shall not be construed to represent any directive of the Congress.

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

AMENDMENTS

1980—Subsec. (a)(4). Pub. L. 96–305 struck out par. (4) which authorized the Mediator to recommend, in exceptional cases where necessary to prevent hardship, a limited tenure for residential use, not exceeding a life estate, and a phased relocation of members of one tribe from lands which may be partitioned to the other tribe in the joint use area.

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

The Mediator in preparing his report, and the District Court in making the final adjudication, pursuant to section 640d–3 of this title, shall consider and be guided by the decision of the Healing case, under which the tribes have joint, undivided, and equal interests in and to all of the joint use area; by any partial agreement reached by the parties under section 640d–2(b) of this title; by the last best offer for a complete settlement as a part of the negotiating process by each of the tribes; and by the following:

(a) The rights and interests, as defined in the Healing case, of the Hopi Tribe in and to that portion of the reservation established by the Executive order of December 16, 1882, which is known as land management district no. 6 (hereinafter referred to as the ''Hopi Reservation'') shall not be reduced or limited in any manner.

(b) The boundary lines resulting from any partitioning of lands in the joint use area shall be established so as to include the higher density population areas of each tribe within the portion of the lands partitioned to such tribe to minimize and avoid undue social, economic, and cultural disruption insofar as practicable.

(c) In any division of the surface rights to the joint use area, reasonable provision shall be made for the use of and right of access to identified religious shrines for the members of each tribe on the reservation of the other tribe where such use and access are for religious purposes.

(d) In any partition of the surface rights to the joint use area, the lands shall, insofar as is practicable, be equal in acreage and quality: *Provided*, That if such partition results in a lesser amount of acreage, or value, or both to one tribe such differential shall be fully and finally compensable to such tribe by the other tribe. The value of the land for the purposes of this subsection shall be based on not less than its value with improvements and its grazing capacity fully restored: *Provided further*, That, in the determination of compensation for any such differential, the Federal Government shall pay any difference between the value of the particular land involved in its existing state and the value of such land in a fully restored state which results from damage to the land which the District Court finds attributable to a failure of the Federal Government to provide protection where such protection is or was required by law or by the demands of the trust relationship.

(e) Any lands partitioned to each tribe in the joint use area shall, where feasible and consistent with the other provisions of this section, be contiguous to the reservation of each such tribe.

(f) Any boundary line between lands partitioned to the two tribes in the joint use area shall, insofar as is practicable, follow terrain which will facilitate fencing or avoid the need for fencing.

(g) Any claim the Hopi Tribe may have against the Navajo Tribe for an accounting of all sums collected by the Navajo Tribe since September 17, 1957, as trader license fees or commissions, lease rental, or proceeds, or other similar charges for doing business or for damages in the use of lands within the joint use area, shall be for a one-half share in such sums.

(h) Any claim the Hopi Tribe may have against the Navajo Tribe for the determination and recovery of the fair value of the grazing and agricultural use of the lands within the joint use area by the Navajo Tribe and its individual members, since September 28, 1962, shall be for one-half of such value.

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

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

Partition of the surface of the lands of the joint use area shall not affect the joint ownership status of the coal, oil, gas, and all other minerals within or underlying such lands. All such coal, oil, gas, and other minerals within or underlying such lands shall be managed jointly by the two tribes, subject to supervision and approval by the Secretary as otherwise required by law, and the proceeds therefrom shall be divided between the tribes, share and share alike.

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

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

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

Either tribe, acting through the chairman of its tribal council for and on behalf of the tribe, is each hereby authorized to commence or defend in the District Court an action against the other tribe and any other tribe of Indians claiming any interest in or to the area described in the Act of June 14, 1934, except the reservation established by the Executive Order of December 16, 1882, for the purpose of determining the rights and interests of the tribes in and to such lands and quieting title thereto in the tribes.

(b) Allocation of land to respective reservations upon determination of interests

Lands, if any, in which the Navajo Tribe or Navajo individuals are determined by the District Court to have the exclusive interest shall continue to be a part of the Navajo Reservation. Lands, if any, in which the Hopi Tribe, including any Hopi village or clan thereof, or Hopi individuals are determined by the District Court to have the exclusive interest shall thereafter be a reservation for the Hopi Tribe. Any lands in which the Navajo and Hopi Tribes or Navajo or Hopi individuals are determined to have a joint