

# **The Two Navajo-Hopi Land Disputes**

ASB 321 Indians of the Southwest  
Fall Semester 2005  
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## INTRODUCTION

Since the beginning of recorded history, Navajo and Hopi have been living in proximity to one another in northeastern Arizona, and it is likely they did so for some time prior to the arrival of Europeans (Martin/McCarty, p. 17). Throughout nearly all of the 19<sup>th</sup> and 20<sup>th</sup> centuries (and spilling over into this one), they have been at odds with one another over land use issues. This paper will describe what led to the two major disputes between them, as well as the resolutions to date.

The Hopi population has typically been concentrated in large villages, while Navajo groups were small, centered around the family, and moved about the land while grazing livestock. This complementary arrangement of life ways functioned well for some time, but the ever-increasing territory being used by the Navajo led to the first major dispute between these peoples.

## THE FIRST DISPUTE

By 1820, Navajo people had expanded their territory to a point where it completely surrounded the area containing Hopi villages at Black Mesa (Martin/McCarty, p. 31). After their return from internment at Fort Sumner in 1868, the Navajo initially occupied the reservation set aside for them along the Arizona/New Mexico border, but quickly began to spread across the lands they considered their own.

The Hopi complained to the U.S. Government repeatedly about the Navajo's encroachment on lands the Hopi had occupied and used for many centuries (Martin

2005, 21-Sep), and were finally rewarded with a reservation created by executive order in 1882 (Martin/McCarty p. 32).

The 3,863-square mile reservation was intended for use and occupancy by the Hopi “and such other Indians as the Secretary of the Interior may see fit to settle thereon.” (Arthur 1904). Many Navajo families were living in the area set aside, and continued to do so after the creation of the reservation. The Navajo population continued to grow inside the 1882 boundaries, and the Hopi continued to protest to the Department of the Interior (Martin/McCarty, p. 32).

The Hopi took their case to the courts and the BIA repeatedly, and in 1936 the BIA divided the 1882 reservation into 18 land management districts. Only District 6 was designated for exclusive Hopi use, while the remaining districts were intended for joint use by the Hopi and Navajo. The Navajo-Hopi Joint Use Area (JUA) continued to be a source of dispute as both groups competed for its resources (Martin/McCarty, p. 32).

In 1958, the Hopi Tribe sued the Navajo Tribe over title to the 1882 reservation lands in the case *Healing vs. Jones*. When the case was ruled on four years later, the judge granted exclusive rights to the Hopi over District 6 (the Navajo perceived this as a defeat). He also noted that since the Navajo had squatted in the Hopi territory for decades without the Secretary of the Interior removing them, they had “squatters rights.” He granted the Navajo Tribe claim to 50% interest in the remaining Hopi reservation lands (Shepardson 1983:634). This was certainly not what the Hopis had in mind when they filed the lawsuit, so they too saw this result as a defeat (Hopi Tribe 2005:2).

Conflict over land use between the tribes continued, and was intensified by the presence of coal in the shared use area. BIA Commissioner Robert Bennett issued an

administrative order in 1966 freezing all development and construction in disputed areas, including not only the 1882 Hopi reservation land, but the lands under dispute to the west as well (more on this later). This regulation came to be known as the “Bennett Freeze.” This freeze on building and infrastructure development even prohibited the maintenance of existing structures, and has continued to be a major source of bad feelings between the two tribes into this century.

A few years later Congress stepped in, passing the Navajo-Hopi Land Settlement Act of 1974. This law divided the JUA into Hopi Partitioned Lands (HPL) and Navajo Partitioned Lands (NPL) (U.S Congress 1974). At the same time, the Act codified the Bennett Freeze (U.S. Congress 1974, 640d-9(f)). Hopis were required to relocate from NPL lands, and Navajos living on HPL lands were also required to move. 10,000 Navajos were relocated, compared to about 100 Hopis. Several traditional Navajo families refused to leave the area of Big Mountain on Hopi land, and some have remained there in spite of repeated attempts at a settlement (Martin/McCarty, p. 32). The Act resulted in the elimination of any shared lands—each tribe had total jurisdiction over those lands assigned to them.

The development freeze was lifted in a 1992 court ruling regarding the other Hopi-Navajo land dispute, but was then reinstated only 3 years later. The plight of the Navajos living on HPL has received a large amount of public attention, and there have been many attempts to resolve the issue. The 1996 Navajo-Hopi Land Dispute Settlement Act was intended to reach a “fair and final settlement” of the problem. In return for hundreds of thousands of acres of land, the Hopi Tribe would agree to grant 75-year leases to the Navajos remaining in HPL areas (U.S. Congress 1996).

Even though it seemed that the problem was resolved, 26 Navajo individuals refused to sign leases and continued to resist relocation (Hopi Tribe 2005:2). Multiple court rulings have upheld the Hopi position, yet the resisters remain. In Congress, Arizona Representative J. D. Hayworth has repeatedly sponsored legislation to repeal the portion of the original Navajo-Hopi Land settlement Act that implements the Bennett Freeze, without success. Arizona Senator John McCain has sponsored a bill intended to overturn the Bennett Freeze and dissolve the Navajo-Hopi Relocation Office. Senate bill S.1003 is still alive, having been reviewed and reported favorably by the Committee on Indian Affairs on October 27<sup>th</sup> of this year (McCain 2005).

## THE SECOND DISPUTE

In 1934, the Hopi Tribe filed a lawsuit against the Navajo Tribe to gain rights to the lands added to the Navajo reservation west of the 1882 Hopi reservation. These lands included the Hopi trading village of Moencopi, whose population was about 400. Hopis based their claim on the few Hopi people living in Moencopi, plus the continued religious use of several sacred sites within the 3.5 million acres (Martin/McCarty, p. 33).

Ongoing conflict over this area (and others) drove BIA Commissioner Bennett to institute his now infamous freeze, applying it to all of the lands in dispute. The case lingered for almost 60 years, finally coming to a close in 1992 when the U.S. District Court ruled that the Hopi claims based primarily on religious use were inadequate. Roughly 60,000 acres in and around Moencopi were granted to the Hopi Tribe, and the judge also lifted the Bennett Freeze (Martin/McCarty, p. 33).

The Hopis appealed, and the U.S. 9<sup>th</sup> Circuit Court of Appeals in 1995 upheld the 1992 ruling. The court also reinstated the Bennett Freeze, and granted the Hopi guaranteed access to all recognized sacred sites within the disputed area (U.S. Circuit Court 1995).

## CONCLUSION

From the perspective of the U.S. government, most of the land dispute issues between the Navajo and Hopi peoples look to be settled, but that is far from the case. While it is true that legislation exists and court decisions have been made which seem to answer the outstanding questions, two important points of contention remain: The Navajo resisters on Hopi land near Big Mountain, and the Bennett Freeze still hanging over the residents of almost a million acres. After over 120 years, the story continues.

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