

## 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(4) Repealed.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