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Dated: May 8, 2012

Attention: Mr. James Anaya, Special Rapporteur on the Rights of Indigenous Peoples

Subject: Return Stolen Lands-Case of lands stolen by the US government in Hopi Partition Land (HPL) (Navajo Nation)

FOR THE OFFICIAL RECORD

Ya'ah'teeh. Greetings Honorable Mr. James Anaya. As you heard in testimonies presented in Tucson, AZ on April 26 and 27, 2012, the Diné people pray for emergency intervention and the return of Navajo lands stolen by the US government in a manufactured "range war" between the Hopi and Navajo so the US government could mine and profit as major shareholders of a power plant that burns high-grade, low-sulphur, strippable coal.

Numerous gross and systematic violations are still being perpetrated against the Diné people, violations of fundamental laws contained in the US Constitution, international law, the Declaration on the Rights of Indigenous Peoples and customary law. For the following reasons, we request emergency intervention, advocacy for the return of our stolen lands on Hopi Partition Land and UN support of our petition to UNESCO for our lands to be declared a World Heritage site and the Grandmothers, Living Human Treasures.

Brief History:

Our people live on land that our families have occupied for many centuries before the white man came to this continent. The US government acquired colonial jurisdiction over our land from Mexico via the Treaty of Guadalupe Hidalgo in 1848. In 1882, they set up a large reservation centered around Hopi villages, but most of the land was occupied by Dine'. Until the 1950's, we and the Hopi lived in our traditional lifestyle on our respective ancestral lands with little interference by the US government.

When the richest coal reserves in the US were discovered beneath us, white lawyers entered the reservations and set up governments that would issue coal leases. The lawyers went to the US courts to ask which government owned the rights to the coal: the Hopi, because they controlled the 1882 reservation, or the Navajo government because the land was occupied by Dine' [1]

In the 1950s, lawyers insinuated themselves, with BIA approval, as counsel for tribal governments formed through their efforts. John Boyden, a Salt Lake City lawyer was retained as Hopi counsel. Boyden, a Mormon Deacon, also represented the Peabody Coal Company and was counsel for the Mormon Church, which owned a controlling interest in Peabody Coal. (Thus, Peabody eventually gained subsurface rights on exclusive Hopi territory for a fraction of fees paid elsewhere, and continues to lease mineral rights in Navajo/Hopi territory to this day.) Attorney Norman Littell was hired by the Navajo Tribal Council. His contract provided him with 10% of coal revenues. Both lawyers were also motivated by statutory fees of 10% in Indian Claims Commission (I.C.C.) cases, seeking damages for wrongful taking of native lands. Only after accepting settlements did tribes typically learn the real purpose of the I.C.C.: to settle land claims by paying a pittance and thereby foreclose actions to recover lands wrongfully taken. Both lawyers were instrumental in the creation of tribal governments willing to sign mineral leases and to pursue I.C.C. claims.

At the same time, under their lawyers' guidance, the tribes filed a collusive lawsuit 'Healing v. Jones' against each other in 1958, each tribe claiming the entire 1882 reservation. Decided in 1962, the case basically affirms the 1941 BIA designation of a portion of the reservation as exclusive Hopi land and the rest as Joint Use Area (JUA). The Hopi tribe was paid for the loss of the JUA they are asserting jurisdiction over, but they don't own the land so they can't assert jurisdiction over it for the 1937 taking and 1958 vested property rights paid in 1980 on Hopi rights to JUA as determined in Healing. The Hopi tribe is getting double paid for loss of use since the Healing Court was never informed of Hopi ICC claim.

These actions are legal under US law. The federal government is the legal holder of land title to the reservations, holding the land in trust for the benefit of the tribes and their members. The 1963 Healing v. Jones decision stated that the people on these lands were only "tenants at the

[1] February 4, 1999, Sovereign Dineh Nation Land Rights communication to Mr. Julian Burger, Madam Erica Irene Daes, Working Group in Indigenous Populations and Ms. Mary Robinson, High Commissioner for Human Rights

will of the government", so our continuous use of our land for centuries does not convey any right to remain here for one more day if the federal government chooses to move us.

Also, in 1963, the US decided that the Dine' land should become a "Joint-Use Area", with both tribes sharing the land and mining royalties. Backed by the coal companies, the lawyer for the Hopi then asked the US to partition this "Joint Use Area" into separate Hopi v. Navajo territories. Since virtually all the people living in the Joint-Use Area were Dine', the plan would require evicting all the people living in a territory of almost 1 million acres.

In 1966, 1month after the first lease was signed between Peabody and the Hopi Tribe, the US imposed a Bennett Freeze denying all infrastructure and development.

In 1974, the US government passed a law mandating our relocation to solve a manufactured land dispute and assist the US with energy independence, the primary national concern during the 1973 oil embargo. The 1974 Act cannot give back lands that the Indian Claims Commission (ICC) decided were taken.

In 1997 through 1999, the US government through the Office of Navajo Hopi Indian Relocation hand delivered eviction letters accompanied by threats that if Diné resisters did not sign up for relocation they would be evicted from their homes and their livestock confiscated. International support on site at the resisters homes stopped threats in 2000 of armed US Marshalls evicting resisters at gun point.

Relocation effects

Our distinct identity is crucially linked to the lands we have occupied since time immemorial. We are an integral part of our environment. Displacement from our territory means the destruction of our cultural identity and cultural survival. The refusal to respect our sovereignty and humanity is eco-genocide brought about by the destruction of ecological systems on which we depend for our livelihood and our very survival. Pauline Whitesinger, an elder matriarch says, "To relocate is to disappear and never be seen again. Relocation is a death sentence." Genocide in any form is a gross violation of international human rights and a crime against humanity.

Dr. Thayer Scudder, professor of Anthropology at the California Institute of Technology, who has studied resettlement issues in Africa, Asia, and the Middle East for the UN states, "The forced relocation of over 12,000 Native Americans is one of the worst cases of involuntary community resettlement that I have studied throughout the world over the past 40 years. Such a situation would never have arisen in the US if the people involved had been Anglo-Americans. That alone illustrates the extent to which the human rights of one of the poorest minority groups in the US have been violated."

The director of the relocation program resigned, stating that "The forcible relocation of over 12,000 Navajo people is a tragedy of genocide and injustice that will be a blot on the conscience of this country for many generations."

One of three federally appointed relocation commissioners resigned, stating "I feel that in relocating these elderly people, we are as bad as the Nazis that ran the concentration camps in World War II."

Relocation funded by the US government destroys our ability to practice our traditional religion, which is based on a spiritual relationship with our ancestral lands. We have religious ties to the land and believe we must remain upon our lands as caretakers. This is the instruction given to us by the Creator. Our land is sacred and we do not believe our land should be expropriated from us and used by the US government to settle a national interest or provide energy to far-away cities. We are being deprived of our ability to survive and remain on our lands, endangering a great number of families that is costing our lives, health and spiritual well-being.

Relocation violates our human rights, the American Indian Religious Freedom Act, the Religious Freedom Restoration Act, the Guiding Principles of Internal Displacement, international law and the Declaration on the Rights of Indigenous Peoples. The U.S. violates environmental laws in permitting harm to our homelands and water table through mining and in removing Navajo people to lands that are contaminated by abandoned uranium mines and uranium and arensic contaminated water.

US violates fiduciary/trust responsibilities

The Supreme Court first introduced the doctrine of individual aboriginal title in *Cramer v. United States*, 261 U.S. 219 (1923), to permit individual Indian tribe members to establish rights to land separate from their nomadic tribes. The Court described the individual right as similar in purpose to the right of tribal occupancy, but emphasized its *individual* nature as "based on occupancy alone" and "clearly fixed by the inclosure, cultivation and improvements" of the land. *Cramer*, 261 U.S. at 227-29, 235. [2]

We further defined the right to individual aboriginal title in *United States v. Dann*, 873 F.2d 1190 (9th Cir. 1989), and *United States v. Kent*, 945 F.2d 1441 (9th Cir. 1991). In *Dann*, we held that "[t]o establish such an individual right of occupancy, the [claimant] must show actual possession by occupancy giving rise to a *Cramer* claim must have begun *before* the property was withdrawn from settlement, and that the claimant (or her lineal ancestors) must have then *continuously* exercised the right to occupy the land. *Id*., at 1197-1200. We reiterated these factors in *Kent*. *See* 945 F.2d at 1444 (individual aboriginal title can be established "when an Indian can show that she or her lineal ancestors continuously occupied a parcel of land, *as individuals*, and that the period of continuous occupancy commenced before the land in question was withdrawn from entry for purposes of settlement.") (citing *Dann*, 873 F.2d at 1198-99) (emphasis in the original)). *United States v. Lowry*, No. 06-10469 (9th Cir. January 16, 2008),

[2] James W. Zion, Esq.

slip op. at 564-565. [3]

Under domestic legal doctrines, the U.S. has violated its fiduciary/trust responsibilities to the Navajo people and engages in unlawful racial discrimination, in violation of due process and equal protection rights, by requiring Native people to vacate their land, while never having required non-Natives to vacate Native lands.

US government funded tryanny

The US government makes the resisters' lives an intolerable web of jurisdictions and regulations affecting their ability to graze livestock, to repair and improve their homes, to gather firewood, and to maintain sources of potable water. The law recognizes different degrees of right and privilege for those eligible to sign accommodation agreement (75-year lease) under the Hopi tribe than it does for the non-eligible. Of the eligible, it distinguishes those who have signed from those who have not. Of those who have signed, it creates subclasses of privileges based on distinctions concerning full-time presence vs. temporary absence from the land. Of those who are ineligible or who choose to not sign, it creates distinctions based on a family's indication of desire (or lack) to cooperate in their relocation. Since only heads of household are recognized as eligible to sign accommodation agreements, survivors of deceased signers lose their beneficiary status. [4]

Only a police state can enforce such intrusive regulations that meet with understandable resistance because they have such a dramatic impact on the ability of individuals and communities to survive. Numerous instances demonstrate how armed Hopi, Navajo, and BIA police and rangers maintain constant surveillance. One eighty year old woman's horse was impounded while she attended a meeting. Thirteen armed rangers in four vehicles arrived at her home and physically held back her non-resisting son while they removed the horse. She then received a bill for over $800, the cost of the impoundment operation. Another elderly had cattle confiscated while she was attending her relatives funeral. The BIA has taken entire herds, cattle and horses from inside corrals. There are many such stories, akin to the Chinese government's humiliating tactic of sending a bill for the cost of the bullet to the family of its execution victim.

The resisters homes and sacred sites have been bulldozed, firewood and chain saws confiscated, water sources dismantled, capped off, fenced off and bulldozed forcing people to haul water over great distances and unmaintained dirt roads. To this day, people are told they need permits to conduct ceremonies, told they need a permit to visitors at their homes, living under the tyranny of the BIA and the next wave of livestock confiscations.

A complex and abusive bureaucratic machinery, now of more than four generations' duration, has imposed a heavy psychological burden on our people. It has led to great fear and loss of hope

[3] Ibid. James W. Zion, Esq.

[4] Analysis of Dineh Case And Needs by Gabor Rona, Senior Staff Attorney, Center for Constitutional Rights http://www.scribd.com/doc/92776289

and dignity. The sense of desperation and depression is pervasive. In addition, the existence of different classes of rights accorded by law or regulation to different categories of Diné people has created confusion and divisive schisms in the communities.

Mechanisms where we can turn for redress of the violation of our rights barely exists and we have minimal protection in the realm of national, international law and within the United Nations system. It is our hope that international human rights and the collective monitoring and enforcement of human rights standards will become a reality for us in our lives. We believe this will require the recognition of our rights, such as our right to the return of our ancestral territories stolen by the US government. Please check out www.saveblackmesa.org We pray with the support of the UN to UNESCO, our lands, our way of life and historic, cultural and sacred sites endangered by Peabody Coal Company and forced relocation by the US government will be protected as a World Heritage site and the Grandmothers protected as Living Human Treasures.

Recommendations:

- Congress should pass a law that recognizes the change in status of Native tribes from conquered nations to independent sovereign entities analogous to States within the US and having all the powers and rights thereof and recognizing that individual members of the tribes as citizens of the US and residents within these state like entities called tribes have all the rights as citizens of any state including property rights.
- Native tribes should no longer be considered conquered nations but entities analogous to states with equal property rights and the same body of law applies to native and non-native disputes based on a sequence of injustices regarding their ownership, occupancy and use of land which in the Diné case has roots that go back to the Nihitsāzī (Anasazi), Ancient Ones as DNA evidence supports.
- Support our petition to UNESCO to have our lands declared a World Heritage site and the Grandmothers as Living Human Treasures.
- We would like to be given an opportunity to present testimony to an independent body that advocates for the return of our stolen lands. Extensive documentation is available.

We appeal to the UN to intervene, investigate and advocate for the return of our stolen lands. We believe this is necessary to ensure a rule of law for our people that is based on respect for justice, human rights, the environment and humane governance.

Ahe'hee. Respectfully submitted by Carlos W. Begay, Sr. and Marsha Monestersky