

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 ground-water 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-

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 subsection (a) of this section. 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.)

¹ See References in Text note below.