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Office of the Attorney General  
Washington, D. C. 20530

AUG - 5 REC'D

August 5, 1994

TO: Carol Rasco  
Domestic Policy Council  
The White House

FROM: Eleanor D. Acheson *E. Acheson*  
Assistant Attorney General

Gerald Torres *G. Torres*  
Counsel to the Attorney General

SUBJECT: Navajo-Hopi Land Dispute

The purpose of this memorandum is to update you on the recent, positive developments that have occurred in the court-ordered mediation of this dispute between the two Indian Tribes.

Since we last wrote to you, the two federal resource agencies (Interior and Agriculture) have selected high-level officials to work with the Justice Department mediation team in fashioning an overall federal position on the remaining outstanding issues. The Forest Service and the Bureau of Indian Affairs have been very responsive to our needs; those agencies are confronting difficult issues in a creative and cooperative spirit. Acting Secretary of the Interior Bob Armstrong (Secretary Babbitt is recused) has provided timely and extremely helpful leadership in this process.

The other parties are also proceeding in a cooperative spirit. The Hopi Tribe has given its mediation team the authority to negotiate on the final unresolved issues. The Hopi have abandoned the position that mediation has failed, thereby obviating their need to participate further. The Navajo families living on the Hopi Partitioned Lands have selected representatives to meet with Hopi leaders to discuss the actions that can be taken soon to improve living conditions, now that the families have ratified the offer of accommodation made to them by the Hopi Tribe. In particular, the families seek approval to repair houses, improve roads, and for additional grazing rights. The Navajo Nation Council is meeting next week to discuss its role at this stage of the process: it must authorize interim rental payments to the Hopi Tribe for the use of the land occupied by the Navajo families, and it must decide what to offer the Hopi in return for the dismissal of cases where its exposure to Hopi exceeds \$21 million.

Within the next month, we hope to finalize the federal position on issues such as the nature and extent of federal land that can be made available as compensation to the Hopi Tribe. Within the next two weeks, we expect the court-appointed mediator to press the United States to deliver immediate funding for short-term projects that will benefit both the Navajo families living on the Hopi land and the Hopi Tribe. In this fashion, those who have acted to support a consensual resolution of this dispute will be recognized, and those who remain skeptical of our effort may be motivated to support the framework for resolving this difficult and historic dispute.

We will continue to provide you with reports as events warrant. Thank you for your continued interest in and support of our efforts.

Kathryn Hazard } DOJ attorneys  
Peter Steadland }

EXECUTIVE OFFICE OF THE PRESIDENT

29-Jun-1994 07:30pm

**TO:** Carol H. Rasco

**FROM:** Michael T. Schmidt  
Domestic Policy Council

**CC:** Kathryn J. Way  
Robert M. Berry

**SUBJECT:** Hopi-Navajo Dispute -- RE Memo from Torres and Acheson

Carol, by now you will have received a memo from Gerald Torres and Eleanor Acheson (Assistant to the AG) on an ongoing dispute between the Navajo and the Hopi that DOJ has been involved in for a number of years. The memo gives a summary of the dispute, which dates back over 100 years, and of DOJ efforts to mediate the dispute. As you will see in the memo, DOJ's needs help from Interior and USDA to try and resolve this dispute. FYI, Marion has been involved in this from USDA's end for some time now, and he and I have discussed the issue on several occasions (including this evening).

Gerald and Eleanor gave me a detailed briefing on the situation this afternoon. At that time, they were on their way to a meeting with USDA and Interior to try and get a feel for USDA's willingness to help out in this situation -- part of the negotiations with the Hopi include setting aside use of 200,000 acres of National Forest Land, and Ag has historically been VERY reluctant (read: unyielding) to EVER allow any National Forest Land to be taken into trust for Indian use. The memo you received was written before the meeting this afternoon, and at that time DOJ suspected (based on initial discussions with USDA on the issue) that USDA would not want to cooperate, and that your assistance may be needed to "break the logjam" (to use a term I heard somewhere recently). There was some reason for DOJ wanting your assistance in the very near future -- Gerald and Eleanor are going out to meet with the Hopi next Thursday, July 7, and wanted to at least be able to give the Hopi some assurance that, while no decisions had been reached, nothing was off the table yet in discussions. However, I talked to Gerald this evening, after the meeting, and he was very enthusiastic about USDA's response to the issue (thanks in no small part to Marion "miracle worker" Berry). In effect, he feels confident that he can say to the Hopis that nothing is off the table yet. So, while your immediate intervention is no longer necessary, he told me that he did want to make sure that you were up to date on the issue and were supportive of the direction DOJ was going before he leaves on the

7th. Be assured that I did not commit you to anything at any time.

I do agree with Gerald (as does Marion) that this is a serious situation, and that all efforts have to be made to keep negotiations going. As the memo points out, the Hopi could walk out at any time, take the issue back to court, and most likely win (the law does seem to be on their side -- it is their land and the Navajo were ordered to leave). However, this would be a disaster for us, because it would essentially leave us with two equally unattractive (and politically unappealing) alternatives: either enforce the law, which would mean Dickensonian, made for CNN scenes of Federal Agents dragging elderly Navajo out of their dirt-poor dwellings; or choose not to enforce the law, which would really be rewarding people for blatantly violating the law while punishing the Hopis, who have already suffered too much and have acted in good faith all along.

I will be happy to brief you on this situation whenever you want -- however, as you know I will be out of the office tomorrow and Friday moving in to a new house (yea!). Marion knows more about this situation than I do, and can fill you in on all of the details. I am happy to come in to talk to you if you need me to tomorrow or Friday -- or even over the weekend if that's better, we live just a few miles apart after all. My read on this is that it is not urgent that you respond to the memo before Tuesday or Wednesday morning, but if for some reason DOJ seems to think otherwise or if my read is wrong, PLEASE call me at home P6/(b)(6) and I will do whatever we need to get this taken care of. P6/(b)(6)



## Office of Policy Development

Assistant Attorney General

Washington, D.C. 20530

October 24, 1994

TO: Carol Rasco  
Domestic Policy Council  
The White House

FROM: Eleanor D. Acheson *EDA*  
Assistant Attorney General

Gerald Torres *Gerald Torres*  
Counsel to the Attorney General

SUBJECT: Navajo-Hopi Land Dispute

The purpose of this memorandum is to provide an update on the recent developments that have occurred over the last 60 days in the court-ordered mediation of this dispute between the two Indian Tribes. Some progress is being made, albeit at a slow pace in light of the upcoming Navajo elections. We both very recently returned from a visit with the Navajo families and now have seen first-hand the desperateness of the conditions and the depth of the controversy that makes a consensual resolution so important and the progress to date so significant. On the same trip, we and litigation counsel from the Department of the Interior also met with the Navajo Nation to discuss its commitment to proceeding under the mediated agreement.

As described in our last memo, officials from Interior and Agriculture continue to work cooperatively with the Justice Department mediation team. Agriculture is working with us to examine ways of addressing the Hopi Tribe's interest in national forest lands without inflaming the citizens of Northern Arizona. In mid-July, the mediator asked each of the parties to move forward with interim implementation of the 75 year accommodation agreement offered by the Hopi Tribe and ratified by the Navajo families in June. As a means of facilitating interim implementation of the accommodation terms ratified by the Navajo families, Interior has made available to the Navajo families living on Hopi Partitioned Land \$200,000 for housing repairs.

On the tribal side, representatives of the Navajo families have begun meeting with the Hopi Tribe to work out certain details of implementation of the accommodation terms. On August 26, however, the Navajo Council rejected an in-person request by the federal mediator to make an interim rent payment to the Hopi. Thereafter, the Nation tabled all discussion of this subject, the Speaker of the Navajo Tribal Council plans to conduct hearings on the Navajo Reservation and no decision on payment of interim rent is anticipated until mid-November at the earliest. Thus, we have a situation in which each of the other parties is prepared to go forward with interim implementation but the Navajo Nation has, at least so far, declined to pay the Hopi Tribe \$100,000 in interim rent as its part toward interim implementation. In conjunction with its hesitation to proceed with interim implementation, the Nation appears to want, at a minimum, to reconstitute its compensation obligations to the Hopi Tribe and possibly to remake the whole deal.

The Navajo Nation's recalcitrance is attributable in part to the November tribal elections, and in part to a refusal by hard-line elements in the Navajo tribal government (and certain of the Navajo families living on the Hopi Reservation) to abandon the idea of a land exchange with the Hopi Tribe or the possibility of a less fiscally demanding or internally controversial compensation obligation to the Hopis.

Many of the Navajo families wish to proceed with the accommodation offer from the Hopi Tribe, which will enable them to stay on the disputed land. But their support is being undercut by the failure of any improvements to be realized in their living conditions, by the failure of the Navajo Nation to support the agreement and by the unsubstantiated promise that a more permanent solution is possible -- presumably from Congress. We and the Department of the Interior are working diligently to get this back on track.

We will continue to provide you with reports as events warrant. Thank you for your continued interest in and support of our efforts.



Office of the Attorney General  
Washington, D. C. 20530

JUN 29 REC'D

TO: Carol Rasco  
Assistant to the President for Domestic Policy  
The White House

FROM: Eleanor D. Acheson  
Assistant Attorney General

Gerald Torres  
Counsel to the Attorney General

DATE: June 29, 1994

SUBJECT: Navajo-Hopi Land Dispute

The purpose of this memorandum is to provide the background for a briefing we would like to arrange on a matter of great importance to the Attorney General that also involves the Department of the Interior and the Department of Agriculture. We believe your participation would assist in our effort to develop a unified federal position as we complete the remaining stages of an intensive effort to settle an array of lawsuits that arise from the most protracted inter-tribal dispute in our history. Moreover, because of the significance of the proposed federal contribution, there is some agency interest in having Domestic Policy Council involvement at this time.

For the last three years, the Justice Department and the Department of the Interior have participated in a court-ordered mediation in an effort to settle a 110-year old dispute between two Indian tribes in Arizona that has cost the federal government more than three hundred million dollars, has resulted in thirty years of continuous litigation and has caused hardship to both tribes. At root, the dispute involves competing historic and religious claims by Hopis and Navajos to land that Congress, in an effort to resolve this longstanding problem, finally ordered partitioned -- half to the Hopi Tribe and half to the Navajo Nation. The Settlement Act of 1974 provided for judicial partition of the 1882 Reservation and relocation by the summer of 1986 of all tribal members living on land partitioned to the other tribe. The approximately 50 Hopis living on land partitioned to the Navajos promptly moved and several thousand

Navajos living on land partitioned to the Hopi have relocated. But approximately 1500 to 2500 Navajos refuse to relocate.

The case ordered into mediation involves a suit by the Navajo families remaining on the Hopi land. The suit challenges the Settlement Act's relocation mandate as violative of their First Amendment free exercise rights. The four parties involved in the negotiations are the United States, the Hopi Tribe, the Navajo Nation and the Navajo families living on the Hopi land.

We are near to a consensual resolution of this dispute and are now ready to revisit issues involving our contribution to the settlement that provoked intense controversy with the Arizona public in December 1992. In November 1992, the three governmental parties -- the Hopi Tribe, the Navajo Nation and the United States -- reached an Agreement in Principle (AIP). The Agreement in Principle involved several important components: (1) an offer by the Hopi Tribe to allow the Navajo families residing on Hopi land to remain on the land, under Hopi jurisdiction, for 75 years, with the possibility of renewal; (2) transfer into trust for the Hopi Tribe of approximately 500,000 acres of land and payment of \$15 million; and (3) settlement of 9 cases.

With the strong support of the Attorney General and the personal guidance of former Associate Attorney General Hubbell, the Hopi Tribe, the United States and the Navajo families have devoted the last year to reaching agreement on the terms of an accommodation between the Hopi Tribe and the Navajo families living on the Hopi land. On June 3, 1994, the Navajo families ratified the terms of an accommodation agreement. Never before, in the many efforts by Congress, courts and Presidents to resolve this dispute, have the affected Navajo families and the Hopi Tribe reached an agreement that might allow for peaceful coexistence under a consensual arrangement.

We now must return to issues in the Agreement in Principle relating to compensation to the Hopi Tribe. In addressing these issues, the Department of Justice will need the cooperation and assistance of the Department of the Interior and the Department of Agriculture.

The Agreement in Principle calls for compensation to the Hopi Tribe in consideration of its offer to accommodate the Navajo families and in settlement of 9 lawsuits.<sup>1</sup> The

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<sup>1</sup> These cases involve claims against the United States totalling more than \$280 million and claims against the Navajo Nation, some of which have been ruled on since ratification of the Agreement in Principle in November 1992. The United States District Court for the District of Arizona has handed down

(continued...)

compensation involves the purchase and transfer into trust of two privately owned ranches in northern Arizona -- the CO Bar Ranch and the Hart Ranch -- that were on the market at the time the Agreement in Principle was negotiated. Both ranches are located within the ancestral lands of the Hopi Tribe. Together the ranches are composed of approximately 200,000 acres of national forest lands that are currently leased to the private ranch owners for grazing, and approximately 150,000 acres of state lands and 150,000 acres of private lands. The Navajo Nation is to purchase the private land in the CO Bar Ranch (approximately 135,000 acres at an estimated cost of \$13 million). The United States is to purchase the accompanying checkerboarded state lands of the CO Bar Ranch, the 35,000 acres of state land in the Hart Ranch and the 35,000 acres of private land in the Hart Ranch. In addition, the AIP calls for the United States to transfer into trust for the Hopi Tribe the national forest lands accompanying the CO Bar Ranch and the Hart Ranch. It was the proposed transfer of approximately 200,000 acres of national forest land into trust for the Hopi that fired strong opposition among the Arizona public and local, state and national elected officials from Arizona in late 1992 and early 1993, when news of the terms of the Agreement in Principle was first released. Resolution of this dispute will require implementing legislation; and the Arizona Congressional delegation has made clear that it cannot support an agreement that calls for the transfer of national forest lands into trust for an Indian tribe.

Thus, we face two central problems in returning to the issues regarding compensation. First, we need to make an offer to the Hopi Tribe that provides them special use of the national forest lands, and possibly some management role, without transferring title out of the Department of Agriculture. To that end, we need to work closely with the Forest Service to develop a proposal that is workable. In suggesting this change to the Agreement in Principle it is essential that the United States not be perceived as backing down from its commitment because of any dissatisfaction on the part of this Administration with the terms of the Agreement in Principle but, rather, that the terms need to be adjusted in order to have a package that can obtain the approval of the Arizona Congressional delegation. We need to work cooperatively with the Department of Agriculture and officials in the Forest Service so that we can develop a proposal

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<sup>1</sup>(...continued)  
judgments totalling more than \$21 million in favor of the Hopi Tribe against the Navajo Nation for use of and damage to the Hopi Partitioned Lands. In addition, the Hopi Tribe have claims against the Navajo Nation for rental payments for use of the HPL approximating \$2.7 million.

for land that will satisfy the Hopi without doing precedential damage to the concept that national forest lands should not be used to settle disputes that do not directly involve the Forest Service.

Second, in addition to the issues we need to resolve with the Department of Agriculture, we also need to know the extent of the commitments we can make on behalf of the Department of Interior. The CO Bar Ranch, which is owned by the Babbitt family, is the centerpiece of the compensation to the Hopi Tribe. The ranch has been on and off the market for many years, and some members of the Babbitt family have indicated that they have always contemplated that the ranch would be sold to the Navajos.<sup>2</sup> Although the CO Bar was on the market at the time the parties negotiated the AIP, it was taken off the market soon after news of the deal became public in late 1992. It is possible that, if the controversial aspects of the Agreement in Principle with regard to the national forest lands were resolved, the CO Bar Ranch might come back on the market. But if the CO Bar Ranch cannot be purchased, the expense of the settlement will be correspondingly greater for Interior and less for Agriculture, and we will need to develop a new compensation arrangement. These changes in circumstance will require the Justice Department to work closely and quickly with the Department of the Interior so that we can tell the Hopi Tribe what we can proffer in settlement that is equal in value to the contemplated transfer into trust of 500,000 acres of land.

If our effort to achieve a mediated solution to this dispute fails because the United States has been unable or unwilling to resolve the issue of compensation to the Hopi, the remaining options are not attractive. We expect the Hopi to sue to enforce the Settlement Act, asking the court to order the United States to forcibly remove the 1,000 to 2,000 Navajos from the Hopi Reservation. Faced with that persuasive legal claim and dire prospect, Congress might revise the Settlement Act to forcibly take land from the Hopi Reservation in order to accommodate Navajos who defy existing law. Forcible relocation of traditional Navajos (many of whom are elderly) or forced diminishment of the Hopi Tribe's reservation (to which they have religious and historical ties) are both disconcerting measures to

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<sup>2</sup> Secretary Babbitt has recused himself from involvement with the settlement because of his family's interest in the CO Bar Ranch. He has designated Bob Armstrong, Assistant Secretary for Lands and Minerals, to serve in his stead. Mr. Armstrong has been kept abreast of all mediation developments in his role as Acting Secretary. He has encouraged our continued efforts to achieve a consensual solution. Additional support has come from Deputy Solicitor Anne Shields and Assistant Secretary for Indian Affairs Ada Deer.

be taking in the waning years of the 20th Century -- when the declared Administration policy is to favor Native American self-determination.

To summarize, we are about to embark on a series of discussions with the Department of Agriculture and the Department of the Interior to adjust the United States' compensation to the Hopi Tribe. In particular, we would like to conduct a dialogue with the Department of Agriculture on how best to adjust the Agreement in Principle in ways that reflect the political realities in Arizona and that are consistent with Agriculture's programmatic concerns. In addition, we need the Department of the Interior to work with us in developing alternative compensation for the Hopi.

We would like to know if we have your support for us to continue this process. Such support would encourage the other agencies to work with the Justice Department to help bring the settlement of this very old and acrimonious dispute to completion. Thank you for your attention to this matter; we look forward to your involvement in our joint effort to settle this historic dispute.