No: 18-15996

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FRED BEGAY,
Plaintiff-Appellant,

v.

OFFICE OF NAVAJO & HOPI INDIAN RELOCATION,
Defendant-Appellee.

On Appeal from the United States District Court for the
District of Arizona

No. CV 16-08268
The HONORABLE DIANE J. HUMETEWA
United States District Judge

BRIEF OF PLAINTIFF-APPELLANT FRED BEGAY

LEE B. PHILLIPS, SB # 009540
Law Office of Lee Phillips, P.C.
209 N. Elden St.
Flagstaff, AZ 86001
Telephone: (928) 779-1560

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I. INTRODUCTION

The Navajo-Hopi Land Settlement Act, Pub. L. No. 93-531, 88 Stat. 1712 (1974) ("Settlement Act"), sought to resolve the "Navajo-Hopi Land Dispute", which is the subject of, at least four federal statutes, hundreds of federal and state court cases, an independent executive branch agency, at least two multi-year mediations conducted by the Ninth Circuit, perhaps the largest federal housing program in this country and the largest forced relocation of any racial group in this country since the relocation and internment of the Japanese during World War II. *See, Whitson, A Policy Review of the Federal Government's Relocation of Navajo Indians Under P.L. 93-531 and P.L. 96-305,* 27 Ariz.L.Rev. 2 (1985).

The Settlement Act compelled the relocation of Mr. Begay and thousands of other Navajo Indians from land awarded to the Hopi Tribe by the federal government. More than thirty years later, the federal agency in charge of that relocation, now known as the Office of Navajo & Hopi Indian Relocation ("ONHIR" or "the Agency"), finally considered Mr. Begay's claim for benefits under the Act—including money for a new home. The Agency rejected his claim on March 6, 2012 because he lacked documentary evidence of his income from 1980-1986 in order to show he was a self-supporting head of household and entitled to benefits. That rejection was upheld by the Agency's Hearing Officer's ("HO") decision of December 4, 2015 which rested on the arbitrary and capricious

discrediting of all oral testimony of earnings and residency presented at the Administrative Hearing. The decision was contrary to all credible testimony and other evidence.

The HO cited no basis for his evidentiary ruling requiring documentary evidence, and no law requires such evidence of earnings to establish head of household status. ONHIR's written policy recognizes that earnings can be proven through testimony, and it has repeatedly found other applicants to be heads of household based on such evidence. The HO provided no cogent reason for his credibility findings and failed to explain why he deemed all of Mr. Begay's and his witnesses' testimony about events in the 1980s, of which they had personal knowledge, to lack credibility about both his income and residence. In contrast, the HO found the Agency's only witness credible, despite his lack of any personal knowledge of Mr. Begay's residence and income. Absent the Hearing Officer's arbitrary, capricious, and unsupported credibility findings, no evidence supports the Agency's decision.

The U.S. District Court for Arizona affirmed the Agency's decision. It granted summary judgment in favor of the Agency and denied Mr. Begay's Motion for Summary Judgment. Thus, after federal law forced Mr. Begay to abandon his ancestral home, he is left without a new one for want of documents from the 1980's showing the length of his residence on the land partitioned to the Hopi

Tribe and his exact income earned nearly forty years ago. Pursuant to the Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)(A), (E), this Court should reverse the district court's decision and order the Agency to provide relocation benefits to Mr. Begay.

II. JURISDICTIONAL STATEMENT

The District Court had jurisdiction under 28 U.S.C. § 1331, 5 U.S.C. § 701 *etseq.*, and the Navajo-Hopi Land Settlement Act, Pub. L. No. 93-531, § 15(g), 88 Stat. 1720 (1974), *as amended by* Pub. L. 100-666, § 10, 102 Stat. 3933 (1988), *formerly codified as* 25 U.S.C. § 640d-14(g), because it is a civil action arising under United States laws[1].

This Court has jurisdiction under 28 U.S.C. § 1291 because this is an appeal of the final decision of the district court. The district court filed its Order from Chambers and Judgment in a Civil Case on March 30, 2018. ER010. Mr. Begay filed his Notice of Appeal on May 29, 2018 within the time allowed by Fed. R. App. Proc. 4(a)(1)(B)(ii). ER 267.

III. ISSUES PRESENTED FOR REVIEW

(1) Whether Mr. Begay's claim that he was a resident of the HPL at least through 1986 was supported by substantial evidence?

[1] As of September 1, 2016, the Settlement Act was omitted from the United States Code by its compilers for being of special and not general application. *See* 25 U.S.C. 640(d), http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim.

(2) Whether Mr. Begay's claim that he was a head of household when he moved from the HPL was supported by substantial evidence?

(3) Whether the Hearing Officer's finding that Mr. Begay and his witnesses' testimony was not credible because it was not supported by records or other documentation of his residency and income during the 1980's should be upheld?

(4) Whether the Hearing Officer's determination that testimony alone is insufficient to prove facts is contrary to law, and is arbitrary and capricious?

(5) Whether the denial of Mr. Begay's application for relocation benefits violates ONHIR's trust obligations to Mr. Begay?

IV. ADDENDUM

An addendum containing the text of pertinent statutory and regulatory provisions is attached at the end of this brief.

V. STATEMENT OF THE CASE

A. Background of the Settlement Act and Forced Relocation.

The Navajo-Hopi land dispute began in 1882 when the United States set aside 2.5 million acres of Arizona land for the Hopi Tribe and "such other Indians as the Secretary of the Interior may see fit to settle thereon." *See Bedoni v. Navajo-Hopi Indian Relocation Com'n*, 878 F.2d 1119, 1121 (9th Cir. 1989) (quoting Exec. Order of December 16, 1882). Over time, a sizable Navajo population settled in the area. *Id.* In 1958, Congress authorized a three-judge district court to entertain

litigation between the tribes to determine their respective ownership interest in the land. *See* Act of July 22, 1958, Pub. L. No. 85-547, 72 Stat. 403 (1958). In 1962, the district court determined that part of the land constituted a "joint use area" ("JUA"), which was owned by the Hopi Tribe and the Navajo Nation subject to the United States' trust title and concluded it could not partition the JUA between the tribal co-tenants. *See Healing v. Jones*, 210 F. Supp. 125, 192 (1962), *aff'd*, 373 U.S. 758 (1963) (*per curiam*); *Bedoni*, 878 F.2d at 1121. On December 22, 1974, Congress passed the Settlement Act, which appointed a mediator to attempt to resolve the land dispute between the tribes. *Bedoni*, 878 F.2d at 1121. The Settlement Act also gave the *Healing* court the power to divide the JUA between the two tribes on an equal basis should the mediation fail. *Id*. The mediation failed, the court partitioned the JUA on April 18, 1979, and a fence was erected dividing the land. *See Peabody Coal Co. v. Navajo Nation*, 75 F.3d 457, 460 (9th Cir. 1996); 25 C.F.R. § 168.13.

The Settlement Act required tribal members living on land partitioned to the other tribe to relocate, and created an agency—ONHIR—to disburse "funds equivalent to the reasonable cost of a decent, safe, and sanitary replacement dwelling to accommodate [each displaced] household." *Bedoni*, 878 F.2d at 1122 (internal quotation marks and citation omitted). More than 10,000 Navajo residents, mostly traditional subsistence herders and farmers, were forced to move

in what has been called the "greatest title problem in the West." *Healing v. Jones*, (II) 210 F. Supp. 125, 125, 129 (D. Ariz. 1962), cert. denied, 373 U.S. 758 (1963).

B. Procedural History and Rulings to be Reviewed.

The Settlement Act directed that the relocation program be completed in five years. Pub. L. No. 93-531, § 14(a), 88 Stat. 1718 (1974). However, the Agency failed to notify many of its intended beneficiaries of their possible eligibility for relocation benefits. *See Herbert v. Office of Navajo & Hopi Indian Relocation*, No. CV06-03014-PCT-NVW, 2008 U.S. Dist. LEXIS 125947, at *16-20 (D. Ariz. Feb. 27, 2008). In 2008, the district court ordered ONHIR to rectify that failing. *Id.* ONHIR then sent letters to Mr. Begay, and hundreds of other intended beneficiaries, explaining that they could apply for relocation benefits. Mr. Begay applied on July 29, 2010. ER 047. On May 11, 2012, ONHIR denied his application—finding he did not qualify as a head of household because he was not self-supporting at any time prior to July 7, 1986. ER 068. There was no issue raised by ONHIR concerning Mr. Begay's eligibility as a resident of the HPL in its denial letter. *Id*. Mr. Begay filed an agency appeal on July 16, 2012 of the determination that Mr. Begay did not qualify as a head of household. ER 073. Although 25 C.F.R. §700.311(d) generally requires hearings within 30 days of the appeal request, ONHIR's Executive Director waived the time deadlines for *all*

pending and new administrative appeals on September 1, 2009[2]. On July 25, 2014, Mr. Begay appeared with Counsel for his administrative appeal hearing. ER 110. At that time the HO was advised by Counsel that Mr. Begay and his witnesses intended to testify that Mr. Begay was a self-supporting head of household based largely on his employment in the 1980's with Ramsey Construction, a contractor who built relocation homes for ONHIR. ER 111. Further, that Counsel for ONHIR was familiar with Leslie Hosteen, the Ramsey Construction foreman who Mr. Begay claimed to have worked for during the 1980's, and had provided Mr. Begay's Counsel with Mr. Hosteen's name and location. Both Counsel agreed that if Mr. Hosteen would corroborate Mr. Begay's testimony of employment with Ramsey Construction during the 1980's his testimony would be far more credible than just Mr. Begay's uncorroborated claim of being a self-supporting head of household from 1980-1986. As a result, the hearing was continued by the HO to allow Counsel to attempt to locate Mr. Hosteen and secure his declaration and possible testimony. ER 111.

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[2] The regulations under the Settlement Act continue to refer to the original agency structure, headed by a three-member Commission. *See, e.g.*, 25 C.F.R. § 700.321 (entitled "Direct appeal to Commissioners"). The Act was amended in 1988 to require a single Commissioner. Pub. L. 100-666, § 4, 102 Stat. 3929 (1988). The Commissioner resigned in 1994 and delegated all his authority to the Executive Director. ONHIR Management Manual, p. 1, https://www.onhir.gov/mangement-manual/ONHIR-Management-Manual.pdf. Since then, the Agency has operated without the presidentially-appointed Commissioner required by statute. *See id.*

ONHIR finally held Mr. Begay's second Appeal Hearing on October 9, 2015 where Mr. Begay, his former employer, a former co-worker and Mr. Begay's sister all testified. ER 154. On December 4, 2015, the HO issued his decision, recommending denial of Mr. Begay's application for benefits. ER 331. The Agency agreed and issued its final decision denying benefits on January 12, 2016. ER 343.

Mr. Begay filed this case, with the District Court on November 15, 2016 seeking redress for ONHIR's denial of relocation benefits. ER 004. The District Court accepted ONHIR's findings, reasoning, and decision *in toto* and granted summary judgment upholding ONHIR's denial of eligibility. *See* ER 010. This appeal followed. *See* ER 001.

In affirming the HO's decision concerning Mr. Begay's claim of residency, the District Court accepted the HO's findings that Mr. Begay "retained his legal residence at Coalmine Mesa until sometime before or in 1982 as there is no credible or sufficient evidence that he retained his legal residence in Coalmine Chapter after 1982 when he (inconsistently) declared that his family left their residence there and while applicant was living in Tuba City with his uncle." ER 014.

The District Court further found that even if Mr. Begay and his witnesses were truthful "there is insufficient evidence that Plaintiff retained legal residence in

Coalmine after 1982." The District Court reached this conclusion because it found the witness "testified to different time periods of when Plaintiff was living at Coalmine and none of the witnesses provided testimony that would tend to prove the Plaintiff intended to legally reside in Coalmine despite his physical separation." ER 015. The Court further found the HO "set forth specific and cogent reasons as to why each witnesses' testimony was not credible – mainly due to lack of consistency…". *Id*.

Finally the Court added that Mr. Begay failed to provide, "any affirmative evidence to support his contention that he continued to legally reside in the HPL through 1986 despite working and physically being located elsewhere." *Id.* The Court contrasted Mr. Begay's evidence with the evidence presented by the applicant in *Mike v. ONHIR*, 2008 U.S. Dist. LEXIS 510. In *Mike*, the Court noted that the applicant had presented evidence of her voter registration in her Chapter, her listing on the JUA roster, her maintaining substantial ties and recurring contact with an identifiable homesite, and her corroborated and credible testimony that she was only temporarily away from the homesite for work and also due to a construction freeze. *Id*.[3]

[3] For a discussion of the impact the court ordered construction freeze had on all Navajo applicants for relocation benefits. *See Sekaquaptewa v. MacDonald*, 544 F.2d 396, 398 n.1 (9th Cir. 1976), cert. denied, 430 U.S. 931 (1977); Whitson, 27 ARIZ. L. REV. 2 at p. 404-5.

As to Mr. Begay's claim that he was a head of household when he moved off of the HPL, the District Court accepted the HO's findings that Mr. Begay failed to present any records or documentation of his income during the 1980's and that the testimony of Mr. Begay and his witnesses contained "inconsistencies" and provided "very little corroboration." *Id*. at 7.

Finally, the District Court found that the HO's credibility findings were supported by substantial evidence and had set forth "specific and cogent" reasons why he found Mr. Begay and his witnesses to be not credible and that their claims regarding Mr. Begay's income were "merely conjecture." *Id*. at 8.

VI. STATEMENT OF FACTS

1. Mr. Begay was a resident of the HPL through, at least, 1987.

Mr. Begay testified he grew up with his family on the HPL in Coalmine. ER 208-09. Whenever he was not working for his uncle or Ramsey Construction he would return to his family's home in Coalmine. Mr. Begay stayed in Tuba City overnight at his uncle's if he was working there or if he was coming back or going to work elsewhere for Ramsey Construction. ER 218-19.

The family's homesite in Coalmine was small and consisted of one "small house and a Hogan and a shed." ER 202. Mr. Begay's stepdad and Mr. Begay's older brother "Freddie" moved from the HPL in 1982 while awaiting relocation due to the construction freeze and resulting overcrowding at their homesite. ER 220.

Other family members also "moved off" the HPL while they awaited relocation. ER 220. When his parents relocated in 1989, Mr. Begay remained in Coalmine because he was still working for Ramsey Construction and for his uncle in Tuba City. ER 220-21. Mr. Begay later moved from Coalmine to Tuba City after his Coalmine homesite was torn down by ONHIR. *Id*. Mr. Begay testified he lived his life at Coalmine from birth until his parents relocated in the late 1980's. ER 222-23. In Mr. Begay's application for benefits dated July 29, 2010 clearly states that Mr. Begay was a member of the Coalmine Chapter from 1960-1987 and moved to the Tuba City Chapter in 1987. ER 048.

Leslie Hosteen ("Employer") testified that when Mr. Begay came to work for him, Mr. Begay was living with his family in Coalmine. ER 160. Mr. Begay lived in Coalmine the entire time he worked for Ramsey Construction in the 1980's. ER 160, 169. Hosteen would pick Mr. Begay up in Coalmine, about a 50 minute drive east of Tuba City. ER 170. Hosteen testified that at times Mr. Begay would stay with his uncle Keith George in Tuba City when he was, either working for his uncle or, on his way to or returning from work with Ramsey Construction, "but mostly he stayed in Coalmine." ER 171. Anytime Mr. Begay had two or three days off, Mr. Hosteen testified he would go home "to his parents' house. Mostly he was with his parents." ER 172.

Jonathan Sakiestewa ("co-worker") testified that Mr. Begay lived at his parents' house in Coalmine while they worked together for Ramsey Construction from 1983 to 1987. ER 178. The employer and co-worker would go to Coalmine to pick Mr. Begay up for work and the three of them would travel to the job site. ER 179. Sometimes they would pick Mr. Begay up at his uncle's home if Mr. Begay was working or staying in Tuba City. Otherwise they would pick him up or drop him off at his family's home in Coalmine. ER 187-88. When Jonathan moved to Texas in 1987 he was living in Tuba City and Mr. Begay "was still out in Coalmine." ER 183. Most of the time Jonathan worked with Mr. Begay from 1982-1987, Mr. Begay was staying at Coalmine. ER 192.

Elvira Chischillie ("sister") testified she and Mr. Begay grew up together at their parents' homesite in Coalmine. ER 194. As the older siblings (Freddie, Fanny and Frieda) grew up and "moved off" the HPL, the younger kids (Mr. Begay and Elvira) stayed in Coalmine with their parents. ER 195. In 1978 when his sister graduated high school, Mr. Begay and his sister were living in Coalmine. ER 196. Mr. Begay would often be gone for days at a time for work herding sheep, training horses or on the road with the Ramsey construction crew. ER 196.

Mr. Begay's sister moved to Phoenix for employment in 1978 but she came home to the HPL every other week until the family relocated in 1989. ER 196. Mr. Begay resided at the Coalmine homesite until the family relocated in 1989. ER 198.

Mr. Begay never had any other home or residence than his family's residence at Coalmine. ER 198-99. Mr. Begay always came back to his family's home when he was not working. ER 218-19. Mr. Begay's family left Coalmine in 1989 and relocated to Sanders. ER 198-99. The siblings, except Mr. Begay, were certified for relocation based on their residence at Coalmine. ER 200. Mr. Begay's family were all members of the Coalmine Chapter until they relocated in 1989. ER 200-201. Mr. Begay, who was 29 in 1989, remained in the Coalmine area due to his employment.

2. Mr. Begay was a head of household beginning in approximately 1980.

Mr. Begay is a 58 year old Navajo Indian, born February 7, 1960, who resided with his family in the Coalmine Mesa Chapter in a small house on the HPL. ER 190, 195, 208-09. Mr. Begay attended boarding school through the 8th grade and then "returned to his parents' home in Coalmine until his family relocated." ER 209. Mr. Begay worked for his uncle, Keith George, in Tuba City where "he herded sheep and broke horses." ER 209-10. Mr. Begay also worked odd jobs for the Coalmine Chapter and in Phoenix and Utah. ER 211. Mr. Begay met Leslie Hosteen, who "worked for Ramsey Construction, a contractor who was building relocation homes of behalf of ONHIR and the BIA." ER 213. Hosteen hired Mr. Begay to work for him building relocation homes. *Id.* Mr. Begay initially worked doing site clean-up, loaded shingles on roofs, and later did roofing on homes. ER 213-14. Mr. Begay's crew would take 1 to 1½ days to roof a home. ER 332. Mr.

Begay was paid 1) hourly for some labor; 2) piece-work for loading shingles or; 3) by the job if roofing. ER 214-15.

Mr. Begay also testified he supported himself herding sheep and breaking horses. ER 209-10. Mr. Begay was paid for his work with a combination of money, blankets and jewelry. ER 221, 230. Navajos paid him with money, blankets and jewelry for his work. *Id.* Mr. Begay also did several odd jobs before working for Ramsey Construction. ER 213.

Mr. Begay was paid the most for roofing and in the beginning earned approximately $120 - $130 a home. ER 197. In addition, Mr. Begay was paid hourly for labor and piecework for loading shingles. *Id.*

Mr. Begay worked on relocation homes in Red Lake, Cow Springs, Copper Mine, Rocky Ridge, Navajo Mountain, Navajo, Sanders and Shiprock (N. Mex.). ER 216-17. Mr. Begay supplemented his income by herding sheep and training, caring for or breaking horses. ER 220-21, 235. Because some of his work was paid hourly and the roofing was paid by the job, Mr. Begay estimated that he would make approximately $150 per homesite. ER 227-26.

Mr. Hosteen initially submitted a declaration on December 10, 2014 about Mr. Begay's employment between 1982 and 1995. He did so from memory because all records from the 1980's had been destroyed. ER 166, 333. According to Mr. Hosteen, Mr. Begay was hired in 1982, constructing relocation homes between

1982-1995, Mr. Begay worked 30-40 hours a week, was initially paid $30 for loading shingles and $85-$90 to roof a house (ER 333-34) for a total of $115-$120 a house. *Id.* Mr. Hosteen later testified in 2015 he hired Mr. Begay in 1979 or 1980, and paid Mr. Begay $150 a house (total of hourly, piece-work and roofing). ER 334 Jonathan Sakiestewa, Mr. Begay's co-worker, testified Mr. Begay began working in 1983 or 1984, that the crew worked 40 hours a week, that they earned an estimated $4,500 a month and that Mr. Begay also worked for his uncle Keith George during this time period in Tuba City caring for livestock and training horses. *Id.*

Leslie Hosteen testified that he himself worked for Ramsey for over thirty years beginning in approximately 1976. Ramsey built approximately 95 relocation homes between 1980 and 1986. ER 157-8, 167-8, 170, 216-17. Mr. Begay started in approximately 1979. ER 160. He began loading shingles and working on the cleanup crew. ER 161. Hosteen was the foreman of a crew of six that included Mr. Begay and Mr. Sakiestewa. (*Id.*) Mr. Begay and his co-worker rode with Hosteen to the various jobsites. ER 161-2. They all camped out at the jobsites. (*Id.*). The crew worked 30-40 hours a week and sometimes weekends. ER 146. The crew was paid in cash, for hourly work, piecework and for roofing, based on the type of work. ER 165, 167-68, 172-73, 181, 183, 193, 213, 215, 227, 232. Mr. Begay made approximately $150 per home. ER 165.

Mr. Hosteen's wife was the business manager who maintained the records. ER 166. She died in 2003 and the records have since been lost or destroyed. (*Id.*) Mr. Begay worked for Ramsey Construction until he was blinded in an accident in approximately 1995. ER 164, 213.

The co-worker knew Mr. Begay most of his life. ER 175. While he was in high school, Mr. Begay had dropped out and was working herding sheep for his uncle, Keith George. (*Id.*) They worked for Hosteen 40 hours a week. (*Id.*)

The co-worker testified that they were paid approximately $130 per home for roofing. ER 180-81. In addition to roofing they also were paid for loading shingles, cleaning the job site and digging ditches. They were paid in cash. ER 181-82. The co-worker went to Texas in 1987 and Mr. Begay was still working for Ramsey Construction. ER 183.

The co-worker worked for Ramsey Construction with Mr. Begay from 1982 to 1987. ER 185, 180. Jonathan made approximately $12,000 a year working for Ramsey. He worked full-time during good weather months. (*Id.*) During the winter work slowed. (*Id.*) Mr. Begay also worked herding sheep for his uncle Keith George from 1982 to 1987 in addition to the construction work. (*Id.*) The co-worker came back to work for Ramsey in 1992 and he and Mr. Begay worked together for several more years. ER 192-93. In the 1990s, Mr. Hosteen was still their foreman and continued to pay them in cash. (*Id.*)

Elvira Chischillie testified her brother supported himself doing construction and herding sheep and training horses. ER 196. She helped Mr. Begay fill out his application for relocation benefits in 2010 due to his limited English and blindness. (*Id.*) She did not list his employment with Ramsey Construction or his uncle because Mr. Begay was always paid in cash or barter and there were no records of the income. (*Id.*)

VII. SUMMARY OF THE ARGUMENT

This court should reverse the decisions below because ONHIR denied Mr. Begay relocation benefits based only on an unsupported assertion by ONHIR, and a *per se* ruling by the HO, that testimonial evidence of residency and earnings is not credible without documentary corroboration. That ruling has no basis in law and conflicts with Agency policy and long-standing Agency practice. It is therefore arbitrary and capricious. The ruling triggered adverse credibility findings that are not supported by any identifiable, let alone substantial, evidence. Further, there was no notice provided to Mr. Begay in his denial letter that ONHIR questioned that he was a resident of the HPL, only that he could not document his income in the 1980's. Nevertheless, at the administrative hearing the Agency argued, and the HO found, without evidence, that Mr. Begay relocated from the HPL in 1982 before he became a head of household.

A Navajo applicant is eligible for relocation benefits if they lived on the HPL from at least December 22, 1973 through December 22, 1974, and became a head of household by the date they relocated from HPL or by July 7, 1986, at the latest. *See* 25 C.F.R. § 700.147; Pub. L. 93-531, § 15(c), Dec. 22, 1974, 88 Stat. 1719, *formerly codified at* 25 U.S.C. 640d-14(c). The Agency does not dispute that Mr. Begay was a legal resident of HPL until 1982 and that he was displaced pursuant to the Settlement Act. Mr. Begay demonstrated his residency on the HPL until at least 1986 and his head of household status, through uncontroverted sworn testimony of his employer, co-worker, his sister and himself. Nevertheless, the HO found that Mr. Begay was not a resident of the HPL beyond 1982 and was not a head of household because he did not have documentary proof of his wages earned in 1980-1982; it ruled that witnesses' uncontroverted testimony about an applicant's residence and the amount of undocumented wages are inherently unreliable.

The *per se* evidentiary rule relied upon by ONHIR is arbitrary and capricious and not supported by substantial evidence in this case. No law, regulation, or ONHIR policy requires documentary evidence of residence or earnings. On the contrary, ONHIR has repeatedly found applicants to be residents and heads of household without documentary proof. (*See* Section G below at p. 40). As its own policy memorandum explains, the Agency does so because the

traditional Navajo lifestyle on HPL did not generate such documentation. (*See* Section D below at p. 27). Rather, HPL residents commonly left the HPL for employment or earned a living through tending livestock, subsistence farming, or performing odd jobs for cash or barter. *Id.*

The HO also identified no substantial evidence to support his findings that the witnesses' testimony about events that took place between 1980-1986 was not credible. Stripped of the HO's unsupported, adverse credibility findings, the record unquestionably shows that Mr. Begay qualifies for relocation benefits.

Because the Agency's evidentiary ruling was arbitrary and capricious, and its credibility findings lack any substantial evidentiary basis or cogent justification, its decision denying benefits to Mr. Begay must be reversed.

VIII. ARGUMENT

A. Standard of Review.

This Court reviews both a grant and denial of summary judgment *de novo*. *Kuba v. 1-A Agr. Ass'n*, 387 F.3d 850, 856 (9th Cir. 2004). Unlike summary judgment in a typical civil case, summary judgment in an administrative review does not involve resolution of disputed facts. *Occidental Eng'g Co. v. Immigration & Naturalization Serv.*, 753 F.2d 766, 769-70 (9th Cir. 1985). Rather, the court's function "is to determine whether or not as a matter of law the evidence in the administrative record permitted the agency to make the decision it did." *Id.* at 769.

APA appeals generally contain no genuine issues of material fact, as their factual basis for the cases is fixed in the administrative record. *See id.* at 769-70; *Ctr. for Bio. Diversity v. U.S. Fish & Wildlife Serv.*, 450 F.3d 930, 943 (9th Cir. 2006).

The Administrative Procedure Act ("APA") requires courts to "hold unlawful and set aside agency action, findings, and conclusions found to be… arbitrary, capricious, an abuse of discretion, not in accordance with law, or unsupported by substantial evidence." 5 U.S.C. § 706(2)(A), (E). To make this determination, courts must conduct a careful and searching inquiry into the facts and decide whether the agency action "was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401
U.S. 402, 416 (1971).

Agency action is arbitrary and capricious unless, "a reasonable basis exists for its decision." *Kern County Farm Bureau v. Allen*, 450 F.3d 1072, 1076 (9th Cir. 2006) (internal quotation marks and citations omitted). Agency action violates this standard where:

> the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. USDA, 415

F.3d 1078, 1093 (9th Cir. 2005) (internal quotation marks and citations omitted). Reviewing courts, "may not substitute reasons for the agency action that are not in the record[,]" *Ariz. Cattle Growers' Ass'n v. U.S. Fish and Wildlife, BLM*, 273 F.3d 1229, 1236 (9th Cir. 2001), or "infer an agency's reasoning from mere silence." *Crickon v. Thomas*, 579 F.3d 978, 982 (9th Cir. 2009) (internal quotation mark and citation omitted).

The substantial evidence required to uphold an agency decision means, "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Universal Camera Corp. v. Nat'l Labor Relations Board*, 340 U.S. 474, 477 (1951). It "must do more than create a suspicion of the existence of the fact to be established . . . ." and amount to "more than a mere scintilla." *Id.* (internal quotation marks and citations omitted). Courts must "review the administrative record as a whole, weighing the evidence that supports *and* detracts from the [hearing officer's] conclusion." *McAllister v. Sullivan*, 888 F.2d 599, 602 (9th Cir. 1989) (emphasis added).

B. Mr. Begay is Eligible for Relocation Benefits.

Mr. Begay established through uncontroverted testimony that he resided on the HPL until at least July 7, 1986. ONHIR does not dispute that Mr. Begay was a legal resident of HPL until 1982. ER 332, 336, 337. However, ONHIR determined that Mr. Begay was not a head of household when it claims he left HPL in 1982.

Id. ONHIR generally considers an applicant to be a head of household if s/he is married, has a child, or earns at least $1,300 a year by the earlier of the date s/he moves away from HPL or July 7, 1986. The HO found that Mr. Begay, at 22 years old, left in 1982 but his income fell short of ONHIR's standard due to the lack of documentation. ER 333, 336-37, 339, 341. The HO found, and the District Court affirmed, that the testimony of Mr. Begay and his employer, co-worker and sister was inherently not credible, could not stand on its own without documentary corroboration, and therefore could not support his claim that he was a head of household in 1982 and/or resided on the HPL until at least 1986. *Id.* Contrary to the HO's adverse credibility findings, due to his disregard of the sworn testimony of Mr. Begay and his witnesses, the uncontested testimony and other evidence demonstrates that Mr. Begay was a resident of the HPL until at least 1986, earned over $1,300 in 1980-1986 and is, therefore, eligible for relocation benefits.

C. Mr. Begay was a resident of HPL until at least 1986.

Defendant's regulation, §700.147 Eligibility, defines residence as:

> (a) Residence is established by proving that the head of household and/or his/her immediate family were legal residents as of 12/22/1974 of the lands partitioned to the Tribe of which they are not members…
>
> (e) Relocation benefits are restricted to those who qualify as heads-of household as of July 7, 1986.

In addition, in *Chee v. Navajo-Hopi Indian Relocation* the court determined:

> "The Commission's definition of "residence" includes "[a] person who is not actually living on the partitioned lands but maintains substantial, recurring contacts with an identifiable homesite." Navajo & Hopi Indian Relocation Comm'n, Report and Plan 119 (1981) (exhibit 1 to plaintiff's motion for summary judgement). Such a resident is classified as "temporarily away." *Id*. The lack of employment opportunities in the Joint Use Area requires many of the area's residents to seek employment elsewhere. *Id. at 119.* Many of those who find such employment regularly return to their family homes in the Joint Use Area and "claim a strong emotional attachment to their land even though they may be absent for long periods." *Id.* Determining "residence" in this context requires examination of a person's intent to reside combined with manifestations of that intent." 49 Fed. Reg. 22277 (May 29, 1984)

Chee v. Navajo-Hopi Indian Relocation Comm'n., 18 Ind. L. Rep. 3078, 3079 (D. Ariz. 1991)

1.) The HO failed to apply the proper law of residency and failed to provide a reasoned evaluation of the relevant factors related to residency and abandonment.

Mr. Begay has the burden of demonstrating his residence on HPL at the time he moved off or until 1986 whichever occurred earlier. But that burden should not be rendered insurmountable by the agency's readiness to find an "intent to abandon" based on the HO's unsupported assumptions and where there is no substantial evidence of any intent by Mr. Begay to abandon the HPL homesite before 1986.

Both ONHIR and the United States District Court for the District of Arizona have recognized that legal residency is essentially synonymous with domicile. See, e.g., ONHIR's Decision in *Application of Lorenzo Smith*, Hearing No. 85-33 at 5

(1986), ER 61 – 68; *Gamble v. ONHIR*, No. CIV-97-1247-PCT-PGR at 14 (D. Ariz. Sept. 24, 1998) ("The C.F.R. defines 'residence' in this situation as equivalent to a legal residence or domicile."). ER 236, 239. Residence is "meant to be given its legal meaning[,] . . . which requires an examination of a person's intent to reside combined with manifestations of that intent." See 49 Fed. Reg. 22277 (May 29, 1984). Accordingly, the HO should have engaged in a more rigorous analysis of "legal residence or domicile," Mr. Begay's "intent to reside" at his HPL homesite, "manifestations of that intent," and how an existing residence is abandoned.

The legal principles associated with residence/domicile are well-established. "[A] person is domiciled in a location where he or she has established a fixed habitation or abode in a particular place and [intends] to remain there permanently or indefinitely." *Lew v. Moss*, 797 F.2d 747, 750 (9th Cir. 1986) (internal quotation marks and citations omitted). Similarly, a person can only have one domicile at a time, and a person's existing domicile is not lost until a new one is established. *Id.; see also Barber v. Varlet*a, 199 F.2d 419, 423 (9th Cir. 1952); *Restatement (Second) of Conflicts* §§ 18 – 20 (1971). "[A] change in domicile requires the confluence of (a) physical presence at the new location with (b) an intention to remain there indefinitely." *Jes Solar Co., Ltd. v. Matinee Energy, Inc.*, CV-12-626 TUC/DCB, 2015 WL 10939972, at *2 (D. Ariz. March 30, 2015). Finally, the

courts "*apply a presumption in favor of an established domicile as against a newly acquired one.*" Lew, 797 F.2d at 751 (emphasis added). In discussing the operation of that presumption, Wright and Miller explain that an established domicile is presumed to continue until it is abandoned for a new one:

> Another important and widely accepted presumption is that of favoring the continuation of an established domicile against an allegedly newly acquired one. The effect of this presumption is to put a heavier burden on a party who is trying to show a change of domicile than on a party who is trying to show the retention of an existing one.

Charles Alan Wright & Arthur R. Miller, 13E Federal Practice and Procedure § 3612 (3d ed.) (emphasis added). In the present case, the HO made no effort to apply these concepts to Mr. Begay's evidentiary showing and failed to impose a "heavier burden" (or seemingly any evidentiary burden) on ONHIR to rebut the presumption and Mr. Begay's residency.

At his hearing, Mr. Begay established that he lived in the Coalmine area of the HPL from 1960 through 1986. He testified to his homesite's existence and that his parents and siblings later qualified for relocation assistance. He testified to the fact that he resided at his family's HPL homesite except when he was forced to seek employment off the HPL and/or reservation. He presented the testimony of corroborating witnesses who confirmed that Mr. Begay resided on the HPL until at least 1986. He presented uncontroverted testimony that he resided on the HPL but at times left the HPL to work for his uncle in Tuba City or for Ramsey

Construction. Mr. Begay's showing amply met his initial burden and created a presumption of residency sufficient to meet the Act's requirement.

The question then becomes whether ONHIR overcame that showing and that presumption with substantial evidence that Mr. Begay had abandoned his HPL homesite before 1986. Under the pertinent law of domicile, ONHIR's burden was to demonstrate that Mr. Begay had established a "physical presence" at a new location coupled with manifestations of an intent to remain there indefinitely. *Jes Solar*, 2015 WL 10939972, at *2. ONHIR failed in that task. The HO never addressed those inquiries, and his decision therefore is arbitrary and capricious.

The agency's determination that Mr. Begay abandoned his homesite on the HPL in or around 1982 was arbitrary and capricious because: (a) the HO failed to properly apply the law of residency and abandonment; and (b) the HO's decision ran counter to the uncontroverted evidence presented by Mr. Begay and his witnesses. Under the arbitrary and capricious standard, the reviewing court must consider whether an agency decision was premised on a consideration of the pertinent legal factors and whether there has been a clear error of judgment. *Environmental Defense Ctr., Inc. v. EPA*, 344 F.3d 832, 858 n.36 (9th Cir. 2003). Reversal is proper if the agency has relied on impermissible factors or has entirely *failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency*, or is so

implausible it could not be ascribed to a difference in view or the product of agency expertise. *Motor Vehicle Manufacturers Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (emphasis added). The inquiry by the reviewing court must be searching and careful. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 378 (1989).

While the standard of review is deferential, there must be a rational connection between the facts found and the result reached. *Ranchers Cattlemen Action Legal Fund United Stockgrowers of Am. v. U.S. Dep't of Agriculture*, 499 F.3d 1108, 1115 (9th Cir. 2007). The agency's decision must be based on a "reasoned evaluation" of the appropriate factors. *Price Road Neighborhood Ass'n, Inc. v. U.S. Dep't of Transportation*, 113 F.3d 1505, 1511 (9th Cir. 1997). In the present case, the HO made a number of subjective assumptions to support his conclusion that Mr. Begay had abandoned his HPL homesite in or around 1982, but those assumptions were not rationally connected to the evidence presented. There was no "reasoned evaluation" of the law of residency or of abandonment, and the HO's assumptions regarding Mr. Begay's asserted abandonment of the homesite were at odds with the evidence. Accordingly, the agency's decision was fundamentally flawed, arbitrary, and capricious.

D. MR. BEGAY WAS A HEAD OF HOUSEHOLD WHEN HE ABANDONED HIS HPL RESIDENCE

1.) ONHIR's eligibility standards for Head of Household

25 CFR §700.147 describes the standards necessary for qualifying for relocation benefits including:

> (a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on 12/22/74 of an area partitioned to the tribe of which they were not members.
>
> (e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.

Head of household standards are contained in 25 CFR §700.69:

> (a) *Household*. A household is:
>
> (2) A single person who at the time of his/her residence on land partitioned to the Tribe of which he/she is not a member actually maintained and supported him/herself or was legally married and is now legally divorced.

.

In approximately 1985, ONHIR's first Attorney, E. Susan Crystal developed a policy to define self-support. In a memorandum entitled "Criteria for Determination of Self-Supporting," ER 007 (Docket #46, Exhibit 3) she wrote:

> Artificial income levels are not sufficient to determine self-supporting status for Navajos.
>
> (5) In some circumstances, individuals may be able to show that they were self-supporting without the benefit of tax returns and wage statements because of the lifestyle on the HPL. It is common for individuals to make a living from livestock or support themselves through odd jobs throughout the Reservation. The Commission has always considered these factors in its determination of head of household status…

In 1987, ONHIR was ordered by Congress to re-examine those cases already certified to verify eligibility. *See* "Criteria for Certification Review." ER 007 (Docket #46, Exhibit 4). Attorney Crystal described how ONHIR developed its standard of $1,300 as the presumptive level for self-support. This amount was similar to the level of general assistance available to single individuals on the Reservation at that time ($1,296 per year). Attorney Crystal noted:

> …the circumstances on the HPL are considerably different than mainstreamed communities. A non-cash economy exists for a large segment of the population. The Commission must therefore allow for the possibility of an individual demonstrating self-support at a lower figure than the $1300 floor established herein.
>
> ER 007 (Docket #46, Exhibit 4, p. 4).

2.) The Hearing Officer's Key Factual Findings Concerning Head of Household are not Supported by Substantial Evidence.

Several key facts, found by the HO, are not supported by substantial evidence. Mr. Begay was not "living" with his uncle Keith George when he was hired by Ramsey Construction. The HO makes this assertion in his decision but provides no citation to any such evidence. ER 332-33. According to Mr. Begay's employer, Mr. Hosteen, when Mr. Begay came to work for him Mr. Begay was living in Coalmine with his parents and his siblings. ER 160. Mr. Begay did know that his step-father and older brother Freddie "left" the family's HPL homesite due

to overcrowding, and was told it was in 1982. ER 220.[4] It is undisputed that Mr. Begay's family were not actually relocated until April 4, 1989. ER 256. The HO asserts most of Mr. Begay's work with Ramsey "occurred during the summers". ER 333. Again this assertion is contrary to all of Mr. Begay's witnesses and the HO cites to no such evidence. Mr. Begay worked for Ramsey Construction year round for approximately 15 years (ER 164, ER 167) until he was injured in 1995. ER 168-169.

E. THE HO'S CREDIBILITY FINDINGS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

The Hearing Officer made credibility findings for each witness. The credibility findings are not supported by substantial evidence.

1. LESLIE HOSTEEN (Employer): Hosteen's testimony was contradictory and inconsistent with his December 2014 written declaration. Leslie Hosteen is not a credible witness.
2. JONATHAN SAKIESTEWA (Co-worker): Overall, Sakiestewa's testimony is inconsistent with other testimony provided at the hearing, as well as Leslie Hosteen's declaration, and he is not a credible witness.
3. ELVIRA CHISCHILLIE (Older sister): Except for her testimony about completing her brother's application, her testimony is not credible.

[4] Mr. Begay lost his eyesight in a work related accident in 1995. As a result, he has not seen anything in over 20 years and relies largely on what he hears or is told.

4. MR. BEGAY: Applicant could not remember critical details about his employment, could not testify about his earnings in any given year or about his taxable earnings in 1983/1984. Applicant's testimony about his Coalmine residence from 1982 on is inconsistent and not credible. Applicant is not a credible witness.
5. JOSEPH SHELTON (Agency Agent): Joseph Shelton is a credible witness. ER 334-36.

Negative credibility findings cannot stand unless supported by substantial evidence. *Ceguerra v. Secretary of HHS*, 933 F.2d 735, 738 (9th Cir. 1991). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 US 389, 401 (1971).

In making an adverse credibility determination an administrative law judge must do more than simply declare a witness's testimony not to be credible.

> This court reviews factual determinations, including credibility determinations, for substantial evidence. Under this standard, we reverse a factual determination only if "any reasonable adjudicator would be compelled to conclude to the contrary." An adverse credibility finding must be supported by "specific and cogent reasons." Those reasons "must be substantial and bear a legitimate nexus to the finding" of incredibility. Inconsistencies that are "minor" or that "do not go to the heart of an applicant's claim[s]" are insufficient by themselves to support an adverse credibility finding.
>
> *Morgan v. Mukasey*, 529 F.3d 1202, 1206-1207, (9th Cir. 2008) (Internal citations omitted) See also: *Zhou v. Gonzales*, 437 F.3d 860, 865 (9th Cir. 2006)

The HO's primary rationale for finding Mr. Begay and his three witnesses not to be credible was based on lack of documentation and alleged inconsistencies he found in their testimony. "Minor discrepancies, inconsistencies or omissions that do not go to the heart of an applicant's claim do not constitute substantial evidence to support an adverse credibility finding." *Chen v. Ashcroft*, 362 F.3d 611, 617 (9th Cir. 2004). An "adverse credibility determination may not rest on incidental misstatements that do not go to the "heart" of the petitioner's claim." *Shire v. Ashcroft*, 388 F.3d 1288, 1298 (9th Cir. 2004).

Mr. Begay and his witnesses were testifying about events from more than thirty years previous. The HO found Mr. Begay's claim to be "fraught with contradictions and inconsistencies." The HO found significance in the differing amounts Mr. Begay and other witnesses testified that he was paid, as well as differing testimony as to the year in which he began working for Ramsey. But such inconsistencies in pay rate and year of hire do not go to the heart of Mr. Begay's claim since all testimony was consistent as to the type of work he was engaged in, that he was employed, at the latest, by 1982 and was self-supporting. The HO failed to take into account, the language barriers, the cash basis of that economy, the fact that the HO himself found Mr. Begay worked for his uncle and Ramsey Construction throughout the 1980's. The HO also failed to recognize that the hourly

rate of pay, the amount of money paid for piece-work and for roofing changed and increased over the 15 years Mr. Begay worked for Ramsey.

The omission of testimony about Mr. Begay's specific annual earnings also does not provide a basis for finding the testimony to lack credibility. All testimony was consistent that Mr. Begay and co-workers worked 30-40 hours a week for Ramsey, were paid in cash and did not pay taxes. It is not realistic or reasonable to expect Mr. Begay and his witnesses to have a clear or exact memory of the rate of pay for individual years or for specific yearly income earned decades ago.

The HO made mathematical computations to demonstrate that Mr. Begay could not have made as much as $1,300 a year while working for Ramsey. But, this was pure speculation on the HO's part as there is nothing in the record to indicate how many houses Ramsey constructed during the years Mr. Begay was employed or how many homes he roofed or worked on in each year. No matter which witnesses' testimony is correct concerning the amount of money Mr. Begay was paid for labor, piece-work or roofing, he was able to support himself. This would be true even if he was only paid the minimum wage. "Speculation and conjecture cannot form the basis of an adverse credibility finding, which must instead be based on substantial evidence." *Shire v. Ashcroft*, *supra*, at 1296. Also: *Zhou v. Gonzales*, 437 F.3d 860, 865 (9th Cir. 2006)

The HO repeatedly engaged in the exercise of speculation and assumption. *Cf. Joseph*, 600 F.3d at 1246 (stating that the agency engaged in improper speculation in making assumptions about the motivations and thought processes of the applicant). The HO's "findings" were therefore entirely unreasonable and cannot constitute substantial evidence. *See also Begay v. ONHIR*, No. CV-16-08221-PCT-DGC, 2017 WL 4297348, at *4 (D. Ariz. Sept. 28, 2017) (finding that the HO's decision was arbitrary, capricious, and unsupported by substantial evidence because "[t]he Hearing Officer made assumptions about payment practices on which he had no evidence") (emphasis added). In sum, when this Court weighs both the evidence that supports the agency's determination as well as the evidence that detracts from it, the scale tips decidedly against the HO's decision, and the record lacks "such relevant evidence as a reasonable mind might accept as adequate to support" the denial of the application. *De la Fuente*, 332 F.3d at 1220; s*ee also Krull v. SEC*, 248 F.3d 907, 911 (9th Cir. 2001) (noting that the Court must "weigh pros and cons in the whole record with a deferential eye"). Whatever scintilla of "evidence" can be found on ONHIR's side of the ledger is insufficient to rebut the presumption of domicile or overcome Mr. Begay's showing.

The HO's negative credibility findings regarding Mr. Begay and his witnesses are consistent with his eagerness to ignore, discount, or misinterpret any

evidence in support of Mr. Begay's application. The HO effectively chastised Mr. Begay for not having documentary evidence to support his application and critiqued trivial inconsistencies in Mr. Begay's memory of events that had occurred decades before. ER 313-23. The HO's "analysis" obscures a sad irony, namely that the Navajo people exist for the most part in a cash- and barter-based subsistence farming and ranching economy and operate well below the poverty level. They may not speak, read, or write English. They would be unlikely to have maintained "books of account" or other paper records, let alone have maintained such records dating back to 1982. No law, regulation, or policy requires that an applicant must have a particular *kind* of proof or have documentary support for their application.

ONHIR and the HO have placed Mr. Begay (and other elderly and illiterate applicants like him) in an untenable Catch-22 situation: they can only prevail on their applications if they can present certain kinds of evidence, and, because they likely will be unable to produce that kind of evidence, they will never prevail. Mr. Begay's credibility should not be negatively assessed simply because he is blind and illiterate, has an imperfect memory, or lacks documentary "proof" of where he lived and worked from 1982-1986. Such a formalistic approach to assessing witness credibility might be appropriate in everyday litigation originating in the mostly white, educated, technologically sophisticated parts of America, but it is

needlessly harsh, and here punitive, for elderly Navajos born and raised in hogans or shacks often without running water or electricity. Moreover it is completely at odds with the Act's stated purposes and the Government's trust responsibility to Mr. Begay and other Native applicants.

This Court need not defer to the HO's negative credibility findings where they are not fairly supported by the record. *De Valle v. INS*, 901 F.2d 787, 792 (9th Cir. 1990). As discussed above, the HO discredited Mr. Begay's testimony primarily because of his *assumption* that Mr. Begay *must have intended to leave his* HPL homesite for good in or during 1982 when, in fact, he was temporarily away from the HPL to work for his uncle or Ramsey Construction. This assumption is directly contradicted by the sworn testimony of Mr. Begay and his witnesses, all who lived and worked through the 1980's together. "Speculation and conjecture cannot form the basis of an adverse credibility finding." *Shah v. INS*, 220 F.3d 1062, 1071 (9th Cir. 2000). Rather than premise his credibility determination on testimony, the HO improperly based his finding on personal supposition. *See Zhi v. Holder*, 751 F.3d 1088, 1091 (9th Cir. 2014) ("The [Hearing Officer] cannot cherry pick facts solely favoring an adverse credibility determination while ignoring facts that undermine that result."), quoting *Shrestha v. Holder*, 590 F.3d 1034, 1040 (9th Cir. 2010). Here, the HO's reasoning was neither specific nor cogent but is consistent with recent efforts to close ONHIR and

end the relocation program as quickly and cheaply as possible. *See Lopez-Reyes v. INS*, 79 F.3d 908, 912 (9th Cir. 1996) (explaining that a Hearing Officer must offer a specific and cogent reason for his adverse credibility determination and that "conjecture is not a substitute for substantial evidence").

The HO also found Mr. Begay's recollection of placing events in time as questionable. Again, given the passage of time and Mr. Begay's limited English, blindness and illiteracy, it is unsurprising that he did not have perfect recall of what happened almost forty years ago. *See Singh v. Ashcroft*, 301 F.3d 1109, 1112 (9th Cir. 2002) (stating that minor inconsistencies in testimony will not support an adverse credibility determination). In order to justify an adverse credibility determination, the "[i]nconsistencies in the [witness] statements must go to the heart" of the claim. *Id.* The assertion that Mr. Begay "could not remember critical details about his employment" or his "taxable earnings" (CITE) is neither specific nor cogent and therefore cannot comprise "substantial evidence." The HO also failed to explain why he relied on some of Mr. Begay's testimony but not the key testimony related to his domicile or income. *See Hammock v. Bowen*, 879 F.2d 498, 503 (9th Cir. 1989) (rejecting adverse credibility finding for failure to explain why specific observations were not credible); *Mike*, 2008 WL 54920, at *7 (rejecting the HO's credibility findings for failing "to explain why he found the witnesses credible in some respects but not in others"). The HO's negative credibility findings

regarding Leslie Hosteen, Jonathan Sakiespewa and Elvira Chischillie are equally non-specific and infirm. The HO's credibility determinations regarding Leslie Hosteen, Jonathan Sakiespewa and Elvira Chischillie should also be discounted given the absence of any specific or cogent basis for rejecting their testimony.

F. THE HEARING OFFICER'S CREDIBILITY RULING REQUIRING DOCUMENTARY EVIDENCE IS ARBITRARY AND CAPRICIOUS.

The HO found that Mr. Begay did not meet the residency and head of household requirement. ER 331-41. Those findings rests on his ruling that—absent corroborating documentary evidence—Mr. Begay's, and his witnesses', testimony about residency and head of household in 1980-1986 could not be credible. *Id.* Nothing in the law, the record, or the Agency's practice supports the HO's decision.

Neither the Settlement Act nor ONHIR's regulations or policies require documentary evidence to establish residency or head of household status. The Agency's hearing regulations authorize the introduction of testimonial evidence. *See* 25 C.F.R. 700.313(a)(1), 700.313(a)(4). And they empower the HO to rely on such testimony with no blanket limitations such as the HO imposed here. *See* 25 C.F.R. 700.313(b)(10).

The Agency has not previously mandated documentation of residency or earnings. The Agency's policy expressly states that:

> In some circumstances, individuals may be able to show that they are self-supporting without the benefit of tax returns and wage statements because of the lifestyle on the HPL. It is common for individuals to make a living from livestock or support themselves through odd jobs throughout the Reservation. The Commission has always considered these factors in its determination of head-of-household status.

ER 007 (Docket #46, Exhibit 3). The HO, however, refused to accept sworn, uncontroverted testimony of residency and earnings and instead required documentation of Mr. Begay's residency and earnings from an illiterate, blind and elderly Navajo man, who was paid in cash in the 1980's and speaks English as a second language. A trier of fact may not reject "uncontradicted testimony. . . *without* good reason[.]" *White Glove Bldg. Maint., Inc. v. Brennan*, 518 F.2d 1271, 1273 (9th Cir. 1975) (emphasis in original) (internal quotation marks and citation omitted). In *White Glove Bldg. Main., Inc.*, this Court reversed an administrative law judge's rejection of testimonial evidence as arbitrary because the rejection lacked a detailed explanation demonstrating such a reason. *Id.* at 1276.

This Court has explicitly rejected the notion that testimony alone is insufficient to prove facts, including earnings from employment, and must always be corroborated with documents.

In *Vera-Villegas v. INS*, 330 F.3d 1222 (9th Cir. 2002), the Court of Appeals reversed the district court's upholding of an Immigration Judge's rejection of testimony because it was not accompanied by documentary evidence.

> The decision of the IJ to reject Vera's testimonial evidence because it lacked supporting contemporaneous documentation is unreasonable and contrary to the established method by which we litigate matters in our justice system, including in administrative hearings. Courts and litigants have long relied on testimony alone, whether in the form of affidavits, declarations, depositions, or live witnesses, to prove antecedent facts. *See, e.g.*, *Marbury v. Madison, 5 U.S. (1 Cranch) 137, 155, 2 L. Ed. 60 (1803)* (relying on affidavits for factual support). While contemporaneous documentary evidence may add to the credibility of a witness, it is by no means indispensable. It is unreasonable to discredit the sworn testimony of a witness for the sole reason that there is no contemporaneous documentary evidence to support it, especially when there may be valid reasons why no such evidence exists.
>
> 330 F.3d, at 1234.

G. IN PRIOR ONHIR DECISIONS THE SAME HEARING OFFICER CREDITED UNDOCUMENTED WAGES AND CERTIFIED APPLICANTS WITHOUT WRITTEN PROOF OF INCOME

In his prior decisions the HO accepted undocumented wage testimony and found applicants heads of household despite lacking documentation. U.S. Supreme Court and Ninth Circuit case law clearly require that an agency's departure from its own precedents must be explained or it will be found arbitrary and capricious. *See Andrzejewski v. FAA*, 563 F.3d 796, 799 (9th Cir. 2009); *Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade*, 412 US 800, 808 (1973). In prior decisions, Susan Crystal's memos permitting certification without documented wage receipts were given wide application. This precedent contradicts the HO's denial in this case.

Christine Curley Riggs was certified by the HO. ER 355-85[5]. Riggs was raised by her great grandparents. Her great-grandmother received AFDC for Riggs until 1978. The HO found Riggs a head of household after 1978 through tending livestock, babysitting and weaving. Riggs estimated her babysitting earnings at $20-$30 per month and testified she made three to four rugs per month, selling them for $40-$75 apiece. Her third source of income was sheepherding. No receipts existed for any of her livestock, weaving or babysitting income.

Alton Begay was certified by the HO. ER 386-440[6]. His Social Security statement showed no wages until 1987. Begay sold his paintings and crafts beginning in the 8th grade and sold them for prices starting at $20.00. Begay's parents did not contribute to his support. His art teacher wrote an affidavit in support of Begay's work but did not appear as a witness. The HO accepted his testimony and demonstrative exhibits as evidence of his work. No receipts were requested, nor were they available.

[5] The Hearing Officer's Decision dated March 16, 1994 and pages 1-24 of the transcript are included. Because the hearing was consolidated with Christine's two sister, Priscilla C. Yazzie and Fannie Curley, Christine's testimony is contained in pages 1-24 only.

[6] ER contains Alton Begay's Notice of Certification, transcript and all exhibits submitted at the time of hearing.

Jimmy Yellowhair was certified by this HO. ER 441-493[7]. After leaving high school, Yellowhair worked for the railroad, then later for a sheep ranch. He testified he was paid $250/month plus meals. No receipts existed for his railroad work or sheepherding, nor were they requested.

Melvin Cleveland was certified by the HO. ER 634-669. Cleveland was born in 1959. In 1979, he joined the traditional economy on HPL and performed odd jobs for cash. He lived with his grandparents until they relocated and then lived with and helped to care for his great-grandfather on the HPL. There was no documentation of Cleveland's earnings. The Hearing Officer found Cleveland eligible for relocation benefits.

In addition, in the following five decisions, the HO found the applicants to be head of household on the basis of testimony alone, without documentation: Calvin Manning, ER 521-37[8]; Clarence Blackrock, Jr. ER 538-604[9]; Amos Daily, ER 605-

[7] ER contains the Hearing Officer's Decision and entire transcript. Mr. Yellowhair's head of household testimony spans only pages 10-12; 23-27; and 35-37.

[8] The Hearing Officer's March, 1988 decision and pages 1, 22-31 of the transcript are included. Because Calvin participated in a consolidated hearing with his mother, Maggie and other relatives, Beverly and Verna, only those portions of the transcript that contain Calvin's testimony are included.

[9] ER contains Clarence Blackrock, Jr.'s Notice of Certification, transcript and Exhibits 1 and 2 submitted at the time of hearing. Although other exhibits were submitted at hearing, none pertained to the question of head of household.

25[10]; Manual Yellowhair, ER 626-29[11]; Norman Lee Edison, ER 630-633 [12]; Roland Thompson, ER 494-520 [13].

Further, Laura Jensen was certified after federal appeal. CIV-95-0145-PCT-RCB (August 14, 1996). ER 670-88[14]. Jensen worked for the Teesto Chapter in 1979 and 1980, earning $829.40 and approximately $850.00, respectively. Pay slips reflected earnings of $396.80 through July 18, 1980, but Jensen testified she worked the entire summer; and the HO credited her with earnings of $850.00. In addition, she made crafts, earning $30/month and worked as a maid, earning $60/month for four months in 1980. Combining the sources of income, the Court found her earnings exceeded $1300 for 1980. No receipts existed for the crafts or maid work.

Like these certified applicants, Mr. Begay began working at an early age doing various jobs in a rural reservation where work was scarce. All of Mr. Begay's

[10] ER contains Amos Daily decision and transcript.
[11] ER does not contain Manual Yellowhair's transcript, because the Hearing Officer acknowledged the lack of receipts for Mr. Yellowhair's wages in his Decision at 3.
[12] ER contains the Hearing Officer's Decision. No transcript is included because the ALJ acknowledged in his Decision, p. 3 that no written evidence existed for wages in 1979, the head of household year in question.
[13] ER contains Roland Thompson's Decision and transcript.
[14] ER includes Laura Jensen's District Court Order dated August 14, 1996, her transcript and two AR documents (pay slips from 1980 [totaling $396.80] and from 1979 [totaling $829.40].

witnesses confirmed that he was self-supporting by the 1986 deadline. ONHIR offered no evidence to the contrary.

Under established principles of Indian law, ONHIR stands as trustee to relocated members of the tribes. *Bedoni*, 878 F.2d at 1124-25. As such, it cannot pick and choose among its beneficiaries. *See* Restatement (2nd) of Trusts, § 183 ("When there are two or more beneficiaries of a trust, the trustee is under a duty to deal impartially with them."). The APA's prohibition on arbitrary and capricious agency action likewise requires that ONHIR "deal consistently" with Mr. Begay and other applicants. *See Alphonsus v. Holder*, 705 F.3d 1031, 1044 (9th Cir. 2013). *See Ariz. Cattle Growers' Ass'n*, 273 F.3d at 1236 ("reviewing court may not substitute reasons for the agency action that are not in the record"); *Crickon*, 579 F.3d at 982 (courts may not "infer an agency's reasoning from mere silence"). Moreover, Mr. Begay provided similar evidence of residency and self-support as the above applicants, and a 30-40 year gap between events and testimony cannot automatically discredit testimony.

Certainly, the above cases are not factually identical to Begay's in every respect. However, the cases are factually identical with each other in accepting uncontroverted sworn testimony and in not requiring documented wages. The HO and District Court erred in applying a rule of mandatory documentation that is not required by law and is inconsistent with Agency policy and practice. That rule and

the resulting adverse credibility determination and denial of benefits are therefore arbitrary and capricious.

H. THE HO'S FACTUAL AND CREDIBILITY FINDINGS SHOULD BE ASSESSED IN THE CONTEXT OF THE GENERALTRUST RELATIONSHIP BETWEEN NAVAJO APPLICANTS AND ONHIR.

The HO's factual assumptions and negative credibility findings should also be assessed in the context of ONHIR's inability to address Mr. Begay's claim for more than a quarter of a century, during which time Mr. Begay's memory and the memories of his surviving witnesses grew less detailed. The complete failure of ONHIR to acknowledge the impact of its own delays, and to take those delays into account when assessing the adequacy of witness memory and witness "credibility," is contrary to both the letter and spirit of the Settlement Act. The real-world consequences of agency delay should not fall on Mr. Begay's shoulders, especially where Mr. Begay should have been counseled to apply for relocation benefits in the 1980's and where the administrative "process" then outlasted the lives of Mr. Begay's parents and other witnesses. Given the continuing delays, it appears that ONHIR's strategy is simply to "run out the clock" and blame elderly uneducated Native Americans for a record rendered imperfect by ONHIR's delay and the passage of time.

The Settlement Act both explicitly and implicitly embodies the trust relationship existing between the United States and Navajo applicants like Mr.

Begay and gives rise to enforceable obligations owed by the United States. *See Bedoni*, 878 F.2d at 1124 – 25 ("The undisputed general trust obligation, buttressed by the many grants of express trustee authority in the Settlement Act, justify the imposition on [ONHIR] of an affirmative duty to manage and distribute the funds appropriated pursuant to the Settlement Act such that the displaced families receive the full benefits authorized for them.") The Act required ONHIR to "take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and [develop its relocation plan to] avoid or minimize, to the extent possible, such impacts." Pub. L. No. 93-531, § 13(c)(2). ONHIR adopted and embraced that standard in its 1981 Report and Plan. ER 76.

The district court has likewise recognized enforceable trust duties in the administration of the Settlement Act. In *Herbert*, the court ruled that because the plaintiff's application had been improperly delayed for more than a decade and ONHIR's eligibility requirements had changed in a way unfavorable to the applicant during that delay, "ONHIR must assume responsibility" for the defects in the application. *Herbert*, 2008 WL 11338896, at *8. Accordingly, the court found that a defect in *process* constituted a breach of the agency's trust responsibility. ONHIR's contention that it can delay Mr. Begay's eligibility determination for decades, and then use the passage of time to deny him relocation benefits, is at odds with the agency's central responsibility under the Act.

The Court must consider and apply the trust relationship between Navajo applicants and ONHIR to its review under the APA and determine whether the APA's standards are met in light of the agency's fiduciary obligations. Those obligations include the Settlement Act's duty to consider and minimize the adverse impacts of relocation; the duty declared in *Herbert* to not delay action in a manner that prejudices the ability of Navajo residents to establish their eligibility; the duty enforced in *Bedoni* to assist applicants in maximizing their benefits entitlement; and the trustee's fundamental duties of prudence, diligence, and care in administering the trust and identifying its beneficiaries. *See, e.g., Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc*., 472 U.S. 559, 572 (1985)(holding that ERISA fiduciary has duties to act with reasonable diligence and to investigate and determine identity of beneficiary); Restatement (Second) of Trusts §174 (recognizing the fiduciary's duty "to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property.")

Reliance on federal trust duties to inform judicial review under the APA is longstanding. For example, in *Pyramid Lake Paiute Tribe of Indians v. Morton*, 354 F.Supp. 252 (D.D.C. 1972), the court employed a trust analysis in an APA review of the Department of the Interior's failure to allocate water to a tribe. The court concluded that the Department's failure to discharge its fiduciary duties

pursuant to regulations "constitute[d] agency action unlawfully withheld and unreasonably delayed when viewed in light of the Secretary's trust responsibilities to the Tribe, 5 U.S.C. § 706(1)." *Id.* at 257. And in *Morton v. Ruiz*, 415 U.S. 199, 236 (1974), the Court relied upon the federal government's trust obligations to Native beneficiaries in determining that eligibility standards for the BIA's General Assistance program were substantive rules that required publication in the Federal Register under §552(a)(1) of the APA.

Similarly, in Mr. Begay's case this Court should find that the delay caused by ONHIR, and the agency's use of the fruits of that delay to discredit Mr. Begay and his witnesses and to deny his application, is at odds with ONHIR's trust responsibilities. As such, it is arbitrary and capricious, unsupported by evidence that would be substantial to a prudent trustee, and it has resulted in unreasonable delay and the unlawful withholding of agency action[15].

[15] The use of trust principles to inform APA review of the administration of Indian affairs statutes is readily distinguishable from "breach of trust" claims seeking damages for federal mismanagement of Indian resources, which must fit the strictures of the Indian Tucker Act, 28 U.S.C. § 1505. *See, e.g., United States v. Mitchell*, 463 U.S. 206 (1983). Mr. Begay's argument also must be distinguished from breach of trust claims related to the administration of statutes of general applicability, such as federal environmental laws, which provide no specific statutory basis for imposing a fiduciary relationship. *See, e.g., Blue Legs v. Bureau of Indian Affairs*, 867 F.2d 1094, 1101 (8th Cir.1989); *Cohen's Handbook of Federal Indian Law*, §§ 5.04(3), 5.05(1) (2012 ed.).

ONHIR already has been found to have breached its fiduciary duties arising under the Settlement Act by its failure to notify potential applicants before the initial deadline of July 7, 1986. *Herbert*, 2008 WL 11338896, at *8. Mr. Begay is a member of the group found by the *Herbert* court to have been denied access to the application process. Yet ONHIR's breach of its obligation to Mr. Begay is even more palpable than that found in *Bedoni* or *Herbert*. There can be no dispute that ONHIR is solely responsible for the nineteen-year cessation of the application process between 1986 and 2005. ONHIR alone is responsible for the five years of extensions it unilaterally granted itself from 2005 to 2010 before finally holding its administrative appeal hearing, after the records of Mr. Begay's income were lost or destroyed and after his parents and other witnesses had died. ONHIR cannot credibly argue that those delays did not disadvantage Mr. Begay or affect the quality of evidence he might have been able to marshal at an earlier date. Yet ONHIR now suggests that Mr. Begay's memory is "questionable" and that he should have done a better job at preserving evidence of his income and residency on HPL. The consequences of the decades-long bureaucratic delays caused by ONHIR should not fall on Mr. Begay. "ONHIR owes a fiduciary obligation to all members of the Hopi and Navajo Tribes who were obligated to relocate from lands allocated to the other Tribe pursuant to court-ordered partition." *Herbert*, 2008 WL 11338896, at *7.

ONHIR has been under an obligation to discharge its duties for decades, and by its bureaucratic dysfunction it has prejudiced the rights of its trust beneficiaries like Mr. Begay. *Cf. Cobell v. Norton*, 240 F.3d 1081 (D.C. Cir. 2001). As the *Cobell* court stated, "delaying review is tantamount to denying review altogether." *Id*. at 1095. ONHIR's delays in discharging its obligations have been unreasonable and egregious, and accordingly this Court may compel agency action "unlawfully withheld or unreasonably denied." *Id*.; 5 U.S.C. § 706(1). ONHIR should not be able to use the passage of time as an evidentiary club against applicants like Mr. Begay. By his sworn testimony, and that of his corroborating witnesses, Mr. Begay met his burden of proof. In contrast, ONHIR relied on the fruits of its own delays and dereliction in an effort to expedite the end of the federal relocation program which has drug on at a snail's pace and caused untold suffering since 1974.

IX. CONCLUSION

A certain rich man was enjoying a banquet. As he sat at the groaning table he could see an old woman, half starved, weeping. His heart was touched with pity. He called a servant to him and said: 'That old woman out there is breaking my heart. Go out and chase her away. 'Felix Cohen, Indian Claims, The American Indian (1945), in the Legal Conscience: Selected Papers of Felix S. Cohen 264 (1970). This Court should not allow ONHIR or its servant to chase Mr. Fred Begay away.

Respectfully submitted this 28th day of August, 2018.

s/Lee Phillips
Lee B. Phillips, ASB # 009540
Law Office of Lee Phillips, P.C.
209 N. Elden St.
Flagstaff, AZ 86001
Telephone: (928) 779-1560
Attorney for Mr. Begay

STATEMENT OF RELATED CASES

The following four appeals pending in this Court raise the same or closely related issues regarding eligibility for relocation benefits under the Settlement Act, but they do not involve the same parties.

1. *Rosita Charles v. Office of Navajo & Hopi Indian Relocation*, 17-17258
2. *Hedy Bahe v. Office of Navajo & Hopi Indian Relocation*, 18-15271
3. *Larry K. Begay v. Office of Navajo & Hopi Indian Relocation*, 18-15489
4. *Ancita Tsosie v. Office of Navajo & Hopi Indian Relocation,* 18-15145

Dated this 29th day of August, 2018.

s/Lee Phillips
Lee B. Phillips, ASB # 009540
Law Office of Lee Phillips, P.C.
209 N. Elden St.
Flagstaff, AZ 86001
Telephone: (928) 779-1560
Attorney for Mr. Begay

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Signature of Attorney or Unrepresented Litigant [s/Lee Phillips] Date [August 29, 2018]

("s/" plus typed name is acceptable for electronically-filed documents)

9th Circuit Case Number(s) 18-15996

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ADDENDUM TO PLAINTIFF-APPELLANT'S OPENING BRIEF

Mr. Begay v. Office of Navajo & Hopi Indian Relocation

Case No. 18-15996

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28 USCS § 1291

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§ 1291. Final decisions of district courts

The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this *title [28 USCS §§ 1292(c)* and (d) and 1295].

History

(June 25, 1948, ch 646,*62 Stat. 929*; Oct. 31, 1951, ch 655, § 48, *65 Stat. 726*; July 7, 1958, *P.L. 85-508*, § 12(e), *72 Stat. 348*; April 2, 1982, *P.L. 97-164*, Title I, Part A, § 124, *96 Stat. 36*.)

Prior law and revision:

Based on *title 28, U.S.C., 1940 ed., §§ 225(a)*, *933(a)(1)*, and *section 1356 of title 48, U.S.C.*, 1940 ed., Territories and Insular Possessions, and sections 61 and 62 of title 7 of the Canal Zone Code (Mar. 3, 1911, ch. 231, § 128, *36 Stat. 1133*; Aug. 24, 1912, ch. 390, § 9, *37 Stat. 566*; Jan. 28, 1915, ch. 22, § 2, *38 Stat. 804*; Feb. 7, 1925, ch. 150, *43 Stat. 813*; Sept. 21, 1922, ch. 370, § 3, *42 Stat. 1006*; Feb. 13, 1925, ch. 229, § 1, *43 Stat. 936*; Jan. 31, 1928, ch. 14, § 1, *45 Stat. 54*; May 17, 1932, ch. 190, *47 Stat. 158*; Feb. 16, 1933, ch. 91, § 3, *47 Stat. 817*; May 31, 1935, ch. 160, *49 Stat. 313*; June 20, 1938, ch. 526, *52 Stat. 779*; Aug. 2, 1946, ch. 753, Sec. 412(a)(1), *60 Stat. 844*).

This section rephrases and simplifies paragraphs "First", "Second", and "Third" of *section 225(a) of title 28, U.S.C.*, 1940 ed., which referred to each Territory and Possession separately, and to sections 61 and 62 of the Canal Zone Code, section 933(a)(1) of said title relating to jurisdiction of appeals in tort claims cases, and the provisions of *section 1356 of title 48, U.S.C.*, 1940 ed., relating to jurisdiction of appeals from final judgments of the district court for the Canal Zone.

The district courts for the districts of Hawaii and Puerto Rico are embraced in the term "district courts of the United States."

(See definitive section 451 of this title.)

Paragraph "Fourth" of *section 225(a) of title 28, U.S.C.*, 1940 ed., is incorporated in section 1293 of this title.

Words "Fifth. In the United States Court for China, in all cases" in said section 225(a) were omitted. (See reviser's note under section 411 of this title.)

Venue provisions of *section 1356 of title 48, U.S.C.*, 1940 ed., are incorporated in section 1295 of this title.

Section 61 of title 7 of the Canal Zone Code is also incorporated in sections 1291 and 1295 of this title.

In addition to the jurisdiction conferred by this chapter, the courts of appeals also have appellate jurisdiction in proceedings under Title 11, Bankruptcy, and jurisdiction to review:

(1) Orders of the Secretary of the Treasury denying an application for, suspending, revoking, or annulling a basic permit under chapter 8 of title 27;

(2) Orders of the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System and the Federal Trade Commission, based on violations of the antitrust laws or unfair or deceptive acts, methods, or practices in commerce;

(3) Orders of the Secretary of the Army under sections 504, 505 and 516 of title 33, U.S.C., 1940 ed., Navigation and Navigable Waters;

(4) Orders of the Civil Aeronautics Board under chapter 9 of title 49, except orders as to foreign air carriers which are subject to the President's approval;

(5) Orders under chapter 1 of title 7, refusing to designate boards of trade as contract markets or suspending or revoking such designations, or excluding persons from trading in contract markets;

(6) Orders of the Federal Power Commission under chapter 12 of title 16;

(7) Orders of the Federal Security Administrator under section 371(e) of title 21, in a case of actual controversy as to the validity of any such order, by any person adversely affected thereby;

(8) Orders of the Federal Power Commission under chapter 15B of title 15;

(9) Final orders of the National Labor Relations Board;

(10) Cease and desist orders under section 193 of title 7;

(11) Orders of the Securities and Exchange Commission;

(12) Orders to cease and desist from violating section 1599 of title 7;

(13) Wage orders of the Administrator of the Wage and Hour Division of the Department of Labor under section 208 of title 29;

(14) Orders under sections 81r and 1641 of title 19, U.S.C., 1940 ed., Customs Duties.

The courts of appeals also have jurisdiction to enforce:

(1) Orders of the Interstate Commerce Commission, the Federal Communications Commission, the Civil Aeronautics Board, the Board of Governors of the Federal Reserve System, and the Federal Trade Commission, based on violations of the antitrust laws or unfair or deceptive acts, methods, or practices in commerce;

(2) Final orders of the National Labor Relations Board;

(3) Orders to cease and desist from violating section 1599 of title 7.

The Court of Appeals for the District of Columbia also has jurisdiction to review orders of the Post Office Department under section 576 of title 39 relating to discriminations in sending second-class publications by freight; Maritime Commission orders denying transfer to foreign registry of vessels under subsidy contract; sugar allotment orders; decisions of the Federal Communications Commission granting or refusing applications for construction permits for radio stations, or for radio station licenses, or for renewal or modification of radio station licenses, or suspending any radio operator's license.

Changes were made in phraseology.

End of Document

28 USCS § 1331

Current through PL 115-231, approved 8/8/18

United States Code Service - Titles 1 through 54 > TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE > PART IV. JURISDICTION AND VENUE > CHAPTER 85. DISTRICT COURTS; JURISDICTION

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§ 1331. Federal question

The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

History

(June 25, 1948, ch 646,62 Stat. 930; July 25, 1958, P.L. 85-554, § 1, 72 Stat. 415; Oct. 21, 1976, P.L. 94-574, § 2, 90 Stat. 2721; Dec. 1, 1980, P.L. 96-486, § 2(a), 94 Stat. 2369.)

Prior law and revision:

Based on *title 28, U.S.C., 1940 ed., § 41(1)* (Mar. 3, 1911, ch. 231, § 24, P 1, 36 Stat. 1091; May 14, 1934, ch. 283, § 1, *48 Stat. 775*; Aug. 21, 1937, ch. 726, § 1, 50 Stat. 738; Apr. 20, 1940, ch. 117, *54 Stat. 143*).

Jurisdiction of federal questions arising under other sections of this chapter is not dependent upon the amount in controversy. (See annotations under former *section 41 of title 28, U.S.C.A.*, and 35 C.J.S., p. 833 et seq., Sec. 30-43. See, also, reviser's note under section 1332 of this title.)

Words "wherein the matter in controversy exceeds the sum or value of $ 3,000, exclusive of interest and costs," were added to conform to rulings of the Supreme Court. See construction of provision relating to jurisdictional amount requirement in cases involving a Federal question in *United States v. Sayward, 16 S.Ct. 371, 160 U.S. 493, 40 L.Ed. 508; Fishback v. Western Union Tel. Co., 16 S.Ct. 506, 161 U.S. 96, 40 L.Ed. 630;* and *Halt v. Indiana Manufacturing Co., 1900, 20 S.Ct. 272, 176 U.S. 68, 44 L.Ed. 374.*

Words "all civil actions" were substituted for "all suits of a civil nature, at common law or in equity" to conform with *Rule 2 of the Federal Rules of Civil Procedure.*

Words "or treaties" were substituted for "or treaties made, or which shall be made under their authority," for purposes of brevity.

The remaining provisions of *section 41(1) of title 28, U.S.C.*, 1940 ed., are incorporated in sections 1332, 1341, 1342, 1345, 1354, and 1359 of this title.

Changes were made in arrangement and phraseology.

End of Document

5 USCS § 701

Current through PL 115-231, approved 8/8/18

United States Code Service - Titles 1 through 54 > TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES > PART I. THE AGENCIES GENERALLY > CHAPTER 7. JUDICIAL REVIEW

§ 701. Application; definitions

(a) This chapter [*5 USCS §§ 701* et seq.] applies, according to the provisions thereof, except to the extent that--

(1)statutes preclude judicial review; or

(2)agency action is committed to agency discretion by law.

(b) For the purpose of this chapter [*5 USCS §§ 701* et seq.]--

(1)"agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include--

(A)the Congress;

(B)the courts of the United States;

(C)the governments of the territories or possessions of the United States;

(D)the government of the District of Columbia;

(E)agencies composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them;

(F)courts martial and military commissions;

(G)military authority exercised in the field in time of war or in occupied territory; or

(H)functions conferred by sections 1738, 1739, 1743, and 1744 of title 12; subchapter II of chapter 471 of title 49 [*49 USCS §§ 47151* et seq.]; or sections 1884, 1891-1902, and former section 1641(b)(2), of title 50, appendix, and

(2)"person," "rule," "order," "license," "sanction," "relief," and "agency action" have the meanings given them by section 551 of this *title [5 USCS § 551*].

History

(Sept. 6, 1966,*P.L. 89-554*, § 1, *80 Stat. 392*; July 5, 1994, *P.L. 103-272*, § 5(a), *108 Stat. 1373*; Jan. 4, 2011, *P.L. 111-350*, § 5(a)(3), *124 Stat. 3841*.)

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and

		Statutes at Large
(a)	5 USC Sec. 1009 (introductory clause).	June 11, 1946, ch 324, Sec. 10 (introductory clause), 60 Stat. 243.

In subsection (a), the words "This chapter applies, according to the provisions thereof," are added to avoid the necessity of repeating the introductory clause of former section 1009 in sections 702-706.

Subsection (b) is added on authority of section 2 of Act June 11, 1946, ch. 324, 60 Stat. 237, as amended, which is carried into section 551 of this title.

In subsection (b)(1)(G), the words "or naval" are omitted as included in "military".

In subsection (b)(1)(H), the words "functions which by law expire on the termination of present hostilities, within any fixed period thereafter, or before July 1, 1947" are omitted as executed. Reference to the "Selective Training and Service Act of 1940" is omitted as that Act expired on March 31, 1947. Reference to the "Sugar Control Extension Act of 1947" is omitted as that Act expired on March 31, 1948. References to the "Housing and Rent Act of 1947, as amended" and the "Veterans' Emergency Housing Act of 1946" have been consolidated as they are related. The reference to former section 1641(b)(2) of title 50, appendix, is retained notwithstanding its repeal by § 111(a)(1) of Act Sept. 21, 1961, Pub. L. 87-256, 75 Stat. 538, since § 111(c) of the Act provides that a reference in other Acts to a provision of law repealed by § 111(a) shall be considered to be a reference to the appropriate provisions of Pub. L. 87-256.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

End of Document

5 USCS § 706

Current through PL 115-231, approved 8/8/18

United States Code Service - Titles 1 through 54 > TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES > PART I. THE AGENCIES GENERALLY > CHAPTER 7. JUDICIAL REVIEW

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§ 706. Scope of review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1)compel agency action unlawfully withheld or unreasonably delayed; and

(2)hold unlawful and set aside agency action, findings, and conclusions found to be--

(A)arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B)contrary to constitutional right, power, privilege, or immunity;

(C)in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D)without observance of procedure required by law;

(E)unsupported by substantial evidence in a case subject to sections 556 and 557 of this *title [5 USCS §§ 556* and *557*] or otherwise reviewed on the record of an agency hearing provided by statute; or

(F)unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

History

(Sept. 6, 1966,*P.L. 89-554*, § 1, *80 Stat. 393*.)

Prior law and revision:

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 USC Sec. 1009(e)	June 11, 1946, ch 324, Sec. 10(e), 60 Stat. 243.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface of this report.

End of Document

Public Law 85-547

AN ACT

To determine the rights and interests of the Navaho Tribe, Hopi Tribe, and individual Indians to the area set aside by Executive order of December 16, 1882, and for other purposes.

July 22, 1958
[S. 692]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That lands described in the Executive order dated December 16, 1882, are hereby declared to be held by the United States in trust for the Hopi Indians and such other Indians, if any, as heretofore have been settled thereon by the Secretary of the Interior pursuant to such Executive order. The Navaho Indian Tribe and the Hopi Indian Tribe, acting through the chairmen of their respective tribal councils for and on behalf of said tribes, including all villages and clans thereof, and on behalf of any Navaho or Hopi Indians claiming an interest in the area set aside by Executive order dated December 16, 1882, and the Attorney General on behalf of the United States, are each hereby authorized to commence or defend in the United States District Court for the District of Arizona an action against each other and any other tribe of Indians claiming any interest in or to the area described in such Executive order for the purpose of determining the rights and interests of said parties in and to said lands and quieting title thereto in the tribes or Indians establishing such claims pursuant to such Executive order as may be just and fair in law and equity. The action shall be heard and determined by a district court of three judges in accordance with the provisions of title 28, United States Code, section 2284, and any party may appeal directly to the Supreme Court from the final determination by such three judge district court.

Indian lands.
Trust title.

Adjudication of claims.

62 Stat. 968.

SEC. 2. Lands, if any, in which the Navaho Indian Tribe or individual Navaho Indians are determined by the court to have the exclusive interest shall thereafter be a part of the Navaho Indian Reservation. Lands, if any, in which the Hopi Indian Tribe, including any Hopi village or clan thereof, or individual Hopi Indians are determined by the court to have the exclusive interest shall thereafter be a reservation for the Hopi Indian Tribe. The Navaho and Hopi Tribes, respectively, are authorized to sell, buy, or exchange any lands within their reservations, with the approval of the Secretary of the Interior, and any such lands acquired by either tribe through purchase or exchange shall become a part of the reservation of such tribe.

Navaho and Hopi Reservations.

Purchase or exchange of lands.

SEC. 3. Nothing in this Act shall be deemed to be a congressional determination of the merits of the conflicting tribal or individual Indian claims to the lands that are subject to adjudication pursuant to this Act, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

Approved July 22, 1958.

Public Law 85-548

AN ACT

To direct the Secretary of the Army to convey certain property located at Boston Neck, Narragansett, Washington County, Rhode Island, to the State of Rhode Island.

July 22, 1958
[S. 628]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Army is authorized and directed to convey by quitclaim deed, without consideration, to the State of Rhode Island all right, title,

Boston Neck, R.I.
Conveyance.

Public Law 93-531

December 22, 1974
[H. R. 10337]

AN ACT

To provide for final settlement of the conflicting rights and interests of the Hopi and Navajo Tribes to and in lands lying within the joint use area of the reservation established by the Executive order of December 16, 1882, and lands lying within the reservation created by the Act of June 14, 1934, and for other purposes.

Indians.
Hopi and Navajo Tribes.
Mediator.
25 USC 640d.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, (a) within thirty days after enactment of this Act, the Director of the Federal Mediation and Conciliation Service shall appoint a Mediator (hereinafter referred to as the "Mediator") who shall assist in the negotiations for the settlement and partition of the relative rights and interests, as determined by the decision in the case of Healing v. Jones (210 F. Supp. 125, D. Ariz., 1962, aff'd 363 U.S. 758, 1963) (hereinafter referred to as the "Healing case"), of the Hopi and Navajo Tribes (hereinafter referred to as the "tribes") to and in lands within the reservation established by the Executive order of December 16, 1882, except land management district no. 6 (such lands hereinafter referred to as the "joint use area"). The Mediator shall not have any interest, direct or indirect, in the settlement of the interests and rights set out in this subsection. The duties of the Mediator shall cease upon the entering of a full agreement into the records of the supplemental proceedings pursuant to section 3 or the submission of a report to the District Court after a default in negotiations or a partial agreement pursuant to section 4.

(b) The proceedings in which the Mediator shall be acting under the provisions of this Act shall be the supplemental proceedings in the Healing case now pending in the United States District Court for the District of Arizona (hereinafter referred to as "the District Court").

(c)(1) The Mediator is authorized to request from any department, agency, or independent instrumentality of the Federal Government any information, personnel, service, or materials he deems necessary to carry out his responsibilities under the provisions of this Act. Each such department, agency, or instrumentality is authorized to cooperate with the Mediator and to comply with such requests to the extent permitted by law, on a reimbursable or nonreimbursable basis.

Interagency committee.
Establishment.

(2) To facilitate the expeditious and orderly compilation and development of factual information relevant to the negotiating process, the President shall, within fifteen days of enactment of this Act, establish an interagency committee chaired by the Secretary of the Interior (hereinafter referred to as the "Secretary") to develop relevant information and to respond to the requests of the Mediator.

(d) The Secretary shall appoint a full-time representative as his liaison with the Mediator to facilitate the provision of information and assistance requested by the Mediator from the Department of the Interior.

(e) The Mediator may retain the services of such staff assistants and consultants as he shall deem necessary, subject to the approval of the Director of the Federal Mediation and Conciliation Service.

Negotiating team.
25 USC 640d-1.

SEC. 2. (a) Within thirty days after enactment of this Act, the Secretary shall communicate in writing with the tribal councils of the tribes directing the appointment of a negotiating team representing each tribe. Each negotiating team shall be composed of not more than five members to be certified by appropriate resolution of the respective tribal council. Each tribal council shall promptly fill any vacancies which may occur on its negotiating team. Notwithstanding any other

provision of law, each negotiating team, when appointed and certified, shall have full authority to bind its tribe with respect to any other matter concerning the joint use area within the scope of this Act.

(b) In the event either or both of the tribal councils fail to select and certify a negotiating team within thirty days after the Secretary communicates with the tribal council under subsection (a) of this section or to select and certify a replacement member within thirty days of the occurrence of a vacancy, the provisions of subsection (a) of section 4 shall become effective.

Negotiating session.

(c) Within fifteen days after formal certification of both negotiating teams to the Mediator, the Mediator shall schedule the first negotiating session at such time and place as he deems appropriate. The negotiating sessions, which shall be chaired by the Mediator, shall be held at such times and places as the Mediator deems appropriate. At such sessions, the Mediator may, if he deems it appropriate, put forward his own suggestions for procedure, the agenda, and the resolution of the issues in controversy.

(d) In the event either negotiating team fails to attend two consecutive sessions or, in the opinion of the Mediator, either negotiating team fails to bargain in good faith or an impasse is reached, the provisions of subsection (a) of section 4 shall become effective.

(e) In the event of a disagreement within a negotiating team the majority of the members of the team shall prevail and act on behalf of the team unless the resolution of the tribal council certifying the team specifically provides otherwise.

Full agreement. 25 USC 640d-2.

SEC. 3. (a) If, within one hundred and eighty days after the first session scheduled by the Mediator under subsection (c) of section 2, full agreement is reached, such agreement shall be put in such form as the Mediator determines best expresses the intent of the tribes and shall then be submitted to the Secretary and the Attorney General of the United States for their comments as they relate to the interest of the United States in the proceedings. These comments are to be submitted to the Mediator and the negotiating teams within thirty days. The negotiating teams and the Mediator shall then consider the comments and, if agreement can still be reached on terms acceptable to the negotiating teams and the Mediator within sixty days of receipt by him of the comments, the agreement shall be put in final written form and shall be signed by the members of the negotiating teams and the Mediator. The Mediator shall then cause the agreement to be entered into the records of the supplemental proceedings in the Healing case. The provisions of the agreement shall be reviewed by the District Court, modified where necessary, and put into effect immediately thereafter.

Partial agreement.

(b) If, within the one hundred and eighty day period referred to in subsection (a) of this section, a partial agreement has been reached between the tribes and they wish such partial agreement to go into effect, they shall follow the procedure set forth in said subsection (a). The partial agreement shall then be considered by the Mediator in preparing his report, and the District Court in making a final adjudication, pursuant to section 4.

(c) For the purpose of this section, the negotiating teams may make any provision in the agreement or partial agreement not inconsistent with existing law. No such agreement or any provision in it shall result in a taking by the United States of private property compensable under the Fifth Amendment of the Constitution of the United States.

USC prec. title 1. 25 USC 640d-3.

SEC. 4. (a) If the negotiating teams fail to reach full agreement within the time period allowed in subsection (a) of section 3 or if one or both of the tribes are in default under the provisions of subsections (b) or (d) of section 2, the Mediator, within ninety days thereafter, shall prepare and submit to the District Court a report containing his

Report to Dis-

recommendations for the settlement of the interests and rights set out in subsection (a) of section 1 which shall be most reasonable and equitable in light of the law and circumstances and consistent with the provisions of this Act. Following the District Court's review of the report and recommendations (which are not binding thereon) and any further proceedings which the District Court may schedule, the District Court is authorized to make a final adjudication, including partition of the joint use area, and enter the judgments in the supplemental proceedings in the Healing case.

District Court, review and recommendations.

(b) Any proceedings as authorized in subsection (a) hereof shall be assigned for hearing at the earliest possible date, shall take precedence over all other matters pending on the docket of the District Court at that time, and shall be expedited in every way by the Court.

Hearing.

SEC. 5. (a) For the purpose of facilitating an agreement pursuant to section 3 or preparing a report pursuant to section 4, the Mediator is authorized—

Settlement guidelines. 25 USC 640d-4.

(1) notwithstanding the provisions of section 2 of the Act of May 25, 1918 (40 Stat. 570), to recommend that, subject to the consent of the Secretary, there be purchased or otherwise acquired additional lands for the benefit of either tribe from the funds of either tribe or funds under any other authority of law;

(2) to recommend that, subject to the consent of the Secretary, there be undertaken a program of restoration of lands lying within the joint use area, employing for such purpose funds authorized by this Act, funds of either tribe, or funds under any other authority of law;

Restoration of lands.

(3) to recommend that, subject to the consent of the Secretary, there be undertaken a program for relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area;

(4) to recommend, in exceptional cases where necessary to prevent personal hardship, a limited tenure for residential use, not exceeding a life estate, and a phased relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area; and

(5) to make any other recommendations as are in conformity with this Act and the Healing case to facilitate a settlement.

(b) The authorizations contained in subsection (a) of this section shall be discretionary and shall not be construed to represent any directive of the Congress.

Report. 25 USC 640d-5.

SEC. 6. The Mediator in preparing his report, and the District Court in making the final adjudication, pursuant to section 4, shall consider and be guided by the decision of the Healing case, under which the tribes have joint, undivided, and equal interests in and to all of the joint use area; by any partial agreement reached by the parties under subsection (b) of section 3; by the last best offer for a complete settlement as a part of the negotiating process by each of the tribes; and by the following:

(a) The rights and interests, as defined in the Healing case, of the Hopi Tribe in and to that portion of the reservation established by the Executive order of December 16, 1882, which is known as land management district no. 6 (hereinafter referred to as the "Hopi Reservation") shall not be reduced or limited in any manner.

(b) The boundary lines resulting from any partitioning of lands in the joint use area shall be established so as to include the higher density population areas of each tribe within the portion of the lands partitioned to such tribe to minimize and avoid undue social, economic, and cultural disruption insofar as practicable.

(c) In any division of the surface rights to the joint use area, reasonable provision shall be made for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

(d) In any partition of the surface rights to the joint use area, the lands shall, insofar as is practicable, be equal in acreage and quality: *Provided*, That if such partition results in a lesser amount of acreage, or value, or both to one tribe such differential shall be fully and finally compensable to such tribe by the other tribe. The value of the land for the purposes of this subsection shall be based on not less than its value with improvements and its grazing capacity fully restored: *Provided further*, That, in the determination of compensation for any such differential, the Federal Government shall pay any difference between the value of the particular land involved in its existing state and the value of such land in a fully restored state which results from damage to the land which the District Court finds attributable to a failure of the Federal Government to provide protection where such protection is or was required by law or by the demands of the trust relationship.

(e) Any lands partitioned to each tribe in the joint use area shall, where feasible and consistent with the other provisions of this section, be contiguous to the reservation of each such tribe.

(f) Any boundary line between lands partitioned to the two tribes in the joint use area shall, insofar as is practicable, follow terrain which will facilitate fencing or avoid the need for fencing.

(g) Any claim the Hopi Tribe may have against the Navajo Tribe for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, as trader license fees or commissions, lease rental or proceeds, or other similar charges for doing business or for damages in the use of lands within the joint use area, shall be for a one-half share in such sums.

(h) Any claim the Hopi Tribe may have against the Navajo Tribe for the determination and recovery of the fair value of the grazing and agricultural use of the lands within the joint use area by the Navajo Tribe and its individual members, since September 28, 1962, shall be for one-half of such value.

Joint ownership of minerals.
25 USC 640d-6.

SEC. 7. Partition of the surface of the lands of the joint use area shall not affect the joint ownership status of the coal, oil, gas, and all other minerals within or underlying such lands. All such coal, oil, gas, and other minerals within or underlying such lands shall be managed jointly by the two tribes, subject to supervision and approval by the Secretary as otherwise required by law, and the proceeds therefrom shall be divided between the tribes, share and share alike.

25 USC 640d-7.

SEC. 8. (a) Either tribe, acting through the chairman of its tribal council for and on behalf of the tribe, is each hereby authorized to commence or defend in the District Court an action against the other tribe and any other tribe of Indians claiming any interest in or to the area described in the Act of June 14, 1934, except the reservation established by the Executive Order of December 16, 1882, for the purpose of determining the rights and interests of the tribes in and to such lands and quieting title thereto in the tribes.

(b) Lands, if any, in which the Navajo Tribe or Navajo individuals are determined by the District Court to have the exclusive interest shall continue to be a part of the Navajo Reservation. Lands, if any, in which the Hopi Tribe, including any Hopi village or clan thereof, or Hopi individuals are determined by the District Court to have the exclusive interest shall thereafter be a reservation for the Hopi Tribe. Any lands in which the Navajo and Hopi Tribes or Navajo or Hopi individuals are determined to have a joint or undivided interest

shall be partitioned by the District Court on the basis of fairness and equity and the area so partitioned shall be retained in the Navajo Reservation or added to the Hopi Reservation, respectively.

(c) The Navajo and Hopi Tribes are hereby authorized to exchange lands which are part of their respective reservations.

(d) Nothing in this section shall be deemed to be a Congressional determination of the merits of the conflicting claims to the lands that are subject to adjudication pursuant to this section, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

(e) The Secretary of the Interior is authorized to pay any or all appropriate legal fees, court costs, and other related expenses arising out of, or in connection with, the commencing of, or defending against, any action brought by the Navajo or Hopi Tribe under this section.

Paiute Indians, allotment. 25 USC 640d-8.

SEC. 9. Notwithstanding any other provision of this Act, the Secretary is authorized to allot in severalty to individual Paiute Indians, not now members of the Navajo Tribe, who are located within the area described in the Act of June 14, 1934 (48 Stat. 960), and who were located within such area, or are direct descendants of Paiute Indians who were located within such area, on the date of such Act, land in quantities as specified in section 1 of the Act of February 8, 1887 (24 Stat. 388), as amended (25 U.S.C. 331), and patents shall be issued to them for such lands having the legal effect and declaring that the United States holds such land in trust for the sole use and benefit of each allottee and, following his death, of his heirs according to the laws of the State of Arizona.

25 USC 640d-9.

SEC. 10. (a) Subject to the provisions of section 9 and subsection (a) of section 17, any lands partitioned to the Navajo Tribe pursuant to section 3 or 4 and the lands described in the Act of June 14, 1934 (48 Stat. 960), except the lands as described in section 8, shall be held in trust by the United States exclusively for the Navajo Tribe and as a part of the Navajo Reservation.

(b) Subject to the provisions of section 9 and subsection (a) of section 17, any lands partitioned to the Hopi Tribe pursuant to section 3 or 4 and the lands as described in section 8 shall be held in trust by the United States exclusively for the Hopi Tribe and as a part of the Hopi Reservation.

25 USC 640d-10.

SEC. 11. (a) The Secretary is authorized and directed to transfer not to exceed 250,000 acres of lands under the jurisdiction of the Bureau of Land Management within the States of Arizona or New Mexico to the Navajo Tribe: *Provided*, That the Navajo Tribe shall pay to the United States the fair market value for such lands as may be determined by the Secretary. Such lands shall, if possible, be contiguous or adjacent to the existing Navajo Reservation. Title to such lands which are contiguous or adjacent to the Navajo Reservation shall be taken by the United States in trust for the benefit of the Navajo Tribe.

(b) Any private lands the Navajo Tribe acquires which are contiguous or adjacent to the Navajo Reservation may be taken by the United States in trust for the benefit of the Navajo Tribe: *Provided*, That the land acquired pursuant to subsection (a) and this subsection shall not exceed a total of 250,000 acres.

Navajo and Hopi Indian Relocation Commission. Establishment. 25 USC 640d-11.

SEC. 12. (a) There is hereby established as an independent entity in the executive branch the Navajo and Hopi Indian Relocation Commission (hereinafter referred to as the "Commission").

(b) The Commission shall be composed of three members appointed by the Secretary within sixty days of enactment of this Act.

(c) The Commission shall elect a Chairman and Vice Chairman from among its members.

(d) Two members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(e) Each member of the Commission who is not otherwise employed by the United States Government shall receive an amount equal to the daily rate paid a GS–18 under the General Schedule contained in section 5332 of title 5, United States Code, for each day (including time in travel) or portion thereof during which such member is engaged in the actual performance of his duties as a member of the Commission. A member of the Commission who is an officer or employee of the United States shall serve without additional compensation. All members of the Commission shall be reimbursed for travel, subsistence, and other expenses incurred by them in the performance of their duties. 5 USC 5332 note.

(f) The first meeting of the Commission shall be called by the Secretary forthwith following the date on which a majority of the members of such Commission are appointed and qualified under this Act, but in no event later than sixty days following such date.

(g) Subject to such rules and regulations as may be adopted by the Commission, the Chairman shall have the power to— Rules and regulations.

(1) appoint and fix the compensation of an Executive Director, and such additional staff personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS–18 of the General Schedule under section 5332 of such title; and

(2) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, United States Code, but at rates not to exceed $150 a day for individuals.

(h) The Department of the Interior shall furnish, on a non-reimbursable basis, necessary administrative and housekeeping services for the Commission.

(i) The Commission shall cease to exist when the President determines that its functions have been fully discharged.

SEC. 13. (a) Within the twenty-four month period following the date of issuance of an order of the District Court pursuant to section 3 or 4, the Commission shall prepare and submit to the Congress a report concerning the relocation of households and members thereof of each tribe, and their personal property, including livestock, from lands partitioned to the other tribe pursuant to sections 8 and 3 or 4. 25 USC 640d-12. Report to Congress.

(b) Such report shall contain, among other matters, the following:

(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe; and

(2) the fair market value of the habitations and improvements owned by the heads of households identified by the Commission as being among the persons named in clause (1) of this subsection.

(c) Such report shall include a detailed plan providing for the relocation of the households and their members identified pursuant to clause (1) of subsection (b) of this section. Such plan (hereinafter referred to as the "relocation plan") shall—

(1) be developed to the maximum extent feasible in consultation with the persons involved in such relocation and appropriate representatives of their tribal councils;

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(2) take into account the adverse social, economic, cultural, and other impacts of relocation on persons involved in such relocation and be developed to avoid or minimize, to the extent possible, such impacts;

(3) identify the sites to which such households shall be relocated, including the distance involved;

(4) assure that housing and related community facilities and services, such as water, sewers, roads, schools, and health facilities, for such households shall be available at their relocation sites; and

(5) take effect thirty days after the date of submission to the Congress pursuant to subsection (a) of this section: *Provided, however*, That the Commission is authorized and directed to proceed with voluntary relocations as promptly as practicable following its first meeting.

Voluntary relocations.
25 USC 640d-13.

SEC. 14. (a) Consistent with section 8 and the order of the District Court issued pursuant to section 3 or 4, the Commission is authorized and directed to relocate pursuant to section 8 and such order all households and members thereof and their personal property, including livestock, from any lands partitioned to the tribe of which they are not members. The relocation shall take place in accordance with the relocation plan and shall be completed by the end of five years from the date on which the relocation plan takes effect. No further settlement of Navajo individuals on the lands partitioned to the Hopi Tribe pursuant to this Act or on the Hopi Reservation shall be permitted unless advance written approval of the Hopi Tribe is obtained. No further settlement of Hopi individuals on the lands partitioned to the Navajo Tribe pursuant to this Act or on the Navajo Reservation shall be permitted unless advance written approval of the Navajo Tribe is obtained. No individual shall hereafter be allowed to increase the number of livestock he grazes on any area partitioned pursuant to this Act to the tribe of which he is not a member, nor shall he retain any grazing rights in any such area subsequent to his relocation therefrom.

Assistance payments.

(b) In addition to the payments made pursuant to section 15, the Commission shall make payments to heads of households identified in the report prepared pursuant to section 13 upon the date of relocation of such households, as determined by the Commission, in accordance with the following schedule:

(1) the sum of $5,000 to each head of a household who, prior to the expiration of one year after the effective date of the relocation plan, contracts with the Commission to relocate;

(2) the sum of $4,000 to each head of a household who is not eligible for the payment provided for in clause (1) of this subsection but who, prior to the expiration of two years after the effective date of the relocation plan, contracts with the Commission to relocate;

(3) the sum of $3,000 to each head of a household who is not eligible for the payments provided for in clause (1) or (2) of this subsection but who, prior to the expiration of three years after the effective date of the relocation plan, contracts with the Commission to relocate; and

(4) the sum of $2,000 to each head of a household who is not eligible for the payments provided for in clause (1), (2), or (3) of this subsection but who, prior to the expiration of four years after the effective date of the relocation plan, contracts with the Commission to relocate.

(c) No payment shall be made pursuant to this section to or for any person who, after May 29, 1974, moved into an area partitioned pur-

suant to section 8 or section 3 or 4 to a tribe of which he is not a member.

Replacement housing.
25 USC 640d-14.

SEC. 15. (a) The Commission shall purchase from the head of each household whose household is required to relocate under the terms of this Act the habitation and other improvements owned by him on the area from which he is required to move. The purchase price shall be the fair market value of such habitation and improvements as determined under clause (2) of subsection (b) of section 13.

Fair market value.

(b) In addition to the payments made pursuant to subsection (a) of this section, the Commission shall:

(1) reimburse each head of a household whose household is required to relocate pursuant to this Act for the actual reasonable moving expenses of the household as if the household members were displaced persons under section 202 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894);

42 USC 4622.

(2) pay to each head of a household whose household is required to relocate pursuant to this Act an amount which, when added to the fair market value of the habitation and improvements purchased under subsection (a) of this section, equals the reasonable cost of a decent, safe, and sanitary replacement dwelling adequate to accommodate such household: *Provided*, That the additional payment authorized by this paragraph (2) shall not exceed $17,000 for a household of three or less and not more than $25,000 for a household of four or more, except that the Commission may, after consultation with the Secretary of Housing and Urban Development, annually increase or decrease such limitations to reflect changes in housing development and construction costs, other than costs of land, during the preceding year: *Provided further*, That the additional payment authorized by this subsection shall be made only to a head of a household required to relocate pursuant to this Act who purchases and occupies such replacement dwelling not later than the end of the two-year period beginning on the date on which he receives from the Commission final payment for the habitation and improvements purchased under subsection (a) of this section, or on the date on which such household moves from such habitation, whichever is the later date. The payments made pursuant to this paragraph (2) shall be used only for the purpose of obtaining decent, safe, and sanitary replacement dwellings adequate to accommodate the households relocated pursuant to this Act.

Additional payment.

(c) In implementing subsection (b) of this section, the Commission shall establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894). No payment shall be made pursuant to this section to or for any person who, later than one year prior to the date of enactment of this Act, moved into an area partitioned pursuant to section 8 or section 3 or 4 to a tribe of which he is not a member.

42 USC 4601 note.

(d) The Commission shall be responsible for the provision of housing for each household eligible for payments under this section in one of the following manners:

(1) Should any head of household apply for and become a participant or homebuyer in a mutual help housing or other homeownership opportunity project undertaken under the United States Housing Act of 1937 (50 Stat. 888), as amended (42 U.S.C. 1401), or in any other federally assisted housing program now or hereafter established, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section

and under subsection (a) of this section shall be paid to the local housing agency or sponsor involved as a voluntary equity payment and shall be credited against the outstanding indebtedness or purchase price of the household's home in the project in a manner which will accelerate to the maximum extent possible the achievement by that household of debt free homeownership.

(2) Should any head of household wish to purchase or have constructed a dwelling which the Commission determines is decent, safe, sanitary, and adequate to accommodate the household, the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section shall be paid to such head of household in connection with such purchase or construction in a manner which the Commission determines will assure the use of the funds for such purpose.

(3) Should any head of household not make timely arrangements for relocation housing, or should any head of household elect and enter into an agreement to have the Commission construct or acquire a home for the household, the Commission may use the amounts payable with respect to such household under paragraph (2) of subsection (b) of this section and under subsection (a) of this section for the construction or acquisition (including enlargement or rehabilitation if necessary) of a home and related facilities for such household: *Provided*, That, the Commission may combine the funds for any number of such households into one or more accounts from which the costs of such construction or acquisition may be paid on a project basis and the funds in such account or accounts shall remain available until expended: *Provided further*, That the title to each home constructed or acquired by the Commission pursuant to this paragraph shall be vested in the head of the household for which it was constructed or acquired upon occupancy by such household, but this shall not preclude such home being located on land held in trust by the United States.

(e) The Commission is authorized to dispose of dwellings and other improvements acquired or constructed pursuant to this Act in such manner, including resale of such dwellings and improvements to members of the tribe exercising jurisdiction over the area at prices no higher than the acquisition or construction costs, as best effects section 8 and the order of the District Court pursuant to section 3 or 4.

25 USC 640d-15. SEC. 16. (a) The Navajo Tribe shall pay to the Hopi Tribe the fair rental value as determined by the Secretary for all use by Navajo individuals of any lands partitioned to the Hopi Tribe pursuant to sections 8 and 3 or 4 subsequent to the date of the partition thereof.

(b) The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all use by Hopi individuals of any lands partitioned to the Navajo Tribe pursuant to sections 8 and 3 or 4 subsequent to the date of the partition thereof.

25 USC 640d-16. SEC. 17. (a) Nothing in this Act shall affect the title, possession, and enjoyment of lands heretofore allotted to Hopi and Navajo individuals for which patents have been issued. Such Hopi individuals living on the Navajo Reservation shall be subject to the jurisdiction of the Navajo Tribe and such Navajo individuals living on the Hopi Reservation shall be subject to the jurisdiction of the Hopi Tribe.

(b) Nothing in this Act shall require the relocation from any area partitioned pursuant to this Act of the household of any Navajo or Hopi individual who is employed by the Federal Government within such area or to prevent such employees or their households from residing in such areas in the future: *Provided*, That any such Federal

employee who would, except for the provisions of this subsection, be relocated under the terms of this Act may elect to be so relocated.

SEC. 18. (a) Either tribe, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof, is hereby authorized to commence or defend in the District Court an action or actions against the other tribe for the following purposes if such action or actions are not settled pursuant to section 3 or 4: 25 USC 640d-17.

(1) for an accounting of all sums collected by either tribe since the 17th day of September 1957 as trader license fees or commissions, lease proceeds, or other similar charges for the doing of business or the use of lands within the joint use area, and judgment for one-half of all sums so collected, and not paid to the other tribe, together with interest at the rate of 6 per centum per annum compounded annually;

(2) for the determination and recovery of the fair value of the grazing and agricultural use by either tribe and its individual members since the 28th day of September 1962 of the undivided one-half interest of the other tribe in the lands within the joint use area, together with interest at the rate of 6 per centum per annum compounded annually, notwithstanding the fact that the tribes are tenants in common of such lands; and

(3) for the adjudication of any claims that either tribe may have against the other for damages to the lands to which title was quieted as aforesaid by the United States District Court for the District of Arizona in such tribes, share and share alike, subject to the trust title of the United States, without interest, notwithstanding the fact that such tribes are tenants in common of such lands: *Provided*, That the United States may be joined as a party to such an action and, in such case, the provisions of sections 1346(a)(2) and 1505 of title 28, United States Code, shall not be applicable to such action.

(b) Neither laches nor the statute of limitations shall constitute a defense to any action authorized by this Act for existing claims if commenced within two years from the effective date of this Act or one hundred and eighty days from the date of issuance of an order of the District Court pursuant to section 3 or 4, whichever is later.

(c) Either tribe may institute such further original, ancillary, or supplementary actions against the other tribe as may be necessary or desirable to insure the quiet and peaceful enjoyment of the reservation lands of the tribes by the tribes and the members thereof, and to fully accomplish all objects and purposes of this Act. Such actions may be commenced in the District Court by either tribe against the other, acting through the chairman of its tribal council, for and on behalf of the tribe, including all villages, clans, and individual members thereof.

(d) Except as provided in clause (3) of subsection (a) of this section, the United States shall not be an indispensable party to any action or actions commenced pursuant to this section. Any judgment or judgments by the District Court in such action or actions shall not be regarded as a claim or claims against the United States.

(e) All applicable provisional and final remedies and special proceedings provided for by the Federal Rules of Civil Procedure and all other remedies and processes available for the enforcement and collection of judgments in the district courts of the United States may be used in the enforcement and collection of judgments obtained pursuant to the provisions of this Act.

SEC. 19. (a) Notwithstanding any provision of this Act, or any order of the District Court pursuant to section 3 or 4, the Secretary is authorized and directed to immediately commence reduction of the 25 USC 640d-18.

numbers of all the livestock now being grazed upon the lands within the joint use area and complete such reductions to carrying capacity of such lands, as determined by the usual range capacity standards as established by the Secretary after the date of enactment of this Act. The Secretary is directed to institute such conservation practices and methods within such area as are necessary to restore the grazing potential of such area to the maximum extent feasible.

(b) The Secretary, upon the date of issuance of an order of the District Court pursuant to sections 8 and 3 or 4, shall provide for the survey location of monuments, and fencing of boundaries of any lands partitioned pursuant to sections 8 and 3 or 4.

25 USC 640d-19. SEC. 20. The members of the Hopi Tribe shall have perpetual use of Cliff Spring as shown on USGS 7½ minute Quad named Toh Ne Zhonnie Spring, Arizona, Navajo County, dated 1968; and located 1,250 feet west and 200 feet south of the intersection of 36 degrees, 17 minutes, 30 seconds north latitude and 110 degrees, 9 minutes west longitude, as a shrine for religious ceremonial purposes, together with the right to gather branches of fir trees growing within a 2-mile radius of said spring for use in such religious ceremonies, and the further right of ingress, egress, and regress between the Hopi Reservation and said spring. The Hopi Tribe is hereby authorized to fence said spring upon the boundary line as follows:

Beginning at a point on the 36 degrees, 17 minutes, 30 seconds north latitude 500 feet west of its intersection with 110 degrees, 9 minutes west longitude, the point of beginning;

thence north 46 degrees west, 500 feet to a point on the rim top at elevation 6,900 feet;

thence southwesterly 1,200 feet (in a straight line) following the 6,900 feet contour;

thence south 46 degrees east, 600 feet;

thence north 38 degrees east, 1,300 feet to the point of beginning, 23.8 acres more or less: *Provided*, That, if and when such spring is fenced, the Hopi Tribe shall pipe the water therefrom to the edge of the boundary as hereinabove described for the use of residents of the area. The natural stand of fir trees within such 2-mile radius shall be conserved for such religious purposes.

25 USC 640d-20. SEC. 21. Notwithstanding anything contained in this Act to the contrary, the Secretary shall make reasonable provision for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

25 USC 640d-21. SEC. 22. The availability of financial assistance or funds paid pursuant to this Act may not be considered as income or resources or otherwise utilized as the basis (1) for denying a household or member thereof participation in any federally assisted housing program or (2) for denying or reducing the financial assistance or other benefits to which such household or member would otherwise be entitled to under the Social Security Act or any other Federal or federally assisted program. None of the funds provided under this Act shall be subject to Federal or State income taxes.

25 USC 640d-22. SEC. 23. The Navajo and Hopi Tribes are hereby authorized to exchange lands which are part of their respective reservations.

25 USC 640d-23. SEC. 24. If any provision of this Act, or the application of any provision to any person, entity or circumstance, is held invalid, the remainder of this Act shall not be affected thereby.

25 USC 640d-24. SEC. 25. (a) (1) For the purpose of carrying out the provisions of section 15, there is hereby authorized to be appropriated not to exceed $31,500,000.

(2) For the purpose of carrying out the provisions of subsection (a) of section 19, there is hereby authorized to be appropriated not to exceed $10,000,000.

(3) For the purpose of carrying out the provisions of subsection (b) of section 19, there is hereby authorized to be appropriated not to exceed $500,000.

(4) For the purpose of carrying out the provisions of subsection (b) of section 14, there is hereby authorized to be appropriated not to exceed $5,500,000.

(5) There is hereby authorized to be appropriated annually not to exceed $500,000 for the expenses of the Commission.

(6) There is hereby authorized to be appropriated not to exceed $500,000 for the services and expenses of the Mediator and the assistants and consultants retained by him: *Provided*, That, any contrary provision of law notwithstanding, until such time as funds are appropriated and made available pursuant to this authorization, the Director of the Federal Mediation and Conciliation Service is authorized to provide for the services and expenses of the Mediator from any other appropriated funds available to him and to reimburse such appropriations when funds are appropriated pursuant to this authorization, such reimbursement to be credited to appropriations currently available at the time of receipt thereof.

(b) The funds appropriated pursuant to the authorizations provided in this Act shall remain available until expended.

Repeal.

SEC. 26. Section 10 of the Act entitled "An Act to promote the rehabilitation of the Navajo and Hopi Tribes of Indians and a better utilization of the resources of the Navajo and Hopi Indian Reservations, and for other purposes", approved April 19, 1950 (64 Stat. 47; 25 U.S.C. 640) is repealed effective close of business December 31, 1974.

Effective date.

Approved December 22, 1974.

Public Law 93-532

AN ACT

Relating to former Speakers of the House of Representatives.

December 22, 1974
[H. R. 17026]

Former Speakers of the House of Representatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) the provisions of H. Res. 1238, Ninety-first Congress, as enacted into permanent law by the Supplemental Appropriations Act, 1971 (84 Stat. 1989), are hereby extended to, and made applicable with respect to, each former Speaker of the House of Representatives, as long as he determines there is need therefor, commencing at the expiration of his term of office as Representative in Congress.

(b) Subsection (a) shall not apply with respect to any former Speaker of the House of Representatives for any period during which such former Speaker holds an appointive or elective office or position in or under the Federal Government or the government of the District of Columbia to which is attached a rate of pay other than a nominal rate or to any former Speaker separated from the service by reason of expulsion from the House.

Approved December 22, 1974.

NAVAJO AND HOPI INDIAN RELOCATION AMENDMENTS OF 1988, 1988 Enacted S. 1236, 100 Enacted S. 1236

Enacted, November 16, 1988

Reporter
102 Stat. 3929 *; 100 P.L. 666; 1988 Enacted S. 1236; 100 Enacted S. 1236

UNITED STATES PUBLIC LAWS > 100th Congress -- 2nd Session > PUBLIC LAW 100-666 > [S. 1236]

Synopsis

An Act

To reauthorize housing relocation under the Navajo-Hopi Relocation Program, and for other purposes.

Text

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. <<Notes>> This Act may be cited as the "Navajo and Hopi Indian Relocation Amendments of 1988".

AUTHORIZATION OF APPROPRIATIONS

SEC. 2. Subsection (a) of section 25 of Public Law 93-531 (*25 U.S.C. 640d-24(a)*) is amended --

(1) by striking out "$ 7,700,000" in paragraph (4) and inserting in lieu thereof "$ 13,000,000", and

(2) by striking out "$ 15,000,000 annually for fiscal years 1983 through 1987" in paragraph (8) and inserting in lieu thereof "$ 30,000,000 annually for fiscal years 1989, 1990, and 1991".

USE OF DISCRETIONARY FUNDS

SEC. 3. Subsection (b) of section 27 of Public Law 93-531 (*25 U.S.C. 640d-25*) is amended to read as follows:

"(b) Funds appropriated under the authority of subsection (a) may be used by the Commissioner for grants, contracts, or expenditures which significantly assist the Commissioner or assist the Navajo Tribe or Hopi Tribe in meeting the burdens imposed by this Act.".

COMMISSIONER ON NAVAJO AND HOPI INDIAN RELOCATION

SEC. 4. (a) Section 12 of Public Law 93-531 (*25 U.S.C. 640d-11*) is amended to read as follows:

"(a) There is hereby established as an independent entity in the executive branch the Office of Navajo and Hopi Indian Relocation which shall be under the direction of the Commissioner on Navajo and Hopi Relocation (hereinafter in this Act referred to as the 'Commissioner').

"(b)(1) The Commissioner shall be appointed by the President by and with the advice and consent of the Senate.

"(2) The term of office of the Commissioner shall be 2 years. An individual may be appointed Commissioner for more than one term.

"(3) The Commissioner shall be a full time employee of the United States and shall be paid at the rate of GS-18 of the General Schedule under *section 5332 of title 5, United States Code*.

"(c)(1)(A) Except as otherwise provided by the Navajo and Hopi Indian Relocation Amendments of 1988, the Commissioner shall have all the powers and be responsible for all the duties that the

[*3930] Navajo and Hopi Indian Relocation Commission had before the enactment of such amendments.

"(B) All funds appropriated to the Navajo and Hopi Indian Relocation Commission before the date on which the first Commissioner on Navajo and Hopi Indian Relocation is confirmed by the Senate that have not been expended on such date shall become available to the Office of Navajo and Hopi Indian Relocation on such date and shall remain available without fiscal year limitation.

"(2) There are hereby transferred to the Commissioner, on January 31, 1989 --

"(A) all powers and duties of the Bureau of Indian Affairs derived from Public Law 99-190 *(99 Stat. at 1236)* that relate to the relocation of members of the Navajo Tribe from lands partitioned to the Hopi Tribe, and

"(B) all funds appropriated for activities relating to such relocation pursuant to Public Law 99-190 *(99 Stat. at 1236):* Provided, That such funds shall be used by the Commissioner for the purpose for which such funds were appropriated to the Bureau of Indian Affairs.

"(d)(1) The Commissioner shall have the power to --

"(A) appoint and fix the compensation of such staff and personnel as he deems necessary, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such

title relating to classification and General Schedule pay rates, but at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title; and

"(B) procure temporary and intermittent services to the same extent as is authorized by *section 3109 of title 5, United States Code*, but at rates not to exceed $ 200 a day for individuals.

"(2) The authority of the Commissioner to enter into contracts for the provision of legal services for the Commissioner or for the Office of Navajo and Hopi Indian Relocation shall be subject to the availability of funds provided for such purpose by appropriations Acts.

"(3) There are authorized to be appropriated for each fiscal year $ 100,000 to fund contracts described in paragraph (2).

"(e)(1) The Commissioner is authorized to provide for the administrative, fiscal, and housekeeping services of the Office of Navajo and Hopi Indian Relocation and is authorized to call upon any department or agency of the United States to assist him in implementing the relocation plan, except that the control over and responsibility for completing relocation shall remain in the Commissioner. In any case in which the Office calls upon any such department or agency for assistance under this section, such department or agency shall provide reasonable assistance so requested.

"(2) On failure of any agency to provide reasonable assistance as required under paragraph (1) of this subsection, the Commissioner shall report such failure to the Congress.

"(f) The Office of Navajo and Hopi Indian Relocation shall cease to exist when the President determines that its functions have been fully discharged.".

(b) <<Notes>> Public Law 93-531 is amended by striking out "the Commission" each place it appears and inserting in lieu thereof "the Commissioner".

(c)(1) <<Notes>> Notwithstanding any other provisions of law or any amendment made by this Act --

[*3931] (A) the Navajo and Hopi Indian Relocation Commission shall --

(i) continue to exist until the date on which the first Commissioner is confirmed by the Senate,

(ii) have the same structure, powers and responsibilities such Commission had before the enactment of this Act, and

(iii) assume responsibility for the powers and duties transferred to such Commissioner under section 12(c)(2) of Public Law 93-531, as amended by this Act, until the Commissioner is confirmed,

(B) the existing Commissioners shall serve until the new Commissioner is confirmed by the Senate, and

(C) the existing personnel of the Commission shall be transferred to the new Office of Navajo and Hopi Indian Relocation.

(2) The Navajo and Hopi Relocation Commission shall become known as the Office of Navajo and Hopi Indian Relocation on the date on which the first Commissioner is confirmed by the Senate.

(d) Section 13 of Public Law 93-531 (*25 U.S.C. 640d-12*) is amended to read as follows:

"(a) By no later than the date that is 6 months after the date on which the first Commissioner is confirmed by the Senate, the Commissioner shall prepare and submit to the Congress a report concerning the relocation of households and members thereof of each tribe and their personal property, including livestock, from lands partitioned to the other tribe pursuant to this Act.

"(b) The report required under subsection (a) shall contain, among other matters, the following:

"(1) the names of all members of the Navajo Tribe who reside within the areas partitioned to the Hopi Tribe and the names of all members of the Hopi Tribe who reside within the areas partitioned to the Navajo Tribe;

"(2) the names of all other members of the Navajo Tribe, and other members of the Hopi Tribe, who are eligible for benefits provided under this Act and who have not received all the benefits for which such members are eligible under this Act;

"(3) the fair market value of the habitations and improvements owned by the heads of households identified by the Commissioner is being among the persons named in clause (1) of this subsection; and

"(4) a report on how funds in the Navajo Rehabilitation Trust Funds will be expended to carry out the purposes described in section 32(d).".

LOBBYING

SEC. 5. Public Law 93-531 is amended by adding at the end thereof the following new section:

"SEC. 31. <<Notes>> (a) Except as provided in subsection (b), no person or entity who has entered into a contract with the Commissioner to provide services under this Act may engage in activities designed to influence Federal legislation on any issue relating to the relocation required under this Act.

"(b) Subsection (a) shall not apply to the Navajo Tribe or the Hopi Tribe, except that such tribes shall not spend any funds received from the Office in any activities designed to influence Federal legislation.".

[*3932] NEW DEVELOPMENT ON CERTAIN LANDS

SEC. 6. Subsection (f) of section 10 of Public Law 93-531 (*25 U.S.C. 640d-9(f)*) is amended --

(1) by striking out "Any development" and inserting in lieu thereof "(1) Any development", and

(2) by adding at the end thereof the following new paragraphs:

"(2) Each Indian tribe which receives a written request for the consent of the Indian tribe to a particular improvement, construction, or other development on the lands to which paragraph (1) applies shall respond in writing to such request by no later than the date that is 30 days after the date on which the Indian tribe receives the request. If the Indian tribe refuse to consent to the improvement, construction, or other development, the response shall include the reasons why consent is being refused.

"(3)(A) Paragraph (1) shall not apply to any improvement, construction, or other development if

--

"(i) such improvement, construction, or development does not involve new housing construction, and

"(ii) after the Navajo Tribe or Hopi Tribe has refused to consent to such improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Secretary of the Interior determines that such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either tribe.

"(B) If a written request for a determination described in subparagraph (A)(ii) is submitted to the Secretary of the Interior after the Navajo Tribe or Hopi Tribe has refused to consent to any improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Secretary shall, by no later than the date that is 45 days after the date on which such request is submitted to the Secretary, determine whether such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either Tribe.

"(C) Any development that is undertaken pursuant to this section shall be without prejudice to the rights of the parties in the civil action pending before the United States District Court for the District of Arizona commenced pursuant to section 8 of this Act, as amended.".

NAVAJO REHABILITATION TRUST FUND

SEC. 7. Public Law 93-531 is amended by adding at the end thereof the following new section:

"Sec.32. <<Notes>> (a) There is hereby established in the Treasury of the United States a trust fund to be known as the 'Navajo Rehabilitation Trust Fund', which shall consist of the funds transferred under subsection (b) and of the funds appropriated pursuant to subsection (f) and any interest or investment income accrued on such funds.

"(b) All of the net income derived by the Navajo Tribe from the surface and mineral estates of lands located in New Mexico that are

[*3933] acquired for the benefit of the Navajo Tribe under section 11 shall be deposited into the Navajo Rehabilitation Trust Fund.

"(c) The Secretary shall be the trustee of the Navajo Rehabilitation Trust Fund and shall be responsible for investment of the funds in such Trust Fund.

"(d) Funds in the Navajo Rehabilitation Trust Fund, including any interest or investment accruing thereon, shall be available to the Navajo Tribe, with the approval of the Secretary, solely for purposes which will contribute to the continuing rehabilitation and improvement of the economic, educational, and social condition of families, and Navajo communities, that have been affected by --

"(1) the decision in the Healing case, or related proceedings,

"(2) the provision of this Act, or

"(3) the establishment by the Secretary of the Interior of grazing district number 6 as land for the exclusive use of the Hopi Tribe.

"(e) The Navajo Rehabilitation Trust Fund shall terminate when, upon petition by the Navajo Tribe, the Secretary determines that the goals of the Trust Fund have been met and the United States has been reimbursed for funds appropriated under subsection (f). All funds in the Trust Fund on such date shall be transferred to the general trust funds of the Navajo Tribe.

"(f) There is hereby authorized to be appropriated for the Navajo Rehabilitation Trust Fund not exceed $ 10,000,000 in each of fiscal years 1990, 1991, 1992, 1993, 1994 and 1995. The income from the land referred to in subsection (b) of this section shall be used to reimburse the General Fund of the United States Treasury for amounts appropriated to the Fund.".

LANDS TRANSFERRED OR ACQUIRED FOR THE NAVAJO TRIBE

SEC. 8. Subsection (h) of section 11 of Public Law 93-531 (*25 U.S.C. 640d-10(h)*) is amended by striking out "the date of this subsection who are awaiting relocation under this Act" and inserting in lieu thereof "the date of enactment of this Act: Provided, That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this Act shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this Act".

PROVISION OF ATTORNEY FEES FOR THE SAN JUAN SOUTHERN PAIUTE TRIBE

SEC. 9. (a) Subsection (e) of section 8 of Public Law 93-531 (*25 U.S.C. 640d-7(e)*) is amended by inserting a comma and the words "San Juan Southern Paiute" after the word "Navajo".

(b) Section 8 of Public Law 93-531 is amended by adding at the end thereof the following new subsection:

"(f)(1) Any funds made available for the San Juan Southern Paiute Tribe to pay for attorney's fees shall be paid directly to the tribe's attorneys of record until such tribe is acknowledged as an Indian tribe by the United States: Provided, That the tribe's eligibility for such payments shall cease once a decision by the Secretary of the Interior declining to acknowledge such tribe becomes final and no longer appealable.

"(2) Nothing in this subsection shall be interpreted as a congressional acknowledgement of the San Juan Southern Paiute as an

[*3934] Indian tribe or as affecting in any way the San Juan Southern Paiute Tribe's Petition for Recognition currently pending with the Secretary of the Interior.

"(3) There is hereby authorized to be appropriated not to exceed $ 250,000 to pay for the legal expenses incurred by the Southern Paiute Tribe on legal action arising under this section prior to enactment of the Navajo and Hopi Indian Relocation Amendments of 1988.".

SEC. 10. <<Notes>> Section 15 of Public Law 93-531 is amended by adding the following new subsection (g) at the end thereof:

"(g) Notwithstanding any other provision of law, appeals from any eligibility determination of the Relocation Commission, irrespective of the amount in controversy, shall be brought in the United States District Court for the District of Arizona.".

Descriptors

INDIANS; NAVAJO AND HOPI INDIAN RELOCATION AMENDMENTS; NAVAJO AND HOPI INDIAN RELOCATION COMMISSION; NAVAJO-HOPI LAND SETTLEMENT ACT; FAMILIES; OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION; FEDERAL INDEPENDENT AGENCIES; GOVERNMENT REORGANIZATION; RELOCATION; FEDERAL AID TO HOUSING; ARIZONA; ARBITRATION AND MEDIATION; NAVAJO REHABILITATION TRUST FUND; TRUST FUNDS

Margin Notes

1 NOTE: *25 USC 640d* note

2 NOTE: *25 USC 640d* et seq

3 NOTE: *25 USC 640d-11* note

4 NOTE: *25 USC 640d-29*

5 NOTE: *25 USC 640d-30*

6 NOTE: *25 USC 640d-14*

End of Document

USCS Fed Rules App Proc R 4

Current through changes received August 9, 2018.

Rule 4. Appeal as of Right—When Taken

(a) Appeal in a Civil Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

(i) the United States;

(ii) a United States agency;

(iii) a United States officer or employee sued in an official capacity; or

(iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party files in the district court any of the following motions under the Federal Rules of Civil Procedure—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

(i) for judgment under Rule 50(b);

(ii)to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;

(iii)for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;

(iv)to alter or amend the judgment under Rule 59;

(v)for a new trial under Rule 59; or

(vi)for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)

(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii)A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5)*Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i)a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii)regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B)A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6)*Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A)the court finds that the moving party did not receive notice under *Federal Rule of Civil Procedure 77(d)* of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under *Federal Rule of Civil Procedure 77(d)* of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if *Federal Rule of Civil Procedure 58(a)* does not require a separate document, when the judgment or order is entered in the civil docket under *Federal Rule of Civil Procedure 79(a)*; or

(ii) if *Federal Rule of Civil Procedure 58(a)* requires a separate document, when the judgment or order is entered in the civil docket under *Federal Rule of Civil Procedure 79(a)* and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under *Federal Rule of Civil Procedure 79(a)*.

(B) A failure to set forth a judgment or order on a separate document when required by *Federal Rule of Civil Procedure 58(a)* does not affect the validity of an appeal from that judgment or order.

(b) Appeal in a Criminal Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:

(i) the entry of either the judgment or the order being appealed; or

(ii) the filing of the government's notice of appeal.

(B) When the government is entitled to appeal, its notice of appeal must be filed in the district court within 30 days after the later of:

(i) the entry of the judgment or order being appealed; or

(ii) the filing of a notice of appeal by any defendant.

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision, sentence, or order — but before the entry of the judgment or order — is treated as filed on the date of and after the entry.

(3) *Effect of a Motion on a Notice of Appeal.*

(A) If a defendant timely makes any of the following motions under the Federal Rules of Criminal Procedure, the notice of appeal from a judgment of conviction must be filed within 14 days after the entry of the order disposing of the last such remaining motion, or within 14 days after the entry of the judgment of conviction, whichever period ends later. This provision applies to a timely motion:

(i) for judgment of acquittal under Rule 29;

(ii) for a new trial under Rule 33, but if based on newly discovered evidence, only if the motion is made no later than 14 days after the entry of the judgment; or

(iii) for arrest of judgment under Rule 34.

(B) A notice of appeal filed after the court announces a decision, sentence, or order — but before it disposes of any of the motions referred to in Rule 4(b)(3)(A) — becomes effective upon the later of the following:

(i) the entry of the order disposing of the last such remaining motion; or

(ii) the entry of the judgment of conviction.

(C) A valid notice of appeal is effective — without amendment — to appeal from an order disposing of any of the motions referred to in Rule 4(b)(3)(A).

(4) *Motion for Extension of Time.* Upon a finding of excusable neglect or good cause, the district court may — before or after the time has expired, with or without motion and notice — extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

(5) *Jurisdiction.* The filing of a notice of appeal under this Rule 4(b) does not divest a district court of jurisdiction to correct a sentence under *Federal Rule of Criminal Procedure 35(a)*, nor does the filing of a motion under 35(a) affect the validity of a notice of appeal filed before entry of the order disposing of the motion. The filing of a motion under *Federal Rule of Criminal Procedure 35(a)* does not suspend the time for filing a notice of appeal from a judgment of conviction.

(6) *Entry Defined.* A judgment or order is entered for purposes of this Rule 4(b) when it is entered on the criminal docket.

(c) Appeal by an Inmate Confined in an Institution.

(1) If an institution has a system designed for legal mail, an inmate confined there must use that system to receive the benefit of this Rule 4(c)(1). If an inmate files a notice of appeal in either a civil or a criminal case, the notice is timely if it is deposited in the institution's internal mail system on or before the last day for filing and:

(A) it is accompanied by:

(i) a declaration in compliance with *28 U.S.C. § 1746*—or a notarized statement—setting out the date of deposit and stating that first-class postage is being prepaid; or

(ii) evidence (such as a postmark or date stamp) showing that the notice was so deposited and that postage was prepaid; or

(B) the court of appeals exercises its discretion to permit the later filing of a declaration or notarized statement that satisfies Rule 4(c)(1)(A)(i).

(2) If an inmate files the first notice of appeal in a civil case under this Rule 4(c), the 14-day period provided in Rule 4(a)(3) for another party to file a notice of appeal runs from the date when the district court dockets the first notice.

(3) When a defendant in a criminal case files a notice of appeal under this Rule 4(c), the 30-day period for the government to file its notice of appeal runs from the entry of the judgment or order appealed from or from the district court's docketing of the defendant's notice of appeal, whichever is later.

(d) Mistaken Filing in the Court of Appeals. If a notice of appeal in either a civil or a criminal case is mistakenly filed in the court of appeals, the clerk of that court must note on the notice the date when it was received and send it to the district clerk. The notice is then considered filed in the district court on the date so noted.

History

Amended April 30, 1979, effective Aug. 1, 1979; Nov. 18, 1988, P. L. 100-690, Title VII, Subtitle C, § 7111, *102 Stat. 4419*; Dec. 1, 1991; Dec. 1, 1993; Dec. 1, 1995; Dec. 1, 1998; Dec. 1, 2002; Dec. 1, 2005; Dec. 1, 2009; Dec. 1, 2010; Dec. 1, 2011; April 28, 2016, eff. Dec. 1, 2016; April 27, 2017, eff. Dec. 1, 2017.

End of Document

25 CFR 168.13

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER I -- BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR > SUBCHAPTER H -- LAND AND WATER > PART 168 -- GRAZING REGULATIONS FOR THE HOPI PARTITIONED LANDS AREA

§ 168.13 Fences.

Fencing will be erected by the Federal Government around the perimeter of the 1882 Executive Order Area, Land Management District 6, and on the boundary of the former Joint Use Area partitioned to each tribe by the Judgment of Partition of April 18, 1979. Fencing of other areas in the former Joint Use Area will be required for a range recovery program in accordance with the range units established under § 168.4. Such fencing shall be erected at Government expense and ownership shall be clearly identified by appropriate posting on the fencing. Intentional destruction of Federal property will be treated as a violation of *18 U.S.C. 1164.*

Statutory Authority

5 U.S.C. 301; 25 U.S.C. 2, 640d-8, and 640d-18.

History

47 FR 39817, Sept. 10, 1982.

Annotations

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

NOTES APPLICABLE TO ENTIRE CHAPTER:

[PUBLISHER'S NOTE: For Federal Register citations concerning Chapter I Availability of Final Report, see: *82 FR 50532,* Nov. 1, 2017.]

End of Document

25 CFR 700.147

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART C -- GENERAL RELOCATION REQUIREMENTS

§ 700.147 Eligibility.

(a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on 12/22/74 of an area partitioned to the Tribe of which they were not members.

(b) The burden of proving residence and head of household status is on the applicant.

(c) Eligibility for benefits is further restricted by *25 U.S.C. 640d-13*(c) and 14(c).

(d) Individuals are not entitled to receive separate benefits if it is determined that they are members of a household which has received benefits.

(e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

[49 FR 22278, May 29, 1984, as amended at *51 FR 19170,* May 28, 1986]

Annotations

Case Notes

LexisNexis® Notes

Governments : Native Americans : Authority & Jurisdiction
Governments : Native Americans : Property Rights
Real Property Law : Estates : Concurrent Ownership : Partition Actions

Governments : Native Americans : Authority & Jurisdiction

Whitehair v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1892 (9th Cir Feb. 3, 1997).

Overview: *A Navajo tribal member was not entitled to relocation assistance benefits under the Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d, because she was not the head of her household as required; the tribal member did not show that the denial of her request for benefits was arbitrary.*

- The Act Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d* authorizes relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: 1) she must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, 2) she must not be a member of the tribe that received the partitioned land, and 3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Akee v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1905 (9th Cir Feb. 3, 1997).

Overview: *The trial court did not err in granting summary judgment to the Office of Navajo and Hopi Indian Relocation (ONHIR) in a tribal member's appeal of the ONHIR's denial of her request for relocation benefits under 25 U.S.C.S. § 640d because the member had not established that the ONHIR's action was inconsistent with its own standards.*

- The Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d,* authorizes, inter alia, relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: (1) a Native American must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, (2) she must not be a member of the tribe that received the partitioned land, and (3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Governments : Native Americans : Property Rights

Whitehair v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1892 (9th Cir Feb. 3, 1997).

Overview: *A Navajo tribal member was not entitled to relocation assistance benefits under the Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d, because she was not the head of her household as required; the tribal member did not show that the denial of her request for benefits was arbitrary.*

- The Act Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d* authorizes relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: 1) she must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, 2) she must not be a member of the tribe that received the partitioned land, and 3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Akee v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1905 (9th Cir Feb. 3, 1997).

Overview: *The trial court did not err in granting summary judgment to the Office of Navajo and Hopi Indian Relocation (ONHIR) in a tribal member's appeal of the ONHIR's denial of her request for relocation benefits under 25 U.S.C.S. § 640d because the member had not established that the ONHIR's action was inconsistent with its own standards.*

- The Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d,* authorizes, inter alia, relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: (1) a Native American must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, (2) she must not be a member of the tribe that received the partitioned land, and (3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Akee v. Office of Navajo & Hopi Indian Relocation, 907 F. Supp. 315, 1995 U.S. Dist. LEXIS 17661 (D Ariz Nov. 4, 1995).

Overview: *Summary judgment was granted to the Office of Navajo and Hopi Indian Relocation in a Native American's appeal of the denial of her claim for relocation assistance benefits pursuant to the Navajo-Hopi Settlement Act because substantial evidence supported the decision that the Native American did not live on the area partitioned to another tribe.*

- In order to be entitled to receive relocation benefits under the Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d* et seq., a claimant must meet three requirements. First, she must show that, on December 22, 1974, she was a legal resident of an area partitioned by the Settlement Act to the Tribe of which she is not a member. *25 C.F.R. § 700.147(a) (1986)*. Second, she must not be a member of the Tribe which received the partitioned land. *25 C.F.R. § 700.147(a)*. Third, she must have been a head of a household and/or immediate family at the time when she moved from the partitioned land. *Go To Headnote*

Bedoni v. Navajo-Hopi Indian Relocation Com., 878 F.2d 1119, 1989 U.S. App. LEXIS 8828 (9th Cir June 20, 1989).

Overview: *Navajo-Hopi Indian Relocation Commission breached the fiduciary obligation it owed to a Navajo family entitled to benefits under the Settlement Act when it encouraged the family to take the risk of deleting their children from their application.*

- Pursuant to federal regulations, a displaced person entitled to replacement-housing benefits has to be the head of a Navajo or Hopi household residing within the Joint Use Area and relocated as a consequence of the Settlement Act, 25 U.S.C.S. §§ 640d-12 to 640d-15. 25 C.F.R. § 700.147 (1982). Residency is established by fulfilling either of the following criteria: (1) Current Occupancy, (2) Maintenance of substantial recurring contacts with an identifiable homesite although the individual is temporarily away for any of the following reasons: (i) Employment, (ii) Education. 25 C.F.R. § 700.97 (1982). Go To Headnote

Real Property Law : Estates : Concurrent Ownership : Partition Actions

Whitehair v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1892 (9th Cir Feb. 3, 1997).

Overview: *A Navajo tribal member was not entitled to relocation assistance benefits under the Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d, because she was not the head of her household as required; the tribal member did not show that the denial of her request for benefits was arbitrary.*

- The Act Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d authorizes relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: 1) she must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, 2) she must not be a member of the tribe that received the partitioned land, and 3) she must have been a head of household at the time of relocation. 25 C.F.R. § 700.147. Go To Headnote

Akee v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1905 (9th Cir Feb. 3, 1997).

Overview: *The trial court did not err in granting summary judgment to the Office of Navajo and Hopi Indian Relocation (ONHIR) in a tribal member's appeal of the ONHIR's denial of her request for relocation benefits under 25 U.S.C.S. § 640d because the member had not established that the ONHIR's action was inconsistent with its own standards.*

- The Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d, authorizes, inter alia, relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: (1) a Native American must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, (2) she

must not be a member of the tribe that received the partitioned land, and (3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

End of Document

25 CFR 700.311

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART L -- DETERMINATION OF ELIGIBILITY, HEARING AND ADMINISTRATIVE REVIEW (APPEALS)

§ 700.311 Hearing scheduling and documents.

(a) Hearings shall be held as scheduled by the Presiding Officer.

(b) Notice of the hearing shall be communicated in writing to the applicant at least thirty days prior to the hearing and shall include the time, date, place, and nature of the hearing.

(c) Written notice of the Applicant's objections, if any, to the time, date, or place fixed for the hearing must be filed with the Presiding Officer at least five days before the date set for the hearing. Such notice of objections shall state the reasons therefor and suggested alternatives. Discretion as to any changes in the date, time, or place of the hearing lies entirely with the Presiding Officer, Provided, that the 30 (thirty) day notice period as provided in paragraph (b) of this section shall be observed unless waived in writing by the applicant or his representative.

(d) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this limit is extended by the Presiding Officer.

(e) All hearings shall be conducted at the Commission office in Flagstaff, Arizona, unless otherwise designated by the Presiding Officer.

(f) All time periods in this regulation include Saturdays, Sundays and holidays. If any time period would end on a Saturday, Sunday, or holiday, it will be extended to the next consecutive day which is not a Saturday, Sunday, or holiday.

(g)A copy of each document filed in a proceeding under this section must be filed with the Commission and may be served by the filing party by mail on any other party or parties in the case. In all cases where a party is represented by an attorney or representative, such attorney or representative will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney or representative, which service shall suffice as if made upon the Applicant. Where a party is represented by more than one attorney or representative, service upon one of the attorneys or representatives shall be sufficient.

(h) Hearings will be recorded verbatim and transcripts thereof shall be made when requested by any parties; costs of transcripts shall be borne by the requesting parties unless waived according to § 700.313(a)(5).

(i) Applicants may be represented by a licensed attorney or by an advocate licensed to practice in any Hopi or Navajo Tribal Court.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

46 FR 46801, Sept. 22, 1981; *47 FR 15774,* Apr. 13, 1982.

Annotations

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

End of Document

25 CFR 700.321

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART L -- DETERMINATION OF ELIGIBILITY, HEARING AND ADMINISTRATIVE REVIEW (APPEALS)

§ 700.321 Direct appeal to Commissioners.

Commission determinations concerning issues other than individual eligibility or benefits which do not require a hearing may be appealed directly to the Commission in writing. The Commission decision will constitute final agency action on such issues.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

46 FR 46801, Sept. 22, 1981; *47 FR 15774,* Apr. 13, 1982.

Annotations

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

End of Document

25 CFR 700.69

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART A -- GENERAL POLICIES AND INSTRUCTIONS > DEFINITIONS

§ 700.69 Head of household.

(a) Household. A household is:

(1)A group of two or more persons living together at a specific location who form a unit of permanent and domestic character.

(2)A single person who at the time his/her residence on land partitioned to the Tribe of which he/she is not a member actually maintained and supported him/herself or was legally married and is now legally divorced.

(b) Head of household. The head of household is that individual who speaks on behalf of the members of the household and who is designated by the household members to act as such.

(c) In order to qualify as a Head of Household, the individual must have been a Head of Household as of the time he/she moved from the land partitioned to a tribe of which they were not a member.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

[49 FR 22278, May 29, 1984]

Annotations

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

End of Document

25 CFR 700.313

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART L -- DETERMINATION OF ELIGIBILITY, HEARING AND ADMINISTRATIVE REVIEW (APPEALS)

§ 700.313 Evidence and procedure.

(a) At the hearing and taking of evidence the Applicant shall have an opportunity to:

(1) Submit and have considered facts, witnesses, arguments, offers of settlement, or proposals of adjustment;

(2) Be represented by a lawyer or other representative as provided herein;

(3) Have produced Commission evidence relative to the determination, Provided, that the scope of pre-hearing discovery of evidence shall be limited to relevant matters as determined by the Presiding Officer;

(4) Examine and cross-examine witnesses;

(5) Receive a transcript of the hearing on request and upon payment of appropriate Commission fees as published by the Commission, which may be waived in cases of indigency.

(b) The Presiding Officer is empowered to:

(1) Administer oaths and afffirmations;

(2) Rule on offers of proof;

(3) Receive relevant evidence;

(4) Take depositions or have depositions taken when the ends of justice would be served and to permit other pre-hearing discovery within his/her discretion;

(5) Regulate the course and conduct of the hearings; including pre-hearing procedures;

(6) Hold pre-hearing or post-hearing conferences for the settlement or simplification of the issues;

(7) Dispose of procedural requests or similar matters;

(8) Make a record of the proceedings;

(9) Hold the record open for submission of evidence no longer than fourteen days after completion of the hearings;

(10) Make or recommend a decision in the case based upon evidence, testimony, and argument presented;

(11) Enforce the provisions of *5 USCA section 557*(d) in the event of a violation thereof;

(12) Issue subpoenas authorized by law; and

(13) Extend any time period of this subpart upon his/her own motion or upon motion of the applicant, for good cause shown.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

46 FR 46801, Sept. 22, 1981; *47 FR 15774,* Apr. 13, 1982.

Annotations

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

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Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

End of Document

25 CFR 700.1

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART A -- GENERAL POLICIES AND INSTRUCTIONS

§ 700.1 Purpose.

The purpose of this part is to implement provisions of the Act of December 22, 1974 (Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929),* hereinafter referred to as the Act, in accordance with the following objectives--

(a) To insure that persons displaced as a result of the Act are treated fairly, consistently, and equitably so that these persons will not suffer the disproportionate adverse, social, economic, cultural and other impacts of relocation.

(b) To set forth the regulations and procedures by which the Commission shall operate; and implement the provisions of the Act.

(c) To establish standards consistent with those established in the implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 *(84 Stat. 1894, 42 U.S.C. 4601* et. seq., Pub. L. 91-646), hereinafter referred to as the Uniform Act.

(d) To insure that owners of habitations and other improvements to be acquired pursuant to the Act are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation, relieve congestion in the courts and to promote public confidence in the Commission's relocation program.

(e) To facilitate development of a relocation plan according to the Act and carry out the directed relocation as promptly and fairly as possible, with a minimum of hardship and discomfort to the relocation, in accordance with the Act.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

47 FR 2092, Jan. 14, 1982.

End of Document

25 CFR 700.97

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART A -- GENERAL POLICIES AND INSTRUCTIONS > DEFINITIONS

§ 700.97 Residence.

(a) Residence is established by proving that the head of household and/or his/her immediate family were legal residents as of 12/22/74 of the lands partitioned to the Tribe of which they are not members.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

[49 FR 22278, May 29, 1984]

Annotations

Case Notes

LexisNexis® Notes

Governments : Native Americans : Property Rights

Bedoni v. Navajo-Hopi Indian Relocation Com., 878 F.2d 1119, 1989 U.S. App. LEXIS 8828 (9th Cir June 20, 1989).

Overview: *Navajo-Hopi Indian Relocation Commission breached the fiduciary obligation it owed to a Navajo family entitled to benefits under the Settlement Act when it encouraged the family to take the risk of deleting their children from their application.*

- Pursuant to federal regulations, a displaced person entitled to replacement-housing benefits has to be the head of a Navajo or Hopi household residing within the Joint Use Area and relocated as a consequence of the Settlement Act, *25 U.S.C.S. §§ 640d-12* to 640d-15. *25 C.F.R. § 700.147 (1982)*. Residency is established by fulfilling either of the following criteria: (1) Current Occupancy, (2) Maintenance of substantial recurring contacts with an identifiable homesite although the individual is temporarily away for any of the following reasons: (i) Employment, (ii) Education. *25 C.F.R. § 700.97 (1982)*. *Go To Headnote*

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

End of Document

25 CFR 700.138

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART C -- GENERAL RELOCATION REQUIREMENTS

§ 700.138 Persons who have not applied for voluntary relocation by July 7, 1986.

(a) Pursuant to *25 U.S.C. 640d-14* (d)(3) heads-of-household who do not make timely arrangements for relocation by filing an application by July 7, 1986, shall be provided a replacement home by the Commission. To be eligible for benefits (Housing and Moving Expenses), such persons must be, as of July 7, 1986, physically residing full time on land partitioned to a tribe of which they are not members and they must also otherwise meet all other current eligibility criteria.

(b) The Commission shall utilize amounts payable with respect to such households pursuant to *25 U.S.C. 640d-14*(b)(2) and 25 U.S.C. 640d-34(a) for the construction or acquisition of a home and related facilities for such households.

(c) Persons identified by the Commission as potentially subject to relocation who have not applied for relocation assistance shall be contacted by the Commission as soon as practicable after July 7, 1986. At such time, the Commission shall--

(1) Request that the head-of-household choose an available area for relocation, and contract with the Commission for relocation; and

(2) Offer the relocatee suitable housing; and

(3) Offer to purchase from the head-of-household the habitation and improvements; and

(4) Offer provisions for the head-of-household and his family to be moved (e.g., moving expenses, etc.).

(d) If a person so identified fails to agree to move after the actions outlined in this section are taken by the Commission and suitable housing is available (or sufficient funds are available to assure the relocation assistance to which the relocatee may be entitled), the Commission will issue a ninety-day notice stating the date by which the person will be required to vacate the area partitioned to the Tribe of which he is not a member.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

[51 FR 19170, May 28, 1986]

End of Document

25 CFR 700.147

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART C -- GENERAL RELOCATION REQUIREMENTS

§ 700.147 Eligibility.

(a) To be eligible for services provided for under the Act, and these regulations, the head of household and/or immediate family must have been residents on 12/22/74 of an area partitioned to the Tribe of which they were not members.

(b) The burden of proving residence and head of household status is on the applicant.

(c) Eligibility for benefits is further restricted by *25 U.S.C. 640d-13*(c) and 14(c).

(d) Individuals are not entitled to receive separate benefits if it is determined that they are members of a household which has received benefits.

(e) Relocation benefits are restricted to those who qualify as heads-of-household as of July 7, 1986.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

[49 FR 22278, May 29, 1984, as amended at *51 FR 19170,* May 28, 1986]

Annotations

Case Notes

LexisNexis® Notes

Governments : Native Americans : Authority & Jurisdiction
Governments : Native Americans : Property Rights
Real Property Law : Estates : Concurrent Ownership : Partition Actions

Governments : Native Americans : Authority & Jurisdiction

Whitehair v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1892 (9th Cir Feb. 3, 1997).

Overview: *A Navajo tribal member was not entitled to relocation assistance benefits under the Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d, because she was not the head of her household as required; the tribal member did not show that the denial of her request for benefits was arbitrary.*

- The Act Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d* authorizes relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: 1) she must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, 2) she must not be a member of the tribe that received the partitioned land, and 3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Akee v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1905 (9th Cir Feb. 3, 1997).

Overview: *The trial court did not err in granting summary judgment to the Office of Navajo and Hopi Indian Relocation (ONHIR) in a tribal member's appeal of the ONHIR's denial of her request for relocation benefits under 25 U.S.C.S. § 640d because the member had not established that the ONHIR's action was inconsistent with its own standards.*

- The Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d,* authorizes, inter alia, relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: (1) a Native American must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, (2) she must not be a member of the tribe that received the partitioned land, and (3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Governments : Native Americans : Property Rights

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- The Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d,* authorizes, inter alia, relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: (1) a Native American must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, (2) she must not be a member of the tribe that received the partitioned land, and (3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Akee v. Office of Navajo & Hopi Indian Relocation, 907 F. Supp. 315, 1995 U.S. Dist. LEXIS 17661 (D Ariz Nov. 4, 1995).

Overview: *Summary judgment was granted to the Office of Navajo and Hopi Indian Relocation in a Native American's appeal of the denial of her claim for relocation assistance benefits pursuant to the Navajo-Hopi Settlement Act because substantial evidence supported the decision that the Native American did not live on the area partitioned to another tribe.*

- In order to be entitled to receive relocation benefits under the Navajo-Hopi Settlement Act, *25 U.S.C.S. § 640d* et seq., a claimant must meet three requirements. First, she must show that, on December 22, 1974, she was a legal resident of an area partitioned by the Settlement Act to the Tribe of which she is not a member. *25 C.F.R. § 700.147(a) (1986)*. Second, she must not be a member of the Tribe which received the partitioned land. *25 C.F.R. § 700.147(a)*. Third, she must have been a head of a household and/or immediate family at the time when she moved from the partitioned land. *Go To Headnote*

Bedoni v. Navajo-Hopi Indian Relocation Com., 878 F.2d 1119, 1989 U.S. App. LEXIS 8828 (9th Cir June 20, 1989).

Overview: *Navajo-Hopi Indian Relocation Commission breached the fiduciary obligation it owed to a Navajo family entitled to benefits under the Settlement Act when it encouraged the family to take the risk of deleting their children from their application.*

- Pursuant to federal regulations, a displaced person entitled to replacement-housing benefits has to be the head of a Navajo or Hopi household residing within the Joint Use Area and relocated as a consequence of the Settlement Act, 25 U.S.C.S. §§ 640d-12 to 640d-15. 25 C.F.R. § 700.147 (1982). Residency is established by fulfilling either of the following criteria: (1) Current Occupancy, (2) Maintenance of substantial recurring contacts with an identifiable homesite although the individual is temporarily away for any of the following reasons: (i) Employment, (ii) Education. 25 C.F.R. § 700.97 (1982). Go To Headnote

Real Property Law : Estates : Concurrent Ownership : Partition Actions

Whitehair v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1892 (9th Cir Feb. 3, 1997).

Overview: *A Navajo tribal member was not entitled to relocation assistance benefits under the Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d, because she was not the head of her household as required; the tribal member did not show that the denial of her request for benefits was arbitrary.*

- The Act Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d authorizes relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: 1) she must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, 2) she must not be a member of the tribe that received the partitioned land, and 3) she must have been a head of household at the time of relocation. 25 C.F.R. § 700.147. Go To Headnote

Akee v. Office of Navajo & Hopi Indian Relocation, 1997 U.S. App. LEXIS 1905 (9th Cir Feb. 3, 1997).

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- The Navajo-Hopi Settlement Act, 25 U.S.C.S. § 640d, authorizes, inter alia, relocation assistance benefits for heads of households who moved from land partitioned to the tribe of which they are not a member. In order to qualify for relocation benefits, an applicant must satisfy three requirements: (1) a Native American must prove that on December 22, 1974, she was a legal resident of an area partitioned under the Settlement Act, (2) she

must not be a member of the tribe that received the partitioned land, and (3) she must have been a head of household at the time of relocation. *25 C.F.R. § 700.147*. *Go To Headnote*

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

End of Document

25 CFR 700.311

This document is current through the August 22, 2018 issue of the Federal Register. with the exception of the following which all affect title 48 (83 FR 42568, 83 FR 42569, 83 FR 42570, 83 FR 42571, 83 FR 42579). Title 3 is current through August 3, 2018.

Code of Federal Regulations > TITLE 25 -- INDIANS > CHAPTER IV -- THE OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION > PART 700 -- COMMISSION OPERATIONS AND RELOCATION PROCEDURES > SUBPART L -- DETERMINATION OF ELIGIBILITY, HEARING AND ADMINISTRATIVE REVIEW (APPEALS)

§ 700.311 Hearing scheduling and documents.

(a) Hearings shall be held as scheduled by the Presiding Officer.

(b) Notice of the hearing shall be communicated in writing to the applicant at least thirty days prior to the hearing and shall include the time, date, place, and nature of the hearing.

(c) Written notice of the Applicant's objections, if any, to the time, date, or place fixed for the hearing must be filed with the Presiding Officer at least five days before the date set for the hearing. Such notice of objections shall state the reasons therefor and suggested alternatives. Discretion as to any changes in the date, time, or place of the hearing lies entirely with the Presiding Officer, Provided, that the 30 (thirty) day notice period as provided in paragraph (b) of this section shall be observed unless waived in writing by the applicant or his representative.

(d) All hearings shall be held within thirty days after Commission receipt of the applicant's request therefor unless this limit is extended by the Presiding Officer.

(e) All hearings shall be conducted at the Commission office in Flagstaff, Arizona, unless otherwise designated by the Presiding Officer.

(f) All time periods in this regulation include Saturdays, Sundays and holidays. If any time period would end on a Saturday, Sunday, or holiday, it will be extended to the next consecutive day which is not a Saturday, Sunday, or holiday.

(g)A copy of each document filed in a proceeding under this section must be filed with the Commission and may be served by the filing party by mail on any other party or parties in the case. In all cases where a party is represented by an attorney or representative, such attorney or representative will be recognized as fully controlling the case on behalf of his client, and service of any document relating to the proceeding shall be made upon such attorney or representative, which service shall suffice as if made upon the Applicant. Where a party is represented by more than one attorney or representative, service upon one of the attorneys or representatives shall be sufficient.

(h) Hearings will be recorded verbatim and transcripts thereof shall be made when requested by any parties; costs of transcripts shall be borne by the requesting parties unless waived according to § 700.313(a)(5).

(i) Applicants may be represented by a licensed attorney or by an advocate licensed to practice in any Hopi or Navajo Tribal Court.

Statutory Authority

Pub. L. 99-590; Pub. L. 93-531, *88 Stat. 1712* as amended by Pub. L. 96-305, *94 Stat. 929,* Pub. L. 100-666, *102 Stat. 3929 (25 U.S.C. 640d).*

History

46 FR 46801, Sept. 22, 1981; *47 FR 15774,* Apr. 13, 1982.

Annotations

Research References & Practice Aids

NOTES APPLICABLE TO ENTIRE TITLE:

CROSS REFERENCES: Regulations pertaining to migratory birds, applicable to Indians living on reservations: See Wildlife and Fisheries, 50 CFR chapter I.

Bureau of Land Management regulations pertaining to Indians: See Bureau of Land Management, 43 CFR part 2530.

Public Health regulations pertaining to contracts and health: See Public Health, 42 CFR chapter I.

Other regulations issued by the Department of the Interior appear in title 30, chapters II, III, IV, VI, VII; title 36, chapter I; title 41, chapter 114; title 48, chapter 14; title 43; and title 50, chapters I and IV, Code of Federal Regulations.

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