

12074

HOUSE
MISCELLANEOUS
REPORTS OF
PUBLIC BILLS
III

Level 1
Reading
Room
Only

Y
11/2
Serial
1974

HOUSE REPORTS
1954-2009
WITH EXCEPTIONS
85TH CONGRESS
2D SESSION

DETERMINING RIGHTS AND INTERESTS OF THE NAVAHO
TRIBE, HOPI TRIBE, AND INDIVIDUAL INDIANS TO
CERTAIN LANDS

JUNE 23, 1958.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. HALEY, from the Committee on Interior and Insular Affairs,
submitted the following

REPORT

[To accompany S. 692]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 692) to provide that the United States hold in trust for the Indians entitled to the use thereof the lands described in the Executive order of December 16, 1882, and for adjudicating the conflicting claims thereto of the Navaho and Hopi Indians, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following language:

That lands described in the Executive order dated December 16, 1882, are hereby declared to be held by the United States in trust for the Hopi Indians and such other Indians, if any, as heretofore have been settled thereon by the Secretary of the Interior pursuant to such Executive order. The Navaho Indian Tribe and the Hopi Indian Tribe, acting through the chairmen of their respective tribal councils for and on behalf of said tribes, including all villages and clans thereof, and on behalf of any Navaho or Hopi Indians claiming an interest in the area set aside by Executive order dated December 16, 1882, and the Attorney General on behalf of the United States, are each hereby authorized to commence or defend in the United States District Court for the District of Arizona an action against each other and any other tribe of Indians claiming any interest in or to the area described in such Executive order for the purpose of determining the rights and interests of said parties in and to said lands and quieting title thereto in the tribes or Indians establishing such claims pursuant to such Executive order as may be just and fair in law and equity. The action shall be heard and determined by a district court of three judges in accordance with the provisions of title 28, United States Code, section 2284, and any party may appeal directly to the Supreme Court from the final determination by such three judge district court.

SEC. 2. Lands, if any, in which the Navaho Indian Tribe or individual Navaho Indians are determined by the court to have the exclusive interest shall thereafter be a part of the Navaho Indian Reservation. Lands, if any, in which the Hopi Indian Tribe, including any Hopi village or clan thereof, or individual Hopi Indians are determined by the court to have the exclusive interest shall thereafter be a reservation for the Hopi Indian Tribe. The Navaho and Hopi Tribes, respectively, are authorized to sell, buy, or exchange any lands within their reservations, with the approval of the Secretary of the Interior, and any such lands acquired by either tribe through purchase or exchange shall become a part of the reservation of such tribe.

SEC. 3. Nothing in this Act shall be deemed to be a congressional determination of the merits of the conflicting tribal or individual Indian claims to the lands that are subject to adjudication pursuant to this Act, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

Amend the title so as to read:

A bill to determine the rights and interests of the Navaho Tribe, Hopi Tribe, and individual Indians to the area set aside by Executive order of December 16, 1882, and for other purposes.

SUMMARY

The purpose of S. 692 is to provide for a determination of the rights and interests of the Navaho Tribe, Hopi Tribe, and individual Indians to the area set aside by the Executive order of December 16, 1882. There has been conflict and dispute for 75 years over the boundaries of the Hopi Reservation which is surrounded by the Navaho. This bill provides for a determination of the dispute by a district court of three judges with right of appeal to the Supreme Court.

No expenditure of Federal funds except for participation in the lawsuit will result from enactment of this legislation.

The Department of the Interior recommends several amendments which have been incorporated into the bill. Representatives of the Hopi Nation and the Navaho Tribe attended the hearings, and for the most part, indicated concurrence in the bill as reported.

EXPLANATION OF THE BILL

S. 692 provides that the 2,472,216 acres of land described in the December 16, 1882, Executive order shall be held in trust for the Hopi Indians and such other Indians, if any, as are entitled to be thereon. It also authorizes an adjudication by a three-judge district court of the conflicting claims of the Hopi and Navaho Indians to the lands in question. The litigation will be in the nature of a quiet title action.

The 1882 Executive order set aside other lands "for the use and occupancy of the Hopi and such other Indians as the Secretary of the Interior may see fit to settle thereon." These lands are now completely surrounded by the Navaho Reservation and there has been considerable settling by members of both tribes outside their respective reservations. The Hopi Nation contends that its members have exclusive use of the 1882 reservation, while the Navahos claim they are "other Indians" whom the Secretary of the Interior has seen fit to settle on the lands and that they have valid interests in the reservation.

The Bureau of Indian Affairs has made repeated, but unsuccessful, efforts to settle the dispute which, with discovery of oil, gas, and uranium in the area, has become acute. The committee does not

believe Congress should attempt to determine the merits of this legal controversy through legislation and recommends enactment of S. 692, which will permit the dispute to be litigated in court.

SECTIONAL ANALYSIS

Section 1 provides for the conversion of the present interest of the Indians under the Executive order of December 16, 1882, into a trust title, and authorizes an adjudication of the conflicting claims of the Indians who assert those interests. The Navaho and Hopi Tribes are authorized to act in the litigation on their own behalf and also on behalf of clans, villages, or individuals claiming an interest in the lands. This will prevent any question about the right of the recognized governing body of the tribe to represent all component parts of the tribe. The section also provides for the litigation to be held before a district court of three judges in accordance with provisions of the United States Code with the right of appeal to the Supreme Court.

Section 2 provides that any lands in which the Navaho Tribe or individual Navaho Indians have the exclusive interest shall thereafter be a part of the Navaho Reservation, and any lands in which the court finds that the Hopi Tribe, village, clan, or individual has the exclusive interest shall thereafter be a reservation for the Hopi Indian Tribe. Provision is also made in this section for the Navaho and Hopi Tribes, respectively, to sell, buy, or exchange any lands within their reservation with the approval of the Secretary of the Interior.

Section 3 expresses the intent of Congress that nothing in S. 692 is to be construed as a congressional determination of the rights and interests in the lands set aside by the Executive order, or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission.

H. R. 3789, a bill similar to S. 692, was introduced by Representative Udall, and considered concurrently with the reported bill. Hearings were held on similar legislation during the 84th Congress.

Amendments recommended by the Secretary of the Interior were among those incorporated into the reported bill. It is noted that certain factions within the Hopi Tribe are not in sympathy with this legislation but, following extended hearings, the committee Members feel that S. 692 is in the best interest of both the Hopi and Navaho Tribes.

The favorable report on H. R. 3789 from the Secretary of the Interior dated February 26, 1957, and his supplemental report containing recommended amendments dated March 19, 1957, are as follows:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., February 26, 1957.

HON. CLAIR ENGLE,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.

DEAR MR. ENGLE: Your committee has requested a report on H. R. 3789, a bill to determine the rights and interests of the Navaho Tribe, Hopi Tribe, and individual Indians to the area set aside by Executive order of December 6, 1882, and for other purposes.

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

The bill authorizes an adjudication by a three-judge district court, with a right of appeal directly to the Supreme Court, of the conflicting claims of the Navaho and Hopi Indians to the lands that were set aside by Executive order dated December 16, 1882. The litigation will be in the nature of a quiet title action.

The Executive order set aside the lands "for the use and occupancy of the Moqui [Hopi] and such other Indians as the Secretary of the Interior may see fit to settle thereon".

The 1882 reservation is completely surrounded by a reservation belonging to the Navaho Tribe. The Hopi Indians claim that the 1882 reservation was set aside for their exclusive use and that the Navaho Indians are unlawful intruders with no right to be there. The Navaho Indians claim that they are "other Indians" whom the Secretary of the Interior has been fit to settle on the 1882 reservation within the meaning of the Executive order, and that they have valid interests in the reservation.

This conflict between the Navaho Indians and the Hopi Indians has existed since the 1882 reservation was first established, and because of increasing population pressures, the conflict has become progressively worse. There is no practical way in which the conflict can be resolved administratively. This Department has made repeated efforts to resolve it, and has adopted from time to time regulations governing the use of the area. Because of the nature of the conflicting claims of use and occupancy interests, however, the Department cannot make a final determination that will be accepted. We believe that it is impracticable for the merits of the controversy to be determined by legislation, which would mean trying the merits of the case before Congress, and that the only practical solution to the problem in the enactment of enabling legislation that will permit the controversy, which is primarily legal in nature, to be litigated in the courts.

The recognized governing bodies of both the Navaho and the Hopi Tribes have asked for such enabling legislation, and the pending bill was drafted by the attorneys representing the two tribes, in consultation with representatives of this Department.

Section 1 of the bill provides that the Navaho and Hopi Tribes may act in the litigation on their own behalf and also on behalf of any individual Navaho or Hopi Indians who may claim an interest in the land. It would be completely impracticable to allow such individuals to appear and be represented separately. The bill also provides that the tribes will represent all villages and clans thereof, which will prevent any question from arising about the right of the recognized governing body of the tribe to represent all component parts of the tribe.

The litigation to determine the conflicting interests of the Indians under the Executive order may be started by either tribe, or, if the tribes do not take the initiative, by the Attorney General. We understand that both of the tribes are willing to commence the action.

Section 2 of the bill provides that (1) any lands in which the court finds that the Navaho Tribe or individual Navahos have the exclusive interest shall thereafter be a part of the Navaho Reservation, (2) any lands in which the court finds that the Hopi Tribe, village, clan, or individual has the exclusive interest shall thereafter be a reservation for the Hopi Tribe, and (3) any lands in which the Navaho and Hopi Indians have a joint or undivided interest shall become a part of either the Navaho or the Hopi Reservation according to the court's determi-

nation of fairness and equity. This provision will assure that one or the other of the tribes will have administrative jurisdiction over the land in the future, without prejudice, however, to the undivided interests. It also makes it clear that the tribe will have jurisdiction notwithstanding the fact that its rights may be predicated upon the interests of individual members of the tribe. Furthermore, by providing that, after interests have been determined under the Executive order, the lands that are adjudicated to be Hopi lands will thereafter be a reservation for the Hopi Tribe, the bill converts the lands from an Executive order reservation into a statutory reservation.

Section 2 of the bill also authorizes either the Navaho or the Hopi Tribe to buy, sell, or exchange land within its reservation, with the approval of the Secretary of the Interior. This provision will permit sales or exchanges between the two tribes in order to take care of the needs of any Indians who may be displaced as a result of the litigation, or in order to adjust the title to land in one reservation that may be occupied by members of the other reservation. The authority is restricted to lands that are within the two reservations.

Section 3 of the bill provides that none of its provisions shall be construed to be a congressional determination prior to adjudication of the rights and interests in the lands set aside by the Executive order. Those rights and interests are to be adjudicated on the basis of the existing law without any advantage or disadvantage accruing from the enactment of the bill. After the adjudication has been completed, however, the provisions of section 2 for incorporating the lands in one or the other reservation will be effective.

In order to remove from the bill any basis for an inference that Indians have compensable legal rights or title to lands in an Executive order reservation (as distinguished from a statutory reservation), we recommend that the form of the bill be recast so that it first converts the present interests of the Indians under the Executive order into a trust title, and then authorizes an adjudication of the conflicting claims of the Indians who assert those interests. By this procedure the litigation will involve trust titles that are created by the new legislation, rather than noncompensable interests that are held by the Indians only at the sufferance of the Government. Inasmuch as it is most improbable that the Government would ever want to deprive the Indians of these lands, the conversion of their use rights into a trust title should present no practical problem.

The amendments necessary for the foregoing purposes are:

1. On page 1, line 3, after "That" delete "the" and insert in lieu thereof "lands described in the Executive order dated December 16, 1882, are hereby declared to be held by the United States in trust for the Hopi Indians and such other Indians as heretofore have been settled thereon by the Secretary of the Interior pursuant to such Executive order. The".

2. On page 1, line 6, before "any Navaho" insert "on behalf of".

3. On page 3, line 9, delete "any rights or interests in" and insert in lieu thereof "the merits of the conflicting tribal or individual Indian claims to".

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

Sincerely yours,

HATFIELD CHILSON,
Assistant Secretary of the Interior.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D. C., March 19, 1957.

HON. JAMES A. HALEY,
Chairman, Subcommittee on Indian Affairs,
Committee on Interior and Insular Affairs,
House of Representatives, Washington, D. C.

DEAR MR. HALEY: In accordance with Mr. Aspinall's request during the hearing on H. R. 3789, a bill to determine the rights and interests of the Navaho Tribe, Hopi Tribe, and individual Indians to the area set aside by Executive order of December 6, 1882, and for other purposes, the following amendments to the bill are submitted and we recommend that they be incorporated in the bill. They are in addition to the amendments recommended by our report dated February 26, 1957.

1. In the title of the bill and also on page 1, line 8, change "December 6" to "December 16".

2. On page 2, line 7, after "claims" insert "pursuant to such Executive order". The purpose is to make clear that the relative rights and interests of the two groups of Indians are those that have been established under the Executive order.

3. On page 2, line 14, delete "Any lands" and insert in lieu thereof "Lands, if any,".

4. On page 2, line 17, delete "Any lands" and insert in lieu thereof "Lands, if any,". The purpose is to prevent any inference from the language of the bill that either tribe may have exclusive rights.

5. On page 2, line 21, delete the sentence beginning on line 21 and ending on page 3, line 2. The purpose is to leave for future determination the question of tribal control over lands in which the Navahos and Hopis may have a joint and undivided interest. The two tribes feel that this question cannot be adequately resolved until the nature of their rights is adjudicated, and that the question is properly one for determination by Congress rather than by the courts. We agree with that position. Until the nature of their respective interests is adjudicated it is difficult to determine whether any part of or interest in the lands should be put under the exclusive jurisdiction of either tribe.

6. On page 3, line 10, change the period to a comma and add "or to affect the liability of the United States, if any, under litigation now pending before the Indian Claims Commission."

The purpose is to make clear that the adjudication of the conflicting interests of the Navaho and Hopi Indians in the Executive order reservation will not affect in any way the pending claims litigation.

Sincerely yours,

HATFIELD CHILSON,
Acting Secretary of the Interior.

The Committee on Interior and Insular Affairs recommends enactment of S. 692.

85TH CONGRESS } HOUSE OF REPRESENTATIVES } REPORT
2d Session } } No. 1943

AMENDING ALASKAN AIRPORTS ACT OF 1948 RELATIVE TO TERMS OF LEASES ON REAL PROPERTY

JUNE 23, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HARRIS, from the Committee on Interstate and Foreign Commerce, submitted the following

REPORT

[To accompany S. 1366]

The Committee on Interstate and Foreign Commerce, to whom was referred the bill (S. 1366) to amend the act entitled "An act to authorize the construction, protection, operation, and maintenance of public airports in the Territory of Alaska," as amended, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

This legislation would amend existing law to permit the Secretary of Commerce to lease real property upon public airports at Anchorage and Fairbanks, Alaska, for periods not to exceed 55 years for the purpose of erecting structures necessary or incident to the operation of these airports.

NEED FOR THE LEGISLATION

Section 5 of the act of May 28, 1948, which authorized the construction and operation of these airports, empowers the Secretary of Commerce to lease real property on the airports for periods not in excess of 20 years for the erection of such structures. Previously this 20-year term was considered adequate because, prior to the liquidation of the Reconstruction Finance Corporation, it was possible for national banks to make loans for construction of commercial facilities on land held under lease for 20 years.

Under present law, however, national banks are prohibited from lending money secured by mortgages on leaseholds having less than 50 years to run from the date the loan is made or acquired by the