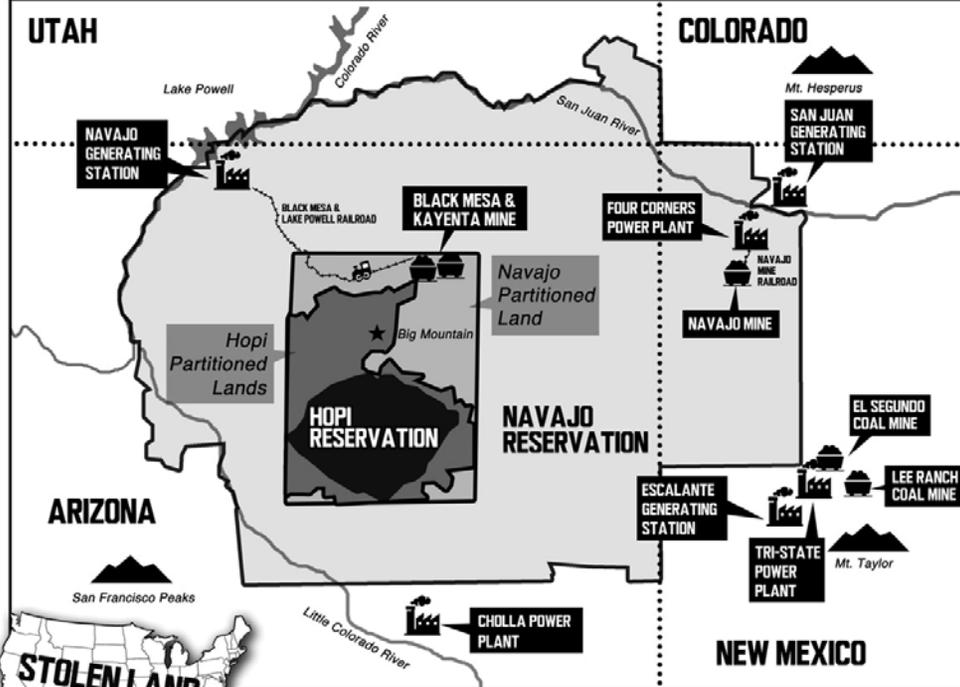


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Geopolitics of the Navajo-Hopi 'Land Dispute'



by John Redhouse

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J'ACCUSE

On August 31st, 1981, the United States officially responded to an open charge of violating the human rights of the Big Mountain Diné Nation by ordering forced relocation of its citizens from their homeland. It was the first time the U.S. government had ever publicly defended itself against an international complaint of this nature filed by an American Indian tribe or community.

This unprecedented exchange between the accuser nation and the took place in oral arguments before a special session of the United Nations Human Rights Subcommittee on the Prevention of Discrimination and Protection of Minorities convened in Geneva, Switzerland. The U.S. Observer to the UN subcommittee represented the American position and said that the federal government's intervention into the internal affairs of the Navajo and Hopi peoples was necessary in order to resolve a long-standing land dispute between the two neighboring tribes. The Big Mountain brief, authored by Navajo advocate Herb Blatchford, alleged that the U.S. government's program of mass relocation of Navajo and Hopi people from the former Joint Use Area in northeastern Arizona is actually motivated by powerful outside interests coveting energy resources in the disputed territory. The following is a discussion of the geopolitics and economic forces involved in this most complex issue.

EARLY NAVAJO HOPI RELATIONS

When the Europeans initially arrived in the Southwest, the Navajos and Hopis peopled the area much as they do today.

national scandal which the United States government tried to cover up in its 1981 "innocence abroad" statement to the United Nations Human Rights Subcommittee on the Prevention of Discrimination and Protection of Minorities meeting in Geneva, Switzerland. From the colonial Trenary of Guadalupe Hidalgo to the 'Navajo Hopi Land Settlement Act, the United States of America has repeatedly violated the human rights and territorial integrity of the Navajo and Hopi people living on Black Mesa and throughout the former Joint Use Area. The executive, legislative, and judicial branches of the American state have separately and in concert aided and abetted this process by robbing the two tribes of their sovereign status and dispossessing them of their aboriginal land base. Seeking to divide and conquer, a coalition of special interests ranging from government-paid claims attorneys to multinational energy corporations have succeeded to a fine legal degree in alienating the two peoples and ending their joint tenure of the shared soil. Failing to resolve the dispute it helped create, the U.S. government through its Relocation Commission is now bent on clearing the land for large-scale mineral and water expropriation that will follow Indian removal in the late 1980s. But in the end, the final solution to the Navajo Hopi Land Dispute may be a military one in which the Former Joint Use Area is declared a federal receivership on July 8, 1986 and all unauthorized human beings still in the area are either physically evacuated or rubbed out. The "domestic dependent" tribal governments stationed under the indirect but ultimate rule of the Secretary of Interior and subject to the plenary powers of Congress may be forced to cooperate in the relocation effort or face unilateral termination. The pattern is a familiar one. The bottom line in every major Indian removal program to date has been white control of land and resources; from the Trail of Tears to the theft of the Black Hills to the Navajo Long Walks of the 19th and 20th centuries.

This continuing genocidal practice must become the subject of greater international attention and outrage. It is a crime against humanity.



prevent Navajos from taking up residence on BLM National Resource Lands in the uranium-rich Arizona Strip.

In the House Rock Valley-Paria Plateau area alone, there were five uranium mine and prospecting sites and at least eight areas of intensive mining claim activity.

Shortly after Udall's amendment passed, Energy Fuels Nuclear, Inc. of Denver, Colorado opened up its first uranium mining operation west of House Rock Valley. By 1983, it had "staked 28,000 claims, averaging 20 acres each, and obtained prospecting permits on 250,000 acres of state land in the area." As of January, 1985, Energy Fuels owned four active uranium mines in the Arizona Strip with plans for a fifth on the South Rim of the Grand Canyon. Despite the nationwide slump in the uranium industry, the Denver nuclear company boasted publicly, "We think this is the only area in the U.S. with uranium ore rich enough to compare with foreign sources."

Some 3,000 former JUA residents have already been relocated from their homeland because it contains high-grade energy resources. Yet they are being denied immigrant passage into adjacent public lands for the same reason. With less than a year and a half before the tanks and bulldozers begin rolling in, the majority of native people still remaining have nowhere to go.



Shortly after being made an honorary member of the Hopi Tribe, John Boyden died in July of 1980. Later that month, an aging and now sickly Norman Littell accepted an out of court settlement of \$795,000 from the Navajo Tribe for his spirited defense in *Healing v. Jones*, 1958-63. Originally he had asked for \$2.8 million or ten percent of half of the total value of the Joint Use Area which in 1962 was appraised at \$56 million.

The Navajo Hopi Land Dispute has since been called a white man's law bonanza in which neither attorney in the case actually lost.

ON THE EIGHTH DAY

Now it can finally be told with a considerable body of conclusive and circumstantial credence that the Navajo Hopi Land Dispute is a

Just south of Big Mountain, the Hopis dwell in small agricultural villages atop three high mesas while the Navajos continue to use and occupy the vast rangelands below.

In 1583, an early Spanish explorer named Antonio de Espejo reported the presence of "Querechos" (Navajo-Apaches or simply Navajos) living near the Hopi village of Awatovi on the Jeddito bluff near Keams Canyon. This sighting provided the first documented account of aboriginal Navajos and Hopis living in common side by side in the so-called disputed area. Indeed their historical relationship has been one largely of peaceful co-existence and intertribal cooperation as evidenced by centuries of bartering, feasting, and intermarriage -- a tradition which still remains culturally intact.

In 1848, the United States inherited away the Southwest from the Mexican government with the signing of the Treaty of Guadalupe Hidalgo. Included in the spoils was the sovereign and undivided homeland of the Navajo and Hopi people. But with the ratifying stroke of President Zachary Taylor's pen, their shared land base was then officially condemned as the eminent domain and public property of the United States government. After unilaterally imposing its national sovereignty over the native land and people in the Southwest, the new American regime immediately built two Army forts within the Navajo Nation and in 1863 established a Bureau of Indian Affairs (BIA) agency at Keams Canyon in Hopiland. That winter, U.S. occupation forces attacked the Navajo people and forcibly relocated most of them to an already prepared military concentration camp along the Pecos River in the New Mexico Territory.

However, not all of the Navajos surrendered in the wake of this sneak invasion of their motherland. Some fled into the northern highlands of Black Mesa and hid while others sought sanctuary among their Paiute and Havasupai brethren to the west.

Meanwhile, back at the agency, the U.S. government formally began its colonial administration of Hopi affairs by introducing a variety of mandatory civilization and Christianization programs aimed at transforming the communal Hopis into the Anglo-American mold of rugged individualism. Most of these social engineering attempts failed due to the sustained passive resistance of the target Hopi population.

After four years of internment at Fort Sumner, the Navajos rounded up by Kit Carson were released after first signing a land cession treaty with the United States government.

The treaty document thumbprinted in 1868 gave the U.S. title to all of their recognized tribal homeland except for a small enclave reserved for Navajo resettlement. That land became known as the original Navajo treaty reservation. But the new reservation proved to be inadequate for the returning Navajo survivors and their livestock, so in 1878 and 1880 two blocks of land were generously withdrawn from the public domain and added to the treaty reservation. The land returned to the Navajos was adjoining and abutting what was soon to become the infamous 1882 Executive Order Reservation, the territorial and legal basis of the Navajo Hopi Land Dispute.

1882 EXECUTIVE ORDER RESERVATION

Steady encroachment by white settlers forced many Navajos to move closer to the Hopi villages and into their customary use area. This in turn caused minor disputes between the Hopi farmers and Navajo ranchers over scarce water supplies and land resources.

Aggravating these conditions was the unrelenting tide of Mormon pilgrims streaming in from the north and west. These Latter Day Saints had earlier claimed portions of Navajo and Hopi country as part of their new church state of Deseret, and by the hundreds they descended into the promised land. In 1876, the Indian agent at Keams Canyon recommended the creation of a reservation to halt future Mormon entry into Hopi lands. Later he complained of increasing Navajo encroachment as well. But the 1882 Executive Order Reservation was not created for those reasons.

For too long, the Hopis had effectively opposed the BIA's compulsory education program for their children. So in response, armed truant officers were sent to the villages and literally kidnapped Hopi youngsters from their homes and hauled them out on wagons to a boarding school compound away from the three mesas. When the BIA proposed to ship them even further east to the Albuquerque Indian School, the Hopi parents again protested and this time enlisted the aid of two resident white men to help them fight this plan. Indian agent in charge J.H. Fleming then tried to arrest the pair but was told that he lacked the proper authority to do so because the Hopi villages technically did not constitute a federal Indian reservation and therefore he did not have jurisdiction over them. Furious, Agent Fleming wrote to the BIA central office in Washington, D.C and threatened to resign if he did not get his own reservation.

Santa Fe Railroad. The reason that Black Mesa is so desirable is because it is close enough to Southern California that a pipeline could be constructed to the Los Angeles Basin to transport the coal in a very economic way." It continued, "Of great interest to the Department of Water Resources are the lowest cost scenarios" and "the significant result of our findings is that six of the lowest cost scenarios would use Black Mesa coal for different plant sites in California. All six scenarios would use slurry pipelines as the best way to transport coal. These pipeline routes would have to cross the Navajo Reservation, and the proposed routes are shown."

In February of 1980, the Manager of Environmental Quality for Peabody Coal Company issued a chilly warning for the children of the seventh generation, "This is just the beginning. There's coal here we didn't even know about when we started mining. Coal underlies all of Black Mesa. Black Mesa is practically made of coal. There's enough coal here in this area to be mining coal on this reservation for the next 100 years. Coal will change the lifestyle of people more than you can know, and that's what I predict -- that after we've left, they'll be mining coal just a few miles away."

In 1975 the Navajo Tribe applied to the Secretary of Interior for permission to purchase 250,000 acres of available public land just across the Colorado River in the Arizona Strip north of Grand Canyon. Although the proposed land selection was authorized under the Navajo Hopi Land Settlement Act, it caused an unexpected uproar among non-Indian sportsmen and environmentalists who claimed that "their" land would be ruined by habitual Navajo overgrazing. As local caretaker of the House Rock Valley-Paria Plateau area, the Bureau of Land Management (BLM) agreed saying that Navajo resettlement there would be an "environmental disaster." So an environmental impact statement was ordered, an interdepartmental task force assembled under the BIA, and, four years later, the final document was completed and transmitted to the Interior Secretary for his decision. Although there were indications that the Secretary would approve the Navajo application, the same old snag developed: Who owned the mineral rights to this estate? The Navajos claimed both surface and subsurface rights while the BLM held out for retaining federal mineral ownership. Finally in 1980, Morris Udall successfully amended the Navajo Hopi Land Settlement Act to discriminately

offer to become Vice President of Governmental Relations with Peabody Coal Company. Later in an Associated Press news story, a spokesman for Peabody Coal would neither confirm nor deny “that Peabody had lobbied for the partition or that the company has plans to develop Big Mountain.”

WAYNE OWENS, successful sponsor of the Navajo Hopi Land Settlement Act, went to work for John Boyden’s Salt Lake law firm which also interestingly relocated its offices from the El Paso Natural Gas Company Building to the Kennecott Copper Corporation Building. Later Owens became chief counsel to the Hopis.

In 1975, a political geographer studying the Navajo Hopi Land Dispute wrote, “It now seems inevitable, however, that the mined areas will expand to the south and west (of Peabody’s existing leases) as new lease agreements are concluded with the Hopi and Navajo tribes. Production of coal might be facilitated by the removal of the human population from Black Mesa.”

In 1976, Dresser Minerals Company of Houston, Texas obtained approval from the chairmen of the Navajo and Hopi tribal councils to drill and explore for coal in the northwest sector of the still unpartitioned JUA. Later it proposed to block out sections of its permit area for leasing and development but was rejected due to “unfavorable conditions.” If joint approval was granted, however, Dresser planned to begin mining one million tons of coal a year by 1985.

On February 10, 1977, Arizona U.S. District Judge James Walsh divided the surface estate of the Joint Use Area into two separate but equal halves. The Navajos and Hopis caught on the wrong side of the barbed wire fence were then given seven (now nine) years to move voluntarily. After that, the federal marshalls and possibly the Arizona National Guard will be brought in to enforce the standing eviction notice.

Six weeks after Walsh’s partition decision, the State of California Water Resources Department released a study on the competitive position of Navajo coal for the California electricity market. It stated, “In our analysis, we found that Black Mesa coal was very desirable for the Southern California market, even though no railroad exists connecting the Black Mesa coal fields to the

Upon receipt of his ultimatum, Washington immediately wired a telegram to Fleming asking him to send a legal description of what kind of reservation he wanted. Obsessed with geometry, bureaucrat Fleming mailed in his order -- a perfect rectangular reservation, one degree latitude, one degree longitude, 70 miles by 55, and encompassing approximately 2.5 million acres or 3900 square miles of former Arizona territory. Then on the 16th day of December, 1882, President Chester Arthur issued an executive order establishing a reservation “for the use and occupancy of Moqui (Hopi) and other such Indians as the Secretary of Interior may see fit to settle thereon.” And, as per Agent Fleming’s orders, a local cavalry unit was dispatched and escorted the two Anglo troublemakers off his reservation.

Thus, contrary to popular belief, the 1882 Executive Order Reservation was not created to resolve any Navajo Hopi land dispute, but rather was established to give BIA Agent Fleming the legal authority to evict the two Anglo insurgents for allegedly stirring up “mischief” among his Indians.

Further complicating the new land situation was the fact that between 300 to 600 Navajos were already living inside the artificial borders of the 1882 executive order reservation. These numbers would greatly multiply over the next fifty years as successive Secretaries of Interior routinely encouraged the Navajos and their livestock to settle thereon.

The first legal precedent of the Navajo Hopi Land Dispute arose out of a conflict involving three white men, but would later set the stage for the largest Indian removal program of the 20th century. Ironically, the first two relocatees were white.

DISTRICT SIX

Two years after the 1882 Executive Order Reservation was established, there was still peace between the Navajos and Hopis living there. The BIA agent assigned to the new reservation wrote, “The best of good feelings generally exists between these tribes. They constantly mingle together at festivals and dances. The Hopi barter his surplus melons and peaches with his old pastoral neighbors for their mutton.” But violent clashes with white ranchers and the Atlantic & Pacific Railroad in the Checkerboard Area in New Mexico soon forced many Navajos to abandon their eastern grazing lands and flee into the jointly used executive order reservation.

To accommodate this flow of Navajo refugees, the federal government issued four more executive order additions to the westwardly expanding Navajo reservation and, by 1907, the Hopis found themselves surrounded by thousands of new pastoral Navajo neighbors. Population and livestock pressures on the land increased.

Still Washington continued to interfere in the domestic affairs of the two tribes.

In the 1920s and 1930s, the Secretary of Interior took the lead in unilaterally creating the Navajo and Hopi tribal councils for the purpose of approving mineral leases with outside corporations. The chairmen of these federally chartered bodies would later become key litigants in the course of the Navajo Hopi Land Dispute. By 1933, the Dust Bowl had come to the high desert country of northern Arizona. Drought and soil erosion threatened the maintenance of traditional Navajo and Hopi lifestyles and soon the curse of overgrazing became an accepted way of survival in their homeland. Instead of making surplus land available for Navajo and Hopi stockmen, the Department of Interior instituted a massive livestock reduction campaign geared to bringing the reservation rangeland into line with its scientifically recommended carrying capacity.

In other words, the native pastoral economy had to be destroyed in order to save it.

To most effectively administer the stock reduction program, the government established nineteen grazing districts across the Navajo and Hopi reservations. The area immediately surrounding the Hopi mesas was defined as the exclusive Hopi use area or District 6 and only Hopis could be granted grazing permits there. The rest of the 1882 executive order reservation was subdivided into Navajo grazing districts and the same tribal restriction applied to Navajos. But on April 24, 1943, Hopi District 6 was enlarged to 631,000 acres and all Navajos living within this new boundary were then ordered to move. Over 100 Navajo families were deported by federal agents as the mass slaughter of their livestock continued.

By simple bureaucratic fiat, the 1882 executive order reservation was partitioned along arbitrarily drawn lines on a range management map and forcibly segregated the two tribal neighbors from ever living together again in aboriginal sin. A "separate but equal" arrangement would later be proposed as the final solution to alleged Navajo trespassing but, for the moment, the Second Long Walk had begun.

natural gas pipelines crossing Black Mesa south. That same year, the Department of Interior reported, "Transwestern Gas Supply Company (a wholly owned subsidiary of Texas Eastern) and Pacific Lighting Gas Development Corporation plan a three-year gas exploration program in areas of Arizona, New Mexico, Oklahoma, and Texas, contiguous to the Transwestern Pipeline Company system; objective of the Program is to find additional gas supplies for the southern California market." During this time, the two companies were studying the possibility of locating a coal gasification plant on Black Mesa as a primary fuel hookup into their five-state pipeline grid system. But according to an application document filed with the Federal Power Commission, "The Black Mesa Field was eliminated from consideration because most of the economically recoverable coal reserves are already under lease to a major coal producer (Peabody) and the coal dedicated under two long-term contracts for deliveries to the Mohave and Navajo electrical generation stations." Still the Black Mesa coal field was listed as a "location alternative" to Texas Eastern and Pacific Lighting's preferred proposal to build its gasification complex at Burnham on the New Mexico side of the Navajo reservation. Certainly for private corporations expressing an interest in the JUA, supporting the removal of Navajos and their livestock under the guise of resolving a century-old intertribal dispute would be more acceptable to the public than simply relocating them for a coal gasification plant and stripmine on their lands.

RICK LAVIS, staff assistant to Arizona Senator Paul Fannin, also worked with the Senate Interior and Insular Affairs Committee on Navajo Hopi Land Dispute legislation, including the Fannin-Goldwater partition bill. After Fannin retired in 1976, Lavis became a lobbyist for El Paso natural Gas Company. Like Texas Eastern, El Paso also operates an interstate natural gas pipeline running south of the Joint Use Area. In her 1973 book *Black Mesa: The Angel of Death*, Suzanne Gordon revealed that "El Paso Natural Gas is currently trying to negotiate several new leases on Black Mesa for coal gasification." But perhaps encountering the same obstacles as Texas Eastern and Pacific Lighting, El Paso also decided to construct its gasification and stripmine facility at Burnham.

After the Navajo Hopi Land Settlement Act, HARRISON LOESCH, former assistant Interior Secretary and then minority counsel for the Senate Interior and Insular Affairs Committee, accepted an

Aided by Arizonians Steiger and Goldwater, the Owens bill passed the House in May of 1974 and headed for Loesch's Republican den in the Senate Interior and Insular Affairs Committee. By this time, Boyden and the recently hired Salt Lake City public relations firm of Evans & Associates (which also represented WEST associates on the Black Mesa coal stripmining controversy) were busy beating drums for the Owens bill. Following Loesch's precedent as Deputy Secretary, the Interior Department once again supported the bipartisan call for partition and then proposed the following amendment which was later wisely taken out, "In the event of a dispute between the tribes regarding the exploration or development of such minerals, the Secretary is authorized to resolve such dispute; if the Secretary determines that exploration or development would be in the overall best interests of the tribes, he is authorized to take such actions as he deems necessary to implement such exploration or development." After filing a blatantly pro-Boyden report, the Senate Interior and Insular Affairs Committee recommended the bill's approval to the Senate floor. Agreeing first to refer the 1934 Navajo Hopi Reservation Boundary Dispute to the federal courts, Goldwater and Fannin then led their fellow senators to a 72-0 vote all in favor of the Owen's partition and relocation bill. Not even bothering to meet in Joint Conference Committee, the House adopted the Senate version and forwarded it to President Gerald Ford who signed Public Law 93-531 on the 22nd day of December, 1974 at his winter retreat in Vail, Colorado.

Eight days later, John Boyden filed a lawsuit claiming joint Hopi possessory interest in the 4.5-million-acre 1934 reservation and the second Navajo Hopi land dispute in less than a hundred years was officially under way.

SMOKING GUNS & CONSPIRACY THEORIES

JERRY VERKLER, staff director of the Senate Interior and Insular Affairs Committee, played a key role in the Senate's passage of the Owens bill in 1974. Immediately after the Navajo Hopi Land Settlement Act was signed into law, Verkler was hired as the chief lobbyist for Texas Eastern Transmission Corporation. Texas Eastern also operates a large interstate natural gas pipeline just south of the Joint Use Area. In 1970, the Arizona Bureau of Mines discussed the "practical reality" of converting Black Mesa coal into commercial synthetic natural gas and said that "a major distribution system is already present" with existing

THE OMEN

In 1909, coal was discovered on Black Mesa.

According to the U.S. Geological Survey which conducted the initial investigation of the area, about eight billion tons of recoverable coal was thought to lie beneath the mysterious dark forested plateau in northeast Arizona.

Eight years later, the Geological Survey published the results of a more extensive geographical and hydrological reconnaissance into the Navajo and Hopi country. The report confirmed the existence of a rich coal field underlying Black Mesa.

In 1970 and later in 1976, the Arizona Bureau of Mines estimated that Black Mesa contained over 21 billion tons of known accessible coal and predicted that it would soon become part of one of the largest energy producing centers in the world.

In addition to coal, Black Mesa is endowed with tremendous reserves of untapped oil, natural gas, and ground water resources. It also has unknown uranium potential and is the source of significant surface water runoff.

Juxtaposing the 3200-square-mile Black Mesa mineral formation is the nearly identical outline of the 1882 Executive Order Reservation. This coincidence, whether by accident or design, is inextricably linked with the political geography of Black Mesa and its unique spatial and ecological relationship to the Navajo Hopi Land Dispute.

HEALING VS. JONES

In 1933, the BIA agency superintendent at Keams Canyon received an inquiry about who owned the mineral estate to the 1882 Executive Order Reservation. Unable to make an official response, the agency head forwarded the query to the Commissioner of Indian Affairs in Washington who lamely replied that "it would appear" that both tribes owned mineral rights to the area.

But the question begged for a more definitive answer. To the oil companies which had initiated the request, it was of obvious concern. For the unsuspecting Navajos and Hopis cohabiting the region, it was ominously termed an "undetermined matter potentially of greatest importance."

In 1944, the Hopi agency superintendent again put the question to the BIA Commissioner who after a year and a half finally asked the Secretary of Interior to instruct his chief solicitor to rule on the bothersome question.

The question presented was: Is the mineral estate in the Hopi Executive Order Reservation the sole property of the Hopi Tribe; and if not, what is the extent of the interest of the Hopi Tribe, and what is the extent of the interest of the non-Hopi Indians (Navajos) who are legally occupying part of the Hopi Executive Order Reservation?

On June 11, 1946, the Solicitor issued a landmark opinion entitled Ownership of the Mineral Estate in the Hopi Executive Order Reservation and held that since the 1882 reservation was set aside for the use and occupancy of the Hopis and the Navajos settled thereon by the Interior Secretary, then “the rights of the Navajos within the area who settled in good faith prior to 1936 are co-extensive with those of the Hopis with respect to the natural resources of the reservation.”

In 1946, Congress passed the Indian Claims Commission Act which authorized tribes to hire their own legal counsel to seek monetary compensation from the federal government for loss of aboriginal lands. Although the Claims Commission could not return stolen land to the Indians, the claims lawyers could be awarded up to 10 percent of the value of the land “at the time of taking.” This was a built-in incentive for attorneys to solicit dispossessed tribes as clients, prove how much land they lost and how much it was worth, and then bill the government for their time and expenses. It was later called the Indian Lawyers Welfare Act.

In 1947, Norman Littell of Arlington, Virginia and John Boyden of Salt Lake City, Utah each applied for the combined post of general counsel and claims attorney for the Navajo Tribe. After much deliberation, the tribal council voted to reject Boyden and engage the services of Littell & Associates. Admittedly upset, Boyden next approached the Hopi tribal council and was hired.

The next meeting between Esquires Littell and Boyden would be in an adversarial setting which would not end until their final disassociation with the two tribes in 1980.

Not satisfied with the ruling that the Navajo Tribe had coextensive mineral rights to the so-called Hopi executive order reservation, Boyden filed a petition in 1952 asking the Secretary of Interior to reconsider the Solicitor’s opinion.

situation in the Joint Use Area, the 76-year-old “Mr. West” told the House Rulers Committee, “Gentlemen, people are being killed every day in the land dispute” and then proceeded to endorse the pending relocation legislation.

Later Aspinall was retained as a consultant to various mining firms, including American Metals Climax (AMAX) the third largest coal producer in the country.



In July, 1972, the Steiger bill passed the House and was referred to the Indian Affairs Subcommittee of the Senate Interior and Insular Affairs Committee for hearings in September. Again Undersecretary Loesch carried the ball for the administration as he reiterated official Interior Department support for the bill. But the 92nd Congress adjourned before the full Senate had a chance to vote on it.

On January 3, 1973, Steiger reintroduced his bill which was again sent to the Senate Interior and Insular Affairs Committee. By this time, Loesch was employed as minority counsel for the Committee and continued to push for congressional partition and relocation.

In September, U.S. Senators Paul Fannin (R-AZ) and Barry Goldwater (R-AZ) cosponsored an even stronger version of the Steiger bill. Although Steiger had planned to finance the relocation process by defining unauthorized Navajo and Hopi occupants in the former JUA as “displaced persons” under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, the Fannin-Goldwater bill would not provide for any relocation benefits or allow the Navajo Tribe to buy comparable public lands contiguous to the reservation at fair market value. Not surprising, this unusually harsh measure was also drafted by John Boyden. Toward the end of the 1973 session, Boyden convinced Steiger to withdraw as prime sponsor of the partition campaign and let Representative Wayne Owens (D-UTAH) take over as legislative hit man. Together, Boyden and Owens rewrote a substitute bill authorizing Congress to direct one of the same Arizona judges that took part in the 1962 Healing v. Jones decision to partition the Joint Use Area without prejudice.

grant the Hopis 140,814 acres from the Western Navajo Agency.

The fudging of “final” boundary figures was done without recourse to the actual facts of Hopi use and occupancy of said lands as of 1934. Rather, the real intent of this map-making enterprise was to free subterranean access to “the entire coal deposit that lies between Moencopi and all of the (1882) Hopi Executive Order Reservation.” Unlike the Joint Use Area where the two energy resource tribes had to share and share alike, the Hopi tribal council would have sole and uncontested subsoil leasing privileges in their partitioned share of the 1934 Navajo reservation.

To loosen further constraints on future development, Assistant Interior Secretary Loesch opposed application of the 1970 National Environmental Policy Act on Indian lands on the grounds that they were jurisdictionally different from federal lands. But at the same time, he mainlined direct control over both federal and Indian land and resources -- with a philosophy toward minimum environmental protection.

Loesch continued to work openly for Navajo relocation and livestock reduction in the JUA until his firing as chief public land manager in December of 1972.

But like a bad dream, he would return in another form and another to haunt the Navajo people still living on Black Mesa.

Like Steiger, WAYNE ASPINALL was running for reelection in 1972. And like Steiger, he was also fighting strong congressional legislation to regulate coal stripmining. But unlike Steiger, he lost after serving 24 years as “one of the most influential individuals in the development of the West’s water and mineral resources since the end of World War II.”

The main reason for Aspinall’s downfall were charges during the primary that he was “owned lock, stock, and barrel by the coal and oil industry” and “no less than nine large contributions to his last campaign were from executives of the Kennecott Copper Corporation.” At the same time, Kennecott also owned Peabody Coal Company lock, stock, and barrel.

After Aspinall was turned out of office, he was recalled to testify as an expert witness on the Steiger bill. Greatly exaggerating the true

The following year, Boyden was told by the department solicitor to submit a legal memorandum in support of his request for secretarial reintervention into the matter.



In 1955, Boyden filed his brief entitled Petition to the Secretary of the Interior by the Hopi Tribe, Arizona, for Reconsideration of the Opinion of the Solicitor of the Department of Interior Dated June 11, 1946, Re: Ownership of the Mineral Estate of the Hopi Executive Order Reservation. In his petition, Boyden stated that the Solicitor’s opinion was in error and should be modified or reversed. He further argued that the claim of exclusive Hopi mineral ownership of the 1882 reservation should be decided separately from the issue of Navajo grazing rights to the same area.



At the same time, the BIA and the University of Arizona College of Mines had just completed a \$500,000 study of mineral resources on Navajo and Hopi lands, including the Black Mesa super formation. The three-volume report surveyed the geology of the Black Mesa coal field and specifically mentioned the possibility of stripmining and electrical power generation “within the foreseeable future.” It also said that Black Mesa constituted a major petroleum basin and that “a thorough surface and subsurface study of the area together with a well-planned geophysical program” was needed in order to determine its oil and gas potential.

Commercial exploration and subsequent development of this enigmatic mineral region hinged on the legal question of which tribe owned and could therefore lease its natural resources in the 1882 executive order reservation. Royalties from these ventures would then go to pay for the general counsel duties of its attorneys who were both largely working on a contingency fee basis with the Indian Claims Commission.



In March, 1957, Norman Littell replied to Boyden with his own brief titled Answer of the Navajo Tribe to the Petition of the Hopi Tribe to the Secretary of the Interior for Reconsideration of the Opinion of the Solicitor of the Department of Interior Dated June 11, 1946, Re: Ownership of Mineral Estate in Area of the Executive Order of December 16, 1882.

In rebuttal, Littell mocked Boyden's "novel attempt to sever horizontally the interests in lands held by two Indian tribes respectively, recognizing surface rights in one tribe and subsurface mineral rights in another" and said this concept seemed rather to be "a product of the exciting new prospects for uranium and oil and gas development in the surrounding area of Arizona."

Littell contended that since the Navajos have historically used and occupied most of the surface of the executive order reservation, then concomitantly they own most of the mineral rights there by virtue of their more extensive areal subsistence and settlement patterns.

Stating that this was an ordinary incident of Indian title, Littell then recommended that legislation "be enacted by Congress authorizing and directing a Federal Court to find and determine a boundary line between the areas equitably owned by the two Tribes, respectively, and confirming to each Tribe its respective ownership."

In non-legalese, Littell was pushing for a quiet title resolution of both the surface and subsurface issues through a judicial partition of the joint reservation.

After establishing that the Secretary of Interior had no authority under existing law to divide the land, Littell elaborated further on his proposal to refer the matter to a special federal court system, "although Congress has the legal power to divide the so-called Moqui (Hopi) Reservation, the exercise of this power by a political branch of the Government would be difficult and inappropriate.

Since the equitable title of the two tribes has already been vested by reason of their settlement in their respective portions of the reservation, questions of fact appropriate for judicial determination are presented.

To remove the controversy from partisan pressures and to the level of legal and factual realities, Congress should pass an act conferring jurisdiction on an appropriate Federal court to partition the so-called Moqui Reservation according to principles of law and equity.

The long and unsatisfactory history of the Reservation of 1882 and lack of authority in either tribe to lease the lands therein for mineral purpose, thus retarding the economic development of the area, shows that no other solution is practicable."

So be it.

In supporting Steiger's bill in 1972, HARRISON LOESCH admitted that he "was instrumental in the final delineation" of the Hopi claim to 140,814 acres of the Navajo Boundary Act Reservation which was set aside on June 14, 1934, "for the benefit of the Navajo and such other Indians as may already be located thereon." Such other Indians included the Hopi village of Moencopi and certain members of the San Juan Band of Southern Paiutes (who could apply for individual allotments under the Steiger bill). Although the acreage requested was supposed to be based on actual Hopi use and occupancy of the area in 1934, Loesch testified that his delineation was "sort of a judgment call."

Underlying this "judgment call" is the rich coal-bearing Dakota Formation -- the far west end of the Black Mesa mineral theater.

In 1963, Peabody prospected for coal on much of this land and subsequently attempted to lease portions of it for development but couldn't due to its alleged disputed status.

Later the Arizona Public Service Company applied to the Navajo Tribe for a right-of-way easement to build an electrical transmission line across their 1934 lands, but Boyden protested claiming undetermined Hopi rights to the area.

After consulting with his solicitor, Secretary Udall directed his new Commissioner of Indian Affairs Robert Bennett to administratively freeze all new construction and improvements in the area as of July 8, 1966 and "order all funds from either surface or subsurface resources in the area impounded until the Hopi interests in the area can be determined and made retroactive to 1934."

The Bennett Freeze covered a large area of predominantly Navajo-occupied land just west of the 1882 Executive Order Reservation.

Then in 1969, Commissioner Bennett offered to give the Hopis 105,000 acres of prime Navajo tundra and a year later, Loesch "affirmed and ratified" Bennett's proposal after adding 60 acres and said that his latest boundary line was "consistent with (Hopi) land use patterns in existence in 1934." Only congressional confirmation was needed to make a second exclusive Hopi reservation. So on February 22, 1971, Sam Steiger introduced a bill to award the Hopis 305,000 acres but later withdrew it in favor of his October 6 partition package which would site-specifically

In his book *New Navajo Tears*, Ralph Gasteel explained Steiger's relocation motives firsthand, "Congressman Sam Steiger said to me between commercials at a radio debate on the bill, 'Ralph, you might as well make up your mind right now, this bill is going to pass. The Indians don't have sense enough to settle this problem.' Steiger went on to say, 'The Hopis or Navajo neither one have the capability to settle this. Besides, the more you fight this the better it made me look.' The radio commentator then turned to Steiger and said, 'Besides, Sam, this is an election year.' At that point, good old Congressman Steiger beamed and said, 'It sure is and this is worth a million bucks publicity, and anyway, I'll be damned if any tribe of Indians is going to defeat my bill.'

"This dispute is worth 'a million dollars' to Sam Steiger's campaign, alright, it helped him get reelected. He would have been defeated but fate moved his district out of the voting reach of the Navajos and Hopi traditionalists alike who came by the droves to vote against him saying, 'Where is that Steiger's name, why is the devil's messenger hiding behind his name?'

"Even more tragic that this is a statement by a fellow Senator who had made a political promise. He said, 'We promised the party (Republican) that we would not go against Steiger or publicly argue until after the election.' The distinguished Senator then went on to say, 'Don't tell anybody, but I'm terribly concerned about this bill. I can't do anything about it because of the promise.' But he said, 'If I were you, I'd check on the proposed ranch that would be purchased to relocate some of the Navajos.' He said, 'I heard (a) shocking rumor that it belongs to a friend of Sam Steiger.'"

In 1965 and 1966, JOHN BOYDEN listed Peabody Coal Company as his client while at the same time he was representing the Hopi Tribal Council in its negotiations with Peabody for 40,000 acres of joint use land on Black Mesa. This is another possible conflict of interest situation which then-Interior Secretary Stewart Udall failed to investigate.

In 1968, Boyden was then employed as special counsel in the legal merger of Peabody Coal Company and Kennecott Copper Corporation. A third major client of his was Morgan Guaranty Trust Company of New York, New York which helped finance the corporate marriage made in Wall Street. Again Boyden was the official Hopi lawyer during this time.

With both sides agreeing to disagree over substance but not procedure, gentlemen Littell and Boyden went back to their respective tribal councils and convinced them to seek federal permission to sue each other over the surface and mineral estate of the 1882 executive order reservation.

Congressional legislation was prepared by the BIA and introduced in the House by Representative Stewart Udall (D-AZ) and in the Senate by fellow solons Carl Hayden (R-AZ) and Barry Goldwater (R-AZ).

In May, 1957, Littell drafted a highly questionable resolution for the Navajo Tribal Council to approve. It was worded to request the Interior Secretary to advance sufficient funds to an apparently indigent John Boyden to prosecute the Hopi claim against the Navajos. Based on the reassuring advice of their attorney, the tribal council voted unanimously to accept the resolution.

A few weeks later, Littell had another bizarre idea. Since the government would not likely give a loan to the Hopis without requiring some sort of backup security, Littell then offered to use the mineral estate of the 1882 reservation as collateral. Itching to litigate, Littell quickly drafted another Navajo resolution which would allow the Secretary of Interior to lease minerals within the disputed area -- without the authorization of either tribal group.

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Under this plan, all royalties and bonuses from the lease sales would be deposited into a special escrow account with the Interior Secretary who could continue leasing such lands, "to the extent necessary to make maximum economic use of the area" for the duration of the Navajo Hopi Boundary Line Dispute.

Upon final adjudication of each tribe's rights and interests in the former joint reservation, the mineral proceeds (plus interest) would be partitioned and distributed accordingly.

But in the meantime, credit funds could be withdrawn from the account and used to cover Borden's fees and expenses in representing the Hopi plaintiffs. Again on the legal advice of Littell, the Navajo council passed his second resolution without question and also sent it to Congress.



Littell's motives at this time were at best suspect and at worst foul and unethical. Just before he manipulated the Navajo Tribal Council to forward the two questionable resolutions to Congress, his ten-year contract as their chief general counsel and claims attorney was about to expire. Taking advantage of the situation, Littell carefully reworked his new contract to stipulate that he would receive 10 percent of the value of the total Navajo claim to the 1882 executive order reservation which of course included most of Black Mesa. By proving that the Navajos owned at least one-half of the contested surface and mineral estate of the reservation, he could then become an instant multimillionaire on this one case alone. Suffice to say, Littell's amended contract was renewed for another ten years.



Fortunately, Congress had the legislative grace to strike out Littell's inane resolutions which were proposed as an amendment to the bill authorizing Boyden to sue his Navajo clients over the ownership of Chester Arthur's executive ordered reservation.

On July 22, 1958, Congress enacted Public Law 85-547 to "determine the rights and interests of the Navajo Tribe, Hopi Tribe, and individual Indians to the area set aside by Executive order of December 16, 1882, and for other purposes."

Nine days later, Willard Sekiestewa, chairman of the Hopi Tribal Council, filed a friendly lawsuit against Paul Jones, chairman of the Navajo Tribal Council, in what would soon be characterized as "the greatest title problem of the West." Sekiestewa was later replaced as Hopi Chairman by Dewey Healing and from that point on the suit was known as Healing v. Jones.

According to observer Herb Blatchford, what started out as a legal can of worms had now turned into a barrel of snakes.

NAVAJO HOPI LAND SETTLEMENT ACT

In 1971, there was a renewed push for surface partition of the Joint Use Area.

On October 6th, U.S. House Representative Sam Steiger (R-AZ) introduced a bill authorizing Congress to divide the JUA and directing the Secretary of Interior then to remove all Navajos and Hopis living on the "wrong" side of the partition line within a ten-year period. The measure also proposed to withdraw 140,814 acres from the 1934 Navajo "Arizona Boundary Act" Reservation and transfer it to the Hopis with full surface and subsurface rights and interests. This would lead to yet another round of forced Navajo relocation and is sometimes called the Second Navajo Hopi Land Dispute.

Steiger's 20th century Indian Removal Act was drafted with the assistance of Hopi tribal attorney John Boyden and Assistant Secretary of Interior for Public Land Management Harrison Loesch. The bill was appropriately referred to the House Interior and Insular Affairs Committee whose pro-partition chairman Wayne Aspinall (D-CO) asked fellow Colorado native and personal friend Mr. Loesch to prepare an official Interior Department report on it for presentation at future hearings.

Each member of this Gang of Four had a special interest in the passage of this legislation.



SAM STEIGER also had the Colorado Connection as a graduate and alumni of Colorado A&M. Although he decried the evils of Navajo overgrazing, Steiger was a leading opponent in Congress of proposed legislation to require reclamation of coal stripmined land. It was perhaps no coincidence that Steiger was representing that particular part of Arizona where the nation's largest coal producer Peabody Coal Company was leveling Black Mesa. Later an Indian enforcer at the U.S. Office of Surface Mining spoke of Peabody's unsuccessful lobbying against the 1977 federal reclamation law, "The money and time they spent on lawyers and politicians to weaken the law could have made a (environmental) difference on Black Mesa."

“The big thing is to get the Indians into the money markets of the country -- to the banks -- into the economic mainstream. Forget the past. Get a smile on your faces.”

With smiling faces, the Department of Interior and Bureau of Indian Affairs prepared a resolution for the Navajo Tribal Council to adopt waving its Winter’s Doctrine water rights to the Arizona side of the Upper Colorado River.

On the advice of their new tribal attorney approved by Udall, the Navajo governing body then voted 57 to 3 to approve the resolution.

The BIA Area Director rubberstamped the puppet council’s resolution after being told that he would have to resign if he didn’t.

In Washington, the colonial Office of Indian Affairs closed the deal and the resolution became law. Having completed this last mission, Secretary of Interior Stewart Udall left his eight-year cabinet post to make way for the incoming Nixon administration.

In 1969, the Navajo Power Plant was given the green light and the following year, stripmining began on Black Mesa. Under its coal salts contract with the Salt River Project, Peabody agreed to strip and ship eight million tons of coal a year to the publicly-owned private utility station at Page.



By this time, Norman Littell returned to his venue and had filed a lawsuit in federal district court in Baltimore, Maryland against the Office of the Secretary of Interior demanding 10 percent of the half of the Joint Use Area that he did not lose. But since *Healing v. Jones* was not classified as claims litigation according to the Indian Claims Commission Act, Littell’s Navajo clients, not Udall or his successor, would have to shoulder his white man’s burden with their mineral royalties and later did.

It was also discovered that, just before he was forced to resign, “King Norman” was quietly pursuing a seven-year legal and legislative strategy to clarify and clear Navajo subsurface title in the JUA -- another form of partition.

Yiyah! Poisonous ones.

In 1960, the long-awaited trial began before a special three judge panel in federal district court in Prescott. Oral arguments lasted for more than a month and on September 28, 1962, the court finally decided the case and issued a 63-page opinion to reinforce its findings of fact and conclusions of law.

The judgment centered on three legal points:

- 1) District 6 was officially named the Hopi Indian Reservation. In 1965, the new reservation would be resurveyed and expanded to 650,000 acres, an increase of almost 20,000 acres. The Navajos caught inside this latest boundary were summarily ejected by the U.S. government in 1972. The Hopi tribal council was also given exclusive mineral rights to all of District 6.
 - 2) The Navajos and Hopis had joint, undivided, and equal rights and interests to the remainder of the 1882 Executive Order Reservation also known as the Joint Use Area (JUA). Under this arrangement, the consent of both tribes was needed before any surface or mineral leasing could take place in the 1.8-million-acre joint reserve. Further, all royalties, bonuses, and other income from these leases were to be split at the source and divided equally between the two tribes.
 - 3) The court claimed it lacked jurisdiction to partition the JUA and in effect deferred the matter back to Congress.
- The decision was immediately appealed to the United States Supreme Court which affirmed the ruling without comment on June 3, 1963.

Disappointed, Littell still viewed the final decree in *Healing v. Jones* as a “very substantial net gain” for his Navajo defendants.

In reporting to the tribal council, he said, “Never until now did the Navajos own title even though they had used and occupied most of the Executive Order area. No leases or mineral exploration could be made by either Tribe. As soon as administrative details are worked out, the oil and gas exploration by companies which have long waited to get into the territory can commence and known coal deposits may be developed.”

A week after the Supreme Court confirmed the *Healing vs. Jones* decision, the BIA summoned both tribal chairmen and their

attorneys to a high-level meeting in Washington to discuss the mechanics of how to administer the new Navajo-Hopi reservation. Later field discussions were held at Scottsdale and Flagstaff, respectively.

Joint mineral leasing did not seem to be a problem until Boyden raised the partisan issue in Scottsdale. He strongly suggested that he would advise his clients to sit on the minerals until the oil companies would support congressional division of the Joint Use Area and subsequent relocation of all Navajos from “their” half of the split estate. Boyden said, “If the Navajos say they are not going to do anything about the surface, we may have to take the position we will do nothing about the minerals, because the pressure is on the minerals and the moment we give that up, we lose half our political support.” He later conceded that the oil companies had put great pressure on him and the Interior Secretary “to go ahead with development of this area and they (will) do everything they can to get the thing off dead center.”

The BIA-sponsored negotiations between the two tribes broke down after the Flagstaff meeting and Littell, who was no longer advocating partition, said that Boyden and the BIA had begun drafting partition legislation to present to Congress.

On December 19, 1963, Wayne Aspinall (D-CO), chairman of the House Interior and Insular Affairs Committee, introduced a bill in the U.S. House of Representatives authorizing an equal surface partition of the JUA. According to a resolution that was not introduced on the floor, about 5,000 Navajo Indians would be relocated if in fact this measure became law. But even with oil company support, Aspinall’s partition bill died in his own committee and the painful subject would not come up again until 1971.

RAPE OF BLACK MESA REVISITED

In the aftermath of *Healing vs. Jones*, there was a tremendous oil and gas exploration boom in Hopi District 6 and on undisputed Navajo lands surrounding the undivided and still largely inaccessible Joint Use Area. Even as competitive bidding opened and rounds of lease sales scheduled, there was growing industry speculation that opening the JUA to mineral entry would unlock

rights suit, it would create havoc with the whole Upper Colorado River Basin Compact formula and sorely jeopardize Peabody’s mine expansion plans on Black Mesa, the Page Power Plant (now called the Navajo Generating Station), and the Central Arizona Project. Not to mention what it would do to the Department of Interior/WEST associates 20-year plan for the greater Pacific Southwest.

So in the Indian Summer of 1968, somebody had to sell our the Navajos down the river and that somebody was Stewart Udall with the assistance of his congressional counterpart Wayne Aspinall, the crusty chair of the House Interior and Insular Affairs Committee.



In testifying earlier before Aspinall’s committee on the department’s Omnibus Bill to industrialize Indian reservations, Interior Secretary Udall spoke glowingly of its terminationist intent:

UDALL: I think this type of legislation, which would move us down the road toward the right kind of ultimate independence, is what the Indian people want. ASPINALL: By “ultimate independence,” do you mean doing away with reservations as such? UDALL: I think this is undoubtedly the end result, yes.

On another occasion, Udall questioned his role as legal steward charged with the protection of Indian land and natural resources:

“When one looks at Indian resources today, one asks himself the question, ‘What would IBM or AT&T, or Standard Oil of New Jersey do if they owned this particular piece of land and these resources?’

“How do we get Walt Disney and Standard Oil interested in developing Indian reservations? Can we do this? (There is) not a major corporation in this country that would not take the resources these Indians have and increase the value ten or twenty times in the next twenty years.

“One way might be to let the Indians mortgage their reservations. Why shouldn’t Indians mortgage their land?”

for the construction of the Salt River Project plant at Page in exchange for the largest share of its yearly output. In other words, 24.3 percent of the electricity generated at the plant would be used to pump water from Lake Havasu to Phoenix and Tucson through the main aqueduct of the Central Arizona Project. The remaining end produced would be distributed through the WEST grid to participating utility service areas in Arizona, Nevada, and southern California.

Coal for the power plant would come from Peabody opening a second mine on Black Mesa. Once stripped, the coal would be hauled down the mountain by conveyor belt, placed on the back of an electric train, and hauled 78 miles on the Black Mesa-Lake Powell railroad to Page.

The only unresolved question was the legal status of the 50,000 acre feet. Was it reserved Navajo water as guaranteed in the Winter's Doctrine of 1908 or was it Arizona water under the 1948 Upper Colorado River Basin Compact?

Perhaps hoping to speed things up a bit, the Salt River Project began making heavy capital investments into the proposed venture. In December, 1967, "the turbine generators for the (Page) plant were ordered from General Electric Company. Additional equipment and materials already under contract have created commitments more than \$100 million."

On September 30, 1968, President Lyndon B. Johnson signed into law the Central Arizona Project (CAP) and afterwards passed out souvenir pens to the Father of CAP Carl Harden, Stuart Udall and brother Mo, and from the Upper Colorado River Wayne Aspinall.

The new act also stated that the 50,000 acre feet be charged to the State of Arizona.

Now the only problem was to get the Navajos to agree to limit their potential claim to the Arizona portion of the Upper Colorado to 50,000 acre feet a year. Then, after deducting 34,100 acre feet for the power plant and 3,000 acre feet for the non-Indian boom town of Page, the Western Navajos would be left with 12,900 acre feet or about 400 acre feet less than what they were presently using.

But if the Navajo Tribe exceeded this ceiling figure by filing a water

far richer treasures than what they were now drilling for.

According to the prestigious Oil & Gas Journal, a weekly trade publication, "Some geologists, especially those with companies who already have conducted seismic work in the area, believe the best possibilities for oil lie near the heart of the (Black Mesa) basin. And this land, still being disputed by the tribes, is not yet available for leasing.

"The Supreme Court upheld in 1963 a decision by a district court that gave the Hopis clear title to surface and mineral rights (to) over 631,000 acres. The court gave both tribes equal rights to all mineral and surface privileges to 1,785,900 acres.

"Both tribes have agreed to split mineral rights 50-50, but negotiations are not complete on the surface rights, and it's unlikely this land will be offered until this is settled."

Soon it became widely believed that indeed the Joint Use Area was the geological epicenter of the entire Black Mesa region.

For instance:

- * The executive director of the Arizona Oil & Gas Conservation Commission revealed that geologists and oilmen "have been licking their chops" for years over the Black Mesa basin.

- * A national petroleum journal in a feature article characterized Black Mesa as "the largest potentially oil productive area in the United States yet unexplored."

- * The Winslow Mail said state officials considered Black Mesa "one of the great remaining undeveloped oil areas in the nation."

- * The Arizona Republic called Black Mesa "one of the hottest untested areas in the entire country."

- * And the local Navajo Times quoted oil and gas experts as stating that the Navajo-Hopi Joint Use Area is "the last major highly potential source of unexplored oil lands in the country."

In 1964, three oil lease sales were held within District 6 and eight more on the Navajo reservation just outside of the still untouchable JUA.

The Hopi tribal council received \$3.2 million in exploration bids and bonuses. Having succeeded in opening up 63 percent of District Six to the oil companies, John Boyden billed the Tribe for his previous

work and re- ceived exactly one million dollars for his legal services and out-of-pocket expenses.

In these booming times, the stated known value of District 6 was appraised at \$38 million while the total worth of the Joint Use Area was reportedly in excess of \$500 million.

As the new year gushed in, the Oil & Gas Journal predicted “the ripest wildcat target in the United States for 1965 is going to be the Black Mesa basin of Arizona, still one of the largest unexplored basins in the country.”

The wildcatters drilled along the promising edges of the JUA, including District 6, but every one of their rigs “came up dryer than a popcorn fart.” After striking out for the last time, they finally withdrew from the demineralized zone, humiliated by Mother Nature. Subduing the Earth was not cheap or easy. According to one estimate, sinking one dry hole cost \$150,000. Plus hauling heavy equipment across dusty sheep trails or through an endless sea of mud had also reduced their technological capability and severely undercut the profit motive. The oil and gas was still there but was and is trapped in a greatly thickened-out bed of tertiary marine sediment -- far out of the reach of their shadow drilling tools and techniques. Paydirt was denied.

But the greatest challenge to face the Navajo and Hopi peoples living on Black Mesa and in the Joint Use Area lay immediately ahead.

In 1961, the coal cavalry came to Black Mesa.

That year, Fisher Contracting Company of Phoenix began negotiating with John Boyden and the BIA for a three-year 36,560-acre coal prospecting permit on exclusive Hopi use lands in District 6. Under the permit later approved by the Hopi tribal council, Fisher also had the right to lease 25,000 acres of land for mining and an option to build a minimum 200,000-kilowatt electrical generating power station there within five years.

According to Boyden, Fisher was also pursuing a similar deal with Norman Littell for a permit on Navajo use lands in the 1882

for re-election and together with members of his new majority party took the voting power away from the Old Guard and appointed his own advisory committee. As the executive committee of the tribal council, the Advisory Committee has the delegated legislative authority to act on behalf of the Tribe when the Council is not in session.

Then on January 9, 1967, Udall prevailed in a well-timed U.S. Supreme Court decision which upheld his right as “The Great White Ultimate Trustee” to terminate Littell’s attorney contract with the Navajo Tribe on a relatively minor infraction. Littell resigned a short time later but would surface again to reclaim his share of the rich Black Mesa coal field.



With Littell now out of the way, Nakai and Udall were finally able to make joint tribal-federal plans for the orderly corporate exploitation of Black Mesa and the Navajo Hopi Joint Use Area. John Boyden for the Hopis would also become reinvented in this trilateral energy web.

First, the Navajo Tribal Council resolution of July 28, 1966 asking Udall to appropriate 40,000 acre feet of “Navajo” water for Peabody’s Antelope Creek power plant was scrapped. And in its place was a long-standing proposal by the Salt River Project (SRP) to build a WEST-affiliated power plant in the same location. Since 1964, SRP of Phoenix had been seeking approval from the Arizona Water Commission and Interior Secretary Udall to gain control over Arizona’s share of the Upper Colorado River Basin allocation to site a power plant on the Navajo reservation. Now it was engaged in serious negotiation with the Federal Bureau of Reclamation for a water service contract to release the 50,000 acre feet in question. At the same time, SRP was meeting with the Central Arizona Project Association, Arizona Interstate Stream Commission, and the Arizona Power Authority for state-wide lobbying support to carry to the Brothers Udall in Washington.

Within months, it all paid off in a big way.

On February 1, 1967, Secretary of Interior Stewart Udall announced a new revised Central Arizona Prospect plan. Instead of damming up the Grand Canyon, the BuREC would help prepay

3,000-MW plant at Paiute Farms which would have consumed 60,000 acre feet of Utah water annually.

Admittedly Littell's legal strategy was clever. By getting Secretary Udall to sign over Arizona's upper basin share to the Navajos, Linell hoped to sell or lease the water to Peabody for its already predetermined use on the reservation and without surrendering a drop of valuable Navajo water rights.

But again Udall interfered. Without consulting or even informing the Navajo Tribe, the Interior Department was actively backing a bill in Congress that would flood 46 miles of scenic Navajo land along the Colorado River. As part of his latest deal with WEST Associates, Udall was supporting a Bureau of Reclamation proposal to build two large hydroelectric dams in the Grand Canyon to generate revenue and power to pump 1.2 million acre feet of water per year from Lake Havasu in the Lower Colorado River Basin across the Arizona desert to the sprawling megalopolises of Phoenix and Tucson. This multimillion-dollar "cash register" and water diversion schema was called the Central Arizona Project (CAP), another pet pork-barrelled design of the Bureau of Wreck. Incidentally, Stewart Udall's younger brother Morris (an Arizona congressman) had sponsored the first bill to authorize CAP and recently testified in Congress in favor of the two controversial Grand Canyon dams.

On August 3, the Navajo Tribal Council passed a resolution blasting "this proposed trespass upon tribal property... without payment of compensation to the Navajo Tribe." More Navajo testimony was subsequently printed in the Congressional Record and then, upon receipt of the official council resolution, a high-ranking Bureau of Redamation officer was heard to say, "That does it! Tbe project is stopped." The dam legislation failed to pass and soon word on capitol hill was that the "damn" Navajos had effectively killed it through their Littell-inspired lobbying campaign.

Udall was stewed. For the past three years, he and Navajo Tribal Chairman Raymond Nakai and a small band of young turks had tried to get rid of Littell but couldn't. It was an undisputed political fact that Littell was controlling the Tribal Council and its elected advisory committee while Udall and Nakai were clearly acting in the minority. But in November, 1966, Chairman Nakai won his bid

Executive Order Reservation but was tued down for "reasons unknown."

Meanwhile, south of Oraibi, Fisher Contracting drilled 20 holes wth disappointing results and cancelled its permit with the Hopis in 1962.

At the same time, Peabody Coal Company of St. Louis, Missouri became interested in taking over Fisher's exploration holdings in District 6 and also offered to lease coal near Cow Springs in the 1882 executive order reservation. But since title was still clouded by the Healing v. Jones litigation, Peabody's offer was respectfully declined -- for the time being.



Not to be denied, Sentry Royalty Company (a subsidiary of Peabody Coal Company) applied for a preferential coal prospecting permit for 75,137 acres of Navajo tribal lands just north of the disputed executive order reservation. In February, 1962, the BIA Commissioner of Indian Affairs in Washington approved Peabody's permit with the option to mine 25,000 acres if it was found to contain at least 200 million tons of high BTU (British Thermal Unit) coal. Two years later, the permit matured into a lease for 24,858 acres.

Although Peabody had lined up a list of potential industrial and public utility customers on the West Coast, access to these markets was a logistical problem. So it proposed to construct a 130-mile-long railroad spur from its operation on Black Mesa all the way down to Winona on the main Santa Fe rail line. From there the coal could be shipped west.

As Healing v. Jones drew to a legal conclusion, Peabody was again eyeing the rich unmined coal reserves inside the JUA.

According to a BIA spokesman, "the Company hopes to negotiate with the Hopis and Navajos for drilling permits in the northern portion of the Executive (Order) area which is outside of the present drilling area. It is believed that there are large coal deposits in this area and future plans when approval for leasing is obtained would be to ship coal to the west coast. This would mean building a railroad spur line from Winona, Arizona to the drilling area to handle

shipments and according to observers would do much to open up this area of the reservation for development.

“Rumors which appear to be from reliable sources say that this company has ordered a 200-yard coal shovel which might be used on the reservation. The massive size of this piece of equipment can best be described as a unit of machinery which would require enough electricity to support a town twice the size of Gallup.”

Earlier, the shovel and dragline set was hailed as “the largest stripmine equipment so far manufactured in the world.”

Two months before the Healing vs. Jones decision became final, secret negotiations began on a proposed permit by Peabody Coal Company to drill and explore for coal on 58,270 acres of land within the 1882 Executive Order Reservation. Involved in these discussions were Peabody, Boyden, Secretary of Interior Stewart Udall, and newly elected Navajo tribal chairman Raymond Nakai who two months after Healing vs. Jones would favor surface partition of the controverted Joint Use Area. Excluded from these closed-door sessions were Norman Littell who now opposed partition and the Navajo Tribal Council which passed a resolution criticizing Chairman Nakai’s pro-partition stance and saying that it would ultimately lead to the removal of 5,000 to 6,000 Navajos from the JUA. The Council also reaffirmed its authority to deal with all tribal land matters, including the border dispute with the Hopis. But on May 7, 1964, the Nakai-appointed Advisory Committee of the Navajo tribal council approved Peabody’s two-year permit and then in an apparent maneuver to win joint approval from the Hopi Tribal Council voted by resolution to endorse Nakai’s cooperation with Borden on the partition question. The Hopis obliged by releasing their consent, but on December 2, the newly reorganized Navajo advisory committee revoked Peabody’s permit and charged that only the Council could represent the tribe’s position on partition and any other land-related issue affecting the Navajo reservation. The matter went to the BIA Phoenix Area Director (a non-attorney) who issued a legal opinion on December 14 sustaining the validity of the first advisory committee resolution.



needs of the reservation and fulfill the purpose for which it was established. Moreover, Indian water rights are perpetual and senior to most non-Indian claims to the same body of water. Surely if the Navajos were to fully assert their rights to the upper and lower Colorado, it would virtually bankrupt the river. So at least in theory, the Navajo Tribe was in an extremely strong position with respect to its doctrine of reserved water rights and therefore did not need to be included in either Colorado River compact.

But the State of Arizona saw it quite differently.

Under the 1948 compact, Arizona was allotted 50,000 acre feet of water per annum from the Upper Colorado River Basin. Ironically, though, most if not all of the land adjoining the state’s portion of the upper basin was on the Navajo reservation. It was then decided by Udall and the state governor that Arizona’s share would best be put to beneficial use on the reservation. Arizona, however, didn’t seem to mind since it would receive most of its water from the lower basin via native son Udall’s Central Arizona Project. In the summer of 1966, the Western Navajo Agency was only using about 10,000 acre feet of upper basin water a year and “the best estimates of the Bureau of Reclamation is that during the foreseeable future the yearly usage of (Arizona) water on the Navajo Reservation will never exceed 17,000 acre feet per year.” And assuming the Navajos would not exercise their water rights, there was a current annual surplus of 40,000 acre feet of water.

Then in a resolution apparently written by Littell, the Navajo Tribal Council voted on July 28 to petition “the Secretary of Interior to take all steps necessary, advisable or incidental, to affirm the right of the Navajo Tribe to 50,000 acre feet of water from the Upper Colorado River Basin pursuant to the Upper Colorado River Basin Compact and authorize the use of 40,000 acre feet thereof for the purposes of (1) cooling the generators of Peabody’s proposed 2,000-megawatt (MW) power plant on the Navajo reservation and (2) serving as a back-up system to Peabody & Company’s coal slurry pipeline to the Mohave Generating Station in Nevada.

The Council resolution also authorized Littell to negotiate an industrial site lease and associated right-of-way arrangements with Peabody to build its power plant at Antelope Creek near Page.

By this time, Peabody had given up on its plans to construct a

As with the two Black Mesa leases, Interior Secretary Udall expeditiously approved Peabody's water payment and right-of-way agreements in order to accommodate this latest WEST Associates Project.

But Peabody Coal Company had more ambitious designs on the drawing board.

As early as July, 1965, it had publicized its intentions to build two huge power plants on the Navajo reservation. Stoking these twin monsters would be hundreds of millions of tons of Black Mesa coal. The first unit would be a 2,000-megawatt plant located near LeChee south of Glen Canyon Dam and Lake Powell and would draw on "40,000 acre feet of Arizona's Upper Basin allocation of Colorado River water" to cool its mammoth turbine generators. Situated upstream at Paiute Farms on the San Juan River, the second proposed plant "would use 60,000 acre feet of water of Lake Powell chargeable against Utah" and with an on-steam production capacity of 3,000 megawatts, it would become the largest coal-fired electrical generating energy complex in the world.

In mid-July, 1966, it appeared that indeed the Angel of Death had come to Black Mesa.



Enter the conundrum of Indian water rights and the spooky numbers game.

In 1922, the Colorado River system was divided into the upper and lower basins for the purpose of future water allocation. In 1948, the states of Wyoming, Colorado, Utah, New Mexico, and Arizona divided the available upper basin flow among themselves.

Excluded from both of these interstate stream compacts was the Navajo Tribe which by treaty and through two U.S. Supreme Court decisions could claim "prior and paramount" rights to all surface and ground water resources on and near its 16-million-acre reservation. Although the exact quantity of these rights remain undefined, the tribe is entitled to receive as much water as necessary to irrigate all practical acreage on its recognized land base or waters in sufficient supply to meet the present and future

In the early spring of 1965, Interior Secretary Stewart Udall had embarked upon a master plan to coordinate the development of water and energy resources in the Southwest. Under this scheme, the Department of Interior through its Bureau of Reclamation (BuREC) would enter into a joint venture with a recently incorporated consortium of 23 public and private utilities called WEST (Western Energy Supply & Transmission) Associates to construct and operate a regional power grid to serve a nine-state boom area in the Pacific Southwest. Feeding into this grid system would be an integrated flow of energy generated by coal-fired power plants and hydroelectric dams located on and near Indian lands in New Mexico, Arizona, Utah, and Nevada.

In June, a tentative agreement was reached between the Bureau of Reclamation and WEST Associates. Secretary Udall heralded the partnership as "a giant step forward in the development of a formula for joint public and private resource development in the Colorado (River) Basin that will become a model for the Nation."

That same month, Udall called a secret meeting in Washington to secure Navajo tribal approval of a proposal authorizing Peabody Coal Company to sell and deliver five million tons of Black Mesa coal to Southern California Edison Company's WEST-sponsored Mohave Generating Station in southern Nevada. At Littell's urgings, the new Navajo Advisory Committee boycotted the meeting and only the local BIA and Interior Department officials showed up. This deliberate move caused maximum consternation on Udall's part and at his July press conference, he spoke on the problem of Navajo economic development: "Well, we have some very serious problems and some very fine opportunities in terms of economic development. I am hoping that some of them will come to a head within the next few weeks and if they do... some of them are going -- most of them are going to involve not just the (Navajo) tribe; they are going to involve the state of Arizona. They are going to involve some of the large industrial concerns -- this WEST electric power organization is keyed into the development of the Navajo and Hopi resources."

Still there was no response from Window Rock.

In August, another clandestine meeting convened in the inner sanctum of the Department of Interior capital headquarters. At the behest of Udall's executive assistant, a form Navajo Tribal Council

resolution had been drawn up to legalize the pending Peabody-Southern Cal Edison deal. Navajo chairman Nakai and several of his invited staff were then told to get it passed by the tribal council or advisory committee. However, Littell found out about the meeting and again token tribal approval was withheld.

Frustrated, Udall moved on two other fronts.

In September, the Interior Department announced the signing of a preliminary agreement between Peabody Coal and Southern California Edison to provide needed coal and water to the Mohave Generating Station. Udall's office called it "the largest coal supply letter of intent agreement ever negotiated utilizing Navajo and Hopi Indian coal reserves in Arizona" and said it would mean "new jobs, large tax benefits, tremendous economic advances for two Indian tribes, but also for the entire Southwest." But the actual implementation of the agreement was still subject to the joint concurrence of the Navajo and Hopi tribal councils.

In October, Udall appointed a special Department of Interior Task Force to deal with the growing problem of Navajo Indian administration. According to its new chairman and Deputy Assistant Interior Secretary for Public Land Administration, "There are several big problems that must be resolved -- the development of their (Navajo) coal reserves is one, the development of thermo-electric power keyed to the water is the second, and the development of industrial opportunities."

Within weeks, the heavy hand of government oppression was felt by Littell who issued a statement to the press complaining of "a not-too-subtle implied threat on the Navajo Tribe that they had better do what Udall wishes" and "be sure Peabody gets the water it desires on the Arizona side of the reservation, willy-nilly."

Broadening his counter-attack, Littell went on, "Udall himself deliberately created one of the greatest title problems in the West by opposing review (of *Healing v. Jones*) in the United States Supreme Court, and since then, he has gone to great lengths over the past two years to force on the Navajo Tribe a lease agreement for Peabody Coal Company on his own terms."

By appealing his case directly to the Fourth Estate, Littell not only won the important war of the words but had succeeded in

exposing and arresting Secretary Udall's high-pressure tactics for more than a year.



At a WEST Associates meeting in November, 1965, Littell met with Peabody's new president and general counsel and convinced them to renegotiate the 58,270-acre coal permit in good faith since the Navajo tribe's own legal department had been "carefully bypassed" in the first contract talks. Another condition was that any previous "commitments or concessions" made by any individuals or groups other than the tribal council itself concerning partition of the 1882 Executive Order Reservation would not be recognized. In other words, the Advisory Comminee's resolution of May 7, 1964 which was attached to Peabody's permit approval on the same day would be declared forever null and void. After weeks of private negotiation with Peabody and then Boyden and Udall's lawyers in San Francisco, Littell flew triumphantly back to Navajoland where he was seen "walking up the Council aisle, waving papers for the Council to approve, like the Savior had returned." On the last day of February, 1966, the tribal council directed its advisory committee to execute Peabody's new exploration and drilling permit and right to lease. In May, a representative from Peabody made a presentation to the Hopi Tribal Council which later affixed its collective signature to the document following Boyden's recommendation for ready approval. And with Secretary of Interior Udall's final blessings, it was done. Peabody now had the right to mine 40,000 acres of coal-laden land in the formerly impenetrable Joint Use Area.



With a total of 64,858 acres of Navajo and Hopi lands under lease, Peabody Coal had several development options from which to choose.

First, it abandoned its original plan to ship the coal out by rail to the West Coast. Instead it elected to pump up 3,000 acre feet of underground water a year from Black Mesa, mix it with five million tons of finely crushed coal, and then flush it through a 273-mile-long slurry pipeline to the Mohave Generating Station in Clark County, Nevada.