coal slurry pipeline to move the coal to a generating station.[13]

The Peabody operation that pumped almost one billion gallons of water annually lasted for almost thirty years. The water came from the Black Mesa/Navajo Aquifer, which was the sole source of water for the Hopi and Navajo. This led to ground water level dropping, springs drying up, and vegetation completely disappearing in some areas.[14]

Despite the protests by both Hopi and Navajo concerning the waste of their water, the federal government refused to act and mining continued. Exploitation of tribal lands continued and attorneys for both tribes used the energy crisis of 1970s as a reason to continue mining and further undermined the tribes by saying there existed a range war between the two tribes. Hopi attorney, John Boyden, went so far as to hire a public relations firm to promote the story.[15]

Conclusion

The apparent lack of concern by the federal government to protect Native American rights shows that the United States government is more easily influenced by big business and the wealth it has available. This arrangement is alive and well today. Although not directly tied to the Navajo-Hopi Land Dispute and the rape of their sacred lands by Peabody Coal Company, Arizona Senators John McCain and Jon Kyle attempted to take Navajo and Hopi water from the Little Colorado River through SB 2109. Individual entities must work together in partnership to accomplish their goals. Each entity decided the resources they would commit to the cause in order to help the partnership. Each entity's resource was to be used to maximize the groups' efforts in achieving the ultimate goal. The more powerful the individual entity, the more influence it held in the legislature. Big money, big business, the Mormon Church, questionable attorneys, the national government, and Senators Barry Goldwater, John McCain and Jon Kyle joined hands to plunder the Navajo and Hopi lands and desecrate their religious grounds.

The Navajo and Hopi Tribes did not give up peacefully. Peter MacDonald, Chairman of the Navajo Nation worked tirelessly to keep Navajo on the land that they and their ancestors had lived on for hundreds of years. Abbott Sekaquaptewa, Chairman of the Hopi Tribe worked to help himself, his family, and the modernist/Mormon Hopi. As a result of this division between the tribes and within the Hopi Tribe, Congress was divided not knowing which group was representative of the majority.

Chapter 5

Recent Happenings

The Navajo-Hopi Land Dispute dates back to President Arthur's Executive Order in 1882. This Order set up reservation land for the Hopi and any other Indians that the Secretary of Interior allowed to settle on. This land was significantly less than the land of the Hopi ancestors. Some people say that the dispute started in 1934 when the Navajo Reservation was expanded to include Hopi land. When an Executive Order, signed by President Franklin Roosevelt, gave the Navajo the entire western portion of their reservation today and added 234,000 acres to their reservation.

Give Us Back Our Land

The taking of Hopi land by the Navajo was summed up best by Vanessa Charles when she said: "It would be like if your family was from California and you had ranch lands, 150 acres, and slowly but surely I start coming in with friends and families and start moving in to outlying areas. Because it's 150 acres, you won't have the opportunity to go around and see if I came in, but surely over the next few decades before you know about it, I'm all over the place, and I'm surrounding you. So, after a while, you're going to say, 'my great grandfather, this was his land, he came here, he's always been here, this was his land and we want our land back. Give us back our land."[1]

Other people say the dispute came as a result of the ruling in the Healing v. Jones case which started in 1958 and was ruled on by the Supreme Court in 1963 (373 U.S. 758, 1963). The court ruled that the Hopi would have exclusive rights to lands within District 6 and the rest of the Hopi lands would become a Joint Use Area. The court also said that both tribes would have equal surface and subsurface rights.[2] So begins the long, drawn out legal battle that still lives in the court system today.

Peabody Coal and Water Usage

The fabricated land dispute was a smoke screen to allow big business to steal natural resources (coal and water) from the Navajo and Hopi Tribes. Peabody Coal began strip-mining the Black Mesa in 1958 with two mines: the Peabody Coal Mine and the Kayenta Mine. Traditional Navajo and Hopi say this strip-mining violates their religious beliefs because the company is destroying their sacred land.[3] This pristine spirituality of the land will never return despite reclamation of the land and vegetation.

The taking of the coal was an insult to the two tribes, but the stealing of the water was even worse. The lifeblood of the Navajo and Hopi, water, was pumped out of the Navajo aquifer to slurry coal to the power plant near Laughlin, Nevada and the Navajo generating station in Page, Arizona at a rate of 3-8 million gallons per day.[4] This vast amount of water being taken out of the aquifer caused important springs to go dry. The relationship of the individual and the environment is all-important; it is "a life of balance and harmony based on kinship with all living things in the universe."[5]

Land is sacred to both the Navajo and Hopi and the strip-mining of the coal, the taking of the water and those more recent events have harmed the balance between the environment and the people. Their religion teaches them that the land is sacred and should not be abused and the resources should not be over used because they need to provide for the future children.[6]

One of the essential elements in this operation is water. The Black Mesa/Navajo Aquifer supplies the water needed to slurry the coal. The amount of water needed was 3,100 acre-feet per year (an acre foot is 325,851 gallons). Peabody Coal used over one billion gallons of water per year to slurry the coal.[7]

As expected, tests done by Peabody Coal showed that they were not depleting the aquifer. Since the leases were signed in the mid-1960's, there have been more than 10 studies done on the Navajo Aquifer water level. The Navajo Nation, the Hopi Tribe, government and non-government agencies, and Peabody Coal have done these studies. All studies, but Peabody's, say the aquifer has been drastically reduced. Peabody's study claims that the aquifer's decreased water level is minimal.[8]

The National Research Defense Council concluded that "Peabody cease mining the aquifer no later than 2005."[9] But Peabody blames the dropping water level on a 20-year drought.[10]

Despite the lowering water table, Peabody asked for and received permission to use an additional 32% of the aquifer. When the federal government granted their request, the Navajo and Hopi realized that the government was not on their side and they would have to fight to protect their sacred land and resources. Thousands of people, supporting the tribes sent messages to the Department of Interior opposing the use of the aquifer by Peabody. As a result, the company was required to stop using the aquifer and find an alternate source to slurry the coal. Since Peabody could not find an alternate source, they shut down the Black Mesa mine on December 31, 2005.[11]

Coal Slurries and Generating Stations

The coal slurried from Black Mesa provided the power for the Mohave Generating Station in Laughlin, Nevada and the Navajo Generating Station near Page, Arizona.

The Mohave Generating Station came on line in 1970. In 1998, the Los Angeles Times said, "the Mohave Generating Station is the biggest uncontrolled source of sulfur dioxide in the southwest – a prime contributor to the gaseous haze that clouds visibility over the Grand Canyon."[12]

The Bechtel Corporation, who is also the builder of Central Arizona Project, which is indirectly involved with the Navajo-Hopi Land Dispute (discussed below), built the plant. Los Angeles Water and Power, Southern California Edison, Salt River Project, which was Phoenix, and Nevada Power, which was Las Vegas, jointly owned the Mohave Generating Station.[13]

Big Business and the Federal Government

To a degree, Bechtel Corporation became an unofficial extension of the federal government, four of its administrators went to work for the federal government: George Shultz was Bechtel's former president. He became Secretary of State under President Ronald Reagan; Caspar Weinberger, the corporations legal counsel, became Secretary of Defense under President Reagan; Ken Davis, the corporations' former director of Bechtel Nuclear Plant Construction, he became assistant Secretary of Energy under President Reagan; Donald Hodel, past president of Peabody Coal, served on President Reagan's Energy Advisory Board.[14]

The tangled web of big business involvement with federal government got even more complicated when Bechtel purchased Peabody Coal (energy).

As an expose in *Mother Jones* opined, "Never before has a corporation been so invisibly linked to the presidency. It has had close ties with every chief of state since Eisenhower. Bechtel contributed heavily to Reagan's campaign in 1980. Peter Flanigan, of Dillon Read, played a key role. Shultz and Weinberger endorsed Reagan in the spring of 1980, joined by Walter Wriston of Citibank, who is on the Bechtel Board of Counselors, and Robert Quenon, President of Peabody Coal Co., Kenneth Davis, a Bechtel vice-president, is number 2 in the Department of Energy. Casey (CIA) represented Pertomina, the giant oil company of Indonesia which has been a good customer of Bechtel."[15]

With this type of cronyism, it is no wonder that First Nations peoples have struggled against the political and economic system of the United States. Indians that were asked to move off the Joint Use Land or off the partitioned land were slowly being

forced out by legislation proposed by Senator John McCain, Senator Barry Goldwater's replacement, in 1986.

As Robert Blackgoat said, "I don't see why he doesn't like Indians – he's living on Indian dust. Like I mentioned to a Hopi man [who] came up to me and said, 'this land is not your land', but now how can it be that it's not my land when my great-great-great ancestors were born here, and they've been buried here and they're over here where I live. And you could see in all these graveyard sites, all the bodies have turned to dust. Our great ancestors' dust is right here. Their prayer is still here; their holy song is still here. It's been carried on, on, on, and it's still here. So this is what is holding us tight here."[16]

If not for the Mohave Generating Station and its customers to the West, the coal would not have been so much in demand. But, the growing population's demand for the creature comforts of society meant continuously mining and shipping (slurry) more and more of the precious resource – coal. Actually, two precious resources – coal and water to slurry the coal.

Peabody's control ran out in the early 21st century. After years of operation, the controversial Mohave Coal-Fired Power Plant opened in 1979 and ceased operation on December 31, 2005 because of continuous EPA violations. It had violated more than 400,000 pollution protection laws between 1993-1998.[17]

The closure was the result of a coalition of groups: to Nizhoni Ani, Black Mesa Water Coalition, Black Mesa Trust, Dine' CARE, and the Sierra Club. These groups fought tirelessly and relentlessly against a well-funded coal lobby that had made millions of dollars in profits by exploiting and lying to communities that were unaware of their

treacherous practices.[18] The Mohave Generating Station not only polluted the air and clouded the vistas of the surrounding landscape, including the Grand Canyon, it also brought sickness and death to the residents surrounding the station.

Generating Station Closure

The closure of the Mohave Generating Station is an event of mixed blessings. The closure had a domino effect: with its closure of water from the Navajo Aquifer, which was no longer needed, and coal was no longer needed to supply the station's power. The result was cleaner air, refilled aquifer, and the Navajo and Hopi no longer needed to move because of Peabody's expanded coal mining operations, which had been expanded to 100 square miles.

The closure of the generating station, coal slurry, and coal mine had negative impacts on the tribes: the lost revenues brought in by the coal and water and most importantly, the jobs that had been held by tribal members. In an area where double-digit unemployment was a fact of life, the closures of the three entities greatly increased the unemployment figures.

The Mohave Generating Station powered down, leading to the closure of the Black Mesa Coal Mine in Northern Arizona, which shut down the pipeline that slurried the coal from the mine to the generating station. On January 1, 2006, the three facilities ceased operations.[19]

The closures and shutdown of the three entities hit the Hopi and Navajo Tribes hard, but the biggest blow came from the closure of the Black Mesa Coal Mine. When Peabody Western Coal Company, a subsidiary of Peabody Energy, shutdown Black Mesa, almost 200 workers, mostly tribal members, lost their jobs.[20]

While the closure proved disastrous to the local tribal and family economics, it was a victory for environmental groups and tribal activists who had been opposed to the mine since its inception because of the huge amount of water (1.3 billion gallons per

year) that Peabody had pumped out of the Navajo Aquifer. The fresh water slurry was used to move the coal instead of being used to water livestock and crops and supplying drinking water to the residents of Black Mesa.[21]

But the close may have come too late. Nicole Horseherder, a Navajo, believes, "the damage to her community from the mine has been tremendous and irreversible."[22]

Environmental Groups and Big Business

The coalition of environmental groups did not quit on the people of Black Mesa. They knew the loss of jobs was detrimental to the families, so they called for establishing a renewable energy infrastructure of solar and wind operations that would provide electricity to the tribes and provide electricity to past Mohave customers.[23]

Southern California Edison, who owns 56% of the Mohave Generating Station, shut down the station in December of 2005. At the time, they said it would not be put back into service. The station was "the first large western coal plant to shut down,"[24] according to Roger Clark.

After unsuccessfully trying to restart or selling the Mohave Generation Station, Southern California Edison decided to de-commission the station in 2009 with the intention of razing it.[25] On March 11, 2011, explosives brought down the 500-foot exhaust stack at the Mohave Generating Station.[26]

Black Mesa Coal Mine was not the only mine run by Peabody Western Coal Company in the area. They also ran the Kayenta Mine southwest of Kayenta, Arizona.[27] It supplies 8 million tons of coal annually to the Navajo Generating Station, 12 miles from the Grand Canyon near Page, Arizona.[28]

The generating station is owned by six entities: The Los Angeles Department of Water and Power, Arizona Public Service, Tucson Electric Power, Nevada Power Company, Salt River Project Agricultural Improvement and Power District, and The U.S. Bureau of Reclamation, a division within the U.S. Department of Interior.[29]

Unlike the Mohave Generating Station, the Navajo Generating Station did not depend on a slurry line to deliver coal. Coal to the station was delivered by rail. But, its

supplier, the Kayenta Mine, used about 1,200 acre-feet per year from the Navajo Aquifer for coal dust suppression.[30]

The Navajo Generating Station is one of the top 10 (8th) sources of pollution among power plants. In the last decade, of the 20th century, the station has emitted 300,000 tons of nitrogen oxide, 42,000 tons of sulfur dioxide, 190 million tons of carbon dioxide, and 4,200 pounds of mercury.[31]

According to a conservancy group, "In 2000, the Navajo Generating Station installed scrubbers and reduced SO_2 emissions by 95%. From 2008-2011, NGS added NO_x emission controls that reduced NO_x emissions by 40% less than is currently allowed in its air permit."[32] With the recently added technology, NGS emits roughly 5,000 tons of SO_2 per year and 20,000 tons of NO_x per year."[33]

Despite the lowering air pollution rate, people are finding cause for concern with other issues involving the station. "The plant uses 34,000 acre-feet of water per year from Lake Powell, nearly 70% of Arizona's allotment of water from the upper basin of the Colorado River. Until recently, NGS paid a ludicrously low $7 per acre foot for this water, while other water users in the region pay significantly more per acre-foot."[34]

In addition to the ongoing pollution and water troubles, there is also a major health concern issue. Despite the corrections to NGS, the plant is still emitting pollutants and is injurious to the surrounding population.

According to a study conducted in 2010 by ABT associates for the Clean Air Task Force, there were still deaths and other health issues attributed to continuing fine particle pollution from the coal-fired power plants. The health impacts from fine particle

emission are felt the most by the older population, children, and those already suffering from asthma and bronchitis.[35]

Tribal leaders must weigh these problems with another factor, tribal economy. NGS provides jobs and income to the Navajo Nation. "An analysis from Arizona State University (ASU) estimating Navajo employment resulting from NGS and the Kayenta mine projects that, if all three NGS units continue running, the power plant and mine directly create more than 800 well paid Navajo jobs and indirectly lead to 500 other more modestly paid jobs. In addition, the study projects that the lease payments and tax revenues from NGS and Kayenta create 1,500 Navajo jobs."[36]

Like many communities in the United States, the Navajo Nation confronts a choice between the extractive coal economy and one based on renewable energy that is sustainable after finite resources run out. Initially, transforming to a sustainable economy threatens income.[37]

It has been proposed to shut down one of the three NGS units in the next five years. This would mean a loss of almost 280 well-paying jobs at NGS and Kayenta. The Navajo Nation would also feel the loss with a $15 million royalty loss per year. On the positive side, the shutting down of one unit would free up 11,000 acre-feet of water per year. This water could then be used for livestock and irrigation for additional farmland.[38]

The loss of the estimated 280 jobs would have a ripple effect through the Navajo Nation. In order to maintain the current job rate, they would have to build a 900mw removable (solar, wind) generating station.[39]

The Kayenta Mine/Navajo Generating Station issue is not dead. On May 26, 2011, three Indian Tribes told a Congressional hearing that closing the mine would

devastate the communities with loss of jobs and threaten pending water rights settlements.[40]

The major conflict is between jobs and clean air. Eighty-five percent of the generating stations employees are Navajo. The stations pump Arizona's share of the Colorado River water, and provides electricity for millions of people in three states. It also pumps thousands of tons of pollution in to the air.[41] In order for the station to be in compliance, it must reduce emissions by 84% according to Clean Air Act's haze rule. All this comes with a hefty price tag, estimated by some to be in excess of $1 billion.[42]

Both parties hope a compromise can be reached in order to keep the plant operating until 2044. According to one alternate plan, one of the plant's generating units would shut down by 2020 and would be rebuilt to reduce emissions by 2030. The proposal would bring an end to "conventional coal-fired generation" or completely close the plant down by 2044.[43] Sandy Baha of the Sierra Club's Grand Canyon Chapter says, "The plan should be more definitively geared toward ending coal burning in the region."[44]

Two of the plant's owners, Los Angeles Department of Water and Power and Nevada Energy, have said they will free themselves of coal dependence by 2023. If the Navajo Nation does not fill the ownership gap, there will not be a plant future, possibly beyond 2020, but surely beyond 2044.[45]

The plant closure would locally mean a loss of jobs and would also have a massive impact on the cities in Nevada, Arizona and California. The loss of this source of power would mean a 200 percent increase in water delivery costs, loss of jobs, and the

ability for Arizona to use the sale of excess energy to pay state debts, one of which is the building of the Central Arizona Project.[46]

In 2013, the EPA said that the Navajo generating station was subject to BART (Best Available Retrofit Technology) based on the stations age and its impact on visibility at the eleven national parks and wilderness areas that the station's pollution affected.[47] The EPA's final action regarding the station came on July 28, 2014 when it established a cap in NO_x.[48]

In 2005, Peabody shut down the Black Mesa mine instead of complying with Clean Air Act standards. This led to the shutdown of the Mohave Generating Station, and the Navajo Nation and the Hopi Tribe passed resolutions to end Peabody's use of water from the Navajo Aquifer. But they kept their Kayenta mine operational. The coal from the mine, about eight million tons per year is shipped by rail to the Navajo generating station near Paige, Arizona.[49]

One of the owners of NGS, the Federal Bureau of Reclamation, uses more than a quarter of the electricity to provide water, via a series of pumps, pipelines, and cement-lined waterways to Phoenix and Tucson. Today, there is not a replacement source for the electricity that runs the system that lifts the water over the mountains and across canyons to those southern Arizona cities. The federal government is committed to keeping NGS running.[50] Peabody wants to combine the Kayenta mine and NGS leases under one permit. This would allow both facilities to continue operation past the current 2019 lease expiration.[51]

The Department of Interior says the coal at the Kayenta mine will only last until 2026, Peabody is trying to expand the mine permit to include the closed Black Mesa

mine. If this were to be approved, it would mean that the mine would spread further into the HPL (Hopi Partitioned Land), which is occupied by the traditional Navajo and their flocks of sheep.[52]

Peabody wants to expand and will allow nothing or no one to stand in its way. Almost fifty years ago, the company, through legal actions and the federal government, began relocating Hopi and Navajo Tribal members and that relocation continues to this day. The Hopi are traditionally agricultural while the Navajo are herders. The Navajo sheep flocks are being reduced, in some incidents drastically. The Hopi law enforcement and the federal government are impounding the sheep. According to Hopi rules, the Navajo are only allowed 28 head of sheep per family on the Hopi Partitioned Land (HPL). Many of the Navajo herders have more than 200.[53] The Hopi say that too many sheep are ruining the land that is already damaged because of the extended drought. To the Navajo, the story is quite different. According to Roberta Blackgoat, a Black Mesa Navajo elder, "it is our feeling and the feeling of our Moqui (Hopi) allies that the American government created the land dispute so that it would be easier for American energy corporations to exploit the vast mineral resources in the land."[54]

As stated previously, Peabody wants to combine the Kayenta mine and the NGS (Navajo Generating Station) under one renewal permit that would allow the operations to produce beyond 2019, which is the current expiration year. The new lease would allow for mining expansion into the lands surrounding the Kayenta mine into the closed Black Mesa mine. If this is approved, it would mean that the mine would reach further into the HPL, which is occupied by the Navajo and their sheep. This helps explain the push to

impound the sheep.[55] Without their sheep, the Navajo will have to move elsewhere in order to survive.

The Hopi and especially the Navajo have been moved and relocated since the 1974 Navajo-Hopi Settlement Act, authored by Senator John McCain.[56] And, the movement will continue if Peabody is allowed to annex additional land in the HPL.

While Arizona's Senators John McCain and Jon Kyl temporarily stepped away from Peabody's coal mining operations, they had not given up on taking tribal resources. On February 14, 2012 (ironic twist-brotherly love?) the two senators introduced the "Navajo-Hopi Little Colorado River Water Rights Settlement Act of 2012."[57] The purpose closes the door forever on Navajo and Hopi food and water sovereignty, security and self-reliance.[58]

The legislation further complicates the Navajo-Hopi Land Dispute and the accompanying issues with Peabody Coal. The skein of issues has been fraught with lawsuits and counter suits.

Navajo Lawsuit

In 2006, the Navajo sued the federal government saying the government had mishandled royalties for at least 60 years (1946) on oil, gas, coal, uranium and other mineral leases that the government had held in trust for the tribe.[59]

The lawsuit originally asked for $900 million in damages. The lawsuit additionally questioned the inability of the federal government to increase mining fees due to the Navajo Tribe dating back to the 1980s.

According to John Fritz, an Interior Department official during the Reagan Presidency, Peabody Coal began a strong lobbying effort aimed at Donald Hodel, the Secretary of Interior. The lobbying effort worked as Hodel told John Fritz to not pursue an increase in mining fees.[60] This will lead to a civil lawsuit against Peabody Coal, brought by the Navajo Nation (discussed later in the chapter).

The lawsuit against the federal government dragged on and on for years. In September of 2014, the 8-year battle by the Navajo claiming that the federal government mismanaged monies owed to the Navajo from mineral resource contracts was finally settled. The United States paid the Navajo Nation $554 million.[61]

Under the lawsuit arrangement, neither the government or the Navajo Nation admitted to wrongdoing. But, the settlement leaves the door open for the tribe to pursue water-rights claims and claims for environmental and health issues from uranium mining on and around the Navajo Reservation.[62]

With one lawsuit successfully argued the Navajo leadership turned their attention to the civil suit against Peabody Coal Company. After years of getting no legal

satisfaction against Peabody in the United States judicial system, the Navajo Nation decided on a different course of action.

In 1999, the Navajo Nation filed charges using RICO (Racketeering Influenced and Corrupt Organizations) Act against Peabody Energy and its partners Salt River Project and Southern California Edison.[63]

The lawsuit was instigated by Peabody's successful effort to prevent the Department of Interior from raising royalty rates to the Navajo Tribe to 20 percent. This amount was totally unacceptable to Peabody.[64]

According to Navajo Nation President, Kelsey Begaye, Peabody had stolen over $600 million from the tribe since 1984. All this time, Peabody made huge profits from the Navajo coal which produced electricity for Southern California, Las Vegas, and Arizona while thousands of Navajo homes went without electricity.[65]

The issue at the heart of the matter goes back to the mid-1970s when the royalty rate was set by the Department of Interior at a minimum of 12 percent. The coal is considered federal property and held in trust for the Navajo Tribe. For years, Peabody had been paying about 2 percent.[66]

Peabody convinced the tribe to back off of their immediate demands in exchange of the coal company paying more beginning in 1980. Once the agreement was reached Peabody denied there had been an agreement.[67]

In late 1983, with no new agreement, Peabody had earned over $140 million while paying less than $3 million in royalties.[68]

In early 1984, the Navajo asked the Secretary of Interior to raise the rate himself. The interior department saw the profits generated from the Navajo coal and

ordered Peabody to begin paying a 20 percent royalty fee. This fee would only be temporary as the BIA Division of Energy and Resources recommended a 25 percent fee.[69]

Peabody and the utilities appealed the decision and continued to the royalty rate of 37.5 cents portion of coal.[70]

Peabody hired Stanley Hulett, a close friend of Secretary of Interior, Donald Hodel. His job was to keep Peabody updated on how the government was leaning on the royalty increase, an increase that would have cost consumers one dollar a year.[71]

This contact raised questions from the interior department's legal counsel. Interior solicitor Frank Richardson told Hodel to discuss nothing about the appeal with Peabody. It raised this question of ex parte contact. According to Black's Law Dictionary, ex parte is a legal term meaning that action is done for the benefit of one party only.[72]

Despite the warning, Hulett continued meeting with Hodel without Navajo knowledge. This information came to light in 2000, when it was inadvertently uncovered during the research on the case.[73]

While the two sides negotiated the royalty rate, Peabody was secretly meeting with Hulett. In 1987, Peabody and the Navajo Nation agreed to the government minimum of 12 percent royalty rate. This agreement forced the Navajo to waive back taxes and royalties worth about $100 million. It also disallowed the Navajo Nation from taxing the Black Mesa Pipeline Inc. and the Black Mesa and Lake Powell Railroad for years 1978-1985. The Navajo Nation also waived sovereign immunity if disagreements

arose, agreed to be sued in non-Navajo courts, and agreed to not raise sovereign immunity as a defense in suits that Peabody or the utilities could bring against it.[74]

In 1993, the Navajo Nation sued the Department of Interior for breaching its fiduciary duties to protect their interest because of Hodel's actions. Additionally, in 1999, the Navajo accused Peabody of attempting to defraud, corrupt, cheat, and deprive the Navajo Nation of its rightful benefits from the coal resources. This lawsuit stated that Peabody engaged in activities that included corruption of federal administrative appeal, fraud, misrepresentation, obstruction of justice, conspiracy, breach of contract, and interfering with the fiduciary relationship that existed between the federal government and the Navajo Nation.[75]

In 2008, the U.S. Supreme Court ruled against the Navajo suit against the Department of Interior. The court ruled that the Navajo Nation was not entitled to damages from the federal government. They further said that the federal government had not breached its duties. This ruling overturned a decision reached earlier by the U.S. Court of Appeals in Washington. The 2008 decision also quashed a previous U.S. Supreme Court decision (2003) that decided Hodel's actions violated the federal government's trust obligation.[76]

The 2008 court decision further weakened the Navajo Nation's fight against Peabody. The new Navajo administration kept fighting for a negotiating settlement. On August 4, 2011, a settlement was reached after years of court proceedings. The Navajo Nation was awarded $600 million. The settlement amount would bring the tribe a one-time $50 million cash payment plus varying amounts to be divided among the five chapters impacted by Peabody's mining on Black Mesa. These

payments would amount to $300,000 per year for ten years to the five chapters.[77] Further division of the monies awarded have not been released to the public. The records have been sealed for twenty years.

The awarding of further court ordered payments have become unclear as Peabody Energy filed for Chapter 11 bankruptcy on April 13, 2016. [78]

Conclusion

There has never been an argument as to the availability of coal on Black Mesa. The argument was who owned the resource. The American government, at the urging of John Boyden, said the land belonged to the Hopi. Peabody Coal wanted, and took, the resource. In order to ship the coal, Peabody needed one other resource, one that is more precious than gold – water. They took the water from the Navajo Aquifer and slurried the coal to the Mohave Generating Station in Laughlin, Nevada.

Despite ongoing EPA violations, the generating station continued to slurry the coal to produce electricity for parts of Nevada, Arizona, and California. Finally, the generating station was shut down. This had a trickle-down effect: water was no longer needed to slurry the coal; coal from Black Mesa was no longer needed to fuel the station. In 2006, all three operations were idle. Environmentalists cheered, as pollutants were no longer poured into the atmosphere. But, with good comes bad: high paying jobs, especially at Black Mesa Coal, ceased to exist. The aquifer was no longer being depleted, saving 1.3 billion gallons per year. This would allow the Hopi to water their crops and Navajo to water their sheep.

After failing to find a buyer for the generating station, one of the owners, Southern California Edison destroyed the 500-foot exhaust stack which brought a visible end to the almost 60-year saga of energy production versus the two tribes. There are other concerns, ones that promise to last for generations. The health issues brought on by the fine particle emissions that will continue to drop from the sky and be kicked up by winds and disturbance of the dirt by grazing livestock and walking humans.

The Navajo hope to change the old generating station into one that uses renewable resources. But this will be expensive and in the mean-time, unemployment will continue to bother the people in the area.

Peabody did not want to give up on its claim to the coal and even tried to consolidate their holdings under one permit, but this was turned down by the federal government.

Chapter 6
Conclusion

The dispute over land by the Hopi and Navajo peoples began in 1882 when President Chester A. Arthur issued an executive order setting over 2 million acres on land aside for the Hopi and the other Indians the Secretary of Interior saw fit to settle upon. The problem with this executive order was that the Hopi still did not have a reservation to call their own. The Navajo tribe already inhabited the region.

Since the issuance of the executive order, the Navajo used the phrase, "other Indians" as an invitation to inhabit the region. The Hopi, on the other hand, believed the executive order gave the land solely to them.

The executive order did not solve anything, instead it made matters worse. In 1891, hostilities between the two tribes led the Secretary of Interior to set aside 300,000 acres that exclusively belonged to the Hopi.

The exclusive Hopi reservation was expanded in 1943 to over 600,000 acres. The area became known as District 6. All Navajo living in the District were forced to abandon their homes and cropland.

Over the coming years, tribal members of both tribes lived as neighbors, sometimes intermarrying. Everything seemed to have returned to normal, until 1951. In that year, the richest coal deposit in the United States History was found in the northern part of the 1882 Hopi Reservation, the area that eventually became District 6.

This is where the dispute arises. The Navajo-Hopi Land Dispute was (is) a conspiracy by big business, the Mormon Church, federal and state governments, and elected government officials. It is the government's responsibility to be accountable to all people, not just the select, wealthy segments of this country. John Boyden, an

attorney of questionable integrity, worked both sides of the issue, being the attorney of record for Peabody Coal and at the same time, the attorney for the Hopi Tribe. The Hopi Tribe had been splintered by Boyden to set up a select council, a council made up of Hopi Mormons, hand-picked by Boyden, who was also a Mormon. The traditional members of the society, a majority of the tribe, had been ignored. The Tribal Council, under Boyden, manipulated and cajoled the members of the United States Legislature into passing Public Law 93-531, the Navajo and Hopi Settlement Act. This was only the beginning of troubled and litigation for both tribes as elected government officials continued to take more and more from both tribes.

In 1967, John Boyden swindled both tribes when, as a salaried employee of Peabody Coal, he had both tribes sign contracts to sell the coal for a rate far below the standard rates. Traditional Hopi leaders, who opposed the coal lease, filed a lawsuit, saying the coal mine on Black Mesa was sacred ground to both tribes and the strip mining violated both traditional religions. The federal courts rejected the lawsuit saying the Hopi government, established by Boyden was a sovereign power and could not be sued. John Boyden's actions not only set the tribes against each other, they set the traditionalists against the progressives within the Hopi Tribe.

In 1963, the Arizona District Court had put a freeze on all construction in the area known as the Joint Use Area, an area that was set aside for the use of both tribes. The purpose of the "freeze" was to drive the Navajo out. But, the Navajo who lived there had been born there and their ancestors were buried there. Even though they were barely surviving, they refused to leave. Instead of leaving, the Navajo took their sheep inside the Hopi exclusive area to get them to water.

In order to stop the Navajo from intruding into District 6, the Hopi hired a white man to patrol the border of District 6. His job was to impound Navajo stock inside District 6 and arrest the one watching over the livestock. For the Navajo, it was a no-win situation: if they took their livestock into District 6, they had their sheep impounded and if they stayed on their land, the livestock died from lack of water and vegetation.

As further humiliation on the Navajo in the region, in 1972, the Arizona District Court ordered the Navajo to reduce their herds in the Joint Use Area. The plan originally was for the Navajo to voluntarily reduce their herds, but no one voluntarily reduced their livelihood. Two years later, the court found the Navajo Tribe guilty of not enforcing the voluntary reduction.

The progressive Hopi wanted the Navajo land so they could increase their cattle herds and have larger herds to take to market. In order to make way for the progressive Hopi ranchers, the Navajo in the Joint Use Area were to be moved to land near Chambers, Arizona. This land was a candidate for superfund monies as it was the worst radioactive spill in the world. The government didn't want to pay for the clean-up so they got the land cheap. This area was known as the new lands.

In 1996, Congress passed the Navajo-Hopi Settlement Act of 1996. It required all Navajo still living on the land, against 1974 law, to either sign leases giving their land to the Hopi government or being forcibly evicted. This was to be accomplished by 2000. The American Government promised to pay the Hopi $25 million if they could convince almost 100 families to sign the unfair leases. Almost immediately, the Navajo and the general public complained of fraud and coercion.

The author of the 1996 Settlement Act was the senior senator from Arizona, John McCain. He has close personal and political ties to the mining industry and power producing companies. His 1996 Settlement Act has been called Genocide for Profit.[1]

Throughout all this political wrangling business as usual was continuing on Black Mesa as Coal was mined and slurried to the generating station near Laughlin, Arizona.

The Navajo and Hopi have not given up and continue to fight for what is rightfully theirs. Despite the ongoing theft of their resources by Big Business, elected officials, and state and federal governments, they hope one day to take back what is rightfully theirs.

Water, the lifeblood of their existence, continues to be an issue. It is still taken, not to slurry coal, but to clean the existing power station and supply water to the burgeoning cities of the southwest.

The Navajo Nation entered negotiations to purchase a coal mine and generating station as a way to help their members improve their quality of life. The elected officials and the federal government have not given up taking the Navajo and Hopi resources, but they have placed them on the back burner. Senator John McCain, a major friend of mining corporations, is focused on the copper buried on the Apache Reservation in Southern Arizona. His current interest would not surprise the Hopi or the Navajo. Water from the Navajo Aquifer will be used by Resolution Copper, a joint venture by multi-national Kennecott mining company.

The saga continues with no end in sight. The resources under the Hopi and Navajo land are still at risk of being exploited by legislators, state government and

federal government. And there appears to be no legal entity responsible for the white man's damages.

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Chapter 1

Introduction

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Chapter 2

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