

104TH CONGRESS
2D SESSION

S. 1973

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 29, 1996

Referred to the Committee on Resources

AN ACT

To provide for the settlement of the Navajo-Hopi land
dispute, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Navajo-Hopi Land
5 Dispute Settlement Act of 1996”.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

3 (1) it is in the public interest for the Tribe,
4 Navajos residing on the Hopi Partitioned Lands,
5 and the United States to reach a peaceful resolution
6 of the longstanding disagreements between the par-
7 ties under the Act commonly known as the “Navajo-
8 Hopi Land Settlement Act of 1974” (Public Law
9 93–531; 25 U.S.C. 640d et seq.);

10 (2) it is in the best interest of the Tribe and
11 the United States that there be a fair and final set-
12 tlement of certain issues remaining in connection
13 with the Navajo-Hopi Land Settlement Act of 1974,
14 including the full and final settlement of the mul-
15 tiple claims that the Tribe has against the United
16 States;

17 (3) this Act, together with the Settlement
18 Agreement executed on December 14, 1995, and the
19 Accommodation Agreement (as incorporated by the
20 Settlement Agreement), provide the authority for the
21 Tribe to enter agreements with eligible Navajo fami-
22 lies in order for those families to remain residents
23 of the Hopi Partitioned Lands for a period of 75
24 years, subject to the terms and conditions of the Ac-
25 commodation Agreement;

1 (4) the United States acknowledges and re-
2 spects—

3 (A) the sincerity of the traditional beliefs
4 of the members of the Tribe and the Navajo
5 families residing on the Hopi Partitioned
6 Lands; and

7 (B) the importance that the respective tra-
8 ditional beliefs of the members of the Tribe and
9 Navajo families have with respect to the culture
10 and way of life of those members and families;

11 (5) this Act, the Settlement Agreement, and the
12 Accommodation Agreement provide for the mutual
13 respect and protection of the traditional religious be-
14 liefs and practices of the Tribe and the Navajo fami-
15 lies residing on the Hopi Partitioned Lands;

16 (6) the Tribe is encouraged to work with the
17 Navajo families residing on the Hopi Partitioned
18 Lands to address their concerns regarding the estab-
19 lishment of family or individual burial plots for de-
20 ceased family members who have resided on the
21 Hopi Partitioned Lands; and

22 (7) neither the Navajo Nation nor the Navajo
23 families residing upon Hopi Partitioned Lands were
24 parties to or signers of the Settlement Agreement
25 between the United States and the Hopi Tribe.

1 **SEC. 3. DEFINITIONS.**

2 Except as otherwise provided in this Act, for purposes
3 of this Act, the following definitions shall apply:

4 (1) ACCOMMODATION.—The term “Accommoda-
5 tion” has the meaning provided that term under the
6 Settlement Agreement.

7 (2) HOPI PARTITIONED LANDS.—The term
8 “Hopi Partitioned Lands” means lands located in
9 the Hopi Partitioned Area, as defined in section
10 168.1(g) of title 25, Code of Federal Regulations (as
11 in effect on the date of enactment of this Act).

12 (3) NAVAJO PARTITIONED LANDS.—The term
13 “Navajo Partitioned Lands” has the meaning pro-
14 vided that term in the proposed regulations issued
15 on November 1, 1995, at 60 Fed. Reg. 55506.

16 (4) NEW LANDS.—The term “New Lands” has
17 the meaning provided that term in section
18 700.701(b) of title 25, Code of Federal Regulations.

19 (5) SECRETARY.—The term “Secretary” means
20 the Secretary of the Interior.

21 (6) SETTLEMENT AGREEMENT.—The term
22 “Settlement Agreement” means the agreement be-
23 tween the United States and the Hopi Tribe exe-
24 cuted on December 14, 1995.

25 (7) TRIBE.—The term “Tribe” means the Hopi
26 Tribe.

1 (8) NEWLY ACQUIRED TRUST LANDS.—The
2 term “newly acquired trust lands” means lands
3 taken into trust for the Tribe within the State of Ar-
4 izona pursuant to this Act or the Settlement Agree-
5 ment.

6 **SEC. 4. RATIFICATION OF SETTLEMENT AGREEMENT.**

7 The United States approves, ratifies, and confirms
8 the Settlement Agreement.

9 **SEC. 5. CONDITIONS FOR LANDS TAKEN INTO TRUST.**

10 The Secretary shall take such action as may be nec-
11 essary to ensure that the following conditions are met
12 prior to taking lands into trust for the benefit of the Tribe
13 pursuant to the Settlement Agreement:

14 (1) SELECTION OF LANDS TAKEN INTO
15 TRUST.—

16 (A) PRIMARY AREA.—In accordance with
17 section 7(a) of the Settlement Agreement, the
18 primary area within which lands acquired by
19 the Tribe may be taken into trust by the Sec-
20 retary for the benefit of the Tribe under the
21 Settlement Agreement shall be located in north-
22 ern Arizona.

23 (B) REQUIREMENTS FOR LANDS TAKEN
24 INTO TRUST IN THE PRIMARY AREA.—Lands

1 taken into trust in the primary area referred to
2 in subparagraph (A) shall be—

3 (i) land that is used substantially for
4 ranching, agriculture, or another similar
5 use; and

6 (ii) to the extent feasible, in contig-
7 uous parcels.

8 (2) ACQUISITION OF LANDS.—Before taking
9 any land into trust for the benefit of the Tribe
10 under this section, the Secretary shall ensure that—

11 (A) at least 85 percent of the eligible Nav-
12 ajo heads of household (as determined under
13 the Settlement Agreement) have entered into an
14 accommodation or have chosen to relocate and
15 are eligible for relocation assistance (as deter-
16 mined under the Settlement Agreement); and

17 (B) the Tribe has consulted with the State
18 of Arizona concerning the lands proposed to be
19 placed in trust, including consulting with the
20 State concerning the impact of placing those
21 lands into trust on the State and political sub-
22 divisions thereof resulting from the removal of
23 land from the tax rolls in a manner consistent
24 with the provisions of part 151 of title 25, Code
25 of Federal Regulations.

1 (3) PROHIBITION.—The Secretary may not,
 2 pursuant to the provisions of this Act and the Set-
 3 tlement Agreement, place lands, any portion of
 4 which are located within or contiguous to a 5-mile
 5 radius of an incorporated town or city (as those
 6 terms are defined by the Secretary) in northern Ari-
 7 zona, into trust for benefit of the Tribe without spe-
 8 cific statutory authority.

9 (4) EXPEDITIOUS ACTION BY THE SEC-
 10 RETARY.—Consistent with all other provisions of
 11 this Act, the Secretary is directed to take lands into
 12 trust under this Act expeditiously and without undue
 13 delay.

14 **SEC. 6. ACQUISITION THROUGH CONDEMNATION OF CER-**
 15 **TAIN INTERSPERSED LANDS.**

16 (a) IN GENERAL.—

17 (1) ACTION BY THE SECRETARY.—

18 (A) IN GENERAL.—The Secretary shall
 19 take action as specified in subparagraph (B), to
 20 the extent that the Tribe, in accordance with
 21 section 7(b) of the Settlement Agreement—

22 (i) acquires private lands; and

23 (ii) requests the Secretary to acquire
 24 through condemnation interspersed lands
 25 that are owned by the State of Arizona

1 and are located within the exterior bound-
2 aries of those private lands in order to
3 have both the private lands and the State
4 lands taken into trust by the Secretary for
5 the benefit of the Tribe.

6 (B) ACQUISITION THROUGH CONDEMNATION.—With respect to a request for an acqui-
7 sition of lands through condemnation made
8 under subparagraph (A), the Secretary shall,
9 upon the recommendation of the Tribe, take
10 such action as may be necessary to acquire the
11 lands through condemnation and, with funds
12 provided by the Tribe, pay the State of Arizona
13 fair market value for those lands in accordance
14 with applicable Federal law, if the conditions
15 described in paragraph (2) are met.

16 (2) CONDITIONS FOR ACQUISITION THROUGH
17 CONDEMNATION.—The Secretary may acquire lands
18 through condemnation under this subsection if—

19 (A) that acquisition is consistent with the
20 purpose of obtaining not more than 500,000
21 acres of land to be taken into trust for the
22 Tribe;
23

1 (B) the State of Arizona concurs with the
2 United States that the acquisition is consistent
3 with the interests of the State; and

4 (C) the Tribe pays for the land acquired
5 through condemnation under this subsection.

6 (b) DISPOSITION OF LANDS.—If the Secretary ac-
7 quires lands through condemnation under subsection (a),
8 the Secretary shall take those lands into trust for the
9 Tribe in accordance with this Act and the Settlement
10 Agreement.

11 (c) PRIVATE LANDS.—The Secretary may not ac-
12 quire private lands through condemnation for the purpose
13 specified in subsection (a)(2)(A).

14 **SEC. 7. ACTION TO QUIET POSSESSION.**

15 If the United States fails to discharge the obligations
16 specified in section 9(c) of the Settlement Agreement with
17 respect to voluntary relocation of Navajos residing on
18 Hopi Partitioned Lands, or section 9(d) of the Settlement
19 Agreement, relating to the implementation of sections
20 700.137 through 700.139 of title 25, Code of Federal
21 Regulations, on the New Lands, including failure for rea-
22 son of insufficient funds made available by appropriations
23 or otherwise, the Tribe may bring an action to quiet pos-
24 session that relates to the use of the Hopi Partitioned
25 Lands after February 1, 2000, by a Navajo family that

1 is eligible for an accommodation, but fails to enter into
2 an accommodation.

3 **SEC. 8. PAYMENT TO STATE OF ARIZONA.**

4 (a) AUTHORIZATION OF APPROPRIATIONS.—Subject
5 to subsection (b), there are authorized to be appropriated
6 to the Department of the Interior \$250,000 for fiscal year
7 1998, to be used by the Secretary of the Interior for mak-
8 ing a payment to the State of Arizona.

9 (b) PAYMENT.—The Secretary shall make a payment
10 in the amount specified in subsection (a) to the State of
11 Arizona after an initial acquisition of land from the State
12 has been made by the Secretary pursuant to section 6.

13 **SEC. 9. 75-YEAR LEASING AUTHORITY.**

14 The first section of the Act of August 9, 1955 (69
15 Stat. 539, chapter 615; 25 U.S.C. 415) is amended by
16 adding at the end the following new subsections:

17 “(c) LEASES INVOLVING THE HOPI TRIBE AND THE
18 HOPI PARTITIONED LANDS ACCOMMODATION AGREE-
19 MENT.—Notwithstanding subsection (a), a lease of land
20 by the Hopi Tribe to Navajo Indians on the Hopi Parti-
21 tioned Lands may be for a term of 75 years, and may
22 be extended at the conclusion of the term of the lease.

23 “(d) DEFINITIONS.—For purposes of this section—

24 “(1) the term ‘Hopi Partitioned Lands’ means
25 lands located in the Hopi Partitioned Area, as de-

1 fined in section 168.1(g) of title 25, Code of Federal
 2 Regulations (as in effect on the date of enactment
 3 of this subsection); and

4 “(2) the term ‘Navajo Indians’ means members
 5 of the Navajo Tribe.”.

6 **SEC. 10. REAUTHORIZATION OF THE NAVAJO-HOPI RELO-**
 7 **CATION HOUSING PROGRAM.**

8 Section 25(a)(8) of Public Law 93–531 (25 U.S.C.
 9 640d–24(a)(8)) is amended by striking “1996, and 1997”
 10 and inserting “1996, 1997, 1998, 1999, and 2000”.

11 **SEC. 11. EFFECT OF THIS ACT ON CASES INVOLVING THE**
 12 **NAVAJO NATION AND THE HOPI TRIBE.**

13 Nothing in this Act or the amendments made by this
 14 Act shall be interpreted or deemed to preclude, limit, or
 15 endorse, in any manner, actions by the Navajo Nation that
 16 seek, in court, an offset from judgments for payments re-
 17 ceived by the Hopi Tribe under the Settlement Agreement.

18 **SEC. 12. WATER RIGHTS.**

19 (a) IN GENERAL.—

20 (1) WATER RIGHTS.—Subject to the other pro-
 21 visions of this section, newly acquired trust lands
 22 shall have only the following water rights:

23 (A) The right to the reasonable use of
 24 groundwater pumped from such lands.

1 (B) All rights to the use of surface water
2 on such lands existing under State law on the
3 date of acquisition, with the priority date of
4 such right under State law.

5 (C) The right to make any further bene-
6 ficial use on such lands which is unappropriated
7 on the date each parcel of newly acquired trust
8 lands is taken into trust. The priority date for
9 the right shall be the date the lands are taken
10 into trust.

11 (2) RIGHTS NOT SUBJECT TO FORFEITURE OR
12 ABANDONMENT.—The Tribe's water rights for newly
13 acquired trust lands shall not be subject to forfeiture
14 or abandonment arising from events occurring after
15 the date the lands are taken into trust.

16 (b) RECOGNITION AS VALID USES.—

17 (1) GROUNDWATER.—With respect to water
18 rights associated with newly acquired trust lands,
19 the Tribe, and the United States on the Tribe's be-
20 half, shall recognize as valid all uses of groundwater
21 which may be made from wells (or their subsequent
22 replacements) in existence on the date each parcel of
23 newly acquired trust land is acquired and shall not
24 object to such groundwater uses on the basis of
25 water rights associated with the newly acquired trust

1 lands. The Tribe, and the United States on the
2 Tribe's behalf, may object only to the impact of
3 groundwater uses on newly acquired trust lands
4 which are initiated after the date the lands affected
5 are taken into trust and only on grounds allowed by
6 the State law as it exists when the objection is made.
7 The Tribe, and the United States on the Tribe's be-
8 half, shall not object to the impact of groundwater
9 uses on the Tribe's right to surface water estab-
10 lished pursuant to subsection (a)(3) when those
11 groundwater uses are initiated before the Tribe initi-
12 ates its beneficial use of surface water pursuant to
13 subsection (a)(3).

14 (2) SURFACE WATER.—With respect to water
15 rights associated with newly acquired trust lands,
16 the Tribe, and the United States on the Tribe's be-
17 half, shall recognize as valid all uses of surface
18 water in existence on or prior to the date each parcel
19 of newly acquired trust land is acquired and shall
20 not object to such surface water uses on the basis
21 of water rights associated with the newly acquired
22 trust lands, but shall have the right to enforce the
23 priority of its rights against all junior water rights
24 the exercise of which interfere with the actual use of
25 the Tribe's senior surface water rights.

1 (3) RULE OF CONSTRUCTION.—Nothing in
2 paragraph (1) or (2) shall preclude the Tribe, or the
3 United States on the Tribe’s behalf, from asserting
4 objections to water rights and uses on the basis of
5 the Tribe’s water rights on its currently existing
6 trust lands.

7 (c) APPLICABILITY OF STATE LAW ON LANDS
8 OTHER THAN NEWLY ACQUIRED LANDS.—The Tribe,
9 and the United States on the Tribe’s behalf, further recog-
10 nize that State law applies to water uses on lands, includ-
11 ing subsurface estates, that exist within the exterior
12 boundaries of newly acquired trust lands and that are
13 owned by any party other than the Tribe.

14 (d) ADJUDICATION OF WATER RIGHTS ON NEWLY
15 ACQUIRED TRUST LANDS.—The Tribe’s water rights on
16 newly acquired trust lands shall be adjudicated with the
17 rights of all other competing users in the court now presid-
18 ing over the Little Colorado River Adjudication, or if that
19 court no longer has jurisdiction, in the appropriate State
20 or Federal court. Any controversies between or among
21 users arising under Federal or State law involving the
22 Tribe’s water rights on newly acquired trust lands shall
23 be resolved in the court now presiding over the Little Colo-
24 rado River Adjudication, or, if that court no longer has
25 jurisdiction, in the appropriate State or Federal court.

1 Nothing in this subsection shall be construed to affect any
2 court's jurisdiction; provided, that the Tribe shall admin-
3 ister all water rights established in subsection (a).

4 (e) PROHIBITION.—Water rights for newly acquired
5 trust lands shall not be used, leased, sold, or transported
6 for use off of such lands or the Tribe's other trust lands,
7 provided that the Tribe may agree with other persons hav-
8 ing junior water rights to subordinate the Tribe's senior
9 water rights. Water rights for newly acquired trust lands
10 can only be used on those lands or other trust lands of
11 the Tribe located within the same river basin tributary to
12 the main stream of the Colorado River.

13 (f) SUBSURFACE INTERESTS.—On any newly ac-
14 quired trust lands where the subsurface interest is owned
15 by any party other than the Tribe, the trust status of the
16 surface ownership shall not impair any existing right of
17 the subsurface owner to develop the subsurface interest
18 and to have access to the surface for the purpose of such
19 development.

20 (g) STATUTORY CONSTRUCTION WITH RESPECT TO
21 WATER RIGHTS OF OTHER FEDERALLY RECOGNIZED IN-
22 DIAN TRIBES.—Nothing in this section shall affect the
23 water rights of any other federally recognized Indian tribe
24 with a priority date earlier than the date the newly ac-
25 quired trust lands are taken into trust.

1 (h) STATUTORY CONSTRUCTION.—Nothing in this
2 section shall be construed to determine the law applicable
3 to water use on lands owned by the United States, other
4 than on the newly acquired trust lands. The granting of
5 the right to make beneficial use of unappropriated surface
6 water on the newly acquired trust lands with a priority
7 date such lands are taken into trust shall not be construed
8 to imply that such right is a Federal reserved water right.
9 Nothing in this section or any other provision of this Act
10 shall be construed to establish any Federal reserved right
11 to groundwater. Authority for the Secretary to take land
12 into trust for the Tribe pursuant to the Settlement Agree-
13 ment and this Act shall be construed as having been pro-
14 vided solely by the provisions of this Act.

Passed the Senate September 26, 1996.

Attest:

GARY SISCO,
Secretary.