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OFFICE OF THE DEPUTY ATTORNEY GENERAL
WASHINGTON, D.C. 20530

March 20, 1974

Mr. Bradley Patterson
White House
Washington, D.C. 20500

Dear Mr. Patterson:

Enclosed is a revised version of the proposed bill to amend 43 U.S.C. 666, and of the proposed bill to authorize suits against States as parens patriae for the adjudication of federally reserved water rights, together with comments, for your information. The revised drafts will replace the bills originally drafted.

Yours very truly,

Hermine Herta Meyer
Attorney

Enclosures



A BILL

To amend Section 666 of Title 43 United States Code to exempt Indian water rights held in trust by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

(1) Section 666 of Title 43 United States Code is hereby amended to read as follows:

(a) Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of, or is in the process of acquiring, water rights, and the United States is a necessary party to such suit.

(b) Any suit brought in a State court in which the United States shall have been joined in accordance with this section shall, upon application made by the United States, be removed to the District Court of the United States for the District in which such action shall have been brought, and shall not be subject to remand as long as the United States remains a party defendant in such suit.

(c) Nothing in this section shall be construed as authorizing the joinder of the United States in any suit involving any water rights held in trust by the United States for any Indian, or any Indian tribe, band, or community.



(2) Subsections (b) and (c) of Section 666 of Title 43, United States Code, shall become Subsections (d) and (e) respectively.

(3) Section 1346 of Title 28, U. S. Code, is hereby amended by adding Subsection (g) to read as follows: The district courts shall have original jurisdiction of any civil action against the United States (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of, or is in the process of acquiring, water rights.

Nothing in this Subsection shall be construed as authorizing an action against the United States in any suit involving any water rights held in trust by the United States for any Indian, or any Indian tribe, band, or community.



COMMENT

Re: A Bill to amend Section 666 of Title 43, United States Code, and for other purposes.

43 U.S.C. 666 permits to join the United States as a defendant "in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit."

The legislation was sponsored by Senator McCarran. From his statement in the Senate it might appear that the purpose he had in mind was the waiver of sovereign immunity of the United States in state adjudications of water rights acquired under State law. He particularly mentioned water rights acquired from former owners who were subject to such suits. He found it neither fair nor just that the United States should have a better right than the former owners.

Unfortunately, the wording of the statute is not very clear and permits a broad interpretation. The court decisions in which the statute was directly in issue serve as a good example for the uncertainties and confusion created by the statute.

43 U.S.C. 666 permits to join the United States in any suit for the adjudication of water rights. This seems to say that the suit may be



pending in a state or federal court, and therefore, by implication, create jurisdiction of such suits in federal district courts.

However, in "In re Green River Drainage Area," 147 F.S. 127 (D. C. Utah, Central Div. 1956), District Judge Christenson held that this language alone did not confer jurisdiction on the federal district courts.

The Green River case involved an action for the "general determination" of certain water rights under State law initiated by the State Engineer of Utah in a State court in which the United States was joined as a party defendant. The United States filed a petition for removal to the U. S. District Court. The State Engineer interposed a motion to remand.

Judge Christenson pointed out that Senate Bill 18, 82nd Congress, First Session, upon which 43 U.S.C. 666 is based, originally contained a provision giving the United States the right of removal to the federal courts of any such suit in which it is a party, but that the removal provision was omitted from the final version. In his opinion, this omission indicates that water adjudication suits brought against the United States under Section 666 should not be subject to removal merely because the United States is a party, but that there has to be reference to existing law. The general removal statute, 28 U.S.C. 1441, permits the removal from a State court to a U. S. District Court only in such actions in which the district courts have original jurisdiction.



Therefore, in the Green River case the crucial question was whether the district courts had jurisdiction of actions against the United States for the adjudication of water rights.

The United States took the position that jurisdiction existed pursuant to Art. III, Section 2 of the Constitution of the United States which provides that the judicial power of the United States extends to controversies to which the United States shall be a party. This position seemed to find support in State of Minnesota v. Hitchcock, 185 U.S. 373,384 (1902), where the Supreme Court considered this constitutional provision as sufficient to vest it with jurisdiction of cases in which the United States is either a party plaintiff or defendant.

However, Judge Christenson found that Art. III, Section 2 of the Constitution is self-executing only as regards the jurisdiction of the United States Supreme Court, but that the jurisdiction of the inferior courts is dependent upon statute. The applicable provisions are 28 U.S.C. 1345 and 1346. 28 U.S.C. 1345 concerns cases in which the United States is the plaintiff. It reads:

"Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

No such general jurisdiction has been vested in the United States district courts of actions in which the United States is a defendant. The reason therefor is, of course, that the United States cannot be sued except where Congress consents. Therefore 28 U.S.C. 1346 enumerates the cases against



the United States of which the district courts have jurisdiction. Suits for the general determination of water rights are in the nature of suits to quiet title. At the time the Green River case was decided there were no federal statutes conferring jurisdiction on the district courts of an action to quiet title. Consequently, Judge Christenson denied the petition for removal and remanded the case for lack of jurisdiction.

In 1972, Congress enacted P.L. 92-562. Section 1 of that Act added Subsection (f) to Section 1346, Title 28, conferring on the district courts "exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States."*

Section 3 of P.L. 92-562 added a new Section 2409a to Chapter 161 of Title 28. Subsection (a) of Section 2409a reads in pertinent part:

"(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under . . . section 208 of the Act of July 10, 1952 (43 U.S.C. 666)."

As can be seen, the statute which permits actions to quiet title against the United States expressly exempts Indian trust property as well as water rights.

* P.L. 92-562, § 1, Oct. 25, 1972, 86 Stat. 1176

** P.L. 92-562, § 3(a), Oct. 25, 1972, 86 Stat. 1176



The reason for excluding lands held in trust for Indians and Indian restricted lands appears in a letter from Mitchell Melich, Solicitor of the Interior Department, addressed to Senator Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs, dated September 29, 1971, and printed as part of the Legislative History of P.L. 92-562.* There it is said:

"Second, the Justice proposal specifically excludes lands held in trust for Indians and Indian restricted lands. The Federal government's trust responsibility for Indian lands is the result of solemn obligations entered into by the United States government. The Federal government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements. The Indians for their part have often surrendered claims to vast tracts of land. President Nixon has pledged his administration against abridging the historic relationship between the Federal government and the Indians without the consent of the Indians."**

As reason for the exclusion of water rights from 28 U.S.C. 2409a, it was mentioned that the United States had consented to be sued in specific instances in addition to the jurisdiction provided the courts as contemplated under the new bill.*** Specific actions of this type are referred to in subsection (a) of section 2409a, where it is provided that the new section does not apply to actions which may be or could be brought under the sections there enumerated, among them 43 U.S.C. 666.

* 1972 U.S. Code Cong. and Administrative News, 92d Cong., 2d Session, pp. 4547, 4556-4557

** Id. 4556-4557

*** Id. 4551, 4555



It seems that Congress was under the impression that 43 U.S.C. 666 had conferred jurisdiction in water rights cases against the United States on the U. S. district courts. However, 43 U.S.C. 666 does not contain a jurisdictional clause and, as has been shown above, in the Green River case District Judge Christenson did not accept removal from a State court for lack of original jurisdiction. The new statute 28 U.S.C. 2409a which gives the district courts jurisdiction of actions to quiet title expressly exempts water rights. The result is that there is no express provision conferring on the district courts jurisdiction of actions to quiet title to water rights. This permits a construction that the United States can be drawn into water rights cases in State courts, but cannot be sued in an original action in the federal district courts. It also gives strength to the district court's opinion in the Green River case that the elimination of the removal provision from the final version of 43 U.S.C. 666 was intended to prevent removal for the sole reason that the United States was made a party defendant in a State court.

Moreover, in the two Eagle River cases the Supreme Court held that 43 U.S.C. 666 includes federal reserved rights.* As is well known, federal reserved rights include Indian lands and water held in trust by the United States. No Indian water rights were involved in the Eagle River cases. But the Indians fear that the Supreme Court's ruling

* United States v. District Court in and for the County of Eagle and State of Colorado, 401 U.S. 520 (1971); United States v. District Court in and for Water Division No. 5, 401 U.S. 527 (1971).



subjecting federal reserved water rights to State court jurisdiction has exposed their own water rights to adjudication in the State courts. The Supreme Court's remark that federal reserved rights involve a federal question which, if preserved, can be reviewed by it after final judgment by the State court,* is no consolation to the Indians. The Supreme Court may deny certiorari. But even if it were granted and the final decision were favorable to the Indians, they feel that they should not have to go through lengthy and costly litigation, but that their treaties and agreements with the Federal government entitle them to protection from being drawn into litigation in the State courts.

It has usually been the policy of Congress to protect Indian lands and water rights against litigation. Thus, when Congress yielded to the states jurisdiction in civil actions to which Indians are parties, Indian land and water rights held in trust by the United States or subject to a restriction against alienation were explicitly exempted.** And when Congress waived sovereign immunity in actions to quiet title, trust and restricted Indian lands were not included.*** The absence of such a provision in 43 U.S.C. 666 appears as an anomaly and cannot be reconciled with the usual congressional policy.

In addition, the near impossibility for the United States to remove an action brought against it under 43 U.S.C. 666 in a State court seems incompatible with the constitutional plan to create a federal forum for actions by and against the United States.

* 401 U.S. at 526

** See 28 U.S.C. 1360; 25 U.S.C. 233

*** See 28 U.S.C. 2409a



Through statutes and court decisions a situation has been created in which the United States can be sued for a determination of water rights in the State courts, but not in a federal district court, and in which Indian lands and water are protected against suit in federal courts, but can be drawn into litigation over water rights in the State courts. Obviously, such a result cannot have been intended by Congress. Therefore, there is great need for new legislation which will eliminate these inconsistencies. The attached draft bill attempts to accomplish this purpose. It proposes to amend 43 U.S.C. 666 by providing for a right of removal to the appropriate federal district court upon application of the United States and by exempting water rights held in trust by the United States for any Indians; and to amend 28 U.S.C. 1346 to extend to water rights the jurisdiction of the federal district courts of actions to quiet title in which the United States is a party defendant.

Hermine Herta Meyer
Office of the Deputy Attorney General
Ext. 4525



A BILL

To authorize suits against States as parens patriae for the adjudication of federally reserved water rights, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the purpose of this Act is to simplify and expedite litigation involving federally reserved water rights.

(a) The district courts shall have jurisdiction of any action brought by the United States for an adjudication involving any water rights reserved by the United States, and of any action brought by any Indian tribe, band, or community for an adjudication involving any water rights held in trust by the United States for any Indian, or any Indian tribe, band, or community.

The only necessary party defendant to such an action shall be the State in which such federally reserved water rights are in dispute, and such State shall be deemed to represent the interests of all non-Indian water users claiming under the laws of such State.

(b) If an action brought under Section (a) of this act involves an interstate stream, the district court shall have jurisdiction to adjudicate the rights to the use of water from such interstate stream claimed by any person if such adjudication shall be necessary for a complete resolution of the claims asserted by the United States, or the Indian, Indian tribe, band, or community.

The only necessary party or parties defendant to such action shall be the State or States under the laws of which such person asserts the right to water from such interstate stream, and such State or States shall be deemed to represent the interests of all non-Indian water users claiming under the laws of such State or States.



(c) Summons or other process in a suit commenced under this Act, issued from the district court of the district wherein such suit has been brought, shall run in any other district, and service thereof upon any State named as a party defendant, in the manner prescribed by Rule 4(d)(6), Federal Rules of Civil Procedure, may be made in any district within the United States with the same force and effect as if the same had been served within the district in which such suit has been brought.

(d) Upon timely application, any person able to show that his water rights may be affected by a judgment rendered in an action authorized by this act may be permitted to intervene.



COMMENT

Re: A Bill to authorize suits against States as parens patriae for the adjudication of federally reserved water rights, and for other purposes

This bill concerns actions in which the United States or an Indian tribe, band or community is seeking to establish the measure and priority of federally reserved water rights as against water rights over which a State exercises jurisdiction. The rights of individual water users claiming under state law are not in issue in actions of this type. Rather, their interests are identical with those of the State, namely to limit both the extent and priority of the federal and Indian reserved rights.

The Supreme Court has long recognized that a State suing, or sued, in the Supreme Court by virtue of the original jurisdiction over controversies between States must be deemed to represent all its citizens. Kentucky v. Indiana, 281 U.S. 163, 173 (1930). The reason is that in such actions matters of sovereign interest are involved. A controversy of a State over the division of the waters of an interstate stream with another state has been considered to be a matter of sovereign interest in which a State has the right, parens patriae, to represent all the non-federal users in its own State, and in which the State will stand in judgment for all appropriators in that State. Nebraska v. Wyoming, 295 U.S. 40, 43 (1935); New Jersey v. New York, 345 U.S. 369, 372-373 (1953); United States, v. Nevada, 412 U.S. 534, 539 (1973).

The same principle ought to apply in a suit brought by the United States against a State for the determination of federally reserved water rights in



a lower federal court. However, without special legislation, there is no certainty that a judgment would be binding on the water users in the State. Consequently, in such actions the Federal government finds it now necessary to join all individual water users. In an action brought in the District Court of Nevada for the establishment of the federally reserved rights of the Pyramid Lake Indian Reservation, the government is forced to serve with process about 13,500 individual users, although the action only seeks a judicial allocation of the waters of the Truckee River as between two sovereigns, the United States and the State of Nevada, and not a determination of the rights of the individual users under state law. Such procedure is extremely time consuming and costly. It makes it prohibitive for an Indian tribe to institute such an action.

In order to simplify and expedite litigation involving federally reserved water rights, the Bill would give the district courts jurisdiction of any action brought by the United States or any Indian or Indian tribe for the determination of federally reserved water rights, and it provides that the only necessary party shall be the State in which such rights are in dispute and that such State shall be deemed to represent all non-Indian water users claiming under State law.

Where such an action involves an interstate stream, the bill confers on the district courts jurisdiction to adjudicate the rights to the use of water from such interstate stream claimed by any person if such adjudication is necessary for a complete resolution of the claims asserted by the United States or the Indians, and any State under the laws of which such claims are made shall be the only necessary party to represent the



claimants. In accordance with Rule 4(f), Federal Rules of Civil Procedure, service of process outside of the territorial limits of the district court in which the suit is brought is expressly authorized.

Individual water users able to show that their water rights may be affected by a judgment in such an action are permitted to intervene.

Hermine Herta Meyer
Office of the Deputy Attorney General
Ext. 4525



UNITED STATES GOVERNMENT

Memorandum

TO : To Reviewers

FROM : Reid P. Chambers

DATE: February 20, 1974

SUBJECT:

Here is a rough redraft of the Indian water rights legislation.



5010-109

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan



A BILL

To authorize suits for the adjudication of federally owned reserved water rights, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the purpose of this Act is to simplify and expedite litigation involving federally reserved water rights.

(a) The district courts shall have exclusive jurisdiction of any action brought by ^{or against} the United States ~~[for an adjudication]~~ involving the adjudication, protection, administration or control of any rights to the use of water reserved by the United States, and of any action brought by ^{or against} any Indian tribe, band, or community or any individual Indian holding an interest in lands which are held in trust by the United States or restricted against alienation pursuant to any federal statute ~~[for an adjudication]~~ involving the adjudication, protection, administration or control of any rights to the use of water held in trust by the United States for any Indian, or any Indian tribe, band, or community.

(b) Such actions may be brought in any district court in which some or all of the lands reserved by the United States or held in trust for any Indian tribe, band, community or individual Indian or restricted against alienation for which right to the



to the use of water have been reserved are situated. In the case of an interstate stream, such court shall have jurisdiction to adjudicate the rights to the use of water claimed by any person if such adjudication shall be necessary for a complete resolution of the claims asserted by the United States, or the Indian tribe, band, or community, or individual Indian.

(c) The only necessary party to such actions shall be the State in which such federally reserved water rights are in dispute, and such State shall be deemed to represent the interests of all non-Indian water users claiming under the laws of such State or otherwise. ~~[Powers]~~

(d) Upon timely application, any person able to show that his water rights may be affected by a judgment rendered in such an action, may be permitted to intervene in such an action.



A BILL

To amend Section 666 of Title 43 United States Code to exempt Indian water rights held in trust by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

(1) Section 666 of Title 43 United States Code is hereby amended to read as follows:

(a) Consent is given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of, or is in the process of acquiring, water rights, and the United States is a necessary party to such suit.

(b) Any suit brought in a State court in which the United States shall have been joined in accordance with this section shall, upon application made by the United States, be removed to the District Court of the United States for the District in which such action shall have been brought, and shall not be subject to remand.

(c) Nothing in this section shall be construed as authorizing the joinder of the United States in any suit involving any water rights held in trust by the United States for any Indian, or any Indian tribe, band, or community.



(2) Subsections (b) and (c) of Section 666 of Title 43, United States Code, shall become Subsections (d) and (e) respectively.

(3) Subsection (f) of Section 1346 of Title 28, United States Code, is hereby amended by inserting after "real property" the words "including water rights."

(4) Subsection (a) of Section 2409 of Title 28, United States Code, is hereby amended by striking the words "water rights" and the words "or section 208 of the Act of July 10, 1952 (43 U.S.C. 666)."

Hermine Herta Meyer
Office of the Deputy Attorney General
Ext. 4525



COMMENT

Re: A Bill to amend Section 666 of Title 43, United States Code, and for other purposes.

43 U.S.C. 666 permits to join the United States as a defendant "in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United States is a necessary party to such suit."

The legislation was sponsored by Senator McCarran. From his statement in the Senate it might appear that the purpose he had in mind was the waiver of sovereign immunity of the United States in state adjudications of water rights acquired under State law. He particularly mentioned water rights acquired from former owners who were subject to such suits. He found it neither fair nor just that the United States should have a better right than the former owners.

Unfortunately, the wording of the statute is not very clear and permits a broad interpretation. The court decisions in which the statute was directly in issue serve as a good example for the uncertainties and confusion created by the statute.

43 U.S.C. 666 permits to join the United States in any suit for the adjudication of water rights. This seems to say that the suit may be



pending in a state or federal court, and therefore, by implication, create jurisdiction of such suits in federal district courts.

However, in "In re Green River Drainage Area," 147 F.S. 127 (D. C. Utah, Central Div. 1956), District Judge Christenson held that this language alone did not confer jurisdiction on the federal district courts.

The Green River case involved an action for the "general determination" of certain water rights under State law initiated by the State Engineer of Utah in a State court in which the United States was joined as a party defendant. The United States filed a petition for removal to the U. S. District Court. The State Engineer interposed a motion to remand.

Judge Christenson pointed out that Senate Bill 18, 82nd Congress, First Session, upon which 43 U.S.C. 666 is based, originally contained a provision giving the United States the right of removal to the federal courts of any such suit in which it is a party, but that the removal provision was omitted from the final version. In his opinion, this omission indicates that water adjudication suits brought against the United States under Section 666 should not be subject to removal merely because the United States is a party, but that there has to be reference to existing law. The general removal statute, 28 U.S.C. 1441, permits the removal from a State court to a U. S. District Court only in such actions in which the district courts have original jurisdiction.



Therefore, in the Green River case the crucial question was whether the district courts had jurisdiction of actions against the United States for the adjudication of water rights.

The United States took the position that jurisdiction existed pursuant to Art. III, Section 2 of the Constitution of the United States which provides that the judicial power of the United States extends to controversies to which the United States shall be a party. This position seemed to find support in State of Minnesota v. Hitchcock, 185 U.S. 373,384 (1902), where the Supreme Court considered this constitutional provision as sufficient to vest it with jurisdiction of cases in which the United States is either a party plaintiff or defendant.

However, Judge Christenson found that Art. III, Section 2 of the Constitution is self-executing only as regards the jurisdiction of the United States Supreme Court, but that the jurisdiction of the inferior courts is dependent upon statute. The applicable provisions are 28 U.S.C. 1345 and 1346. 28 U.S.C. 1345 concerns cases in which the United States is the plaintiff. It reads:

"Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress."

No such general jurisdiction has been vested in the United States district courts of actions in which the United States is a defendant. The reason therefor is, of course, that the United States cannot be sued except where Congress consents. Therefore 28 U.S.C. 1346 enumerates the cases against



the United States of which the district courts have jurisdiction. Suits for the general determination of water rights are in the nature of suits to quiet title. At the time the Green River case was decided there were no federal statutes conferring jurisdiction on the district courts of an action to quiet title. Consequently, Judge Christenson denied the petition for removal and remanded the case for lack of jurisdiction.

In 1972, Congress enacted P.L. 92-562. Section 1 of that Act added Subsection (f) to Section 1346, Title 28, conferring on the district courts "exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States."*

Section 3 of P.L. 92-562 added a new Section 2409a to Chapter 161 of Title 28. Subsection (a) of Section 2409a reads in pertinent part:

"(a) The United States may be named as a party defendant in a civil action under this section to adjudicate a disputed title to real property in which the United States claims an interest, other than a security interest or water rights. This section does not apply to trust or restricted Indian lands, nor does it apply to or affect actions which may be or could have been brought under . . . section 208 of the Act of July 10, 1952 (43 U.S.C. 666)."

As can be seen, the statute which permits actions to quiet title against the United States expressly exempts Indian trust property as well as water rights.

* P.L. 92-562, § 1, Oct. 25, 1972, 86 Stat. 1176

** P.L. 92-562, § 3(a), Oct. 25, 1972, 86 Stat. 1176



The reason for excluding lands held in trust for Indians and Indian restricted lands appears in a letter from Mitchell Melich, Solicitor of the Interior Department, addressed to Senator Henry M. Jackson, Chairman, Committee on Interior and Insular Affairs, dated September 29, 1971, and printed as part of the Legislative History of P.L. 92-562.* There it is said:

"Second, the Justice proposal specifically excludes lands held in trust for Indians and Indian restricted lands. The Federal government's trust responsibility for Indian lands is the result of solemn obligations entered into by the United States government. The Federal government has over the years made specific commitments to the Indian people through written treaties and through informal and formal agreements. The Indians for their part have often surrendered claims to vast tracts of land. President Nixon has pledged his administration against abridging the historic relationship between the Federal government and the Indians without the consent of the Indians."**

As reason for the exclusion of water rights from 28 U.S.C. 2409a, it was mentioned that the United States had consented to be sued in specific instances in addition to the jurisdiction provided the courts as contemplated under the new bill.*** Specific actions of this type are referred to in subsection (a) of section 2409a, where it is provided that the new section does not apply to actions which may be or could be brought under the sections there enumerated, among them 43 U.S.C. 666.

* 1972 U.S. Code Cong. and Administrative News, 92d Cong., 2d Session, pp. 4547, 4556-4557

** Id. 4556-4557

*** Id. 4551, 4555



It seems that Congress was under the impression that 43 U.S.C. 666 had conferred jurisdiction in water rights cases against the United States on the U. S. district courts. However, 43 U.S.C. 666 does not contain a jurisdictional clause and, as has been shown above, in the Green River case District Judge Christenson did not accept removal from a State court for lack of original jurisdiction. The new statute 28 U.S.C. 2409a which gives the district courts jurisdiction of actions to quiet title expressly exempts water rights. The result is that there is no express provision conferring on the district courts jurisdiction of actions to quiet title to water rights. This permits a construction that the United States can be drawn into water rights cases in State courts, but cannot be sued in an original action in the federal district courts. It also gives strength to the district court's opinion in the Green River case that the elimination of the removal provision from the final version of 43 U.S.C. 666 was intended to prevent removal for the sole reason that the United States was made a party defendant in a State court.

Moreover, in the two Eagle River cases the Supreme Court held that 43 U.S.C. 666 includes federal reserved rights.* As is well known, federal reserved rights include Indian lands and water held in trust by the United States. No Indian water rights were involved in the Eagle River cases. But the Indians fear that the Supreme Court's ruling

* United States v. District Court in and for the County of Eagle and State of Colorado, 401 U.S. 520 (1971); United States v. District Court in and for Water Division No. 5, 401 U.S. 527 (1971).



subjecting federal reserved water rights to State court jurisdiction has exposed their own water rights to adjudication in the State courts. The Supreme Court's remark that federal reserved rights involve a federal question which, if preserved, can be reviewed by it after final judgment by the State court,* is no consolation to the Indians. The Supreme Court may deny certiorari. But even if it were granted and the final decision were favorable to the Indians, they feel that they should not have to go through lengthy and costly litigation, but that their treaties and agreements with the Federal government entitle them to protection from being drawn into litigation in the State courts.

It has usually been the policy of Congress to protect Indian lands and water rights against litigation. Thus, when Congress yielded to the states jurisdiction in civil actions to which Indians are parties, Indian land and water rights held in trust by the United States or subject to a restriction against alienation were explicitly exempted.** And when Congress waived sovereign immunity in actions to quiet title, trust and restricted Indian lands were not included.*** The absence of such a provision in 43 U.S.C. 666 appears as an anomaly and cannot be reconciled with the usual congressional policy.

In addition, the near impossibility for the United States to remove an action brought against it under 43 U.S.C. 666 in a State court seems incompatible with the constitutional plan to create a federal forum for actions by and against the United States.

* 401 U.S. at 526

** See 28 U.S.C. 1360; 25 U.S.C. 233

*** See 28 U.S.C. 2409a



Through statutes and court decisions a situation has been created in which the United States can be sued for a determination of water rights in the State courts, but not in a federal district court, and in which Indian lands and water are protected against suit in federal courts, but can be drawn into litigation over water rights in the State courts. Obviously, such a result cannot have been intended by Congress. Therefore, there is great need for new legislation which will eliminate these inconsistencies. The attached draft bill attempts to accomplish this purpose. It proposes to amend 43 U.S.C. 666 by providing for a right of removal to the appropriate federal district court upon application of the United States and by exempting water rights held in trust by the United States for any Indians; and to amend 28 U.S.C. 1346 and 28 U.S.C. 2409a to extend to water rights the jurisdiction of the federal district courts of actions to quiet title in which the United States is a party defendant.

Hermine Herta Meyer
Office of the Deputy Attorney General
Ext. 4525



A BILL

To authorize suits against states as parens patriae for the adjudication of federally reserved water rights, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the purpose of this Act is to simplify and expedite litigation involving federally reserved water rights.

(a) The district courts shall have jurisdiction of any action brought by the United States for the adjudication involving any water rights reserved by the United States, and of any action brought by any Indian tribe, band, or community for the adjudication involving any water rights held in trust by the United States for any Indian, or any Indian tribe, band, or community.

(b) The only necessary party to such an action shall be the State in which such federally reserved water rights are in dispute, and such State shall be deemed to represent the interests of all water users claiming under the laws of such State.

(d) Upon timely application, any person able to show that his water rights may be affected by a judgment rendered in such an action, may be permitted to intervene.



COMMENT

Re: A Bill to authorize suits against states as parens patriae for the adjudication of federally reserved water rights, and for other purposes

This bill concerns actions in which the United States or an Indian tribe, band or community is seeking to establish the measure and priority of federally reserved water rights as against water rights over which a State exercises jurisdiction. The rights of individual water users claiming under state law are not in issue in actions of this type. Rather, their interests are identical with those of the State, namely to limit both the extent and priority of the federal and Indian reserved rights.

The Supreme Court has long recognized that a State suing, or sued, in the Supreme Court by virtue of the original jurisdiction over controversies between States must be deemed to represent all its citizens. Kentucky v. Indiana, 281 U.S. 163, 173 (1930). The reason is that in such actions matters of sovereign interest are involved. A controversy of a State over the division of the waters of an interstate stream with another state has been considered to be a matter of sovereign interest in which a State has the right, parens patriae, to represent all the non-federal users in its own state, and in which the state will stand in judgment for all appropriators in that state. Nebraska v. Wyoming, 295 U.S. 40, 43 (1935); New Jersey v. New York, 345 U.S. 369, 372-373 (1953); United States v. Nevada, 412 U.S. 534, 539 (1973).

The same principle ought to apply in a suit brought by the United States against a State for the determination of federally reserved water rights in



a lower federal court. However, without special legislation, there is no certainty that a judgment would be binding on the water users in the State. Consequently, in such actions the Federal government finds it now necessary to join all individual water users. In an action brought in the District Court ^{for} ~~of~~ Nevada for the establishment of the federally reserved rights of the Pyramid Lake Indian Reservation, the government is forced to serve with process about 13,500 individual users, although the action only seeks a judicial allocation of the waters of the Truckee River as between two sovereigns, the United States and the State of Nevada, and not a determination of the rights of the individual users under state law. Such procedure is extremely time consuming and costly. It makes it prohibitive for an Indian tribe to institute such an action.

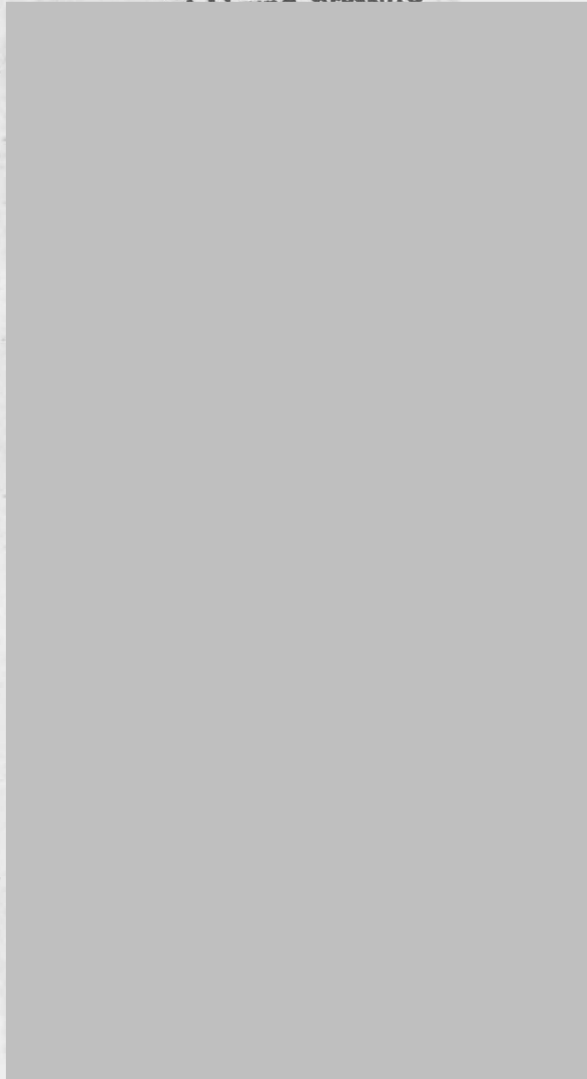
In order to simplify and expedite litigation involving federally reserved water rights, the Bill would give the district courts jurisdiction of any action brought by the United States or any Indian tribe for the determination of federally reserved water rights, and it provides that the only necessary party shall be the State in which such rights are in dispute and that such State shall be deemed to represent all water users claiming under State law. Individual water users able to show that their water rights may be affected by a judgment in such an action are permitted to intervene.

Hermine Herta Meyer
Office of the Deputy Attorney General
Ext. 4525



Page 8

**TOWARD REPEALING
PUBLIC LAW 280**



93D CONGRESS
2D SESSION

S. 3552

IN THE SENATE OF THE UNITED STATES

MAY 30, 1974

Mr. ABOUREZK (for himself and Mr. HATFIELD) introduced the following bill;
which was read twice and referred to the Committee on Interior and Insular
Affairs

A BILL

Providing for the reacquisition of jurisdiction by Indian tribes
and by the United States over criminal offenses and civil
matters in Indian country.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) in any case in which a State, pursuant to the pro-
4 visions of section 1162 of title 18, United States Code, sec-
5 tion 1360 of title 28, United States Code, or section 6 or 7
6 of the Act of August 15, 1953 (67 Stat. 588), as each
7 such section 6 or 7 was in effect prior to its repeal by sec-
8 tion 3 of this Act and section 403 (b) of the Act of April 11,
9 1968, respectively, acquired all or any measure of jurisdic-
10 tion over criminal offenses committed by or against Indians



1 or over civil causes of action between Indians or to which
 2 Indians are parties and which arise in areas of Indian coun-
 3 try situated within such State, any Indian tribe occupying
 4 the particular Indian country or part thereof affected by
 5 such State assumption shall be authorized, acting through its
 6 tribal council or other governing body, to adopt a resolu-
 7 tion indicating its desire (1) to have the United States re-
 8 acquire any such jurisdiction, and (2) to make the juris-
 9 diction of the tribe coextensive with tribal jurisdiction as
 10 it was prior to such assumption of jurisdiction by such State.

11 (b) Within thirty days following the receipt by him
 12 of any such resolution adopted in accordance with the pro-
 13 visions of this Act, the Secretary of the Interior shall issue
 14 a proclamation (1) to the effect that the United States
 15 reacquires, in accordance with the provisions of such reso-
 16 lution, its jurisdiction over such offenses, or such civil actions,
 17 or both, as the case may be, in such Indian country or part
 18 thereof occupied by such tribe and affected by such State
 19 assumption, and (2) to the effect that the jurisdiction of the
 20 tribe thereafter is coextensive with the tribal jurisdiction
 21 as it was prior to such assumption of jurisdiction by such
 22 State.

23 (c) Within ten days following the issuance of such
 24 proclamation, the Secretary of the Interior shall publish
 25 such proclamation in the Federal Register. Effective upon

1 the date of such publication, the United States and the
 2 Indian tribe shall exercise their respective jurisdictions as
 3 provided by such proclamation.

4 (d) Effective upon and after the date of such publica-
 5 tion in the Federal Register, all criminal and civil laws of
 6 the United States and of such Indian tribe which, on the
 7 date immediately preceding such date of publication, would
 8 have been applicable to such Indian country but for such
 9 assumption of jurisdiction by such State shall be applicable
 10 within such Indian country in accordance with the provisions
 11 of such proclamation.

12 SEC. 2. No action or proceeding pending before any
 13 court or agency of any State immediately prior to the re-
 14 acquisition of jurisdiction by the United States pursuant to
 15 this Act shall abate by reason thereof. For purposes of any
 16 such action or proceeding, such reacquisition of jurisdiction
 17 by the United States shall take effect on the day following
 18 the date of final determination of such action or proceeding.

19 SEC. 3. Section 6 of the Act of August 15, 1953 (67
 20 Stat. 588) is hereby repealed, but such repeal shall not affect
 21 any cession of jurisdiction validly made pursuant to such
 22 section prior to its repeal.

A BILL

Providing for the reacquisition of jurisdiction
by Indian tribes and by the United States
over criminal offenses and civil matters in
Indian country.

By Mr. ABOTREZK and Mr. HATFIELD

MAY 30, 1974

Read twice and referred to the Committee on Interior
and Insular Affairs

93RD CONGRESS
2^D SESSION

S. 3614

IN THE SENATE OF THE UNITED STATES

JUNE 10, 1974

Mr. MAGNUSON (for himself and Mr. JACKSON) (by request) introduced the following bill; which was read twice and referred to the Committee on Interior and Insular Affairs

A BILL

To amend certain provisions of the Act of July 24, 1956, relating to the restoration of tribal ownership of certain lands upon the Colville Indian Reservation, Washington.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) section 2 of the Act entitled "An Act restoring
4 to tribal ownership certain lands upon the Colville Indian
5 Reservation, Washington, and for other purposes", approved
6 July 24, 1956 (70 Stat. 626), is amended by deleting "In
7 carrying out the provisions of this Act, if non-Indian lands
8 are involved the board of county commissioners of counties
9 in which land is located shall by proper resolution consent



1 before such non-Indian land is acquired for the tribe or an
2 individual Indian.”.

3 (b) Sections 4 and 5 of such Act of July 24, 1956, are
4 hereby repealed.

83D CONGRESS
2D Session

S. 3614

A BILL

To amend certain provisions of the Act of July 24, 1956, relating to the restoration of tribal ownership of certain lands upon the Colville Indian Reservation, Washington.

By Mr. MAGNUSON and Mr. JACKSON

JUNE 10, 1974

Read twice and referred to the Committee on Interior and Insular Affairs



93d CONGRESS

2d SESSION

S. _____

(Note.—Fill in all blank lines except those provided for the date, number, and reference of bill.)

IN THE SENATE OF THE UNITED STATES

Mr. _____

introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend certain provisions of the Act of July 24, 1956, relating to the restoration of tribal ownership of certain lands upon the Colville Indian Reservation, Washington.

(Insert title of bill here)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 2 of the Act entitled "An Act restoring to tribal ownership certain lands upon the Colville Indian Reservation, Washington, and for other purposes", approved July 24, 1956 (70 Stat. 626), is amended by deleting "In carrying out the provisions of this Act, if non-Indian lands are involved the board of county commissioners of counties in which land is located shall by proper resolution consent before such non-Indian land is acquired for the tribe or an individual Indian."

(b) Sections 4 and 5 of such Act of July 24, 1956 are hereby repealed.



COLVILLE CONFEDERATED TRIBES

POST OFFICE BOX 150

TELEPHONE AC 509/634-4591

COLVILLE INDIAN AGENCY • NESPELEM, WASHINGTON 99155



RESOLUTION

1973-835

(Repeal certain portions of PL. 772)

WHEREAS, the Act of July 24, 1956, PL 84-772, authorized the restoration of certain lands to the Colville Tribes, in trust, and for other purposes; and

WHEREAS, Section two of the Act authorized the Tribe to purchase, sell and exchange lands within the Reservation boundary for the purpose of consolidation, and further authorized the Tribes to purchase fee lands and bring same into trust with the consent of the County Commissioners in which the land is located; and

WHEREAS, Section three of the Act provided that title to land purchased by the Tribes or individual Indians shall be taken in the name of the United States in trust for the owner; and

WHEREAS, Section four of the Act ratified and approved of an Agreement dated April 24, 1954 between the Colville Tribes and Okanogan and Ferry Counties; and

WHEREAS, said Agreement provided that the Colville Tribes pay a certain amount annually to the two counties in lieu of taxes; and

WHEREAS, Section five of the Act required the Colville Tribes to submit proposed legislation to Congress within 5 years for the termination of the Colville Indian Reservation within a reasonable time; and

WHEREAS, the Tribe takes the legal position that the consent of the Counties to approve the taking of fee lands into trust is illegal, as the authority to buy land comes under Federal Law; and

WHEREAS, the Tribe takes the legal position that the Agreement dated April 21, 1954 with the two Counties is illegal as trust land owners under Federal Law and treaties are exempt from paying taxes; and

WHEREAS, One or more Bills for proposed Legislation have been introduced annually without success and we are of the opinion that the Tribe has fully complied with Section five of the Act.



THEREFORE, BE IT RESOLVED, that the Business Council requests the Secretary of the Interior and the Congress of the United States to take necessary action to repeal certain portions of the Act as follows:

(1) Section 2 - Delete "In carrying out the provisions of this Act, if non-Indian lands are involved, the Board of County Commissioners or counties in which land is located shall by proper resolution consent before such non-Indian land is acquired for the Tribe or an individual Indian."

(2) Section 4 - Delete entire section - "The agreement entered into by the Confederated Tribes of the Colville Reservation and Okanogan and Ferry Counties of the State of Washington on April 21, 1954, is hereby ratified and approved."

(3) Section 5 - Delete entire section - "The Business Council of the Confederated Tribes of the Colville Reservation shall, in accordance with resoltuion numbered 1955-33, dated April 8, 1955, of the Colville Business Council, submit to the Secretary of the Interior within five years from the date of enactment of this Act proposed legialstion providing for the termination of Federal supervision over the property and affairs of the Confederated Tribes and their members within a reasonable time after the submission of such proposed legislation."

The foregoing was duly enacted by the Colville Business Council by a vote of 10 FOR; 0 AGAINST, under authority contained in Article V, Section 1(a) of the Constitution of the Confederated Tribes of the Colville Reservation, ratified by the Colville Indians on February 26, 1938, and approved by the Commissioner of Indian Affairs on April 19, 1938.

ATTEST:

Eddie Palmanteer, Jr.

Eddie Palmanteer, Jr., Chairman
Colville Business Council



COLVILLE CONFEDERATED TRIBES

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ZONING

Establish a "blanket zone" of Agricultural use only. And that all future development will only be permitted for agricultural uses with one dwelling unit (HOME) per 80 acres.

ALL other uses will require a special use permit from the Colville Confederated Tribes.

A system will have to be developed for review of proposals which would reflect the Indian (Colvilles) values system. A method can be developed to protect the Tribal interests and give the non-Indian his due process etc.

.....Jack McDermott



COLVILLE CONFEDERATED TRIBES

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May 20, 1974

The Colville Reservation was established by Executive Order July 2, 1872 covering all the land between the Columbia and Okanogan Rivers and the Canadian Border. In 1891 the north half of the reservation was taken, then pursuant to the Act of March 22, 1906, 34 Stat. 80, all lands not allotted in the south half of the reservation were opened to homestead entry. In 1934 the Indian Reorganization Act withdrew the undisposed of lands consisting of 878,728 acres from further homestead entry. However, since the Colville Confederated Tribes did not vote to accept the I.R.A. full title did not vest in the Tribes.

The Confederated Tribes continued their quest for these lands to be held in trust for them but were for years unsuccessful. Finally, after meetings with the Congressman from that district an arrangement was agreed upon that if the Tribes would agree to some undesirable provisions so that the local counties would agree, the Congressman would support the bill. It is those undesirable features of P.L. 772 that we now seek to have removed from the bill.

At the time of the restoration bill, termination was the policy of Congress and in that climate a bill which contemplated almost immediate termination was drafted.

The point was made forcefully during the debate that the Tribes had the moral right to the land was in the Tribes but it is understandable that members of Congress and certainly the Administration was bent on termination and it was in that climate the bill was passed.

SECTION 5 specifically stated that the Tribes were to come up with a termination plan within five years. The Tribes met this provision. We do not believe that Section 5 has any effect in law,



however, the cloud of termination will be a threat until that section is removed.

SECTION 4 approved of an agreement to aid the counties by an annual payment, we were in 1956 forced to agree in order to get the counties' support although there was never any clear statement as to the services we were paying for. In 1970, the Tribes analyzed the agreement and decided that we were not getting any services from the \$40,000 that we were not entitled to and refused to pay. Although the local counties sued us in U.S. District Court, the case was dismissed for lack of jurisdiction since the Tribes had not agreed in its sovereign capacity to be sued. This section again not being enforceable is only important because of the blemish that gives the appearance that we consent to local taxes and is important only psychologically but we want the record cleared.

SECTION 2 has more significance. This section was also added in contemplation of termination and there is very little evidence in the legislative history as to what the language means: "In carrying out the provisions of this Act, if non-Indian lands are involved the board of county commissioners of counties in which land is located shall be proper resolution consent before such non-Indian land is acquired for the Tribe or an individual Indian." However, read in the entire context of Section 2 we believe there was an attempt to keep the balance between Indian and non-Indian lands substantially as they were in 1956.

History has shown otherwise. Because of the persistent policy of termination carried out on the Colville Reservation up until 1970 more than 60,000 acres of trust land have gone into fee, by such devices as forcing fee patents or sale in order to harvest timber, clear land for farming or to become eligible for public assistance.

Relatively little land has been returned to trust status and at the present time the commissioners in both counties have virtually refused to give their consent to further trust conveyances. To further complicate the picture the Washington State Attorney General has indicated in an opinion that the commissioners' lack of power to "take property off of the tax rolls." This opinion totally destroys the spirit of the law but completely negates the consent of Congress.



The inholdings acquired by non-Indians in these areas present a real problem to our tribe's resource management, however, the above-quoted Section 5 of the Act of July 24, 1956 accompanied by the lack of cooperation of the commissioners of Okanogan and Ferry counties prevent our negotiations for the purchase of these lands.

Another growing potential danger is the summer home developer who may own a small tract within our great forest area and brings in numerous summer visitors who create fire and pollution hazards.

With this bill we can accomplish our purpose for consolidation. We are prepared to fully document the facts set out here if given the opportunity for hearings.



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Native American Rights Fund

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Staff Attorney
John D. Ross III

June 27, 1974

Mr. Leonard Garment
The White House
Washington, D. C. 20013

Dear Mr. Garment:

Thank you very much for your June 17th letter. I am pleased that you found the information helpful and am especially pleased to hear that action is being taken on many of the points raised. Perhaps I can offer some additional thoughts.

The heirship problem is huge in terms of both acres and dollars. I would venture to say that every reservation unfortunate enough to have fallen subject to an allotment act suffers from this problem and this includes most of the Indian land in Oklahoma. This problem has been complained about and studied many times over the years. A new look at the problem by BIA would be excellent, if done with the definite goal in mind of resolving the matter in a manner satisfactory to affected tribes.

One possibility is found in 25 U.S.C. §607, a statute limiting inheritance of trust interest on the Yakima reservation to tribal members and providing the tribe with what is essentially a right of first refusal when the estate is being probated. I believe the Nez Perce and Warm Springs tribes have had similar provisions passed. Naturally, to be totally effective, the tribe needs to have enough money on hand to purchase such interests as they become available especially if they are destined to pass to non-Indians if not purchased by the tribe. 25 U.S.C. §608 provides a valuable adjunct to §607.

There are enclosed a copy of a bill and attached narrative I prepared for the Kootenai Tribe of Idaho as a step to further their Bureau of Indian Affairs approved land purchase program. The draft bill is patterned heavily after the Yakima statutes. As you can tell from the narrative, this tribe is in a different position than most in terms of land. Because these documents have not been finally approved by the Tribe, I would appreciate your keeping them confidential.

If it would be possible to pass this kind of law as one of general application, leaving it optional with tribes to come under its terms, actual funding might be achieved by amendment to 25 U.S.C.



THE WHITE HOUSE
WASHINGTON

July 1, 1974

Martin -

Garment and Doug Nash
have been corresponding ever since LG's
speech at Albuquerque -- and attached
is a copy of Doug's latest.

We had talked about heirship
before, and here, confidentially, Doug
sends us copies of a bill and narrative
which he has drafted for the
Kootenais. Please preserve this confiden-
tiality, but consider this as part of
the study you are making re heirship.

Could a comprehensive bill be
drafted, including most or all Indian
tribes? Could we include it in an
Indian Message II early next year?

Beed



Native American Rights Fund

Mr. Leonard Garment

-2-

June 27, 1974

§465. In its current form, §465 applies only to tribes that elected to form their governmental structure under the Indian Reorganization Act. If it were amended to apply to all tribes affected by any allotment act and the amount annually appropriated increased, it would have the effect of rectifying the damage done by the allotment acts by providing the tribes with an opportunity to purchase the lands lost thereby.

Point number 9 in my letter was not aimed at Indian schools but at Indian programs that operate in public schools, for example, those created under Title IV of the Civil Rights Act which are primarily aimed at desegregation, those created under Title IV of the Indian Education Act, and those under Title I of what I believe is called the Emergency School Aid Act. It is this type of program that necessarily must be coordinated with regular school terms, usually starting in September, that have problems caused by not receiving word on their funding until July or August of every year. I understand that Mr. Larry LaMoore, Deputy Commissioner of Indian Education, U.S. Office of Education, Room 4062, F.O.B. 6, 400 Maryland Avenue in Washington is aware of this problem and may be able to provide additional specifics.

The resetting of the fiscal year to October 1 would effectively alleviate this problem if appropriations are made at that time for the next fiscal year.

I am very happy to hear of the communications with the State Department regarding Indian fishing interests and agree that there is unity of interest between the Indian and non-Indian fishermen vis-a-vis the international fishery. Both want more fish made available to their respective fisheries. I feel it is important to stress the fact that Indian fishing is frequently done in times and places and by methods different from non-Indian fishermen and that Indian fishing is a matter of a right as opposed to the privilege exercised by non-Indians under state authority. Further, I hope that representatives from tribes that fish in international waters will be included in future meetings held by the White House, State Department and BIA, although I recognize the importance of having this first meeting early in light of the imminence of the Caracas meeting.

In regard to a meeting with certain agencies, my suggestion would be to include the heads of Indian programs in HEW and HUD and also the appropriate persons in OMB and Justice. I would contemplate that approximately four NARF attorneys would be involved. If possible, I would like to time it so as to coincide with a time when at least part of the attorneys will be in Washington on a case. Perhaps we can leave the time open for now and I can select a definite date in the future after conferring with other attorneys.

The two additional points you raise are certainly crucial ones at this time. As you may know, the Indian Civil Rights Task Force in the Solicitor's office in Interior, where, incidentally,



Native American Rights Fund

Mr. Leonard Garment

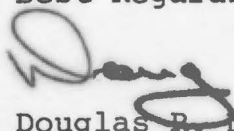
-3-

June 27, 1974

I worked during the year I spent in Washington, has done an extensive amount of high quality research on those points that may be of value to you. I am sure that both Fran Ayre and Peter Taylor, the attorneys in charge of that project would welcome the opportunity to review their work on those subject with you.

Be assured that I fully understand your having to cancel the trip to Washington State. Whenever you can select a period of time in September that will fit your schedule, I will certainly be happy to arrange the schedule.

Best Regards,



Douglas R. Nash

DRN/ea

enclosures



A BILL

DRAFT COPY
OFFICE USE ONLY

To restrict further fractionation of trust allotments made to members of the Kootenai Tribe of Idaho, allow for tribal purchase of interests in trust allotments, appropriation of funds for a tribal land purchase program and other purposes.

Be it enacted by the Senate and House of Representatives of the United States of American in Congress assembled, that this Act may be cited as the "Kootenai Land Acquisition Act."

Sec. 2. For the purpose of this Act --

A. "Kootenai Tribe" means the Kootenai Tribe of Idaho.

B. "Tribal member" means a person who is a member of the Kootenai Tribe and who is one-fourth degree or more blood of such tribe.

C. "Secretary" means the Secretary of the Interior or his designee.

D. "Area aboriginally occupied" means that land found by the Indian Claims Commission to have been exclusively used and occupied by the Kootenai Tribe of Idaho in aboriginal times, to wit: Beginning on the northwest on the International Boundary at the crest of the Selkirk Mountains and running along the crest of said mountains in a southeasterly direction to the headwaters of Ross Creek, thence in a northeasterly direction along the crest of the mountains between Ross Creek and Bull River to the crest between Bull River and Libby Creek, thence along said crest to Kootenay Falls, thence in a direct northerly



direction to the International Boundary, thence westerly along said boundary to the point of beginning. 5 Ind. Cl. Comm. 456, 461-2, Docket No. 154, August 9, 1957.

E. "Third Party" means any person, corporation or organization legally competent to hold title to land other than the Kootenai Tribe and its individual members.

F. "Trust or restricted land" means land, title to which is held in trust by the Secretary of the Interior for the members of the Kootenai Tribe or land upon which the Secretary has placed restrictions against alienation and which is non-taxable, including lands in heirship status.

Sec. 3. A. A person who is not an enrolled member of the Kootenai Tribe with one-fourth degree or more blood of such tribe shall not be entitled to receive by devise or inheritance any interest in trust or restricted land situated within the area aboriginally occupied by the Kootenai Tribe if while the decedent's estate is pending before the Administrative Law Judge, the Kootenai Tribe pays to the Secretary, on behalf of such person, the fair market value of such interest as determined by the Secretary after appraisal.

B. On request of the Kootenai Tribe, the Administrative Law Judge shall keep an estate pending for not less than two years from the date of decedent's death.

C. When a person who is prohibited by



Section 3(A) from acquiring any interest by devise or inheritance is a surviving spouse of the decedent, a life estate in one-half of the interest acquired by the Kootenai Tribe shall, on request of such spouse, be reserved for him or her and the value of such life estate so reserved shall be reflected in the Secretary's appraisal.

Sec. 4. A. No member of the Kootenai Tribe who holds an interest in any trust or restricted land in the area aboriginally occupied by the Kootenai Tribe shall sell or otherwise convey his interest in such land to any person not a member of the Kootenai Tribe with less than one-fourth blood without affording the Kootenai Tribe a reasonable opportunity to purchase his interest at the fair market value or for an amount equal to a bona fide offer made in writing to the owner of the interest by a third party.

B. The sale of an interest in any trust or restricted land to a third party after the option to purchase has been offered to and declined by the Kootenai Tribe, at a price below that contained in the original offer by such third party, shall be void.

C. No fee patent for any of the trust or restricted allotments held by members of the Kootenai Tribe shall hereafter be issued unless there is inserted, as part of the fee patent, a provision reserving for the Kootenai Tribe the right of first refusal prior to any



subsequent sale of that land by the holder of the fee patent. If the Kootenai Tribe opts to purchase the land under its right of first refusal, the price shall be determined in a manner not inconsistent with the provisions of this act.

D. Any sale or conveyance to a third party in a manner inconsistent with this section shall be void ab initio.

Sec. 5. A. For the purpose of acquiring and effecting consolidation of land situated within the area aboriginally occupied by the Kootenai Tribe, the Secretary is authorized to:

(1) Purchase for the Kootenai Tribe, with tribal funds on deposit in the United States Treasury, or otherwise, any lands held by individual members of the Kootenai Tribe under trust patent or other restrictions against alienation including lands in heirship status and including interests therein or improvements thereon, water rights and surface rights; and

(2) Exchange any tribal trust lands including lands, interests, improvements and rights acquired under this Act for other lands situated within the area aboriginally occupied by the Kootenai Tribe including fee patent lands or lands under trust patent or other restrictions against alienation including land in heirship status; and

(3) Take title to any non-trust lands or interests therein situated within the area aboriginally occupied by the Kootenai Tribe



by purchase, gift, devise, exchange, assignment or condemnation.

B. The Secretary shall obtain the advice and consent of the Kootenai Tribe before investigating, commencing or entering into any such transaction.

C. With the exception of any condemnation actions, the terms and conditions of any transaction under this section, including the price at which any land is to be purchased and the valuation of any lands to be exchanged, shall be mutually agreed upon by the Secretary, the Kootenai Tribe, and the individuals concerned.

Sec. 6. All lands or interests in lands acquired by or for the Kootenai Tribe under this Act shall be held in trust by the Secretary for the Kootenai Tribe.

Sec. 7. There is hereby authorized to be appropriated \$600,000, to be deposited in the account of the Kootenai Tribe in the United States Treasury for the purchase of land under this Act.

Sec. 8. The provisions of this Act shall apply to all estates pending before an Administrative Law Judge on the date of this Act and to all future estates but shall not apply to any estate heretofore closed, and shall apply to all future transfers of interests in trust or restricted land.



Sec. 9. The Secretary is authorized and directed to promulgate such rules as are necessary to implement and carry out this Act.



DRAFT COPY
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The Kootenai (also Kutenai) Tribe of Indians originally occupied an area that is now northeast Idaho, northwest Montana, and the Kootenai River drainage in Canada. The Tribe consisted of several bands, which were politically independent of each other and which were organized with its own chief or headman. Culturally, the bands are divided into two groups - the Upper and Lower Kootenai. The Lower Kootenai was composed of two and possibly three separate and independent bands - the Bonners Ferry Kootenai, the Creston, British Columbia Band, and possibly the Nelson Band. Of these, only the Bonners Ferry Band, now the Kootenai Tribe of Idaho, held land in what is now the United States. It has been ruled that the Kootenai Tribe of Idaho held aboriginal title to 1,160,000 acres of land in what is now northeastern Idaho and northwestern Montana. 5 Ind. Cl. Comm. 456-77 (1957).

The Act of July 31, 1854 (10 Stat. 315, 329-330) authorized the negotiation of treaties with Indian Tribes in Washington Territory. By letter of August 30, 1854, the Commissioner of Indian Affairs notified then Governor of the Washington Territory, Isaac I. Stevens, of his appointment to conduct negotiations for treaties with the Indians in the Territory. That letter directed Governor Stevens to make conventional arrangements "... with all the Tribes and fragments of Tribes... by which the United States will extinguish their claim of title to all lands within the Territory..."

On July 16, 1855, at Hell Gate, Montana, Governor Stevens concluded a treaty with Flathead, Kootenai, and Upper Pend d'Oreille Indians as a confederated tribe. By Article I of this treaty (12 Stat. 975), these tribes ceded a vast tract of land amounting to approximately 16 million acres and reserved for themselves a reservation of 1,243,969 acres which became the Flathead Indian Reservation in western Montana. The treaty was ratified by the



Senate on March 8, 1859, and proclaimed by the President on April 18, 1859.

The lands ceded to the United States by the treaty of Hell Gate included the lands that had been exclusively used and occupied by the Bonners Ferry Band of Kootenai, however, that band was neither a party to, nor was it represented at, the treaty of July 16, 1855. 5 Ind. Cl. Comm. 456, 461 (1957).

Subsequently, the Flathead, Kootenai, and Upper Pend d'Oreille Tribes that were a party to the Hell Gate treaty filed an action (Docket No. 61) in the Indian Claims Commission pursuant to the Act of August 13, 1946, 60 Stat. 1049, 25 U.S.C. §70, against the United States, seeking additional compensation for lands ceded by them in their treaty. The Kootenai Tribe of Idaho filed a similar action on July 23, 1951, and it was consolidated for trial with Docket No. 61. However, upon a showing by the Kootenai Tribe of Idaho that they were a group entirely separate from the Kootenai in Docket No. 61 and that they held their lands independently of that group of Kootenai, their action was severed from Docket No. 61 and they were allowed to pursue their claim (Docket No. 154) independently. As a result, a judgment was entered pursuant to a Joint Motion for Entry of Judgment in the amount of \$425,000 after all allowable deductions, credits, and offsets in favor of the Kootenai Tribe of Idaho.

Within the area aboriginally occupied by the Kootenai Tribe of Idaho, individual members of the tribe received public domain allotments under the Act of February 8, 1887 (24 Stat. 388) as amended by the Act of February 28, 1891 (26 Stat. 794); however, no land was set aside for the tribe. The largest allotments made under these two acts were one-eighth section of land. During the period of _____, 76 individual allotments were made totaling _____ acres. All of the allotments were located in the Kootenai River Valley on agricultural land.



While these allotments were undoubtedly of considerable benefit to the individuals who received them originally, their value to the people now holding interests in them is currently, to a large degree, doubtful. Under the 1887 allotment act, it was required that state inheritance laws govern the descent and distribution of allotments. Act of February 8, 1887, c.119, §5, 24 Stat. 389; 25 U.S.C. §348. The result is that these lands are enmeshed in what has come to be known in Indian country as the "heirship problem".

The land has passed from the original allottee to his heirs, from his heirs to their heirs and so on over the past decades in such a manner that the number of interests in one piece of land increases in a pyramidal fashion. The situation is compounded by the fact that, for a variety of reasons, some interests lose their trust status. The result borders on being unbelievable. Bureau of Indian Affairs records for 1967 reflect the following.

For Kootenai Allotment #26 which contains 90.90 acres and has a total base rental of \$257.92 per year, there were a total of 59 people holding undivided interests. Twenty-nine of these were trust interests and the remainder were non-trust. The largest fractional trust share was $52,062,750/262,440,000$ which received \$51.17 in annual rentals. There were five fractional interests of $116,640/262,440,000$ each of which had a yearly rental income of \$.11.

For Kootenai Allotment #46 which contains 80.65 acres and has a total base rental of \$192.87 per year, there were 67 undivided interests 30 of which were held in trust. The largest trust interest amounted to $52,062,750/524,880,000$ of the total allotment and received \$19.13 per year rent. The smallest, of which there were five, was $116,640/524,880,000$ of 80.65 acres which yielded an annual rental of \$.05.

The land records provides other examples of the havoc the allotment and inheritance laws have wreaked on these parcels of



land. Suffice it to say that fractionation of these allotments is a problem - one that has impacts far beyond what might be expected.

It is a problem for the federal government who, as trustee, must maintain records, collect and distribute rent monies, and calculate the astronomical fractions to determine ownership of an undivided interest that has passed through several generations. The money that this process consumes could undoubtedly be better spent in some other Indian program. It makes little sense to devote hours of work to determine that a person is entitled to \$.05 as his share of annual rentals and mail him a check for that amount in an envelope that costs \$.10 to mail.

It is a problem for the many individuals who hold minute interests in these lands. Whatever benefits the original allottees were supposed to derive from these allotments has long been lost due to fractionation. Because of the type of land involved, most interests are far too small for the owner to engage in any farming operations. His only method of utilization has been to lease his interest to local non-Indian farmers for a small amount. Many have reached the point of selling their small interests to local interests rather than receiving a few cents a year as rentals.

Fractionation of this land has also caused problems for the tribe. For the lack of a reservation, the tribe has been totally without a system of regularly financing tribal government operations and, consequently, has been unable to develop long range programs for the benefit of all its members.

Despite the fact that this tribe has never had a reservation, it is organized and is federally recognized, operating under a constitution and set of by-laws that were approved on June 16, 1947. The tribe has not been idle by any means. Through their efforts, the Catholic Church recently returned five acres of land to the tribe and a bill is now pending in Congress which would return 12.5 acres of land. However, a viable amount of tribally held



land, indeed, a reservation, is badly needed by this tribe so that an economic base can be established and so that tribal programs for its members can be developed with the assurance that they can be placed on tribal lands. Tribal projects such as housing programs, a farming enterprise, a community center and offices for tribal government would be a definite source of pride and unity in the tribe not to mention a tangible benefit for every member.

The Kootenai Tribe of Idaho proposes the attached bill be introduced to remedy all of the problems outlined above.

Section 2 of the bill provides definitions to be used for certain terms.

Section 3 limits the inheritance of trust interests to tribal members and provides the tribe with an opportunity to purchase interests that would be inherited by non-members. This section is patterned after acts now in force that apply to the Yakima, Nez Perce, and Warm Springs Tribes.

Section 4 provides a system whereby land that is currently held in trust cannot be sold or otherwise conveyed to non-members without first giving the tribe the chance to purchase the land at a fair price.

Section 5 authorizes the Secretary of the Interior to purchase, exchange and acquire by other means, lands for the tribe with the desired amount of tribal input into such transactions.

Section 6 requires that all lands acquired be held in trust for the tribe.

Section 7 appropriates \$600,000 for purposes of land acquisition for the tribe. That figure was used based on the following: 1) An acre of cultivated land in that area has a value of approximately \$600.00. 2) A lessor's income from an acre of cultivated land will be 6% per annum of net land value,



hence, for one acre the income would be \$36.00. Thus, the \$600,000 should purchase 1,000 acres of cultivated land which should produce an annual income for the tribe, if leased, of \$36,000 which would initially allow them to purchase individual trust interests as they became available and would later provide them with the economic base to develop tribal programs with little or no federal assistance.

Section 8 defines those transactions and probates that will be subject to this act.

Section 9 provides for rulemaking by the Secretary.

This bill, if enacted by Congress, would provide the Kootenai Tribe of Idaho with a land base that has been denied them thus far - an aspect of tribalism that has proved essential to tribal existence and progress. Further, the bill has the potential of freeing the tribe from its current dependency on federal programs - truly an important step towards self-determination.



MEMORANDUM
OF CALL

TO:

BRAD

☐ YOU WERE CALLED BY—

☐ YOU WERE VISITED BY—

Doris Meisner

OF (Organization)

DOJ



PLEASE CALL →

PHONE NO.
CODE/EXT.

739-5137



WILL CALL AGAIN



IS WAITING TO SEE YOU



RETURNED YOUR CALL



WISHES AN APPOINTMENT

MESSAGE

Indian Task Force.



RECEIVED BY

DATE

TIME

STANDARD FORM 63

REVISED AUGUST 1967

GSA FPMR (41 CFR) 101-11.6

☆ U. S. GPO: 1972 - 472-749

63-108

July 29, 1974

Dear Carl:

As you leave the Department of Justice to pursue further graduate studies in England, I want to tell you personally how much it will be our loss that you go.

In federal courtrooms, on Reservations, and as Head of the new Office of Indian Rights, you have been a pioneer in strengthening the President's policy of more effectively ensuring justice for Indian people. Neither the Department of Justice nor the Federal Government will be the same again for your having been here as our colleague.

I want to congratulate you on your past outstanding work confident that ahead of you lies a splendid and constructive career.

Sincerely,

Leonard Garment
Assistant to the President

Mr. Carl Stolber
Office of Indian Rights
Department of Justice
Washington, D. C.

cc: The Attorney General



Jonathan C. Rose
Associate Deputy Attorney General

Carlton R. Stoiber
Director
Office of Indian Rights

Tentative Agenda--Intradepartmental Review
of Indian Litigation

The following draft agenda is, of course, subject to substantial amendment; and is only intended as an initial working paper. I have divided the paper into subject matter areas, with specific problems set forth under those categories. From this list of problems, I have identified those which can be followed up in some fashion immediately. Draft queries to appropriate departmental units are attached to the agenda.

I. Assignment of Litigation

- A. Predicate: Some federal statutes involving Indians are poorly enforced (if at all) because: (1) they are assigned to a departmental unit which lacks expertise in or policy identification with such cases; or (2) lack of clear assignment results in such cases falling between jurisdictional lines.

Examples: Criminal statutes proscribing embezzlement of tribal funds; Indian Bill of Rights litigation prior to the clarifying of CFR by Attorney General's order of September 1973; defense of certain civil suits against the federal government.



Inquiry: All litigating Divisions should be surveyed to determine what types of Indian litigation they currently handle. To avoid confusing perceptions with reality, divisions should be asked to specifically indicate statutes they administer which affect Indians; the approximate number of cases brought under such statutes during the preceeding two years; what guidelines are used to determine whether such cases will be brought; and whether reassignment within the Department should be considered.

Action: Solution of problems in this area could involve the following; (1) reassignment of responsibility for certain types of litigation in CFR; (2) amendment of CFR provisions to make assignment explicit; (3) memoranda to respective divisions to alter prosecutive or litigative guidelines if they fail to reflect division responsibilities.

II. Investigation of Matters

- A. Predicate: Federal crimes on Indian reservations are poorly investigated because: (1) they are a relatively low priority with the F.B.I., (2) agents lack understanding of unique legal aspects of these cases; (3) agents often do not understand Indian cultural and social values; and (4) coordination with tribal or B.I.A. police is poorly developed.

Examples: See study entitled "Federal Prosecution of Crimes Committed on Indian Reservations" prepared by National American Indian Court Judges Association.



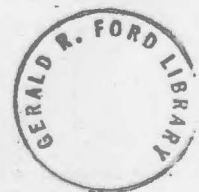
Inquiry: Determine from the F.B.I.: (1) whether any special training in Indian law or investigative techniques specially tailored to Indian matters is currently provided to agents. The specific nature of such training should be outlined; (2) to what extent has the Bureau actively sought to hire qualified Indians as agents, for assignment to reservation areas; (3) what guidelines have been developed for dividing investigative responsibilities between agents and tribal or B.I.A. police.

Action: The Department should consider: (1) re-instituting special training in Indian law and cultural values for F.B.I. agents; (2) embarking on special recruitment efforts to employ and train Indians as agents; (3) developing (with the cooperation of the Department of Interior) a set of written guidelines clarifying the division of investigative responsibilities between B.I.A. or tribal police and the F.B.I.

- B. Predicate: Investigation of federal civil rights matters involving Indians has been hampered by refusal of Indian people to cooperate with F.B.I. agents because these same agents have close relationships with subjects of investigations (i.e., tribal police or officials).

Examples: Pine Ridge election investigation; investigation of charges that David Hill was assaulted by Sioux Falls, South Dakota police.

Inquiry: What happened to the F.B.I. policy of having civil rights matters involving persons associated with local agents investigated by agents from other localities?



Action: (1) Develop a rule that agents from outside a locality would be assigned to investigate matters involving law enforcement officers or other persons who have been associated, in some way with local agents; (2) Develop a special unit of investigators of Indian matters within the F.B.I. or elsewhere in the Department.

III. Conduct of Litigation

- A. Predicate: Many potentially meritorious prosecutions of crimes occurring on Indian reservations are not initiated because such cases are a low priority with United States Attorneys' offices.

Examples: Numerous charges by Indian groups that liquor law violations and major crimes act cases are not prosecuted on reservations.

Inquiry: Determine from selected U.S. Attorneys in districts with large Indian populations: (1) how many total matters were investigated under Indian statutes in that district during the past two years; (2) how many cases were brought under Indian statutes during that same period; (3) whether they feel that Indian litigation consumes too little or too much of that office's resources, and whether they would suggest any changes in the handling of such cases.

Action: Memorandum from Deputy Attorney General to United States Attorneys to elevate priority of Indian cases in specific areas.



- B. Predicate: Indian litigation brought by the government is poorly handled because Assistant United States Attorneys assigned to such cases lack experience or interest in Indian law.

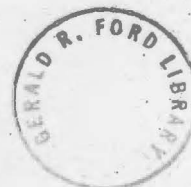
Examples: United States v. Albert Six Feathers, Jr. (South Dakota); Mancari v. Morton (New Mexico); United States v. Mazurie (Wyoming); Cameron v. Whirlwindhorse (North Dakota); United States v. Blackfeet Tribe (Montana).

Inquiry: Do any of the United States Attorneys provide that AUSA's receive special training in Indian law; or whether any specific Assistants are identified to handle all or the substantial part of the district's Indian litigation.

Action: Provide special training opportunities for AUSAs in Indian law; select at least one AUSA in each district as primarily responsible for Indian litigation. Hire Indian lawyers as AUSAs.

- C. Predicate: Indian litigation has resulted in conflicting positions being taken by the federal government in the courts because of a lack of policy coordination within the Department of Justice or with other federal agencies.

Examples: United States v. Blackfeet Tribe (Montana) as compared with United States v. Mazurie (Wyoming); United States v. Critzer (North Carolina); prosecution of migratory bird feather cases (W.D. Oklahoma).



Inquiry: Litigating Divisions and United States Attorneys should be surveyed to determine whether (1) they feel greater policy coordination is necessary; and (2) what specific ways this could be accomplished.

Action: A wide variety of options which should be considered include: (1) requiring certain kinds of Indian cases to receive the prior approval of the appropriate Division (would require amendment of United States Attorneys Manual); (2) Issuing a departmental publication equivalent to "Proving Federal Crimes" which would make explicit the Department's view on the legal and policy issues which frequently arise in Indian litigation; (3) establishing a special assistant for Indian litigation in the DAG's office or elsewhere, who would be empowered to review legal positions taken by the Department in Indian cases; (4) publication of Departmental guidelines on Indian litigation in the United States Attorneys' Bulletin; (5) other formal or informal mechanisms for policy coordination (such as presentations at U.S. Attorney conferences; circulation, with comments, of particularly relevant law review articles, etc.)

- D. Predicate: The government's position as advocate and trustee for Indian resources is handicapped by conflicts of interest arising from its duty to represent competing federal interests.

Example: pueblo water rights cases in New Mexico



Inquiry: Lands Division, the Department of Interior Solicitor's office, and Indian legal organizations should be surveyed to determine their view of this matter, including recommendations.

Action: Pending enactment of Trust Counsel Authority legislation the Department might wish to consider; (1) establishing an Indian Trust Section within the Lands Division to handle such litigation; (2) identification of specific attorneys within the General Litigation Section as persons solely responsible for advocating the Indian position in conflict cases; (3) expansion of the "split brief" concept in appeals courts; (4) other appropriate devices for reducing conflict of interest situations.

IV. Law Enforcement

- A. Predicate: In potential or actual civil disorder situations on Indian reservations, the federal government has often failed adequately to discharge its special law enforcement responsibilities because of poor coordination between the numerous agencies affected.

Example: Wounded Knee

Inquiry: All federal agencies affected should be surveyed to determine what they perceive as their proper role in such matters and what recommendations they have for handling such matters. (at minimum such a group would include: DAG's office; F.B.I., U.S. Marshals Service, Criminal Division, Civil Rights Division, Community Relations Service, Bureau of Indian Affairs, and Interior Solicitor's office).



Action: A detailed written plan of coordinating the federal response to civil disorders on Indian reservations should be drafted to include; (1) a flexible heirarchy of responses to a variety of situations; (2) an outline of the responsibilities of various agencies; (3) a list of persons to be contacted in such circumstances.

- B. Predicate: Law enforcement on most reservations is poorly handled because: (1) there are far too few police to do the job; and (2) these police lack training, proper equipment and support.

Examples: Pine Ridge Reservation, South Dakota; San Carlos Apache Reservation (Arizona); Ft. Peck Reservation (Montana).

Inquiry: Determine from Bureau of Indian Affairs, Prevention and Enforcement Services branch whether increased funding for Indian law enforcement programs is being sought, and what support the Justice Department could lend to such an effort. Determine from L.E.A.A. the level of current support for Indian programs and whether increases would be appropriate. Determine from F.B.I. and Marshals Service whether training has been given to Indian law enforcement personnel, and whether such a program (if any) should be expanded.

Action: (1) Support any Interior approach to OMB or Congress for increased funding for Indian law enforcement services; (2) Encourage L.E.A.A. to give greater priority to Indian law enforcement programs; (3) Develop training programs by F.B.I. or other departmental units tailored to the special needs of Indian police.



C. Predicate: Litigation challenging the right of state prisons to regulate the religious and cultural expression of inmates is soon likely to reach the federal system. Therefore, a re-examination of Bureau of Prison policy in this area is indicated.

✓ Examples: Teterud v. Gillman (Iowa) and Crowe v. Erickson (South Dakota) both involved regulations which have the effect of preventing Indian inmates from wearing their hair in the traditional long, braided style.

Inquiry: Determine the Bureau of Prison's view of this issue, and whether a change in policy would be necessary or desirable to give the broadest possible latitude to Indian religious and cultural expression.

Action: Change Bureau of Prison regulations to permit religiously grounded conduct (including hair styles) of Indian inmates.



Central
File

December 6, 1972

Dear Dave:

In further response to your letter of November 10, I have discussed this suggestion with Leonard and with the Department of Justice people.

It has been our view that better services could be rendered the Indians under the present organization. While the amount of Indian litigation pending at any time is limited, its scope is very broad. By using the personnel of the Land and Natural Resources Division on Indian cases where required, the Department of Justice is able to use attorneys with expertise in various subjects which would not be possible if a separate Indian Division were created. For example, the Department has pending one or two cases involving surveys of Indian allotments. The factual and legal questions are substantially the same as in cases dealing with surveys of other federal lands. All of the cases of this nature are not sufficient to keep one attorney occupied full time, but they do justify an attorney spending considerable time to become acquainted with the subject. If the one or two cases involving Indian lands were assigned to a separate Division, it could not be expected that the attorney there would be as well qualified to handle survey cases as an attorney of the Land and Natural Resources Division who would be more experienced in the field.

If a separate Indian Division were created, it would be a very small division. Experience has shown that the volume of Indian work varies greatly from year to year. Such a small division would have very little flexibility in the assignment of cases to attorneys and might find it extremely difficult to handle the fluctuations in the volume of the work. With such a small staff the normal turnover of personnel could cause very serious interruptions.

These suggestions only illustrate the problems which we would expect to incur if an Indian Division were created within the Department.

Of course the Trust Counsel, as you recognize, is the real answer in the long range, and we hope that with the new Congress assembling this needed reform will have another and better chance.



C-File

2

Dave, you should always feel free to identify particularly significant or landmark cases where in your opinion the government's position is crucial to the protection of Indian rights -- and bring them to our attention. I hope you join us in being pleased at the governments briefs in the Pyramid Lake, Mescalero, McClanahan, Tonasket and Kahn cases now pending in the Supreme Court. We find Kent Frissell, furthermore, to be an attractive and positive new man in the strategic position he occupies.

Cordially,

Bradley H. Patterson, Jr.

Mr. David H. Getches
Directing Attorney
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302



November 14, 1972

Dear Dave:

I appreciate having your letter of the 10th
and will see what kind of reaction it evokes
and will be back in touch with you.

With cordial personal regards,

Sincerely,

Brad Patterson, Jr.

Mr. David H. Getches
Directing Attorney
Native American Rights Fund
1506 Broadway
Boulder, Colorado 80302



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David H. Getches
Deputy Director
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(202) 785-4166

Staff Attorney
L. Graeme Bell III

10 November 1972

Mr. Bradley Patterson
The White House
Washington, D.C. 20009

Dear Brad:

It was good to see you, although briefly, at the recent meeting of the National Congress of American Indians.

For some time attorneys on our staff have been discussing ways in which better legal representation might be provided for American Indians. Of course, the administration's Indian Trust Counsel Authority proposal is an excellent way to achieve such results, but Congress has not seen fit to make it a reality. We believe the spirit of the Indian Trust Counsel Authority proposal can be implemented administratively, however, specifically, we urge consideration of establishing a division of the Department of Justice which would handle exclusively the representation of Indian tribes and individuals in cases in which they are not adverse to the United States. A similar unit within the Interior Department Solicitor's Office would be set up exclusively for the advocacy of Indian interests; the client would be the Commissioner of Indian Affairs, not the Secretary of Interior.

The cases that the Solicitor's Office for Indian Affairs and the Indian Division of the Department of Justice would handle would not be limited to natural resources protection. A major area of litigation against the states as you are aware, concerns excessive assertions of state jurisdiction over Indians. This, and other problem areas, would be important fields of activity for the new units.

The proposed unit would have the sole responsibility of advocating Indian interests. They would not be responsible in any way for the defense of claims against the United States or against federal officials, nor would they assume any position which would be adverse to Indians. Such representation and advocacy would be handled by other units within the Justice and Interior Departments. The offices would work closely with Indian tribes, apprise them of their legal rights and responsibilities and work closely with them and their private attorneys to prosecute claims against the states and private persons, as well as defending them in litigation with such non-federal parties.



Native American Rights Fund

Mr. Bradley Patterson
10 November 1972
Page 2

I will not dwell on instances in which the United States has been unable to give its undivided support for Indian interests in litigation. These instances are well-documented in congressional hearings and, of course, in Reid Chambers' "Study of Administrative Conflicts of Interests in the Protection of Indian Natural Resources." Testimony by officials of this administration before congressional committees has been most candid in recognizing the existence of institutional conflicts of interests and the difficulties of the Departments of Interior and Justice in this regard. The President's statement on this subject in the July, 1970 Message to Congress convinces me that you well understand the problem.

In implementing the proposed changes, a talent search for capable and vigorous attorneys would be launched both within and without the existing departmental structure. Those persons presently in other divisions of the Justice Department and within the Interior Department Solicitor's Office who have proved not only their abilities but their willingness to advocate strongly on behalf of the American Indian interests would be easily identifiable. Someone in each of the regional offices of the Interior Department Solicitor could be assigned the task of Indian advocacy and would be responsible primarily to the Indian Solicitor's Office, while perhaps under the administrative direction of the Regional Solicitor. Finally, it might be wise to consider locating the Indian Division of the Department of Justice physically apart from the existing department office. Location of the office in the West might enhance its credibility and underscore its independence from other divisions of Justice which sometimes find themselves representing interests adverse to Indians.

I hope you will give serious consideration to this proposal, or some variation of it, as a way to develop concept of the Indian Trust Counsel Authority without legislation. I recognize that much of the argument for Indian Trust Counsel Authority legislation may be lost if the proposal is put into effect, but there are two answers to this argument. First, a separate budget and institutional independence still may be necessary or desirable for the proper functioning of Indian legal representatives. Second, the administration's creation of the new arrangement can be cited as evidence of the urgency for change and an interim solution which might provide the personnel and structure for the Indian Trust Counsel Authority.



Native American Rights Fund

Mr. Bradley Patterson
10 November 1972
Page

If you would like to discuss these matters further with me or others in our office, we would welcome the opportunity to speak with you about them.

Sincerely,

David H. Getches
David H. Getches *HE*
Directing Attorney

DHG/mcp

cc: Reid Chambers
L. Graeme Bell



Department of Justice
Washington, D.C. 20530

November 27, 1972

Mr. Bradley Patterson
The White House
Washington, D. C. 20009

Dear ~~Mr. Patterson:~~ *Good,*

This is in response to your memorandum of November 14, 1972, enclosing a copy of a letter dated November 10, 1972, from David H. Getches, Esquire.

Mr. Getches suggests, insofar as this Department is concerned, that a division be established which would handle exclusively the representation of Indian tribes and individuals in cases in which they are not adverse to the United States. Similar suggestions have received the consideration of this Department from time to time, but from a practical standpoint we have not felt they were meritorious.

It has been our view that better services could be rendered the Indians under the present organization. While the amount of Indian litigation pending at any time is limited, its scope is very broad. By using the personnel of the Land and Natural Resources Division on Indian cases where required, we are able to use attorneys with expertise in various subjects which would not be possible if a separate Indian Division were created. For example, we have pending one or two cases involving surveys of Indian allotments. The factual and legal questions are substantially the same as in cases dealing with surveys of other federal lands. All of the cases of this nature are not sufficient to keep one attorney occupied full time, but they do justify an attorney spending considerable time to become acquainted with the subject. If the one or two cases involving Indian lands were assigned to a separate Division,

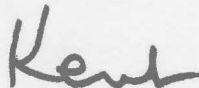


it could not be expected that the attorney there would be as well qualified to handle survey cases as an attorney of the Land and Natural Resources Division who would be more experienced in the field.

If a separate Indian Division were created, it would be a very small division. Experience has shown that the volume of Indian work varies greatly from year to year. Such a small division would have very little flexibility in the assignment of cases to attorneys and might find it extremely difficult to handle the fluctuations in the volume of the work. With such a small staff the normal turnover of personnel could cause very serious interruptions.

These suggestions only illustrate the problems which we would expect to incur if an Indian Division were created within this Department. If the Indians feel that a separate unit should be created to furnish them legal representation, we believe the creation of an independent agency, such as the Indian Trust Counsel, would be preferable to the creation of a separate division within this Department.

Sincerely,



Kent Frizzell
Assistant Attorney General
Land and Natural Resources Division



UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Wallace H. Johnson
Assistant Attorney General
Land and Natural Resources Division

FROM : Marshall L. Miller -M4
Associate Deputy Attorney General

DATE: January 30, 1974

SUBJECT: The Land Division and Indian Litigation

There seems to be a good deal of dissatisfaction within the Indian leadership over the handling of Indian litigation, especially water rights cases, by the Land Division. It may be that those most dissatisfied are also the most vocal, and of course some dissatisfaction is to be expected no matter how good a job the division does. I believe, however, that at least some of the dissatisfaction is justified and that solutions should be found.

The Indian Trust Council solution proposed by the President in 1971 is not receiving much support from the Indian community and appears uncertain of passage. Needed changes in Interior's organization also appear unlikely at this time. So what can be done within the general existing structure of the Justice Department and, more particularly, within the Land Division?

As you well know, one of the problems is that the division has only recently been attracting higher caliber lawyers. Moreover, attorneys within the division do not usually consider Indian cases as their first line of work, or even as an important part of their work. This may not even be a wrong attitude in view of the division's overall priorities, but it is likely to work real hardship in particular cases.

One solution might be to follow the lead of the Civil Rights Division by setting up a special group within the division to handle cases primarily for the Indian interest. This is also in line with prior approaches of the Land Division. When the Indian Claims Commission was set up the division established a special section to litigate against the Indian Tribes in Claims Commission cases. Similarly, the division has a special and highly competent section on Marine resources, an area of law able to attract talented men to the division.



It should be possible to attract a small group of talented lawyers interested in water rights and Indian rights who would concentrate in these areas, much as has been done with marine resources. Persons in the division who are handling Indian cases, but who have no special interest (or competency) in them could be relieved of those duties.

The section should have sufficient staff to do the Indian work presently done by the general litigation section and the appellate section including a good part of the inland water litigation where Indian interests are a major interest at stake. Those few water rights cases not concerning Indians could be handled by the general litigation section and the appellate section as in other cases. The location of the Indian Section as part of the Land Division should let it draw on the experience and advice of the rest of the division and contribute to the rest.

These suggestions are only tentative, since I have only dealt with Indian affairs for a couple of months, but I do hope they will be helpful.





United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

Legislation

SEP 5 1974

Memorandum

To: Central Office Directors
All Area Directors
All Agency Superintendents

From: Commissioner of Indian Affairs

Subject: Preliminary Legislative Program for First Session of the 94th Congress.

We have been requested by the Legislative Counsel's Office to submit no later than October 14, 1974, items which we wish to have incorporated in the Department's Preliminary Legislative Program for the First Session of the 94th Congress. Please submit your suggestions in the same format as in previous years (copy attached) through the following channels:

Superintendents through Area Directors

Area Directors through Commissioner of Indian Affairs

Central Office Directors to the Congressional and
Legislative Affairs Staff

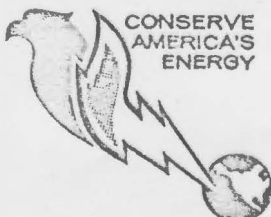
It is especially important that any legislative items involving additional cost to the Federal government, and the amount of funds required, be included.

The above information should reach the Congressional and Legislative Affairs Staff no later than October 4, 1974.

Your cooperation will be appreciated.


Commissioner

Enclosure



Save Energy and You Serve America!



INDIAN AFFAIRS

PART I - PRESIDENT'S PROGRAM PROPOSALS

1. To provide for the economic development and management of the resources of individual Indians and Indian tribes, and for other purposes ("Indian Resources Development Act") -- This legislation is needed to remove many of the economic barriers which surround Indians, closing them off from fullest development and use of their resources. It will enable Indians to enter the money markets of the Nation to secure the capital so essential to individual and community development. It also provides a method of consolidating into economical usable units trust lands that often are seriously checkerboarded as a result of allotment processes.

This proposal was submitted in the first session of the 90th Congress and introduced as S. 1816 and H.R. 10560. Hearings were held in both the Senate and the House but no action was taken.

Estimated cost \$525 million.

PART II - ALL OTHER PROPOSALS

2. To settle the land claims of Alaska Natives, and for other purposes -- This proposal would provide a means of resolving the Native land ownership problem.

This proposal was submitted in the first session of the 90th Congress and introduced as S. 1964 and H.R. 11213. Also introduced were similar bills S. 2020 and H.R. 11164, which are not considered adequate. No action.

The costs of this proposal cannot be estimated.



93^d CONGRESS
2^d SESSION

H. R. 16058

IN THE HOUSE OF REPRESENTATIVES

JULY 22, 1974

Mr. ULLMAN introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1954 to provide the same tax treatment for recognized Indian tribes as are applicable to other governmental units.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Indian Tribal Govern-
4 mental Status Act".

5 FINDINGS AND DECLARATION OF PURPOSE

6 SEC. 2. The Congress finds that—

7 (a) the governmental status and powers of Indian
8 tribes have been repeatedly recognized and affirmed by
9 the Congress, the executive branch, and the courts from
10 the earliest days of the Republic, and

★I—O



1. (b) notwithstanding such recognition, Indian tribes
2 are subject to certain Federal taxes from which States
3 and subdivisions of States are exempt, and

4 (c) the exemption of Indian tribal governments
5 from such taxes would be consistent with the Federal
6 laws and treaties recognizing the governmental status
7 of Indian tribes and with the role of Indian tribes in
8 providing public services to Indians.

9 RETIREMENT INCOME

10 SEC. 3. Subsection (f) of section 37 of the Internal
11 Revenue Code of 1954 (relating to the credit given for
12 receipt of retirement income from a public retirement sys-
13 tem) is amended by inserting after "a possession of the
14 United States," "a recognized Indian tribe,".

15 CONTRIBUTIONS TO CANDIDATES FOR PUBLIC OFFICE

16 SEC. 4. Paragraph (4) of subsection (c) of section 41
17 of the Internal Revenue Code of 1954 (relating to credits
18 and deductions for political contributions) is amended by
19 inserting after "States", "any recognized Indian tribe,".

20 INTEREST ON GOVERNMENTAL OBLIGATIONS

21 SEC. 5. (a) Subsection (a) of section 103 of the
22 Internal Revenue Code of 1954 (relating to exclusion of
23 interest on certain governmental obligations) is amended
24 by striking out "or a possession of the United States," in



1 clause (1) and inserting in lieu thereof "a possession of the
2 United States, or a recognized Indian tribe,".

3 (b) Subsection (c) of section 103 of the Internal Reve-
4 nue Code of 1954 is amended by inserting after "a gov-
5 ernmental unit" in clause A of paragraph (3) "(including a
6 recognized Indian tribe)".

7 INCOME OF GOVERNMENTS

8 SEC. 6. Subsection (a) of section 115 of the Internal
9 Revenue Code of 1954 (relating to the exclusion of income
10 accruing to governments) is amended by striking out "or
11 any political subdivision thereof" in clause (2) and inserting
12 in lieu thereof "or any recognized Indian tribe, or any politi-
13 cal subdivision of any of the foregoing".

14 SCHOLARSHIPS AND FELLOWSHIP GRANTS

15 SEC. 7. Subparagraph (iv) of subparagraph (A) of
16 paragraph (2) of subsection (b) of section 117 of the In-
17 ternal Revenue Code of 1954 (relating to the exclusion of
18 scholarship and fellowship grants from gross income) is
19 amended by inserting after "a possession of the United
20 States," "a recognized Indian tribe,".

21 DEDUCTION FOR TAXES

22 SEC. 8. Paragraph (3) of subsection (b) of section 164
23 of the Internal Revenue Code of 1954 (relating to deduction
24 of certain taxes from income tax) is amended by inserting



1 after "a possession of the United States," "a recognized
2 Indian tribe,".

3 CHARITABLE CONTRIBUTIONS

4 SEC. 9. Subsection (c) of section 170 of the Internal
5 Revenue Code of 1954 (defining the term "charitable con-
6 tribution") is amended by inserting after "a possession of
7 the United States," in clause (1) "a recognized Indian
8 tribe," and by inserting after "the District of Columbia,"
9 in clause (2) (A) "a recognized Indian tribe,".

10 TAXATION OF EMPLOYEE ANNUITIES

11 SEC. 10. Subparagraph (ii) of subparagraph (A) of
12 paragraph (1) of subsection (b) of section 403 of the
13 Internal Revenue Code of 1954 (relating to taxation of
14 certain employer contributions for employee annuities) is
15 amended by inserting after "a political subdivision of a State,"
16 "any recognized Indian tribe,".

17 TRANSFERS FOR PUBLIC, CHARITABLE, AND RELIGIOUS

18 USES

19 SEC. 11. Paragraph (1) of subsection (a) of section
20 2055 of the Internal Revenue Code of 1954 (relating to
21 deduction from taxable estate of gifts to certain governmental
22 bodies) is amended by inserting after "Territory," "any
23 recognized Indian tribe,".



1 CHARITABLE AND SIMILAR GIFTS

2 SEC. 12. (a) Paragraph (1) of subsection (a) of section
3 2522 of the Internal Revenue Code of 1954 (relating to
4 deduction from taxable gifts of gifts to governmental bodies)
5 is amended by inserting after "Territory," "any recognized
6 Indian tribe,".

7 (b) Paragraph (1) of subsection (b) of section 2522
8 of the Internal Revenue Code of 1954 (relating to deduction
9 from taxable gifts of gifts to governmental bodies) is
10 amended by inserting after "Territory," "any recognized
11 Indian tribe,".

12 RETAILERS' EXCISE TAX

13 SEC. 13. Section 4055 of the Internal Revenue Code of
14 1954 (relating to exemption from retailers' excise tax) is
15 amended by inserting after "Territory of the United States,"
16 "any recognized Indian tribe,".

17 MANUFACTURERS' EXCISE TAX

18 SEC. 14. Subsection (a) of section 4221 of the
19 Internal Revenue Code of 1954 (relating to exemption from
20 manufacturers' excise tax) is amended by deleting after para-
21 graph (4) the word "or", adding after paragraph (5) the
22 word "or", and inserting the following paragraph (6) :



1 “(6) to a recognized Indian tribe for its exclusive
2 use.”

3 REGISTRATION

4 SEC. 15. Paragraph (1) of subsection (b) of section
5 4222 of the Internal Revenue Code of 1954 (relating
6 to registration for ~~certain tax-free~~ sales) is amended by
7 inserting after “local government” in each instance “includ-
8 ing any recognized Indian tribe)”.

9 SERVICES AND FACILITIES TAX

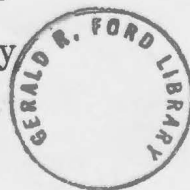
10 SEC. 16. Section 4292 of the Internal Revenue Code
11 of 1954 (relating to exemption from certain communication
12 excise taxes) is amended by inserting after “Territory of the
13 United States,” “recognized Indian tribe,”.

14 DEFINITIONS

15 SEC. 17. Paragraph (1) of subsection (c) of section
16 4482 of the Internal Revenue Code of 1954 (relating to
17 definitions applicable for use tax on certain highway motor
18 vehicles) is amended by inserting after “a Territory of
19 the United States,” “any recognized Indian tribe,”.

20 TAXES ON SELF-DEALING BY PRIVATE FOUNDATIONS

21 SEC. 18. Paragraph (5) of subsection (c) of section
22 4946 (relating to taxes on certain transactions between
23 private foundations and government officials) is amended by
24 inserting after “possession of the United States,” “any
25 recognized Indian tribe,”.



1 CERTAIN TAXES ON SALES AND SERVICES

2 SEC. 19. Subparagraph (C) of paragraph (2) of sub-
3 section (b) of section 6416 of the Internal Revenue Code of
4 1954 (relating to overpayments of certain taxes on sales and
5 services) is amended by inserting after "local government"
6 in each instance "(including any recognized Indian tribe)".

7 GASOLINE USED ON FARMS

8 SEC. 20. Subparagraph (A) of paragraph (1) of sub-
9 section (b) of section 6420 of the Internal Revenue Code of
10 1954 (relating to payments made in connection with gasoline
11 used on farms) is amended by inserting after "political sub-
12 division of a State," "any recognized Indian tribe or
13 subdivision thereof,".

14 GASOLINE USED FOR CERTAIN NONHIGHWAY PURPOSES

15 OR BY LOCAL TRANSIT SYSTEMS

16 SEC. 21. Subparagraph (A) of paragraph (1) of sub-
17 section (i) of section 6421 of the Internal Revenue Code
18 of 1954 (relating to payments made in connection with
19 gasoline used for certain nonhighway purposes) is amended
20 by inserting after "political subdivision of a State," "any
21 recognized Indian tribe or subdivision thereof,".

22 LUBRICATING OIL NOT USED IN HIGHWAY MOTOR VEHICLES

23 SEC. 22. Subparagraph (A) of paragraph (1) of sub-
24 section (g) of section 6424 of the Internal Revenue Code
25 of 1954 (relating to payments made in connection with



1 lubricating oil) is amended by inserting after "political sub-
 2 division of a State," "any recognized Indian tribe or sub-
 3 division thereof,".

4 **FUELS NOT USED FOR TAXABLE PURPOSES**

5 SEC. 23. Subparagraph (A) of paragraph (1) of sub-
 6 section (f) of section 6427 of the Internal Revenue Code
 7 of 1954 (relating to payments made in connection with
 8 fuels not used for taxable purposes) is amended by insert-
 9 ing after "political subdivision of a State," "any recog-
 10 nized Indian tribe or subdivision thereof,".

11 **DEFINITION**

12 SEC. 24. For the purposes of this Act, the term "rec-
 13 ognized Indian tribe" means any tribe, band, community,
 14 village, or group of Indians or Alaska Natives which is
 15 recognized by the United States as performing govern-
 16 mental functions.

17 **EFFECTIVE DATE**

18 SEC. 25. The effective date of this Act shall be Janu-
 19 ary 1, 1975.



93d CONGRESS
2d SESSION

H. R. 16058



A BILL

To amend the Internal Revenue Code of 1954 to provide the same tax treatment for recognized Indian tribes as are applicable to other governmental units.

By Mr. ULLMAN

JULY 22, 1974

Referred to the Committee on Ways and Means



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D. C. 20245

IN REPLY REFER TO:

Legislation

SEP 5 1974

Memorandum

To: All Tribal Chairmen

From: Commissioner of Indian Affairs

Subject: Preliminary Legislative Program for First Session of the 94th Congress.

We have been requested by the Legislative Counsel's Office to submit items to be incorporated in the Department's Preliminary Legislative Program for the First Session of the 94th Congress. We must have any items that you want made a part of the Department's Preliminary legislative program for the 94th Congress no later than October 4, 1974. However, we welcome at any time any legislative proposal that you might wish to submit and those proposals will have our careful consideration. You need not draft the legislative language but as complete as possible explanation of your proposals would be appreciated.

You may wish to consult with your superintendents about your legislative proposals and may submit them through the agency and area offices if you wish.

Whenever possible, proposed legislative items involving additional cost to the Federal government should set out your best estimate of that increased cost.

Your advice on needed legislative proposals is greatly valued.


Commissioner



Save Energy and You Serve America!



OCT 30 1974

1. Environmental Message

- a. National Land Use
S. 924 - H.R. 4862
- b. Mined Area Protection
S. 923 - H.R. 4863
- c. DNR
S. 2135 - H.R. 9090
- d. Mineral Leasing Law
S. 1040 - H.R. 5442
- e. BLM Organic Act
S. 1041 - H.R. 5441
- f. Wild & Scenic Rivers
S. 921 - H.R. 4864
- g. Big Cypress
S. 920 - H.R. 4866
- h. Predator Control
S. 887 - H.R. 4759
- i. Endangered Species
S. 1592 - H.R. 4755

Proposal Senate Action* House Action* Public
to Cong. Hrg. Rptd. Floor Hrg. Rptd. Floor Law

2-15-73	2-5-73	5-22-73	6-21-73	3-26-73	2-13-74		
2-15-73	3-13-73	7-10-73	10-4-73	4-9-73	5-30-74	7-25-74	
6-29-73	7-31-73			7-25-73			
2-27-73	3-27-74						
2-27-73	3-1-73	5-23-74	7-8-74	4-22-74	**		
2-15-73	7-16-73	7-21-73	7-21-73	6-11-73	11-6-73	12-3-73	5-10-74
2-15-73	3-21-74	6-22-74	7-4-74	5-10-73	7-13-73	10-3-73	10-11-74
2-15-73	3-27-73			3-19-73	**		
2-15-73	6-20-73	7-6-73	7-24-73	3-26-73	7-25-73	9-18-73	12-20-73

2. Indians

- a. Indian Financing Act
S. 1341 - H.R. 6371
- b. Trespass & Trader Bill
S. 1344 - H.R. 6375
- c. Indian Trust Counsel
S. 1339 - H.R. 6374
- d. A/Secy for Indians
S. 1345 - H.R. 6373
- e. Transfer of Programs
S. 1343 - H.R. 6372
- f. Transfer of Fed. Emp.
S. 1340 - H.R. 6553
- g. Amend Johnson-O'Malley
S. 1342 - H.R. 6376
- h. Indian Block Grants
S. 2038 - H.R. 9011

3-15-73	5-31-73	7-19-73	7-28-73	4-27-73	3-13-74	3-18-74	4-12-74
3-15-73				5-21-73			
3-15-73	5-7-73			9-27-73			
3-15-73		1-31-74	2-4-74	5-31-73	6-16-73	10-1-73	
3-15-73	6-1-73	2-7-74	4-1-74	5-20-74			
3-15-73	6-1-73	2-7-74	4-1-74	5-26-74			
3-15-73	6-1-73	2-7-74	4-1-74				
6-12-73							

3. Energy Message

- a. Deepwater Ports
S. 1751 - H.R. 7501
- b. Natural Gas
S. 2048 - H.R. 7507
- c. Santa Barbara
S. 1951 - H.R. 7500
- d. Rights-of-Way
S. 1041 - H.R. 5441
- e. Emergency Petro. Act
S. 2589 - H.R. 11031

4-18-73	7-23-73	10-2-74	10-9-74	7-26-73	11-28-73	6-6-74	
4-18-73	10-10-73						
4-18-73	11-12-73						
2-27-73	3-1-73	5-9-73	7-17-73	4-18-73	7-28-73	8-2-73	11-16-73
	11-8-73	11-12-73	11-14-73	11-14-73	12-10-73		

*Reported and passed bills are not necessarily identical or under same bill number as administration's proposal.
**Subcommittee voted to report to Full Committee.

