



THE NAVAJO NATION

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Navajo Attorney General says Treaty of 1868 still relevant 139 years after Navajos' release from Bosque Redondo

ALBUQUERQUE, N.M. – The Navajo Treaty of 1868, which turned 139 years old on Friday, remains highly relevant today and is a testament to the foresight of the Navajo leaders who signed it, according to the Navajo Nation's attorney general.

Speaking to about 150 lawyers at the Navajo Bar Association's annual conference here Friday – June 1, Navajo Nation Memorial Day – Navajo Nation Attorney General Louis Denetsosie said the Navajo leaders who put their mark to the treaty were farsighted strategic planners who looked to the future of their tribe, in addition to immediate release from brutal captivity at Fort Sumner, N.M.

"Our leaders wanted the people to continue, the tribe to continue," Mr. Denetsosie said. "They wanted self-sufficiency. They wanted self-determination."

Beginning in 1863, some 8,000 Navajos were rounded up by U.S. soldiers and forcibly marched 300-to-400 miles to Fort Sumner, the Bosque Redondo, where they were imprisoned until mid-June 1868. Ever since known as "The Long Walk," hundreds died or were killed by soldiers along the way, leaving the Navajo people with the greatest historical trauma in their long history.

Once there, many more died from starvation, disease, were subject to rape and many hardships just to survive. Firewood was scarce, food wouldn't grow, the water was undrinkable and the people were subject to raids by other tribes in the area and were powerless to help themselves.

The Navajo Treaty of 1868, the last treaty the Navajos signed with the U.S., not only freed Navajos from captivity but returned them to the homeland they were forced to leave rather than have them relocated to Oklahoma or Florida, as the federal government did with other tribes. In the Treaty of 1849, Navajos agreed to be peaceful people. But by 1852, the federal government was already planning to move the Navajos off their homeland anyway.

"From the Navajo side, the treaty framers agreed that the treaty would bind all the Navajo bands," Mr. Denetsosie said. "The Navajos would lay down their arms and be peaceable people. They agreed to accept the protection of the United States against their enemies. They agreed to confine themselves to a reservation. The treaty makers wanted a permanent homeland for future generations of Navajos. I think that tells us that along with

that they expected these future generations to carry on that work and protect the sovereignty of the tribe."

Mr. Denetsosie said these concepts are powerful because they are consistent with what the federal government wanted, and they achieved the goals of the Navajo leaders as well, particularly Barboncito, the headman from Canyon de Chelly.



In his most famous statement of the time, he told Lt. General William Tecumseh Sherman, "I hope to God you will not ask me to go to any other country except my own."

"He was talking about coming back to his land, using the law that he had," Mr. Denetsosie said.

The concept of law then is what today is known as the Fundamental Law of the Diné, Mr. Denetsosie said.

"The Navajo Treaty is very relevant," he said. "The treaty lays the very foundation for the Nation that we're trying to build here."

“As Indian lawyers we have to be highly vigilant to protect and maintain tribal sovereignty,” he said. “There’s more pressure to create a homogenous society with one language. That sounds very much like the failed assimilation policies of the past. That is where we stand today.”

A distinguishing characteristic of the treaty, he said, was its complete lack of enforceability from the Navajo perspective. It depended solely on the goodwill of the federal government to fulfill its promises, which the Navajos had not seen with the previous treaty.

Nonetheless, Navajo leaders approached it strategically with a plan, Mr. Denetsosie said.

“So these guys were doing strategic planning back in 1868 based on Fundamental Law,” he said “They said ‘Lets pick a small piece of land, establish ourselves there, and we’ll get the rest of the land back.’ The Navajo Nation was very successful in implementing their purpose.”

The reservation created by the Treaty of 1868 was about three million acres straddling what is now the Arizona-New Mexico border, reaching west to Canyon de Chelly. In the time since, until 1934, the Navajo Nation annexed the land east almost to Albuquerque, south to the San Francisco Peaks and Interstate-40, west to the Colorado River, and north into Utah.

The Navajos were so successful, he said, that the State of Arizona passed a statute in 1918 to try to stop these land annexations.

“I would give them an A-plus for implementing the plan,” he said of these Navajo leaders. “They regained more of their aboriginal lands than any tribe in history.”

However, the problem with treaties is that they were breached more than they were fulfilled, he said. Often they were negotiated with good intentions only to be changed in Washington without the knowledge of tribes, or the U.S. Senate would fail to ratify them.

“The United States could breach these treaties with impunity. Witness the loss of the Black Hills, the loss of hundreds of millions of acres under the General Allotment Act,” Mr. Denetsosie said. “Congress has passed numerous laws implicitly repealing various provisions of the treaties. Federal courts routinely state treaties will be honored unless Congress has chosen to change those treaties.”

Consequently, the respect given to treaties was cyclical depending on which political party was in power at the time, he said. Three U.S. Supreme Court decisions from 1823, 1831 and 1832, known as the Marshall Trilogy, formed the foundation of federal Indian law. These recognized tribes as sovereigns with a

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relationship to the federal government as that of a ward to a guardian.

“The laws of the state governments were deemed to have no force in Indian country,” Mr. Denetsosie said. “For first 200 years, since the Declaration of Independence, the federal courts have remained very much faithful to this view of the law. And up through 1959, and beyond, the United States Supreme Court deemed the United States to be the protector of Indians tribes.”

He said that most of the modern success stories of tribes, such as the right to tax or the right to have lawsuits heard in tribal courts, derive from treaties. He said he believes, overall, that the U.S. Supreme Court and Navajo leaders of the past were very visionary.

“We have a major source of tribal revenue which derives from reservation land rental and rights of way compensations, and these revenues are attributable to the exercise of the power of Indian tribes to condition entry onto their reservations, and condition the use of the land by outsiders,” Mr. Denetsosie said. “Finally, we have the Indian water rights settlements. Those would not be possible without the treaties.”

Today, he said, tribes are reaching settlements to further acquire their rights to water that flows across their land. These rights also stem from treaties, in addition to court decisions recognizing the validity of those treaties. A significant problem, however, is the time it takes to fulfill those rights.

Mr. Denetsosie credited the Navajo Nation Department of Justice water rights attorneys for the work they do, as well as the Navajo Nation Water Rights Commission. Among the attorneys he noted are Stanley Pollack, Scott McElroy, Bidtah Becker, and Brenna Clani.

“I think the work that they do is a credit to the treaty, and it’s an honor to work with you guys,” he said.