No. 25-2213

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDDIE MALONEY,

Plaintiff-Appellant,

v.

OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION

Defendant-Appellee

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

No. 3:23-cv-08632-SMB
Hon. Susan M. Brnovich

APPELLANT'S OPENING BRIEF

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INTRODUCTION

Plaintiff/Appellant Eddie Maloney, an enrolled member of the Navajo Nation, brings this appeal of an agency's statutory benefits determination that was upheld by the U.S. District Court for Arizona, and that is subject to *de novo* review on the agency record.

Mr. Maloney is one of thousands of Navajos forced to relocate from their ancestral homeland pursuant to the Navajo-Hopi Land Settlement Act, Pub. L. No. 93-531, 88 Stat. 1712 (1974)[1] ("Settlement Act"). The Settlement Act also provided for the creation of an independent agency, now the Office of Navajo and Hopi Indian Relocation ("ONHIR," or "the Agency"), to facilitate and fund this involuntary relocation.

Congress directed ONHIR to implement this relocation program so as: "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." 25 C.F.R. §700.1(a).

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[1]Formerly codified as 25 U.S.C. §§ 640d *et seq.* As of September 1, 2016, §640d of Title 25 was omitted from the United States Code by its compilers as being of "special and not general application." This omission is editorial only and has no effect on the validity of the law. As a convenience for the reader the U.S. Code version of the Settlement Act is included in the Addendum to this Brief. The Act has been amended several times but those amendments have no relevancy to the issues presented here.

The District Court's *Order* below upheld ONHIR's Hearing Officer's (HO) *Decision* in all particulars. The HO found Maloney to be a credible witness yet declined to credit that part of his testimony that was critical to his claim for relocation benefits. The HO also dismissed the testimony of Maloney's witness and failed to objectively weigh all evidence in the Certified Administrative Record. The conduct of ONHIR in addressing Maloney's claim for compensation for his involuntary relocation from his ancestral home contravenes the express intent of Congress cited above.

JURISDICTIONAL STATEMENT

The District Court had federal question jurisdiction pursuant to 28 U.S.C. §1331, as the cause of action arose under the laws of the United States (Pub. L. No. 93-531, 88 Stat. 1712 (1974)). This Court has appellate jurisdiction under the provisions of the Administrative Procedure Act, 5 U.S.C. §§702, 706, which govern judicial review of decisions of federal agencies. This Court also has appellate jurisdiction as the appeal is from a final order of a district court. 28 U.S.C. §1291. The District Court filed its Order and Judgment in a Civil Case on January 30, 2025. ER-6. Mr. Maloney's timely Notice of Appeal was filed on March 30, 2025. Fed. R. App. P. 4(a)(1)(B)(ii). ER-4-5.

STATUTORY AND REGULATORY AUTHORITIES

Relevant statutes and regulations are set forth in the Addendum to this brief.

ISSUES PRESENTED FOR REVIEW

1. Was the *Decision* of the Hearing Officer arbitrary and capricious, and not based upon substantial evidence, where he misrepresented and discounted Plaintiff's and his witness's testimony about Plaintiff's presence at his family's HPL homesite to find that on December 22, 1974, he was residing solely at the NPL homesite?

2. Was the *Decision* of the Hearing Officer arbitrary and capricious, and not based upon substantial evidence, where in total reliance on the BIA Enumeration he concluded that on December 22 Plaintiff did not maintain a legal residence on the HPL?

STATEMENT OF THE CASE

I. Background of the Settlement Act and Relocation

This action's historical origin extends to 1882 when President Chester Arthur by Executive Order created a 2.5 million acre reservation in Arizona, "for the use and occupancy of the Moqui [Hopi], and such other Indians as the Secretary of the Interior may see fit to settle thereon." Cited in, *Healing v. Jones,* 210 F.Supp. 125, 129 (D. Ariz. 1962), *aff'd,* 373 U.S. 758 (1963) (*per curium*). Navajo Tribal members were residing within this reservation area at the time, coexisting with the Hopi, and over the decades their numbers increased.

In 1958, to resolve the beneficial ownership of the reservation, and quiet title to the area, the U.S. Congress authorized litigation between the Hopi and Navajo tribes, resulting in a three-judge panel of the U.S. District Court for Arizona ruling

that 650,000 acres of the reservation belonged exclusively to the Hopi Tribe, and that the Hopi and Navajo had joint and undivided interests in the remaining 1.8 million acres. *Healing v. Jones, supra.* This shared area was thereafter referred to as the Joint Use Area ("JUA"). Subsequently, following Hopi complaints that the substantial Navajo population and livestock holdings was interfering with Hopi fair use of the JUA, Congress enacted the Settlement Act that provided for the eventual partitioning of the JUA.

The Arizona District Court partitioned the JUA in 1979, dividing it approximately in half and creating the Hopi Partitioned Lands ("HPL") and the Navajo Partitioned Lands ("NPL"). The Settlement Act required tribal members to move from lands partitioned to the other tribe.[2] The Settlement Act also provided for the creation of an independent agency, now ONHIR, charged with the responsibility for identifying Navajo and Hopi tribal members potentially required to relocate, processing applications for compensation, and subject to eligibility criteria, providing replacement housing to those forced to relocate. 25 C.F.R. §700.1.

Congress instructed ONHIR to devise a "relocation plan," and to complete the relocation of affected families within five years of the plan's issuance. ONHIR

2. This historical background is covered in *Clinton v. Babbitt,* 180 F.3d 1081, 1083-1084, (9th Cir. 1999), and *Bedoni v. Navajo-Hopi Indian Relocation Commission,* 878 F.2d 1119, 1121-1122 (9th Cir. 1989).

issued its "Relocation Report and Plan" in 1981, and established a July 7, 1986 deadline for completing the relocation process. However, this process continues to this day.[3]

ONHIR closed the application process for Relocation Benefits on July 7, 1986, though it continued to accept applications on an individual basis if certain criteria were met. In 2008, the Arizona District Court, in *Herbert v. ONHIR,* CV-06-03014, 2008 WL 11338896, ruled that "ONHIR was required to notify and inform each person identified as potentially subject to relocation" of their rights under the Settlement Act. *Id.*,*6. *Herbert* concluded that the systemic failure to notify each such person of their potential eligibility for benefits constituted a breach of ONHIR's trust obligations. *Id.,**7-8.

ONHIR thereafter reopened the application process. Once the opportunity to apply for relocation benefits again became available, Eddie Maloney was one of the many Navajo individuals who did so.

II. ONHIR's Eligibility Requirements For Relocation Benefits

ONHIR's eligibility standards for granting relocation benefits provide that:

To be eligible for services provided for under the Act, and these

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3 In 1985 at least ten thousand Navajo had been identified as living on the HPL and subject to removal in what has been characterized as the largest mandatory relocation of U.S. citizens since the internment of Japanese Americans during World War II. *See* Iver Peterson, *Navajos Refuse to Bow to Relocation by U.S.*, New York Times, May 9, 1985, at A1.

> regulations, the head of household and/or immediate family must have been residents on December 22, 1974, of an area partitioned to the Tribe of which they were not members.

25 CFR §700.147(a).

Additionally, eligibility is limited to those who are, "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." 25 CFR §700.69 (c).

III. Procedural History

Eddie Maloney submitted an application for relocation benefits to ONHIR on September 14, 2009. ER-22-28. Five years later he was informed by letter from ONHIR, dated October 2, 2014, that his application was denied. ER-29-30.

Maloney appealed the denial and an Appeal Hearing was held August 18, 2017. ER-31-60. At the hearing the parties stipulated that Maloney achieved head of household status on April 25, 1972, with the birth of his child. ER-32. In addition to Maloney, Darrell Woody testified on his behalf. ONHIR employee, Joseph Shelton, testified for the Agency.

On March 19, 2018, the HO issued a *Decision* upholding ONHIR's denial of benefits. ER-61-74. On April 27, 2018, Maloney filed a Request for Reconsideration, which was denied by the HO on May 23, 2018. ER-75-77. ONHIR issued Final Agency Action in Eddie Maloney's case on June 20, 2018. ER-78.

Maloney filed a Complaint in the U.S. District Court for Arizona on December 22, 2023, requesting judicial review of ONHIR's decision, and filed a Motion for Summary Judgement on July 15, 2024. ONHIR filed a Response and Cross-Motion for Summary Judgement on August 14, 2024. Briefing concluded on October 15, 2024. The District Court issued an *Order* on January 30, 2025, denying Maloney's Motion for Summary Judgment, granting ONHIR's Cross-Motion for Summary Judgement, and upholding ONHIR's denial of relocation benefits. ER-7-15.

IV. Statement of Facts

Eddie Maloney was born April 28, 1948. ER-23. He is a member of the Shonto Chapter of the Navajo Nation and has never held membership in a different chapter.[4] ER-23.

Maloney grew up in a "traditional use area" encompassing homesites in Cow Springs on what became the NPL and Black Mesa on what became the HPL. ER-33. His family's residency pattern was seasonal, the Cow Springs homesite occupied in the summer, the Black Mesa homesite from October to May. ER-36. Twelve to fifteen miles separated the two homesites. The road connecting the

4 Chapters are the local subdivisions of the Navajo Nation government.

homesites was maintained and serviced once or twice a year. ER-45-46. In those years he owned a 1973 Ford Pickup. ER-43.

Maloney was employed by the BIA as a bus driver for the Shonto Boarding School from 1970 to 1991, and held that job in 1973, 1974, and 1975. ER-34-35; ER-37; ER-41-42. The job was seasonal; he worked from August to May and was furloughed during the summer. ER-37. In the months he was employed he was provided housing at the school campus. ER-35.

Maloney worked as a bus driver during the school week, and spent weekends at the Black Mesa homesite helping his mom and grandparents care for livestock, hauling water, and other chores. ER-37-38.

Maloney, his wife, children, and parents, were enumerated by the BIA at the Cow Springs homesite on what became the NPL. ER-17; ER-20-21; ER-58. Maloney's maternal grandparents were enumerated both at Cow Springs and at Black Mesa on what became the HPL. ER-58.

Maloney recalls being interviewed for the "census" by a single individual. He was not asked if he maintained a residence anywhere else but he "mentioned" that he did. ER-37; ER-47.

Maloney's maternal grandparents received relocation benefits as did their Black Mesa neighbor and clan relative Yanapah Tooley, who also had a homesite

in Cow Springs. ER-37; ER-57-58. Maloney's Black Mesa neighbors, Alfred Maze and Eddie and Ruby Watson also received relocation homes. ER-37.

Maloney's mother did not apply for relocation benefits because she was suspicious of the federal government and feared that participation in relocation would result in the loss of her family's land and grazing rights. ER-36-37; ER-58-59.

On the application for relocation benefits Maloney submitted to ONHIR, Question 2 (page 5) asks: "Where were you living on December 22, 1974?" Maloney checked the box for, "In the Navajo Nation," rather than the box for, "Outside the Navajo Nation." ER-25.

Question 2(a) requests his Chapter membership. Question 2(b) asks: "Was the residence located on the HPL?" Maloney checked the box for "Yes." ER-25. Question 2(c) asks: "If in the Navajo Nation, please explain where your residence was located:" Maloney wrote, "Cow Springs, AZ." ER-25.

In ONHIR's letter to Maloney informing him that his application for benefits was denied the reason given for the denial was because Maloney and his immediate family appear in the Bureau of Indian Affairs (BIA) 1974-1975 "Enumeration" of residents of the JUA as residing only on the NPL and not the HPL. ER-29-30.

SUMMARY OF THE ARGUMENT

I. The Hearing Officer's Dismissals of Testimony Is Arbitrary and Capricious and Not Based Upon Substantial Evidence

The HO's *Decision's* Credibility Finding for Eddie Maloney states he "is a Credible Witness." ER-68. Yet, elsewhere in the *Decision* Maloney's testimony about his presence at his HPL homesite is misrepresented or ignored. A finding that Maloney testified credibly, while dismissing testimony determinative of his eligibility for benefits, avoids the need to support an explicit adverse credibility finding. However, the dismissal of testimony results in the same thing and must be supported by "specific and cogent reasons" as this Court has held. *De Valle v. INS*, 901 F.2d 787, 792 (9th Cir. 1991).

Maloney testified he resided seasonally at two homesites, one of which later became HPL, the other NPL. The *Decision* recognizes that his "family regarded the two areas … as a traditional use area with the Black Mesa area used during winter months and the Cow Springs area used during summer months." ER-65. Yet, this finding is not included in the *Decision's* residency analysis, which by arbitrarily discounting testimony focuses on Maloney's presence at the NPL site.

In 1973-1975 Maloney was employed by Shonto Boarding School. He worked during the school week and spent weekends with his mother and

grandparents on Black Mesa, caring for livestock, hauling water, and other chores. ER-35, ER-37.

In the Credibility Finding for Darrell Woody, the HO found his testimony about Maloney's presence at Black Mesa "too indefinite … and is not credible testimony as to any specific time period or year," and further dismissed his testimony because of his age at the time. However, Woody was specific about the period of time he would see Maloney at Black Mesa. ER-51-54.

Woody testified his family had homesites at Cow Springs and Black Mesa and recalled seeing Maloney there in 1973, 1974 and 1975. Woody attended elementary grades at Shonto Boarding School and testified Maloney regularly checked him out of school and drove him home to Black Mesa as their homesites were close. ER-52-53.

The testimony of Maloney and Woody was material and probative, the dismissal of it arbitrary, and not founded upon specific and cogent reasons.

II. The Hearing Officer's Reliance on the BIA "Enumeration" to Find That Eddie Maloney Was Not a Legal Resident of The HPL on December 22, 1974 is Not Based Upon Substantial Evidence

The HO's *Decision's* conclusion that, "[o]n December 22, 1974, applicant was a legal resident of the Cow Springs area … the location where he was enumerated by the BIA," [ER-70] supports ONHIR's reliance on the Enumeration

to find that Maloney was not also a resident of the HPL. Throughout ONHIR's operation of the relocation program many applicants have been found eligible to receive benefits despite not being enumerated on the HPL. At Maloney's hearing, ONHIR's employee acknowledged it is common for applicants who have not been enumerated to receive relocation benefits. ER-59.

The HO declared that "[t]he BIA Enumeration is considered a critical factor in determining legal residence" and "*prima facie* evidence that the applicant was accordingly a resident (or not) of the JUA as of December 22, 1974." ER-69. This Court, the Arizona District Court, and past decisions of ONHIR's Hearing Officer, have found applicants to have been residents of the HPL despite the BIA Enumeration recording otherwise. In virtually all cases it is testimony that has overcome the "*prima facie* evidence" of the Enumeration.

Thus, although the HO found Maloney a credible witness, the failure to afford his testimony the probative weight credible testimony deserves, and the dismissal of Woody's testimony, resulted in the foregone conclusion the Enumeration alone would determine Maloney's eligibility for benefits.

STANDARD OF REVIEW

This Court has described the Standard of Review applicable to an appeal from the district court's decision on a motion for summary judgment challenging final agency action:

> We review de novo a challenge to a final agency action decided on summary judgment and pursuant to Section 706 of the Administrative Procedure Act ("APA"). De novo review of a district court judgment concerning a decision of an administrative agency means the court views the case from the same position as the district court, and review[s] directly the agency's action under the Administrative Procedure Act's arbitrary and capricious standard…

Corrigan v. Haaland, 12 F. 4th 901, 906 (9th Cir. 2021) (citations omitted).

> The Administrative Procedure Act ("APA") provides that:
>
> "The reviewing court shall – . . . hold unlawful and set aside agency action, findings, and conclusions found to be – arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law . . . without observance of procedure required by law; [or] unsupported by substantial evidence…"

5 U.S.C. §706(2)(A),(D),(E). See: *Bedoni v. Navajo-Hopi Indian Relocation Commission*,[5] 878 F.2d 1119, 1122 (9th Cir. 1989).

A reviewing court shall set aside an agency's decision, "when it cannot conscientiously find that the evidence supporting that decision is substantial, when viewed in the light that the record in its entirety furnishes, including the body of evidence opposed to the [agency's] view." *Universal Camera v. National Labor Relations Board*, 71 S. Ct. 456, 488 (1951).

"In determining whether there is substantial evidence to support the ALJ's [Administrative Law Judge] decision we are required to review the administrative

5. The Commission was ONHIR's predecessor agency.

record as a whole, weighing both the evidence that supports and detracts from the ALJ's conclusion." *McAllister v. Sullivan,* 888 F.2d 599, 602 (9th Cir. 1989).

ARGUMENT

I. The Hearing Officer's Dismissal of Testimony is Arbitrary and not Supported by Substantial Evidence

The Hearing Officer failed to fairly weigh the probative value of the testimony of Eddie Maloney and his witness, Darell Woody, and to objectively incorporate their testimony in the analysis of Maloney's HPL residency during the requisite time period determinative of his eligibility for relocation benefits. The HO's credibility findings here are not in accordance with this Circuit's instructions as to the acceptable procedure for an ALJ's adverse credibility finding:

> This court reviews factual determinations, including credibility determinations, for substantial evidence. … 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.

Morgan v. Mukasey, 529 F.3d 1202, 1206-1207, (9th Cir. 2008) (Internal citations omitted).

A. Administrative Hearing Testimony of Eddie Maloney

In the Credibility Findings of his *Decision* the HO states: "Applicant is a credible witness." ER-68. But, throughout the remainder of the *Decision* the HO misrepresents and discredits Maloney's testimony about his presence at the Black Mesa homesite.

The *Decision's* Finding of Fact #9 states in part: "On weekends and during the summers, applicant and his family returned to his mother's home in Cow Springs and they sometimes went to Black Mesa to visit family members." ER-66. This is a misrepresentation of Maloney's testimony as the HO's citations to the appeal hearing transcript (Tr.) show:

> **Tr. at 7:19-23 (ER-37)** Maloney's counsel: Now, when would you be going back up on the HPL side, up on top, at Black Mesa, when you were working in Shonto?"
>
> Maloney: "Mainly I spent my time on weekends up there with my mom and Daisy and John Maze, so and then from Monday though Friday, I move back down to the Shonto Campus and work there."
>
> **Tr. 8:10-18 (ER-38)** Maloney's Counsel: "So during the winters of '73, '74, '75, on weekends , you'd go up and help your mother with sheep?"
>
> Maloney: "My mom and the late John Maze and Daisy Maze, I help them out, yes."
>
> Maloney's counsel: "Would you be doing anything else out there?"
>
> Maloney: "Well, sometimes I run them to the Trading Post or Tuba City where they can buy their needs for the winter and I haul water up there too, they didn't have any water, or running water, drinking water … during those times and then maybe I come down to town and buy some food and take them out there to them."
>
> **Tr. 9:21-10:2 (ER-39-40)** Maloney's Counsel: "During this time period, '73, '74, '75, in the winters when your family was using … the Hopi side, up on Black Mesa, did you ever take your kids up there at all?"
>
> Maloney: "Yeah, we used to take them when they were small, yeah. Sometimes they spent time over there on weekends with us."

> **Tr. 13:8-13 (ER-43)** ONHIR's Counsel: " … You said you didn't really have a place of your own, but was that a Hogan, a complete log dwelling?"
>
> Maloney: "Yes it was, it belonged to my mom and my dad, they have a house … the log Hogan … was located next to it and they let us live in it during the summers and whenever."

Maloney's testimony does not support the HO's assertion he regularly "returned" to Cow Springs and "sometimes went to Black Mesa to visit family members." It supports his presence at Black Mesa as the cited testimony only references the Cow Springs homesite once when he is asked to describe the Hogan there. Further, the question from ONHIR's attorney following that citation is:

> "And you testified that you'd go up on Black Mesa, particularly in the winter, where did you stay?"
>
> Maloney: "We stayed in John and Daisy Maze's Hogan up there. Share it, combined the Hogan together with them."
>
> ER-43.

The *Decision* misrepresents Maloney's testimony in other passages. In attempting to support his determination that "[o]n December 22, 1974, applicant was a legal resident of the Cow Springs area …" [ER-70], the HO states that Maloney, "regularly returned to that residence [Cow Springs] from his employment at Shonto Boarding School." ER-72. There is no citation to the hearing transcript because this "fact" is not there. As cited, *supra.*, Maloney testified that while working as a bus driver during the school year he spent

weekends with his mother and grandparents at the Black Mesa homesite. ER-37. Nowhere does he state that when not residing at the Shonto campus during the school week that he would spend weekends at Cow Springs. Cow Springs was the family's summer homesite. Maloney was furloughed from his job when school was not in session during the summer and would regularly have been spending weekends there only while unemployed between school terms. ER-37.

The *Decision*, beyond misrepresenting Maloney's testimony, attempts (through other references) to undermine his testimony that the Black Mesa HPL homesite was as much a part of his traditional use area as Cow Springs. Two relate to answers he gave in his application for relocation benefits; another, his mother's attitude toward applying for benefits.

1. Eddie Maloney's Application for Relocation Benefits

a. Maloney's Answer as to His Residence on December 22, 1974

The *Decision's* Finding of Fact #9 states: "On his application for relocation benefits, applicant identified his residence on December 22, 1974 as Cow Springs." ER-66. The HO cites the full question ("Application p.5, Q.2") but references only a subpart. Maloney's answer to the entirely of Question 2 [ER-25, and cited *supra,*9] must be reviewed to have a full understanding of what the HO's quotation removes from context. Maloney's answer is ambiguous because the question could easily confuse an applicant. The "Navajo Nation" and the "HPL"

are referenced. On December 22, 1974 (date of passage of the Settlement Act) the HPL and NPL did not exist because the partition was in 1979. In December, 1974 it was the Joint Use Area but the question does not reference the JUA. Maloney checked the box for "yes," where asked if his residence was in the HPL. He wrote "Cow Springs" for the question asking where his residence was if in the Navajo Nation. He had two residences in December 1974, but only one, Cow Springs, was in in the Navajo Nation (future NPL).

The following question at 3(b) asks: "If you had a residence on what became the HPL on December 22, 1974 but were not actually living in that residence on that day please explain why you were not actually living in that residence." Maloney wrote: "I was living at Shonto Boarding School campus reason is I was employed at the sch." ER-26. Maloney's answers on his application are consistent with his hearing testimony.

b. Maloney's Answer as to Whether He Had Previously Applied for Relocation Benefits

On his benefits application, in response to the question as to whether he had previously applied for benefits, Maloney checked the box for "No." In response to the question as to why he did not apply previously, he wrote: "I was not too familiar with the benefits." ER-25.

The HO finds significance in this and states: "If applicant was unaware of and unfamiliar with the relocation process during the 1970's and up to July 7,

1986, his claim about contacts with relatives in the Black Mesa area are highly suspect." ER-73. This is simply speculation, intended to undercut the veracity of Maloney's "credible" testimony about his presence at the Black Mesa homesite.

The HO's insistence that if Maloney had maintained the regular presence at the Black Mesa homesite as he testified he would not have been "unfamiliar" with the relocation process is conjecture. The record contains no evidence that the process for applying for relocation benefits would have been a subject of discussion within Maloney's family. ONHIR's predecessor agency, the Navajo Hopi Indian Relocation Commission, recognized the negative emotions that involuntary relocation aroused in the JUA population: "Relocation is a sensitive and emotional issue. … The people expressed anger and hostility towards the government, their tribal leaders, the Commission and the enumerators." NHIRC 1981 Report and Plan to Congress, pgs. 69-70. ER-102-103.

The Arizona District Court in *Herbert v. ONHIR, supra.,* 5, held that ONHIR had an obligation to notify all those potentially subject to relocation. Following *Herbert*, ONHIR acknowledged this obligation and reopened the opportunity to apply for relocation benefits. Relocation was not viewed positively by many JUA Navajo as few wanted to abandon their homes. There is no basis to conclude Maloney's family on Black Mesa accepted relocation and would have discussed the process to apply for benefits with him. This is not a basis for

doubting Maloney's testimony about spending significant amounts of time at his Black Mesa HPL homesite.

2. Maloney's Mother's Interest in Relocation

The HO attempts to undercut the veracity of Maloney's testimony by noting that he stated his mother "was offered but declined relocation benefits," but that ONHIR employee Shelton testified ONHIR has no records of her application. ER-67-68. It is of little importance that Maloney is mistaken about his mother actually being "offered" relocation. Maloney's testimony is that his mother knew of the availability of compensation for Navajos who chose to relocate from land partitioned to the Hopi Tribe. Maloney testified his mother was "suspicious" of the "Government" and "maybe they going to transfer us around and we have what we want, use the grazing land out there …" ER-37.

Maloney apparently conflated the opportunity to apply with the actual offer of a relocation home. But, this difference is immaterial in analyzing whether Maloney was a resident of the HPL on December 22, 1974. It is an attempt to show, despite the finding of credibility, that Maloney's testimony was unreliable.

B. Administrative Hearing Testimony of Darrell Woody

The HO found Darrell Woody's

> testimony about 'seeing' applicant at the two locations is too indefinite to support applicant's claim to residency on HPL and is not credible testimony as to any specific time period or year, especially as Mr. Woody was only nine to eleven years old at the time…

ER-68.

Darrell Woody was born 12/14/63 and knows Eddie Maloney because he lived near Maloney and his family. ER-48. Woody attended elementary grades at Shonto Boarding School. ER-49. In those years his family had two homesites, one on Black Mesa, the other at Cow Springs. It was common for people in the area to have a homesite in each area, used seasonally, up on Black Mesa in winter and down below in summer. ER-49-50. In winter when home from school he would be at the Black Mesa homesite. ER-50. Woody testified that he saw Maloney on Black Mesa in the winters of 1973, 1974, and 1975. In the summers of those years he saw Maloney below in Cow Springs. ER-51-52.

Woody testified that when school was out for the week Maloney often would check him out of the school dorm, drive him home, then return him to school on Monday. Maloney lived close to Woody on Black Mesa. ER-53; ER-54. The only other person who would check Woody out of school was his grandmother, Yanapa Tooley, who also had homesites at Black Mesa and Cow Springs. ER-55.

Thus, Darrell Woody's testimony was definite and specific as to the period of time he saw Maloney at the Black Mesa HPL homesite. And he was specific as to the circumstances of seeing him there, that Maloney was a neighbor and one of only two people who would check him out of the boarding school dorm at the

conclusion of the school week, drive him home, and return him to school after the weekend. As to discounting his testimony because he was between ten and twelve years of age at the time, this Court recently held: "[T]he IHO's perfunctory conclusion that Margery's young age [11]at the time of the events and the subsequent passage of time rendered her recollections 'highly suspect' also lacks support in the record." *Fuson v. ONHIR*, 134 F.4th 1010, 1016 (9th Cir. 2025).

This Circuit has recognized that in cases where a claimant's testimony is the primary source of evidence determining eligibility for a benefit that the credibility finding be subject to particular scrutiny:

> Thus, there must be a rational and supportable connection between the reasons cited and the conclusion that the petitioner is not credible. In cases of this nature, where the principal and frequently only source of evidence is the petitioner's testimony, it is particularly important that the credibility determination be based on appropriate factors.

Aguilera-Cota v. I.N.S., 914 F.2d 1375, 1381 (9th Cir. 1990).

This Court has addressed an ALJ's role in evaluating witness testimony in an immigration proceeding that is equally relevant here:

> An immigration judge alone is in a position to observe an alien's tone and demeanor, to explore inconsistencies in testimony, and to apply workable and consistent standards in the evaluation of testimonial evidence. He [or she] is, by virtue of his [or her] acquired skill, uniquely qualified to decide whether an alien's testimony has about it the ring of truth.

Oshodi v. Holder, 729 F.3d 883, 892 (9th Cir. 2013) (*en banc*).

The *Decision's* perfunctory recitation of testimony is contrary to the careful,

deliberate procedure described in *Oshodi*. No effort was made to fairly evaluate the testimony of Maloney and Woody and objectively incorporate their testimony in the residency analysis.

"[T]he totality of the circumstances approach also imposes the requirement that an IJ not cherry pick solely facts favoring an adverse credibility determination while ignoring facts that undermine that result." *Shrestha v. Holder*, 590 F.3d 1034, 1040 (9th Cir. 2010).

II. The BIA Enumeration is not Determinative; the Entire Record Must be Examined to Determine if Plaintiff Maintained an HPL Homesite Through December 22, 1974

ONHIR's letter to Eddie Maloney, denying his application for relocation benefits, states the reason for the denial is that he was documented ("enumerated") by the BIA as being a resident of the NPL, and not also a resident of the HPL. ER-29-30. In turn, the HO's *Decision* relies solely on the Enumeration to uphold ONHIR's denial of benefits, stating: "The BIA Enumeration is deemed to be *prima facie* correct." ER-69. Though appearing open to the possibility the Enumeration can be rebutted, the *Decision,* by misrepresenting and discounting the hearing testimony, treats the Enumeration as determinative. There is not much an applicant can offer to counter the Enumeration other than testimony.

In the history of ONHIR's operation, many applicants for relocation benefits have been certified to receive them despite their names not recorded in the

Enumeration (sometimes referenced as, "Joint Use Area roster") as residents of an HPL homesite. ONHIR's employee, Joseph Shelton, acknowledged at the hearing that it is "common" for people who have not been enumerated to receive relocation benefits. ER-59.

Three decisions of ONHIR's Hearing Officer,[6] finding applicants eligible for relocation benefits despite not being enumerated on the HPL, were attached as exhibits to Maloney's Motion for Summary Judgment filed in the District Court.[7] In each decision the applicant was recorded by the BIA as a resident of the NPL only. However, following an appeal hearing the HO held that the applicants maintained a traditional use area extending onto the HPL though enumerators did not record their presence there. In each case it was only through testimony that the Enumeration was found inaccurate. In *Edison Bahe*, [ER-94-98] the HO noted that, "standing alone, the roster cannot be the sole source upon which Applicant could be disqualified from receiving relocation benefits and assistance." ER-97. This is contrary to the HO's complete reliance on the Enumeration (JUA roster) here.

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6. *Harry Isaac*, Hearing No. 85-31 [ER-79-83]; *Minnie Woodie*, Casefile No. 5124 [ER-84-91]; *Edison Bahe*, Hearing No. 89-36 [ER-92-98].
7. ONHIR in its Response and Cross-Motion for Summary Judgment objected to the inclusion of the prior decisions, but neither ONHIR's objection nor the decisions are addressed in the District Court's Order. The exhibits with the three decisions are listed in the District Court's Docket Report. ER-110.

ONHIR's predecessor agency recognized the deficiencies of the BIA Enumeration. In 1981, in conjunction with its obligations incurred under the Settlement Act, the Navajo-Hopi Indian Relocation Commission (NHIRC) submitted a report to the U.S. Congress that included the Commission's own census of residents of the former JUA. In the "Enumeration Methodology" section of the Commission's Report four prior efforts to compile a census of the JUA, and the inadequacies and limitations of each, are noted, including a critique of the BIA's Joint Use Area Roster. ER-104. *Navajo Hopi Indian Relocation Commission Report and Plan*, "Enumeration Methodology," p. 67-72[8]. ER-99-105.

The NHIRC Report (and also the HO's *Edison Bahe* decision, *supra.*, 25) was cited by the Arizona District Court in *Ray, et. al. v. ONHIR*, 22-cv-08101-SPL, 2023 WL 4761789, identifying it is an, "ONHIR report discussing why the 1974–75 BIA Enumeration was limited in its usefulness and generally unreliable." *Id.,**7. *Ray* noted that, "Courts have generally recognized this unreliability by finding that the Enumeration is not, on its own, sufficient evidence to establish residency or non-residency." *Id. Ray* overturned the HO's decision, finding that he, "essentially treated the Enumeration as conclusive evidence of Plaintiffs' residency

8. Attached as Exhibit IV to Maloney's Motion for Summary Judgment and not objected to by ONHIR.

because he failed to meaningfully consider whether Plaintiffs had met their burden of disproving the Enumeration." *Id.* This describes the HO's *Decision* here.

Ray also cites this Court's decision in *Walker v. Navajo-Hopi Indian Relocation Commission*, 728 F.2d 1276 (9th Cir. 1984),*7. In *Walker* this Court recognized the deficiencies of the BIA Enumeration when it noted the difficulty of conducting a reliable census in the 1970's of residents of the former JUA:

> The Commission has always taken the position that the enumeration list is not conclusive as to eligibility. The Commission treated the list as a way of informing Congress of the approximate number of people affected by the settlement so that estimates of relocation costs could be made. Prior to the list no reliable information was available about the number of people living in the JUA or their tribal affiliation.

Walker, 728 F. 2d, 1279.

The reference to "no reliable information" previously available includes the 1974-1975 BIA Enumeration. This Court noted that neither could the Commission's own census be considered conclusive: "Not all those eligible for benefits appear on the list submitted with the *Report and Plan.*" *Walker,*728 F. 2d, 1280. That the BIA Enumeration failed to identify all residents of the JUA, and capture all HPL homesites in existence on December 22, 1974, was recognized by the Commission, as well as by the HO, in the administrative decisions cited.

The HO misreads the Arizona District Court's decision in *Mike v. ONHIR*, CV-06-0866, 2008 WL 54920, *6-7 (D. Ariz. 2008). ER-69; ER-73. *Mike* faulted the HO for failing to acknowledge the plaintiff/applicant's listing "on the JUA

enumeration roster…" *Mike,**6. *Mike* stands for the proposition that, "if the applicant is listed on the JUA roster, he/she is assumed to have been a legal resident …" *Id. Mike* did not address the contrary proposition, and thus does not stand for a presumption of non-residency if the applicant is not listed on the roster.

Here, the HO recognized in the *Decision's* Findings of Fact that, "[a]pplicant's family regarded the two areas – Cow Springs and Black Mesa – as a traditional use area …" [ER-65], while ignoring this in the residency analysis. By misrepresenting and discounting hearing testimony the Enumeration was found to be dispositive. *Decision*: "Applicant self-identified to the BIA enumerators as a Cow-Springs resident …applicant did not tell the enumerators that he really or also lived at Black Mesa." ER-72-73. This misrepresents Maloney's testimony. In response to a question from his counsel as to what he recalled about being visited by people taking a "Census" Maloney stated:

> They question me about my family and their Census and everything like that. … I don't remember them asking me about the location where I'm living, but they just ask down below where we spend the summers.

ER-39.

When asked by ONHIR's counsel if he recalled telling those he spoke with if he lived with his grandparents on Black Mesa, Maloney responded: "Yes I tell them we, I just kind of mentioned it, they didn't exactly ask me that question, but I just mentioned it." ER-47.

Decision: "[T]here is no evidence that any of the people who were found by the BIA enumerators on Black Mesa … identified applicant as a resident there." ER-72. This is speculation as no records exist of anything that transpired between enumerators and the people they encountered in conducting their survey. "[W]hile ONHIR has the survey results, the original data entry documents were destroyed by a flood while still in the possession of the BIA.[9]" Nothing remains of the Enumeration other than a bare listing of homesites ("improvements") and individuals associated with them. ER-108.

The *Decision* contains over a page drawn from the "Mediator's Report and Recommendations"describing the process of conducting the Enumeration. ER-64-65. However, this Court's opinion in *Fuson v. ONHIR, supra.,*22, describes testimony of one of those who conducted the Enumeration, showing it was not as careful and accurate as the process described. *Fuson* considered, "transcripts of a former BIA enumerator's deposition testimony:"

> [T]he former BIA enumerator explained the BIA's surveying process. When asked how BIA enumerators addressed the ownership of multiple homesites, she explained that survey participants were asked to select a primary homesite, which would list all the owner's family members. Then, to avoid overcounting the total number of people in the JUA, only the owner would be listed at the secondary homesite. This was the case even if the family members spent equal amounts of

9. U.S. Government Accountability Office, Report to Congressional Requesters, Appendix II. Comments from Office of Navajo and Hopi Indian Relocation, GAO-18-266, April 2018.

> time at each homesite. In other words, the roster did not always accurately report where a family spent their time.

Fuson, 134 F.4th,1015.

This would explain why Eddie Maloney's name does not appear in the Enumeration as a resident of his grandfather John Maze's homesite on Black Mesa.

In *Ray v. ONHIR*, *supra*, 26, the Arizona District Court faulted ONHIR's HO for basing his decision on the Enumeration and excluding testimony. "In essence, the IHO based his benefits decision entirely on the Enumeration." *Id.*,*8. This is the same conclusion this Court arrived at in *Fuson, supra,*

> The IHO relied almost exclusively on the BIA enumeration roster to conclude that [applicant] was a resident of the NPL … rather than the HPL, because it listed [applicant] as a resident of the NPL homesite in January 1975. … the IHO summarily treated the enumeration roster as dispositive evidence of [applicant's] residence at the NPL. By neglecting to engage with the critical testimony in his decision, the IHO failed "to reasonably consider the relevant issues and reasonably explain" his decision. *Fed. Commc'ns Comm'n. v. Prometheus Radio Project*, 592 U.S. 414, 423 (2021). The IHO's residency finding is therefore arbitrary and capricious.

134 F.4th, 1018.

An objective review of the record here reveals the same deficiencies in the HO's analysis. The BIA Enumeration was found to be determinative of residency, and testimony was not fairly considered in arriving at the *Decision's* conclusions. Although the Hearing Officer found Eddie Maloney to be a credible witness his testimony was consistently misrepresented, and testimony of Maloney's witness

arbitrarily discounted. This resulted in a decision not based upon substantial evidence.

CONCLUSION

Eddie Maloney respectfully requests that this Court reverse the District Court, grant his Motion for Summary Judgment, remand this matter to ONHIR, and direct the Agency to certify him for Relocation Benefits.

Respectfully submitted this the 21st day of July, 2025.

s/ Robert S. Malone

Attorney for Plaintiff/Appellant
Eddie Maloney

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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FOR THE NINTH CIRCUIT

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ADDENDUM

TABLE OF CONTENTS

Statutes

Regulations

Rules

Subsec. (b). Pub. L. 110–315 substituted ''Diné College'' for ''the Navajo Community College'' and ''College be used'' for ''college be used''.

1988—Pub. L. 100–297 designated existing provisions as subsec. (a) and added subsec. (b).

EFFECTIVE DATE OF 1988 AMENDMENT

For effective date and applicability of amendment by Pub. L. 100–297, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

EFFECTIVE DATE

Section effective Oct. 1, 1980, see section 1393(a) of Pub. L. 96–374, set out as an Effective Date of 1980 Amendment note under section 1001 of Title 20, Education.

§ 640c–3. Payments; interest

(a) Notwithstanding any other provision of law, the Secretary of the Interior shall not, in disbursing funds provided under sections 640a to 640c–3 of this title, use any method of payment which was not used during fiscal year 1987 in the disbursement of funds provided under sections 640a to 640c–3 of this title.

(b)(1)(A) Notwithstanding any provision of law other than subparagraph (B), any interest or investment income that accrues on any funds provided under sections 640a to 640c–3 of this title after such funds are paid to Diné College and before such funds are expended for the purpose for which such funds were provided under sections 640a to 640c–3 of this title shall be the property of Diné College and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, to Diné College under any provision of Federal law.

(B) All interest or investment income described in subparagraph (A) shall be expended by Diné College by no later than the close of the fiscal year succeeding the fiscal year in which such interest or investment income accrues.

(2) Funds provided under sections 640a to 640c–3 of this title may only be invested by Diné College in obligations of the United States or in obligations or securities that are guaranteed or insured by the United States.

(Pub. L. 92–189, § 7, as added Pub. L. 100–297, title V, § 5402(b), Apr. 28, 1988, 102 Stat. 415; amended Pub. L. 110–315, title IX, § 946(f), Aug. 14, 2008, 122 Stat. 3469.)

CODIFICATION

Section was not enacted as part of act Apr. 19, 1950, ch. 92, 64 Stat. 44, which comprises this subchapter.

AMENDMENTS

2008—Subsec. (b). Pub. L. 110–315 substituted ''Diné College'' for ''the Navajo Community College'' wherever appearing.

EFFECTIVE DATE

For effective date and applicability of section, see section 6303 of Pub. L. 100–297, set out as an Effective Date of 1988 Amendment note under section 1071 of Title 20, Education.

SUBCHAPTER XXII—NAVAJO AND HOPI TRIBES: SETTLEMENT OF RIGHTS AND INTERESTS

§ 640d. Mediator

(a) Appointment; duties; qualifications; termination of duties

Within thirty days after December 22, 1974, 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 640d–2 of this title or the submission of a report to the District Court after a default in negotiations or a partial agreement pursuant to section 640d–3 of this title.

(b) Nature of proceedings

The proceedings in which the Mediator shall be acting under the provisions of this subchapter 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) Interagency committee

(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 subchapter. 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.

(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 December 22, 1974, 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) Liaison with Secretary

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) Staff assistants and consultants

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.

(Pub. L. 93–531, §1, Dec. 22, 1974, 88 Stat. 1712.)

SHORT TITLE OF 1991 AMENDMENT

Pub. L. 102–180, §1, Dec. 2, 1991, 105 Stat. 1230, provided that: ''This Act [amending sections 640d–11 and 640d–24 of this title and section 5315 of Title 5, Government Organization and Employees, and enacting provisions set out as notes under section 640d–11 of this title] may be cited as the 'Navajo-Hopi Relocation Housing Program Reauthorization Act of 1991'.''

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100–666, §1, Nov. 16, 1988, 102 Stat. 3929, provided that: ''This Act [enacting sections 640d–29 and 640d–30 of this title, amending sections 640d–7, 640d–9 to 640d–14, 640d–22, 640d–24, 640d–25, and 640d–28 of this title, and enacting provisions set out as a note under section 640d–11 of this title] may be cited as the 'Navajo and Hopi Indian Relocation Amendments of 1988'.''

SHORT TITLE OF 1980 AMENDMENT

Pub. L. 96–305, §1, July 8, 1980, 94 Stat. 929, provided: ''That this Act [enacting sections 640d–25 to 640d–28 of this title and amending sections 640d–4, 640d–7, 640d–9 to 640d–12, 640d–14, 640d–18, 640d–22, and 640d–24 of this title] may be cited as the 'Navajo and Hopi Indian Relocation Amendments Act of 1980'.''

NAVAJO-HOPI LAND DISPUTE SETTLEMENT ACT OF 1996

Pub. L. 104–301, Oct. 11, 1996, 110 Stat. 3649, as amended by Pub. L. 105–256, §3, Oct. 14, 1998, 112 Stat. 1897, provided that:

''SECTION 1. SHORT TITLE.

''This Act may be cited as the 'Navajo-Hopi Land Dispute Settlement Act of 1996'.

''SEC. 2. FINDINGS.

''The Congress finds that—

''(1) it is in the public interest for the Tribe, Navajos residing on the Hopi Partitioned Lands, and the United States to reach a peaceful resolution of the longstanding disagreements between the parties under the Act commonly known as the 'Navajo-Hopi Land Settlement Act of 1974' (Public Law 93–531; 25 U.S.C. 640d et seq.);

''(2) it is in the best interest of the Tribe and the United States that there be a fair and final settlement of certain issues remaining in connection with the Navajo-Hopi Land Settlement Act of 1974, including the full and final settlement of the multiple claims that the Tribe has against the United States;

''(3) this Act, together with the Settlement Agreement executed on December 14, 1995, and the Accommodation Agreement (as incorporated by the Settlement Agreement), provide the authority for the Tribe to enter agreements with eligible Navajo families in order for those families to remain residents of the Hopi Partitioned Lands for a period of 75 years, subject to the terms and conditions of the Accommodation Agreement;

''(4) the United States acknowledges and respects—

''(A) the sincerity of the traditional beliefs of the members of the Tribe and the Navajo families residing on the Hopi Partitioned Lands; and

''(B) the importance that the respective traditional beliefs of the members of the Tribe and Navajo families have with respect to the culture and way of life of those members and families;

''(5) this Act, the Settlement Agreement, and the Accommodation Agreement provide for the mutual respect and protection of the traditional religious beliefs and practices of the Tribe and the Navajo families residing on the Hopi Partitioned Lands;

''(6) the Tribe is encouraged to work with the Navajo families residing on the Hopi Partitioned Lands to address their concerns regarding the establishment of family or individual burial plots for deceased family members who have resided on the Hopi Partitioned Lands; and

''(7) neither the Navajo Nation nor the Navajo families residing upon Hopi Partitioned Lands were parties to or signers of the Settlement Agreement between the United States and the Hopi Tribe.

''SEC. 3. DEFINITIONS.

''Except as otherwise provided in this Act, for purposes of this Act, the following definitions shall apply:

''(1) ACCOMMODATION.—The term 'Accommodation' has the meaning provided that term under the Settlement Agreement.

''(2) HOPI PARTITIONED LANDS.—The term 'Hopi Partitioned Lands' means lands located in the Hopi Partitioned Area, as defined in section 168.1(g) of title 25, Code of Federal Regulations (as in effect on the date of enactment of this Act [Oct. 11, 1996]).

''(3) NAVAJO PARTITIONED LANDS.—The term 'Navajo Partitioned Lands' has the meaning provided that term in the proposed regulations issued on November 1, 1995, at 60 Fed. Reg. 55506.

''(4) NEW LANDS.—The term 'New Lands' has the meaning provided that term in section 700.701(b) of title 25, Code of Federal Regulations.

''(5) SECRETARY.—The term 'Secretary' means the Secretary of the Interior.

''(6) SETTLEMENT AGREEMENT.—The term 'Settlement Agreement' means the agreement between the United States and the Hopi Tribe executed on December 14, 1995.

''(7) TRIBE.—The term 'Tribe' means the Hopi Tribe.

''(8) NEWLY ACQUIRED TRUST LANDS.—The term 'newly acquired trust lands' means lands taken into trust for the Tribe within the State of Arizona pursuant to this Act or the Settlement Agreement.

''SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.

''The United States approves, ratifies, and confirms the Settlement Agreement.

''SEC. 5. CONDITIONS FOR LANDS TAKEN INTO TRUST.

''The Secretary shall take such action as may be necessary to ensure that the following conditions are met prior to taking lands into trust for the benefit of the Tribe pursuant to the Settlement Agreement:

''(1) SELECTION OF LANDS TAKEN INTO TRUST.—

''(A) PRIMARY AREA.—In accordance with section 7(a) of the Settlement Agreement, the primary area within which lands acquired by the Tribe may be taken into trust by the Secretary for the benefit of the Tribe under the Settlement Agreement shall be located in northern Arizona.

''(B) REQUIREMENTS FOR LANDS TAKEN INTO TRUST IN THE PRIMARY AREA.—Lands taken into trust in the primary area referred to in subparagraph (A) shall be—

''(i) land that is used substantially for ranching, agriculture, or another similar use; and

''(ii) to the extent feasible, in contiguous parcels.

''(2) ACQUISITION OF LANDS.—Before taking any land into trust for the benefit of the Tribe under this section, the Secretary shall ensure that—

''(A) at least 85 percent of the eligible Navajo heads of household (as determined under the Settlement Agreement) have entered into an accommodation or have chosen to relocate and are eligible for relocation assistance (as determined under the Settlement Agreement); and

''(B) the Tribe has consulted with the State of Arizona concerning the lands proposed to be placed in trust, including consulting with the State concerning the impact of placing those lands into trust on the State and political subdivisions thereof resulting from the removal of land from the tax rolls in a manner consistent with the provisions of part 151 of title 25, Code of Federal Regulations.

''(3) PROHIBITION.—The Secretary may not, pursuant to the provisions of this Act and the Settlement Agreement, place lands, any portion of which are located within or contiguous to a 5-mile radius of an incorporated town or city (as those terms are defined by the Secretary) in northern Arizona, into trust for benefit of the Tribe without specific statutory authority.

''(4) EXPEDITIOUS ACTION BY THE SECRETARY.—Consistent with all other provisions of this Act, the Secretary is directed to take lands into trust under this Act expeditiously and without undue delay.

''SEC. 6. ACQUISITION THROUGH CONDEMNATION OF CERTAIN INTERSPERSED LANDS.

''(a) IN GENERAL.—

''(1) ACTION BY THE SECRETARY.—

''(A) IN GENERAL.—The Secretary shall take action as specified in subparagraph (B), to the extent that the Tribe, in accordance with section 7(b) of the Settlement Agreement—

''(i) acquires private lands; and

''(ii) requests the Secretary to acquire through condemnation interspersed lands that are owned by the State of Arizona and are located within the exterior boundaries of those private lands in order to have both the private lands and the State lands taken into trust by the Secretary for the benefit of the Tribe.

''(B) ACQUISITION THROUGH CONDEMNATION.—With respect to a request for an acquisition of lands through condemnation made under subparagraph (A), the Secretary shall, upon the recommendation of the Tribe, take such action as may be necessary to acquire the lands through condemnation and, with funds provided by the Tribe, pay the State of Arizona fair market value for those lands in accordance with applicable Federal law, if the conditions described in paragraph (2) are met.

''(2) CONDITIONS FOR ACQUISITION THROUGH CONDEMNATION.—The Secretary may acquire lands through condemnation under this subsection if—

''(A) that acquisition is consistent with the purpose of obtaining not more than 500,000 acres of land to be taken into trust for the Tribe;

''(B) the State of Arizona concurs with the United States that the acquisition is consistent with the interests of the State; and

''(C) the Tribe pays for the land acquired through condemnation under this subsection.

''(b) DISPOSITION OF LANDS.—If the Secretary acquires lands through condemnation under subsection (a), the Secretary shall take those lands into trust for the Tribe in accordance with this Act and the Settlement Agreement.

''(c) PRIVATE LANDS.—The Secretary may not acquire private lands through condemnation for the purpose specified in subsection (a)(2)(A).

''SEC. 7. ACTION TO QUIET POSSESSION.

''If the United States fails to discharge the obligations specified in section 9(c) of the Settlement Agreement with respect to voluntary relocation of Navajos residing on Hopi Partitioned Lands, or section 9(d) of the Settlement Agreement, relating to the implementation of sections 700.137 through 700.139 of title 25, Code of Federal Regulations, on the New Lands, including failure for reason of insufficient funds made available by appropriations or otherwise, the Tribe may bring an action to quiet possession that relates to the use of the Hopi Partitioned Lands after February 1, 2000, by a Navajo family that is eligible for an accommodation, but fails to enter into an accommodation.

''SEC. 8. PAYMENT TO STATE OF ARIZONA.

''(a) AUTHORIZATION OF APPROPRIATIONS.—Subject to subsection (b), there are authorized to be appropriated to the Department of the Interior $250,000 for fiscal year 1998, to be used by the Secretary of the Interior for making a payment to the State of Arizona.

''(b) PAYMENT.—The Secretary shall make a payment in the amount specified in subsection (a) to the State of Arizona after an initial acquisition of land from the State has been made by the Secretary pursuant to section 6.

''SEC. 9. 75-YEAR LEASING AUTHORITY.

''[Amended section 415 of this title.]

''SEC. 10. REAUTHORIZATION OF THE NAVAJO-HOPI RELOCATION HOUSING PROGRAM.

''[Amended section 640d–24 of this title.]

''SEC. 11. EFFECT OF THIS ACT ON CASES INVOLVING THE NAVAJO NATION AND THE HOPI TRIBE.

''Nothing in this Act or the amendments made by this Act shall be interpreted or deemed to preclude, limit, or endorse, in any manner, actions by the Navajo Nation that seek, in court, an offset from judgments for payments received by the Hopi Tribe under the Settlement Agreement.

''SEC. 12. WATER RIGHTS.

''(a) IN GENERAL.—

''(1) WATER RIGHTS.—Subject to the other provisions of this section, newly acquired trust lands shall have only the following water rights:

''(A) The right to the reasonable use of groundwater pumped from such lands.

''(B) All rights to the use of surface water on such lands existing under State law on the date of acquisition, with the priority date of such right under State law.

''(C) The right to make any further beneficial use on such lands of surface water which is unappropriated on the date each parcel of newly acquired trust lands is taken into trust. The priority date for the right shall be the date the lands are taken into trust.

''(2) RIGHTS NOT SUBJECT TO FORFEITURE OR ABANDONMENT.—The Tribe's water rights for newly acquired trust lands shall not be subject to forfeiture or abandonment arising from events occurring after the date the lands are taken into trust.

''(b) RECOGNITION AS VALID USES.—

''(1) GROUNDWATER.—With respect to water rights associated with newly acquired trust lands, the Tribe, and the United States on the Tribe's behalf, shall recognize as valid all uses of groundwater which may be made from wells (or their subsequent replacements) in existence on the date each parcel of newly acquired trust land is acquired and shall not object to such groundwater uses on the basis of water rights associated with the newly acquired trust lands. The Tribe, and the United States on the Tribe's behalf, may object only to the impact of groundwater uses on newly acquired trust lands which are initiated after the date the lands affected are taken into trust and only on grounds allowed by the State law as it exists when the objection is made. The Tribe, and the United States on the Tribe's behalf, shall not object to the impact of groundwater uses on the Tribe's right to surface water established pursuant to subsection (a)(1)(C) when those groundwater uses are initiated before the Tribe initiates its beneficial use of surface water pursuant to subsection (a)(1)(C).

''(2) SURFACE WATER.—With respect to water rights associated with newly acquired trust lands, the Tribe, and the United States on the Tribe's behalf, shall recognize as valid all uses of surface water in existence on or prior to the date each parcel of newly acquired trust land is acquired and shall not object to such surface water uses on the basis of water rights associated with the newly acquired trust lands, but shall have the right to enforce the priority of its rights against all junior water rights the exercise of which interfere with the actual use of the Tribe's senior surface water rights.

''(3) RULE OF CONSTRUCTION.—Nothing in paragraph (1) or (2) shall preclude the Tribe, or the United States on the Tribe's behalf, from asserting objections to water rights and uses on the basis of the

Tribe's water rights on its currently existing trust lands.

''(c) APPLICABILITY OF STATE LAW ON LANDS OTHER THAN NEWLY ACQUIRED LANDS.—The Tribe, and the United States on the Tribe's behalf, further recognize that State law applies to water uses on lands, including subsurface estates, that exist within the exterior boundaries of newly acquired trust lands and that are owned by any party other than the Tribe.

''(d) ADJUDICATION OF WATER RIGHTS ON NEWLY ACQUIRED TRUST LANDS.—The Tribe's water rights on newly acquired trust lands shall be adjudicated with the rights of all other competing users in the court now presiding over the Little Colorado River Adjudication, or if that court no longer has jurisdiction, in the appropriate State or Federal court. Any controversies between or among users arising under Federal or State law involving the Tribe's water rights on newly acquired trust lands shall be resolved in the court now presiding over the Little Colorado River Adjudication, or, if that court no longer has jurisdiction, in the appropriate State or Federal court. Nothing in this subsection shall be construed to affect any court's jurisdiction: *Provided*, That the Tribe shall administer all water rights established in subsection (a).

''(e) PROHIBITION.—Water rights for newly acquired trust lands shall not be used, leased, sold, or transported for use off of such lands or the Tribe's other trust lands: *Provided*, That the Tribe may agree with other persons having junior water rights to subordinate the Tribe's senior water rights. Water rights for newly acquired trust lands can only be used on those lands or other trust lands of the Tribe located within the same river basin tributary to the main stream of the Colorado River.

''(f) SUBSURFACE INTERESTS.—On any newly acquired trust lands where the subsurface interest is owned by any party other than the Tribe, the trust status of the surface ownership shall not impair any existing right of the subsurface owner to develop the subsurface interest and to have access to the surface for the purpose of such development.

''(g) STATUTORY CONSTRUCTION WITH RESPECT TO WATER RIGHTS OF OTHER FEDERALLY RECOGNIZED INDIAN TRIBES.—Nothing in this section shall affect the water rights of any other federally recognized Indian tribe with a priority date earlier than the date the newly acquired trust lands are taken into trust.

''(h) STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to determine the law applicable to water use on lands owned by the United States, other than on the newly acquired trust lands. The granting of the right to make beneficial use of unappropriated surface water on the newly acquired trust lands with a priority date such lands are taken into trust shall not be construed to imply that such right is a Federal reserved water right. Nothing in this section or any other provision of this Act shall be construed to establish any Federal reserved right to groundwater. Authority for the Secretary to take land into trust for the Tribe pursuant to the Settlement Agreement and this Act shall be construed as having been provided solely by the provisions of this Act.''

EXECUTIVE ORDER NO. 11829

Ex. Ord. No. 11829, Jan. 6, 1975, 40 F.R. 1497, as amended by Ex. Ord. No. 11853, Apr. 17, 1975, 40 F.R. 17537, which established the Hopi-Navajo Land Settlement Interagency Committee and provided for its membership, functions, etc., was revoked by Ex. Ord. No. 12379, § 11, Aug. 17, 1982, 47 F.R. 36099, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 640d–1. Negotiating teams

(a) Appointment; time; membership and certification; nature of authority

Within thirty days after December 22, 1974, 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 subchapter.

(b) Failure to select and certify

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 section 640d–3(a)[1] of this title shall become effective.

(c) First negotiating session; time and place; chairman; suggestions for procedure, agenda, and resolution of issues in controversy

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) Failure to attend two consecutive sessions or bargain in good faith

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 section 640d–3(a)[1] of this title shall become effective.

(e) Disagreements within team

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.

(Pub. L. 93–531, § 2, Dec. 22, 1974, 88 Stat. 1712.)

REFERENCES IN TEXT

Section 640d–3 of this title, referred to in subsecs. (b) and (d), was amended by Pub. L. 98–620, title IV, § 402(27), Nov. 8, 1984, 98 Stat. 3359, by striking out subsec. (b) and redesignating subsec. (a) as the entire section.

§ 640d–2. Implementation of agreements

(a) Full agreement

If, within one hundred and eighty days after the first session scheduled by the Mediator under section 640d–1(c) of this title, full agreement is reached, such agreement shall be put in such form as the Mediator determines best ex-

[1] See References in Text note below.

presses 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.

(b) Partial agreement

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 640d–3 of this title.

(c) Consistency with existing law

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.

(Pub. L. 93–531, § 3, Dec. 22, 1974, 88 Stat. 1713.)

§ 640d–3. Default or failure to reach agreement; recommendations to District Court; final adjudication

If the negotiating teams fail to reach full agreement within the time period allowed in section 640d–2(a) of this title or if one or both of the tribes are in default under the provisions of section 640d–1(b) or (d) of this title, the Mediator, within ninety days thereafter, shall prepare and submit to the District Court a report containing his recommendations for the settlement of the interests and rights set out in section 640d(a) of this title which shall be most reasonable and equitable in light of the law and circumstances and consistent with the provisions of this subchapter. 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.

(Pub. L. 93–531, § 4, Dec. 22, 1974, 88 Stat. 1713; Pub. L. 98–620, title IV, § 402(27), Nov. 8, 1984, 98 Stat. 3359.)

AMENDMENTS

1984—Pub. L. 98–620 struck out designation "(a)" before "If the negotiating", and struck out subsec. (b) which provided that any proceedings as authorized in this section had to be assigned for hearing at the earliest possible date, would take precedence over all other matters pending on the docket of the District Court at that time, and had to be expedited in every way by the Court.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98–620 not applicable to cases pending on Nov. 8, 1984, see section 403 of Pub. L. 98–620, set out as an Effective Date note under section 1657 of Title 28, Judiciary and Judicial Procedure.

§ 640d–4. Authorized recommendations for facilitation of agreement or report to District Court; discretionary nature of recommendations

(a) For the purpose of facilitating an agreement pursuant to section 640d–2 of this title or preparing a report pursuant to section 640d–3 of this title, the Mediator is authorized—

(1) notwithstanding the provisions of section 211 of this title, 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 subchapter, funds of either tribe, or funds under any other authority of law;

(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) Repealed. Pub. L. 93–531, § 30(a), as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 934.

(5) to make any other recommendations as are in conformity with this subchapter 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.

(Pub. L. 93–531, § 5, Dec. 22, 1974, 88 Stat. 1714; Pub. L. 93–531, § 30(a), as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 934.)

AMENDMENTS

1980—Subsec. (a)(4). Pub. L. 96–305 struck out par. (4) which authorized the Mediator to recommend, in exceptional cases where necessary to prevent 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.

§ 640d–5. Considerations and guidelines for preparation of report by Mediator and final adjudication by District Court

The Mediator in preparing his report, and the District Court in making the final adjudication, pursuant to section 640d–3 of this title, 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 section 640d–2(b) of this title; 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.

(Pub. L. 93–531, § 6, Dec. 22, 1974, 88 Stat. 1714.)

§ 640d–6. Joint ownership and management of coal, oil, gas and other minerals within or underlying partitioned lands; division of proceeds

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.

(Pub. L. 93–531, § 7, Dec. 22, 1974, 88 Stat. 1715.)

§ 640d–7. Determination of tribal rights and interests in land

(a) Authorization to commence and defend actions in District Court

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) Allocation of land to respective reservations upon determination of interests

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) Actions for accounting, fair value of grazing, and claims for damages to land; determination of recovery; defenses

(1) Either as a part of or in a proceeding supplementary to the action authorized in subsection (a) of this section, either tribe, through the chairman of its tribal council for and on behalf of the tribe, including all villages, clans, and individual members thereof, may prosecute or defend an action for the types of relief, including interest, specified in section 640d–17 of this title, including all subsections thereof, against the other tribe, through its tribal chairman in a like representative capacity, and against the United States as to the types of re-

covery specified in subsection (a)(3) of section 640d–17 of this title and subject to the same provisions as contained in said subsection, such action to apply to the lands in issue in the reservation established by the Act of June 14, 1934 (48 Stat. 960).

(2) In the event the Hopi Tribe or Navajo Tribe is determined to have any interest in the lands in issue, the right of either tribe to recover hereunder shall be based upon that percentage of the total sums collected, use made, waste committed, and other amounts of recovery, which is equal to the percentage of lands in issue in which either tribe is determined to have such interest.

(3) Neither laches nor the statute of limitations shall constitute a defense to such proceedings if they are either prosecuted as a part of the action authorized by this section or in a proceeding supplemental thereto, if instituted not later than twenty-four months following a final order of partition and exhaustion of appeals in an action filed pursuant to this section.

(d) Denial of Congressional interest in merits of conflicting claims; liability of United States

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) Payment of legal fees, court costs and other expenses

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, San Juan Southern Paiute or Hopi Tribe under this section.

(f) Provision of attorney fees for San Juan Southern Paiute Tribe

(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 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 November 16, 1988.

(Pub. L. 93–531, § 8, Dec. 22, 1974, 88 Stat. 1715; Pub. L. 96–305, § 2, July 8, 1980, 94 Stat. 929; Pub. L. 100–666, § 9, Nov. 16, 1988, 102 Stat. 3933.)

REFERENCES IN TEXT

Act of June 14, 1934, referred to in subsecs. (a) and (c)(1), is act June 14, 1934, ch. 521, 48 Stat. 960, which was not classified to the Code.

The Indian Claims Commission, referred to in subsec. (d), terminated Sept. 30, 1978. See Codification note set out under former section 70 et seq. of this title.

AMENDMENTS

1988—Subsec. (e). Pub. L. 100–666, § 9(a), inserted ", San Juan Southern Paiute" after "Navajo".

Subsec. (f). Pub. L. 100–666, § 9(b), added subsec. (f).

1980—Subsec. (c). Pub. L. 96–305 substituted provision authorizing, as part of the determination of tribal rights and interests in land, actions for accounting, fair value of grazing, and claims for damages, specifying the formula for determining recovery, and limiting defenses for provision authorizing exchange of reservation lands.

§ 640d–8. Allotments in severalty to Paiute Indians now located on lands; issue of patents declaring United States as trustee

Notwithstanding any other provision of this subchapter, 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 331[1] of this title, 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.

(Pub. L. 93–531, § 9, Dec. 22, 1974, 88 Stat. 1716.)

REFERENCES IN TEXT

Act of June 14, 1934, referred to in text, is act June 14, 1934, ch. 521, 48 Stat. 960, which was not classified to the Code.

Section 331 of this title, referred to in text, was repealed by Pub. L. 106–462, title I, § 106(a)(1), Nov. 7, 2000, 114 Stat. 2007.

§ 640d–9. Partitioned or other designated lands

(a) Lands to be held in trust for Navajo Tribe; exception

Subject to the provisions of sections 640d–8 and 640d–16(a) of this title, any lands partitioned to the Navajo Tribe pursuant to sections 640d–2 and 640d–3 of this title and the lands described in the Act of June 14, 1934 (48 Stat. 960), except the lands as described in section 640d–7 of this title, shall be held in trust by the United States exclusively for the Navajo Tribe and as a part of the Navajo Reservation.

(b) Lands to be held in trust for Hopi Tribe

Subject to the provisions of sections 640d–8 and 640d–16(a) of this title, any lands partitioned to the Hopi Tribe pursuant to sections 640d–2 and 640d–3 of this title and the lands as described in section 640d–7 of this title shall be held in trust by the United States exclusively for the Hopi Tribe and as a part of the Hopi Reservation.

[1] See References in Text note below.

(c) Protection of rights and property of individuals subject to relocation

The Secretary shall take such action as may be necessary in order to assure the protection, until relocation, of the rights and property of individuals subject to relocation pursuant to this subchapter, or any judgment of partition pursuant thereto, including any individual authorized to reside on land covered by a life estate conferred pursuant to section 640d–28 of this title.

(d) Protection of benefits and services of individuals subject to relocation

With respect to any individual subject to relocation, the Secretary shall take such action as may be necessary to assure that such individuals are not deprived of benefits or services by reason of their status as an individual subject to relocation.

(e) Tribal jurisdiction over partitioned lands

(1)[1] Lands partitioned pursuant to this subchapter, whether or not the partition order is subject to appeal, shall be subject to the jurisdiction of the tribe to whom partitioned and the laws of such tribe shall apply to such partitioned lands under the following schedule:

(A) Effective ninety days after July 8, 1980, all conservation practices, including grazing control and range restoration activities, shall be coordinated and executed with the concurrence of the tribe to whom the particular lands in question have been partitioned, and all such grazing and range restoration matters on the Navajo Reservation lands shall be administered by the Bureau of Indian Affairs Navajo Area Office and on the Hopi Reservation lands by the Bureau of Indian Affairs Phoenix Area Office, under applicable laws and regulations.

(B) Notwithstanding any provision of law to the contrary, each tribe shall have such jurisdiction and authority over any lands partitioned to it and all persons located thereon, not in conflict with the laws and regulations referred to in paragraph (A) above, to the same extent as is applicable to those other portions of its reservation. Such jurisdiction and authority over partitioned lands shall become effective April 18, 1981.

The provisions of this subsection shall be subject to the responsibility of the Secretary to protect the rights and property of life tenants and persons awaiting relocation as provided in subsections (c) and (d) of this section.

(Pub. L. 93–531, § 10, Dec. 22, 1974, 88 Stat. 1716; Pub. L. 96–305, § 3, July 8, 1980, 94 Stat. 929; Pub. L. 100–666, § 6, Nov. 16, 1988, 102 Stat. 3932; Pub. L. 111–18, § 1, May 8, 2009, 123 Stat. 1611.)

REFERENCES IN TEXT

Act of June 14, 1934, referred to in subsec. (a), is act June 14, 1934, ch. 521, 48 Stat. 960, which was not classified to the Code.

AMENDMENTS

2009—Subsec. (f). Pub. L. 111–18 struck out subsec. (f), which related to development of lands in litigation.

1988—Subsec. (f). Pub. L. 100–666 designated existing provisions as par. (1) and added pars. (2) and (3).

1980—Subsecs. (c) to (f). Pub. L. 96–305 added subsecs. (c) to (f).

[1] So in original. No par. (2) has been enacted.

§ 640d–10. Resettlement lands for Navajo Tribe

(a) Transfer of lands under jurisdiction of Bureau of Land Management; State and private land exchanges; valuation; acquired private lands; lands to be held in trust

The Secretary is authorized and directed to—

(1) transfer not to exceed two hundred and fifty thousand acres of lands under the jurisdiction of the Bureau of Land Management within the State[1] of Arizona and New Mexico to the Navajo Tribe: *Provided*, That, in order to facilitate such transfer, the Secretary is authorized to exchange such lands for State or private lands of equal value or, if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands transferred out of Federal ownership. The Secretary shall try to reduce the payment to as small an amount as possible.

(2)[2] on behalf of the United States, accept title to not to exceed one hundred and fifty thousand acres of private lands acquired by the Navajo Tribe. Title thereto shall be taken in the name of the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation.

Subject to the provisions of the following sentences of this subsection, all rights, title and interests of the United States in the lands described in paragraph (1), including such interests the United States as lessor has in such lands under the Mineral Leasing Act of 1920, as amended [30 U.S.C. 181 et seq.], will, subject to existing leasehold interests, be transferred without cost to the Navajo Tribe and title thereto shall be taken by the United States in trust for the benefit of the Navajo Tribe as a part of the Navajo Reservation. So long as selected lands coincide with pending noncompetitive coal lease applications under the Mineral Leasing Act of 1920, as amended, the Secretary may not transfer any United States interests in such lands until the noncompetitive coal lease applications have been fully adjudicated. If such adjudication results in issuance of Federal coal leases to the applicants, such transfer shall be subject to such leases. The leaseholders rights and interests in such coal leases will in no way be diminished by the transfer of the rights, title and interests of the United States in such lands to the Navajo Tribe. If any selected lands are subject to valid claims located under the Mining Law of 1872 the transfer of the selected lands may be made subject to those claims.

(2)[2] Those interests in lands acquired in the State of New Mexico by the Navajo Tribe pursuant to subsection 2[3] of this section shall be subject to the right of the State of New Mex-

[1] So in original. Probably should be "States".

[2] So in original. Two pars. designated (2) have been enacted.

[3] So in original. Probably should be "paragraph (1)".

ico to receive the same value from any sales, bonuses, rentals, royalties and interest charges from the conveyance, sale, lease, development, and production of coal as would have been received had the subsurface interest in such lands remained with the United States and been leased pursuant to the Mineral Lands Leasing Act of 1920, as amended [30 U.S.C. 181 et seq.], or any successor Act; or otherwise developed. The State's interest shall be accounted for in the same manner as it would have been if a lease had issued pursuant to the Mineral Lands Leasing Act of 1920, as amended.

(b) Proximity of lands to be transferred or acquired to Navajo Reservation; lands to be used for exchanges

A border of any parcel of land so transferred or acquired shall be within eighteen miles of the present boundary of the Navajo Reservation: *Provided*, That, except as limited by subsection (g) hereof, Bureau of Land Management lands anywhere within the States of Arizona and New Mexico may be used for the purpose of exchanging for lands within eighteen miles of the present boundary of the reservation.

(c) Selection of lands to be transferred or acquired; time period; consultation; restriction of New Mexico lands

Lands to be so transferred or acquired shall, for a period of three years after July 8, 1980, be selected by the Navajo Tribe after consultation with the Commissioner: *Provided*, That, at the end of such period, the Commissioner shall have the authority to select such lands after consultation with the Navajo Tribe: *Provided further*, That not to exceed thirty-five thousand acres of lands so transferred or acquired shall be selected within the State of New Mexico.

(d) Progress and status of land transfer program; reports to Congressional committees

The Commissioner, in consultation with the Secretary, shall within sixty days following the first year of enactment of this subsection report to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs, on the progress of the land transfer program authorized in subsection (a) of this section. Sixty days following the second year of enactment of this subsection the Commissioner, in consultation with the Secretary, shall submit a report to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs giving the status of the land transfer program authorized in subsection (a) of this section, making any recommendations that the Commissioner deems necessary to complete the land transfer program.

(e) Entitlement lands payments

Payments being made to any State or local government pursuant to the provisions of chapter 69 of title 31, on any lands transferred pursuant to subsection (a)(1) of this section shall continue to be paid as if such transfer had not occurred.

(f) Acquisition of title to surface and subsurface interest; time period; public notice; report to Congressional committees; rights of subsurface owner

(1) For a period of three years after July 8, 1980, the Secretary shall not accept title to lands acquired pursuant to subsection (a)(2)[4] of this section unless fee title to both surface and subsurface has been acquired or the owner of the subsurface interest consents to the acceptance of the surface interest in trust by the Secretary.

(2) If, ninety days prior to the expiration of such three year period, the full entitlement of private lands has not been acquired by the Navajo Tribe and accepted by the Secretary in trust for the Navajo Tribe under the restrictions of paragraph (1) of this subsection, the Commissioner, after public notice, shall, within thirty days, make a report thereon to the House Committee on Interior and Insular Affairs and the Senate Select Committee on Indian Affairs.

(3) In any case where the Secretary accepts, in trust, title to the surface of lands acquired pursuant to subsection (a)(2)[4] of this section where the subsurface interest is owned by third parties, the trust status of such surface ownership and the inclusion of the land within the Navajo Reservation shall not impair any existing right of the subsurface owner to develop the subsurface interest and to have access to the surface for the purpose of such development.

(g) Lands not available for transfer

No public lands lying north and west of the Colorado River in the State of Arizona shall be available for transfer under this section.

(h) Administration of lands transferred or acquired

The lands transferred or acquired pursuant to this section shall be administered by the Commissioner until relocation under the Commission's[5] plan is complete and such lands shall be used solely for the benefit of Navajo families residing on Hopi-partitioned lands as of December 22, 1974: *Provided*, That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this subchapter shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this subchapter.

(i) Negotiations regarding land exchanges or leases

The Commissioner shall have authority to enter into negotiations with the Navajo and Hopi Tribes with a view to arranging and carrying out land exchanges or leases, or both, between such tribes; and lands which may be acquired or transferred pursuant to this section may, with the approval of the Commissioner, be included in any land exchange between the tribes authorized under section 640d–22 of this title.

(Pub. L. 93–531, § 11, Dec. 22, 1974, 88 Stat. 1716; Pub. L. 96–305, § 4, July 8, 1980, 94 Stat. 930; Pub. L. 98–603, title I, § 106, Oct. 30, 1984, 98 Stat. 3157;

[4] See References in Text note below.

[5] So in original. Probably should be ''Commissioner's''.

Pub. L. 100–666, §§ 4(b), 8, Nov. 16, 1988, 102 Stat. 3930, 3933.)

REFERENCES IN TEXT

The Mineral Leasing Act of 1920, as amended, and the Mineral Lands Leasing Act of 1920, as amended, referred to in subsec. (a), are act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, known as the Mineral Leasing Act, which is classified generally to chapter 3A (§ 181 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

The Mining Law of 1872, referred to in subsec. (a), is act May 10, 1872, ch. 152, 17 Stat. 91, as amended. That act was incorporated into the Revised Statutes as R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344, which are classified to sections 22 to 24, 26 to 28, 29, 30, 33 to 35, 37, 39 to 42, and 47 of Title 30. For complete classification of R.S. §§ 2319 to 2328, 2331, 2333 to 2337, and 2344 to the Code, see Tables.

The first year of enactment of this subsection and the second year of enactment of this subsection, referred to in subsec. (d), probably mean the first and second year after the date of enactment of this subsection, which was July 8, 1980.

Subsection (a)(2) of this section, referred to in subsec. (f)(1), (3), means the first paragraph (2) of subsec. (a), relating to acceptance of title to private lands.

CODIFICATION

In subsec. (e), ''chapter 69 of title 31'' substituted for ''the Act of October 20, 1976 (90 Stat. 2662; 31 U.S.C. 1601 et seq.)'' on authority of Pub. L. 97–258, § 4(b), Sept. 13, 1982, 96 Stat. 1067, the first section of which enacted Title 31, Money and Finance.

AMENDMENTS

1988—Subsecs. (c), (d), (f)(2). Pub. L. 100–666, § 4(b), substituted ''Commissioner'' for ''Commission'' wherever appearing.

Subsec. (h). Pub. L. 100–666, §§ 4(b), 8, substituted ''by the Commissioner'' for ''by the Commission'' and ''December 22, 1974: *Provided*, That the sole authority for final planning decisions regarding the development of lands acquired pursuant to this subchapter shall rest with the Commissioner until such time as the Commissioner has discharged his statutory responsibility under this subchapter'' for ''July 8, 1980, who are awaiting relocation under this subchapter''.

Subsec. (i). Pub. L. 100–666, § 4(b), substituted ''Commissioner'' for ''Commission'' in two places.

1984—Subsec. (a). Pub. L. 98–603, § 106(2), inserted provisions relating to transfer without cost to the Navajo Tribe with title taken by the United States in trust for the benefit of the Navajo Tribe as part of the Navajo Reservation of all rights, title, and interests of the United States in the lands described in par. (1), subject to existing leaseholds.

Subsec. (a)(1). Pub. L. 98–603, § 106(1), struck out provisions requiring transfer of lands without cost to the Navajo Tribe with title taken by the United States in trust for the benefit of the Navajo Tribe as part of the Navajo Reservation.

Subsec. (a)(2). Pub. L. 98–603, § 106(3), added the par. (2) relating to interests in lands acquired in New Mexico.

1980—Subsec. (a). Pub. L. 96–305 substituted provision authorizing the Secretary to transfer not more than 250,000 acres of land under the jurisdiction of the Bureau of Land Management to the Navajo Tribe, at no cost to the Navajo Tribe, and in order to facilitate this transfer, exchange Bureau of Land Management land, at equal valuation, for State and private land, and to accept title to not more than 150,000 acres of private lands acquired by the Navajo Tribe, with title to both the transferred and privately acquired lands to be held by the United States in trust for the benefit of the Navajo Tribe for provision authorizing the Secretary to transfer not more than 250,000 acres of land under the jurisdiction of the Bureau of Land Management to the Navajo Tribe providing the Navajo Tribe pay the fair market value of the land transferred and providing that title to the transferred land be held by the United States for the benefit of the Navajo Tribe.

Subsec. (b). Pub. L. 96–305 substituted provision requiring a border of any parcel of land transferred or acquired to be within 18 miles of the present boundary of the Navajo Reservation and providing that, with the exception of the lands unavailable for transfer, any Bureau of Land Management lands within Arizona and New Mexico be available for exchange for lands within 18 miles of the present boundary of the reservation for provision authorizing the United States to take in trust for the benefit of the Navajo Tribe any private lands acquired by the Navajo Tribe which are contiguous or adjacent to the Navajo Reservation and restricting the total acreage of lands transferred or acquired to not more than 250,000 acres.

Subsecs. (c) to (i). Pub. L. 96–305 added subsecs. (c) to (i).

CHANGE OF NAME

Committee on Interior and Insular Affairs of the House of Representatives changed to Committee on Natural Resources of the House of Representatives on Jan. 5, 1993, by House Resolution No. 5, One Hundred Third Congress.

Select Committee on Indian Affairs of the Senate redesignated Committee on Indian Affairs of the Senate by section 25 of Senate Resolution No. 71, Feb. 25, 1993, One Hundred Third Congress.

§ 640d–11. Office of Navajo and Hopi Indian Relocation

(a) Establishment; Commissioner

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 subchapter referred to as the ''Commissioner'').

(b) Appointment; term of office; compensation

(1) The Commissioner shall be appointed by the President.

(2) The term of office of the Commissioner shall be 2 years. An individual may be appointed Commissioner for more than one term. The Commissioner serving at the end of a term shall continue to serve until his or her successor has been confirmed in accordance with paragraph (1) of this subsection.

(3) The Commissioner shall be a full-time employee of the United States, and shall be compensated at the rate of basic pay payable for level IV of the Executive Schedule.

(c) Transfer of powers, duties, and funds to Commissioner

(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 Navajo and Hopi Indian Relocation Commission had before November 16, 1988.

(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. (B)[1]: *Provided further*, That for administrative purposes such funds shall be maintained in a separate account.

(d) Powers of Commissioner

(1) Subject to such rules and regulations as may be adopted by the Office of Navajo and Hopi Indian Relocation, the Commissioner shall have the power to—

(A) appoint and fix the compensation of such staff and personnel as the Commissioner deems necessary in accordance with the provisions of title 5 governing appointments in the competitive service, but at rates not in excess of a position classified above a GS–15 of the General Schedule under section 5108 of such title; and

(B) procure temporary and intermittent services to the same extent as is authorized by section 3109 of title 5, 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) Administrative, fiscal, and housekeeping services; implementation of relocation plan; reasonable assistance by Federal departments or agencies; report to Congress

(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.

[1] So in original. The period and designation ''(B)'' probably should not appear.

(f) Termination

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

(Pub. L. 93–531, § 12, Dec. 22, 1974, 88 Stat. 1716; Pub. L. 96–305, § 5, July 8, 1980, 94 Stat. 932; Pub. L. 100–666, § 4(a), Nov. 16, 1988, 102 Stat. 3929; Pub. L. 100–696, title IV, § 406, Nov. 18, 1988, 102 Stat. 4592; Pub. L. 102–180, § 3(a)–(c), Dec. 2, 1991, 105 Stat. 1230; Pub. L. 112–166, § 2(u), Aug. 10, 2012, 126 Stat. 1288.)

REFERENCES IN TEXT

Level IV of the Executive Schedule, referred to in subsec. (b)(3), is set out in section 5315 of Title 5, Government Organization and Employees.

The Navajo and Hopi Indian Relocation Amendments of 1988, referred to in subsec. (c)(1)(A), is Pub. L. 100–666, Nov. 16, 1988, 102 Stat. 3929, which enacted sections 640d–29 and 640d–30 of this title, amended sections 640d–7, 640d–9 to 640d–14, 640d–22, 640d–24, 640d–25, and 640d–28 of this title, and enacted provisions set out as a note under sections 640d and 640d–11 of this title. For complete classification of this Act to the Code, see Short Title of 1988 Amendment note set out under section 640d of this title and Tables.

Public Law 99–190, referred to in subsec. (c)(2), is Pub. L. 99–190, Dec. 19, 1985, 99 Stat. 1185. The provisions of Pub. L. 99–190 (99 Stat. 1236) relating to the relocation of members of the Navajo Tribe are not classified to the Code. For complete classification of Pub. L. 99–190 to the Code, see Tables.

AMENDMENTS

2012—Subsec. (b)(1). Pub. L. 112–166 struck out ''by and with the advice and consent of the Senate'' before period at end.

1991—Subsec. (b)(2). Pub. L. 102–180, § 3(a), inserted at end ''The Commissioner serving at the end of a term shall continue to serve until his or her successor has been confirmed in accordance with paragraph (1) of this subsection.''

Subsec. (b)(3). Pub. L. 102–180, § 3(b), amended par. (3) generally. Prior to amendment, par. (3) read as follows: ''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.''

Subsec. (d)(1). Pub. L. 102–180, § 3(c), amended par. (1) generally. Prior to amendment, par. (1) read as follows: ''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 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, but at rates not to exceed $200 a day for individuals.''

1988—Pub. L. 100–666 amended section generally, substituting subsecs. (a) to (f) relating to the Office of Navajo and Hopi Indian Relocation, for former subsecs. (a) to (j) which related to the Navajo and Hopi Relocation Commission.

1980—Subsec. (g)(1). Pub. L. 96–305, § 5(1), inserted ''an independent legal counsel,'' after ''an Executive Director,''.

Subsec. (h). Pub. L. 96–305, § 5(2), substituted provision authorizing Commission to provide for its own administrative, fiscal, and housekeeping services for provision authorizing Department of the Interior, on a nonreimbursable basis, to furnish necessary administrative and housekeeping services for Commission.

Subsecs. (i), (j). Pub. L. 96–305, § 5(3), added subsec. (i) and redesignated former subsec. (i) as (j).

EFFECTIVE DATE OF 2012 AMENDMENT

Amendment by Pub. L. 112–166 effective 60 days after Aug. 10, 2012, and applicable to appointments made on and after that effective date, including any nomination pending in the Senate on that date, see section 6(a) of Pub. L. 112–166, set out as a note under section 113 of Title 6, Domestic Security.

SEPARATION OR REDUCTION IN GRADE OR COMPENSATION OF EMPLOYEE

Pub. L. 102–180, § 3(d), Dec. 2, 1991, 105 Stat. 1230, provided that: ''The amendments made by this section [amending this section and section 5315 of Title 5, Government Organization and Employees] shall not cause any employee of the Office of Navajo and Hopi Indian Relocation to be separated or reduced in grade or compensation for 12 months after the date of enactment of this Act [Dec. 2, 1991].''

POSITIONS IN SENIOR EXECUTIVE SERVICE

Pub. L. 102–180, § 3(e), Dec. 2, 1991, 105 Stat. 1230, provided that: ''The position of Executive Director of the Office of Navajo and Hopi Indian Relocation and Deputy Executive Director of such Office shall on and after the date of the enactment of this Act [Dec. 2, 1991], be in the Senior Executive Service.''

EMPLOYEES OF OFFICE AS GOVERNMENT EMPLOYEES

Pub. L. 102–180, § 3(f), Dec. 2, 1991, 105 Stat. 1231, provided that: ''Any employee of the Office of Navajo and Hopi Indian Relocation on the date of the enactment of this Act [Dec. 2, 1991], shall be considered an employee as defined in section 2105 of title 5, United States Code.''

CONTINUATION OF RELOCATION COMMISSION AND RETENTION OF EXISTING COMMISSIONERS PENDING CONFIRMATION OF COMMISSIONER; TRANSFER OF EXISTING PERSONNEL; CHANGE OF NAME

Pub. L. 100–666, § 4(c), Nov. 16, 1988, 102 Stat. 3930, provided that:

''(1) Notwithstanding any other provisions of law or any amendment made by this Act [see Short Title of 1988 Amendment note under section 640d of this title]—

''(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 [Nov. 16, 1988], and

''(iii) assume responsibility for the powers and duties transferred to such Commissioner under section 12(c)(2) of Public Law 93–531 [25 U.S.C. 640d–11(c)(2)], 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.''

§ 640d–12. Report concerning relocation of households and members of each tribe

(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 subchapter.

(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 subchapter and who have not received all the benefits for which such members are eligible under this subchapter; and

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

(Pub. L. 93–531, § 13, Dec. 22, 1974, 88 Stat. 1717; Pub. L. 96–305, § 6, July 8, 1980, 94 Stat. 932; Pub. L. 100–666, § 4(d), Nov. 16, 1988, 102 Stat. 3931; Pub. L. 101–121, title I, § 120, Oct. 23, 1989, 103 Stat. 722.)

AMENDMENTS

1989—Subsec. (b)(4). Pub. L. 101–121 struck out cl. (4) which required a report on how funds in the Navajo Rehabilitation Trust Funds would be expended to carry out the purposes described in section 640d–30(d) of this title.

1988—Pub. L. 100–666 amended section generally, substituting subsecs. (a) and (b) for former subsecs. (a) to (c).

1980—Subsec. (c)(5). Pub. L. 96–305 substituted ''ninety'' for ''thirty''.

§ 640d–13. Relocation of households and members

(a) Authorization; time of completion; prohibition of further settlement of nonmembers without written approval; limit on grazing of livestock

Consistent with section 640d–7 of this title and the order of the District Court issued pursuant to section 640d–2 or 640d–3 of this title, the Commissioner is authorized and directed to relocate pursuant to section 640d–7 of this title 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 subchapter 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 subchapter 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

[1] So in original. Probably should be ''as''.

number of livestock he grazes on any area partitioned pursuant to this subchapter 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.

(b) Additional payments to heads of household; time

In addition to the payments made pursuant to section 640d–14 of this title, the Commissioner shall make payments to heads of households identified in the report prepared pursuant to section 640d–12 of this title upon the date of relocation of such households, as determined by the Commissioner, 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 Commissioner 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 Commissioner 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 Commissioner 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 Commissioner to relocate.

(c) Payments to or for any person moving into partitioned area after May 29, 1974

No payment shall be made pursuant to this section to or for any person who, after May 29, 1974, moved into an area partitioned pursuant to section 640d–7 of this title or section 640d–2 or 640d–3 of this title to a tribe of which he is not a member.

(Pub. L. 93–531, § 14, Dec. 22, 1974, 88 Stat. 1718; Pub. L. 100–666, § 4(b), Nov. 16, 1988, 102 Stat. 3930.)

AMENDMENTS

1988—Subsecs. (a), (b). Pub. L. 100–666 substituted ''Commissioner'' for ''Commission'' wherever appearing.

§ 640d–14. Relocation housing

(a) Purchase of habitation and improvements from head of household; fair market value

The Commissioner shall purchase from the head of each household whose household is required to relocate under the terms of this subchapter 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 section 640d–12(b)(2)[1] of this title.

[1] See References in Text note below.

(b) Reimbursement for moving expenses; payment for replacement dwelling; limitations

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

(1) reimburse each head of a household whose household is required to relocate pursuant to this subchapter 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 U.S.C. 4622];

(2) pay to each head of a household whose household is required to relocate pursuant to this subchapter 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 Commissioner 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 subchapter 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 Commissioner 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 subchapter.

(c) Establishment of standards consistent with other laws; payments to or for any person moving into partitioned area after specified time

In implementing subsection (b) of this section, the Commissioner 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) [42 U.S.C. 4601 et seq.]. No payment shall be made pursuant to this section to or for any person who, later than one year prior to December 22, 1974, moved into an area partitioned pursuant to section 640d–7 of this title or section 640d–2 or 640d–3 of this title to a tribe of which he is not a member.

(d) Methods of payment

The Commissioner 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. 1437 et seq.], 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 Commissioner 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 Commissioner 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 Commissioner construct or acquire a home for the household, the Commissioner 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 Commissioner 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 Commissioner 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) Disposal of acquired dwellings and improvements

The Commissioner is authorized to dispose of dwellings and other improvements acquired or constructed pursuant to this subchapter 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 640d–7 of this title and the order of the District Court pursuant to section 640d–2 or 640d–3 of this title.

(f) Preferential treatment for heads of households of Navajo Tribe evicted from Hopi Reservation by judicial decision; restriction

Notwithstanding any other provision of law to the contrary, the Commissioner shall on a preferential basis provide relocation assistance and relocation housing under subsections (b), (c), and (d) of this section to the head of each household of members of the Navajo Tribe who were evicted from the Hopi Indian Reservation as a consequence of the decision in the case of United States v. Kabinto (456 F.2d 1087 (1972)): *Provided*, That such heads of households have not already received equivalent assistance from Federal agencies.

(g) Appeals of eligibility determinations

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.

(Pub. L. 93–531, § 15, Dec. 22, 1974, 88 Stat. 1719; Pub. L. 96–305, § 7, July 8, 1980, 94 Stat. 932; Pub. L. 100–666, §§ 4(b), 10, Nov. 16, 1988, 102 Stat. 3930, 3934.)

REFERENCES IN TEXT

Section 640d–12 of this title, referred to in subsec. (a), was amended generally by Pub. L. 100–666, § 4(d), Nov. 16, 1988, 102 Stat. 3931, and as so amended, section 640d–12(b)(2) does not relate to fair market value of habitations and improvements. Provisions formerly contained in section 640d–12(b)(2) are covered in section 640d–12(b)(3).

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1894), referred to in subsec. (c), is Pub. L. 91–646, Jan. 2, 1971, 84 Stat. 1894, which is classified principally to chapter 61 (§ 4601 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4601 of Title 42 and Tables.

The United States Housing Act of 1937, referred to in subsec. (d)(1), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93–383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of Title 42. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of Title 42 and Tables.

AMENDMENTS

1988—Subsecs. (a) to (f). Pub. L. 100–666, § 4(b), substituted "Commissioner" for "Commission" wherever appearing.

Subsec. (g). Pub. L. 100–666, § 10, added subsec. (g).

1980—Subsec. (f). Pub. L. 96–305 added subsec. (f).

§ 640d–15. Payment of fair rental value for use of lands subsequent to date of partition

(a) Payment by Navajo Tribe

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 640d–7 and 640d–2 or 640d–3 of this title subsequent to the date of the partition thereof.

(b) Payment by Hopi Tribe

The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Sec-

retary for all use by Hopi individuals of any lands partitioned to the Navajo Tribe pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title subsequent to the date of the partition thereof.

(Pub. L. 93–531, §16, Dec. 22, 1974, 88 Stat. 1720.)

§ 640d–16. Title, possession, and enjoyment of lands

(a) Covered lands; jurisdiction of respective tribes over nonmembers

Nothing in this subchapter 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) Relocation of Federal employees

Nothing in this subchapter shall require the relocation from any area partitioned pursuant to this subchapter 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 subchapter may elect to be so relocated.

(Pub. L. 93–531, §17, Dec. 22, 1974, 88 Stat. 1720.)

§ 640d–17. Actions for accounting, fair value of grazing, and claims for damages to land

(a) Authorization to commence and defend actions in District Court

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 640d–2 or 640d–3 of this title:

(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 shall not be applicable to such action.

(b) Defenses

Neither laches nor the statute of limitations shall constitute a defense to any action authorized by this subchapter for existing claims if commenced within two years from December 22, 1974, or one hundred and eighty days from the date of issuance of an order of the District Court pursuant to section 640d–2 or 640d–3 of this title, whichever is later.

(c) Further original, ancillary or supplementary actions to insure quiet enjoyment

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 subchapter. 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) United States as party; judgments as claims against the United States

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) Remedies

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 subchapter.

(Pub. L. 93–531, §18, Dec. 22, 1974, 88 Stat. 1721.)

§ 640d–18. Reduction of livestock within joint use area

(a) Institution of conservation practices

Notwithstanding any provision of this subchapter, or any order of the District Court pursuant to section 640d–2 or 640d–3 of this title, the Secretary is authorized and directed to immediately commence reduction of the 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 capac-

ity standards as established by the Secretary after December 22, 1974. 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) Survey location of monuments and fencing of boundaries

The Secretary, upon the date of issuance of an order of the District Court pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title, shall provide for the survey location of monuments, and fencing of boundaries of any lands partitioned pursuant to sections 640d–7 and 640d–2 or 640d–3 of this title.

(c) Completion of surveying, monumenting, and fencing operations and livestock reduction program

(1) Surveying, monumenting, and fencing as required by subsection (b) of this section shall be completed within twelve months after July 8, 1980, with respect to lands partitioned pursuant to section 640d–3 of this title and within twelve months after a final order of partition with respect to any lands partitioned pursuant to section 640d–7 of this title.

(2) The livestock reduction program required under subsection (a) of this section shall be completed within eighteen months after July 8, 1980.

(Pub. L. 93–531, § 19, Dec. 22, 1974, 88 Stat. 1721; Pub. L. 96–305, § 8, July 8, 1980, 94 Stat. 932.)

AMENDMENTS

1980—Subsec. (c). Pub. L. 96–305 added subsec. (c).

§ 640d–19. Perpetual use of Cliff Spring as shrine for religious ceremonial purposes; boundary; piping of water for use by residents

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.

(Pub. L. 93–531, § 20, Dec. 22, 1974, 88 Stat. 1722.)

§ 640d–20. Use and right of access to religious shrines on reservation of other tribe

Notwithstanding anything contained in this subchapter 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.

(Pub. L. 93–531, § 21, Dec. 22, 1974, 88 Stat. 1722.)

§ 640d–21. Payments not to be considered as income for eligibility under any other Federal or federally assisted program or for assistance under Social Security Act or for revenue purposes

The availability of financial assistance or funds paid pursuant to this subchapter 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 [42 U.S.C. 301 et seq.] or any other Federal or federally assisted program. None of the funds provided under this subchapter shall be subject to Federal or State income taxes.

(Pub. L. 93–531, § 22, Dec. 22, 1974, 88 Stat. 1722.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

§ 640d–22. Authorization for exchange of reservation lands; availability of additional relocation benefits; restrictions

The Navajo and Hopi Tribes are hereby authorized to exchange lands which are part of their respective reservations. In the event that the tribes should negotiate and agree on an exchange of lands pursuant to authority granted herein the Commissioner shall make available 125 per centum of the relocation benefits provided in sections 640d–13 and 640d–14 of this title to members of either tribe living on land to be exchanged to other than his or her own tribe, except that such benefits shall be available only if, within one hundred and eighty days of the agreement, a majority of the adult members of the tribe who would be eligible to relocate from exchanged lands sign a contract with the Commissioner to relocate within twelve months of the agreement or such later time as determined by the Commissioner and such additional benefits shall only be paid to those who actually relocate within such period.

(Pub. L. 93–531, § 23, Dec. 22, 1974, 88 Stat. 1722; Pub. L. 96–305, § 9, July 8, 1980, 94 Stat. 933; Pub. L. 100–666, § 4(b), Nov. 16, 1988, 102 Stat. 3930.)

AMENDMENTS

1988—Pub. L. 100–666 substituted ''Commissioner'' for ''Commission'' wherever appearing.

1980—Pub. L. 96–305 inserted provision authorizing the Commission, in the event that the tribes agree on an exchange of lands, to make available 125 per centum of the relocation benefits provided in sections 640d–13 and 640d–14 of this title to members of either tribe living on lands to be exchanged to other than his or her own tribe, provided that within 180 days of the agreement, a majority of the adult members of the tribe who would be eligible to relocate from exchanged lands contract with the Commission to relocate within 12 months of the agreement or such later time as the Commission determines and to pay these additional benefits only to those who actually relocate within such period.

§ 640d–23. Separability

If any provision of this subchapter, or the application of any provision to any person, entity or circumstance, is held invalid, the remainder of this subchapter shall not be affected thereby.

(Pub. L. 93–531, § 24, Dec. 22, 1974, 88 Stat. 1722.)

§ 640d–24. Authorization of appropriations

(a) Purposes; amounts

(1) For the purpose of carrying out the provisions of section 640d–14 of this title, there is hereby authorized to be appropriated not to exceed $31,500,000.

(2) For the purpose of carrying out the provisions of section 640d–18(a) of this title, there is hereby authorized to be appropriated not to exceed $10,000,000.

(3) For the purpose of carrying out the provisions of section 640d–18(b) of this title, there is hereby authorized to be appropriated not to exceed $500,000.

(4) For the purpose of carrying out the provisions of section 640d–13(b) of this title, there is hereby authorized to be appropriated not to exceed $13,000,000.

(5) There is hereby authorized to be appropriated annually not to exceed $4,000,000 for the expenses of the Commissioner.

(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.

(7) For the purpose of carrying out the provisions of subsection (i) of section 640d–28 of this title, there is authorized to be appropriated, effective in fiscal year 1981, not to exceed $1,000,000 annually.

(8) For the purposes of carrying out the provisions of section 640d–14 of this title, there is authorized to be appropriated not to exceed $30,000,000 for each of fiscal years 2003 through 2008.

(b) Availability of sums

The funds appropriated pursuant to the authorizations provided in this subchapter shall remain available until expended.

(Pub. L. 93–531, § 25, Dec. 22, 1974, 88 Stat. 1722; Pub. L. 96–40, July 30, 1979, 93 Stat. 318; Pub. L. 96–305, § 10, July 8, 1980, 94 Stat. 933; Pub. L. 98–48, July 13, 1983, 97 Stat. 244; Pub. L. 100–666, §§ 2, 4(b), Nov. 16, 1988, 102 Stat. 3929, 3930; Pub. L. 102–180, § 2, Dec. 2, 1991, 105 Stat. 1230; Pub. L. 104–15, § 1, June 21, 1995, 109 Stat. 189; Pub. L. 104–301, § 10, Oct. 11, 1996, 110 Stat. 3652; Pub. L. 108–204, title I, § 102, Mar. 2, 2004, 118 Stat. 543.)

AMENDMENTS

2004—Subsec. (a)(8). Pub. L. 108–204 substituted ''for each of fiscal years 2003 through 2008'' for ''annually for fiscal years 1995, 1996, 1997, 1998, 1999, and 2000''.

1996—Subsec. (a)(8). Pub. L. 104–301 substituted ''1996, 1997, 1998, 1999, and 2000'' for ''1996, and 1997''.

1995—Subsec. (a)(8). Pub. L. 104–15 substituted ''1995, 1996, and 1997'' for ''1989, 1990, 1991, 1992, 1993, 1994, and 1995''.

1991—Subsec. (a)(8). Pub. L. 102–180 substituted ''1991, 1992, 1993, 1994, and 1995'' for ''and 1991''.

1988—Subsec. (a)(4). Pub. L. 100–666, § 2(1), substituted ''$13,000,000'' for ''$7,700,000''.

Subsec. (a)(5). Pub. L. 100–666, § 4(b), substituted ''Commissioner'' for ''Commission''.

Subsec. (a)(8). Pub. L. 100–666, § 2(2), substituted ''$30,000,000 annually for fiscal years 1989, 1990, and 1991'' for ''$15,000,000 annually for fiscal years 1983 through 1987''.

1983—Subsec. (a)(4). Pub. L. 98–48, § 1, substituted ''$7,700,000'' for ''$5,500,000''.

Subsec. (a)(8). Pub. L. 98–48, § 2, added par. (8).

1980—Subsec. (a)(5). Pub. L. 96–305, § 10(a), substituted ''$4,000,000'' for ''$1,000,000''.

Subsec. (a)(7). Pub. L. 96–305, § 10(b), added par. (7).

1979—Subsec. (a)(5). Pub. L. 96–40 substituted ''$1,000,000'' for ''$500,000''.

§ 640d–25. Discretionary fund to expedite relocation efforts

(a) Authorization of appropriations

To facilitate and expedite the relocation efforts of the Commissioner, there is hereby authorized to be appropriated annually, effective in fiscal year 1981, not to exceed $6,000,000 as a discretionary fund.

(b) Authorized uses

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 subchapter.

(c) Funding and construction of Hopi high school and medical center

The Secretary of the Interior and the Secretary of Health and Human Services, as appropriate, shall assign the highest priority, in the next fiscal year after July 8, 1980, to the funding and construction of the Hopi high school and Hopi medical center consistent with any plans already completed and approved by appropriate agencies of the respective departments.

(Pub. L. 93–531, § 27, as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 933; amended Pub. L. 100–666, §§ 3, 4(b), Nov. 16, 1988, 102 Stat. 3929, 3930.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100–666, §4(b), substituted ''Commissioner'' for ''Commission''.

Subsec. (b). Pub. L. 100–666, §3, amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: ''Such funds may only be used by the Commission to—

''(1) match or pay not to exceed 30 per centum of any grant, contract, or other expenditure of the Federal Government, State or local government, tribal government or chapter, or private organization for the benefit of the Navajo or Hopi Tribe, if such grant, contract, or expenditure would significantly assist the Commission in carrying out its responsibilities or assist either tribe in meeting the burdens imposed by this subchapter;

''(2) engage or participate, either directly or by contract, in demonstration efforts to employ innovative energy or other technologies in providing housing and related facilities and services in the relocation and resettlement of individuals under this subchapter.

Not to exceed 5 per centum of such funds may be used for the administrative expenses of the Commission in carrying out this section.''

§ 640d–26. Implementation requirements

(a) Environmental impact provisions

No action taken pursuant to, in furtherance of, or as authorized by this subchapter, shall be deemed a major Federal action for purposes of the National Environmental Policy Act of 1969, as amended [42 U.S.C. 4321 et seq.].

(b) Transfer of public lands

Any transfer of public lands pursuant to this subchapter shall be made notwithstanding the provisions of sections 1782 and 1752(g) of title 43.

(Pub. L. 93–531, §28, as added Pub. L. 96–305, §11, July 8, 1980, 94 Stat. 933.)

REFERENCES IN TEXT

National Environmental Policy Act of 1969, as amended, referred to in subsec. (a), is Pub. L. 91–190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§4321 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of Title 42 and Tables.

§ 640d–27. Attorney fees, costs and expenses for litigation or court action

(a) Payment by Secretary; authorization of appropriations

In any litigation or court action between or among the Hopi Tribe, the Navajo Tribe and the United States or any of its officials, departments, agencies, or instrumentalities, arising out of the interpretation or implementation of this subchapter, as amended, the Secretary shall pay, subject to the availability of appropriations, attorney's fees, costs and expenses as determined by the Secretary to be reasonable. For each tribe, there is hereby authorized to be appropriated not to exceed $120,000 in fiscal year 1981, $130,000 in fiscal year 1982, $140,000 in fiscal year 1983, $150,000 in fiscal year 1984, and $160,000 in fiscal year 1985, and each succeeding year thereafter until such litigation or court action is finally completed.

(b) Award by court; reimbursement to Secretary

Upon the entry of a final judgment in any such litigation or court action, the court shall award reasonable attorney's fees, costs and expenses to the party, other than the United States or its officials, departments, agencies, or instrumentalities, which prevails or substantially prevails, where it finds that any opposing party has unreasonably initiated or contested such litigation. Any party to whom such an award has been made shall reimburse the United States out of such award to the extent that it has received payments pursuant to subsection (a) of this section.

(c) Excess difference between award of court and award of Secretary treated as final judgment of Court of Claims

To the extent that any award made to a party against the United States pursuant to subsection (b) of this section exceeds the amount paid to such party by the United States pursuant to subsection (a) of this section, such difference shall be treated as if it were a final judgment of the Court of Claims under section 2517 of title 28.

(d) Litigation or court actions applicable

This section shall apply to any litigation or court action pending upon July 8, 1980, in which a final order, decree, judgment has not been entered, but shall not apply to any action authorized by section 640d–7 or 640d–17(a) of this title.

(Pub. L. 93–531, §29, as added Pub. L. 96–305, §11, July 8, 1980, 94 Stat. 934.)

REFERENCES IN TEXT

The Court of Claims, referred to in subsec. (c), and the Court of Customs and Patent Appeals were merged effective Oct. 1, 1982, into a new United States Court of Appeals for the Federal Circuit by Pub. L. 97–164, Apr. 2, 1982, 96 Stat. 25, which also created a United States Claims Court [now United States Court of Federal Claims] that inherited the trial jurisdiction of the Court of Claims. See sections 48, 171 et seq., 791 et seq., and 1491 et seq. of Title 28, Judiciary and Judicial Procedure.

§ 640d–28. Life estates

(a) Omitted

(b) Application for lease; contents; filing date; extension

Any Navajo head of household who desires to do so may submit an application for a life estate lease to the Commissioner. Such application shall contain such information as the Commissioner may prescribe by regulation, such regulation to be promulgated by the Commissioner within ninety days of July 8, 1980. To be considered, such application must be filed with the Commissioner on or before April 1, 1981: *Provided*, That the Commissioner may, for good cause, grant an extension of one hundred and eighty days.

(c) Application groupings

Upon receipt of applications filed pursuant to this section, the Commissioner shall group them in the following order:

(A) Applicants who are determined to be at least 50 per centum disabled as certified by a physician approved by the Commissioner. Such applicants shall be ranked in the order of the severity of their disability.

(B) Applicants who are not at least 50 per centum disabled shall be ranked in order of their age with oldest listed first and the youngest listed last: *Provided*, That, if any applicant physically resides in quarter quad Nos. 78 NW, 77 NE, 77 NW, 55 SW, or 54 SE as designated on the Mediator's partition map, such applicant shall be given priority over another applicant of equal age.

(C) Applicants who did not, as of December 22, 1974, and continuously thereafter, maintain a separate place of abode and actually remain domiciled on Hopi partitioned lands, and who, but for this subsection would be required to relocate, shall be rejected by the Commissioner.

(D) Applicants who were not at least forty-nine years of age on December 22, 1974, or are not at least 50 per centum disabled, shall also be rejected by the Commissioner.

(d) Number of leases; priorities

The Commissioner shall have authority to award life estate leases to not more than one hundred and twenty applicants with first priority being given to applicants listed pursuant to subsection (c)(A) and the next priority being given to the applicants listed pursuant to subsection (c)(B), in order of such listing.

(e) Area; allowable livestock; assistance by Secretary in feeding livestock

Each life estate lease shall consist of a fenced area not exceeding ninety acres of land which shall include the life tenant's present residence and may be used by the life tenant to feed not to exceed twenty-five sheep units per year or equivalent livestock. The Secretary, under existing authority, shall make available to life estate tenants such assistance during that tenure, as may be necessary to enable such tenant to feed such livestock at an adequate nutritional level.

(f) Individuals permitted to reside; regulations

No person may reside on a life estate other than the life tenant, his or her spouse, and minor dependents, and/or such persons who are necessarily present to provide for the care of the life tenant. The Commissioner shall promulgate regulations to carry out the intent of this subsection.

(g) Termination

The life estate tenure shall end by voluntary relinquishment, or at the death of the life tenant or the death of his or her spouse, whichever occurs last: *Provided*, That each survivorship right shall apply only to those persons who were lawfully married to each other on or before July 8, 1980.

(h) Relocation benefits upon voluntary relinquishment; compensation upon death of life tenant or surviving spouse; relocation of dependents

Nothing in this section shall be construed as prohibiting any such applicant who receives a life estate lease under this section from relinquishing, prior to its termination, such estate at any time and voluntarily relocating. Upon voluntary relinquishment of such estate, by such means or instrument as the Secretary shall prescribe, such applicant shall be entitled to relocation benefits from the Secretary comparable to those provided by section 640d–14 of this title. For life estates terminated by the death of the life tenant or his or her surviving spouse, compensation shall be paid to the estate of the deceased life tenant or surviving spouse based on the fair market value of the habitation and improvements at the time of the expiration of such tenure and not before. Such payment shall be in lieu of any other payment pursuant to subsection (a) of section 640d–14 of this title. Assistance provided pursuant to section 640d–14(b) of this title, shall be paid to any head of household lawfully residing on such life estate pursuant to subsection (f) of this section who is required to move by the termination of such life estate by the death of the life tenant and his or her surviving spouse and who does not maintain a residence elsewhere. Compensation under section 640d–14(a) of this title shall be paid and distributed in accordance with the last will and testament of the life tenant or surviving spouse or, in the event no valid last will and testament is left, compensation shall be paid and distributed to his or her heirs in accordance with existing Federal law. Upon termination of a life estate by whatever means, the dependents residing with the individuals having such life estate so terminated shall have ninety days following such termination within which to relocate.

(i) Payment of fair market rental value

The Secretary shall pay, on an annual basis, the fair market rental value of such life estate leases to the tribe to whom the lands leased were partitioned.

(j) Improvements

Nothing in this subchapter or any other law shall be construed to prevent a life tenant from making reasonable improvements on the life estate which are related to the residence and agricultural purposes of the life tenancy.

(k) Additional leases for Hopi heads of household

The Commissioner is authorized to grant not to exceed ten additional life estate leases to Hopi heads of household residing on Navajo-partitioned lands under such terms of this section as may be appropriate.

(Pub. L. 93–531, § 30, as added Pub. L. 96–305, § 11, July 8, 1980, 94 Stat. 934; amended Pub. L. 100–666, § 4(b), Nov. 16, 1988, 102 Stat. 3930.)

CODIFICATION

Subsec. (a) provided for the repeal of section 640d–4(a)(4) of this title.

AMENDMENTS

1988—Subsecs. (b) to (d), (f), (k). Pub. L. 100–666 substituted ''Commissioner'' for ''Commission'' wherever appearing.

§ 640d–29. Restrictions on lobbying; exception

(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 subchapter may engage in activities designed to influence Federal legislation on any issue relating to the relocation required under this subchapter.

(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.

(Pub. L. 93–531, § 31, as added Pub. L. 100–666, § 5, Nov. 16, 1988, 102 Stat. 3931.)

§ 640d–30. Navajo Rehabilitation Trust Fund

(a) Establishment

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) Deposit of income into Fund

All of the net income derived by the Navajo Tribe from the surface and mineral estates of lands located in New Mexico that are acquired for the benefit of the Navajo Tribe under section 640d–10 of this title shall be deposited into the Navajo Rehabilitation Trust Fund.

(c) Secretary as trustee; investment of funds

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) Availability of funds; purposes

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 decison[1] in the Healing case, or related proceedings,

(2) the provision[2] of this subchapter, 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) Conceptual framework for expenditure of funds

By December 1, 1989, the Secretary of the Interior, with the advice of the Navajo Tribe and the Office of Navajo and Hopi Indian Relocation, shall submit to the Congress a conceptual framework for the expenditure of the funds authorized for the Navajo Rehabilitation Trust Fund. Such framework is to be consistent with the purposes described in subsection (d) of this section.

(f) Termination of Trust Fund

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.

(g) Authorization of appropriations; reimbursement of General Fund

There is hereby authorized to be appropriated for the Navajo Rehabilitation Trust Fund not[3] 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.

(Pub. L. 93–531, § 32, as added Pub. L. 100–666, § 7, Nov. 16, 1988, 102 Stat. 3932; amended Pub. L. 101–121, title I, § 120, Oct. 23, 1989, 103 Stat. 722.)

CODIFICATION

Another section 32 of Pub. L. 93–531 was enacted by Pub. L. 100–696, title IV, § 407, Nov. 18, 1988, 102 Stat. 4593, and is classified to section 640d–31 of this title.

AMENDMENTS

1989—Subsecs. (e) to (g). Pub. L. 101–121 added subsec. (e) and redesignated former subsecs. (e) and (f) as (f) and (g), respectively.

§ 640d–31. Residence of families eligible for relocation assistance

Nothing in this subchapter prohibits the Commissioner from providing relocation assistance to families certified as eligible, regardless of their current place of residence, with funds appropriated to implement this subchapter.

(Pub. L. 93–531, § 32, as added Pub. L. 100–696, title IV, § 407, Nov. 18, 1988, 102 Stat. 4593.)

CODIFICATION

Another section 32 of Pub. L. 93–531 was enacted by Pub. L. 100–666, § 7, Nov. 16, 1988, 102 Stat. 3932, and is classified to section 640d–30 of this title.

SUBCHAPTER XXIII—HOPI TRIBE: INDUSTRIAL PARK

§ 641. Congressional findings and declaration of purpose

For the purpose of assisting in the economic advancement and contributing to the general welfare of the Hopi Indian Tribe of Arizona, the Congress hereby finds it to be fitting and appropriate to provide the Hopi Tribal Council with certain powers of self-determination that are necessary to enable the Hopi people to carry out the effective development and operation of the Hopi Industrial Park, which is located in the counties of Navajo and Coconino in the State of Arizona.

(Pub. L. 91–264, § 1, May 22, 1970, 84 Stat. 260.)

§ 642. Powers of Tribal Council

The Hopi Tribal Council shall have the following powers:

(a) Sale of lands

To sell any part of the lands within the Hopi Industrial Park.

(b) Mortgages or deeds of trust; law governing mortgage foreclosure or sale; United States as party; removal of cases; appeals

To execute mortgages upon, or deeds of trust to, the lands within said Hopi Industrial Park.

[1] So in original. Probably should be ''decision''.

[2] So in original. Probably should be ''provisions''.

[3] So in original. Probably should be ''not to''.

5 U.S.C. § 702 - Right of review

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 392; Pub. L. 94–574, § 1, Oct. 21, 1976, 90 Stat. 2721.)

5 U.S.C. § 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

Notice

Part 1 of 3. You are viewing a very large document that has been divided into parts.

§ 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.

28 U.S.C. § 1291

28 USCS § 1291

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 83. COURTS OF APPEALS

Notice

Part 1 of 2. You are viewing a very large document that has been divided into parts.

§ 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].

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.

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*.

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:

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

(4) 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;

(5) 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;

(6) 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;

(7) 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;

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

(9) 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;

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

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

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

(13) Orders of the Securities and Exchange Commission;

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

(15) 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 s1r 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.

28 U.S.C. § 1331

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

Notice

Part 1 of 2. You are viewing a very large document that has been divided into parts.

§ 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.

25 CFR § 700.1 - Purpose.

§ 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.

25 C.F.R. § 700.147

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.

(17) 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.

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

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

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

(21) 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).*
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.*

(6) 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*.

Governments : Native Americans : Property Rights

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

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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.

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).

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- 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

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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

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).
Source: 47 FR 2092, Jan. 14, 1982, unless otherwise noted.

§ 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.

[49 FR 22278, May 29, 1984]

REGULATIONS

Fed. R. App. Proc. 4(a)(1)(B)ii)

USCS Fed Rules App Proc R 4

Current through changes received
August 9, 2018.

USCS Court Rules > Federal Rules of Appellate Procedure > II. Appeal from a Judgment or Order of a District Court

Rule 4. Appeal as of Right-When Taken

(16) Appeal in a Civil Case.

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

- 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.
- 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:
  - the United States;
  - a United States agency;
  - a United States officer or employee sued in an official capacity; or
  - 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.
- 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).

(B) *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.

(C) *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.

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

- 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:
  - for judgment under Rule 50(b);

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

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

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

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

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

(B)

- 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.
- 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.
- No additional fee is required to file an amended notice.

- *Motion for Extension of Time.*
  - The district court may extend the time to file a notice of appeal if:
    - a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

- 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.

- 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.

- 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.

- *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:

  - 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;

  - 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

  - the court finds that no party would be prejudiced.

- *Entry Defined.*

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

    - 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

    - 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)*.

- 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.

- **Appeal in a Criminal Case.**
  - *Time for Filing a Notice of Appeal.*
    - In a criminal case, a defendant's notice of appeal must be filed in the district court within 14 days after the later of:
      - the entry of either the judgment or the order being appealed; or
      - the filing of the government's notice of appeal.
    - 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:
      - the entry of the judgment or order being appealed; or
      - the filing of a notice of appeal by any defendant.
  - *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.
  - *Effect of a Motion on a Notice of Appeal.*
    - 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:
      - for judgment of acquittal under Rule 29;
      - 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
      - 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:
      - the entry of the order disposing of the last such remaining motion; or

- 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.