

Committee on Resources

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Testimony of Ivan L. Sidney Chairman, The Hopi Tribe

Before The Committee On Resources United States House of Representatives

For the hearing on S. 1003, Navajo-Hopi Land Settlement Amendments of 2005

June 20, 2006

Introduction

Mr. Chairman and members of the House Committee on Resources, my name is Ivan Sidney, and I am Chairman of the Hopi Tribal Council. The Hopi Tribe appreciates the opportunity to provide testimony on S. 1003, the Navajo-Hopi Land Settlement Amendments of 2005 sponsored in the Senate by Senator McCain (designated S. 1003 RFH by the House) and H.R. ____, the Navajo-Hopi Settlement Amendments of 2006 as introduced by Arizona Congressman Renzi.

The Hopi Tribe has previously testified in support of S. 1003 during its consideration before the Senate Committee on Indian Affairs. In general, the Hopi Tribe supported S. 1003, urging timely closure of ONHIR and an end to the Hopi-Navajo land dispute. However, the Tribe objected to certain provisions of the bill based on their potential effect on pending Hopi/Navajo litigation and we urged allocation of adequate time and funding to complete the relocation process and ONHIR's obligations to the Tribe. The concerns of the Hopi Tribe were largely addressed by subsequent revisions to S. 1003 prior to its introduction and passage in the Senate.

The Hopi Tribe recently sent a letter to Congressman Renzi outlining the Tribe's Opposition to the House measure. A copy of the letter has been provided to the Committee staff for inclusion in the record of this hearing. My testimony before the Committee today will provide a summary of the Hopi Tribe's overall views on both the Senate and House bills.

The Hopi Tribe Supports S. 1003

The Hopi Tribe supports the Committee's efforts through S. 1003 to bring to a close a difficult chapter in the long struggle of the Hopi Tribe to protect its Reservation from encroachment and to regain full jurisdictional control over Hopi lands. The Hopi Tribe is situated on a Reservation in Northern Arizona set aside by Executive Order of President Chester Arthur in 1882. The current Reservation is but a small part of the Hopi's aboriginal lands and only slightly more than 60 percent of the land originally set aside for the Hopi by President Arthur almost 125 years ago. Through a long history of action and inaction by the United States, the Hopi Tribe lost 40 percent of its Reservation—approximately 911,000 acres—to the Navajo Nation. The Navajo Nation occupies a Reservation of over 17 million acres stretching across parts of Arizona, Utah and New Mexico. The Navajo Reservation completely surrounds the much smaller Hopi Reservation.

For more than 100 years, the Hopi Tribe has worked to prevent the loss of its lands to the much larger Navajo Nation and to preserve the Hopis' right to control its lands against intrusion. Beginning in 1958 the United States Congress enacted a series of laws intended to lead to a final resolution of the disputes between the Hopi and Navajo over the Lands of the 1882 Hopi Reservation. The Navajo-Hopi Land Settlement Act of 1974 authorized litigation between the Hopi and Navajo to determine the Tribes' respective rights in the 1882 Reservation. The litigation resulted in a partition of the Reservation into lands held exclusively by the Hopi and lands held exclusively by the Navajo. Other provisions of the 1974 Act provided for the relocation of Hopi and Navajo individuals residing on that part of the Reservation partitioned to the Tribe of whom that individual was not a member. Since 1974, the Hopi have waited patiently for the

Relocation process to be completed and for the restoration of our full jurisdictional authority over the Hopi Reservation. We are still waiting. Perhaps we have been too patient and too accommodating. All members of the Hopi Tribe who were required to relocate off Navajo partitioned land completed the relocation process many years ago. However, more than 30 years following passage of the 1974 Act, we are still waiting for completion of Navajo Relocation off Hopi land.

The principal objectives of S. 1003 are to provide for completion of the work of relocation, as originally authorized in the Navajo-Hopi Land Settlement Act of 1974, and to provide for termination by a date certain of the Office of Navajo-Hopi Indian Relocation (ONHIR). The Hopi Tribe supports timely completion of the relocation obligations of the United States and eventual closure of ONHIR. However, the Hopi Tribe believes that the objectives of S. 1003 must be accomplished in ways that do not prejudice the rights and interests of the Hopi Tribe established under existing laws of the United States. In 1995, the United States entered into a Settlement Agreement with the Hopi Tribe under which the United States committed to complete the relocation process by February 1, 2000. Congress ratified and approved that Settlement Agreement by enacting the Navajo-Hopi Land Dispute Settlement Act of 1996. That commitment has not yet been fulfilled. S. 1003 should not become the means for further weakening that commitment. The Hopi Tribe believes that S. 1003 will be effective only so long as it provides, finally, for the Hopi Tribe to regain complete jurisdiction over all of its Reservation lands as provided by Congress in the 1974 Act and reaffirmed in the 1995 Settlement Agreement and 1996 Act.

While termination of the Office of Relocation is certainly the ultimate goal, that goal should not become a substitute for full and efficient accomplishment of the relocation obligations of the United States. The Hopi Tribe believes that, to the greatest extent possible, the existing office of Navajo-Hopi Indian Relocation should carry out the work of wrapping up federal relocation responsibilities under existing law. The Office of Navajo-Hopi Indian Relocation has the experience and the on the ground know how necessary to complete the relocation obligations of the United States. The Hopi Tribe does not want to see an incomplete relocation obligation pushed off onto an already overburdened and under funded Bureau of Indian Affairs. The Hopi Tribe is acutely aware of the difficulties that the BIA has in accomplishing its currently assigned responsibilities. Funding shortages produce staff shortages and the result is that some work is unavoidably shifted to the very lowest priority and may in fact never be completed. Given the Hopi Tribe's interests in obtaining full jurisdiction over all of its Reservation lands, we would not want to see the work of completing relocation drop into some black hole within the Interior Department. Another issue that should not be lightly considered is whether the BIA is suited to carry out relocation responsibilities that may in fact adversely affect the interest of either the Hopi Tribe or the Navajo Nation. Will the BIA be willing to step into a situation that it might view as a conflict of interests and perhaps a breach of the federal trust responsibility that it has to both Tribes? Under such circumstances, can the BIA adequately carry out the relocation responsibilities that might remain post 2008?

In order to complete the work of Relocation, the Office of Relocation will need sufficient time and funding. The Hopi Tribe believes that a date certain for termination must be set and we support the 2008 deadline. The Relocation issue can be fully and finally resolved only to the extent that all Navajos potentially qualifying for Relocation benefits have an opportunity to apply for those benefits. Making the certification deadlines unreasonably short only opens up the possibility of legal challenges and delays by those who believe their circumstances were not fairly considered. Adequate funding should of course be provided to carry out all relocation obligations within the Termination deadline of September 30, 2008. Funding should be sufficient to staff the Relocation Office at levels necessary to complete the work efficiently and on time. Funding must also be sufficient to carry out the substantive work of the Office of Relocation, in other words, the actual work of building houses. The Relocation Program cannot be closed out unless houses are actually built for those families and individuals entitled to Relocation benefits. We urge Congress to coordinate with the Office of Relocation in determining an annual budget that will cover the costs of constructing a sufficient number of houses each year to satisfy the full relocation-housing requirement by the end of 2008.

In addition, the Office of Relocation should continue to have discretion to utilize a portion of the annual funding allocation in ways that address the unique burdens imposed by existing relocation law on the Hopi and Navajo people. For example, when a homesite on Hopi land is vacated because of relocation, that homesite must be dismantled. In addition, all of these homesites are associated with open solid waste dumpsites that must be cleaned up. In years past, the Hopi Tribe has contracted with ONHIR to cover the cost of dismantling and cleanup by the Hopi. We would want funding to continue to be available for these important activities. There are six planned communities on Hopi Partitioned Lands, all of which could benefit from infrastructure improvements made possible by relocation funds. These communities provide

opportunities for Hopi people to build new homes to accommodate a growing population and to move out onto the Hopi Partitioned Lands that make up the bulk of the Hopi homeland. One of these communities, Spider Mound, is now in the development phase. Hopi people are living at Spider Mound and need infrastructure improvements. We hope that S.1003 does not limit the discretion of ONHIR to assist these communities with various infrastructure improvements such as roads, electricity, water and sewer.

The Hopi Tribe Opposes H.R. _____

The Hopi Tribe opposes H.R. _____. I understand that the draft bill is intended as a House response to the Senate's passage of S. 1003. The Hopi Tribe continues to support closure of ONHIR following a completion of its work and we believe that adequate time and funding remain critical elements in ensuring final completion. These elements are included in S. 1003. We want to see a final end to the long and divisive history of the Navajo-Hopi land dispute. Unfortunately, the draft House bill, in proposing to revisit the Congressional wisdom of the 1974 Act and examine the consequences of relocation will only lead to a reopening and prolonging of the controversy and will work to the detriment of the Hopi Tribe. The Hopi Tribe cannot support the draft bill under such circumstances.

The bill starts from the false premise that passage of the 1974 Act was a "grave error" on the part of Congress. Hopi cannot accept that premise. The 1974 Act turned back the tide of Navajo encroachment onto the Hopi reservation and marked the beginning of a long road to recovery for the Hopi Tribe – recovery of a small portion of our original reservation and a recovery of full jurisdiction by the Hopi over our land. Now that we are nearly at the end of that long road, we do not want to be sent back to square one and forced to defend all that has been gained. The 1974 Act stopped the long history of Hopi land losses that had preceded its passage and under which nearly 1 million acres of Hopi reservation land shifted from Hopi ownership into Navajo hands and under which billions of dollars worth of energy resources beneath Hopi lands became vested in the Navajo. The 1974 Act was a watershed for the Hopi. We will not join in its Navajo-sponsored denigration and we will not submit to the negative implications against Hopi that flow from an attack on its validity. Let me briefly outline why we cannot support the draft bill.

The bill would harm Hopi by placing into its legislative history certain congressional findings concluding, among other things, that the 1974 Act was a "grave error" congress never should have made. This congressional finding would not only rewrite the past, it would rewrite the legislative history of the 1974 Act and cast doubt on all that Hopi has achieved under authority of the Act. To establish as a finding of the United States Congress that the 1974 Act and its relocation program was a "grave error" could negatively affect the Hopi position before the court's in any future land litigation with the Navajo involving relocation or any other aspect of the 1974 Act potentially implicated in the so-called "grave error." Premised on the assumption that relocation had negative consequences, the bill implies that actions taken by congress, the courts and by the Hopi Tribe under the 1974 Act and its relocation provisions were improper. Under this implication, the justification for past actions such as removing Navajo trespassers from Hopi Partitioned Lands (HPL), entering into Accommodation Agreements, reducing livestock numbers to the land's actual carrying capacities, restoring damaged HPL grazing capacity, recovering monetary damages and other similar actions might be subject to rethinking in some future court action in which the Hopi seek to protect their interest against Navajo claims. Congress should not subject Hopi to this kind of potential mischief by Navajos who in the future might seek to assert some new claims to HPL. It is time to end the Navajo-Hopi dispute once and for all.

The bill completely ignores the negative consequences suffered by the Hopi in seeing much of their aboriginal land and forty-percent of their reservation land, some 911,000 acres, taken by the Navajo—with the assistance of the United States. The bill casts the Navajo as the "victim" and the Hopi, by almost silent innuendo, as the perpetrator of some terrible harm against the Navajo. The facts, as previously established by Congress and Federal courts, do not bear out such implied conclusions and the Hopi Tribe cannot support a bill that would draw such false conclusions.

The bill attempts to lend support to Navajo's "awaiting relocation" by finding that those who were away on military service were unable to protect their rights under the 1974 Act. These individuals might use such a finding to claim rights to Hopi land or to argue that such a congressional finding is a defense in court to a Hopi legal action to evict them from HPL. As a result, we might see more Navajo lay claim to Hopi land based on their military service. A great many Hopi people have served and continue to serve in the military forces of the United States at home and abroad. Such service did not prevent the Hopi Tribe and its members from losing their lands and resources to trespassers here at home.

The bill would allow the Navajo Nation to enter into Accommodation Agreements on behalf of Navajos who themselves refused to voluntarily enter into such agreements. The Hopi Tribe cannot support such a unilateral right on the part of the Navajo Nation and allow the creation of contractual agreements that are non-binding on and unenforceable against the Navajo individuals made the subject of the agreement.

The bill provides for eventual closure of ONHIR, but only after ONHIR develops and implements a "mitigation and closure plan" based on the recommendations of a study aimed at identifying the negative consequences of relocation and recommending activities to redress such consequences. The scope of the so-called study analyzing the impacts of relocation is far too undefined and open ended to be workable. The bill would authorize the Navajo to hire a consultant using federal dollars and the consultant would be given free reign to develop a list of Navajo identified relocation negatives and injustices and then develop recommendations on how to make things right for the Navajo. Such recommendations could range from a federal giveaway of millions of dollars to the Navajo, to a conclusion that the Navajo should stay on Hopi land for as long as they choose. The study would set up the negative implication that the Hopi Tribe experienced no suffering at the hands of the Navajo or because of the actions and inactions of the United States in allowing the Hopi/Navajo land issue to become a problem in the first place. While the study would focus on the alleged negative consequences of relocation, it would say nothing about impacts to the Hopi resulting from Navajo encroachment on Hopi land or the consequences of the United States' failure to carry out its obligations to the Hopi under the 1974 Act. The Hopi Tribe cannot support a study that would cast such bad light on the Hopi Tribe and its efforts to protect the Hopi homeland from a history of well documented and judicially recognized Navajo encroachment.

In summary, the Hopi Tribe opposes the draft House bill. It is completely contrary to the interest of the Hopi Tribe to reopen old wounds with the Navajo and rehash the question of who suffered what as a result of the land dispute. It is long past time to put all of this behind us and allow both tribes to go on with their full attention focused on the business of providing secure and economically viable homelands for our respective people. I urge this Committee to reconsider the advisability of moving forward with a bill that will pit the Hopi and Navajo against each other on issues that Congress and the Courts have worked so hard and so long to bring to an end.

I am happy to answer any question that members of the Committee may have.