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SENATE

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AMENDING THE ACT OF DECEMBER 22, 1974, AND FOR OTHER PURPOSES

DECEMBER 12, 2005.—Ordered to be printed

Mr. MCCAIN, from the Committee on Indian Affairs,
submitted the following

R E P O R T

[To accompany S. 1003]

The Committee on Indian Affairs, to which was referred the bill, S. 1003, to amend the Act of December 22, 1974, as amended, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

PURPOSE

The purpose of S. 1003 is to amend P.L. 93-5311,¹ the Navajo and Hopi Indian Land Settlement Act, to complete the relocation program and to phase out the Office of the Navajo and Hopi Indian Relocation by September 30, 2008.

BACKGROUND

The Navajo and Hopi Indian Land Settlement Act was enacted on December 22, 1974 (hereafter, “the 1974 Act”). The Act was intended to facilitate a settlement of all of the rights and interests of the Navajo and Hopi Tribes in lands known as the 1882 Executive Order Reservation and the 1934 Navajo Reservation. The Act was subsequently amended in 1980 (P.L. 96-305), 1988 (P.L. 100-166), 1991 (P.L. 102-180) and 1995 (P.L. 104-15).

The necessity for the 1974 Act arose out of an Executive Order signed by President Chester Arthur on December 16, 1882 and two Acts of Congress enacted on June 14,² and June 18,³ 1934. The

¹25 U.S.C. § 640d et seq., as amended.

²48 Stat. 960.

³48 Stat. 984.

1882 Executive Order set aside approximately 2.5 million acres of land for the Hopi and “such other Indians as the Secretary of the Interior may see fit to settle thereon.” The 1934 Act established the exterior boundaries of the Navajo Nation and set aside the lands within the reservation for the Navajos and “such other Indians as may already be located thereon.”

At the time of the 1882 Executive Order a small but indeterminate number of Navajos resided on portion of the reserved lands. At the time of the 1934 enactments, Hopi and other Indians, including the San Juan Southern Paiutes, occupied the lands reserved as part of the Navajo reservation. Most of the Hopi residents of the 1934 Reservation were located in the Village of Moencopi near Tuba City, Arizona. Throughout the 1890s and up to the present, the Hopi and Navajo Tribes have disputed the right to title and occupancy of lands in both reservations based on the 1882 Executive Order and the 1934 Acts of Congress.

The land disputes intensified in the 1940s as a result of action taken by the Secretary of the Interior pursuant to the Indian Reorganization Act⁴ to establish grazing management districts on the two reservations for livestock control and to improve range management and soil conservation. Twenty-one districts were established in the early 1940s. District Six, comprised of about 631,000 acres, was identified as an exclusive Hopi district located in the south-central portion of the 1882 Reservation. All remaining districts were assigned to the Navajo Tribe.

The Hopi Tribe vigorously protested the establishment of District Six. Due to increasing tensions between the two tribes, the Congress passed the Navajo and Hopi Rehabilitation Act in 1950 (P.L. 85-740).⁵ The Act was intended to promote cooperation between the tribes by providing federal funding for the construction of infrastructure including roads, hospitals, irrigation, radio and telephone communications. The Act authorized funds for the development of off-reservation employment opportunities for members of both tribes and for the continuing relocation of Navajos and Hopis to the Colorado River Indian Reservation.

By 1957, all hope for cooperation and a mutual resolution of the underlying land disputes had evaporated. The Hopi Tribe sought legislation from Congress authorizing both tribes to sue one another to quiet title to the 1882 Reservation. On July 22, 1958, P.L. 85-547 (72 Stat. 403) was enacted to authorize a suit in the Arizona Federal District Court “. . . for the purpose of determining the rights and interests of [each tribe] in and to [the 1882 Reservation] and quieting title thereto in the tribes . . . establishing such claims . . . as may be just and fair in law and equity.” On August 1, 1958, the Hopi Tribes sued the Navajo Tribe under the authority of P.L. 85-547.

Four years later, the court ruled that the Hopi Tribe had the exclusive right to District Six and that both tribes had joint and equal rights to the surface and subsurface of the remainder of the 1882 Reservation. *Healing v. Jones*, 210 F. Supp 125 (D. Az. 1962), *aff'd* 373 U.S. 758 (1963). The area outside of District Six became known as the Joint Use Area (JUA). Throughout the 1960s and

⁴ 25 U.S.C. § 461 et seq.

⁵ 25 U.S.C. § 631 et seq.

into the early 1970s the Hopi Tribe sought assistance from the Department of the Interior to gain joint and equal use of the JUA. All efforts by the Secretary to negotiate implementation of the *Healing* decision proved futile.

In the early 1970s, the Hopi Tribe had several favorable Federal Court decisions which led to the enactment of the 1974 Act. In *Hamilton v. Nakai*, 453 F.2d 152 (9th Cir. 1971) the Appellate Court reversed the District Court's denial of a Hopi petition for a Writ of Assistance to compel the Navajo Tribe to reduce its livestock in the JUA to enable Hopi to have access to the lands and to prevent further overgrazing. The Appellate Court ruled that the District Court had jurisdiction to enter an order in aid of its decision in *Healing*, even though the Congress had not expressly provided that authority to the Court in P.L. 85-547.

In 1972, the United States brought suit on behalf of the Hopi Tribe to evict sixteen Navajos who were residing in District Six. *United States v. Kabinto*, 456 F.2d 1087 (9th Cir. 1972). The Appeals Court held that the *Healing* decision effectively extinguished any claim that the Navajo Tribe may have had to aboriginal title in District Six and that no compensation was due to the tribe. All Navajos residing in District Six were subsequently evicted.

On March 13, 1970, the Hopi Tribe petitioned the District Court for a Writ of Compliance to compel the Navajo Tribe to share jointly with it in the surface and subsurface interests of the 1882 Reservation outside of District Six. The petition was denied. In 1974, the Court of Appeals reversed the District Court's ruling. *Hamilton v. MacDonald*, 503 F.2d 1138 (9th Cir. 1975). The District Court subsequently imposed a freeze on any new construction by Navajos in the JUA and ordered the reduction of livestock herds managed by the Navajos in the JUA.

THE 1974 ACT

P.L. 93-531 was enacted to promote a comprehensive settlement of the land dispute between the Navajo and Hopi Tribes in the 1882 Reservation and the 1934 Reservation. The major provisions of the Act authorize:

- The establishment of Navajo and Hopi negotiating teams under the auspices of a federal mediator for settlement of the 1882 Reservation dispute through partition and land exchanges within a six month period from the date of enactment;
- Court ordered partition of the 1882 Reservation based on the mediator's recommendations in the event that the tribal negotiations did not succeed with the prescribed time period;
- Relocation of Navajo and Hopi individuals residing on lands partitioned to the tribe of which they were not a member, with provisions to reduce the hardship of relocation to the degree possible;
- The establishment of a three-member commission in the Department of the Interior to administer the relocation program;
- Authority for the purchase of 250,000 acres of Bureau of Land Management lands by the Navajos for the purposes of relocation;
- A livestock reduction program; and

- Authority for both tribes to sue each other and the United States for damages arising out of the disputes.

In 1972 and 1973, several bills to settle the land disputes were introduced in the Congress prior to enactment of P.L. 93–531. Several hearings were held on competing bills in the House and Senate. Many of these bills included relocation provisions. A common estimate of cost for relocation was in the \$40 million range. As many as 6,000 Navajos were estimated as eligible for relocation. In 1977, after failed negotiations, the mediator estimated that adopting his recommended partition line would result in the relocation of approximately 3,495 Navajos.

The Act intended that the relocation program would be complete five years after the Relocation Commission filed its plan, or on or about July 7, 1986. However, problems in implementing the Act arose and it became necessary for Congress to amend the Act several times. In 1980, P.L. 96–305 was enacted to amend the provisions on new land selections by the Navajo Tribe. These amendments were required due to overwhelming non-Indian resistance to the Navajo Nation’s selection of about 250,000 acres of BLM lands in the Arizona “strip” in the late 1970’s pursuant to the original Act. The 1980 amendments authorized transferring up to 250,000 acres of federal land to the Navajo Nation and the acquisition of 150,000 acres through purchase. Not more than 35,000 acres of lands acquired by transfer were authorized to be selected in New Mexico. The 1980 amendments also authorized the Relocation Commission to grant life estates to certain Navajos residing on the 1882 Reservation partitioned to the Hopi Tribe.

In 1988, Congress amended the Act again. P.L. 100–666 abolished the three-member Relocation Commissioner and established in its place the Office of Navajo and Hopi Indian Relocation as an Independent Agency of the Executive Branch under the authority of a single Commissioner.

A 1988 amendment to the Act authorized not more than \$10 million for fiscal years 1990 to 1995 to go into a trust fund for the “rehabilitation and improvement of the economic, educational and social condition of families and Navajo communities” affected by the Healing case, relocation, or the District Six grazing area. The amendment provided that income derived by the Navajo Tribe from surface and minerals rights acquired from authorized land purchases would reimburse the U.S. Treasury for amounts appropriated to the Fund. The Rehabilitation Trust Fund is to be administered by the Navajo Tribe under a “conceptual framework” approved by the Secretary of the Interior.

In 1991, Congress amended the Act again to extend the authorization for the provision of relocation benefits until the end of fiscal year 1995. P.L. 102–180. In 1995, Congress extended the authorization through the end of fiscal year 1997. P.L. 104–15.

THE NAVAJO AND HOPI SETTLEMENT ACT AMENDMENTS OF 2005

S. 1003 amends P.L. 93–531, as amended, to provide for the termination of the Office of Navajo and Hopi Indian Relocation [hereafter “ONHIR”] by September 30, 2008. At that time, any remaining responsibilities under the Act are transferred to the Interior Secretary. ONHIR shall transfer to the Secretary the remaining personnel and funds to provide relocation benefits to remaining eli-

gible individuals who have not received their benefits by September 30, 2008. The funds will be held in trust by the Secretary for distribution to such individuals or their heirs. The bill also establishes an expedited appellate procedure for final eligibility determinations.

As noted above, the Office of Navajo and Hopi Indian Relocation was established by Public Law 100-666. The Act authorized ONHIR to make eligibility determinations and to hear appeals of those denied eligibility. Appeals of ineligibility decisions may be brought in federal court within 6 years of ONHIR's final decision. Congress originally imposed a July 1985 deadline for Navajos and Hopis to apply for relocation benefits through the ONHIR. A court order postponed that deadline to July 7, 1986.

To be eligible for relocation benefits, an applicant (1) must have been a legal resident of the disputed land on December 22, 1974 and (2) must be the head of the household before July 7, 1986. Death or divorce from an original "head of household" could provide an exception to the criteria. Those found eligible are assigned a counselor to help them determine an area of relocation (on or off the reservation), acquire a home site, purchase an existing home or build a new one. Once relocated, the family is provided financial and other assistance to adjust to their new surroundings. At its inception, ONHIR employed 108 employees to carry out these responsibilities.

By 1985, ONHIR had certified 1,276 individuals as eligible for relocation benefits. By 1994, that number increased to 3,302. As of May 1996 a total of 4,432 heads of household from both tribes had applied for relocation benefits. Of those certified, 26 were enrolled in the Hopi Tribe and 3,258 were enrolled in the Navajo Tribe. Of the Navajos who were certified, 2,617 households had received their benefits and 641 were still awaiting their relocation benefits. By April 1996, the cost for the relocation program was \$319 million.

In the 104th Congress, S. 2111 was introduced to phase-out the relocation program by September 2001. A hearing was held on the bill and many of the witnesses testified that the program could come to a close by 2001. Nonetheless, opposition to final passage remained due to pending approval by the Department of the Interior of the Accommodation Lease Agreement that provided for Navajo families to remain on portions of the Hopi Partitioned Land with the consent of the Hopi Tribe.

The Committee believes that the ONHIR has consistently made best efforts to make relocation services available to all eligible Navajos and Hopis. Despite the July 1986 deadline for application and ONHIR's efforts, however, by 1996, an estimated 50-100 individuals who were likely eligible for relocation benefits had not yet applied for such benefits. By March 2005, the ONHIR estimated that approximately 50 such individuals had not applied for relocation benefits. Nonetheless, by March, 2005, ONHIR had certified a total of 3,626 individuals as eligible for relocation benefits and documented 6 active pending appeals challenging a finding of ineligibility for relocation services. The Committee believes that ample notice to eligible individuals about the relocation program and the process for application has occurred over the last 30 years.

The Committee is also aware that actual funding for settlement activity has far exceeded the original cost estimate of \$40 million. By June 2005, expenditures of ONHIR were estimated at approximately \$480 million. Contributing to this is the continuing increase in cost to provide replacement home benefits over the last 30 years. These costs rose from \$17,000 to \$25,000 in 1974, \$55,000 in 1985, and to \$114,000 in 2005. During the operation of the relocation program, the average cost per home or move has steadily increased and continues to increase exponentially.

Title I, Amendments to the Act of December 22, 1974

To accomplish the intent of S. 1003, existing Sections of the Act are redesignated and seven sections of the Act are repealed, including Sections 1 through 5. These sections provide for the authority of the mediator, the tribal negotiating teams and the Arizona Federal District Court for the partition of the JUA. The authorities conferred by these Sections have been fully discharged. Similarly, Section 13, relating to the preparation and filing of reports to the Congress by the Commissioner is repealed. The mandated reports have been filed and no further reports are necessary.

Section 6 which provides guidelines for use by the mediator and the court for partitioning the 1882 Reservation would be partially repealed as this authority has been discharged.

Section 8 is amended by repealing paragraph (f) relating to the payment of legal fees for the San Juan Southern Paiute Tribe. This paragraph was added by P.L. 100-166 in 1988 and has since been discharged by the subsequent federal recognition by the Secretary of the Interior of the San Juan Southern Paiute Tribe.

Section 10 is amended by striking any reference to life estates. This amendment has the effect of conforming the amended Act to reflect the repeal of Section 30.

Section 11 is amended to terminate the Commissioner's authority to select new lands for the Navajo Nation on September 30, 2006. Under the Act, the Commissioner's authority to select lands continues until the land selection is complete or until the President determines that the functions of the ONHIR have been fully discharged pursuant to Section 12 of the Act. To phase-out the ONHIR in an orderly fashion, termination of the Commissioner's land selection authority by a date certain is required. The Committee notes that although the Navajo Nation has previously selected the acreage available by the Act in New Mexico, it still may select up to another 13,000 acres for purchase in Arizona. The tribe may also request that the Commissioner request that the lands be taken into trust to complete all of the selections of land authorized by the 1980 amendments to the Act. P.L. 96-305.

Section 12 is amended to terminate the Office of Navajo and Hopi Indian Relocation on September 30, 2008, rather than at the discretion of the President. The Committee believes that it is important to set a date certain to facilitate the orderly implementation of the Act.

Section 12 is further amended to provide for the transfer of all remaining responsibilities, funds and personnel of ONHIR, effective October 1, 2006, to an Office of Relocation within the Office of the Department of the Interior. This earlier date authorizes the Secretary to prepare for assumption of this responsibility and to per-

mit the smooth transition of ONHIR personnel and resources prior to the closure of ONHIR. Thereafter, the Secretary is authorized to implement the final disposition of the relocation program and to terminate the Office once these responsibilities are complete. In establishing an Office with the Interior Department, the Committee is aware that a potential for conflict of interest in the Bureau of Indian Affairs [hereafter "BIA"] in administering any aspect of P.L. 93-531. The Committee expects that the Office of Relocation be sufficiently removed from the day-to-day business of the BIA to avoid such conflicts of interest.

The Committee is aware that the Interior Department is concerned about taking on additional responsibilities. The Committee believes that the responsibilities to be transferred by September 2008 will be minimal. Moreover, it is not intended to be permanent. The ONHIR continues to implement its responsibilities at a reasonable pace. Indeed, the ONHIR has informed the Committee that as of March 2005, approximately 130 families remained to be relocated. ONHIR reports anticipating that of the 130 families, 50 will be relocated during fiscal year 2005 and that 65 families will be relocated in fiscal year 2006. Further, the ONHIR anticipates closing approximately 15 inactive cases. Therefore, the responsibilities to be assumed by the Secretary are minimal but necessary to bring to finality this temporary program.

Section 14 is amended in paragraph (a) to delete a reference to the filing of the relocation program plan and the completion of the program within five years from the date the plan was to take effect. Although the original Relocation Commission filed the required plan on July 7, 1981, completing the relocation program by 1986 proved futile. A number of factors contributed to the slow pace of the relocation program, including an extremely low estimate by the BIA of approximately 1000 households to be relocated, resistance to Navajo land selections, delays in administration of the National Historic Preservation Act and the Archaeological Resources Protection Act as they apply to the activities of the relocation program, uncertainties associated with efforts to redraw the original partition line in the 1882 Reservation and numerous court challenges to the Act and its administration by either the Commission or the Interior Secretary. The amendments to paragraph (a) reflect the reality of these delays and otherwise conform the Act to the amendments contained in this legislation.

Section 14 is further amended to add a new paragraph (d) which prohibits the payment of any benefits under the Act to any head of household who has not been certified eligible for benefits by September 30, 2008. The Committee intends that the seemingly never ending process of determining eligibility for relocation benefits be completed by a certain date. As noted earlier, individuals have had approximately 30 years in which to apply for benefits or to appeal ineligibility claims. Other provisions of the bill would establish procedures to ensure adequate notice to any potentially eligible individuals, fair review of their applications and prompt appeals of eligibility denials.

Section 15 is amended by adding several new paragraphs. The Committee is aware that there are many eligible relocatees who long ago left the partitioned lands in an effort to comply with the Act, but who may not have received their replacement homes for

various reasons. The new paragraph (e) in Section 15 ensures that these individuals receive the benefits for which they have been certified as eligible. If a replacement home has not been provided by the time that the ONHIR ceases to exist, this provision provides a final opportunity for the eligible head of household to receive a replacement home or for his or her heirs to receive their pro-rata share of the replacement home benefit in cash.

The new paragraph (e) requires the Commissioner of the ONHIR to notify the Secretary of any eligible relocatees who have left the lands partitioned to the tribe of which they are not members, but whose circumstances have prevented ONHIR from completing the replacement home process and who have not received a replacement home by September 30, 2008. The Commissioner would simultaneously transfer to the Secretary the funds necessary to provide such homes. The Secretary will hold the funds in trust for the benefit of each head of household until such time as the head of household request the funds for the acquisition of a replacement home. If no replacement home has been selected by the head of household at the time of his or her death, the Secretary will distribute the funds to his or her adult heir. Such funds would no longer be held in trust. If the heirs of the head of household are minors, the Secretary would continue to hold their share of the funds in trust until they attain the age of majority. The funds would then be distributed to such heirs and cease to be held in trust.

A new paragraph (f) is also added to Section 15 which requires the Commissioner to implement the provisions of 25 C.F.R. sections 700.138 and 700.139 commencing 180 days after the date of enactment. This amendment is intended to ensure timely completion of identifying, notifying and reaching eligibility determinations for individuals who were residents on July 7, 1986 of the 1882 Reservation lands partitioned to the Hopi Tribe who have continuously resided there since that date and who were also otherwise eligible for relocation benefits. This amendment also clarifies the roles of the Interior Secretary, the Commissioner and the United States Attorney for the District of Arizona in the possible removal of individuals from Hopi partitioned lands and the construction of replacement homes for those individuals. The Commissioner's authority to begin construction of replacement homes for such individuals would cease after July 1, 2008. This provision provides adequate time for the Commissioner to complete the construction of homes prior to the September 30, 2008, ONHIR closure.

Section 15 is further amended by adding a new paragraph (i) to authorize the Commissioner to establish expedited procedures for reaching final determinations after an appeal from a decision of ineligibility for relocation benefits. As of May 1, 1996, the ONHIR had 115 active pending appeals. By March 2005, ONHIR had 6 appeals, including active and inactive appeals. These appeals of ineligibility would be processed under an expedited procedure established by the Commissioner. The Committee expects that other appeals may arise as a result of the new paragraph (i) which requires the Commissioner to provide notice to anyone who may have a right to an eligibility determination who must file a request for such determination within 180 days of the notice. A denial of eligi-

bility arising therefrom would be processed through the expedited appeals process.

The Committee is aware that the Commissioner will be operating on a tight time-line under this section. To the extent that any of these amendments require that the Commissioner publish new rules, the Committee anticipates that the Commissioner will publish Interim Final Rules consistent with the Administrative Procedures Act to permit public comment on the rules while the amendments are being implemented and the relocation program is being completed.

A new paragraph (j) is added to Section 15 to authorize the Commissioner to contract for services and employ personnel in order to complete the expedited eligibility determination and appeals process. The Director of the Interior Department's Office of Hearings and Appeals is authorized to make a qualified hearing officer available to the Commissioner.

A new paragraph (k) is added to Section 15 to establish a process for expedited judicial review of any final decision of the ONHIR which results in a denial of relocation benefits. Under this procedure, applicants who have been determined ineligible would have 30 days from the date of such determination to file an appeal in the Ninth Circuit United States Court of Appeals. The Commissioner would then certify the record to the Court and the Court would have 60 days from the receipt of the certified record to complete its review of the appeal. All decisions of the Court would be final with no further appeal provided. Any determination of the Commissioner which is supported by substantial evidence would be affirmed by the Court. The Committee believes that, given the time that individuals have had to apply for benefits, the estimated number of bona fide eligible individuals that have not to date applied and the current appeals pending, the expedited judicial review will not have a significant impact on the Court or its function.

Section 25 of the Act is amended in paragraph (a) to provide an authorization for such sums as are necessary to carry out the relocation program for fiscal years 2006, 2007 and 2008. Although ONHIR will cease to exist on September 30, 2008, the Committee has authorized funding through fiscal year 2008 to ensure that the Secretary has an authorization for such funds as may be necessary to carry out its duties in that fiscal year.

Section 25 is also amended by deleting the authority for appropriations for the mediator, life estates and the discretionary funds for the Commissioner. These funds are supplemental and not required for the completion of the relocation program. They do not conform to other provisions of the Act as amended.

Section 27 is amended by repealing paragraph (c) providing for construction of the Hopi High School and the Health Center. This provision has been fully discharged.

Section 28 is amended by adding a new paragraph (c) to require that the construction activities of the Commission be undertaken in compliance with 16 U.S.C. §§ 469a-1-469c. Compliance with these sections ensures compliance with the National Historic Preservation Act [NHPA] and the Archaeological Resource Protection Act [ARPA]. One major cause of delay in completing the relocation program has been the lengthy process of completing the consultation required of the ONHIR under NHPA and ARPA. Requiring compli-

ance with sections 469a–1 through 469c will provide adequate protection for protected property and resources while allowing the Commissioner to expeditiously discharge its duties to relocatees. The Committee expects that personnel experienced in the protection of cultural resources will continue to be employed with ONHIR to ensure full compliance with these statutes. The Committee urges the ONHIR and the Secretary to enter into a Memorandum of Understanding on how they will implement any remaining duties affected by this section.

Section 30, relating to life estates is repealed. This provision was added in the 1980 amendments but was never implemented by its intended beneficiaries—the Navajos residing on lands in the 1882 Reservation which had been partitioned to the Hopi Tribe. Due to the unique Navajo culture, the “life estates” were viewed as “death estates,” consequently, only one eligible Navajo chose to consider the option to remain on lands partitioned to the Hopi Tribe pursuant to this section.

Finally, throughout the Act, various technical and correctional amendments are provided to ensure conformity and ease of reference.

Title II, Personnel of the Office of Navajo and Hopi Indian Relocation

Title II of S. 1003 includes amendments to facilitate the work of the ONHIR personnel while providing for their orderly placement and retirement. At its inception, ONHIR employed 108 employees. As of May 1996, the Office employed 85 full-time and 2 temporary employees. As of March 2005, the ONHIR employed 49 individuals. Of these employees, approximately 10 will not be entitled to immediate retirement or discontinued service by September 2008. All remaining employees are immediately eligible for retirement or discontinued service or will be by September 2008. As ONHIR phases out its duty, the Commissioner will require authority to exercise discretion and to provide modest incentives to employees to effectively manage the reduction in work force while simultaneously completing the relocation program.

Section 5597 of Title 5 is amended to provide for voluntary separation incentive payments to personnel of the ONHIR to increase attrition. The Commissioner would be authorized to restrict which positions may be eligible for such payments in order to avoid the disruption of work. The incentive payments would not be limited to severance pay levels.

Sections 8336, 8339, 8412 and 8415 of Title 5 is amended to modify the retirement computations for employees who are eligible for retirement under early or optional retirement regulations. These amendments are intended to promote reductions in ONHIR personnel without the need for adverse action and to provide retirement benefits comparable to those available to other agency federal employees who have the opportunity to complete their service and retire.

A change would also be made in the annuity formula of the Federal Employee Retirement System [FERS] for employees of ONHIR to provide a comparable increased retirement for those under this system. There is precedent for instituting such a change in annuity

computation, as was provided for certain Indian Health Service and BIA employees in P.L. 96–135.

The Committee is aware that the Office of Personnel Management opposes the provisions of Title II. Primarily, OPM is concerned that the ONHIR employees should not receive employment benefits that differ from any other federal employee. The Committee recognizes that reductions in the number of employees of ONHIR through attrition and outplacement will likely be nominal by 2008. Budgetary impacts of the proposed modifications to the annuity computation formulas are therefore, negligible.

Title III, Transfer of Functions and Savings Provisions

Title III of S. 1003 includes amendments to permit a seamless transition of relocation duties from the ONHIR to the Interior Department. Included in this title are provisions to ensure that all remaining functions, including assets, liabilities, unexpended balances, authorizations and appropriations are transferred to the Secretary and thereafter such resources shall be used only for their intended purpose. The Committee expects that the Secretary shall resolve all remaining relocation responsibilities in a manner consistent with existing ONHIR policy and procedure. In so doing, the Secretary is authorized to rely on existing legal documents, such as federal regulations and policies until such time as a particular function is complete.

LEGISLATIVE HISTORY

S. 1003 was introduced by Senator McCain on May 21, 2005 and the bill was referred to the Senate Committee on Indian Affairs. On July 21, 2005, the Committee on Indian Affairs held a hearing on S. 1003.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTE

In an open business meeting on October 27, 2005, the Committee on Indian Affairs unanimously voted to order the bill reported with the recommendation that the Senate pass the bill.

SECTION-BY-SECTION ANALYSIS

Section 1. Short Title. This section provides that the bill may be cited as the “Navajo and Hopi Settlement Act Amendments of 2005.”

Section 101. Amendments to the Navajo and Hopi Settlement Act. This section sets forth twenty-six amendments to the Navajo and Hopi Settlement Act, as amended, as follows:

1. Seven sections are repealed: Section 1 (25 U.S.C. § 640d) providing for the appointment and duties of a Mediator; Section 2 (25 U.S.C. § 640d–1) establishing the appointment and duties of the Navajo and Hopi negotiating teams; Section 3 (25 U.S.C. § 640–d) relating to implementation of agreements reached by the negotiating teams; Section 4 (25 U.S.C. § 640d–3) establishing procedures to be used by the Mediator and the Federal District Court should the negotiating teams not reach agreement; Section 5 (25 U.S.C. § 640d–4) providing other recommendations by the Mediator and the Federal District Court; Section 13 (25 U.S.C. § 640d–12) requiring the Commission to prepare and file reports in the Congress;

Section 30 (25 U.S.C. § 640d–28) providing life estates to Navajos residing on Hopi partitioned lands.

2. By redesignating, partially repealing and amending Section 6 (25 U.S.C. § 640d–5) relating to the partition of the Joint Use Area of the 1882 Reservation established by Executive Order.

3. By delimiting a Definition Section as Section 1.

4. By redesignating the remaining Section 6 as Section 2.

5. By redesignating Section 7 (25 U.S.C. § 640d–6) as Section 3.

6. By redesignating Section 8 (25 U.S.C. § 640d–7) as Section 4 and by repealing subparagraph (f) which contained provisions relating to the payment of legal fees for the San Juan Southern Paiute Tribe prior to its Federal recognition.

7. By redesignating Section 9 (25 U.S.C. § 640d–8) as Section 5.

8. By redesignating Section 10 (25 U.S.C. § 640d–9) as Section 6.

9. By redesignating Section 11(a) (25 U.S.C. § 640–10(a)) as Section 7 and amending it to terminate the Commissioner’s authority to select lands for the Navajo Nation on September 30, 2008, and to authorize the Commissioner to make homesites available to extended family members of Navajos who are deemed eligible for benefits to facilitate the relocation process.

10. By redesignating Section 12 (25 U.S.C. § 640d–11) as Section 8. This section is amended to provide for: termination of the ONHIR on September 30, 2008; the transfer of all remaining responsibilities, personnel, funds and resources to the Secretary of the Interior; to establish an Office of Relocation in the Office of the Secretary which will remain until all relocation functions are discharged.

11. By redesignating Section 13 (25 U.S.C. § 640d–12) as Section 9.

12. By redesignating Section 14 (25 U.S.C. § 640d–13) as Section 10 and deleting references in paragraph (a) requiring the filing of a relocation plan and completing the relocation program. A new paragraph (d) is added to prohibit payment of benefits to any head of household not certified as eligible by September 30, 2008.

13. By redesignating Section 15 (25 U.S.C. § 640d–14) as Section 11 and amending it to add a new paragraph (e) to require the Commissioner to notify the Secretary by September 30, 2008, of any eligible relocatees who have left partitioned lands but who have not received a replacement home and to transfer the funds to do so. The Secretary is authorized to hold such funds in trust for each head of household until the head of household requests a replacement home. If the Secretary holds the funds for head of household at the time of his or her death, the funds shall be distributed to the heirs of the head of household and shall no longer be held in trust.

This section of the Act is further amended by adding a new paragraph (f) which directs the Commissioner to implement the provisions of 25 C.F.R. § 700.138 within 180 days after the enactment of these amendments. Upon the expiration of all time periods in 25 C.F.R. § 700.138, the Commissioner shall provide notice to the Secretary and United States Attorney for the District of Arizona which are required by section 700.139. At any time prior to July 1, 2008, the Commissioner is authorized to construct a replacement home within 90 days of receiving notice from the Secretary or the United

States Attorney, that the removal of a relocatee from the Hopi partitioned lands is imminent.

This section of the Act is also amended by striking the existing paragraph (g) and inserting in lieu thereof a new paragraph (i) to authorize the Commissioner to establish an expedited procedure for reaching final determination on any appeal from denial of eligibility. The Commissioner must provide a final notice, by mail and/or publication, to anyone who may have a right to an eligibility determination within 30 days from enactment of the amendments and all requests for such determinations must be filed within 180 days from the date of notice.

A new paragraph (j) is added to this section to authorize the Commissioner to contract for services and employ personnel to provide eligibility determinations and appeals. Upon request, the Director of the Office of Hearings and Appeals of the Department of the Interior shall provide a hearing officer to the Commissioner to assist in hearings to review eligibility.

A new paragraph (k) is added to provide for a final and expedited appeal of any final eligibility determination by the Office of the Circuit Court of Appeals for the Ninth Circuit. All appeals shall be filed within 30 days of final action by ONHIR and the Court shall complete its review within 60 days after receipt of the certified record from ONHIR. All such appeals shall be reviewed on the basis of a certified record and any denial of eligibility which is supported by substantial evidence shall be affirmed.

14. By redesignating Section 16 (25 U.S.C. § 640d-15) as Section 12.
15. By redesignating Section 17 (25 U.S.C. § 640d-16) as Section 13.
16. By redesignating Section 18 (25 U.S.C. § 640d-17) as Section 14.
17. By redesignating Section 19 (25 U.S.C. § 640d-18) as Section 15.
18. By redesignating Section 20 (25 U.S.C. § 640d-19) as Section 16.
19. By redesignating Section 21 (25 U.S.C. § 640d-20) as Section 17.
20. By redesignating Section 22 (25 U.S.C. § 640d-21) as Section 18.
21. By redesignating Section 23 (25 U.S.C. § 640d-22) as Section 19.
22. By redesignating Section 24 (25 U.S.C. § 640d-23) as Section 20.
23. By redesignating Section 25 (25 U.S.C. § 640d-24) as Section 27. This section is further amended to provide authorizations of appropriations for fiscal years 2006 through 2008.
24. By redesignating Section 27 (25 U.S.C. § 640d-25) as Section 21.
25. By redesignating Section 28 (25 U.S.C. § 640d-26) as Section 22.
26. By redesignating Section 29 (25 U.S.C. § 640d-27) as Section 23.
27. By redesignating Section 31 (25 U.S.C. § 640d-29) as Section 24.

28. By redesignating Section 32 (25 U.S.C. § 640d–30) as Section 25.

29. By redesignating the second designated Section 32 (25 U.S.C. § 640–31) as Section 26.

Title II, Personnel of the Office of Navajo and Hopi Indian Relocation. Section 201 contains six amendments to Title 5 of the United States Code as follows:

1. By amending paragraph (b) of Section 3501 to exclude employees of the ONHIR from reduction-in-force regulations.

2. By amending Section 5597 to include employees of the ONHIR in the provisions for voluntary and separation incentive pay.

3. By amending Section 8336 to include employees of the ONHIR in subparagraph (1) to make them eligible for early or optional retirement programs.

4. By amending Section 8336 to modify the retirement computations for those employees of the ONHIR who can retire under early or optional retirement regulations.

5. By amending Section 8412 to include employees of the ONHIR in the annuity provisions.

6. By amending Section 8415 to modify the annuity computations for employees of the ONHIR who are eligible for annuities.

Title III, Transfer of Functions and Savings Provisions. This title provides the Secretary of the Interior with necessary authority to receive funds, personnel and resources from the ONHIR to implement its remaining responsibilities until such time as those responsibilities are complete.

COST AND BUDGETARY CONSIDERATION

The cost estimate for S. 1003, as calculated by the Congressional Budget Office is set forth below:

DECEMBER 2, 2005.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1003, the Navajo-Hopi Land Settlement Amendments of 2005.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Matthew Pickford.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1003—Navajo-Hopi Land Settlement Amendments of 2005

Summary: S. 1003 would amend the Navajo-Hopi Land Settlement Act of 1974 to phase out the responsibilities of the Office of Navajo and Hopi Indian Relocation (ONHIR) and close that office at the end of fiscal year 2008. The remaining duties of the ONHIR would be transferred to a new Office of Relocation within the Department of the Interior. The bill also would make technical changes to federal laws concerning the Navajo-Hopi land settle-

ment. Finally, the bill would amend civil service laws regarding the personnel of ONHIR.

CBO estimates that enacting S. 1003 would have no significant effect on direct spending or revenues. In addition, we estimate that implementing S. 1003 would reduce discretionary spending by \$15 million over the 2009–2010 period (relative to estimated baseline spending over that period), assuming appropriations are reduced by the estimated amounts.

S. 1003 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would eliminate a provision that currently authorizes assistance to the Navajo and Hopi Tribes for expenses associated with the relocation process. It would impose no other costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1003 is shown in the following table. The cost of this legislation falls within budget functions 450 (community development) and 800 (general government).

	By fiscal year, in millions of dollars—				
	2006	2007	2008	2009	2010
SPENDING SUBJECT TO APPROPRIATION ¹					
ONHIR Spending Under Current Law: ²					
Estimated Authorization Level	9	9	9	10	10
Estimated Outlays	9	9	9	10	10
Proposed Changes:					
Spending for ONHIR:					
Estimated Authorization Level	0	0	0	-10	-10
Estimated Outlays	0	0	0	-9	-10
Spending for Office of Relocations:					
Estimated Authorization Level	0	*	*	2	2
Estimated Outlays	0	*	*	2	2
Separation Pay:					
Estimated Authorization Level	0	*	*	*	*
Estimated Outlays	0	*	*	*	*
ONHIR Spending Under S. 1003:					
Estimated Authorization Level	9	9	9	2	2
Estimated Outlays	9	9	9	3	2

¹ Enacting S. 1003 also would increase direct spending by less than \$500,000 a year over the 2006–2015 period.

² Current law authorizes the appropriation of such sums as are necessary for fiscal years 2006 through 2008 for ONHIR.

CBO's baseline over that period is equal to the 2006 appropriation adjusted for anticipated inflation.

Notes: * = less than \$500,000; components may not sum to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in fiscal year 2006 and that the necessary amounts will be provided each year.

Spending subject to appropriation

CBO estimates that implementing S. 1003 would save \$15 million over the 2006–2010 period—relative to CBO's baseline projections—and assuming appropriations are reduced by the estimated amounts.

Office of Navajo-Hopi Indian Relocation. S. 1003 would phase out the activities of the ONHIR as authorized by the Navajo-Hopi Land Settlement Act of 1974, terminate the office on September 30, 2008, and transfer all remaining activities to the Department of Interior (DOI). The bill would require ONHIR to transfer all remaining funds for construction of replacement homes to those who have not received a replacement home by September 30, 2008. Based on the

level of funding for 2006, information from ONHIR, and adjusting for anticipated inflation, CBO estimates that the termination of the office would save about \$19 million over the 2009–2010 period.

Office of Relocation. S. 1003 would establish an Office of Relocation within DOI on October 1, 2006, to take over the remaining duties and responsibilities of the ONHIR. This would include final construction projects and funds held in trust for future construction projects for individuals and future heirs. Based on information from ONHIR, CBO estimates that the new office would cost about \$2 million annually over the 2009–2010 period.

Separation Pay. S. 1003 would establish a program to provide separation pay for the employees of ONHIR over the 2007–2010 period during the phaseout of ONHIR and the transfer of duties to DOI. Based on information from ONHIR, CBO expects that this provision would not significantly affect federal spending because less than 50 employees would qualify for such payments.

Direct spending

Federal employees who were first hired before 1985 are generally covered by the Civil Service Retirement System (CSRS), while most other employees are covered by the Federal Employees' Retirement System (FERS). S. 1003 would use a more-generous formula to calculate retirement benefits for certain workers employed by the Office of Navajo and Hopi Indian Relocation.

About 50 employees currently work for the Office of Navajo and Hopi Indian Relocation, and CBO expects almost all of those workers would qualify for the higher benefits once they retire. The higher accrual rate would boost annuities for workers by 10 percent to 20 percent. Because of the small number of employees involved, CBO estimates that direct spending on CSRS and FERS retirement benefits would increase, but by less than \$500,000 a year over the 2006–2015 period.

Intergovernmental and private-sector impact: S. 1003 contains no intergovernmental or private-sector mandates as defined in UMRA. The bill would eliminate a provision that currently authorizes assistance to the Navajo and Hopi Tribes for expenses associated with the relocation process. It would impose no other costs on State, local, or tribal governments.

Estimate prepared by: Federal Costs: DOI Spending: Matthew Pickford; Separation Pay: Ellen Hays; Civil Service Retirement: Craig Meklir and Geoff Gerhardt.

Impact on State, Local, and Tribal Governments: Marjorie Miller; Impact on the private sector: Selena Caldera.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY AND PAPERWORK IMPACT STATEMENT

Paragraph 11(b) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill to evaluate the regulatory and paperwork impact that would be incurred in carrying out the bill. The Committee concludes that S. 1003 will reduce regulatory or paperwork requirements and impacts.

EXECUTIVE COMMUNICATIONS

The Committee has not received written correspondence from the Department of the Interior. However, the Department of the Interior did provide written and oral testimony on the bill at a Committee Hearing on July 21, 2005. The Committee received a letter from the Office of Personnel Management regarding title II of the bill. The letter is attached.

U.S. OFFICE OF PERSONNEL MANAGEMENT,
Washington, DC, September 26, 2005.

Hon. JOHN MCCAIN,
Chairman, Committee on Indian Affairs,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I am writing to offer the views of the Office of Personnel Management (OPM) on S. 1003, the "Navajo-Hopi Land Settlement Amendments of 2005."

This bill would amend prior statutory provisions intended to provide the basis for settlement of longstanding territorial disputes involving the Navajo Nation and the Hopi Tribe. In 1974, Public Law 93-531, the Navajo and Hopi Settlement Act, established a Navajo and Hopi Indian Relocation Commission in the Department of Interior. In 1988, Public Law 100-666 abolished the Commission and established in its place the Office of Navajo and Hopi Indian Relocation (ONHIR) as an independent agency within the executive branch. ONHIR was not intended to be a permanent organization, and a one-time authorization for providing relocation benefits would have expired at the end of fiscal year 1997. The principal purpose of the proposed amendments is to provide for the completion of the relocation program, and termination of ONHIR by September 30, 2008. We take no position with regard to this central aspect of the proposal.

In terms of human capital management, there is nothing that sets ONHIR apart from numerous other temporary Government entities. ONHIR was established as a temporary organization. While its life has been extended, it will eventually terminate. Its employees have always understood that their organization would sunset. There is time for an orderly shutdown. Thus, no basis exists to treat ONHIR in a manner different from other temporary Government entities as to human resources policy. However, Title II of the bill includes such provisions, related to reduction in force, separation payments, and retirement. We strongly oppose each of these provisions.

Section 201 would revise present 5 U.S.C. 3501(b) to exclude employees of ONHIR from coverage under OPM's 5 CFR part 351 reduction in force regulations. The proposed language would make employees of ONHIR subject to summary termination in a reduction in force situation without regard to their retention standing (including veterans' preference entitlements).

Section 202 would reference 5 U.S.C. 5597 (which covers buyouts in the Department of Defense (DOD) and which was supplemented by Public Law 108-136, DOD's 2003 legislation) in authorizing ONHIR to pay buyouts to its employees through December 31, 2009. Technically, this is confusing, since under section 108 of the bill, ONHIR would cease to exist on December 31, 2008. Although the buyouts would be capped at \$25,000, the gross amount of a

maximum buyout would decline to \$20,000 in CY 2008, and then to \$15,000 in CY 2009.

In determining both employees' eligibility for buyouts and the computation of benefits, we believe the Office should continue to be covered by the buyout provisions of section 1313(a) of the Homeland Security Act of 2002 (Public Law 107-296), codified in 5 U.S.C. 3521 through 3525. We find no justification for the Office to be granted its own buyout authority or to depart from the buyout computation formula included in 5 U.S.C. 3523(b)(3).

Section 203 would amend 5 U.S.C. 8336, 8339, 8412, and 8415 to provide preferential retirement eligibility and computation provisions for employees of ONHIR. Under the Civil Service Retirement System (CSRS), individuals would be permitted to retire voluntarily at age 50 with 20 years of service, or at any age with 25 years of service. This authority is unnecessary since a voluntary early retirement authority could be provided administratively under existing law, if necessary and appropriate. If separated involuntarily, individuals would be permitted to retire at age 48 with 18 years of service, or at any age with 23 years of service. We object to this unwarranted preferential benefit applicable to only a small class of individuals whose situation is commonplace.

The normal CSRS annuity computation allows 1½ percent for each of the first 5 years of service, 1¾ percent for each of the next 5 years of service, and 2 percent for each year of service in excess of 10 years. Under this proposal, the CSRS annuity of an individual would be computed under the regular formula, except that service with ONHIR performed on and after January 1, 1985, would be credited at 2½ percent for the first 10 years of such service, and at 2 percent for such service over 10 years. As with the involuntary separation provision, we also object to this preferential benefit.

Under the Federal Employees Retirement System (FERS), ONHIR employees would be permitted to retire voluntarily at age 50 with 20 years of service, or at any age with 25 years of service. As with CSRS, this authority is unnecessary since a voluntary early retirement authority could be provided administratively under existing law.

The normal FERS annuity computation provides 1 percent for each year of service (1.1 percent if the individual is at least age 62 with 20 years of service at retirement). A limited number of employees (such as law enforcement officers and firefighters) are entitled to 1.7 percent for each of the first 20 years of service, and 1 percent for each year in excess of 20.

Under this proposal, FERS employees of ONHIR would have their benefits computed under a uniquely liberal formula. ONHIR service performed on and after January 1, 1985, would be credited at 2 percent for the first 10 years of such service, and at 1½ percent for such service over 10 years. There is no rationale for why this small group should receive a more liberal FERS computation than anyone else, including law enforcement officers, firefighters, and Members of Congress.

Under both CSRS and FERS, the enhanced annuity computation would not be limited to those persons who are involuntarily separated. It would also be available to those who accept voluntary early retirement or who have worked a full career and would be eli-

gible for regular optional retirement. It is not logical to provide special retirement provisions that would serve as an incentive to remain employed, while at the same time providing for voluntary separation incentive payments to induce early separations.

Throughout Government, organizations are changing, with many employees not having the opportunity to complete their careers. There is nothing unique about this situation that would justify granting special annuity computation provisions that are not available to other employees whose employment terminate prior to completion of a full career. To provide such an unfunded windfall to this small group would be extraordinarily unfair to those other similarly situated employees who would not be provided such generous treatment. Moreover, not only are these provisions unjustified, there are no provisions made for funding the added costs of the higher annuities.

In summary, while we take no position on the majority of the bill, we object to the Title II personnel provisions related to ONHIR. The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

DAN G. BLAIR,
Deputy Director.

CHANGES IN EXISTING LAW

In compliance with subsection 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1003, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) *SHORT TITLE.*—*This Act may be cited as the “Navajo-Hopi Land Settlement Amendments of 2005”.*

(b) *TABLE OF CONTENTS.*—*The table of contents of this Act is as follows:*

Sec. 1. Short title; table of contents.

TITLE I—AMENDMENTS TO THE NAVAJO-HOPI LAND SETTLEMENT ACT OF 1974

Sec. 101. Repeal of sections.

Sec. 102. Definitions; division of land.

Sec. 103. Joint ownership of minerals.

Sec. 104. Actions.

Sec. 105. Paiute Indian allotments.

Sec. 106. Partitioned and other designated land.

Sec. 107. Resettlement land for Navajo Tribe.

Sec. 108. Office of Navajo and Hopi Indian Relocation.

Sec. 109. Report.

Sec. 110. Relocation of households and members.

Sec. 111. Relocation housing.

Sec. 112. Payment for use of land.

Sec. 113. Effect of Act.

Sec. 114. Actions for accounting, fair value of grazing, and claims for damages to land.

Sec. 115. Joint use.

Sec. 116. Religious ceremonies; piping of water.

Sec. 117. Access to religious shrines.

- Sec. 118. Exclusion of payments from certain Federal determinations of income.*
Sec. 119. Authorization of exchange.
Sec. 120. Severability.
Sec. 121. Authorization of appropriations.
Sec. 122. Discretionary fund.
Sec. 123. Environmental impact; wilderness study; cancellation of leases and permits.
Sec. 124. Attorney fees and court costs.
Sec. 125. Lobbying.
Sec. 126. Navajo Rehabilitation Trust Fund.
Sec. 127. Availability of funds for relocation assistance.

TITLE II—PERSONNEL OF THE OFFICE OF NAVAJO AND HOPI INDIAN
RELOCATION

- Sec. 201. Retention preference.*
Sec. 202. Separation pay.
Sec. 203. Federal retirement.

TITLE III—TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS

- Sec. 301. Definitions.*
Sec. 302. Transfer of functions.
Sec. 303. Transfer and allocations of appropriations.
Sec. 304. Effect of Title.

TITLE I—AMENDMENTS TO THE ACT OF DECEMBER 22,
1974

SEC. 101. REPEAL OF SECTIONS.

(a) IN GENERAL.—The Act of December 22, 1974 (25 U.S.C. 640d et seq.), is amended in the first undesignated section by striking “That, (a) within” and all that follows through the end of the section.

【§640d-1

【(a) 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) 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) of this title shall become effective.

【(c) 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) 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) of this title shall become effective.

[(e) 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.

§640d-2

[(a) 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 expresses 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) 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) 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.

25 U.S.C. §640d-3

[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 rec-

ommendations (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.

§ 640d-4

[(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 authorization contained in subsection (a) of this section shall be discretionary and shall not be construed to represent any directive of the Congress.]

§ 640d-5.

SECTION 1. DEFINITIONS.

In this Act:

(1) *DISTRICT COURT.*—The term “District Court” means the United States District Court for the District of Arizona.

(2) *SECRETARY.*—The term “Secretary” means the Secretary of the Interior.

(3) *TRIBE.*—The term “Tribe” means—

(A) the Navajo Indian Tribe; and

(B) the Hopi Indian Tribe.

SEC. 2. DIVISION OF LAND.

(a) *DIVISION.*—

(1) *IN GENERAL.*—The land located within the boundaries of the reservation established by Executive Order on December 16, 1982, shall be divided into parcels of equal acreage and quality—

(A) to the maximum extent practicable; and

(B) in accordance with the final order issued by the District Court on August 30, 1978 (providing for the partition of the surface rights and interest of the tribes).

(2) *VALUATION OF PARCELS.*—For the purpose of calculating the value of a parcel produced by a division under paragraph (1), the Secretary shall—

- (A) take into account any improvement on the land; and
- (B) consider the grazing capacity of the land to be fully restored.

(3) *COMPENSATION OF TRIBES.*—If the partition under paragraph (1) result in parcels of unequal value, as determined by the Secretary, the tribe that receives the more valuable parcel shall pay to the other tribe compensation in an amount equal to the difference in the values of the parcels, as determined by the Secretary.

(4) *COMPENSATION OF FEDERAL GOVERNMENT.*—If the District Court determines that the failure of the Federal Government to fulfill an obligation of the Government resulted in the decrease in value of a parcel under paragraph (1), the Government shall pay to the recipient of the parcel compensation in an amount equal to the difference between—

- (A) the decreased value of the parcel; and
- (B) the value of the fully restored parcel.

[(g) Any]

(b) *LICENSE FEES AND RENTS.*—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] (c) *GRAZING AND AGRICULTURAL USE.*—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.

【Joint ownership and management of coal, oil, gas and other minerals within or underlying partitioned lands; division of proceeds】

§ 640d-6.

SEC. 3. JOINT OWNERSHIP OF MINERALS.

(a) *IN GENERAL.*—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.

(b) *JOINT MANAGEMENT.*—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. 【Determination of tribal rights and interests in land】

§ 640d-7.

SEC. 4. ACTIONS.

[(a) *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 interests in or to the area described in the Act of June 14, 1934, Except the reservations established by the Executive Or 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) Lands, if any] (b) *ALLOCATION OF LAND.*—

(1) *NAVAJO RESERVATION.*—*Any land* 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]

(2) *HOPi RESERVATION.*—*Any land* 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.

(3) *JOINT AND UNDIVIDED INTERESTS.*—*Any land* 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)(1) Either] (c) *EXCHANGE OF LAND.*—(1) *IN GENERAL.*—*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 18] *section 14* 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 18] *section 14* 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] (2) *INTERESTS OF TRIBES.*—*If* 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] (3) *DEFENSE.*—*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 24 months following a final order of partition and exhaustion of appeals in an action filed pursuant to this section.

[(d) Nothing] (d) *EFFECT OF SECTION.*—*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) The] (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) * * *

[(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 acknowledgment 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]

§ 640d-8

[SEC. 9. Notwithstanding]

SEC. 5. PAIUTE INDIAN ALLOTMENTS.

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 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.

§ 640d-9

[SEC. 10. (a) SUBJECT]

SEC. 6. PARTITIONED AND OTHER DESIGNATED LAND.

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

(a) *NAVAJO TRUST LAND.*—*Subject* to the provisions of [section 9 and subsection (a) of section 17] *sections 5 and 13(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)] (b) *HOPi TRUST LAND.*—*Subject* to the provisions of [section 9 and subsection 9(a) of section 17] *sections 5 and 13(a)* of this title, any lands partitioned to the Hopi Tribe pursuant to [sections

3 or 4] *section 2* of this title and the lands as described in [section 8] *section 4* 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.

[(c)] (c) *PROTECTION OF RIGHTS AND PROPERTY.*—*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 to this Act.*

[(d)] (d) *PROTECTION OF BENEFITS AND SERVICES.*—*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)(1) Lands] (e) *TRIBAL JURISDICTION OVER PARTITIONED LAND.*—(1) *IN GENERAL.*—*Land 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 90 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]

(2) *RESPONSIBILITY OF SECRETARY.*—*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.*

(f) *DEVELOPMENT OF LANDS IN LITIGATION; EXCEPTION.*—

(1) Any development of lands in litigation pursuant to section 640d-7 of this title and further defined as “that portion of the Navajo Reservation lying west of the Executive Order Reservation of 1882 and bounded on the north and south by westerly extensions, to the reservation line, of the northern and southern boundaries of said Executive Order Reservation,” shall be carried out only upon the written consent of each tribe except for the limited areas around the village of Moenkopi and around Tuba City. Each such area has been heretofore designated by the Secretary. “Development” as used herein shall mean any new construction or improvement to the property and further includes public work projects, power and

water lines, public agency improvements, and associated rights-of-way.

(2) Each Indian tribe which receives a written request for the consent of the Indian tribe to a particular improvement, construction, or other development on the lands to which paragraph (1) applies shall respond in writing to such request by no later than the date that is 30 days after the date on which the Indian tribe receives the request. If the Indian tribe refuse to consent to the improvement, construction, or other development, the response shall include the reasons why consent is being refused.

(3)(A) Paragraph (1) shall not apply to any improvement, construction, or other development if—

(I) such improvement, construction, or development does not involve new housing construction, and

(ii) after the Navajo Tribe or Hopi Tribe has refused to consent to such improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Secretary of the Interior determines that such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either tribe.

(B) If a written request for a determination described in subparagraph (A)(ii) is submitted to the Secretary of the Interior after the Navajo Tribe or Hopi Tribe has refused to consent to any improvement, construction, or development (or after the close of the 30-day period described in paragraph (2), if the Indian tribe does not respond within such period in writing to a written request for such consent), the Secretary shall, by no later than the date that is 45 days after the date on which such request is submitted to the Secretary, determine whether such improvement, construction, or development is necessary for the health or safety of the Navajo Tribe, the Hopi Tribe, or any individual who is a member of either Tribe.

(C) Any development that is undertaken pursuant to this section shall be without prejudice to the rights of the parties in the civil action pending before the United States District Court for the District of Arizona commenced pursuant to section 640d-7 of this title, as amended.

§ 640d-10(a)

[SEC. 11. (a) The Secretary]

SEC. 7. RESETTLEMENT OF LAND FOR NAVAJO TRIBE.

(a) TRANSFER OF LAND.—(1) IN GENERAL.—*The Secretary* is authorized and directed to—

[(1) transfer not to exceed two hundred and fifty thousands acres of lands] (A) transfer not more than 250,000 acres of land under the jurisdiction of the Bureau of Land Management within the State 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.】 *Tribe; and*

【(2) on behalf】 *(B) 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.】

(2) *EXCHANGE OF LAND.—*

(A) *IN GENERAL.—*In order to facilitate a transfer of land under paragraph (1)(A), the Secretary may exchange land described in paragraph (1)(A) for State or private land of equal value.

(B) *UNEQUAL VALUE.—*If the State or private land described in subparagraph (A) is of unequal value to the land described in paragraph (1)(A), the recipient of the land that is of greater value shall pay to the other party to the exchange under subparagraph (A) compensation in an amount not to exceed the lesser of—

(i) the difference between the values of the land exchanged; or

(ii) the amount that is 25 percent of the total value of the land transferred from the Secretary to the Navajo Tribe.

(C) *RESPONSIBILITY OF SECRETARY.—*The Secretary shall ensure that the amount of payment under subparagraph (B) is as minimal as practicable.

(3) *TITLE TO LAND ACCEPTED.—*The Secretary shall accept title to land under paragraph (1)(B) on behalf 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,】

(4) *REQUIREMENT OF TRANSFER.—*

(A) *IN GENERAL.—*Subject to this paragraph, all rights, title and interests of the United States in the lands described in 【paragraph (1)】 *paragraph (1)(A)*, 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.A. § 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】

(B) *COAL LEASE APPLICATIONS.—*

(i) *IN GENERAL.—*If selected lands coincide with pending noncompetitive coal lease applications under the Mineral Leasing Act of 1920, as amended (30 U.S.C.A. § 181 et seq.), 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】

(ii) *ISSUANCE OF LEASES.—*If an adjudication under clause (i) results in issuance of Federal coal leases to the

applicants, such transfer shall be subject to such leases. **【The leaseholders rights and interests】**

(iii) *RIGHTS AND INTERESTS OF LEASEHOLDERS.*— *The rights and interests of a holder of a lease described in clause (i) 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】*

(C) *CLAIMS UNDER MINING LAW.*—*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) Those】

(5) *State rights.*—

(A) *IN GENERAL.*—*The interests in lands acquired in the State of New Mexico by the Navajo Tribe pursuant to 【subsection 2 of this section】 paragraph (1)(B) shall be subject to the right of the State of New Mexico 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.A. § 181 et seq.), or any successor Act; or otherwise developed. 【The】*

(B) *STATE INTERESTS.*—*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 (30 U.S.C.A. § 181 et seq.).*

§ 640d-10(b)

【(b) A border】 (b) *PROXIMITY OF LAND TO BE TRANSFERRED OR ACQUIRED.*—*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) of this section, 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.*

§ 640d-10(c)

【(c) Lands】 (c) *SELECTION OF LAND TO BE TRANSFERRED OR ACQUIRED.*—*Land 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【.】 : Provided further, That the authority of the Commissioner to select lands under this subsection shall terminate on September 30, 2008.*

§ 640d-10(d)

【(d) The】 (d) *REPORTS.*—*The Commissioner, in consultation with the Secretary, shall within sixty days following the first year of en-*

actment 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.

§ 640d-10(e)

[(e) Payments] *(e) 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.

§ 640d-10(f)

[(f)(1) For] *(f) ACQUISITION OF TITLE TO SURFACE AND SUBSURFACE INTERESTS.—*

(1) IN GENERAL.—For a period of three years after July 8, 1980, the Secretary shall not accept title to lands acquired pursuant to subsection (a)(2) 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]**

(2) PUBLIC NOTICE; REPORT.—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] *(3) RIGHTS OF SUBSURFACE OWNERS.—If* the Secretary accepts, in trust, title to the surface of lands acquired pursuant to subsection (a)(2) 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.

§ 640d-10(g)

[(g) No] *(g) LAND 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.

§ 640d-10(h)

[(h) The lands] *(h) ADMINISTRATION OF LAND TRANSFERRED OR ACQUIRED.—*

(1) IN GENERAL.—*The land* transferred or acquired pursuant to this section shall be administered by the Commissioner until relocation under the Commission's [FN4] 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.

(2) RELOCATION.—

(A) IN GENERAL.—*In order to facilitate relocation of a member of a Tribe, the Commissioner may grant a home-site lease on land acquired under this section to a member of the extended family of a Navajo Indian who is certified eligible to receive benefits under this Act.*

(B) EXCEPTION.—*The Commissioner may not use any funds available to the Commissioner to carry out this Act to provide housing to an extended family member described in subparagraph (A).*

§ 640d-10(i)

[(i) The] (i) NEGOTIATIONS REGARDING LAND EXCHANGES AND 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 23]** section 19 of this title.

§ 640d-11

[SEC. 12. (a) There is hereby]

SEC. 8. OFFICE OF NAVAJO AND HOPI INDIAN RELOCATION.

(a) ESTABLISHMENT.—*There is 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").*

[The] (b) APPOINTMENT.—*The Commissioner shall be appointed by the President by and with the advice and consent of the Senate.*

(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)(1)(A) Except] (c) CONTINUATION OF POWERS.—

(1) POWERS AND DUTIES OF COMMISSIONER; EXISTING FUNDS.—

(A) POWERS AND DUTIES OF COMMISSIONER.—*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] (B) *EXISTING FUNDS.*—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. [There are hereby]

(2) *TRANSFER OF POWERS.*—There are 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 [FN1]: *Provided further*, That for administrative purposes such funds shall be maintained in a separate account.

[(d)(1) Subject] (d) *POWERS OF COMMISSIONER.*—

(1) *IN GENERAL.*—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] (2) *CONTRACTS.*—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] (3) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated for each fiscal year \$100,000 to fund contracts described in paragraph (2).

[(e)(1)] (e) *ADMINISTRATION.*—

(1) *ADMINISTRATIVE, FISCAL, AND HOUSEKEEPING SERVICES.*—

(A) *IN GENERAL.*—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]

(B) ASSISTANCE FROM DEPARTMENTS AND AGENCIES.—*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] (2) FAILURE TO PROVIDE ASSISTANCE.—*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.*

[f] (f) TERMINATION.—

(1) IN GENERAL.—*The Office of Navajo and Hopi Indian Relocation shall terminate on September 30, 2008.*

(2) TRANSFER OF OFFICE DUTIES.—*On the date of termination of the Office, any duty of the Office that has not been carried out, as determined in accordance with this Act, shall be transferred to the Secretary in accordance with title III of the Navajo-Hopi Land Settlement Amendments of 2005.*

(g) OFFICE OF RELOCATION.—

(1) ESTABLISHMENT.—*Effective on October 1, 2006, there is established in the Department of the Interior an Office of Relocation.*

(2) DUTIES.—*The Secretary, acting through the Office of Relocation, shall carry out the duties of the Office of Navajo and Hopi Indian Relocation that are transferred to the Secretary in accordance with title III of the Navajo-Hopi Land Settlement Amendments of 2005.*

(3) TERMINATION.—*The Office of Relocation shall terminate on the date on which the Secretary determines that the duties of the Office have been carried out.*

§ 640d-12

[SEC. 13. (a) By no]

SEC. 9. REPORT.

(a) IN GENERAL.—*Not 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] (b) INCLUSIONS.—*The report required under subsection (a) of this section shall [contain, among other matters, the following:] include—*

(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 [FN1] being among the persons named in clause (1) of this subsection.

§ 640d-13

[SEC. 14. (a)]

SEC. 10. RELOCATION OF HOUSEHOLD AND MEMBERS.

[Consistent] (a) AUTHORIZATION.—

(1) *IN GENERAL.*—Consistent with [section 8] section 4 of this title and the order of the District Court issued pursuant to [section 3 or 4] section 2 of this title, the Commissioner is authorized and directed to relocate pursuant to [section 8] section 4 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.]

(2) *SETTLEMENTS OF NAVAJO.*—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]

(3) *SETTLEMENTS OF HOPI.*—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]

(4) *GRAZING.*—No individual shall hereafter be allowed to increase the 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) In addition] (b) ADDITIONAL PAYMENTS TO HEADS OF HOUSEHOLDS.—In addition to the payments made pursuant to [section 15] section 11 of this title, the Commissioner shall make payments to heads of households identified in the report prepared pursuant to [section 13] section 9 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) No] (c) *PAYMENTS FOR PERSONS MOVING AFTER A CERTAIN DATE.*—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.

(d) *PROHIBITION.*—No payment for benefits under this Act may be made to any head of a household if, as of September 30, 2005, that head of household has not been certified as eligible to receive the payment.

§ 640d-14

[SEC. 15. (a)]

SEC. 11. RELOCATION HOUSING.

[The Commission] (a) *PURCHASE OF HABITATION AND IMPROVEMENTS.*—

(1) *IN GENERAL.*—The Commission 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]**

(2) *PURCHASE PRICE.*—The purchase price shall be the fair market value of such habitation and improvements. **[as determined under clause (2) of subsection (b) of section 13.]**

[(b) In addition] (b) *REIMBURSEMENT FOR MOVING EXPENSES AND PAYMENT FOR REPLACEMENT DWELLING.*—In addition to the payments made pursuant to subsection (a) of this section, the Commissioner [shall:] 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.A. § 4622]; and

(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) In implementing] (c) *STANDARDS; CERTAIN PAYMENTS.*—

(1) *STANDARDS.*—*In carrying out* 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.A. §4601 et seq.). [No payment]

(2) *CERTAIN PAYMENTS.*—*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 8] *section 4* of this title or [section 3 or 4] *section 2* of this title to a tribe of which he is not a member.

[(d) The] (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]

(1) *HOME OWNERSHIP OPPORTUNITY PROJECTS.*—*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.A. §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 home ownership. [(2) Should]

(2) *PURCHASED AND CONSTRUCTED DWELLINGS.*—*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]

(3) *FAILURE TO ARRANGE RELOCATION.*—*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 para-

graph (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) The] (e) *DISPOSAL OF ACQUIRED DWELLINGS AND IMPROVEMENTS*.—The Commission 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 8] *section 4* of this title and the order of the District Court pursuant to [section 3 or 4] *section 2* of this title.

[(f) Notwithstanding] (f) *PREFERENTIAL TREATMENT*.—*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)]

(g) *BENEFITS HELD IN TRUST*.—

(1) *IN GENERAL*.—*Not later than September 30, 2008, the Commissioner shall notify the Secretary of the identity of any head of household that, as of that date—*

(A) *is certified as eligible to receive benefits under this Act;*

(B) *does not reside on land that has been partitioned to the tribe of which the head of household is a member; and*

(C) *has not received a replacement home.*

(2) *TRANSFER OF FUNDS*.—*Not later than September 30, 2008, the Commissioner shall transfer to the Secretary any funds not used by the Commissioner to make payments under this Act to eligible heads of households.*

(3) *DISPOSITION OF TRANSFERRED FUNDS*.—

(A) *IN GENERAL*.—*The Secretary shall hold any funds transferred under paragraph (2) in trust for the heads of households described in paragraph (1)(A).*

(B) *PAYMENT AMOUNTS.*—Of the funds held in trust under subparagraph (A), the Secretary shall make payments to heads of households described in paragraph (1)(A) in amounts that would have been made to the heads of households under this Act before September 30, 2008—

(i) on receipt of a request of a head of household, to be used for a replacement home; or

(ii) on the date of death of the head of household, if the head of household does not make a request under clause (i), in accordance with subparagraph (C).

(C) *DISTRIBUTION OF FUNDS ON DEATH OF HEAD OF HOUSEHOLD.*—If the Secretary holds funds in trust under this paragraph for a head of household described in paragraph (1)(A) on the death of the head of household, the Secretary shall—

(i) identify and notify any heir of the head of household; and

(ii) distribute the funds held by the Secretary for the head of household to any heir—

(I) immediately, if the heir is at least 18 years old; or

(II) if the heir is younger than 18 years old on the date on which the Secretary identified the heir, on the date on which the heir attains the age of 18.

(h) *NOTIFICATION.*—

(1) *IN GENERAL.*—Not later than 180 days after the date of enactment of the Navajo-Hopi Land Settlement Amendments of 2005, the Commissioner shall notify each eligible head of household who has not entered into a lease with the Hopi Tribe to reside on land partitioned to the Hopi Tribe, in accordance with section 700.138 of title 25, Code of Federal Regulations (or a successor regulation).

(2) *LIST.*—On the date on which a notice period referred to in section 700.139 of title 25, Code of Federal Regulations (or a successor regulation), expires, the Commissioner shall submit to the Secretary and the United States Attorney for the District of Arizona a list containing the name and address of each eligible head of household who—

(A) continues to reside on land that has not been partitioned to the Tribe of the head of household; and

(B) has not entered into a lease to reside on that land.

(3) *CONSTRUCTION OF REPLACEMENT HOMES.*—Before July 1, 2008, but no later than 90 days after receiving a notice of the imminent removal of a relocatee from land provided to the Hopi Tribe under this Act from the Secretary or the United States Attorney for the District of Arizona, the Commissioner may begin construction of a replacement home on any land acquired under section 6.

(i) *APPEALS.*—

(1) *IN GENERAL.*—The Commissioner shall establish an expedited hearing procedure for any appeal relating to the denial of eligibility for benefits under this Act (including regulations promulgated pursuant to this Act) that is pending on, or filed after, the date of enactment of the Navajo-Hopi Land Settlement Amendments of 2005.

(2) *FINAL DETERMINATIONS.*—*The hearing procedure established under paragraph (1) shall—*

(A) *provide for a hearing before an impartial third party, as the Commissioner determines necessary; and*

(B) *ensure that a final determination is made by the Office of Navajo and Hopi Indian Relocation for each appeal described in paragraph (1) by not later than January 1, 2008.*

(3) *NOTICE.*—

(A) *IN GENERAL.*—*Not later than 30 days after the date of enactment of the Navajo-Hopi Land Settlement Amendments of 2005, the Commissioner shall provide written notice to any individual that the Commissioner determines may have the right to a determination of eligibility for benefits under this Act.*

(B) *REQUIREMENTS FOR NOTICE.*—*The notice provided under subparagraph (A) shall—*

(i) *specify that a request for a determination of eligibility for benefits under this Act shall be presented to the Commission not later than 180 days after the date on which the notice is issued; and*

(ii) *be provided—*

(I) *by mail (including means other than certified mail) to the last known address of the recipient; and*

(II) *in a newspaper of general circulation in the geographic area in which an address referred to in subclause (I) is located.*

(j) *PROCUREMENT OF SERVICES.*—

(1) *IN GENERAL.*—*Notwithstanding any other provision of this Act, to ensure the full and fair evaluation of the requests referred to in subsection (i)(3)(A) (including an appeal hearing before an impartial third party referred to in subsection (i)(2)(A), the Commissioner may enter into such contracts or agreements to procure such services, and employ such personnel (including attorneys), as the Commissioner determines to be necessary.*

(2) *DETAIL OF ADMINISTRATIVE LAW JUDGES OR HEARING OFFICERS.*—*The Commissioner may request the Secretary to act through the Director of the Office of Hearings and Appeals to make available to the Office of Navajo and Hopi Indian Relocation an administrative law judge or other hearing officer with appropriate qualifications to review the requests referred to in subsection (i)(3)(A), as determined by the Commissioner.*

(k) *APPEAL TO UNITED STATES CIRCUIT COURT OF APPEALS.*—

(1) *IN GENERAL.*—*Subject to paragraph (3), any individual who, under the procedures established by the Commissioner pursuant to this section, is determined not to be eligible to receive benefits under this Act may appeal that determination to the United States Circuit Court of Appeals for the Ninth Circuit (referred to in this subsection as the “Circuit Court”).*

(2) *REVIEW.*—

(A) *IN GENERAL.*—*The Circuit Court shall, with respect to each appeal described in paragraph (1)—*

(i) *review the entire record (as certified to the Circuit Court under paragraph (3)) on which a determination*

of the ineligibility of the appellant to receive benefits under this Act was based; and

(ii) on the basis of that review, affirm or reverse the determination.

(B) *STANDARD OF REVIEW.*—The Circuit Court shall affirm any determination that the Circuit Court determines to be supported by substantial evidence.

(3) *NOTICE OF APPEAL.*—

(A) *IN GENERAL.*—Not later than 30 days after a determination of ineligibility under paragraph (1), an affected individual shall file a notice of appeal with—

(i) the Circuit Court; and

(ii) the Commissioner.

(B) *CERTIFICATION OF RECORD.*—On receipt of a notice under subparagraph (A)(ii), the Commissioner shall submit to the Circuit Court the certified record on which the determination that is the subject of the appeal was made.

(C) *REVIEW PERIOD.*—Not later than 60 days after receiving a certified record under subparagraph (B), the Circuit Court shall conduct a review and file a decision regarding an appeal in accordance with paragraph (2).

(D) *BINDING DECISION.*—A decision made by the Circuit Court under this subsection shall be final and binding on all parties.

§ 640d-15

【SEC. 16. (a) The Navajo】

SEC. 12. PAYMENT FOR USE OF LAND.

(a) *IN GENERAL.*—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 8 and 3 or 4] *sections 2 and 4* of this title subsequent to the date of the partition thereof.

【(b) The】 (b) *PAYMENT.*—The Hopi Tribe shall pay to the Navajo Tribe the fair rental value as determined by the Secretary for all use by Hopi individuals of any lands partitioned to the Navajo Tribe pursuant to [sections 8 and 3 or 4] *sections 2 and 4* of this title subsequent to the date of the partition thereof.

§ 640d-16

【SEC. 17. (a)】

SEC. 13. EFFECT OF ACT.

(a) *TITLE, POSSESSION AND ENJOYMENT.*—

(1) *IN GENERAL.*—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】

(2) *RESIDENCE ON OTHER RESERVATIONS.*—Any 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) Nothing】 (b) *FEDERAL EMPLOYEES.*—Nothing in this subchapter shall require the relocation from any area partitioned pur-

suant 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.

§ 640d-17

[SEC. 18. (a) Either]

SEC. 14. ACTIONS FOR ACCOUNTING, FAIR VALUE OF GRAZING, AND CLAIMS FOR DAMAGES TO LAND.

(a) *ACTIONS BY TRIBES.*—*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 3 or 4]** *section 2* 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) Neither] (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 3 or 4]** *section 2* of this title, whichever is later.

[(c) Either] (c) *FURTHER ORIGINAL, ANCILLARY, OR SUPPLEMENTARY ACTS TO ENSURE QUIET ENJOYMENT.*—

(1) *IN GENERAL.*—*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】**

(2) *ACTION THROUGH CHAIRMAN.*—*An action under paragraph (1) 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) Except】 (d) *UNITED STATES AS PARTY; JUDGMENTS AGAINST THE UNITED STATES.*—

(1) *IN GENERAL.*—*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】*

(2) *EFFECT OF JUDGMENT.*—*Any judgment by the District Court in such action or actions shall not be regarded as a claim or claims against the United States.*

【(e) All】 (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.*

§ 640d-18

【SEC. 19. (a) Notwithstanding】

SEC. 15. JOINT USE.

(a) *REDUCTION OF LIVESTOCK.*—

(1) *IN GENERAL.*—*Notwithstanding any provision of this subchapter, or any order of the District Court pursuant to 【section 3 or 4】 section 2 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 capacity standards as established by the Secretary after December 22, 1974. 【The Secretary is directed to】*

(2) *CONSERVATION PRACTICES AND METHODS.*—*The Secretary shall 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) The】 (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 8 and 3 or 4】 sections 2 and 4 of this title, shall provide for the survey location of monuments, and fencing of boundaries of any lands partitioned pursuant to 【sections 8 and 3 or 4】 sections 2 and 4 of this title.*

【(c)(1) Surveying】 (c) *SURVEYING, MONUMENTING AND FENCING; LIVESTOCK REDUCTION PROGRAM.*—

(1) *SURVEYING, MONUMENTING AND FENCING.*—*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 4】 section 2 of this title and within twelve months after a final*

order of partition with respect to any lands partitioned pursuant to ~~section 8~~ *section 4* of this title.

[(2) The]

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

§ 640d-19

[SEC. 20. The members]

SEC. 16. RELIGIOUS CEREMONIAL USES; PIPING OF WATER.

*The members of the Hopi Tribe shall have perpetual use of Cliff Spring as shown on USGS 7 1/2 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.*

§ 640d-20

[SEC. 21. Notwithstanding]

SEC. 17. ACCESS TO RELIGIOUS SHRINES.

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.

§ 640d-22

[SEC. 22. The availability]

SEC. 18. EXCLUSION OF PAYMENTS FROM CERTAIN FEDERAL DETERMINATIONS OF INCOME.

(a) IN GENERAL.—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.A.

§ 301 et seq.) or any other Federal or federally assisted program. **【None of the funds】**

(b) *FEDERAL AND STATE INCOME TAXES.*—None of the funds provided under this subchapter shall be subject to Federal or State income taxes.

§ 640d-22

【SEC. 23. The Navajo】

SEC. 19. AUTHORIZATION OF EXCHANGE.

(a) *IN GENERAL.*—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】**

(b) *NEGOTIATED EXCHANGES.*—If the Tribes 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 14 and 15】** *sections 10 and 11* 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.

§ 640d-23

【SEC. 24. If】

SEC. 20. SEVERABILITY.

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.

§ 640d-25

【SEC. 27. 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) of the section 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】

SEC. 21. FUNDING AND CONSTRUCTION OF 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.

§ 640d-26

[SEC. 28. (a) No action]

SEC. 22. ENVIRONMENTAL IMPACT; WILDERNESS STUDY; CANCELLATION OF LEASES AND PERMITS.

(a) *IN GENERAL.*—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.A. § 4321 et seq.)

[(b) Any]

(b) *EFFECT OF WILDERNESS STUDY.*—Any transfer of public lands pursuant to this subchapter shall be made notwithstanding the provisions of sections 1782 and 1752(g) of title 43.

(c) *CONSTRUCTION REQUIREMENTS.*—

(1) *IN GENERAL.*—Any construction activity under this Act shall be carried out in accordance with sections 3 through 7 of the Act of June 27, 1960 (16 U.S.C. 469a-1 through 469c).

(2) *COMPLIANCE WITH OTHER REQUIREMENTS.*—If a construction activity meets the requirements under paragraph (1), the activity shall be considered to be in accordance with any applicable requirement of—

(A) Public Law 89-665 (80 Stat. 915); and

(B) the Act of June 8, 1906 (34 Stat. 225, Chapter 3060).

[SEC. 29. (a) Any]

SEC. 23. ATTORNEY FEES AND COURT COSTS.

(a) *IN GENERAL.*—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]**

(b) *AUTHORIZATION OF APPROPRIATIONS.*—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) Upon] (c) AWARD BY COURT.—

[Any Party] (1) IN GENERAL.—On 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.

(2) *REIMBURSEMENT OF UNITED STATES.*—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) To] (d) EXCESS DIFFERENCE.—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 dif-

ference shall be treated as if it were a final judgment of the Court of Claims under section 2517 of title 28.

[(d) This] (e) *APPLICATION OF SECTION*.—*This* section shall apply to any litigation or court action pending upon July 8, 1980, in which a final order, decree, or judgment has not been entered, but shall not apply to any action authorized by [section 8 or 18(a) of this title] *section 4 or section 14(a)* of this title.

[25 U.S.C. § 28

[(a)

[(b) 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) 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. 78NW, 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) The Commission 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) of this section and the next priority given to the applicants listed pursuant to subsection (c)(B) of this section, in order of such listing.

[(e) 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) No persons 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 Commission shall promulgate regulations to carry out the intent of this subsection.

[(g) 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) 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 payments 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) 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) 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) The Commission 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.]

§ 640d-29

[SEC. 31. (a) Except]

SEC. 24. LOBBYING.

(a) *IN GENERAL.*—*Except* as provided in subsection (b) of this section, 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] (b) *APPLICABILITY.*—*Subsection* (a) of this section 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.

§ 640d-30

[SEC. 32. (a) There]

SEC. 25. 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) of this section and of the funds appropriated pursuant to subsection (f) of this section and any interest or investment income accrued on such funds.*

[(b) All] (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) The] (c) *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) Funds] (d) *AVAILABILITY OF FUNDS.*—*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 decision in the Healing case, or related, proceedings;
- (2) the provision of this **[Act, or] Act**; 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) By December 1] (e) *EXPENDITURE OF FUNDS.*—

(1) *IN GENERAL.*—*Not later than 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]***

(2) *REQUIREMENT.*—*The framework under paragraph (1) shall be consistent with the purposes described in subsection (d) of this section.*

[(f) The] (f) *TERMINATION.*—

(1) *IN GENERAL.*—*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) of this section.*

[All funds]

(2) *TRANSFER OF REMAINING FUNDS.*—*All funds in the Trust Fund on such date shall be transferred to the general trust funds of the Navajo Tribe.*

[(g) There is hereby] (g) *AUTHORIZATION OF APPROPRIATIONS.*—

(1) *IN GENERAL.*—*There is authorized to be appropriated for the Navajo Rehabilitation Trust Fund not **[FN3]** exceed*

\$10,000,000 in each of fiscal years [1990, 1991, 1992, 1993, 1994 and 1995] 2006 through 2008. [The income]

(2) *INCOME FROM LAND.*—*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.*

§ 640d-31

[SEC. 32. Nothing]

SEC. 26. AVAILABILITY OF FUNDS 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.

§ 640d-24

SEC. 27. AUTHORIZATION OF APPROPRIATIONS.

(a) *RELOCATION OF HOUSEHOLDS AND MEMBERS.*—*There is authorized to be appropriated to carry out section 10(b) \$13,000,000.*

(b) *RELOCATION OF HOUSEHOLDS AND MEMBERS.*—*There are authorized to be appropriated to carry out section 11 such sums as are necessary for each of fiscal years 2006 through 2008.*

(c) *RETURN TO CARRYING CAPACITY AND INSTITUTION OF CONSERVATION PRACTICES.*—*There is authorized to be appropriated to carry out section 15(a) \$10,000,000.*

(d) *SURVEY LOCATION OF MONUMENTS AND FENCING OF BOUNDARIES.*—*There is authorized to be appropriated to carry out section 15(b) \$500,000.*

TITLE II—PERSONNEL OF THE OFFICE OF NAVAJO AND HOPI RELOCATION

5 U.S.C.A. § 3501. Definitions; application

(a) * * *

(b) Except as otherwise provided by this subsection and section 3504 of this title, this subchapter applies to each employee in or under an Executive agency. This subchapter does not apply to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of, the Senate [or], to a member of the Senior Executive Service [or], the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service, or to an employee of the Office of Navajo and Hopi Indian Relocation.

§ 5598. Separation pay for certain employees of the Office of Navajo and Hopi Relocation

(a) *IN GENERAL.*—*Except as provided in subsections (b) and (c), the Commissioner of the Office of Navajo and Hopi Indian Relocation shall establish a program to offer separation pay to employees of the Office of Navajo and Hopi Indian Relocation (referred to in this section as the "Office") in the same manner as the Secretary of Defense offers separation pay to employees of a defense agency under section 5597.*

(b) *SEPARATION PAY.*—

(1) *IN GENERAL.*—Under the program established under subsection (a), the Commissioner of the Office may offer separation pay only to employees within an occupational group or at a pay level that minimizes the disruption of ongoing Office programs at the time that the separation pay is offered.

(2) *REQUIREMENT.*—Any separation pay offered under this subsection—

(A) shall be paid in a lump sum;

(B) shall be in an amount equal to \$25,000, if paid on or before December 31, 2007;

(C) shall be in an amount equal to \$20,000, if paid after December 31, 2007, and before January 1, 2009;

(D) shall be in an amount equal to \$15,000, if paid after December 31, 2008, and before January 1, 2010;

(E) shall not—

(i) be a basis for payment;

(ii) be considered to be income for the purposes of computing any other type of benefit provided by the Federal Government; and

(F) if any individual is otherwise entitled to receiving any severance pay under section 5595 on the basis of any other separation, shall not be payable in addition to the amount of the severance pay to which that individual is entitled under section 5595.

(c) *PROHIBITION.*—No amount shall be payable under this section to any employee of the Office for any separation occurring after December 31, 2009.

§8336. Immediate retirement

(a) * * *

* * * * *

(j)(1) Except as provided in paragraph (3), an employee is entitled to an annuity if he—

(A)(i) is separated from the service after completing 25 years of service or after becoming 50 years of age and completing 20 years of service, or

(ii) is involuntarily separated, except by removal for cause on charges of misconduct or delinquency, during the 2-year period before the date on which he would meet the years of service and age requirements under clause (i),

(B) was employed in the Bureau of Indian Affairs, the Indian Health Service, a tribal organization (to the extent provided in paragraph (2)), or any combination thereof, continuously from December 21, 1972, to the date of his separation or was employed by the Office of Navajo and Hopi Indian Relocation during the period beginning on January 1, 1985, and ending on the date of separation of that employee, and

(C) is not entitled to preference under the Indian preference laws.

§ 8339. Computation of annuity

(a) Except as otherwise provided by this section, the annuity of an employee retiring under this subchapter is—

(1) * * *

* * * * *

(8) *The annuity of an employee of the Office of Navajo and Hopi Indian Relocation described in section 8336(j)(1)(B) shall be determined under subsection (a), except that with respect to service of that employee on or after January 1, 1985, the annuity of that employee shall be in an amount equal to the sum of—*

(A) *the product obtained by multiplying—*

(i) *2½ percent of the average pay of the employee; and*

(ii) *the quantity of service of the employee on or after January 1, 1985, that does not exceed 10 years; and*

(B) *the product obtained by multiplying—*

(i) *2 percent of the average pay of the employee; and*

(ii) *the quantity of service of the service of the employee on or after January 1, 1985, that exceeds 10 years.*

§ 8412. Immediate retirement

(a) * * *

* * * * *

(i) *An employee of the Office of Navajo and Hopi Indian Relocation is entitled to any annuity if that employee—*

(1) *has been continuously employed in the Office of Navajo and Hopi Indian Relocation during the period beginning on January 1, 1985, and ending on the date of separation of that individual; and*

(2)(A) *has completed 25 years of service at any age; or*

(B) *has attained the age of 50 years and has completed 20 years of service.*

5 U.S.C.A. § 8415. Computation of basic annuity

(a) * * *

* * * * *

(n) *The annuity of an employee retiring under section 8412(i) shall be determined in accordance with subsection (d), except that with respect to service during the period beginning on January 1, 1985, the annuity of the employee shall be an amount equal to the sum of—*

(1) *the product obtained by multiplying—*

(A) *2 percent of the average pay of the employee; and*

(B) *the quantity of the total service of the employee that does not exceed 10 years; and*

(2) *the product obtained by multiplying—*

(A) *1½ percent of the average pay of the employee; and*

(B) *the quantity of the total service of the employee that exceeds 10 years.*

TITLE III—TRANSFER OF FUNCTIONS AND SAVINGS PROVISIONS

SEC. 301. DEFINITIONS.

In this title:

(1) *FEDERAL AGENCY.*—*The term “Federal agency” has the meaning given the term “agency” in section 551(1) of title 5, United States Code.*

(2) *FUNCTION.*—*The term “function” means any duty, obligation, power, authority, responsibility, right, privilege, activity, or program.*

(3) *OFFICE.*—*The term “Office” means the Office of Navajo and Hopi Relocation (including any component of that office).*

SEC. 302. TRANSFER OF FUNCTIONS.

Effective on the date of enactment of this Act, there is transferred to the Secretary of the Interior any function of the Office that has not been carried out by the Office on the date of enactment of this Act, as determined by the Secretary of the Interior in accordance with the Act of December 22, 1974 (25 U.S.C. §640 et. seq.) (as amended by title I).

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