

FILE # 18884 1953 NAVAJO



UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SECRETARY
WASHINGTON 25, D. C.

JUL 13 1956

My dear Senator Eastland:

Your Committee has requested a report on S. 3239, a bill
"For the relief of the Board of National Mission of the Presbyterian
Church in the United States of America."

We recommend that the bill be enacted if it is amended as
suggested below.

The bill relieves the Board of National Mission of the
Presbyterian Church of its contract liability to pay to the United
States \$4,998, which represents the total amount due from the Mission
for irrigation project construction costs under a contract between the
Mission and the United States. The contract provides that the Mission
will reimburse the United States for the Mission's share of the cost of
constructing the Ganado Indian Irrigation Project in Arizona in forty
annual installments of \$124.95 each, beginning on July 1, 1934, and
ending on July 1, 1973. Twenty-two installments totaling \$2,748.90
were due and unpaid on July 1, 1955; eighteen installments totaling
\$2,249.10 are not yet due.

The Ganado Irrigation Project is located on the Navajo
Indian Reservation in Arizona near the New Mexico boundary about
50 miles northeast of Gallup, New Mexico. A water supply is obtained
from the Rio Pueblo Colorado wash which bisects the irrigable area.
Funds were appropriated under the act of August 24, 1912 (37 Stat. 522)
for construction of the project, including a storage dam and 5½ miles
of canal to cover 707 acres of land. The estimated cost was \$80,000
and construction work was begun in the spring of 1913. In 1923
extensive repairs were made to the headworks, following a severe flood.
Again in 1931 the diversion was destroyed and the headworks were
rebuilt and the system was rehabilitated.

There are two tracts of non-Indian owned land within the
Irrigation Project. A tract of 140 acres was homesteaded by
John Lorenzo Hubbell. Under an agreement dated May 31, 1913, Mr. Hubbell
relinquished to the Government his rights to his canal system in return
for the right to use water from the Government system. Under the gen-
eral terms of the agreement the Hubbell tract does not pay construction
costs, but it pays a pro rata share of annual operation and maintenance
costs for a pro rata share of the available water. The lands of the
Ganado Presbyterian Mission comprise an area of 109.34 acres, all of
which until February 24, 1920, were a part of the Navajo Reservation.

REPRODUCED AT THE NATIONAL ARCHIVES

Forty-seven acres of the total area are irrigable from the Ganado Irrigation Project. The contract of September 29, 1933, between the Board of National Mission of the Presbyterian Church and the United States provides in brief that the Mission shall continue the use of water from the Ganado Irrigation Project for the irrigation of 47 acres in an amount not to exceed 2½ acre-feet per acre for the land irrigated, to the extent water is available. In consideration of this service the Mission agreed to reimburse the United States for its proportionate part of the construction cost in the sum of \$106.34 per irrigable acre. The Mission further agreed to pay the United States annual operation and maintenance charges on its 47 acres in the manner and in the same amount as for all irrigable lands of the Ganado Irrigation Project. A copy of the contract is enclosed.

The Ganado Project proper consists of 1,045 acres of land. Recently (about 1952) a consolidation was made of three closely related developments under the one title of the Ganado Project. They include Ganado, 1045 acres; Cornfields, 497 acres; and Coldfields, 400 acres. The physical works consist of a combination of two storage reservoirs. The first reservoir, an off-stream storage structure enlarged from its original capacity of 2,650 acre feet, now has a capacity of 3,480 acre feet. It is supplied by a feeder canal diverting water by means of a masonry diversion dam from the Pueblo Colorado wash. Above this diversion dam on the Coldfields Project is a smaller reservoir of 540 acre feet capacity. A canal diverts water from the main reservoir to supply water to the lateral distribution system which supplies 1,045 acres under the Ganado Project.

The contract between the Mission and the United States provides that the Government will present the Mission with a notice of the assessment of annual operation and maintenance charges. Such notices have been given regularly and the assessments have been paid. The contract does not provide, however, for any notices for the annual construction payments because the contract itself fixes the amount of and the time for making the payments. The failure of the Mission to make any construction payments in accordance with the terms of the contract was the subject of correspondence with the Mission in 1947, and by a letter dated September 8, 1947, Mr. Lucien H. Tribus, Assistant General Counsel of the Mission, concurred in a suggestion that the delinquency be settled by negotiation locally. Our records do not show the extent of those negotiations. A bill for the delinquent charges was submitted to the Mission on September 4, 1953, and the Department has offered to spread the amount of the delinquency over a period of ten years in accordance with the provisions of the Act of June 22, 1936 (49 Stat. 1803), in order to mitigate the budgetary difficulty now confronting the Mission.

The Mission has suggested that the Government was required to give annual notices of the construction charges payable by the Mission, and that the failure to do so is a reason for canceling both the charges that are now due and payable and also the charges that have not yet matured. As indicated above, the Government has no obligation under the contract to give such notices. The contract obligation of the Mission to make the annual construction payments without notice is clear and definite.

The Mission contends that the Government furnished water for the irrigation of only 25 of the 47 acres, and that the failure to furnish water for the entire acreage is a reason for canceling the construction charges allocable to the acreage actually irrigated as well as to the acreage not irrigated in the past, and also for canceling the construction charges that are not yet matured. Our records show that the canal system for irrigating the entire 47 acres was completed as early as 1914 and that it has not been out of service for any extensive irrigation period. The 22 acres of Mission land that have not been irrigated are on the north side of the wash and are served by the north canal. Although water service was interrupted one year when a siphon was burned out, other lands immediately down canal from the 22 acre Mission tract have been cultivated continuously, indicating that water was available from the north canal if the Mission wished to use it. Insofar as water scarcities during any particular year are concerned, the contract only requires that the Mission get its proportionate share of the available water. The failure to cultivate the 22 acre Mission tract apparently was a matter of choice on the part of the Mission rather than due to the unavailability of a proportionate share of the water supply.

The Mission also contends that it thought that the contract obligation had been canceled under the Act of June 22, 1936 (49 Stat. 1803). Our records contain no information that would support such a belief. A search of the files shows no effort to cancel the contract obligation. Moreover, under the 1936 Act a cancellation could only be effected by an Act of Congress.

The Ganado Presbyterian Mission provides an extremely worthwhile service for the Navajo Indians, a service which if performed by the Government would have cost large sums of money. We hope that the service will be continued. We suggest, however, that the foregoing facts do not warrant a cancellation of either the matured or unmatured construction charges allocable to the 25 acres that have been regularly cultivated by the Mission, and presumably will continue to be cultivated,

but that they do warrant a cancellation of the matured and unmatured construction charges allocable to the 22 acres that have not been cultivated, with a requirement that such 22 acres shall not thereafter be eligible to receive irrigation water from the project unless the owner thereof contracts with the Secretary of the Interior to pay the construction charges allocated to such acres in installments as authorized by law.

We also recommend that the bill authorize the Secretary of the Interior to contract with the Mission for spreading the uncanceled portion of the charges over the remaining contract period.

The foregoing changes can be affected by the following amendments:

1. On page 1, line 6, delete "\$4,998. Such sum represents" and insert in lieu thereof "\$2,337, which represents 22/47 of".

2. On page 2, line 2, after "Arizona" change the comma to a period, delete the rest of the language in the bill, and insert in lieu thereof "The 22 acres with respect to which construction charges are canceled by this Act shall not be eligible to receive irrigation water from the Canada Irrigation Project unless the owner thereof contracts with the Secretary of the Interior to pay the construction charges allocated to such acres in installments as authorized by law. The Secretary of the Interior is authorized to agree to an amendment to said contract numbered I-130-Ind-270 that spreads the uncanceled portion of the construction charges over the remaining contract period."

The Bureau of the Budget has advised us that there is no objection to the submission of this report.

Sincerely yours,

Signed - Wesley A. D'Ewart
Asst. Secretary of the Interior

Hon. James O. Eastland, Chairman
Committee on the Judiciary
United States Senate
Washington 25, D. C.

Enclosure