

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 prac-

licable, 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 recovery 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