No. 20-16955

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TULE LAKE COMMITTEE,
Plaintiff-Appellant

vs.

FEDERAL AVIATION ADMINISTRATION, et al.,
Defendants-Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

BRIEF FOR THE APPELLANT, TULE LAKE COMMITTEE

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DISCLOSURE STATEMENT UNDER FRAP 26.1

The Tule Lake Committee, Appellant, is a California non-profit public benefit corporation, tax-exempt under Internal Revenue Code § 501(c)(3), organized (a) to educate the public about the false imprisonment of over 120,000 men, women, and children of Japanese ancestry into ten concentration camps in the United States in the 1940s; (b) to recognize the unique role of the Tule Lake camp, which became a Segregation Center to punish inmates from all ten camps who dissented from their false imprisonment and who, for peacefully expressing their views, were unjustly segregated and stigmatized as "disloyal"; and (c) to preserve the history and experiences of the inmates of the Tule Lake Segregation Center and their struggles to cope with their isolation under harsh conditions. No corporation is a parent to the Committee. No publicly held corporation owns any stock in the Committee.

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JURISDICTIONAL STATEMENT

The district court had subject matter jurisdiction of the claims against the Tribal and City Defendants, as this brief argues, under 28 U.S.C. § 1331 (federal question), because of the elemental and dispositive role of the Federal Airport Act of 1946 as set forth in the complaint. Subject matter jurisdiction of State law claims is alleged under 28 U.S.C. § 1367 (supplemental jurisdiction).

This Court has jurisdiction under 28 U.S.C. § 1291 because the appealed-from order, filed September 25, 2020, dismissing all claims against all defendants, is appealable as a final decision. The appeal is timely because FRAP 4(a)(1)(B)(ii) allows notice of appeal to be filed within 60 days after the order appealed from, and the notice was timely filed September 30, 2020.

ISSUES PRESENTED FOR REVIEW

A. Did the district court err in holding that there was no federal question jurisdiction under 28 U.S.C. § 1331 of the claim against the Tribal and City Defendants that the Indian Tribe was statutorily ineligible for transfer of the federally-granted airport property?

B. If federal question jurisdiction existed, did the district court err in dismissing the state law claims against the Tribal and City Defendants under 28 U.S.C. § 1367, the supplemental jurisdiction statute?

STATEMENT OF THE CASE

A. THE PERTINENT FACTS

In the 1940s the federal government exiled the Japanese Americans from the west coast solely because of their Japanese ancestry. Ten federal concentration camps set up under Executive Orders 9066 and 9102 imprisoned approximately 120,000 Japanese American citizens and immigrants. Complaint, D.C. Doc. 1, at 2, ER-68, lines 15-16. The "military necessity" rationale for the incarceration was false.[1]

In considering the Tule Lake basin as one of the incarceration sites, the War Relocation Authority reported the local residents' hostility toward Japanese Americans and those residents' desire to maintain the area as "White Man's Country." Cmp. at 4, ¶15, ER-70. In awarding homesteads, the Bureau of Reclamation's Klamath Project conformed to those Jim Crow expectations by awarding no homesteads to Japanese Americans. Cmp. at 4, ¶16, ER-70.

Beginning in early 1943, the individuals in the ten camps were expected to answer a misconceived and ineptly administered "loyalty" questionnaire asking innocent American citizens and lawful permanent residents their willingness to perform combat service in the military, and to give up an

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[1] *Personal Justice Denied: Report of the Commission on Wartime Relocation and Internment of Civilians* (1982), at 4-8.

assumed obedience to the Emperor.[2] Up to 12,000 used this occasion for peaceful protest of their treatment by the federal government. Those who refused to answer, or gave "no" or conditional "yes" responses[3], were segregated into the Tule Lake camp. Tule Lake became a maximum-security segregation center imprisoning 18,000 persons. Cmp. at 3, ¶14, ER-69.[4]

In 1951 the federal government, oblivious to institutional Jim Crow racial policies[5] and to the Tule Lake camp site's historical significance, granted 359 acres of the Tule Lake camp site (including two-thirds of the camp's barracks area) to the City of Tulelake to use as an airport. Cmp. at 4-5, ¶19, ER-70–71; Patent ("Pat.,") Cmp. Ex. A, ER-85.

As the Patent recites,[6] the Patent was made "pursuant to the authority contained in Section 16 of the Federal Airport Act" of 1946.[7] Under the Act's Section 16(a) and (b), the then Administrator of Civil Aeronautics was

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[2] *Personal Justice Denied* at 191-94.

[3] *Personal Justice Denied* at 194-97.

[4] *See also Personal Justice Denied* at 206-12.

[5] See the second preceding paragraph. Federal "Jim Crow" policies outside the 1940s treatment of Japanese Americans are detailed in Richard Rothstein, *The Color of Law: A Forgotten History of How Our Government Segregated America* (2017).

[6] Pat. at 1, ER-85, first sentence.

[7] Pub. L. No. 79-377, 60 Stat. 170 (May 13, 1946). A copy of the Act is the Addendum hereto.

responsible for initiating conveyance of federal land to a "public agency." Addendum at 10. Section 2(a)(7) of the Act defined public agencies as federal, Territorial, State, local, or tax-supported entities. Addendum at 1. The federal land was for use as a "public airport." Act Section 16(a), Addendum at 10. A "public airport" was required by Act Section 2(a)(8) to be "under the control of a public agency" and to have a "publicly owned" landing area. Addendum at 1. Act Section 16(a) contemplated conveyance only "to the public agency sponsoring the project in question or owning or controlling the airport." Addendum at 10.

The site's historical significance was recognized in 1975 by the State of California, which designated the site as a State Historic Landmark. Cmp. at 6, ¶27, ER-72.

The injustice of the World War II incarceration was recognized when President Ronald Reagan signed the Civil Liberties Act of 1988.[8] The Act found that the incarceration resulted from "racial prejudice, wartime hysteria, and a failure of political leadership."[9] It provided symbolically significant monetary redress to survivors of the wartime incarceration.[10] It initiated

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[8] Pub. L. No. 100-383, 102 Stat. 903 (Aug. 10, 1988).

[9] *Id.* § 2(a).

[10] *Id.* § 105(a)(1).

official efforts to educate the public[11] to the causes and consequences of the incarceration. Educational efforts have included National Park Service ownership and management of key incarceration sites to disseminate the lessons of that dark moment in our nation's history.

In 2006, the Secretary of the Interior designated 37 acres of federal and state-owned land as the Tule Lake Segregation Center National Historic Landmark or "NHL." NHL status is the highest level of recognition our nation accords to a historic site. The National Park Service manages the NHL. Cmp. at 6, ¶29, ER-72.

Seeking to protect and recognize Tule Lake's significance, President George W. Bush, by Presidential Proclamation 8327 of December 5, 2008, made under the Antiquities Act of 1906, established the World War II Valor in the Pacific National Monument, including a Tule Lake Unit. Cmp. at 6, ¶29, ER-72; 73 Fed. Reg. 75293 (December 10, 2008).

Recognition of the historical significance of the entire Tule Lake site was clarified in an exchange of communications between the FAA and the California State Historic Preservation Officer or SHPO from 2010 to 2014. The FAA and the SHPO agreed that the airport property is eligible for listing in the National Register of Historic Places. Cmp. at 6-7, ¶30, ER-72–73.

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[11] *Id.* § 104(a) (establishment of Civil Liberties Public Education Fund).

In July 2018 the City of Tulelake's City Council met and announced its decision to transfer ownership of the historic airport property to the Tribe. The Tribe promised business development on the site. Cmp. at 13, ¶¶68, 70, ER-75.

In 2019 an Act of Congress elevated the Tule Lake Unit to the status of an independent and Congressionally-created National Monument, the Tule Lake National Monument. Cmp. at 8, ¶33, ER-74.

The Tule Lake site's historical significance includes, but does not end at, its use as a place of incarceration of Americans solely because of their race. Ten War Relocation Authority or WRA concentration (**not** "internment") camps[12] share this fact. But Tule Lake's unique social justice story makes it the most significant:

- Tule Lake was the only WRA incarceration camp to become a maximum-security segregation center used to punish Japanese Americans who performed the quintessentially American act of

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[12] "Internment camp" was used by the WRA and the Department of Justice to refer to camps imprisoning "enemy aliens," that is, citizens of Japan and other enemy nations. The WRA referred to its own facilities as "concentration camps" and distinguished them from Department of Justice internment camps. *See Americans' Misuse of "Internment,"* 14 Seattle Journal for Social Justice 797 (2016), http://digitalcommons.law.seattleu.edu/sjsj/vol14/iss3/12. See especially pages 834 and 835-36, reprinting WRA records, and 837, reprinting a Department of Justice order.

peacefully exercising their freedom of expression.

- Tule Lake was the only camp where the government induced some 6,000 birthright citizens of the United States, in anger and despair, to give up their U.S. citizenship.
- Tule Lake was the only camp where the government imputed foreign citizenship to U.S. citizen renunciants, classifying them as "enemy aliens" to prepare to deport them to Japan.

Members of the public are learning of Tule Lake's significance as an American civil rights site. They want to experience the site's vastness and traverse the barracks areas where families and individuals were forced to live.

The Tule Lake Committee organizes public programs and tours in the limited jail and stockade area that is managed by the National Park Service. But public visitation in the barracks area where incarcerated Japanese Americans lived and died is restricted because of the area's use by an airfield servicing a crop-dusting business. Efforts to agree on dual use of the airfield have not succeeded.

B. THE PROCEDURAL HISTORY

This appeal seeks to reverse the district court's dismissal of the Tule Lake Committee's claim that the Modoc Nation, as an Indian Tribe, is statutorily ineligible for transfer of the airport property patented under the

Federal Airport of 1946. The complaint sets out this statutory claim in allegation paragraphs 94, 96, 97, 98, 100, 101, 102, 103, and 104, and prayer paragraph 194. Cmp. at 15-16 and 26, ER-76–77 and ER-83.

The dismissal motion for the City Defendants (whose act of transfer the lawsuit challenges), D.C. Doc. 13, at 12-13, ER-65–66, engaged with this claim's statutory merits, arguing that the Tribe, although ineligible under the 1946 Act, became eligible by a later enactment—"current law"—for transfer of the patented land. The Committee's opposition to that motion, Doc. 16, at 4-5, ER-62–63, argued that "the Patent … is strictly limited by the statutory authority as it stood at the time of the patent and is not broadened by a later-enacted statute." The City Defendants' reply, Doc. 19, at 8-13 and n.3, ER-55–60, again argued the later (1994) enactment.[13]

Although the complaint's first paragraph (at ER-67) asserts federal-question jurisdiction, defense motions did not challenge that jurisdictional assertion. Thus, at the hearing on defense motions, held September 21, 2020, no party had briefed federal-question jurisdiction. The district court raised federal-question jurisdiction *sua sponte*, saying, "[t]here's no discussion in your brief or in your complaint as to how just because you're talking about a

[13] The briefing of the statutory controversy in the district court is recited not for decision of that controversy by this Court, but to confirm the statutory controversy's presence.

federal land patent it somehow constitutes 1331 federal question jurisdiction…. You know that just because you talk about a federal statute doesn't give you federal jurisdiction." Hearing transcript at 16, line 20, to 17, line 1, ER-32–33.

The final order followed on September 25, 2020. The order said that "the court will dismiss plaintiff's only federal claims." Doc. 22 at 12:15-16, ER-14, lines 15-16. In so saying, the order implied that the Committee's claim of Indian Tribes' federal statutory ineligibility for transfer does not arise under federal law.

Under 28 U.S.C. § 1367, the supplemental jurisdiction statute, after finding no federal question jurisdiction, the district court dismissed "Plaintiff's claims under California law"[14] against the City Defendants and the Tribal Defendants. ER-16, line 1.

SUMMARY OF THE ARGUMENT

The Modoc Nation's Asserted Statutory Ineligibility for Transfer of the Federally Patented Land Presents a Federal Question under 28 U.S.C. § 1331: The district court erred in holding that there was no federal-question jurisdiction under 28 U.S.C. § 1331 of the claim against the Tribal and City

[14] The complaint includes claims under a California open-government law, the Ralph M. Brown Act. Cmp. at 21-24, ¶¶145-176, ER-79–82.

Defendants that the Indian Tribe was statutorily ineligible for transfer of the federally-granted airport property.

To determine whether a lawsuit "aris[es] under" the Federal Airport Act of 1946, within the meaning of the jurisdictional grant in 28 U.S.C. § 1331, one asks whether (1) the federal law in issue creates a private right of action; (2) the suit involves the 1946 Act's application; (3) relief depends on application of the 1946 Act; (4) the 1946 Act issue appears from the complaint; (5) the dispute about the 1946 Act is substantial, involving a serious federal interest in having a federal forum; and (6) federal jurisdiction here would harm the federal-state division of labor. *See Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312-13 (2005).

First, while this action does not invoke a right of action created by the federal law allegedly violated, "significant federal issues" can make such a right of action unnecessary. *Grable*, 545 U.S. at 312. Second, the complaint concerns the 1946 Federal Airport Act's application because it alleges that the 1946 Act applies so as to prohibit transfer of the land by the patentee City to tribal entities. Third, relief in this suit depends on the application of the 1946 Act to the City's attempt to retransfer the land. Fourth, the complaint facially establishes that the plaintiff's right to relief requires resolution of this question of federal law. Fifth, this action involves a substantial federal issue,

implicating serious federal interests, that "sensibly belongs in a federal court." The federal interests in the application of the 1946 Act include judicial protection of the federal government from having conveyed more rights in land than it intended at the time of the conveyance. Sixth, there is no prospect that exercising federal jurisdiction in this case will disrupt the state-federal division of labor.

The Dismissal of State-Law Claims under the Supplemental Jurisdiction Statute, 28 U.S.C. § 1367, Premised on No Federal Question in Suit, Should Be Vacated: If federal question jurisdiction exists, the district court erred in dismissing the state law claims against the Tribal and City Defendants under 28 U.S.C. § 1367, the supplemental jurisdiction statute, and should decide anew whether to exercise supplemental jurisdiction over the state law claims.

ARGUMENT

A. THE MODOC NATION'S ALLEGED STATUTORY INELIGIBILITY FOR TRANSFER OF THE FEDERALLY PATENTED LAND PRESENTS A FEDERAL QUESTION UNDER 28 U.S.C. § 1331.

Standard of Review: This Court reviews *de novo* a district court's decision on subject matter jurisdiction. *Galt G/S v. Hapag-Lloyd AG*, 60 F.3d 1370, 1373 (9th Cir. 1995); *United States v. City of Twin Falls*, 806 F.2d 862, 866 (9th Cir. 1986).

Argument: This lawsuit, challenging the Modoc Nation's claimed ownership of the land granted by the United States in 1951, "arises under" the Federal Airport Act of 1946 within the meaning of the jurisdictional grant in 28 U.S.C. § 1331, which provides:

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

The Supreme Court lists the "arising under" issues to be decided for a suit like this one in *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312-13 (2005): (1) At the outset, does the federal law itself create the cause of action? (2) Is the federal law's "construction or application" in issue? (3) Does relief "depend" on this construction or application? (4) Does the federal issue "appear[] from the complaint"? (5) Is the federal issue "a substantial one" with "a serious federal interest in" a federal forum? (6) Is federal jurisdiction consistent with the "sound division of labor between state and federal courts"?

This argument addresses these issues seriatim.

1. A Federal Law in Issue Need Not Create a Private Right of Action

While most plaintiffs invoking Section 1331 plead a cause of action created by the federal law allegedly violated, there is "another longstanding, if less frequently encountered, variety of federal 'arising under' jurisdiction":

claims that lack a right of action created by the law allegedly violated but that "implicate significant federal issues." *Grable*, 545 U.S. at 312 (citing *Hopkins v. Walker*, 244 U.S. 486, 490-91 (1917)).

The federal law in issue below is the Federal Airport Act of 1946, the Act that authorized the 1951 federal land patent. This law challenges tribal ownership of the land in issue below, because such ownership would enlarge the bundle of rights granted in the 1951 federal land patent. The claim pled below, for declaratory relief, is created not by the 1946 Act but by either the federal or the state declaratory judgment statute. 28 U.S.C. § 2201; Cal. Code Civ. Proc. § 1060.

As shown in the discussion of the remaining *Grable* issues, this suit arises from federal law notwithstanding the lack of a right to sue directly created by the Federal Airport Act of 1946.

2. This Suit Involves the 1946 Act's Application

The second *Grable* issue is whether the federal law's "construction or application" is in issue. *Grable*, 545 U.S. at 313 (quoting *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 199 (1921), internal quotation marks omitted).

The complaint places the 1946 Act's application in issue by alleging that the 1946 Act applies so as to prohibit transfer of the land by the patentee

City to tribal entities. The complaint relies on the application of the 1946 Act to the City's attempt to transfer the historic property to the Tribe. Specifically, Complaint ¶94 alleges that the Act's limits of authority were expressly imported into the Patent. ER-76–77, Cmp. at 15-16. Complaint ¶96 quotes the Act's definition of "public airport." ER-77, Cmp. at 16. Complaint ¶98 quotes the Act's definition of "public agency" and alleges that a Tribal entity is not a public agency under the Act. ER-77. Complaint ¶97 recites the Act's limitation that federal property could be conveyed only to a "public agency." ER-77. Thus, the complaint relies on application of the 1946 Act to invalidate the transfer to the Tribe.

3. Relief Depends on Application of the 1946 Act

As *Grable* reflects, for federal question jurisdiction a suit must not merely relate to the federal law's construction or application. Instead, "the right to relief" must "**depend**[] upon the construction or application" of federal law. *Grable*, 545 U.S. at 313 (emphasis supplied). The Marshall Court established a like materiality requirement in *Cohens v. Virginia*, 19 U.S. 264 (1821): "A case … may truly be said to arise under the constitution or a law of the United States, whenever its correct decision depends on the construction of either." *Id.* at 379.

The rule that the suit's result must depend on the validity, construction

or effect of a federal law "is especially so of a suit involving rights to land acquired under a law of the United States." *Shulthis v. McDougal*, 225 U.S. 561, 569 (1912). The present suit concerns a right to land so acquired, namely, the right of the City to retransfer the land patented to it under the 1946 Act.

4. The 1946 Act Issue Appears from the Complaint

Grable reflects the well-pleaded complaint condition of federal question jurisdiction by requiring that the materiality of the federal law "appears from the [complaint]." *Grable*, 545 U.S. at 313 (brackets in original). Under the well-pleaded complaint rule, a plaintiff's case can "'arise under' the laws of the United States if a well-pleaded complaint established that its right to relief under state law requires resolution of a substantial question of federal law in dispute between the parties." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 1, 13 (1983).[15]

5. The Dispute About The 1946 Act Is Substantial

Under *Grable*, "federal jurisdiction demands not only a contested federal issue, but a substantial one, indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum." *Grable*, 545 U.S. at 313 (collecting cases). A serious federal interest here is judicial protection of the federal government from having conveyed more rights in

[15] *See also Shulthis*, 225 U.S. at 569; *Bankers Mut. Casualty Co. v. Mpls., S.P. & S.S.M. R. Co.*, 192 U.S. 371, 385 (1904).

land than it intended at the time of the conveyance.

This protection looks to original meanings. "The words of an instrument are to be given the meaning that they were given when the instrument was executed…. [O]ur task is to discern congressional intent in 1908." *Idaho v. Hodel*, 814 F.2d 1288, 1295 (9th Cir. 1987) (construing a 1908 Congressional grant of federal land to Idaho for use as a "public park").

The protection also aims to protect the government against overbroad construction of its land grants: "All grants of this description are strictly construed against the grantee"; "what is not given expressly, or by necessary implication, is withheld." *Leavenworth, Lawrence, and Galveston R. Co. v. United States*, 92 U.S. 733, 740 (1876) (applying a treaty-based exception to a federal land grant) (citing *The Dubuque and Pacific Railroad Co. v. Litchfield*, 64 U.S. 66 (1860)).

Another "substantial" federal issue with a "serious federal interest in claiming the advantages thought to be inherent in a federal forum" is in *Grable* itself, a suit based on a state-law right of action, where the plaintiff complained of inadequate notice under a federal tax statute. As the Supreme Court reasoned, that federal tax provision's meaning is an important federal-law issue "that sensibly belongs in a federal court." *Grable*, 545 U.S. at 315.

For resolution of questions regarding the scope of federal land grants

under the 1946 Act, the federal government has a serious interest in a federal forum. Although the federal forum does not guarantee that the government will prevail, e.g., *Hodel*, 814 F.2d at 1295 (approving an interpretation of "public park" favoring Idaho and not the federal government), the federal courts are especially familiar with assertions of Congressional intent and federal governmental interests.

Thus, in *Leavenworth*, private parties undertook railway-related development on alternating sections of land granted to Kansas by the Secretary of the Interior for Kansas to re-grant to the railroad company. An exception to the federal land grant withheld transfer of land "heretofore reserved." *Leavenworth*, 92 U.S. at 746. The federal tracts at issue lay in an Osage Indian reservation created by treaty, and the Supreme Court interpreted the words "heretofore reserved" as including the Osage reservation. The Court gave dispositive interpretive weight to the Osage's treaty-based right of "exclusive enjoyment" of the tracts in issue. *Id.* at 747. The Court's interpretation hurt parties who, despite the land grant's exception, had lent money in reliance on the grants. *Id.* at 753. The three dissenting Justices would have given greater interpretive weight to those parties' "expenditure of millions," *id.* at 760, than did the Court.

Such acts of federal statutory interpretation and balancing of interests

implicating federal policies would, to borrow a phrase from *Grable*, 545 U.S. at 315, "sensibly belong[] in a federal court." In *Leavenworth*, 92 U.S. at 746-47, and here, the indicated forum for interpreting the federal land grant is the federal forum.[16]

6. Federal Jurisdiction Does Not Harm the Federal-State Division of Labor

Finally, federal question jurisdiction is "subject to a possible veto," for Section 1331 will apply "only if federal jurisdiction is consistent with congressional judgment about the sound division of labor between state and federal courts." *Grable*, 545 U.S. at 313. There "must always be an assessment of any disruptive portent in exercising federal jurisdiction." *Id.* at 314. Thus, in *Grable* the Supreme Court foresaw "only a microscopic effect on the federal-state division of labor" because only a "rare state title case …

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[16] While the Committee relies on the controversy over the application of the Federal Airport Act of 1946, this suit also presents a federal-law controversy over the construction of a federal land grant. "The laws of the United States alone control the disposition of title to its lands…. The construction of grants by the United States is a federal not a state question." *United States v. Oregon*, 295 U.S. 1, 27-28 (1935) (relied on by this Court in *Idaho v. Hodel*, 814 F.2d 1288, 1293 (9th Cir. 1987)). Like the meander-line property grant controversy in *Oregon* and the contested interpretation of the parkland patent in *Idaho*, this suit presents a serious controversy over the construction of a federal land grant, namely, the question argued in the trial court of whether the limitations in the 1946 Act apply to the grant. For the additional reason of this federal-land-grant controversy, this can be an action "arising under" federal law within the meaning of 28 U.S.C. § 1331.

Here, there is no prospect that exercising federal jurisdiction here will disrupt the state-federal division of labor. Only rarely will a court encounter a question of eligibility for airport land's retransfer, prohibited by the Act underlying the original federal land grant but argued to be added to the grant's scope retroactively by an enactment some fifty years after the grant. So far as the undersigned's research has shown, the number of decisions of any court citing the Federal Airport Act of 1946 is miniscule.

Thus, the complaint in this case presents a dispositive controversy, and even a controversy already briefed below, of whether a federal statute, the Federal Airport Act of 1946, applies to the conveyance in suit. The controversy is real and substantial, and it affects a serious federal interest in federal-forum uniformity to avoid expansion of federal land grants. Bringing this category of controversy to federal courts has minimal impact on the state-federal division of labor.

Thus, the claim of Tribal ineligibility for transfer is an action "arising under" federal law within the meaning of 28 U.S.C. § 1331. Dismissing that claim under Section 1331 was error and should be reversed.

B. THE DISMISSAL OF STATE-LAW CLAIMS UNDER THE SUPPLEMEMENTAL JURISDICTION STATUTE, 28 U.S.C. § 1367, PREMISED ON NO FEDERAL QUESTION IN SUIT, SHOULD BE VACATED

Supplemental jurisdiction, under 28 U.S.C. § 1367, exists "in any civil action of which the district courts have original jurisdiction," when the non-original-jurisdiction claims "are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III." Because the district court failed to find it had original jurisdiction of the 1946 Federal Airport Act claim, it did not inquire into the relationship between that claim within its original jurisdiction and the State-law claims.

If the district court has federal-question jurisdiction of the 1946 Act claim, then it needs to assess the relationship between the 1946 Act claim and the two State-law claims under California's Ralph M. Brown Act. Thus, in *Watison v. Carter*, 668 F.3d 1108, 1117 (9th Cir. 2012), the district court had dismissed an original-jurisdiction claim and dismissed state-law claims for lack of supplemental jurisdiction. This Court reversed the dismissal of the original-jurisdiction claim. "On remand, the district court will have original jurisdiction over Watison's First Amendment claims and shall decide anew whether to exercise supplemental jurisdiction over the state law claims." *Id.* (citing *Fang v. United States*, 140 F.3d 1238, 1244 (9th Cir. 1998) (reversing

dismissal of state-law claims "to give the district court the opportunity to decide whether to retain supplemental jurisdiction over these claims upon remand")). Thus, this Court should vacate the dismissal of the state-law claims to give the district court the opportunity to decide anew whether to exercise supplemental jurisdiction over the state-law claims.

CONCLUSION

For these reasons, the dismissal of the claim against the Tribal and City defendants that the Tribe is ineligible for transfer of the airport property, for lack of federal question jurisdiction. should be reversed. The dismissal of the Ralph M. Brown Act claims for lack of supplemental jurisdiction should be vacated.

Dated: February 8, 2021

Respectfully Submitted,

By:_____

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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ADDENDUM

[CHAPTER 251]

AN ACT

May 13, 1946
[S. 2]
[Public Law 377]

To provide Federal aid for the development of public airports.

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

SHORT TITLE

SECTION 1. This Act may be cited as the "Federal Airport Act".

PROVISIONS OF GENERAL APPLICATION

Definitions

SEC. 2. (a) As used in this Act—

"Administrator." (1) "Administrator" means the Administrator of Civil Aeronautics.

"Airport." (2) "Airport" means any area of land or water which is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

"Airport development." (3) "Airport development" means (A) any work involved in constructing, improving, or repairing a public airport or portion thereof, including the construction, alteration, and repair of airport administrative buildings and the removal, lowering, relocation, and marking and lighting of airport hazards, and (B) any acquisition of land or of any interest therein, or of any easement through or other interest in air space, which is necessary to permit any such work or to remove or mitigate, or prevent or limit the establishment of, airport hazards; but such term does not include the construction, alteration, or repair of airport hangars.

Airport hangars.

"Airport hazard." (4) "Airport hazard" means any structure or object of natural growth located on or in the vicinity of a public airport, or any use of land near such airport, which obstructs the air space required for the flight of aircraft in landing or taking off at such airport or is otherwise hazardous to such landing or taking off of aircraft.

"Project." (5) "Project" means a project for the accomplishment of airport development with respect to a particular airport.

"Project costs." (6) "Project costs" means any costs involved in accomplishing a project under this Act, including those of making field surveys, preparation of plans and specifications, supervision and inspection of construction work, procurement of the accomplishment of such work by contract, and acquisition of land or interests therein or easements through or other interests in air space, and also including administrative and other incidental costs incurred specifically in connection with the accomplishment of a project, and which would not have been incurred otherwise.

"Public agency." (7) "Public agency" means the United States Government or an agency thereof; a State, the Territory of Alaska, the Territory of Hawaii, or Puerto Rico, or an agency of any of them; a municipality or other political subdivision; or a tax-supported organization.

"Public airport." (8) "Public airport" means any airport which is used or to be used for public purposes, under the control of a public agency, the landing area of which is publicly owned.

"Sponsor." (9) "Sponsor" means any public agency which, either individually or jointly with one or more other public agencies, submits to the Administrator, in accordance with this Act, an application for a grant of funds for airport development.

(10) "United States share" means that portion of the project costs of approved projects under this Act which is to be paid from appropriations made under authority of this Act. "United States share."

(11) "Military and naval aircraft" means aircraft owned and operated by the United States Army, the United States Navy, the United States Coast Guard, or the United States Marine Corps. "Military and naval aircraft."

(12) "State" means a State of the United States or the District of Columbia. "State."

Airport Classifications

(b) For purposes of this Act, a project shall be considered one for development of an airport of a certain class if upon completion of the airport development proposed, the airport so developed would be properly classifiable as of that class according to the airport classification standards of the Administrator stated in Civil Aeronautics Administration Bulletin "Airport Design" dated April 1, 1944.

NATIONAL AIRPORT PLAN

Formulation of Plan

SEC. 3. (a) The Administrator is hereby authorized and directed to prepare, and revise annually, a national plan for the development of public airports in the United States, including the Territory of Alaska, the Territory of Hawaii, and Puerto Rico. Such plan shall specify, in terms of general location and type of development, the projects considered by the Administrator to be necessary to provide a system of public airports adequate to anticipate and meet the needs of civil aeronautics. In formulating and revising such plan, the Administrator shall take into account the needs of both air commerce and private flying, the probable technological developments in the science of aeronautics, the probable growth and requirements of civil aeronautics, and such other considerations as he may deem appropriate, and shall, to the extent feasible, consult, and give consideration to the views and recommendations of, the Civil Aeronautics Board, the States, the Territories, and Puerto Rico, and their political subdivisions, and shall, to the extent feasible, consult, and give consideration to the views and recommendations of, the Federal Communications Commission, and shall make all reasonable efforts to cooperate with that Commission for the purpose of eliminating, preventing, or minimizing airport hazards caused by construction or operation of any radio station. In carrying out this section the Administrator is authorized to make such surveys, studies, examinations, and investigations as he may deem necessary.

Preparation and annual revision.

Consultations.

Hazards caused by radio stations.

Surveys, etc.

Consultation with War and Navy Departments

(b) In carrying out this section the Administrator shall also consider the views and recommendations of the War and Navy Departments to the end that the airport development included in such plan may be as useful for national defense as is feasible, and shall ascertain from such Departments the extent to which military and naval airports and airport facilities will be available for civil use. The War and Navy Departments shall consider the views and recommendations of the Administrator to the end that military and naval airports and airport facilities may be made available for civil use to such extent as is feasible.

FEDERAL-AID AIRPORT PROGRAM

SEC. 4. In order to bring about, in conformity with the national airport plan prepared and from time to time revised as provided in this

Grants of funds.

Act, the establishment of a Nation-wide system of public airports adequate to meet the present and future needs of civil aeronautics, the Administrator is authorized, within the limits of available appropriations made therefor by the Congress, to make grants of funds to sponsors for airport development as hereinafter provided.

Authorizations.
Post, p. 468.

APPROPRIATIONS

Appropriation for Preliminary Expenses

Planning and surveys.

SEC. 5. (a) In addition to amounts hereinafter authorized to be appropriated for administrative expenses, the sum of $3,000,000 is hereby authorized to be appropriated immediately upon the enactment of this Act for expenses of preliminary planning and surveys incident to the initiation of the airport program provided for by this Act, including administrative expenses, which sum shall remain available until expended.

Annual Appropriations for Projects in States

(b) For the purpose of carrying out this Act with respect to projects in the several States, annual appropriations amounting in the aggregate to $500,000,000 are hereby authorized to be made to the Administrator over a period of seven fiscal years, beginning with the fiscal year ending June 30, 1947. The appropriation for any such fiscal year shall not exceed $100,000,000 and shall remain available until June 30, 1953, unless sooner expended. Not to exceed 5 per centum of any such annual appropriation, as specified in the Act making such appropriation, shall be available to the Administrator for necessary planning and research and for administrative expenses incident to the administration of this Act in the several States; except that if 5 per centum of the appropriation for any fiscal year is less than $3,500,000, or if there is no appropriation for such fiscal year, not to exceed $3,500,000 in the aggregate may be made available to the Administrator, for such fiscal year, for such planning and research and administrative expenses. Any amounts made available to the Administrator for such planning and research and administrative expenses shall be deducted for purposes of determining the amounts available for grants for projects in the several States.

Planning and research.

Annual Appropriations for Projects in Alaska, Hawaii, and Puerto Rico

(c) For the purpose of carrying out this Act with respect to projects in the Territories of Alaska and Hawaii, and in Puerto Rico, annual appropriations amounting in the aggregate to $20,000,000 are hereby authorized to be made to the Administrator over a period of seven fiscal years beginning with the fiscal year ending June 30, 1947. The appropriation for any such fiscal year shall remain available until June 30, 1953, unless sooner expended. Not to exceed 5 per centum of any such annual appropriation, as specified in the Act making such appropriation, shall be available to the Administrator for necessary planning and research and for administrative expenses incident to the administration of this Act with respect to projects in the Territories of Alaska and Hawaii, and in Puerto Rico; and the amount so available shall be deducted from such appropriation for purposes of determining the amount thereof available for grants for projects therein. Of the total amount available for such grants, 50 per centum shall be available for projects in the Territory of Alaska,

Planning and research.

25 per centum shall be available for projects in the Territory of Hawaii, and 25 per centum shall be available for projects in Puerto Rico.

Administrative Expenses

(d) As used in this section, the term "administrative expenses" includes expenses under this Act of the character specified in section 204 of the Civil Aeronautics Act of 1938, as amended (U. S. C., 1940 edition, title 49, sec. 424). 52 Stat. 983.

DISTRIBUTION OF FUNDS AVAILABLE FOR PROJECTS IN STATES *Post*, p. 468

Apportionment of Funds

SEC. 6. (a) As soon as possible after any appropriation is made under section 5 (b), 75 per centum of the amount thereof available for grants for projects in the several States shall be apportioned by the Administrator among the several States, one-half in the proportion which the population of each State bears to the total population of all the States, and one-half in the proportion which the area of each State bears to the total area of all the States. All sums so apportioned for a State shall be available only to pay the United States share of the allowable project costs of approved projects located in that State, or sponsored by that State or some public agency thereof but located in an adjoining State. Upon making an apportionment as provided in this subsection, the Administrator shall inform the executive head of each State, and any public agency which has requested such information, as to the sums apportioned for each State. As used in this subsection the term "population" means the population according to the latest decennial census of the United States and the term "area" includes both land and water. "Population." "Area."

Discretionary Fund

(b) (1) All moneys appropriated under section 5 (b) which are available for grants for projects in the several States, and which are not apportioned as provided in subsection (a) of this section, shall constitute a discretionary fund.

(2) The moneys in such discretionary fund shall be available to pay the United States share of the allowable project costs of such approved projects in the several States as the Administrator may deem most appropriate for carrying out the national airport plan, regardless of the States in which they are located. The Administrator shall give consideration, in determining the projects for which the moneys in such fund are to be so used, to the existing airport facilities in the several States and to the need for or lack of development of airport facilities in the several States. U. S. share of costs.

(3) The moneys in such discretionary fund shall also be available to pay the United States share of the allowable project costs of such approved projects in national parks and national recreation areas, national monuments, and national forests, sponsored by the United States or any agency thereof, as the Administrator may deem appropriate for carrying out the national airport plan; but no other funds appropriated under authority of this Act shall be available for such purpose. The sponsor's share of the project costs of any such approved project shall be paid only out of funds contributed to the sponsor for the purpose of paying such costs (receipt of which funds and their use for this purpose is hereby authorized) or appropriations specifically authorized therefor. National parks, etc. Sponsor's share of costs.

AVAILABILITY OF FUNDS FOR PROJECTS IN ALASKA, HAWAII, AND PUERTO RICO

SEC. 7. All funds available for grants for projects in the Territory of Alaska, in the Territory of Hawaii, or in Puerto Rico, respectively, shall be available to pay the United States share of the allowable project costs of such approved projects therein as the Administrator may deem most appropriate for carrying out the national airport plan.

CONDITION PRECEDENT TO DEVELOPMENT OF LARGER AIRPORTS

Request for authority.

SEC. 8. At least two months prior to the close of each fiscal year, the Administrator shall submit to the Congress a request for authority to undertake during the next fiscal year those of the projects for the development of class 4 and larger airports, included in the then current revision of the national airport plan formulated by him under this Act, which, in his opinion, should be undertaken during that fiscal year, together with an estimate of the Federal funds required to pay the United States share of the allowable project costs of such projects. In determining which projects to include in such a request, the Administrator shall consider, among other things, the relative aeronautical need for and urgency of the projects included in the plan and the likelihood of securing satisfactory sponsorship of such projects. In granting any funds that thereafter may be appropriated to pay the United States share of allowable project costs during the next fiscal year, the Administrator may consider such appropriation as granting the authority requested unless a contrary intent shall have been manifested by the Congress by law or by concurrent resolution, and no such grants shall be made unless so authorized.

Determination of projects.

Granting of funds.

SUBMISSION AND APPROVAL OF PROJECTS

Submission

Application by public agency.

SEC. 9. (a) Subject to the provisions of subsections (b) and (c) of this section, any public agency, or two or more public agencies acting jointly, may submit to the Administrator a project application in such form, and containing such supporting information, as may be prescribed by the Administrator and setting forth the airport development proposed to be undertaken. No project application shall propose airport development other than that included in the then current revision of the national airport plan formulated by the Administrator under this Act, and all such proposed development shall be in accordance with standards established by the Administrator, including standards for site location, airport layout, grading, drainage, seeding, paving, lighting, and safety of approaches.

Applications by Public Agencies Whose Powers Are Limited by State Law

(b) Nothing in this Act shall authorize the submission of a project application by any municipality or other public agency which is subject to the law of any State if the submission of such project application by such municipality or other public agency is prohibited by the law of such State.

Applications by Federal Agencies

(c) Nothing in this Act shall authorize the submission of a project application by the United States or any agency thereof, except in the case of a project in the Territory of Alaska, the Territory of Hawaii, or Puerto Rico, or in a national park or national recreation area, a national monument, or a national forest.

Approval

(d) All such projects shall be subject to the approval of the Administrator, which approval shall be given only if, at the time of approval, funds are available for payment of the United States share of the allowable project costs, and only if he is satisfied that the project will contribute to the accomplishment of the purposes of this Act, that sufficient funds are available for that portion of the project costs which is not to be paid by the United States under this Act, that the project will be completed without undue delay, that the public agency or public agencies which submitted the project application have legal authority to engage in the airport development as proposed, and that all project sponsorship requirements prescribed by or under the authority of this Act have been or will be met. No project shall be approved by the Administrator with respect to any airport unless a public agency holds good title, satisfactory to the Administrator, to the landing area of such airport or the site therefor, or gives assurance satisfactory to the Administrator that such title will be acquired.

Hearings

(e) Project applications shall be matters of public record in the office of the Administrator. Any public agency, person, association, firm, or corporation having a substantial interest in the disposition of any application by the Administrator may file with the Administrator a memorandum in support of or in opposition to such application; and any such agency, person, association, firm, or corporation shall be accorded, upon request, a public hearing with respect to the location of any airport the development of which is proposed. The Administrator is authorized to prescribe regulations governing such public hearings, and such regulations may prescribe a reasonable time within which requests for public hearings shall be made and such other reasonable requirements as may be necessary to avoid undue delay in disposing of project applications.

UNITED STATES SHARE OF PROJECT COSTS

General Provision

SEC. 10. (a) Except as provided in subsections (b), (c), and (d) of this section, the United States share payable on account of any approved project under this Act shall be—

(1) in the case of a project for the development of a class 3 or smaller airport, 50 per centum of the allowable project costs of the project; Class 3 project.

(2) in the case of a project for the development of a class 4 or larger airport, such portion of the allowable project costs of the project (not to exceed 50 per centum) as the Administrator may deem appropriate for carrying out the provisions of this Act. Class 4 project.

Projects in Public Land States

(b) In the case of any State containing unappropriated and unreserved public lands and nontaxable Indian lands (individual and tribal) exceeding 5 per centum of the total area of all lands therein, the United States share under subsection (a) (1), and the maximum United States share under subsection (a) (2), shall be increased by whichever is the smaller of the following percentages thereof: (1) 25 per centum, or (2) a percentage equal to one-half the percentage that the area of all such lands in such State is of its total area.

Projects in Alaska

(c) The United States share payable on account of any approved project in the Territory of Alaska shall be such portion of the allowable project costs of the project (not less than 50 per centum in the case of a class 3 or smaller airport, and not to exceed 75 per centum in the case of an airport of any class) as the Administrator may deem appropriate for carrying out the provisions of this Act.

Acquisitions of Land and Interests in Air Space

(d) To the extent that the project costs of an approved project represent the cost of acquiring land or interests therein or easements through or other interests in air space, the United States share (1) in the case of a project for the development of a class 3 or smaller airport, shall be 25 per centum of the allowable costs of such acquisition, and (2) in the case of a project for the development of a class 4 or larger airport, shall be not to exceed 25 per centum of the allowable costs of such acquisition.

PROJECT SPONSORSHIP

SEC. 11. As a condition precedent to his approval of a project under this Act, the Administrator shall receive assurances in writing, satisfactory to him, that—

Public use.

(1) the airport to which the project relates will be available for public use on fair and reasonable terms and without unjust discrimination;

Operation and maintenance.

(2) such airport and all facilities thereon or connected therewith will be suitably operated and maintained, with due regard to climatic and flood conditions;

Aerial approaches.

(3) the aerial approaches to such airport will be adequately cleared and protected by removing, lowering, relocating, marking, or lighting or otherwise mitigating existing airport hazards and by preventing the establishment or creation of future airport hazards;

Use by military and naval aircraft.

(4) all the facilities of the airport developed with Federal aid and all those usable for the landing and take-off of aircraft will be available to the United States for use by military and naval aircraft in common with other aircraft at all times without charge, except, if the use by military and naval aircraft shall be substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities so used;

Space for traffic control.

(5) the airport operator or owner will furnish to any civil agency of the Government, without charge (except for light, heat, janitor service, and similar facilities and services at the reasonable cost thereof), such space in airport buildings as may be reasonably adequate for use in connection with any air traffic control activities, or weather-reporting activities and communications activities related to air traffic control, which such agency may deem it necessary to establish and maintain at the airport;

Accounts and records.

(6) all project accounts and records will be kept in accordance with a standard system of accounting prescribed by the Administrator after consultation with appropriate public agencies;

Reports.

(7) the airport operator or owner will submit to the Administrator such annual or special airport financial and operations reports as the Administrator may reasonably request; and

Inspection of records.

(8) the airport and all airport records will be available for inspection by any duly authorized agent of the Administrator upon reasonable request.

To insure compliance with this section, the Administrator shall prescribe such project sponsorship requirements, consistent with the terms of this Act, as he may deem necessary. Among other steps to insure such compliance the Administrator is authorized to enter into contracts with public agencies, on behalf of the United States. Prescribed requirements.

GRANT AGREEMENTS

SEC. 12. Upon approving a project the Administrator, on behalf of the United States, shall transmit to the sponsor or sponsors of the project an offer to pay the United States share of the allowable project costs of such project. Any such offer shall be made upon such terms, and subject to such conditions, as the Administrator may deem necessary to meet the requirements of this Act and the regulations prescribed thereunder. Each such offer shall state a definite amount as the maximum obligation of the United States payable from funds appropriated under authority of this Act, and shall stipulate the obligations to be assumed by the sponsor or sponsors of the project. If and when any such offer is accepted in writing by the sponsor or sponsors to which it is made, such offer and acceptance shall comprise a grant agreement constituting an obligation of the United States and of the sponsor or sponsors so accepting, and thereafter the amount stated in the accepted offer as the maximum obligation of the United States under such grant agreement shall not be increased. Unless and until such a grant agreement has been executed with respect to a project, the United States shall not pay, nor be obligated to pay, any portion of the project costs which have been or may be incurred in carrying out that project. Offer to pay U. S. share.

ALLOWABLE PROJECT COSTS

SEC. 13. Except as provided in section 14, the United States shall not pay, or be obligated to pay, from amounts appropriated to carry out the provisions of this Act, any portion of a project cost incurred in carrying out a project unless the Administrator has first determined that such cost is allowable. A project cost shall be allowable if—

(1) it was a necessary cost incurred in accomplishing airport development in conformity with approved plans and specifications for an approved project and with the terms and conditions of the grant agreement entered into in connection with such project; Conformity with approved plans.

(2) it was incurred subsequent to the execution of the grant agreement with respect to the project, and in connection with airport development accomplished under such project after the execution of such grant agreement: *Provided*, *however*, That the allowable costs of a project may include any necessary costs of formulating the project (including those of field surveys and the preparation of plans and specifications, including costs of acquiring land or interests therein or easements through or other interests in air space, and including any necessary administrative or other incidental costs incurred by the sponsor specifically in connection with the accomplishment of the project, which would not have been incurred otherwise) which were incurred subsequent to the enactment of this Act; and Incurrence after execution of grant agreement.

(3) it is reasonable in amount, in the opinion of the Administrator: *Provided*, That if the Administrator determines that a project cost is unreasonable in amount, he shall allow, as an allowable project cost under this section, only such amount of such Reasonable amount.

project cost as he determines to be reasonable and no project costs in excess of the definite amount stated in the grant agreement shall be allowable.

Auditing.

The Administrator is authorized to prescribe such regulations, including regulations with respect to the auditing of project costs, as he may deem necessary to effectuate the purposes of this section.

PAYMENTS

Determination of times and amounts.

SEC. 14. The Administrator, after consultation with the sponsor or sponsors with which a grant agreement has been entered into, shall determine at what times, and in what amounts, payments shall be made under this Act. The aggregate of such payments at any time with respect to a particular project shall not exceed a percentage of the project costs of the airport development which has been performed up to that time (and which the sponsor or sponsors to which the payments are to be made certify to have been performed in accordance with the approved plans and specifications for such project), equal to the percentage of the allowable project costs of the project determined to be the United States share of such costs; and if the Administrator shall determine at any time that the aggregate of such payments exceeds the United States share of the allowable project costs of such project the United States shall be entitled to recover such excess. Such payments shall be made to such official or officials or depository, authorized by law to receive public funds, as may be designated by the sponsor or sponsors entitled to such payments.

PERFORMANCE OF CONSTRUCTION WORK

Regulations of the Administrator

SEC. 15. (a) The construction work on any approved project shall be subject to inspection and approval by the Administrator and in accordance with regulations prescribed by him. Such regulations shall require such cost and progress reporting by the sponsor or sponsors of such project as the Administrator shall deem necessary. No such regulation shall have the effect of altering any contract in connection with any project entered into without actual notice of the regulation.

Minimum Rates of Wages

(b) All contracts for work on projects approved under this Act which involves labor shall contain provisions establishing minimum rates of wages, to be predetermined by the Secretary of Labor, which contractors shall pay to skilled and unskilled labor, and such minimum rates shall be stated in the invitation for bids and shall be included in proposals or bids for the work.

Other Provisions as to Labor

(c) All contracts for work on projects approved under this Act which involves labor shall contain such provisions as are necessary to insure (1) that no convict labor shall be employed; and (2) that in the employment of labor (except in executive, administrative, and supervisory positions), preference shall be given, where they are qualified, to individuals who have served as persons in the military service of the United States (as defined in section 101 (1) of the Soldiers' and Sailors' Civil Relief Act of 1940), and who have been honorably discharged from such service: *Provided*, That such preference shall apply only where such labor is available and qualified to perform the work to which the employment relates.

54 Stat. 1179.
50 U. S. C. app. § 511 (1); Supp. V, app § 511 note.

USE OF GOVERNMENT-OWNED LANDS

Requests for Use

SEC. 16. (a) Whenever the Administrator determines that use of any lands owned or controlled by the United States is reasonably necessary for carrying out a project under this Act, or for the operation of any public airport, he shall file with the head of the department or agency having control of such lands a request that such property interest therein as he may deem necessary be conveyed to the public agency sponsoring the project in question or owning or controlling the airport. Such property interest may consist of the title to or any other interest in land or any easement through or other interest in air space.

Making of Conveyances

(b) Upon receipt of a request from the Administrator under this section, the head of the department or agency having control of the lands in question shall determine whether the requested conveyance is inconsistent with the needs of the department or agency, and shall notify the Administrator of his determination within a period of four months after receipt of the Administrator's request. If such department or agency head determines that the requested conveyance is not inconsistent with the needs of that department or agency, such department or agency head is hereby authorized and directed, with the approval of the President and the Attorney General of the United States, and without any expense to the United States, to perform any acts and to execute any instruments necessary to make the conveyance requested; but each such conveyance shall be made on the condition that the property interest conveyed shall automatically revert to the United States in the event that the lands in question are not developed, or cease to be used, for airport purposes.

Condition.

REIMBURSEMENT FOR DAMAGE BY FEDERAL AGENCIES TO PUBLIC AIRPORTS

Submission and Determination of Claims

SEC. 17. (a) Reimbursement shall be made to public agencies, as provided in this section, for the necessary rehabilitation or repair of public airports heretofore or hereafter substantially damaged by any Federal agency. The Administrator is authorized on behalf of the United States to consider, ascertain, adjust, and determine in accordance with regulations he shall prescribe pursuant to this section, any claim submitted by any public agency for reimbursement of the cost of necessary rehabilitation or repair of a public airport, under the control or management of such public agency, substantially damaged by any Federal agency.

Certification of Claims to Congress

(b) Such amount as may be found to be due to any claimant under this section shall be certified by the Administrator to Congress as a claim against the United States, and appropriations for payment of such claims are hereby authorized to be made. Such certification shall include a brief statement of the character of each claim, the amount claimed, and the amount allowed.

Limitation on Submission of Claims

(c) No claim shall be considered by the Administrator pursuant to this section unless such claim has been presented to him within six months after the occurrence of the damage upon which the claim

is based, except that in case of damage caused by operations of a military nature during time of war such notice may be filed within sixty days after termination of the war.

REPORTS TO CONGRESS

SEC. 18. On or before the third day of January of each year the Administrator shall make a report to the Congress describing his operations under this Act during the preceding fiscal year, including detailed statements of the airport development accomplished, the status of each project undertaken, the allocation of appropriations, and itemized statements of expenditures and receipts, and setting forth his recommendations, if any, for legislation amending or supplementing this Act.

FALSE STATEMENTS

SEC. 19. Any officer, agent, or employee of the United States, or any officer, agent, or employee of any public agency, or any person, association, firm, or corporation who shall knowingly make any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the costs thereof, in connection with the submission of plans, maps, specifications, contracts, or estimates of project costs for any project submitted to the Administrator for approval under this Act or shall knowingly make any false statement, false representation, or false report or claim for work or materials for any project approved by the Administrator under this Act, or shall knowingly make any false statement or false representation in any report required to be made under this Act, with the intent to defraud the United States shall, upon conviction thereof, be punished by imprisonment for not to exceed five years or by a fine of not to exceed $10,000, or by both such fine and imprisonment.

Penalty.

EXISTING AIRPORT PROGRAMS

SEC. 20. Nothing in this Act shall affect the carrying out of the program for the development of public landing areas necessary for national defense, authorized by the Department of Commerce Appropriation Act, 1946, or the program for the development of civil landing areas, authorized by the First Supplemental National Defense Appropriation Act, 1944, which programs shall be additional to the Federal-aid airport program authorized by this Act.

59 Stat. 190.

57 Stat. 621.

Approved May 13, 1946.

[CHAPTER 252]

AN ACT

May 14, 1946
[S. 1812]
[Public Law 378]

To provide reimbursement for personal property lost, damaged, or destroyed as the result of explosions at the naval ammunition depot, Hastings, Nebraska, on April 6, 1944, and September 15, 1944.

Navy.
Payment of damage claims.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, such sum or sums, amounting in the aggregate not to exceed $25,000, as may be required by the Secretary of the Navy to pay claims, including those of naval and civilian personnel of the Naval Establishment, for privately owned property lost, damaged, or destroyed as the result of explosions at the naval ammunition depot, Hastings,

9th Circuit Case Number(s) 20-16955

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