

United States Senate-- Committee on Indian Affairs
Hearing on S. 1003: Navajo-Hopi Land Settlement Amendments of 2005
July 21, 2005

Testimony of the Hopi Tribe--Chairman Wayne Taylor Jr.

Chairman McCain and members of the Senate Committee on Indian Affairs, the Hopi Tribe appreciates the opportunity to provide testimony on S. 1003, the Navajo-Hopi Land Settlement Amendments of 2005. My name is Wayne Taylor Jr., and I am Chairman of the Hopi Tribal Council. My testimony before the Committee today will be limited to a summary of the Hopi Tribe's overall testimony. A complete recitation of the Hopi Tribe's views concerning S. 1003 is set out in the written testimony of the Hopi Tribe, including a section-by-section analysis and comments, which has been previously provided to Committee staff for inclusion in the record of this Hearing.

Summary Of Testimony

The Hopi Tribe supports the Committee's efforts through S. 1003 to bring to a close one more chapter in the long struggle of the Hopi Tribe to protect its Reservation from encroachment and to regain full jurisdictional control over those 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. S. 1003 proposes to modify certain provisions of the 1974 Act in ways that may undo years of litigation between the Hopi and Navajo in the Courts of the United States; litigation that has already produced a judgment is currently awaiting further court action. In addition, the Hopi Tribe is concerned that S. 1003, in addressing issues that were the subject of the 1995 Settlement Agreement between the Hopi Tribe and the United States, may undercut prior but unfulfilled commitments of the United States to complete the Relocation process by the year 2000. 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 kept. 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.

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 is concerned that the result of S. 1003 may be to push off onto an already overburdened and under funded Bureau of Indian Affairs responsibility for the unfinished work of the Office of Relocation. 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?

The Hopi Tribe is concerned that S. 1003 includes provisions that will only delay final completion of relocation rather than bring it to a speedy end. The Bill provides that relocation funds may be placed into a trust fund for the benefit of the heirs of individuals who have not relocated. This provision creates a safe harbor for individuals who refuse to relocate off Hopi land by giving them the assurance that their relocation benefits will in fact go to their next of kin when they die. These individuals and their families should not be rewarded for their continued illegal occupation of Hopi land, especially under circumstances where the United States has failed to carry out its commitments to the Hopi Tribe concerning the relocation of individuals from Hopi land. The problem is compounded in other provisions of the Bill that on one hand seem to establish removal/eviction requirements, but then on the other hand leave it to the discretion of the U.S. Attorney whether a relocation resister is actually removed from Hopi land. The Hopi believe that removal should be mandatory. Finally, the eligibility appeals process should be carefully crafted to avoid the delays inherent in a complicated process that might stretch out through September 30, 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, however we are concerned that the time allowed for completing the certification process is inadequate. We believe it is simply impossible for the certification process to be completed by September 30, 2005. 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. Finally, 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. Two of these communities, Spider Mound and Tawaovi are now in the development phase. Hopi people are living at Spider Mound and it is only a matter of time before they will be living at Tawaovi. 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.

Chairman McCain, let me again thank you and the members of this esteemed committee for the opportunity on behalf of the Hopi Tribe to testify concerning S.1003. We look forward to working with the Committee in resolving the issues raised by the Bill. The analysis and comments of the Hopi Tribe concerning specific provisions of S.1003 are set out in our Written Testimony. I am happy to answer any question that the members of the Committee may have.

Section-by-Section Analysis and Comment on S. 1003

<u>S. 1003 Section</u>	<u>Affecting 25 U.S.C § 640d et seq. Section</u>	<u>Hopi Tribe's Comments</u>
1		This provision names the Act and establishes a Table of Contents. This section does not adversely affect the Hopi Tribe.
101	640d, d-1, d-2, d-3, d-4, d-28	The Hopi Tribe understands that the Bill would repeal all these sections. This repeal is in the nature of housekeeping and does not adversely affect the Hopi Tribe.
102	640d-5	The 1974 Act authorized certain litigation between the Hopi Tribe and Navajo Nation. The Owelty litigation involves the issue of whether one tribe or the other received greater value attributable to the land and its improvements on partition of the Hopi 1882 Reservation by the federal court. This section affects the Owelty provision already provided for in the 1974 Act by changing who currently makes the Owelty determination--the federal District Court and substituting the Secretary of Interior. The Bill also changes how Owelty is calculated. The Owelty case is currently in litigation and it would be inappropriate to change how Owelty is calculated and who makes the calculation. The case has been partially decided at the District Court level by two judgments, both of which have gone through appeals to the Ninth Circuit Court of Appeals. The case is now back before the District Court on remand for further proceedings. The Hopi Tribe opposes any changes to the Owelty provisions of the 1974 Act. There is no reason to start

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		<p>the Owelty case again from square one. To do so would prejudice the interest of the Hopi Tribe.</p> <p>In connection with this section, we also note that on page 4, line 7, the date of creation of the Hopi reservation should be 1882, not 1982.</p>
103	640d-6	No substantive change is proposed. (All non-substantive changes consisting principally of renumbering, reorganization, insertion of headings for clarification, etc.)
104	640d-7	No substantive change is proposed.
105	640d-8	No substantive change is proposed.
106	640d-9	No substantive change is proposed. (However, note that the renumbering set out at page 5, lines 20-23, should also be made in subsection (a)).
107	640d-10	The Hopi Tribe understands this provision to extend the time for the U.S. to take land into trust for the Navajo Tribe through September 30, 2008 and allows ONHIR to grant leases of Navajo land designated for resettlement to members of a relocatee's extended family. However, ONHIR may not use relocation funds to provide housing on said leasehold. The Hopi Tribe takes no position on this provision.
108	640d-11	<p>The Hopi Tribe understands that this section closes down ONHIR on September 30, 2008 and transitions all of its functions to the Department of Interior. This section establishes an Office of Relocation in Interior on October 1, 2006. The Hopi Tribe believes that the Interior "Office of Relocation" should not be established until October 1, 2008, immediately on the termination of ONHIR. This would be in keeping with the Secretary's authority in (g) to carry out remaining duties on or after the termination of ONHIR as provided in (f) (2).</p> <p>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</p>

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		<p>extent possible, the work of wrapping up Federal relocation responsibilities under existing law should be carried out by ONHIR prior to its termination in 2008. ONHIR has the experience and the on the ground know how needed to complete federal relocation obligations. The Hopi Tribe is concerned that the result of S. 1003 may be to push off onto an already overburdened and under funded Bureau of Indian Affairs responsibility for the unfinished work of ONHIR.</p> <p>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 done. 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.</p> <p>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 interests 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? The Hopi believe that the BIA will be unwilling to take action that might put it in the middle of a Navajo-Hopi dispute over relocation. Under such circumstances, can the BIA adequately carry out the relocation responsibilities that might remain post 2008? The Hopi believe that any conflict on the part of the BIA in enforcing federal relocation responsibilities will lead to a complete failure to fulfill those responsibilities. This would be detrimental to the interests of the Hopi Tribe.</p>
109	640d-12	No substantive change is proposed.
110	640d-13	<p>The Hopi Tribe understands this provision to require that in order to receive relocation benefits each head of household must be certified eligible as of September 30, 2005. The Hopi Tribe believes that this provision is too restrictive and sets an unrealistic deadline for completion of certification. ONHIR should be given adequate time to complete the certification process. In recent discussions with ONHIR, the Hopi Tribe has learned that there may be hundreds of individuals potentially</p>

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		<p>eligible for relocation benefits. Some of these individuals continue to reside on the Hopi Reservation. We would not want these individuals to be disqualified for relocation benefits by failure to meet the deadline. If there are Navajo heads of household on the Hopi Reservation who are not yet certified eligible (perhaps because they never applied), such individuals may be disqualified for failing to be certified by the deadline. This would be contrary to the interests of the Hopi Tribe in completing relocation and obtaining full jurisdictional authority over the Hopi Reservation. The Hopi Tribe believes that this section should be revised so that HPL Navajos can be relocated in the future even if they are not certified today or by September 30, 2005.</p>
111	640d-14	<p>This section has several problematic provisions. First, it adds subsection (g), which directs the Secretary of the Interior to hold relocation funds in trust for heads of household who have not relocated and to pay the funds to their heirs if the head of household dies. This rewards families who resist relocation by not making them move and nonetheless providing for the payment of relocation funds to their family when the head of household dies. There should be no incentive for resisting Navajo to remain on the Hopi Reservation.</p> <p>Second, this section adds what appears to be a removal/eviction provision, subsection (h), but then apparently still leaves it to the discretion of the U.S. Attorney as to whether a resister is actually removed from Hopi land. Removal should be mandatory. We remind the Committee that 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 no later than February 1, 2000. (See section 9(d) of the 1995 Settlement Agreement). The 1995 Settlement Agreement was approved and ratified by the Congress with passage of the Navajo-Hopi land Dispute Settlement Act of 1996. See 25 U.S.C. 640d-note. The Hopi Tribe believes that the United States should keep its commitment to the Hopi Tribe as set out in the 1995 Agreement and the 1996 Act. The Hopi Tribe believes that this provision of S. 1003 further undercuts the prior commitments of the United States on the matter of completing the relocation process.</p> <p>Finally, this section adds subsection (i), which spells out elaborate procedures for appeals of denials of benefits and</p>

<u>S. 1003</u> <u>Section</u>	<u>Affecting 25 U.S.C § 640d et</u> <u>seq. Section</u>	<u>Hopi Tribe's Comments</u>
		requires ONHIR to make a final determination on all eligibility decisions by January 1, 2008. The Hopi Tribe supports a firm deadline for final determinations of eligibility.
112	640d-15	No substantive change is proposed.
113	640d-16	No substantive change is proposed.
114	640d-17	No substantive change is proposed.
115	640d-18	No substantive change is proposed.
116	640d-19	No substantive change is proposed.
117	640d-20	No substantive change is proposed.
118	640d-21	No substantive change is proposed.
119	640d-22	No substantive change is proposed.
120	640d-23	No substantive change is proposed.
121	640d-24 (This section was apparently moved to section 27)	This provision authorizes certain appropriations, some of which seem questionable. First, this section authorizes \$13,000,000 to make relocation bonus payments under section 10(b) that are in addition to the payments made for relocation housing under section 11. These bonus payments were supposed to be made to relocatees who contracted to relocate a number of years ago. It appears that the timelines established in the statute for payment of these bonuses have all lapsed. Perhaps it is appropriate to make such payments only to the Navajos who remain on Hopi land and who contract to relocate. It may be a waste of taxpayer money to pay the bonuses to those who are not on Hopi land but nevertheless contract to relocate. Second, this section authorizes \$10,000,000 to institute "conservation practices and methods" necessary to return the grazing capacity of the land within the former Joint Use Area to its maximum grazing potential. The Committee has not consulted with the Hopi Tribe to determine what is necessary to return the Hopi portion of these lands to the specified grazing capacity. This consultation should take place before limiting appropriations for such purposes. Finally, this Section authorizes \$500,000 for surveying and fencing. The Committee should consult with the Hopi Tribe to determine whether this is enough funding to

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		pay for fencing the Hopi Reservation under both the 1882 and the 1934 cases.
122	640d-25	This section apparently takes away ONHIR's ability to use money to "assist [the tribes] in meeting the burdens imposed by the" Act. We are not certain that this is the intent or whether the change is driven by a desire for word economy. In any event, if the proposed change is intended to limit the discretion of the commissioner (ONHIR) to contract with the Hopi Tribe or to enter into grant agreements with the Hopi Tribe or to otherwise use the discretionary fund to assist the Hopi Tribe in meeting the burdens imposed by the Act, the Hopi Tribe opposes the change. The ONHIR should continue to have discretion to enter into agreements with the Hopi Tribe or otherwise assist the Hopi Tribe in resolving issues arising out of the Relocation requirements of the 1974 Act. For example, the Hopi Tribe has contracted with ONHIR in the past for the costs of dismantling homesites vacated by the relocation process and cleanup of the open dumpsites associated with these homesites. These cleanup costs will continue to be a part of the burden born by the Hopi Tribe until the relocation process is completed.
123	640d-26	This section makes clear that construction activity has to be carried out in accordance with the Historic Preservation Act. The Hopi Tribe supports this provision and believes it to be a codification of the existing practice of ONHIR.
124	640d-27	No substantive change is proposed.
125	640d-29	No substantive change is proposed.
126	640d-30	The Hopi Tribe understands this provision to extend the \$10,000,000 annual authorization for the Navajo Rehabilitation Trust Fund through 2008. The Hopi Tribe would like to see a status report on the Trust Fund included in the report of this hearing. We would like to see a summary of the original deposit into the fund, all subsequent deposits, all withdrawals and repayments. We note that the Hopi Tribe does not have access to a similar trust fund for use in making improvements to Hopi land or for purposes associated with relocation. The Committee should consider establishing a similar fund for the Hopi.
127	640d-31	No substantive change is proposed.

<u>S. 1003 Section</u>	<u>Affecting 25 U.S.C § 640d et seq. Section</u>	<u>Hopi Tribe's Comments</u>
201-3		The Hopi Tribe understands this provision to provide personnel changes allowing ONHIR to provide for separation pay, retirement annuities, etc. The Hopi Tribe supports this provision
301-17		The Hopi Tribe understands this provision to give the Secretary of the Interior authority to set up the Office of Relocation, hire staff, etc., and requiring the Secretary to file a report by September 2009. The Hopi Tribe supports this provision.