Union Calendar No. 925

83d Congress, 2d Session - - - - - - - House Report No. 2680

REPORT

WITH RESPECT TO

THE HOUSE RESOLUTION

AUTHORIZING THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO CONDUCT AN INVESTIGATION OF THE BUREAU OF INDIAN AFFAIRS

PURSUANT TO HOUSE RESOLUTION 89
(83D CONGRESS)

SEPTEMBER 20, 1954.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed, with an illustration

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Chehalis Indians

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Puyallup Reservation

27. Appraisal of competence

General

A. The Puyallup Indians are competent.

B. These people are almost completely absorbed now by the off-reservation economy. They earn their own living; own their own homes and pay taxes on them.

Quileute Reservation

27. Appraisal of competence

General

A. These Indians are competent to manage their affairs, independently of Bureau.

B. These Indians have demonstrated their ability to handle their own affairs in fishing and fur sealing in the past. Many of them are skilled workmen in the timber operations and some of the older ones make nets and dugout canoes from cedar logs which have a ready sale for premium prices. Several are good carpenters. In general they have all earned their own living for the past 4 or 5 generations. At least three school generations have completed public schools and many have completed high school.

Quinault Reservation

27. Appraisal of competence

General

A. All of the Quinault Indians are competent to manage their affairs independently of the Bureau; 370 live on the reservation and 1,500 off the reservation in white communities and have timber allotments on the reservation.

B. A majority of the Indians have already been absorbed into white communities. The few hundred still living on the reservation earn their livelihood with very little assistance from the Bureau in the form of services.

Individual

A. A number are self-employed as fishermen. Two or three own and operate small restaurants. Most are fisherman and wage earners working in logging camps on and off the reservation, in sawmills and on farms off the reservation. Some are contract loggers.

Skokomish Reservation

27. Appraisal of competence

General

A. Their tribal council operates very effectively and efficiently in handling tribal affairs. The majority of the Indians work in the logging industry, trucking logs or working in the paper mills. Fishing in season.

B. Degree of education for most of the members: Public school attendance by youngsters since 1931; or three school generations of children. Contact and working with white people since before the treaty was signed. George N. Adams, chairman of the Skokomish Council, is the dean of the legislature for the State of Washington.

Individual

A. George N. Adams and grandsons, the Miller boys, are doing very well with about 60 head of pure-bred Hereford cattle. Several of the tribal members are hauling logs as contractors in the woods work. Many work in the paper mills and sawmills in Shelton, Wash., 10 miles away.

Shoalwater Reservation

27. Appraisal of competence

General

A. These Indians are entirely competent to manage their own affairs without help from the Government.

B. These people have lived by their own initiative for years without major assistance from the Bureau. They make their living, as they have in the past, from employment in the fishing and timber industry. Some income is received from timber sales of their allotted interests on Quinault Reservation.

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Southern Plains—Continued

Ponca
Census of 1934. P. W. Danielson, S. I. A. April 1, 1934. Surnames English and translated Indian names. Total persons listed, 800.

Sac and Fox of Oklahoma
Census of 1934. F. E. Perkins. April 1, 1934. English surnames with a very small fraction of surnames of untranslated Indian names. Total persons listed, 831.

Citizen Potawatomi of Oklahoma
Census of 1934. F. E. Perkins, supervisor. April 1, 1934. English surnames with a tiny fraction of untranslated Indian names used as surnames. Total persons listed, 2,668.

Mexican Kickapoo of Shawnee Agency, Okla.
Census of 1934. F. E. Perkins. April 1, 1934. Most of these have no surnames. The surnames are almost all untranslated Indian names, a small number English surnames. Total persons listed, 258.

Tonkawa
Census of 1934. P. W. Danielson. Pawnee Indian Agency. April 1, 1934. English surnames. Total persons listed, 46.

Standing Rock
Census of 1934. L. C. Lippert, supervisor. April 1, 1934. A small number have no surnames, only translated and untranslated Indian names. Surnames are primarily translations of Indian names, a small number of untranslated Indian names and a small number of English names. Total persons listed in North Dakota, 1,677, and total persons in South Dakota, 2,098.

Taholah

Quinaielt
Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. All have English surnames with perhaps a few exceptions where surname may be translated or untranslated Indian names. Typical surnames are Butler, Capoeman, Charley, Cultee, Elliott, George, Hudson, James, Petit, Picknoll, Ward and Williams. Total persons listed, 1,727.

Skokomish
Census of 1934. N. O. Nicholson, supervisor. April 1, 1933 and March 31, 1934. English surnames. Total persons listed, 189.

Ozette
Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. English surnames. Total persons listed, 3.

Nisqually
Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. English surnames. Total persons listed, 63.

Chehalis
Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. English surnames. Total persons listed, 30.

Squaxin Island
Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. English surnames. Total persons listed, 39.

Makah (Neah Bay Jurisdiction)
Census of 1933. Raymond H. Bitney, supervisor. April 1, 1933. English surnames. Total persons listed, 408.

Tongue River
Census of 1934. W. R. Centerwall, supervisor. April 1, 1934. Almost all surnames are translations of Indian names. Total persons listed, 1,541.

Tulalip

Lummi
Census of 1934. O. C. Upchurch, supervisor. April 1, 1934. English surnames. Total persons listed, 665.

Clallam
Census of 1934. O. C. Upchurch, supervisor. April 1, 1934. English surnames. Total persons listed, 763.

Muckleshoot
Census of 1934. O. C. Upchurch, supervisor. April 1, 1934. English surnames. Total persons listed, 205.

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approximately 161 tracts of non-
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Tesuque.—No written records on transactions covering tribal use rights. There are approximately 14 tracts of non-Indian land within the Taos Pueblo grant, the boundaries of which are in part the subject of a dispute.

Zia.—There are no written records of use rights of tribal land held by members of the pueblo. Pueblo officials use copies of group survey maps and consider them sufficient if revised every few years. They try to record sales or exchanges on these maps.

Zuni.—There are no written records regarding tribal land used by individuals. Group survey maps show the general location and the size of tracts of farmland.

Canyoncito.—Land records are not kept since there are no adequate storage facilities and many adults do not speak or read English. The agency officers has copies of deeds covering acquisition of land with Navajo tribal funds and rehabilitation funds, files on allotments and heirship determination regarding them, leases on State land and status maps. These are supplied to the tribal officials at various times. The tribal officials seem to realize that there is a need for keeping records of their title to the land.

Alamo.—The officers do not have safe storage places for maps and deeds and other land records and many do not understand English. The agency office keeps what records there are regarding the Alamo land.

Ramah.—The Indians keep grazing permits issued to each livestock owner. Agency maintains files on allotted land with the heirship determinations connected therewith. Since many do not read or speak English the written documents are meaningless to them.

WARM SPRINGS RESERVATION

Warm Springs reports the following deficiencies: (1) Probate and heirship findings are not current; (2) records of land assignments and exchanges are not current and are not complete; (3) records of land purchases, allotment cancellations and relinquishments and exchanges are not consolidated in such a manner that statistics can be extracted when needed for reports, timber sale contracts, leases, rights of way, etc.; (4) the platbook is not current and the entries within it should be checked against deeds and other documents of original issue.

It is noted further that the land record situation "is steadily deteriorating" and that records should be brought up to date and a system of recording restored that will keep records current.

WESTERN WASHINGTON AGENCY

Chehalis Reservation.—Inheritance records are not maintained to provide ready information as to current ownership. Fractionated ownership is the rule. Otherwise records are adequate.

Lummi.—Records of Lummi Reservation are encumbered by undetermined fractionated interests of heirs to estates.

Muckleshoot.—Land records are reasonably up to date.

Nisqually.—Inheritance records are not up to date and it is necessary to search through numerous probate records to determine ownership of any patent allotment.

Makah.—Land records could be brought up to date in 6 months.

Nooksack.—Tribe maintains no land records.

Port Gamble.—Records are reasonably accurate and up to date.

Puyallup.—Same as at Port Gamble.

Quileute.—Inheritance records are not entirely up to date in the case of some village lots.

Quinault.—Inheritance records are not maintained to provide ready information as to current ownership. Fractionated ownership gets worse with the passage of time.

Skokomish.—Inheritance records are not maintained to provide information on current ownership.

Suquamish.—Heirs' records are not up to date.

Swinomish.—The organization does not maintain any land records.

WIND RIVER

Allotment worksheets are still employed and have never been permanently prepared on card material. The worksheet is still in pencil form but contains all information relative to selection, approval, etc. The staff barely keeps current everyday land transactions and exchanges. Heirship cards are not com-

WESTERN WASHINGTON AGENCY

Chehalis Reservation.—No factions reported and no organizations.

Duwamish Reservation.—No factions reported and no organizations.

Lummi Reservation.—There are no active factions in this group. Several veterans associations are listed as among other social groups. There is a Lumml employment council for purposes of securing jobs for members.

Makah Reservation.—There are two active political factions, the Peterson faction with 50 members and the Parker faction with approximately the same number. There is also an independent faction of about 45 members. The Peterson faction has dominated the political life for the past several years. There are several Indian groups and social organizations. There are no business enterprises mentioned.

Muckleshoot Reservation.—No political factions listed at Muckleshoot but several social organizations.

Nisqually.—There are no political factions listed and no organizations outside of the sewing club.

Nooksack Reservation.—No social organizations or factions.

Port Gamble Reservation.—There may be two factions but the report is not too clear on this. No organizations are listed.

Puyallup Reservation is dormant and no political factions are reported. The only activity of the tribe is to supervise the maintenance of a cemetery and one caretaker is paid out of the tribal funds.

Quileute Reservation has no political factions and one business enterprise consisting of a water system.

Quinault Reservation.—There are no political factions and no organizations outside of some social groups.

Skagit Reservation has no political factions and no organizations.

Skokomish Reservation has no political factions and no organizations outside of some social clubs.

Saquamish Reservation.—No political factions and no organizations.

Swinomish Reservation.—There is a small group in the Swinomish Tribe calling itself the "Swinomish Tribe," which contests the legality of the actions of the Swinomish Tribal Council. Several social organizations are mentioned and a tribal council sawmill and one or two enterprises.

Tulalip Reservation reports only social clubs and no factions. There are several business enterprises of the Tulalip Tribe.

WIND RIVER AGENCY

Shoshones are divided to some extent between fullbloods and mixedbloods and it is estimated about 20 percent are fullbloods. There seems to be no division among the Arapahoes and about 60 percent of them are fullbloods. Arapahoes operate the Arapaho Ranch which is the only full tribal enterprise operated at Wind River. There are six association relating to cattle and crafts and cooperative merchandising as follows: Wind River Cattle Cooperative, Ethete Community Cattlemen's Cooperative, Lower Arapaho Cattlemen Cooperative, Ethete Cooperative Association, Inc., Shoshone Crafts Association, and Arapaho Crafts Association. There are also four water users' associations.

WINNEBAGO AGENCY

Winnebago Reservation reports no factions and no organizations outside some of the usual social groups.

Omaha Reservation reports no political factions and no organizations outside of some social groups.

Ponca Reservation reports no political factions and no organizations.

Santee Sioux Reservation reports no political factions and two organizations, an economic betterment club and a tribal cattle herd.

YAKIMA AGENCY

Yakima Reservation identifies no political factions but does mention a tendency for family groups or clans to act in union on tribal political matters and that there is a division between fullbloods and mixedbloods. A number of social clubs are mentioned. There is a Yakima Tribal Service—Land Development and three cattle associations.

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(*c*) The chief obstacle preventing assumption of full citizenship by these Indians is their lack of confidence in their own ability to meet those responsibilities, and their fear of losing their property through nonpayment of taxes.

(*d*) Legislation to adjudicate the treaty rights of the Indians and settle the status of tribal lands on the Quileute Reservation should make it possible to effect withdrawal of trusteeship over these Indians.

10. Reappraisal of factors

(*a*) (*b*) and (*c*) The Quileute Reservation is too small to form an economic unit for the support of these Indians. It is suitable only for growing of timber. The present timber crop is now being harvested and will bring an income of some $50,000. A second crop cannot be expected for another 60 years. It would appear to be only wise to dispose of this cutover forest land at the earliest practicable date and save the Indian Service the cost of its protection.

QUINAULT

9. Regarding removal of Indian Bureau supervision

(*a*) At the last meeting of the tribal council which had a very good attendance of reservation Indians, a decisive vote was registered against release from wardship.

(*b*) The individual is strongly opposed to assuming full responsibilities of citizenship. He does not like the idea of having his land placed on the tax rolls, of losing his fishing privileges, and other treaty rights.

(*c*) These Indians, like all others in western Washington, are capable of handling their own affairs, excepting a small percentage of older people, mental incompetents, etc. They will not voluntarily accept responsibility for doing so however. They do not want to pay taxes—who does? They enjoy their special fishing privileges—who wouldn't? The only thing they would gain by being released from a wardship status, would be the legal right to buy alcoholic beverages They have little trouble securing more of such beverages than they need now.

The chief obstacles to removal of trust status from these Indians and from the Quinault Reservation lands are:

(1) The antagonistic attitude of the Indians.
(2) The need to determine who is entitled to share in tribal assets and treaty rights.
(3) Treaty rights of Indians.
(4) Claims now in litigation.
(5) Long-term timber sale contracts.

(*d*) Legislation and court action may both be necessary to bring an end to Government trusteeship. Many of the off-reservation Indians would be happy to collect the value of their trust property and tribal assets and go their own way. It must first be determined what share they have in tribal assets, chief of which is the exclusive fishing right in Quinault Lake and the Quinault River.

Perhaps a package deal could be developed to settle with the Indians for their boundary claim, treaty rights, etc.; tribal lands to be fee patented to the tribal organization, or sold and funds distributed; trust lands fee patented or sold and funds distributed to the heirs.

It has also been suggested that the lands be sold to the Forest Service and made a part of the Olympic National Forest.

In any case, fee patents or transfer of titles of lands now under timber sale contract would have to recognize such contracts.

10. Reappraisal of factors

(*a*) The above deals primarily with Indians in residence on the Quinault Reservation. The relatively small group at Taholah dominate tribal affairs and run the tribal government. No accurate count of Quinault Indians exists. There are hundreds of Indians allotted on the Quinault Reservation that are listed as Quinault Indians or as part Quinault. They may be affiliated with the Chinooks, Chehalis, Quileutes, or some other tribe. There are other hundreds of Quinault allottees who are listed as members of other tribes. The Quinault Tribal Council recognizes none of these as entitled to participate in Quinault tribal affairs other than to be represented at meetings and to have a voice in matters pertaining to his particular allotment. One must reside at Taholah to hold office on the council. One must prove that he is a Quinault Indian before he may vote at council meetings or in tribal elections.

(b) The Indians employed counsel for the Eastman case and the Quinault Reservation boundary case. They are now in the process of making a contract with Wilkerson & Stover to replace the late Kenneth R. L. Simmons.

(c) Through schools, marriages and contact with other people assimilation in this tribe is well advanced. The Government's participation in the construction of a school at Moclips, Wash., was a step in the right direction. Now all Indian children past the third grade are transported by bus to a good public school where they are in association with non-Indian children.

SKAGIT

9. Regarding removal of Indian Bureau supervision:

(a) The attitude of members of this tribe is against release from wardship unless a settlement is made for nonfulfillment of treaty obligations.

(b) Individual members of this tribe are not willing to assume full responsibilities of citizenship, such as land taxation.

(c) The obstacle preventing assumption of full citizenship of this tribe are the attitude against withdrawal, the status of these public domain allotments and their pending claim before the Indian Claims Commission.

(d) A bill for complete emancipation of these Indians would have to provide for removal of restrictions on their land and legislation to sell land in undivided multiple ownership.

10. Reappraisal of factors

(a) The Skagit Tribe of Indians participated in the Point Elliott Treaty of January 22, 1855, and the group in this report are nonreservation Indians residing on public domain allotments which are in a restricted trust status.

(b) The Skagit Tribe, along with other tribes and bands in this area, partipated in the Duwamish et al. case of August 21, 1926, which was unfavorably decided June 4, 1934. The Skagit Tribe, together with the Snoqualmie Tribe, engaged attorney Kenneth R. L. Simmons, deceased, to present their claims jointly before the Indian Claims Commission. This contract will expire November 5, 1953.

(c) The assimilation of this tribe has not progressed very rapidly, there being approximately 80 percent Indians of full blood. Children of school age all attend public schools. The public domain allotments on which they reside are scattered among non-Indian lands and the wage earners compete and work with non-Indians.

SKOKOMISH

9. Regarding removal of Indian Bureau supervision

(a) The attitude of the individual Indians is averse to release from wardship. This is an impression gained from statements of individuals at meetings and in conversation with different individuals during the past 2 years. Tribal chairman, George Adams, would favor Federal withdrawal if older Indians (60 years and up) could have tax exemption on homes. Tribal secretary, Elizabeth Byrd, would not favor this action. She felt younger Indians would lose homes and move in on the old people.

(b) Individuals are unwilling to accept full responsibilities of citizenship such as land taxation. They are afraid they would lose their land through inability to pay the taxes.

(c) The primary obstacles to prevent assumption of full citizenship by these Indians are:

(1) The mental attitude of the Indian. He lacks self-confidence in his own ability. He has never faced such responsibility and fears it.

(2) Settlement of tribal fishing rights on the Skokomish River.

(3) The complicated land status (fractionated ownership) of allotments.

(4) The tribal claim of tidelands in Hoods Canal bordering the reservation.

(d) Legislation should include settlement of the tribe's claim to the tidelands bordering the reservation and would have to recognize treaty rights governing fishing in the Skokomish River. The land problem, of multiple ownership of small tracts of land, is not peculiar to this reservation.

10. Reappraisal of factors

(a) The Skokomish Tribe of Indians is probably as near ready for withdrawal of Federal trusteeship as it will ever be. Their lands are in such a tangled ownership pattern that the only practicable way to alleviate the situation in most cases will be to sell the lands and distribute the proceeds to the respective heirs. Lands

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A number of Indians wh
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9. Regarding removal of I
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10. Reappraisal of factors
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9. Regarding removal of In
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either lost or destroyed. There is lack of any systematic procedure to preserve tribal records or to reimburse an official who keeps such records up to date. One clerk could probably bring the records up to date in 3 or 4 months; however, there seems to be a lack of interest of keeping up tribal records.

Makah.—There is no complete up-to-date file of tribal documents of Makah. The filing system is not organized and to produce specific documents is a matter of considerable research. Extensive files on the Makah may be available at the western Washington agency. Council meetings are attended by the tribal secretary who reports proceedings and files copies of same to the agency but not verbatim or complete. A system of accurate filing of tribal documents and preserving the same needs to be established. Present records are subject to destruction by fire.

Nooksack.—Secretary keeps tribal documents at home. These consist of minutes of general council and tribal council meetings. They are kept in long hand and are accurately reported. There is no protection against loss by fire.

Port Gamble.—Secretary takes records of council meetings in long hand. There is no fireproof filing of records.

Puyallup.—The tribal records are incomplete and the tribal council looks to the agency for documentary material.

Quileute.—There is no up-to-date collection of tribal documents. Each council officer keeps those records pertaining to his office. Currently minutes are fully kept. Previously they were not. There is no established procedure for keeping records and no safe place for their preservation.

Quinault.—A large part of tribal records were lost due to a fire in 1950. What remains is to be found in the homes of the past and present officers. No indication is given as to the adequacy of current minutes of regular meetings.

Skagit.—Secretary maintains a complete file of minutes of tribal correspondence. Proceedings of meetings are not verbatim but reports of preceding meetings are read by the secretary. The chief lack is protection against fire.

Skokomish.—No up-to-date file of tribal documents exists. Minutes of the records are maintained by the tribal secretary and clerk in their homes. Adequacy of these records is not known. A roll has not been kept current. Full records of tribal council meetings are not maintained, the secretary making briefs of the proceedings and notes on actions. There is no systematic method of processing records. The agency is 100 miles away from this group of Indians and is not currently in touch unless notified by the tribal secretary.

Snohomish.—The secretary maintains copies of minutes in his residence. No data on adequacy seems available.

Suiattle.—Secretary of the council has minutes of all meetings. There is no provision for preservation.

Suquamish.—Tribal files are not up to date. Any documents are in the agency office. Minutes of meetings are incomplete. The tribe does not attach major importance to the need for up-to-date records. Storage is subject to destruction by fire.

Swinomish.—The office of the Swinomish Indian tribal community at La Conner, Wash., has the tribal documents. No audits of the books have been made. Minutes are not taken verbatim but seem to be accurate descriptions of proceedings. The records are inadequate and cannot be audited under the present system. They are not protected against loss by fire.

Tulalip.—The secretary has the complete file in the office on the reservation. Proceedings are fully reported and approved by each succeeding meeting. There are apparently no deficiencies in the keeping of the records.

WIND RIVER

Records are kept in the agency at Fort Washakie, Wyo. Fuller records are kept now than in former years and written records of tribal meetings have been kept since 1940. Tribal secretary takes verbatim records of meetings and also has charge of the census, keeping records of births, deaths, adoptions, and annulments. Early records are seldom used and their extent is not known. Due to change of personnel, continuity of records has not been maintained. Per capita payments have been responsible for keeping vital statistics in good shape. Marriage by Indian custom is not recognized and marriage certificates must be filed for recording at the agency.

Tesuque Pueblo.—Six resolutions were submitted to the superintendent with various disposal.

Zia Pueblo.—Six resolutions were submitted to the superintendent with various actions taken.

Zuni Pueblo.—Seven resolutions were submitted to the superintendent with action taken indicated.

Canyoncito.—Two resolutions were submitted to the superintendent and referred to the area director.

Alamo.—Two resolutions were submitted to the superintendent and referred to the area director.

Ramah.—One resolution was submitted to the superintendent and referred to the area director.

WESTERN WASHINGTON AGENCY

Chehalis.—No resolutions were submitted.

Duwamish.—No resolutions were submitted.

Elwha Valley.—No resolutions were submitted.

Jamestown.—No resolutions were submitted.

Lummi.—No resolutions were submitted.

Makah.—Six resolutions were submitted to the superintendent with area office action indicated. One was disapproved and the others were approved.

Muckleshoot.—No resolutions were submitted.

Nisqually.—No resolutions were submitted.

Nooksack.—No resolutions were submitted.

Port Gamble.—No resolutions were submitted.

Puyallup.—One resolution was submitted to the agency and referred to the area office and approved there.

Quileute.—One resolution was submitted to the agency officer but no action was taken.

Quinault.—Five resolutions were submitted to the agency officer and referred to the area director. No final action is indicated.

Skagit.—No resolutions were submitted.

Skokomish.—No resolutions were submitted.

Snoqualmi.—No resolutions were submitted.

Suiattle.—No resolutions were submitted.

Swinomish.—Four resolutions were submitted to the superintendent and forwarded to the area director. Two were submitted to the Secretary of the Interior and approved.

Tulalip.—Seven resolutions were submitted to the superintendent, most of which were forwarded to the area office for approval.

WIND RIVER AGENCY

Resolutions and ordinances were submitted but not in tabular form; hence, it is impossible to give a summary of the characteristics.

WINNEBAGO AGENCY

Omaha.—Five resolutions were submitted for review of the Secretary. Eighteen were submitted for the superintendent's review and approved in the main.

Winnebago.—No resolutions were submitted to the superintendent. Four were submitted to the Secretary for review but no record of action is given.

Santee Sioux.—The record of resolutions is not complete.

YAKIMA AGENCY

No list of resolutions is submitted; instead full text of resolutions, which are quite numerous, was given.

CONCLUSION ON RESOLUTIONS AND ORDINANCES

The number and character of resolutions and ordinances submitted to the different levels of the Indian Bureau hierarchy for action can be counted as a species of index of tribal activity. Many tribes which are inactive will show up with few or no resolutions and ordinances. Such a situation occurs among the Southern Plains, Nevada, Great Lakes, western Washington, and parts of California. The degree to which Indian Bureau supervision actually operates in matters of tribal governments can thus be discerned.

ock, farming, per capita payments, bonus payments from gas and oil

of sand, crossing permits, stumpage l herd. Individual income is from d railroad employment. asing its irrigated and grazing lands. social security, pensions and public

wheat. Individuals derive income rity, pensions and public welfare.

d, sales of tribal timberland, and lerived from rental and salaries as

GENCY

e business leases, tourist fees and are self-supporting from farming tion. The minority are supported

rest on tribal funds. Individual ority cases from welfare. Some from which an income is derived. ibal funds and funds earned by der lease, sign board permits and derive income from livestock and and in a minority of cases some

bal funds and livestock crossing stock raising wages from off the

tribal funds, from business and is from trading posts, hunting nd timber sales. st on funds in Treasury. Indi- azing, self-supporting wages off welfare. s, annual rentals, business and Individuals derive income from nd off the reservation and in a

bal funds, business and mining ilies derive income from farming e instances welfare. ibal funds, business leases and g and farming, wages off the

sury funds, business leases, and and livestock wages off and on sources. rest on funds, business leases, permits. Individual income rvation and welfare in a minor-

, business and mining leases, mits and tribal loan program. , wages on and off the reserva-

sury deposits, business leases, permits. Heads of families on the reservation and from work such as pottery, leather

Taos.—Sources of income of the tribe are: Interest on Treasury deposits, hunting and fishing permits and tourist fees. Heads of families derive income from farming and stock raising, wages on and off the reservation and from welfare. Arts and crafts (such as painting, leather work, beadwork) are also important.

Tesuque.—Only source of tribal income is from interest on funds on deposit in Treasury. Heads of families derive income from business leases, farming and stock raising, wages off and on reservation and some welfare. Selling of trinkets within the pueblo and arts and crafts are of some importance.

Zia.—Tribal income is from hunting and fishing permits. Individual income from farming and stock raising, wages off the reservation and some welfare relief. There are arts and crafts also (pottery, leather work, and weaving).

Zuni.—Tribal income is from interest on funds, business leases, and hunting and fishing permits. There is also some tribal income from fines and peddling permits. Individual income is from farming and stock raising, business leases, wages off and on the reservation and from welfare. Some make a living from Indian jewelry and beadwork.

Canyoncito.—The tribe has no income. Individuals derive income from stock raising, wages, and welfare.

Alamo.—No tribal income. Individual income from stock raising, wages, and welfare.

Ramah.—No tribal income. Individual income from stock raising, wages, and welfare.

WARM SPRINGS

Timber sales, fishing permits, traders' licenses fees, operation of tribal locker and service station furnish tribal income. For heads of families, commercial fishing, sale of wheat and cattle, local industrial wages, seasonal agricultural work and Government employment furnish income.

WESTERN WASHINGTON

Chehalis.—Taxes imposed on fish caught in the Chehalis River by tribal members are the only source of tribal income. Fishing revenue from sale of labor plus outside labor are sources of family income.

Lummi.—Tribal income is from leasing of booming grounds and oysterbeds. Individual income is from fishing, farming, dairying, stock raising, leasing of lands and lumber industries.

Nisqually.—Tribal income is derived from a fish tax, 5 percent revenue from sale of fish taken from Nisqually River by the Indians. Fishing and employment are individual sources of income, plus sale of timber.

Makah.—Rental of tribal property for business purposes and sale of timber are principle sources of income for the tribe. Individuals derive income from sale of timber on individual allotments and from wages and commercial fishing.

Puyallup.—Tribal income derived from small tracts of land used for business purposes. Individuals receive wage incomes.

Quileute.—Tribal income is from sale of water from its water systems, sale of timber and business leases at La Push. Individuals derive income from sale of timber, where most have allotments in inherited interests and some wages and logging operations, plus some fishing.

Quinault.—Tribal income is from sale of timber, traders' licenses and tax on fish buyers. Heads of families derive income from sale of timber, fishing, guides for fishing parties and labor.

Skokomish.—Tribal revenue is from a fish tax. Individuals derive income from fishing and wages and logging operations.

Swinomish.—Tribal income is from community enterprises (oyster farm, sawmill project and fish trap) and from land leases. Individual income is from employment in the trap and logging industry, fishing, canneries, and farm work.

Tulalip.—Income of the tribe is derived from the water system, land revenues for homesites and resort owners, leasing of ammunition dump, duck hunting licenses and a credit program. Individuals derive income from contract logging, commercial fishing, and lumbering.

WIND RIVER

Tribal income is derived from (1) oil and gas leasing (including royalties), (2) farming and grazing leases, (3) grazing permits, (4) timber sales, (5) fish and

REFORESTATION

HEARINGS

BEFORE A

SELECT COMMITTEE ON REFORESTATION
UNITED STATES SENATE

SIXTY-SEVENTH CONGRESS
FOURTH SESSION

PURSUANT TO

S. Res. 398

TO INVESTIGATE PROBLEMS RELATING TO REFORESTATION

SEPTEMBER 6, 8, 10, 12, 14, AND 17, 1923

PART 5

Printed for the use of the Select Committee on Reforestation

WASHINGTON
GOVERNMENT PRINTING OFFICE
38254 1923

got the best of us. Moss growing in the edge of the timber close to where we are logging was set afire and we had to take 350 men and work several days to put it out. It cost us nearly $4,000, and it was for the protection of the national forest timber. They say, "Why do you do it?" If we had let that fire go it would have destroyed millions of feet of timber and would have made a scrap heap of our railroad. We are probably as selfish as anybody, but we can't afford to see anybody destroy national forest timber that is adjacent to us. If we can't log it, we will get to haul it out some day, and we figure that railroad will be there a thousand years.

I am not afraid of not having timber enough, for if we can keep fire out of the forests we are going to have plenty for our own needs, and maybe that will be more inducement for the eastern fellow to come out and live in Washington and make our country more valuable. And I am not going to be a bit sorry for the eastern fellow at all. Let him grow some. I know what it is. Birch will grow back East just as fast as the fir tree will grow out here. I can go back there in New Brunswick, Nova Scotia, and the New England States where black and white and yellow birch grow and show you a growth of half an inch a year, and it is good timber. The black birch makes beautiful mahogany without a stain—the only wood in the world that I know that does. You have to stain native mahogany of the tropical countries to get that color, but you don't the black birch. You will have plenty of timber in the East if you will take some interest in the reforesting of it. I do claim that in all of these five States we are entitled to all the revenue from the forests and the mines and everything in our own States, just the same as the eastern man had. With all due respect to Governor Pinchot, his fortune was left to him by his forefathers, who made it out of the natural resources of that eastern country.

Mr. J. J. DONOVAN. May I interrupt you, Senator Polson, to call attention to the fact that I declared the war between the Forest Service and the lumbermen over, and now you have ruined my reputation.

Mr. POLSON. No; I have no war on with the Forest Service. I am only just as the man would be that came from the East. I lived in the country where we used to have to pry the sun up for the State of Mainers in the morning. It is no war at all, but I am not at all anxious about the State of Washington not having timber if we just keep the fire out of what we have, for timber will grow on anything. The time we had that awful fire Mr. Long referred to all the protection in Christendom could not stop it. That fire burned green apple trees in orchards, and a peavey right in the middle of the railroad track on the gravel had the handle burned out of it. It burned the wood out of the center roll of a coil of wire in the middle of the railroad. It burned a whole train of our green fir logs; didn't leave a stick of wood in any of the logs on that train; and the day before a spark would light it like a flash, like black powder, and start it. You get one of these northeastern winds with an electric storm, and up in Mr. Long's country—in Clarke County—it went 35 miles in 55 minutes. That is pretty fast traveling for an automobile, much less a fire. In our country it destroyed half a billion feet of timber, though it didn't travel that fast, but it went 7 miles in 30 minutes and destroyed half a billion feet of timber. If a man stopped to carry tools out of the woods he could not run fast enough to avoid being burned up. We had a man burned up in that fire. Only day before yesterday, this year, was 21 years since that fire. If we had got that northeast wind with an electric storm you could not tell what would have happened. The day after such a fire we traveled until 1 or 2 o'clock in the afternoon with lanterns for it was so smoky and dark. There was nothing that could stop that fire. Now, we hope that won't come about again. There are millions of acres reforesting nicely now, and the trees will grow on if we keep the fire out. But we can't carry it and pay the taxes, because by and by it will commence to produce forests, and the tax assessor will think they are valuable and begin to assess them at high values that will confiscate them. We will have to have some relief from taxes when that time comes or get out of the business.

Senator FLETCHER. You have your forest-fire protection system better organized now?

Mr. POLSON. We can protect the forests very well against everything except against taxes, and we would like to have your help on that. On everything else, I think, we are equal to the occasion—everything except taxes. If you can help us out on the tax problem we certainly will appreciate it. Now, as far as by-products of the timber are concerned, I hope in 10 years, instead of our employing 1,500 men sawing up lumber we will be employing 2,000 manufactur-

ing products out of wood.
to be independent then.
get along.

The CHAIRMAN. We tha
This exhausts the list o
present who desires to ma
mit a written statement o
If there is no one who
until to-morrow morning
Mr. JAMES G. EDDY. I w
The CHAIRMAN. Very w

STATEMENT OF MR.

Mr. EDDY. Mr. Chairma
a citizen of the United S
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that God Almighty plants
committee should confer
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cultivating the seed accor
a large number of people
mation from Burbank in
operators. I think Mr. Bu
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Government is fire protec
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has, for there is no one el
The CHAIRMAN. Has he
Mr. EDDY. No, sir; he
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The CHAIRMAN. Has he
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Mr. EDDY. Yes, sir. He
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The CHAIRMAN. It was
Mr. EDDY. He is the ma
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The CHAIRMAN. What
Would you remove them
Mr. EDDY. Well, as a m
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by waiting upon nature.
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truest results from forest
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but we should develop ou

U. S. DEPARTMENT OF THE INTERIOR
HUBERT WORK, SECRETARY
CHARLES H. BURKE, COMMISSIONER OF INDIAN AFFAIRS

EXTRACTS FROM THE ANNUAL REPORT OF THE
SECRETARY OF THE INTERIOR
FISCAL YEAR, 1927

RELATING TO THE

BUREAU OF INDIAN AFFAIRS

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON
1927

crease. Instructions were issued to all field superintendents to gather the necessary information and compile records of the pursuits and circumstances of graduates from the Indian schools and this information when available will be of interest in its bearing on their present and future prospects.

FORESTRY

In line with the policy of disposing of timber only as the interests of the Indians may require and of contributing to a sustained yield in each district where Indian timber is located, no encouragement has been given to prospective purchasers during the year within any reservation where substantial amounts of stumpage were already under contract. Two comparatively small units were offered on the Klamath Reservation, Oreg., to facilitate the cutting of isolated tracts that were directly adjacent to other areas from which the timber had been sold. Two small tracts were sold on the Spokane Reservation, Wash., primarily to meet the needs of allottees who desired funds. Similar conditions required the offering of two small tracts on the Quinaielt Reservation, Wash. Satisfactory prices were received for all these units and those for Klamath were exceptionally high. The bureau declined to offer large tracts on the Colville, Wash., Fort Apache, Ariz., Klamath and Warm Springs, Oreg., Reservations, maintaining that existing sales on those reservations were sufficient to meet all needs for funds and that economic conditions in the lumber trade and sound principles of forest management did not justify further large offerings.

Heavy operations were conducted on the Klamath and Quinaielt Reservations during the year, but operations on other reservations were generally rather light. There appears to have been a surplus of manufactured products on hand and prices of both logs and lumber have generally declined. During the fiscal year 1926 there were cut from Indian lands 579,958,014 feet of saw timber for which $2,446,455.07 was received. This was the largest amount of timber ever cut in one year on Indian lands. The average stumpage price was more than $4 per thousand feet. Figures are not yet available for 1927, but the value will probably exceed $2,000,000.

The forest fire conditions in the Western States during the spring and summer of 1926 were the worst that have existed since 1910. The appropriation for forest patrol and other means of prevention was entirely inadequate and the service was unable to take effective measures to forestall extensive fires. Heavy electrical storms occurring in July and August started numerous fires that could not be suppressed promptly by the small force available. These uncontrolled fires spread rapidly to such an extent that emergency measures for their control became necessary. More than $85,000 was spent for fire suppression in addition to the amount used for the salaries of the

regular force employed as forest fire guards, and substantial sums were expended by private operators in protecting timber within units on which the stumpage had been purchased. It is believed that with an additional appropriation of $25,000 for fire prevention, as much as $50,000 of the amount expended in suppression might have been saved and the destruction of large quantities of merchantable timber and young growth prevented.

It is felt that substantially increased appropriations are urgently demanded and that the gratuity appropriation of approximately $100,000, made annually since 1909 for forest protection and administration on Indian lands, is less than one-half the amount that the interests of the Federal Government justify. The Federal Government has recognized its responsibility to assist private owners of timber lands in protecting their lands and the responsibility with respect to Indian trust lands is even greater than that as to ordinary private holdings. Every time timber on Indian lands burns, the potential wealth of the Nation is reduced many times the value of the timber so destroyed. All expenses connected with the sale of stumpage on Indian lands are paid from the proceeds of sales, but it is believed that the Federal Government should share with the Indians the cost of protecting the forests from fire and insects.

The Federal Government has long recognized its obligation to furnish educational, health, and industrial facilities for the benefit of the various Indian tribes. In recent years sales of timber from Indian lands have afforded funds for such purposes. Foresight in the administration of Indian affairs requires that special attention be given to the protection of resources that may contribute much to the future needs of the Indians and thus relieve the general public from gratuity appropriations for a dependent and impoverished people. Thus, from a purely economic standpoint a more determined effort to reduce the losses from forest fires and depredating insects on Indian lands is advisable.

IRRIGATION

A survey of Indian irrigation projects was commenced in April, 1927, covering both engineering and economic phases, the primary purpose being improvement of conditions among the farmers—Indian and white—on such projects. The detail for this purpose consisted of an agricultural economist from the Department of Agriculture and one irrigation engineer from the Reclamation Service and one from the Indian Bureau. The scope of their work covers construction, operation, and maintenance, repayment of irrigation charges, proper utilization of irrigated lands by both the Indians and the whites, water supply, soil fertility, availability of markets, etc.

INDIAN TABLE 1.—*Indian population of the United States, exclusive of Alaska, June 30, 1927*—Continued

(Figures compiled from reports of Indian agents, supplemented by 1920 census where no Indian agent is located)

States, agencies, and tribes	Total	Male	Female	Minors	Adults	Full blood	Mixed blood	
							Half or more	Less than half
Washington—Continued.								
Neah Bay Agency	661	335	326	280	381	585	58	18
Hoh	15	6	9	1	14	15	0	0
Makah	431	223	208	190	241	376	37	18
Quileute	211	104	107	89	122	190	21	0
Ozette	4	2	2	0	4	4	0	0
Taholah Agency	2,764	1,365	1,399	[1] 469	[1] 920	[1] 783	[1] 375	[1] 261
Chehalis	85	51	34	32	53	70	15	0
Nisqually	65	36	29	20	45	56	19	10
Quinaielt	801	396	405	256	545	315	251	235
Quileute	215	103	112	88	127	170	40	5
Skokomish	175	70	96	63	112	117	47	11
Squaxin Island	48	25	23	10	38	45	3	0
Unattached	1,375	675	700	(1)	(1)	(1)	(1)	(1)
Tulalip Agency	2,814	1,432	1,382	1,394	1,420	1,854	768	192
Lummi	599	310	289	315	284	315	250	34
Muckleshoot	208	98	110	110	98	149	39	20
Port Madison	162	88	74	70	92	54	37	71
Puyallup	349	183	166	166	183	349	0	0
Snohomish or Tulalip	566	269	297	257	309	262	286	18
Swinomish	280	138	142	155	125	210	66	4
Clallam	[4] 326	181	145	168	158	326	0	0
Skagit and Suiattle	194	105	89	99	95	144	50	0
Unattached	130	60	70	54	76	45	40	45
Yakima Agency (Yakima Confederated)	3,024	1,407	1,617	1,065	1,959	2,046	622	356
West Virginia (not under agent)	7							
Wisconsin	11,622	4,122	4,018	3,626	4,524	2,557	2,934	2,141
Hayward Agency (La Courte Oreilles)	1,366	678	688	507	859	111	848	307
Keshena Agency	5,204	1,011	930	923	1,018	300	900	741
Menominees	1,941	1,011	930	923	1,018	300	900	741
Oneidas	2,976	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Stockbridge and Munsees	[5] 606	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Lac du Flambeau Agency (Chippewas)	801	386	415	313	488	319	358	124
Laona Subagency (under Lac du Flambeau)	873	471	402	490	383	873	0	0
Wisconsin Winnebagos	(3)	(3)	(3)	(3)	(3)	(3)	(3)	(3)
Wisconsin Potawatomis	403	218	185	215	188	403	0	0
Rice Lake Chippewas	170	89	81	96	74	170	0	0
Kansas Potawatomis	300	164	136	179	121	300	0	0
La Pointe Subageney (under Lac du Flambeau)	1,747	886	861	693	1,054	40	780	927
Bad River Chippewas	1,169	589	580	476	693	38	380	751
Red Cliff Chippewas	578	297	281	217	361	2	400	671
Grand Rapids Subagency (under Tomah)	1,412	690	722	700	712	944	48	42
Winnebagos	[6] 1,368	666	702	679	689	900	48	420
Potawatomi	44	24	20	21	23	44	0	0
Wyoming	1,952	1,012	940	882	1,070	1,206	366	380
Shoshone Agency	1,952	1,012	940	882	1,070	1,206	366	380
Arapaho	976	516	460	453	523	770	184	22
Shoshone	976	496	480	429	547	436	182	358

[1] Impossible to determine accurately.
[2] Estimated.
[3] No data.
[4] About 200 live at various points throughout the United States and are not carried on the census.
[5] 195 live outside of Wisconsin but are included.

INDIAN TABLE 1.—*Indian popul*
June

R

Grand total
Five Civilized Tribes
By blood
By intermarriage
Freedmen
Exclusive of Five Civilized Tribes

INDIAN

Alabama
Arizona
Arkansas
California
Colorado
Connecticut
Delaware
District of Columbia
Florida
Georgia
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana

(Figures compiled from reports of Indi
located.)

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1928

attorneys hold consultations with the Indians seeking aid, prepare leases and other legal instruments for the Indians, investigate the validity of legal instruments submitted to them by the Indians, and often aid in placing minor Indians in schools.

The following statistical table shows certain savings to the Indians of the Five Civilized Tribes accomplished by these attorneys for the fiscal year, but does not represent the entire amount actually saved for the reason that many savings are effected in cases where the amount recovered can not be determined in dollars and cents:

Number regular cases in which attorneys appeared	2,167
Amount involved in civil actions, land and partition suits not included	$26,252
Number criminal actions instituted	7
Number new bonds filed	115
Amount covered by new bonds	$219,750
Number guardians removed or discharged	154
Conservation of funds: Investments	$200,000
Amounts saved to minors and others	$67,307
Number quitclaim deeds obtained	52

DEPOSIT AND INVESTMENT OF INDIAN FUNDS

A total of $1,158,994 in interest was paid by the banks holding Indian funds, $391,842 of which accrued to Osage Indians and $287,950 to members of the Five Civilized Tribes. The usual rate obtained on time deposits was 3½ per cent, but in some instances rates as high as 4 and 5 per cent were paid by depositories. Aggregate deposits averaged during the year approximately $35,000,000, and on June 30, stood at $37,215,608 secured by $24,916,800 Government bonds and $16,658,858 surety bonds. Deposits were carried by 598 States and national banks located principally in the northwest, north central, and south central sections of the country.

Whenever banking facilities proved inadequate, surplus funds were invested in Government securities of various issues, yielding from 3⅜ to 4¼ per cent. The total amount of such investments was $25,365,000 on June 30, and of this amount $16,000,000 represented Osage funds and $8,000,000 funds of members of the Five Civilized Tribes.

FORESTRY

The fiscal year 1928 witnessed no marked revival in the lumber trade. In fact throughout the greater part of the year there was a constant tendency toward lower prices both for logs and for finished timber products. Although the volume of trade has been normal, the market has been controlled by the purchaser and only the more favorably situated or most skillfully managed operations have shown a satisfactory return on the invested capital. Under these conditions

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its for the Indians, investigate the
mitted to them by the Indians, and
s in schools.

shows certain savings to the Indians
mplished by these attorneys for the
nt the entire amount actually saved
are effected in cases where the amoun
l in dollars and cents:

eys appeared	2, 16
and partition suits not included	$26, 25
	7
	11
	$219, 75
	15
arged	$200, 00
	$67, 30
	5

STMENT OF INDIAN FUNDS

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Five Civilized Tribes. The usual ra
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FORESTRY

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skillfully managed operations have sh
invested capital. Under these condit

the office has not sought to offer timber for sale unless there were special circumstances making an immediate offering desirable.

A small sale on the Santa Clara Pueblo was made late in the year 1927; about 18,000,000 feet of timber on the Kalispel Reservation in Washington was offered in February, 1928, to meet the urgent needs of allottees; and three units on the Klamath Reservation were offered under sealed bids opened in late March and early April, 1928. The offerings at Klamath were inadvisable from the standpoint of maintaining a sustained yield there, but were thought to be justified as a measure of forest sanitation and the salvage of values which might otherwise be lost. Since 1920 there has been a serious infestation of dendroctonous beetles on the Klamath Reservation. This infestation seemed to be receding in 1923–24, but during the period 1925–1927 it spread with alarming rapidity in the southeastern part of the reservation. Very heavy losses had already occurred on allotments within the Paiute district and it seemed advisable to offer the Five Mile, Paiute, and Kanott units, comprising approximately 340,000,000 feet, for sale under forms of contract which would require prompt logging of the areas. A bid of the minimum prices of $5 per 1,000 feet for yellow pine and sugar pine, $2.50 per 1,000 feet for Douglas fir and incense cedar, and $1 for other species was received on the Five Mile unit. No bids were received on the other units. In view of the depressed lumber market, the great damage from bark beetles, and the comparative inaccessibility of the units the failure of operators to exhibit keen interest in the units was not unexpected.

The great expansion in timber operations on the Klamath and Taholah Reservations during the fiscal year 1927, together with the resumption of operations on the Red Lake Reservation by the International Lumber Co., resulted in an exceptionally heavy cut in 1927. The value of the timber removed from Indian lands by contractors during the fiscal year 1927 was $2,806,871.72. If there be added to this the stumpage value of the timber cut for manufacture at the Neopit and Redby mills on the Menominee and Red Lake Reservations, the total stumpage value for that year rises to $2,953,202.10. Operations under the sale of 1917 to the International Lumber Co. on the Red Lake Reservation were completed during 1927. Under this contract there were cut 105,042,800 feet of saw timber and considerable quantities of cedar and other by-products, for all of which $1,395,585.46 was received. Within all parts of the area not severely burned seed trees were left and satisfactory reseeding will be attained on much of the sale area.

Logging operations have been comparatively light during 1928 on the Jicarilla, Mescalero, and Spokane Reservations and the unfavorable lumber market restricted the production on the Colville and Flat-

head areas. While full data for the fiscal year 1928 is not available, it is known that the total value of the stumpage cut will exceed $2,250,000.

On July 1, 1927, the logging and milling operations on the Menominee Reservation were segregated from the Keshena Agency and full responsibility for all forestry activities on the reservation was assigned to the manager of the Menominee Indian Mills. The results attained during the year appear to justify fully the return to a plan of organization that was inaugurated April 1, 1908, but abandoned July 1, 1910. The lumbering activity at Neopit is primarily a commercial enterprise of an entirely different character from the activities of an Indian agency. The Neopit business of more than a half million dollar turnover annually is of sufficient magnitude to require the undivided efforts of a man specially trained in forest management and commercial methods. Fortunately the reorganization at Neopit has been contemporaneous with a revival of interest in forestry practice in the State of Wisconsin. The rapidly crystallizing conviction of private owners of timberland in the Lake States as to the possibilities of commercially profitable forest management has aided materially in overcoming the prejudice against conservative lumbering that formerly hampered, or even nullified, attempts to apply sound forestry principles to the Menominee timberlands. The possibilities of future success are very encouraging.

IRRIGATION

Effective June 30, 1928, Supervising Engineer Herbert V. Clotts of irrigation district No. 4 was made chief irrigation engineer of the Indian Service.

Progress on the Coolidge Dam being constructed across the Gila River near San Carlos, Ariz., has been marked. Though the contract requires completion of the dam by June 30, 1929, the present program will result in its completion in October, 1928. By the close of the fiscal year the domes and buttresses of the dam were constructed to an elevation of 2,509, which completed the buttresses but left the top portion of the domes yet to be constructed. The actual pouring of concrete on the dam was started November 24, 1927, and continued steadily throughout the remainder of the fiscal year, with the result that 918,000 cubic yards of concrete had been placed in the buttresses of the dam, and 67,900 in the domes. In the spillways 6,400 cubic yards were placed in the floor and spillway weir; 1,650 cubic yards in the walls and guide walls; 2,500 cubic yards in the bridge piers and wall supports of the bridges, and 3,500 cubic yards in the power house base. Less than 30,000 cubic yards yet remain to be placed in the dam and spillway structures.

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UNITED STATES DEPARTMENT OF AGRICULTURE

DEPARTMENT BULLETIN No. 1493

Washington, D. C. June, 1927

TIMBER GROWING AND LOGGING PRACTICE IN THE DOUGLAS FIR REGION

MEASURES NECESSARY TO KEEP FOREST LAND PRODUCTIVE AND TO PRODUCE FULL TIMBER CROPS

By

THORNTON T. MUNGER, Director
Pacific Northwest Forest Experiment Station, Forest Service

Introduction by

W. B. GREELEY, Forester, Forest Service

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON
1927

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CONTENTS

INTRODUCTION

Forestry in the United States is no longer merely a theory or a subject for discussion; it has gotten down to concrete things in the woods. Nor is the growing of timber confined to public lands; it is gradually making headway on land in private ownership. It is becoming an art of land management, expressed in practical measures for protecting forest growth from fire and other destructive agencies,

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pertains entirely to mature stands, unless otherwise specifically stated.

Of the entire lumber cut of western Oregon and Washington (excluding cedar shingles), 82 per cent is Douglas fir. Of the 371,000,000,000 feet of privately owned timber, at least 70 per cent is Douglas fir. But the timber of the entire region, though so predominantly and characteristically Douglas fir, is by no means homogeneous. Although Douglas fir occurs more or less on nearly every site, the physical differences between high and low altitudes, between coastal, valley, and mountain sites, are reflected in pronounced differences in the forest cover.

For clarity in this discussion, it is convenient to recognize the several forest types which occur in the Douglas fir region. They are the Douglas fir type proper, the fog-belt type, and the upper-slope types. Most of the timber cutting is in the Douglas fir type proper and the fog-belt type, which together include practically all the privately owned timberlands.

THE DOUGLAS FIR TYPE PROPER

A forest in which Douglas fir (*Pseudotsuga taxifolia*) comprises 60 per cent or more of the timber volume is classed as the Douglas fir type proper. This type covers at least three-quarters of the forested area of western Washington and Oregon and an even larger proportion of the area of commercial forest. Though it is spoken of as the Douglas fir type, western hemlock (*Tsuga heterophylla*), western red cedar (*Thuja plicata*), Sitka spruce (*Picea sitchensis*), silver fir (*Abies amabilis*), noble fir (*A. nobilis*), lowland white fir (*A. grandis*), western white pine (*Pinus monticola*), and several other species of lesser consequence are mingled with the Douglas fir in greater or less degree.

Roughly speaking, the wetter the site the larger the proportion of other species in the virgin timber. The proportion of hemlock increases with altitude and with approach to the coastal fog belt. Also northward the proportion of other species than Douglas fir increases with increasing humidity and coolness.

On the other hand, in southern Oregon on the foothills of the warm dry valleys and on the hotter slopes in the mountains, Douglas fir gives place to western yellow pine (*Pinus ponderosa*).

Again, the proportion of Douglas fir diminishes as the age of the stand increases. In very old stands there is apt to be more hemlock and cedar than in young timber. The so-called second-growth stands on old burns and logged-off lands are composed to a striking degree of Douglas fir, and are therefore justly spoken of as pure Douglas fir forests.

The younger Douglas fir forests are often referred to by lumbermen as "red fir stands," while the overmature forests are called "yellow fir stands." The slash disposal and fire problem in these two subtypes is quite different in intensity.

THE FOG-BELT TYPE

The humid western slopes of the Olympic Mountains and Coast Ranges, within the so-called fog belt, carry a somewhat different type of forest from the Douglas fir type proper. Here the principal

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species are Sitka spruce and western hemlock, though Douglas fir is never absent over a large area. Western red cedar and, farther south, Port Orford cedar (*Chamaecyparis lawsoniana*) are also conspicuous. Most of this type is in private ownership and is now the scene of active logging operations. The method of logging is identical with that in the Douglas fir type proper, but the brush disposal and fire protective conditions are somewhat different, and hence require a slightly different system of forest management from that suited to the Douglas fir type. Where these differences are significant the treatment for the fog belt will be mentioned separately; otherwise the two types will be considered jointly.

THE UPPER-SLOPE TYPES

On the upper slopes of the Cascade, Olympic, and Siskiyou Mountains the forest cover is largely of species other than Douglas fir, which at certain altitudes disappears altogether. It is needless to go into a description of these mountain types, which are made up of a varying proportion of silver fir, noble fir, mountain hemlock (*Tsuga mertensiana*), western hemlock, western white pine, Alaska cedar (*Chamaecyparis nootkatensis*), lodgepole pine (*Pinus contorta*), Douglas fir, alpine fir (*Abies lasiocarpa*), etc. Some of these upper-slope forests have high commercial value, but for the most part they are so inaccessible that they will not be logged until the virgin stands at lower altitudes have been exploited. As they will not for some time to come play an important rôle in the timber-growing problem of the Douglas fir region, and as they lie mostly within the national forests, these upper-slope types are not considered in the following pages.

FACTORS AFFECTING NATURAL REFORESTATION IN THE DOUGLAS FIR TYPE

As Douglas fir is so superior a tree and is the one upon which the lumber industry of the region is built, it is natural that landowners and foresters should desire to obtain chiefly Douglas fir in the new crop wherever it will grow satisfactorily. The forests of the future should be composed to a large degree of this species, and in the Douglas fir type proper forest management will be directed toward this end. Other species, such as hemlock, cedar, and silver fir, will come in to some extent; it would not be easy to prevent them, even if it were desirable to do so. Where the production of pulp wood is the object of the owner, as it will be increasingly in the spruce-hemlock forests of the fog belt, it may be advisable to manage the land with a view to extending spruce in the new crop. Where the land is managed to obtain principally Douglas fir in the new crop, consideration of the secondary species is of no consequence. As a matter of fact, the treatment that results in regeneration of Douglas fir is also sufficiently favorable for that tree's natural associates.

It may be said at the outset that Douglas fir has every characteristic favorable for its abundant reproduction in this region and no inherent traits to prevent its plentiful natural propagation. An abundant and frequent seeder, its seed germinates quickly and vigorously in almost any kind of seed bed, and the seedlings grow hardily and have good resistance.

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succumb the first season. Some seed fails to germinate and yet falls on ground favorable for its preservation—perhaps it is covered lightly by the leaf fall or by animal activity, and so is "stored" in the cool duff. The disturbance of the ground by logging naturally buries some seed in mineral soil. A small percentage of this stored seed probably remains viable past the first season, and that which escapes injury when the virgin forest is cut and the slash burned germinates the succeeding spring in response to the warmth of the sunlight on the burned, logged-off land. Where there are crown fires in virgin timber, this stored seed seems to be a very potent factor in insuring prompt reforestation.[1] On logged and not too severely burned lands some reproduction undoubtedly comes from stored seed, at least when a good seed crop has been borne the preceding autumn. The rest of the reproduction—if any—comes from seed blown from near-by seed trees and standing timber. The proportion from each source depends upon local circumstances, and the evidence now at hand does not warrant any generalized statements that would apply to all localities and conditions.

SLASH BURNING

The theory has sometimes been advanced that broadcast slash burning is a necessary measure in securing reforestation, in that it bares the ground and stimulates germination; but detailed study strongly points to the conclusion that reproduction of Douglas fir starts more promptly and more abundantly where the slash is not burned. A comparison of a considerable number of burned areas with similar but unburned logged-off land, in each case quite recently cut over, shows 10 or more seedlings on the unburned to every seedling on the burned ground. Slash burning, however, because it lessens the water content of the surface soil, probably increases the proportion of Douglas fir over hemlock in the new crop.

The chief reason for slash burning as a forestry measure is to reduce the fire menace of the vast amount of dry litter, that there may be less chance of accidental fires later. For most of the Douglas fir region broadcast slash burning has been accepted by lumbermen and foresters as an essential practice, a "necessary evil." Until there is a greater degree of fire prevention, slash burning is a wise precaution against a greater evil—uncontrollable summer fires.

Nevertheless a slash fire, no matter how intensely it burns, never leaves an area immune to subsequent fires. In this region even the most thoroughgoing burning fails to consume all the inflammable trash that is on the ground; many of the coarser limbs, tops, cull logs, and rotten windfalls are left; some of the duff is only charred on top; the standing snags are not burned down; and the unmerchantable green trees that are left may be killed but are not consumed. Areas burned by a good slash fire have been known to reburn the same year, though ordinarily the second fire would not cover all of the surface. All too commonly a part reburns when the fresh slash on the adjoining area is burned.

[1] HOFMANN, J. V. THE NATURAL REGENERATION OF DOUGLAS FIR IN THE PACIFIC NORTHWEST. U. S. Dept. Agr. Bul. 1200, 63 p., illus. 1924.

The ability of single Douglas fir trees to withstand wind is somewhat variable; soil and situation affect this characteristic materially. It may be expected that some of the single trees, of whatever size, left on logging operations will be blown down, but experience has shown that the greatest loss is in the first few years after cutting and that on most soils the loss is not serious.

The wisdom of leaving conky trees for seed has been questioned. This need not be gone into here more than to say that the prevalent fungus which causes conk rot (*Trametes pini*) is a disease of the heartwood, and therefore does not affect the vitality of the tree; that the disease is not transmitted through the seed; that it is a disease of old trees and therefore not to be greatly feared in the new crop which will be harvested probably before it comes to the age of bad infection. Foresters and pathologists are agreed that the leaving of such trees does not practically increase the danger of infection in the new crop and that the cutting of these few conky trees merely to rid the area of infection would be a trifling measure, so universal is the disease.

REFORESTATION FACTORS IN THE FOG BELT

The above discussion of the factors affecting reforestation in the Douglas fir type proper applies broadly to the fog-belt type, with a few noteworthy points of difference. Spruce and hemlock, which either with or without Douglas fir are the species common in the fog-belt forests, both reproduce vigorously on logged-off land in very much the same way as does Douglas fir. Hemlock is enormously prolific on moist or shaded sites. Both species are more exacting as to moisture requirements than fir, and hence germination is best in duff and where the site is not too dry. Also, as has already been seen, slash burning, which exposes a site to drying out, is likely to be more favorable to Douglas fir than to hemlock and spruce.

Both spruce and hemlock are less windfirm than Douglas fir; therefore, patches of pole wood or scattered seed trees of these species left from logging are less likely than Douglas fir to survive.

The fire problem is less difficult in the fog-belt than in the Douglas fir type, for accidental burning of slashings is easier to guard against. It is even difficult to burn slashings intentionally in certain fall and spring seasons because of the soaking ocean fogs. Nevertheless in some years the fog belt has dry spells equal to any in the Cascade region, and at such times the fire risk becomes exceedingly acute. Some of the most disastrous conflagrations in the Northwest have been in the fog belt.

Hemlock and spruce slash is less combustible than Douglas fir brush; the needles fall off the first season, and the fog-belt climate promotes a luxuriant growth of shrubbery which quickly clothes logged-off land. Where slash fires do not follow logging, this shrubbery consists of rather noninflammable growth, such as salmonberry, alder, elderberry, red huckleberry, and Christmas fern, and within four or five years makes an almost continuous cover which keeps green all summer. On such areas the fire risk quickly diminishes to that of the virgin forest. This cover does not seem to deter forest reproduction.

Where logged-off land in this type is burned over, the less inflammable shrubbery is killed back and in its place come the more inflam-

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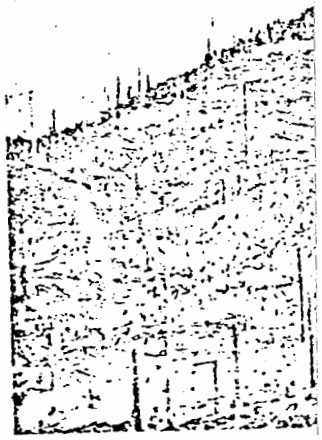

CHARACTERISTIC LOGGE

About 200,000 acres of such land slash has not yet been fired e snags make control of fire here followed clear-cutting. The th is not cut immediately, but th the ground survived the slash t

mable weeds—hawkweed, thistle, bracken fern, and fireweed. These prolong the period of acute fire risk until the less inflammable bushes have regained the ground or the young trees have made a continuous cover.

PLATE 4

THE RESULT OF PROPER LOGGING AND PROTECTION

Two thousand Douglas fir saplings per acre, of Christmas-tree size, on land that has been well protected since logging and immediate slash burning 10 years ago

LOGGING AS IT AFFECTS REFORESTATION

In western Washington there is cut over annually some 145,000 acres of mature timber, and in western Oregon about 60,000 acres. This cut is in both the Douglas fir type proper and the fog belt, most of it in the former. Practically all of it—95 per cent—is on private land. The following discussion applies to the methods used on the private lands without reference to the system of cutting in effect on the national forests under governmental regulation. Briefly, present logging practice is about as follows:

The entire stand is felled, except such scattered trees as are too defective from decay or other causes to be of value to the logger and such small trees as are unmerchantable. The logs are then removed by powerful donkey engines or by skidders, either by the overhead (or skyline) system, by the high-lead method or, rarely now, by the ground-yarding method. Railroads are customarily used in conjunction with the larger operations. Most operations are continuous the year through or are suspended only for a short period in the winter or when the market is off.

The quantity of débris—cull logs, tops, fallen rotten trees, branches, and broken-down undergrowth—which litters the ground on the conclusion of logging is enormous. Ordinarily this slashing is burned broadcast at a convenient and safe time from a few months to two or three years after logging, unless, as is very often the case, it has already caught fire accidentally. Of course, the fire hazard in a logging operation does not all come from the operation itself. Some of the fires are due to other agencies, including lightning, berry pickers, hunters, fishermen, and campers, and common-carrier railroads.

Disposal of slashings which are a menace is required by the laws of both States. Slash burning is done either in the spring or fall but more commonly in the fall. There is little preparation for the slash burn except removal of logging equipment from the zone of danger. An effort is made to keep the fire out of standing timber and the operation. Too often the burning is taken casually and no forehanded aggressive plans are made in advance to control the fire effectively. Sometimes the slash fire spreads to lands once burned, and unless there is timber, equipment, or other property in its path, but slight effort if any is usually made to prevent it from doing so.

Upon the conclusion of "falling," logging, and slash disposal, the average area is usually devoid of living trees. The smaller trees left by the fallers have for the most part been knocked down by the logging lines or burned in the slash fire, and of the few larger trees which were culled and left standing some if not all have been killed in the broadcast burning. Standing dead trees or "snags," varying in height from a few feet to 200 feet, are scattered over the area. Their abundance depends upon the number of dead trees in the original forest and the type of logging used. A check of the snags on a number of representative logged-off tracts shows anywhere from 1 snag to each 5 acres to 5 snags to the acre, considering only those over 20 inches in diameter. On a few operations snags are

Fire lines will sometimes be necessary. At the time when it is proper to burn slash, fire will not run much in green timber. There is greater danger of the fire spreading to cut-over land once burned or to areas from which the logs have not yet been hauled out, and here some fire-line building may be a wise and necessary precaution.

It is not within the scope of this bulletin to treat comprehensively of the complicated art of brush burning, but a few points may illustrate what should constitute the proper carrying out of a brush-burning job.

(1) The area selected for burning should be laid off with reference to topography, cover, and natural firebreaks, so that the fire may be held to that area, and so that when adjoining land is logged and burned the next season the fire may not trespass on the area already burned.

(2) The dryness of the slash and surrounding country should be studied, so that both may be right before a fire is started. Burning slash that is too wet to burn clean is as undesirable as burning slash that is dangerously dry.

(3) A forecast of the weather should be made and the relative humidity of the atmosphere noted. The United States Weather Bureau may be consulted by phone if desirable, so that the fire will not be set on the eve of a hot, dry, or windy spell.

(4) The time of day or night for the burn should be chosen with regard to humidity, local air currents, etc., it being borne in mind that a thorough, clean burn is to be desired. Never burn in the morning unless a rainstorm is setting in.

(5) All equipment (tools, tank cars, hose, pumps) and a reserve crew should be in readiness for a fight in case the fire gives trouble.

(6) The fires should be so set (by enough men to permit rapid work) that the force of the conflagration may work toward the center of the area to be burned; they should be set on the uphill side before the downhill side, and first on the leeward side, on the flanks next, and on the windward side last. Working down a hillside in strips, or against the wind, is a good method.

(7) Slashing should be so fired that standing patches or islands of polewood or immature timber may not be killed by the slash fire. If these are killed, they merely add to the fire danger.

(8) Fires that get across the line or start outside should be put out, by the usual fire-fighting methods, especially the use of water.

PATROL OF SLASHING AFTER BURNING

Competent men should patrol the burned slashing until smoldering fires are out. In the case of spring burning any fires that could cause trouble must be put out, preferably with water, before the dry season begins. The area should be watched as long as any smoke comes from it or stray fires occur.

SLASH DISPOSAL IN THE FOG BELT

Further study and experience is necessary to determine whether in the spruce-hemlock type of the real fog belt broadcast slash burning after clean cutting is always good practice. As stated earlier spruce-hemlock slash is different in inflammability from fir slash, and the native vegetation so quickly reclothes the logged-off land in the coastal region, when there is no burning, that the fire risk returns

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in a very few years to normal, or to a better condition than if the area is burned. Where slash burning is not done, however, it is imperative that doubly efficient protection be given the land for a few years until the stage of acute inflammability is passed.

In this type there is sometimes practiced what almost corresponds to selective logging—taking out the big firs and spruces and leaving a heavy stand of hemlock. These hemlocks so shade the ground that inflammability is low and temporary; to burn the slash would kill them and add greatly to the fire danger. Obviously, here broadcast burning would not accomplish its object.

SEED SUPPLY

To supplement the stored seed that may survive slash burning and to give more security against complete and permanent devastation by accidental reburns, some seed supply should be provided. As has already been pointed out, this may be either in the form of single seed trees scattered over the area or in the form of groups or bodies of uncut timber at not too great a distance.

FROM SINGLE SEED TREES

In most Douglas fir operations there are occasional large trees affected with conk to such a degree as to be of very low commercial value; on some watersheds they occur as frequently as two or three to the acre over large areas. It is somewhat of a gamble whether the merchantable material they yield would pay for the cost of "falling" and handling them. At present there is considerable variation in the methods used by operators in disposing of such trees. Operators cutting for the log market leave them standing rather than handle unsalable cull material; those cutting for their own mills are likely to "fall" them.

It is recommended that these trees of dubious merchantable value be left standing, when this can be done without seriously inconveniencing the loggers. Douglas fir is the best species to leave. Where it does not occur, the best of the other windfirm and fire-resistant trees may be left. Seed trees should always have well-formed crowns, appear windfirm, and be up to the average of the stand in size. Two trees per acre are plenty, but more may have to be left by the fallers to provide for loss in brush burning. Within 150 or 200 feet of landings and railroad tracks seed trees are undesirable.

Leaving seed trees of questionable merchantable value is a wise reforestation measure and may often be done without unreasonable sacrifice of merchantable stumpage. To have a good woodsman, like the bull bucker, designate in advance of the fallers the trees of this sort which might be left, or ought not to be cut, may actually save the operator money.

FROM ADJACENT UNCUT TIMBER

Some logging operations are so laid out that no part of the cut-over acreage is ever very far from standing timber. This may be either patches of unmerchantable trees, timber on the upper slopes of a narrow valley, or stumpage of other ownerships. Within a reasonable distance this bordering timber will help seed up the ground

Union Calendar No. 925

83d Congress, 2d Session - - - - - - - House Report No. 2680

REPORT

WITH RESPECT TO

THE HOUSE RESOLUTION

AUTHORIZING THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO CONDUCT AN INVESTIGATION OF THE BUREAU OF INDIAN AFFAIRS

PURSUANT TO HOUSE RESOLUTION 89
(83D CONGRESS)

SEPTEMBER 20, 1954.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed, with an illustration

UNITED STATES
GOVERNMENT PRINTING OFFICE
53205 WASHINGTON : 1954

PUYALLUP RESERVATION

27. Appraisal of competence

General

A. The Puyallup Indians are competent.

B. These people are almost completely absorbed now by the off-reservation economy. They earn their own living; own their own homes and pay taxes on them.

QUILEUTE RESERVATION

27. Appraisal of competence

General

A. These Indians are competent to manage their affairs, independently of Bureau.

B. These Indians have demonstrated their ability to handle their own affairs in fishing and fur sealing in the past. Many of them are skilled workmen in the timber operations and some of the older ones make nets and dugout canoes from cedar logs which have a ready sale for premium prices. Several are good carpenters. In general they have all earned their own living for the past 4 or 5 generations. At least three school generations have completed public schools and many have completed high school.

QUINAULT RESERVATION

27. Appraisal of competence

General

A. All of the Quinault Indians are competent to manage their affairs independently of the Bureau; 370 live on the reservation and 1,500 off the reservation in white communities and have timber allotments on the reservation.

B. A majority of the Indians have already been absorbed into white communities. The few hundred still living on the reservation earn their livelihood with very little assistance from the Bureau in the form of services.

Individual

A. A number are self-employed as fishermen. Two or three own and operate small restaurants. Most are fisherman and wage earners working in logging camps on and off the reservation, in sawmills and on farms off the reservation. Some are contract loggers.

SKOKOMISH RESERVATION

27. Appraisal of competence

General

A. Their tribal council operates very effectively and efficiently in handling tribal affairs. The majority of the Indians work in the logging industry, trucking logs or working in the paper mills. Fishing in season.

B. Degree of education for most of the members: Public school attendance by youngsters since 1931; or three school generations of children. Contact and working with white people since before the treaty was signed. George N. Adams, chairman of the Skokomish Council, is the dean of the legislature for the State of Washington.

Individual

A. George N. Adams and grandsons, the Miller boys, are doing very well with about 60 head of pure-bred Hereford cattle. Several of the tribal members are hauling logs as contractors in the woods work. Many work in the paper mills and sawmills in Shelton, Wash., 10 miles away.

SHOALWATER RESERVATION

27. Appraisal of competence

General

A. These Indians are entirely competent to manage their own affairs without help from the Government.

B. These people have lived by their own initiative for years without major assistance from the Bureau. They make their living, as they have in the past, from employment in the fishing and timber industry. Some income is received from timber sales of their allotted interests on Quinault Reservation.

Southern Plains—Continued

Ponca

Census of 1934. P. W. Danielson, S. I. A. April 1, 1934. Surnames English and translated Indian names. Total persons listed, 800.

Sac and Fox of Oklahoma

Census of 1934. F. E. Perkins. April 1, 1934. English surnames with a very small fraction of surnames of untranslated Indian names. Total persons listed, 831.

Citizen Potawatomi of Oklahoma

Census of 1934. F. E. Perkins, supervisor. April 1, 1934. English surnames with a tiny fraction of untranslated Indian names used as surnames. Total persons listed, 2,668.

Mexican Kickapoo of Shawnee Agency, Okla.

Census of 1934. F. E. Perkins. April 1, 1934. Most of these have no surnames. The surnames are almost all untranslated Indian names, a small number English surnames. Total persons listed, 258.

Tonkawa

Census of 1934. P. W. Danielson. Pawnee Indian Agency. April 1, 1934. English surnames. Total persons listed, 46.

Standing Rock

Census of 1934. L. C. Lippert, supervisor. April 1, 1934. A small number have no surnames, only translated and untranslated Indian names. Surnames are primarily translations of Indian names, a small number of untranslated Indian names and a small number of English names. Total persons listed in North Dakota, 1,677, and total persons in South Dakota, 2,098.

Taholah

Quinaielt

Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. All have English surnames with perhaps a few exceptions where surname may be translated or untranslated Indian names. Typical surnames are Butler, Capoeman, Charley, Cultee, Elliott, George, Hudson, James, Petit, Picknoll, Ward and Williams. Total persons listed, 1,727.

Skokomish

Census of 1934. N. O. Nicholson, supervisor. April 1, 1933 and March 31, 1934. English surnames. Total persons listed, 189.

Ozette

Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. English surnames. Total persons listed, 3.

Nisqually

Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. English surnames. Total persons listed, 63.

Chehalis

Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. English surnames. Total persons listed, 30.

Squaxin Island

Census of 1934. N. O. Nicholson, supervisor. April 1, 1934. English surnames. Total persons listed, 39.

Makah (Neah Bay Jurisdiction)

Census of 1933. Raymond H. Bitney, supervisor. April 1, 1933. English surnames. Total persons listed, 408.

Tongue River

Census of 1934. W. R. Centerwall, supervisor. April 1, 1934. Almost all surnames are translations of Indian names. Total persons listed, 1,541.

Tulalip

Lummi

Census of 1934. O. C. Upchurch, supervisor. April 1, 1934. English surnames. Total persons listed, 665.

Clallam

Census of 1934. O. C. Upchurch, supervisor. April 1, 1934. English surnames. Total persons listed, 763.

Muckleshoot

Census of 1934. O. C. Upchurch, supervisor. April 1, 1934. English surnames. Total persons listed, 205.

I Pueblos by the agency but it is
blo now.
approximately 161 tracts of non-
are accurately shown on official
r the Pueblo Lands Board (con-
1924) had completed its report
tates district court. The agency
the States marking some of the
disturbed and there is at times
ans as to the boundaries of the
ed by engineers to restake the

ıot fundamentally different from

ıreceding pueblo.

at a meeting between pueblo
to land assignments, at present
ıe council. This is adequate at
ent type of village government,
land assignments. Records of
au. Since the original Spanish
hat are hard to determine now,

greater effort than most Pueblos
dings on the tribal land. They
of Taos County, N. Mex., the
vidual members of the pueblo.
not have a legal description of

ıe as at Acoma and Cochiti.
ıgreements are settled verbally

dividual "tribal use rights" on
by the council and the pueblo
Tribal land use for farming
lo to another member but no

ibal lands used by individuals
there are about 275 tracts of
s marking some of the bound-
and there have been disagree-
boundaries of their respective
howing land units in a division
ıired in December 1939. This

ibal land used for homes and
o grant there are about 616
n disagreement on the bound-
ıary to restake the boundaries

of land used by individual
of non-Indian private claims
e boundaries of these private

d used in this pueblo. Within
non-Indians, the boundaries

d to writing and the locations
ı the minds of the officers of

se rights within the pueblo.
ıembers with each other and
pueblo. Within the pueblo
ed land. The boundaries of

Tesuque.—No written records on transactions covering tribal use rights. There are approximately 14 tracts of non-Indian land within the Taos Pueblo grant, the boundaries of which are in part the subject of a dispute.

Zia.—There are no written records of use rights of tribal land held by members of the pueblo. Pueblo officials use copies of group survey maps and consider them sufficient if revised every few years. They try to record sales or exchanges on these maps.

Zuni.—There are no written records regarding tribal land used by individuals. Group survey maps show the general location and the size of tracts of farmland.

Canyoncito.—Land records are not kept since there are no adequate storage facilities and many adults do not speak or read English. The agency officers has copies of deeds covering acquisition of land with Navajo tribal funds and rehabilitation funds, files on allotments and heirship determination regarding them, leases on State land and status maps. These are supplied to the tribal officials at various times. The tribal officials seem to realize that there is a need for keeping records of their title to the land.

Alamo.—The officers do not have safe storage places for maps and deeds and other land records and many do not understand English. The agency office keeps what records there are regarding the Alamo land.

Ramah.—The Indians keep grazing permits issued to each livestock owner. Agency maintains files on allotted land with the heirship determinations connected therewith. Since many do not read or speak English the written documents are meaningless to them.

WARM SPRINGS RESERVATION

Warm Springs reports the following deficiencies: (1) Probate and heirship findings are not current; (2) records of land assignments and exchanges are not current and are not complete; (3) records of land purchases, allotment cancellations and relinquishments and exchanges are not consolidated in such a manner that statistics can be extracted when needed for reports, timber sale contracts, leases, rights of way, etc.; (4) the platbook is not current and the entries within it should be checked against deeds and other documents of original issue.

It is noted further that the land record situation "is steadily deteriorating" and that records should be brought up to date and a system of recording restored that will keep records current.

WESTERN WASHINGTON AGENCY

Chehalis Reservation.—Inheritance records are not maintained to provide ready information as to current ownership. Fractionated ownership is the rule. Otherwise records are adequate.

Lummi.—Records of Lummi Reservation are encumbered by undetermined fractionated interests of heirs to estates.

Muckleshoot.—Land records are reasonably up to date.

Nisqually.—Inheritance records are not up to date and it is necessary to search through numerous probate records to determine ownership of any patent allotment.

Makah.—Land records could be brought up to date in 6 months.

Nooksack.—Tribe maintains no land records.

Port Gamble.—Records are reasonably accurate and up to date.

Puyallup.—Same as at Port Gamble.

Quileute.—Inheritance records are not entirely up to date in the case of some village lots.

Quinault.—Inheritance records are not maintained to provide ready information as to current ownership. Fractionated ownership gets worse with the passage of time.

Skokomish.—Inheritance records are not maintained to provide information on current ownership.

Suquamish.—Heirs' records are not up to date.

Swinomish.—The organization does not maintain any land records.

WIND RIVER

Allotment worksheets are still employed and have never been permanently prepared on card material. The worksheet is still in pencil form but contains all information relative to selection, approval, etc. The staff barely keeps current everyday land transactions and exchanges. Heirship cards are not com-

WESTERN WASHINGTON AGENCY

Chehalis Reservation.—No factions reported and no organizations.

Duwamish Reservation.—No factions reported and no organizations.

Lummi Reservation.—There are no active factions in this group. Several veterans associations are listed as among other social groups. There is a Lumml employment council for purposes of securing jobs for members.

Makah Reservation.—There are two active political factions, the Peterson faction with 50 members and the Parker faction with approximately the same number. There is also an independent faction of about 45 members. The Peterson faction has dominated the political life for the past several years. There are several Indian groups and social organizations. There are no business enterprises mentioned.

Muckleshoot Reservation.—No political factions listed at Muckleshoot but several social organizations.

Nisqually.—There are no political factions listed and no organizations outside of the sewing club.

Nooksack Reservation.—No social organizations or factions.

Port Gamble Reservation.—There may be two factions but the report is not too clear on this. No organizations are listed.

Puyallup Reservation is dormant and no political factions are reported. The only activity of the tribe is to supervise the maintenance of a cemetery and one caretaker is paid out of the tribal funds.

Quileute Reservation has no political factions and one business enterprise consisting of a water system.

Quinault Reservation.—There are no political factions and no organizations outside of some social groups.

Skagit Reservation has no political factions and no organizations.

Skokomish Reservation has no political factions and no organizations outside of some social clubs.

Saquamish Reservation.—No political factions and no organizations.

Swinomish Reservation.—There is a small group in the Swinomish Tribe calling itself the "Swinomish Tribe," which contests the legality of the actions of the Swinomish Tribal Council. Several social organizations are mentioned and a tribal council sawmill and one or two enterprises.

Tulalip Reservation reports only social clubs and no factions. There are several business enterprises of the Tulalip Tribe.

WIND RIVER AGENCY

Shoshones are divided to some extent between fullbloods and mixedbloods and it is estimated about 20 percent are fullbloods. There seems to be no division among the Arapahoes and about 60 percent of them are fullbloods. Arapahoes operate the Arapaho Ranch which is the only full tribal enterprise operated at Wind River. There are six association relating to cattle and crafts and cooperative merchandising as follows: Wind River Cattle Cooperative, Ethete Community Cattlemen's Cooperative, Lower Arapaho Cattlemen Cooperative, Ethete Cooperative Association, Inc., Shoshone Crafts Association, and Arapaho Crafts Association. There are also four water users' associations.

WINNEBAGO AGENCY

Winnebago Reservation reports no factions and no organizations outside some of the usual social groups.

Omaha Reservation reports no political factions and no organizations outside of some social groups.

Ponca Reservation reports no political factions and no organizations.

Santee Sioux Reservation reports no political factions and two organizations, an economic betterment club and a tribal cattle herd.

YAKIMA AGENCY

Yakima Reservation identifies no political factions but does mention a tendency for family groups or clans to act in union on tribal political matters and that there is a division between fullbloods and mixedbloods. A number of social clubs are mentioned. There is a Yakima Tribal Service—Land Development and three cattle associations.

(c) The chief obstacle preventing assumption of full citizenship by these Indians is their lack of confidence in their own ability to meet those responsibilities, and their fear of losing their property through nonpayment of taxes.

(d) Legislation to adjudicate the treaty rights of the Indians and settle the status of tribal lands on the Quileute Reservation should make it possible to effect withdrawal of trusteeship over these Indians.

10. Reappraisal of factors

(a) (b) and (c) The Quileute Reservation is too small to form an economic unit for the support of these Indians. It is suitable only for growing of timber. The present timber crop is now being harvested and will bring an income of some $50,000. A second crop cannot be expected for another 60 years. It would appear to be only wise to dispose of this cutover forest land at the earliest practicable date and save the Indian Service the cost of its protection.

QUINAULT

9. Regarding removal of Indian Bureau supervision

(a) At the last meeting of the tribal council which had a very good attendance of reservation Indians, a decisive vote was registered against release from wardship.

(b) The individual is strongly opposed to assuming full responsibilities of citizenship. He does not like the idea of having his land placed on the tax rolls, of losing his fishing privileges, and other treaty rights.

(c) These Indians, like all others in western Washington, are capable of handling their own affairs, excepting a small percentage of older people, mental incompetents, etc. They will not voluntarily accept responsibility for doing so however. They do not want to pay taxes—who does? They enjoy their special fishing privileges—who wouldn't? The only thing they would gain by being released from a wardship status, would be the legal right to buy alcoholic beverages They have little trouble securing more of such beverages than they need now.

The chief obstacles to removal of trust status from these Indians and from the Quinault Reservation lands are:

(1) The antagonistic attitude of the Indians.
(2) The need to determine who is entitled to share in tribal assets and treaty rights.
(3) Treaty rights of Indians.
(4) Claims now in litigation.
(5) Long-term timber sale contracts.

(d) Legislation and court action may both be necessary to bring an end to Government trusteeship. Many of the off-reservation Indians would be happy to collect the value of their trust property and tribal assets and go their own way. It must first be determined what share they have in tribal assets, chief of which is the exclusive fishing right in Quinault Lake and the Quinault River.

Perhaps a package deal could be developed to settle with the Indians for their boundary claim, treaty rights, etc.; tribal lands to be fee patented to the tribal organization, or sold and funds distributed; trust lands fee patented or sold and funds distributed to the heirs.

It has also been suggested that the lands be sold to the Forest Service and made a part of the Olympic National Forest.

In any case, fee patents or transfer of titles of lands now under timber sale contract would have to recognize such contracts.

10. Reappraisal of factors

(a) The above deals primarily with Indians in residence on the Quinault Reservation. The relatively small group at Taholah dominate tribal affairs and run the tribal government. No accurate count of Quinault Indians exists. There are hundreds of Indians allotted on the Quinault Reservation that are listed as Quinault Indians or as part Quinault. They may be affiliated with the Chinooks, Chehalis, Quileutes, or some other tribe. There are other hundreds of Quinault allottees who are listed as members of other tribes. The Quinault Tribal Council recognizes none of these as entitled to participate in Quinault tribal affairs other than to be represented at meetings and to have a voice in matters pertaining to his particular allotment. One must reside at Taholah to hold office on the council. One must prove that he is a Quinault Indian before he may vote at council meetings or in tribal elections.

(b) The Indians employed counsel for the Eastman case and the Quinault Reservation boundary case. They are now in the process of making a contract with Wilkerson & Stover to replace the late Kenneth R. L. Simmons.

(c) Through schools, marriages and contact with other people assimilation in this tribe is well advanced. The Government's participation in the construction of a school at Moclips, Wash., was a step in the right direction. Now all Indian children past the third grade are transported by bus to a good public school where they are in association with non-Indian children.

SKAGIT

9. Regarding removal of Indian Bureau supervision:

(a) The attitude of members of this tribe is against release from wardship unless a settlement is made for nonfulfillment of treaty obligations.

(b) Individual members of this tribe are not willing to assume full responsibilities of citizenship, such as land taxation.

(c) The obstacle preventing assumption of full citizenship of this tribe are the attitude against withdrawal, the status of these public domain allotments and their pending claim before the Indian Claims Commission.

(d) A bill for complete emancipation of these Indians would have to provide for removal of restrictions on their land and legislation to sell land in undivided multiple ownership.

10. Reappraisal of factors

(a) The Skagit Tribe of Indians participated in the Point Elliott Treaty of January 22, 1855, and the group in this report are nonreservation Indians residing on public domain allotments which are in a restricted trust status.

(b) The Skagit Tribe, along with other tribes and bands in this area, partipated in the Duwamish et al. case of August 21, 1926, which was unfavorably decided June 4, 1934. The Skagit Tribe, together with the Snoqualmie Tribe, engaged attorney Kenneth R. L. Simmons, deceased, to present their claims jointly before the Indian Claims Commission. This contract will expire November 5, 1953.

(c) The assimilation of this tribe has not progressed very rapidly, there being approximately 80 percent Indians of full blood. Children of school age all attend public schools. The public domain allotments on which they reside are scattered among non-Indian lands and the wage earners compete and work with non-Indians.

SKOKOMISH

9. Regarding removal of Indian Bureau supervision

(a) The attitude of the individual Indians is averse to release from wardship. This is an impression gained from statements of individuals at meetings and in conversation with different individuals during the past 2 years. Tribal chairman, George Adams, would favor Federal withdrawal if older Indians (60 years and up) could have tax exemption on homes. Tribal secretary, Elizabeth Byrd, would not favor this action. She felt younger Indians would lose homes and move in on the old people.

(b) Individuals are unwilling to accept full responsibilities of citizenship such as land taxation. They are afraid they would lose their land through inability to pay the taxes.

(c) The primary obstacles to prevent assumption of full citizenship by these Indians are:

(1) The mental attitude of the Indian. He lacks self-confidence in his own ability. He has never faced such responsibility and fears it.

(2) Settlement of tribal fishing rights on the Skokomish River.

(3) The complicated land status (fractionated ownership) of allotments.

(4) The tribal claim of tidelands in Hoods Canal bordering the reservation.

(d) Legislation should include settlement of the tribe's claim to the tidelands bordering the reservation and would have to recognize treaty rights governing fishing in the Skokomish River. The land problem, of multiple ownership of small tracts of land, is not peculiar to this reservation.

10. Reappraisal of factors

(a) The Skokomish Tribe of Indians is probably as near ready for withdrawal of Federal trusteeship as it will ever be. Their lands are in such a tangled ownership pattern that the only practicable way to alleviate the situation in most cases will be to sell the lands and distribute the proceeds to the respective heirs. Lands

occupied by the Indians are r
the highways. (See map.)
could be concentrated in six
A number of Indians who
on the Quinault Reservation
As is the case with all tr
many of the Indians have lo
lated into non-Indian comm
and live as any other citizen
not reservation Indians.
Those who still reside on
reservation employment, for
Indians.
(b) Tribe has contract wit
tidelands of Hoods Canal th
Contract with attorneys ma
the Skokomish Tribe.
(c) The members of the Sk
tion. They are employed by

9. Regarding removal of Ind
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(c) The treaty of Point E
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sation and they are not in fa
(d) Mutual termination of
pave the way for emancipati

10. Reappraisal of factors
(a) This band actively pa
receive allotments mainly o
sufficient land and a small h
ceived little or no treaty bene
(b) Ever since the treaty,
themselves to be located in t
this connection took part in
United States, August 21, 19
1934, which was unfavorable
with Kenneth R. L. Simm
Claims Commission. This c
(c) Assimilation of this ba
generation marrying Indians
they live in non-Indian comm
Indians as a part of their ever

9. Regarding removal of India
(a) The attitude of these
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of full citizenship and land ta
(c) The obstacles preventi
the members, the trust statu
Indian Claims Commission.
(d) Removal of restriction
people live and legislation en

either lost or destroyed. There is lack of any systematic procedure to preserve tribal records or to reimburse an official who keeps such records up to date. One clerk could probably bring the records up to date in 3 or 4 months; however, there seems to be a lack of interest of keeping up tribal records.

Makah.—There is no complete up-to-date file of tribal documents of Makah. The filing system is not organized and to produce specific documents is a matter of considerable research. Extensive files on the Makah may be available at the western Washington agency. Council meetings are attended by the tribal secretary who reports proceedings and files copies of same to the agency but not verbatim or complete. A system of accurate filing of tribal documents and preserving the same needs to be established. Present records are subject to destruction by fire.

Nooksack.—Secretary keeps tribal documents at home. These consist of minutes of general council and tribal council meetings. They are kept in long hand and are accurately reported. There is no protection against loss by fire.

Port Gamble.—Secretary takes records of council meetings in long hand. There is no fireproof filing of records.

Puyallup.—The tribal records are incomplete and the tribal council looks to the agency for documentary material.

Quileute.—There is no up-to-date collection of tribal documents. Each council officer keeps those records pertaining to his office. Currently minutes are fully kept. Previously they were not. There is no established procedure for keeping records and no safe place for their preservation.

Quinault.—A large part of tribal records were lost due to a fire in 1950. What remains is to be found in the homes of the past and present officers. No indication is given as to the adequacy of current minutes of regular meetings.

Skagit.—Secretary maintains a complete file of minutes of tribal correspondence. Proceedings of meetings are not verbatim but reports of preceding meetings are read by the secretary. The chief lack is protection against fire.

Skokomish.—No up-to-date file of tribal documents exists. Minutes of the records are maintained by the tribal secretary and clerk in their homes. Adequacy of these records is not known. A roll has not been kept current. Full records of tribal council meetings are not maintained, the secretary making briefs of the proceedings and notes on actions. There is no systematic method of processing records. The agency is 100 miles away from this group of Indians and is not currently in touch unless notified by the tribal secretary.

Snohomish.—The secretary maintains copies of minutes in his residence. No data on adequacy seems available.

Suiattle.—Secretary of the council has minutes of all meetings. There is no provision for preservation.

Suquamish.—Tribal files are not up to date. Any documents are in the agency office. Minutes of meetings are incomplete. The tribe does not attach major importance to the need for up-to-date records. Storage is subject to destruction by fire.

Swinomish.—The office of the Swinomish Indian tribal community at La Conner, Wash., has the tribal documents. No audits of the books have been made. Minutes are not taken verbatim but seem to be accurate descriptions of proceedings. The records are inadequate and cannot be audited under the present system. They are not protected against loss by fire.

Tulalip.—The secretary has the complete file in the office on the reservation. Proceedings are fully reported and approved by each succeeding meeting. There are apparently no deficiencies in the keeping of the records.

WIND RIVER

Records are kept in the agency at Fort Washakie, Wyo. Fuller records are kept now than in former years and written records of tribal meetings have been kept since 1940. Tribal secretary takes verbatim records of meetings and also has charge of the census, keeping records of births, deaths, adoptions, and annulments. Early records are seldom used and their extent is not known. Due to change of personnel, continuity of records has not been maintained. Per capita payments have been responsible for keeping vital statistics in good shape. Marriage by Indian custom is not recognized and marriage certificates must be filed for recording at the agency.

Winnebago Reservation.—Th
some record is made of proce
roll. Forty percent of the tri
countries, hence vital statistic
Omaha.—Tribal council kee
statistics are subject to the sa
Ponca of Nebraska.—No rec
Santee Sioux of Nebraska.—
the tribe has been lax in furn
verbatim and are not too wel

The agency office general fi
form. In some general coun
language without interpreta
proceedings are either verba
on the subject under consider
are kept under supervision of
Recording of births and deat
reporting is not indicated. I
of probates and per capita di

Tesuque Pueblo.—Six resolutions were submitted to the superintendent with various disposal.

Zia Pueblo.—Six resolutions were submitted to the superintendent with various actions taken.

Zuni Pueblo.—Seven resolutions were submitted to the superintendent with action taken indicated.

Canyoncito.—Two resolutions were submitted to the superintendent and referred to the area director.

Alamo.—Two resolutions were submitted to the superintendent and referred to the area director.

Ramah.—One resolution was submitted to the superintendent and referred to the area director.

WESTERN WASHINGTON AGENCY

Chehalis.—No resolutions were submitted.

Duwamish.—No resolutions were submitted.

Elwha Valley.—No resolutions were submitted.

Jamestown.—No resolutions were submitted.

Lummi.—No resolutions were submitted.

Makah.—Six resolutions were submitted to the superintendent with area office action indicated. One was disapproved and the others were approved.

Muckleshoot.—No resolutions were submitted.

Nisqually.—No resolutions were submitted.

Nooksack.—No resolutions were submitted.

Port Gamble.—No resolutions were submitted.

Puyallup.—One resolution was submitted to the agency and referred to the area office and approved there.

Quileute.—One resolution was submitted to the agency officer but no action was taken.

Quinault.—Five resolutions were submitted to the agency officer and referred to the area director. No final action is indicated.

Skagit.—No resolutions were submitted.

Skokomish.—No resolutions were submitted.

Snoqualmi.—No resolutions were submitted.

Suiattle.—No resolutions were submitted.

Swinomish.—Four resolutions were submitted to the superintendent and forwarded to the area director. Two were submitted to the Secretary of the Interior and approved.

Tulalip.—Seven resolutions were submitted to the superintendent, most of which were forwarded to the area office for approval.

WIND RIVER AGENCY

Resolutions and ordinances were submitted but not in tabular form; hence, it is impossible to give a summary of the characteristics.

WINNEBAGO AGENCY

Omaha.—Five resolutions were submitted for review of the Secretary. Eighteen were submitted for the superintendent's review and approved in the main.

Winnebago.—No resolutions were submitted to the superintendent. Four were submitted to the Secretary for review but no record of action is given.

Santee Sioux.—The record of resolutions is not complete.

YAKIMA AGENCY

No list of resolutions is submitted; instead full text of resolutions, which are quite numerous, was given.

CONCLUSION ON RESOLUTIONS AND ORDINANCES

The number and character of resolutions and ordinances submitted to the different levels of the Indian Bureau hierarchy for action can be counted as a species of index of tribal activity. Many tribes which are inactive will show up with few or no resolutions and ordinances. Such a situation occurs among the Southern Plains, Nevada, Great Lakes, western Washington, and parts of California. The degree to which Indian Bureau supervision actually operates in matters of tribal governments can thus be discerned.

CHART 2.—*Indian tribal governments—Tabulation of results of a questionnaire submitted to the field agencies of the Indian Bureau by the House Interior and Insular Affairs Committee, May 15, 1963*

	California											
	Blackfeet	Big Valley	Cachil Dehe	Covelo (Round Valley)	Fort Bidwell	Nokomis (Hopland)	Hoopa Valley	Manchester	Owens Valley	Agua Caliente (Palm Springs)		
1. Number of political factions	2	2	0	2	0	0	1	0	0	0		
2. Names and size of political factions listed	Yes	Yes	No	Yes	No	No	Yes	No	No	No		
3. Number of localized conservative and advanced social groups	0	0	0	0	0	0	2	0	0	0		
4. Names and size of such groups listed	No	No	No	No	No	No	Yes	No	No	No		
5. Arrangements for cooperation with local county, State, or city governments listed (number)	Yes 1	Yes 9	Yes 5	Yes 7	Yes 5	Yes 8	Yes 5	Yes 5	Yes 6	Yes 2		

Taos.—Sources of income of the tribe are: Interest on Treasury deposits, hunting and fishing permits and tourist fees. Heads of families derive income from farming and stock raising, wages on and off the reservation and from welfare. Arts and crafts (such as painting, leather work, beadwork) are also important.

Tesuque.—Only source of tribal income is from interest on funds on deposit in Treasury. Heads of families derive income from business leases, farming and stock raising, wages off and on reservation and some welfare. Selling of trinkets within the pueblo and arts and crafts are of some importance.

Zia.—Tribal income is from hunting and fishing permits. Individual income from farming and stock raising, wages off the reservation and some welfare relief. There are arts and crafts also (pottery, leather work, and weaving).

Zuni.—Tribal income is from interest on funds, business leases, and hunting and fishing permits. There is also some tribal income from fines and peddling permits. Individual income is from farming and stock raising, business leases, wages off and on the reservation and from welfare. Some make a living from Indian jewelry and beadwork.

Canyoncito.—The tribe has no income. Individuals derive income from stock raising, wages, and welfare.

Alamo.—No tribal income. Individual income from stock raising, wages, and welfare.

Ramah.—No tribal income. Individual income from stock raising, wages, and welfare.

WARM SPRINGS

Timber sales, fishing permits, traders' licenses fees, operation of tribal locker and service station furnish tribal income. For heads of families, commercial fishing, sale of wheat and cattle, local industrial wages, seasonal agricultural work and Government employment furnish income.

WESTERN WASHINGTON

Chehalis.—Taxes imposed on fish caught in the Chehalis River by tribal members are the only source of tribal income. Fishing revenue from sale of labor plus outside labor are sources of family income.

Lummi.—Tribal income is from leasing of booming grounds and oysterbeds. Individual income is from fishing, farming, dairying, stock raising, leasing of lands and lumber industries.

Nisqually.—Tribal income is derived from a fish tax, 5 percent revenue from sale of fish taken from Nisqually River by the Indians. Fishing and employment are individual sources of income, plus sale of timber.

Makah.—Rental of tribal property for business purposes and sale of timber are principle sources of income for the tribe. Individuals derive income from sale of timber on individual allotments and from wages and commercial fishing.

Puyallup.—Tribal income derived from small tracts of land used for business purposes. Individuals receive wage incomes.

Quileute.—Tribal income is from sale of water from its water systems, sale of timber and business leases at La Push. Individuals derive income from sale of timber, where most have allotments in inherited interests and some wages and logging operations, plus some fishing.

Quinault.—Tribal income is from sale of timber, traders' licenses and tax on fish buyers. Heads of families derive income from sale of timber, fishing, guides for fishing parties and labor.

Skokomish.—Tribal revenue is from a fish tax. Individuals derive income from fishing and wages and logging operations.

Swinomish.—Tribal income is from community enterprises (oyster farm, sawmill project and fish trap) and from land leases. Individual income is from employment in the trap and logging industry, fishing, canneries, and farm work.

Tulalip.—Income of the tribe is derived from the water system, land revenues for homesites and resort owners, leasing of ammunition dump, duck hunting licenses and a credit program. Individuals derive income from contract logging, commercial fishing, and lumbering.

WIND RIVER

Tribal income is derived from (1) oil and gas leasing (including royalties), (2) farming and grazing leases, (3) grazing permits, (4) timber sales, (5) fish and

73D CONGRESS, 1st Session } SENATE { DOCUMENT No. 12

A NATIONAL PLAN FOR AMERICAN FORESTRY

LETTER

FROM

THE SECRETARY OF AGRICULTURE

TRANSMITTING IN RESPONSE TO

S. Res. 175

(SEVENTY-SECOND CONGRESS)

THE REPORT OF THE FOREST SERVICE OF THE AGRICULTURAL DEPARTMENT ON THE FOREST PROBLEM OF THE UNITED STATES

IN TWO VOLUMES

VOLUME I

Index in back of Volume II

MARCH 13 (calendar day, MARCH 30), 1933.—Referred to the Committee on Printing

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THE INDIAN FORESTS

By HENRY B. STEER, Senior Forest Economist, United States Forest Service

(Formerly Supervisor of Forests, United States Indian Service, Department of the Interior)

CONTENTS

HISTORICAL

Among the duties assigned to the War Department, when it was created by Congress under the act of August 7, 1789, were those "relative to Indian affairs."

The Office of the Commissioner of Indian Affairs was created in the War Department by the act of July 9, 1832. Subject to the Secretary of War and the President, the Commissioner was to have "the direction and management of all Indian affairs and all matters arising out of Indian relations." Two years later, on June 30, 1834, an act was passed "to provide for the organization of the Department of Indian Affairs." Certain agencies were established, others abolished. This act, considered the organic law of the Indian Department, provided for subagents, interpreters, and other employees, the payment of annuities, the purchase and distribution of supplies, etc.

The Bureau of Indian Affairs passed from military to civil control when the Department of the Interior was created by the act of March 3, 1849. Under section 441 of the Revised Statutes—

> The Secretary of the Interior is charged with the supervision of public business relating to * * * the Indians;

and section 463 provides that—

> The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior and agreeable to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations (*1*, p. 1).[1]

[1] Italic figures in parentheses refer to literature cited, p. 632.

Thus the Bureau of Indian Affairs has had the custody and management of Indian matters for over 100 years.

From the date of discovery of this country, when, nominally at least, the Indians were in possession of all the land, certain Indian rights of occupancy have been recognized, and it has been customary from the earliest days to secure at least a color of title from the Indians by the payment of a relatively small sum for the land that was acquired from the natives. A Federal act of 1790 (1 Stat.L.137) provided that no sale of land by an Indian or a tribe to any person or persons or to any State should be valid unless made under the provisions of a Federal treaty with the tribe. Under authority of this act the Federal Government continued to make treaties with the Indians for the cession of lands as if they were separate nations (*2*, p. 1041). Lands reserved to the Indians by these treaties came to be known as "Treaty reservations." This policy was discontinued in 1871, when by act of March 3 (16 Stat.L.566) the Congress declared that thereafter no treaties should be made with Indian tribes. By this act the Congress asserted its plenary power to legislate with respect to Indian affairs and to make whatever disposition of Indian lands appeared necessary or advisable. This power, even to the extent of abrogating a treaty, has been fully sustained by the Supreme Court. Under authority of this act, the lands which have been set aside for the use and occupancy of the various Indian bands and tribes by Executive orders have come to be known as "Executive order reservations."

Under various enabling acts, many allotments to individual Indians or additions to existing reservations have been made from the unappropriated public domain and many thousands of acres of land have been purchased for tribal or individual Indian use. Thus the four sources of Indian lands now under the jurisdiction of the Bureau of Indian Affairs are in order of their importance, as follows:

1. Treaty reservations.
2. Executive order reservations.
3. Additions to reservations by—
   - (*a*) Purchase.
   - (*b*) Executive order from public domain.
   - (*c*) Executive order from national forests, and other national reservations.
4. Individual allotments—
   - (*a*) From unappropriated public domain.
   - (*b*) By purchase.

The various Indian reservations originally contained, as many of them still do, a great deal of fine timber. As has been the case with other forms of Indian property, the amount of interest, both official and general, evidenced in Indian timber has kept pace with the economic value of this Indian property. Generally speaking, Indian reservations were made in what was then relatively inaccessible country, and the exploitation of Indian timber resources, whether irregular and illegal in the early days as has been alleged, or under the supervision of the Federal Government in more recent times, has grown with the general economic development of those regions in which Indian reservations with important timber resources were located. Thus, from 1789 when the "Indian problem" was first officially recognized until the early 1880's, no great amount of attention was paid to the question of the actual ownership or management

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of the timber on Indian reservations. It was an early policy of the Indian Service, however, to permit Indians to remove timber from reservations for sale.

Due to the actual need of the Indians and of their still more urgent imaginary need for funds, and in view of the pecuniary interest of the lumbermen and their agents in the acquirement of logs or stumpage from Indian lands, it may be conceded that not all the proceedings were strictly regular and ethical (*2*, p. 1042).

During this period the Indian timberlands were probably subject to much less illegal pilfering than were the timber resources of the entire Nation which were contained within the great area of unsettled, unpatented public lands. Although many complaints of timber stealing from public and Indian lands had been made in the early part of the nineteenth century it was not until the late 1860's that reports of reservation timber looting became numerous. Additional complaints during the next 20 years aroused public interest in this phase of the problem of Indian affairs, sufficiently to stir up a congressional investigation of Indian timberlands in the Lake States in March 1888 (*3*, p. 228).

For many years there had been a difference of opinion as to whether or not the property rights vested in the Indians for reservations established by treaties or Executive orders included standing timber. As late as 1873 it was declared by the highest court that the Indians had only a bare right of occupancy in their lands, and in 1888 and 1890 two successive Attorneys General of the United States held that the proceeds derived from timber cut in trepass from lands held in common by Indians under the ordinary Indian title belonged to the United States and not to the Indians of the band occupying the reservation (*2*, p. 1042). These decisions were greatly at variance with the then existing policy of the Indian Service, which allowed Indians to remove timber for sale. This difference of opinion, the complaints of irregularities in Indian timber matters, and the growing consciousness or awakening of the entire Nation to the general timber problem, were all factors in bringing the timber resources of the Indians before the public, and for the enactment of legislation looking to the proper management of these resources. Although the question of property rights in timber has been definitely settled by Supreme Court decisions, many people still think of and discuss Indian timber resources as if they were public property.

By an act of February 16, 1889 (25 Stat.L., 673) the Congress authorized the cutting of dead timber from any Indian reservation for sale, providing the President was satisfied there was no evidence that the timber had been intentionally burned. Several other acts pertaining to specific reservations (*3*, p. 230) were passed from 1889 on, which are interesting mainly because they were instrumental in setting up governmental machinery to dispose of Indian timber and mark the beginning of forestry work in the Indian Service, in that they provide for "the scientific and businesslike disposal of the Indian pine lands and the full protection of the rights of the Indian in connection therewith."

No act of general application other than the "dead and down" act of February 16, 1889, was passed until the act of June 25, 1910 (36 Stat.L., 857) which authorized the sale of mature timber from allotted lands anywhere within the United States and from tribal lands of any

reservation except those in the States of Minnesota and Wisconsin. This act provided that the proceeds derived from sales of timber from tribal lands should be used for the benefit of the Indians of the reservation from which the timber was sold.

Prior to the passage of this act no general policy for the management of the Indian forest property had been promulgated. Questions of forestry policies on the several reservations had been handled administratively on the basis of the merits and needs of individual cases, and in accordance with legislation concerning specific reservations. For a short period (January 1908 to July 1909) the administration of Indian timberlands was under the jurisdiction of the Forest Service of the Department of Agriculture, but this agreement was in effect for too short a time to have much bearing on the development of a forest policy on Indian lands. Prior to 1910 the main development and exploitation of the Indian forests had, for economic reasons, taken place in the Lake States. The more inaccessible reservations of the West had received comparatively little attention, for the economic development of the West had not yet reached the point where there was any strong demand for the timber on these reservations.

The act of 1910, however, clearly contemplated conservative management of Indian timberlands, providing as it did for departmental regulations, and necessitating the development of a staff of men to carry out the intent of the act.

The organization of the forestry branch of the Indian Service, as it is today, was begun early in 1910, the Indian Appropriation Act for the fiscal year 1910 having set aside $100,000.

> To enable the Commissioner of Indian Affairs, under the direction of the Secretary of the Interior, to make investigations on Indian reservations and take measures for the purpose of preserving living and growing timber, and removing dead timber, standing or fallen; to advise the Indians as to the proper care of forests, and to conduct such timber operations and sales of timber as may be deemed advisable and provided for by law.

Similar items in every Indian appropriation act subsequent to 1910 have made possible the building up of the Forestry Branch of the Indian Service.

EXTENT AND IMPORTANCE OF THE INDIAN FOREST RESOURCES

The fact that the net acreage of Indian land has increased in recent years is of interest. On June 30, 1929, there were approximately 71 million acres of lands held in trust for the Indians by the Government, of which 39 million acres had been allotted to individual Indians and 32 million acres was unallotted or tribal land (table 1). During the fiscal years ending June 30, 1930, and June 30, 1931, the area of Indian allotted lands increased by about 43,000 acres, owing to the excess of acreage of new allotments over acreage of allotted land sold and fee patented, and the area of unallotted land increased by about 181,000 acres, the excess of areas purchased and added by Executive orders over areas allotted; making a net increase of about 224,000 acres.

Approximately 9 million acres of Indian forest land are under the jurisdiction of the Forestry Branch of the Indian Service, but it is impossible to list these lands as allotted or unallotted.

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There are approximately 40 millions of acres of grazing land on the Indian reservations that are of major importance from a grazing standpoint.

TABLE 1.—*Areas of Indian lands, by regions*

Region and State	Total area	Allotted lands	Unallotted lands [1]	Forest lands managed by Forestry Branch [2]	Grazing lands on large reservations [3]
	Acres	*Acres*	*Acres*	*Acres*	*Acres*
Middle Atlantic: New York	87,677		87,677		
South:					
Florida	26,741		26,741		
North Carolina	63,211		63,211	56,000	
Oklahoma	19,184,863	19,145,906	38,957		
Total	19,274,815	19,145,906	128,909	56,000	
Central:					
Iowa	3,480		3,480	(4)	
Kansas	272,661	271,478	1,183		
Nebraska	360,057	352,652	7,405		
Total	636,198	624,130	12,068	(4)	
Lake:					
Michigan	273,702	273,547	155		
Minnesota	1,401,026	995,299	555,727	870,000	
North Dakota	2,194,010	2,192,903	1,107		462,768
Wisconsin	694,459	340,874	275,585	410,000	
Total	4,563,197	3,732,623	830,574	1,280,000	462,768
Rocky Mountain North:					
Idaho	677,206	619,847	57,359	58,675	428,896
Montana	6,529,436	5,759,301	770,135	1,249,986	5,325,062
Total	7,206,642	6,379,148	827,494	1,308,661	5,753,958
Rocky Mountain South:					
Arizona	20,463,020	172,808	20,290,152	1,434,000	20,617,068
Colorado	478,154	82,011	396,143	184,000	
Nevada	847,409	15,227	832,182	4,000	271,449
New Mexico	3,888,821	353,971	3,534,850	362,000	1,799,100
South Dakota	6,671,906	6,408,795	263,111	40,000	4,903,656
Utah	452,627	111,947	340,680	131,000	311,333
Wyoming	2,243,822	246,822	1,997,000	200,000	1,869,367
Total	35,045,759	7,391,641	27,654,118	2,375,000	29,831,973
Pacific Coast:					
California	595,171	99,840	495,331	253,000	
Oregon	1,742,938	619,063	1,123,875	1,464,000	1,551,963
Washington	1,991,818	1,136,917	854,901	1,910,037	2,168,897
Total	4,329,927	1,855,820	2,474,107	3,627,037	3,720,860
United States	71,144,215	39,129,268	32,014,947	[5] 8,646,698	39,769,559

[1] General data concerning Indian reservations. Office of Indian Affairs, October 1929, p. 21.
[2] From an extensive survey made by the Forest Service, 1931-32.
[3] From an unpublished report of an economic survey of the range resources and grazing activities on Indian reservations, by Lee Muck, July 1931.
[4] Less than 500.
[5] This figure does not include 6,772,000 acres of the noncommercial forest land, mostly of pinon-juniper type, in Arizona and New Mexico.

In national terms, the 71 million acres of Indian reservations amount to about 3.7 percent of the total land area of the United States; the 9 million acres of Indian forest lands constitute only 1.4 percent of all potential forest land; and the 40 million acres of grazing land on Indian reservations are only 5 percent of all range lands. However, because the majority of the Indian reservations are located in the central and western regions of the country, the importance of Indian forest and range lands is much greater when considered from a regional standpoint. The distribution of forest lands is shown in table 2. Similar detail for grazing lands is not available, but since these are mainly found on the larger reservations, the bulk of them is in Western States where the stock-raising industry is most actively engaged.

TABLE 2.—*Comparison of Indian forest lands and timber with totals for States and regions* [1]

Region and State	Forest land			Saw-timber stand		
	All land	Indian reservations		All timber	Indian reservations	
	M acres	*M acres*	*Percent*	*Million ft.b.m.*	*Million ft.b.m.*	*Percent*
Lake:						
North Dakota	545			53		
Michigan	19,500			16,430		
Minnesota	21,137	870	4.12	8,580	115	1.34
Wisconsin	16,595	410	2.47	10,824	969	8.95
Total	57,767	1,280	2.22	35,887	1,084	3.02
Central (West):						
Iowa	2,358	(2)		1,107	(2)	
Missouri	17,500			3,689		
Total	19,858	(2)		4,796	(2)	
North Rocky Mountain:						
Idaho	22,479	59	.26	96,502	63	.07
Montana	20,267	1,250	6.17	49,796	2,227	4.47
Total	42,746	1,309	3.06	146,388	2,290	1.56
South Rocky Mountain:						
Arizona	19,426	[3] 1,454	7.48	19,827	5,538	27.93
Colorado	20,116	184	.91	47,379		
Nevada	10,847	4	.04	778		
South Dakota	1,875	40	2.13	3,208	48	1.50
New Mexico	19,739	[3] 362	1.83	14,389	534	3.71
Utah	8,383	131	1.56	7,701	10	.13
Wyoming	6,714	209	2.98	32,584	865	2.65
Total	87,099	2,375	2.73	125,956	6,995	5.55
Pacific coast:						
California	27,371	253	.92	282,460	2,918	1.03
Oregon	29,956	1,464	4.89	437,852	9,130	2.09
Washington	22,215	1,910	8.60	321,316	9,294	2.89
Total	79,542	3,627	4.56	1,041,628	21,342	2.05

[1] Forest Service, data. Areas withdrawn from timber use, as in parks, not included.
[2] Less than 500.
[3] These figures do not include the acreage of noncommercial piñon-juniper type.

In certain lumber- and livestock-producing localities (subdivisions of the regions given in table 2), and on important protection watersheds, Indian timber, range lands, and protection forests constitute one of the major classes of ownership and play an important part in industry and protection.[2] For example: Of the commercial timber tributary to the Klamath Falls (Oreg.) lumber manufacturing district, 47 percent is privately owned, 31 percent is on national forests, and 22 percent is on the Klamath Indian Reservation.

Of the commercial timber tributary to the upper Columbia River (Okanogan, Ferry, and Stevens Counties in Washington), 33 percent is privately owned; 32 percent is on Indian reservations; 25 percent on national forests; and 10 percent on State lands.

In eastern Oregon, including the Klamath District, the cut of Indian timber is over 20 percent of the total annual cut.

Similar examples showing the regional importance of Indian protection forests and grazing lands could be given if space permitted. Although some of the Indian reservations do not have timber and

[2] The following examples are taken from an unpublished report (1931) by Lee Muck on the status of Indian forests in relation to a national program of sustained yield.

grazing resources of great commercial importance, and the development of these resources will naturally be limited to local requirements; yet, in formulating a national or regional forest program of general application, the major commercial forest and grazing resources of the Indians, comprising as they do a considerable portion of the total regional potentialities, should be reckoned with and assigned to their proper place in the general scheme of things.

TIMBER

Indian forest lands support various kinds of timber, including the Appalachian hardwoods of North Carolina; the pine, hemlock, and hardwoods of the Lake States; the pine-fir-larch of Montana and the Inland Empire; the fir-spruce-cedar of the North Pacific; the redwood-fir of California; and the pine types of Arizona.

Of the 16 Western States containing approximately 68½ million acres of Indian land (or about 96 percent of the total) (table 1) six States, the Dakotas, Nevada, Nebraska, Kansas, and Oklahoma, do not contain Indian-owned forests in sufficient quantities to be of commercial importance. The bulk of merchantable timber in Indian ownership is in the States of Washington, Arizona, Oregon, and Montana, and consists of stands of timber typical of these States.

Accurate statistics of the extent and character of these resources are not available. The Forestry Branch of the Indian Service estimates, however, that there remained on June 30, 1931, approximately 30 billion feet of merchantable Indian-owned timber with a value of approximately $100,000,000, and about 10 billion feet of unmerchantable timber. Although a large part of the merchantable timber stands on lands which have been allotted to individual Indians, large bodies of timber remain in tribal ownership on some reservations.

ANNUAL CUT AND POTENTIAL PRODUCTION OF TIMBER

Over 7½ billion feet of timber with a value of about $33,000,000 has been removed from Indian lands under the jurisdiction of the Forestry Branch of the Indian Service since 1910, as given by years in table 3. This total does not include approximately 2 billion feet of timber which was sold from lands of the ceded Chippewas in Minnesota under the supervision of the General Land Office, and sales of land and timber belonging to the Choctaw and Chickasaw tribes in Oklahoma for about $9,000,000.

TABLE 3.—*Timber cut from Indian lands* [1]

Year	Volume	Value	Year	Volume	Value
	M ft. b.m.	*Dollars*		*M ft. b.m.*	*Dollars*
1910	141, 532	900, 612	1922	216, 583	808, 551
1911	137, 208	752, 303	1923	493, 563	1, 856, 323
1912	123, 472	739, 699	1924	510, 314	1, 937, 245
1913	170, 766	1, 028, 184	1925	467, 779	1, 921, 157
1914	143, 426	780, 856	1926	579, 958	2, 446, 455
1915	138, 624	773, 483	1927	627, 365	2, 953, 752
1916	107, 602	726, 483	1928	639, 244	2, 676, 779
1917	205, 312	715, 453	1929	660, 257	2, 818, 317
1918	323, 131	1, 253, 651	1930	561, 415	2, 313, 644
1919	291, 164	1, 303, 840	1931	314, 528	1, 238, 814
1920	398, 485	1, 585, 812			
1921	348, 300	1, 390, 436	Total	7, 660, 028	32, 921, 849

[1] Under jurisdiction of Forestry Branch.

Detailed possibilities of the potentialities of Indian forest lands for the production of tree crops are not available. The following general conclusions, however, are self-evident, and represent the best judgment of those familiar with Indian forest resources:

(*a*) Indian timber is being harvested faster than it is being replaced by growth.

(*b*) The amount cut annually may be subject to some fluctuation in the immediate future, but must inevitably decline from the most recent 5-year average.

MANAGEMENT OF INDIAN FORESTS

LAND AND ALLOTMENT POLICY

The general policies of the Indian Service since its organization have been subject to more or less change due both to administrative judgment and to the changing nature of the Indian problem itself. Since the problem of handling Indian forests is but one phase of the Indian question, forest policies cannot determine general policies. On the contrary, the exact opposite is true. The uncertain status of Indian lands is the crux of the present unsatisfactory situation. Not only is there no assurance that areas of Indian forest land now held in tribal ownership will have that status a decade from now, but the probability is that, in view of decisions of the Supreme Court, many thousands of acres of heavily timbered tribal land which is mainly, if not entirely, valuable for the growth of timber will be allotted to individual Indians.

The land policy of the Indian Service is and has been dependent almost in its entirety upon the then existing policy as to how Indian land was to be held in ownership, and especially with regard to the removal of measures originally designed to restrict the assumption of the Indian of the responsibility of property ownership and the extent to which he was able to forego his ancient method of living and assume economic independence in direct competition with the whites.

Originally all Indian lands, whether reserved by treaties or set aside by Executive orders, were held in common by the several tribes. Relatively early in the history of the Indian Service many allotments of land to individual Indians were made in fee, with a restriction on alienation, except with the consent of the Secretary of the Interior. Later on, under authority of the General Allotment Act of 1887, known as the Dawes Act, and numerous later acts of general scope or which pertained to specific reservations, many millions of acres of land have been assigned to individual Indians. Allotment acts have generally provided that the United States would hold the lands in trust for the allottee for a period of 25 years from the date of allotment, and at the end of that time would convey the land to the allottee or his heirs "in fee, discharged of such trust and free of all charge or incumbrance whatsoever." Trust periods have in many cases been extended, and many thousands of fee patents have been issued before the expiration of the trust period.

The primary purpose of the allotment (*2*, p. 1045) is theoretically to provide a home for the Indian, and by encouraging and aiding him in achieving economic independence by the pursuit of agricultural and stock-raising activities dissolve the tribal relationship and thus solve the Indian problem. There can be no doubt, in view of

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the general objective sought in the allotting of land to individual Indians, that the original intention was to allot only agricultural land. By implication the General Allotment Act of 1887 did not include timberland. However, upon reservations where there was an insufficiency of agricultural land to supply all members of the tribe with allotments, where the better agricultural land was covered with timber, where practically all the land was forested, or where the allotment was made under special acts, timberlands have been allotted. In addition to this, decisions of the courts (unfortunate from the standpoint of timber conservation and sustained yield forest management) have forced the allotting of many thousands of acres of timberland to individual Indians. A notable example is the Quinaielt Reservation in Washington. Recent legislation has been passed (act of May 21, 1928), authorizing the allotment of grazing lands on the Shoshone Reservation in Wyoming from which no Indian (or white) can wrest a living.

Individual Indian allotments soon pass out of governmental control in either of two ways:

1. By the issuance of fee patents or certificates of competency to the allottees or their heirs, permitting their sale by the individual.

> The records show that the lands of a vast majority of Indians who have been given absolute control of their allotments have passed from Indian ownership in various ways—by sale for small values, through unredeemed mortgages, and in some instances by tax deeds (*13*, p. 10).

2. Through outright sales, made to private individuals or corporations by the Government for and in behalf of the allottees or their heirs. The heirship of an Indian allotment frequently becomes so badly involved that the shares of each heir are of small value and the tangled records can best be cleared by an outright sale of the land.

The policy of the Indian Service with regard to the issuance of fee patents and certificates of competency, and the sale of allotments has varied greatly since 1900 and has had a marked effect on the formulation and carrying out of forest policies on these lands. Under provisions of the acts of May 8, 1906 (34 Stat.L., 182) and June 25, 1910 (36 Stat.L., 855) fee patents were issued under a rather conservative policy, until about 1916, when "competency commissions" were appointed which recommended the issuance of fee patents to large numbers of "competent" Indians.

In 1920, the Commissioner (*14*, p. 19) reported:

> Since the Declaration of Policy in 1917 (patents in fee issued to Indians of one half or less Indian blood without any further proof of competency), 17,176 fee patents have been issued which is nearly double the number issued in the 10 years preceding.

The rather liberal policy followed from 1915 to 1920 with regard to the issuance of fee patents was made more conservative in 1921. In 1922 the Commissioner stated (*15*, p. 15):

> A stricter policy has been followed in issuing patents to Indians on the ground of competency, as seemed to be required in order to more fully protect their interests.

In his report for the fiscal year 1926, the Commissioner stated (*13*, p. 10):

> For the past 5 years a conservative policy has been pursued in granting fee titles to individual Indians * * *.

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[COMMITTEE PRINT]

73D CONGRESS
2D SESSION

H. R.

IN THE HOUSE OF REPRESENTATIVES

APRIL —, 1934

Mr. HOWARD (by departmental request) introduced the following bill; which was referred to the Committee on Indian Affairs and ordered to be printed

A BILL

To grant to Indians living under Federal tutelage the freedom to organize for purposes of local self-government and economic enterprise; to provide for the necessary training of Indians in administrative and economic affairs; to conserve and develop Indian lands; and to promote the more effective administration of justice in matters affecting Indian tribes and communities by establishing a Federal Court of Indian Affairs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the short title of this Act may be cited as "The Indian Reorganization Act."

TITLE I—INDIAN SELF-GOVERNMENT

SECTION 1. That it is hereby declared to be the policy of Congress to grant to those Indians *living* under Federal

tutelage and control the freedom to organize for the purposes of local self-government and economic enterprise, to the end that civil liberty, political responsibility, and economic independence shall be achieved among the Indian peoples of the United States, and to provide for cooperation between the Federal Government, the States, and organized Indian communities for Indian welfare. It is further declared to be the policy of Congress that those functions of government now exercised over Indian reservations by the Federal Government through the Department of the Interior and the Office of Indian Affairs shall be gradually relinquished and transferred to the Indians of such reservations, duly organized for municipal and other purposes, as the ability of such Indians to administer the institutions and functions of representative government shall be demonstrated, and that those powers of control over Indian funds and assets now vested in officials of the Federal Government shall be terminated or transferred to the duly constituted governments of local Indian communities as the capacity of the Indians concerned, to manage their own economic affairs prudently and effectively, shall be demonstrated. It is further declared to be the policy of Congress to assist in the development of Indian capacities for self-government and economic competence by providing for the necessary

training of Indians, and by rendering financial assistance and cooperation in establishing Indian communities.

SEC. 2. In accordance with the foregoing purposes, the Secretary of the Interior is hereby authorized to issue to the Indians residing upon any Indian reservation or reservations or subdivision thereof a charter granting to the said community any or all of such powers of government and such privileges of corporate organization and economic activity, hereinafter enumerated, as may seem fitting in the light of the experience, capacities, and desires of the Indians concerned; but no such charter shall take effect until ratified by a three-fifths vote at a popular election open to all adult Indians resident within the territory covered by the charter.

Upon receipt of a petition for the issuance of a charter signed by one fourth of the adult Indians residing on any existing reservation, it shall be the duty of the Secretary of the Interior to make the necessary investigations and issue a proper charter, subject to ratification, or proclaim the conditions upon which such charter will be issued; and such petition, with a record of the findings and of the action of the Secretary, shall be transmitted by the Secretary of the Interior to Congress: *Provided*, That whenever the Secretary of the Interior shall acquire land not comprised

within any existing reservation for the purpose of establishing a new Indian community, pursuant to the authority granted by title III. of this Act, he shall issue a charter to take effect at some future time and shall therein prescribe the conditions under which persons of at least one-fourth degree of Indian blood shall be entitled to become members of such community, and the acceptance of such membership by the qualified persons shall constitute an acceptance and ratification of such charter.

SEC. 3. Each charter issued to an Indian community shall define the territorial limits of the community and the criteria of membership within the community; shall, wherever such community is sufficiently populous and endowed with sufficient territory to make the establishment of local government possible, prescribe a form of government adapted to the needs, traditions, and experience of such community; and shall guarantee the civil liberties of minorities and individuals within the community, including the liberty of conscience, worship, speech, press, assembly, and association, and the right of any member to abandon the community and to receive some compensation for any interest in community assets thereby relinquished, the extent of which compensation and the manner of payment thereof to be fixed by charter provision. Each charter shall further specify the powers of self-government to be exercised by

the chartered community, and shall provide for the planned extension of these powers as the community offers evidence of capacity to administer them. Each charter shall likewise prescribe the powers of management or supervision to be exercised by the chartered community over presently restricted real and personal property of individual Indians or tribes, and shall provide for the bonding of any community officials or Federal employees entrusted with the custody of community funds and for such forms of publicity and accounting, and for such continuing supervision by the Office of Indian Affairs over financial transactions and economic policies as may be found by the Secretary of the Interior to be necessary to prevent dissipation of the capital resources of the community or unjust discrimination in the apportionment of income; and each charter shall further provide for the gradual elimination of administrative supervision as the Indian community shows progress in the effective utilization of its resources and the prudent disposal of its assets.

SEC. 4. The Secretary of the Interior is authorized to grant to any community which may be chartered under this Act, either by original charter or by supplement to such charter initiated or ratified by a three-fourths vote, any or all of the powers hereinafter enumerated, and to provide, in such original charter or supplement, for the

definition, qualification, or limitation of any powers which may be granted, in any manner deemed necessary or desirable for the effectuation of the purposes and policies above set forth.

(a) To organize and act as a Federal municipal corporation, to establish a form of government, to adopt and thereafter to amend a constitution, and to promulgate and enforce ordinances and regulations for the effectuation of the functions hereafter specified, and any other functions customarily exercised by local governments.

(b) To elect or appoint officers, agents, and employees, to define the qualifications for office, to fix the salaries of officials to be paid by the community, to prescribe the qualifications of voters, to define the conditions of membership within the community, and to provide for the adoption of new members.

(c) To regulate the use and disposition of property by members of the community, to protect and conserve the property, wild life, and natural resources of the community, to cultivate and encourage arts, crafts, and culture, to administer charity, and to protect the health, morals, and general welfare of the members of the community.

(d) To establish courts for the enforcement and administration of ordinances of the community, which courts shall have exclusive original jurisdiction over all offenses of, and

controversies between, members of the chartered community, under the ordinances of such community, and jurisdiction exclusive or nonexclusive over all other cases arising under the ordinances of the community, and shall have power to render and enforce judgments, criminal and civil, legal and equitable, and to punish violations of local ordinances by fine not exceeding $500, or, in the alternative, by imprisonment for a period not exceeding six months, or such lesser maximum penalties as may be fixed by charter: *Provided,* That no person shall be punished for any offense for which prosecution has been begun in any other court of competent jurisdiction.

(e) To accept the surrender of the tribal, corporate, or community interests of individual members who desire to abandon the community, and to pay a fair compensation therefor, to act as guardian or to provide for the appointment of guardians for minor and other incompetent members of the community, and to administer tribal and individual funds and properties which may be transferred or entrusted to the community by the Federal Government.

(f) To operate, maintain, and equip any public improvement and, as a Federal agency, to condemn and take title to any lands or properties, in its own name, when necessary for any of the purposes authorized by charter, and to levy assessments for community purposes, or to require the

performance of labor on community projects, in lieu of assessments.

(g) To acquire, manage, and dispose of property, subject to applicable laws restricting the alienation of Indian lands and the dissipation of Indian resources, to make contracts, to issue nontransferable certificates of membership, to declare and pay out dividends, to adopt and use a corporate seal which shall be judicially noticed in all Federal courts, to sue and be sued in its own name, to employ counsel and to pay counsel fees not in excess of limits to be fixed by charter provision, to have succession until its membership may become extinct, and to exercise any other privileges which may be granted to membership or business corporations.

(h) To compel the transfer from the community for inefficiency in office or other cause, of any employee of the Federal Indian Service locally assigned; to regulate trade and intercourse between members of the community and nonmembers; and to exclude from the territory of the community, with the approval of the Secretary of the Interior, nonmembers whose presence endangers the health, security, or welfare of the community: *Provided, however,* That nothing in this section or in this Act shall be construed to forbid the service in the territory of any Indian community

of any civil or criminal process of any court having jurisdiction over any person found therein.

(i) To exercise any other powers now or hereafter delegated to the Office of Indian Affairs, or any officials thereof, to contract with governmental bodies of State or Nation for the reception or performance of public services, and to act in general as a Federal agency in the administration of Indian affairs, upon the condition, however, that the United States shall not be liable to suit for any act done, suffered to be done, or omitted to be done by a chartered Indian community: *Provided*, That nothing in this section shall preclude any person injured by any act or omission of a chartered community from seeking or obtaining appropriate redress from Congress.

(j) To exercise any other powers, not inconsistent with the Constitution and laws of the United States, which may be necessary or incidental to the execution of the powers above enumerated.

An Indian community chartered under this Act shall be recognized as successor to any existing political powers heretofore exercised over the members of such community by any tribal, or other native political organizations comprised within the said community, not withheld by such tribal or other native political organization, and shall further be recognized

as successor to all right, interest, and title to all funds, property, choses in action, and claims against the United States heretofore held by the tribes or other native political organizations comprised within the community, or to a proportionate share thereof, except as such succession may be limited by the charter, subject to existing provisions of law with respect to the maintenance of suits against the United States, subject further to such provision for the apportionment of such assets among nonmembers of the community having vested rights therein, as may be prescribed by the charter, and subject further to any liabilities, liens, or encumbrances, pertaining to such property, as are not expressly canceled by the United States.

SEC. 5. When any Indian community shall have been chartered, it shall be the duty of the Commissioner of Indian Affairs to cause regular reports concerning the respective functions of the Indian Service to be made to the constituted authorities of the community, to advise and consult with such authorities on problems of local administration and Federal policy, and to allow such authorities free access to the records and files of the local agency.

Any Indian community shall have the power to compel the transfer from the community of any persons employed in the administration of Indian affairs within the territorial limits of the community: *Provided, however*, That

the Commissioner of Indian Affairs may prescribe such conditions for the exercise of this power as will assure to employees of the Indian Service a reasonable security of tenure, an opportunity to demonstrate their capacities over a stated period of time, and an opportunity to hear and answer complaints and charges.

SEC. 6. The Secretary shall prepare annual estimates of expenditures for the administration of Indian affairs, including expenditures for functions and services administered by an Indian community, pursuant to the authority conferred by section 8 of this title. It shall be the duty of the Secretary to transmit to the authorized representative of an Indian community any estimates and justifications thereof for expenditures to be made in whole or in part within the territorial limits of the community. Any recommendation of the authorized representatives of the community, including the approval or rejection of any item in whole or in part, or the recommendation of any other expenditure, shall be transmitted by the Secretary to the Bureau of the Budget and to the Congress concurrently with the submission of the estimates of the Secretary.

The Secretary shall also transmit to the authorized representatives of an Indian community a copy of any bill, or amendment of a bill, pertaining to Indians, authorizing, in whole or in part, the appropriation or expenditure,

within the territorial limits of such community, of any funds from the Federal Treasury for which the Secretary of the Interior has submitted no estimates, and the Secretary shall transmit their written recommendations to the Congress.

The Secretary shall also transmit to the authorized representatives of an Indian community a description of any project involving the expenditure, in whole or in part, of any funds appropriated for the general welfare within the territorial limits of the community.

No expenditure hereafter authorized or appropriated for by Congress shall be charged against any such Indian community as a reimbursable debt, unless such appropriation and expenditure have been recommended or approved by such Indian community through its duly constituted authorities; and any funds of the community deposited in the United States Treasury shall be expended only by the bonded disbursing agent of such community.

SEC. 7. The Secretary of the Interior may from time to time delegate to any Indian community, within the limits of its competence as defined by charter, the authority to perform any act, service, or function which the United States administers for the benefit of Indians within the territorial limits of the community and may enter into annual agreements with the constituted authorities of the community with respect to the terms and conditions of such delegation.

SEC. 8. The Secretary is authorized and directed to proceed immediately after the passage of this Act to determine and promulgate standards of fitness for Indians with respect to health, age, character, knowledge, and ability for the various positions maintained, now or hereafter, by the Indian Office for the administration of functions or services within the territorial limits of any chartered community, and to classify those positions for which the requisite knowledge and training may be acquired by Indians through experience or apprenticeship in the position.

Any Indian community may, through procedure set up in its charter, appoint any member fulfilling the qualifications prescribed pursuant to the preceding paragraph to any vacant position under the Indian Service maintained within the territorial limits of the community.

The Secretary is further authorized to transfer to a chartered community any function or service locally administered under the Office of Indian Affairs. Such transfer and the terms and conditions thereof shall be determined either by charter provision or by agreement with the duly constituted authorities of the chartered community.

The Secretary is directed to proceed immediately after the passage of this Act to make a study of the conditions reasonably necessary to assure the continued and satisfactory administration of functions and services which may

FOREST STATISTICS FOR GRAYS HARBOR CO., WASHINGTON

FOREST SURVEY REPORT NO. III

U. S. DEPARTMENT OF AGRICULTURE FOREST SERVICE
PACIFIC NORTHWEST FOREST AND RANGE EXPERIMENT STATION
R. W. COWLIN, DIRECTOR

PORTLAND, OREGON AUGUST 1953

be transferred to a chartered community, and thereupon to promulgate direct and express regulations setting forth these conditions. Upon complying with these conditions, any chartered community may, by a three-fourths vote at a popular election open to all adult members, request the transfer of any function or service, and the Secretary shall thereupon transfer such function or service and, if necessary, confer by supplement to the community charter, the legal capacity to exercise such function or service, subject only to the following terms and conditions:

(a) The community must comply with all conditions prescribed by the rules and regulations of the Secretary of the Interior pursuant to the authority of this section. The community may transmit to the Congress any objection it may have to the conditions imposed, together with its budget recommendations for the next fiscal year.

(b) The Secretary of the Interior shall certify to the Secretary of the Treasury the amount of any sums or any unexpended balance of such sums theretofore or thereafter expressly appropriated, or the proportionate share of any general appropriation, for the administration of such function or service within the territorial limits of the community. The Secretary of the Treasury shall place such sums to the credit of the community, to be paid out on the requisition of the bonded disbursing agent of the community. The

expenditure of such funds shall be subject to all Federal laws and regulations governing the expenditures of Federal appropriations.

(c) The Commissioner shall aid and advise the community, and the local Federal employees shall cooperate in any feasible manner at the request of the community, in the administration of the function or service transferred. The Commissioner shall also make available to the Indian community any facilities, including any lands, buildings, and equipment previously used but no longer needed by the United States in the administration of Indian affairs within the community.

(d) Whenever the Secretary of the Interior shall determine that the community has failed to comply with the conditions imposed for the continued administration of the function or service transferred, the Secretary or the Commissioner of Indian Affairs shall reassume the administration of such function or service and the Secretary shall report to the next regular session of the Congress with appropriate recommendations.

(e) The community, or its duly authorized representatives, shall make on or before September 1 of each year, an annual report for the fiscal year ended June 30, previously, to the Secretary, concerning the administration of the function or service transferred to the community,

including an account by the disbursing agent of the community of receipts and expenditures of moneys placed to the credit of the community under this section.

(f) The Secretary of the Interior shall make an annual report to Congress on the administration of the functions and services transferred to the community, and shall include in such report the reports of the Indian communities required by paragraph (e) of this section.

SEC. 9. The Secretary and the Commissioner shall continue to exercise all existing powers of supervision and control over Indian affairs now entrusted to them or either of them which are not transferred by charter or supplement thereto or by Act of Congress to organized Indian communities, and shall have power to enforce by administrative order or veto, if so provided within the charter, or, in any event, by legal process in any court of competent jurisdiction, all provisions contained in a charter for the protection of the rights of minorities within the community, all provisions therein contained for the conservation of the resources of the community, and all other provisions that limit, qualify, or restrict the powers granted to the community.

SEC. 10. The Secretary of the Interior may, upon granting a charter to an Indian community, convey or confirm to such community, as an agency of the Federal Government, any right, interest, or title in property which may

be held by the United States in trust for members of the community, and in any lands, buildings, or equipment previously used by the United States in the administration of Indian affairs within the community, and in any liens or credits of the United States held by virtue of loans to or expenditures on behalf of Indian members of the said community.

SEC. 11. Nothing in this Act shall be construed as rendering the property of any Indian community or of any member of such community subject to taxation by any State or subdivision thereof, or subject to attachment or sale under legal process, or as an expression of intent on the part of the United States to abandon the duties and responsibilities of guardianship of any Indians becoming members of chartered communities.

SEC. 12. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, such sums as may be necessary, not to exceed $500,000 in any one fiscal year, to be expended at the order of the Secretary of the Interior, and with the consent of the Indian communities concerned, in defraying the expenses of the organization and development of communities chartered under this Act, including the construction and furnishing of community buildings, the purchase of clerical supplies, and the improvement of community lands.

SEC. 13. There is hereby authorized to be appropriated, out of any funds in the Treasury not otherwise appropriated, a revolving fund of $10,000,000 for making loans to chartered Indian communities, or their members, for any of the purposes specified in section 14 of this title, and to defray the expenses of administration of such loans, and there is further authorized to be appropriated from time to time such amounts as the Congress may determine to be necessary for the effective administration of the credit system established by this Act. The Secretary is authorized and directed to determine the credit needs of any chartered community, including its members, to apportion such funds to any chartered community as may be required to meet such needs, and from time to time to increase or diminish such funds. In making such apportionment the Secretary shall give preference to Indian communities which will agree to contribute community funds, in substantial amounts, to be used for the credit purposes authorized by this Act and to absorb a proportionate share of losses from bad loans: *Provided, however,* That this section shall not be construed to limit the authority of the Secretary to apportion funds to chartered communities which do not possess sufficient funds to make contributions.

SEC. 14. The Secretary of the Interior may make loans to chartered communities, or their members, to promote

the economic development of such communities and their members; to clear, improve, and develop lands for agriculture or for other productive purposes; to purchase the rights and equities of allottees or heirs in trust patented lands; to construct houses, barns, fences, and other permanent improvements required for the productive use of Indian lands; to purchase seed, farm equipment, livestock, fertilizer, and other materials and equipment for productive land use; to provide operating funds for agriculture and other productive use of land or natural resources; to purchase sawmill, logging, or other equipment for community development of natural resources; to establish cooperative stores and marketing associations; to construct public works; and for other like purposes.

The Secretary shall require satisfactory proof of the financial and personal responsibility of any individual, association, or community applying for a loan and of the ability of such individual, association, or community to put the proceeds of such loan to beneficial use; shall require a duly executed contract specifying the methods of amortizing such loan from future individual, association, or community moneys, assets, crops, or products of land or industry, or other income; and shall prescribe the forms of liens on real or personal property of the individual, association, or community which he may require as security for any loan.

SEC. 15. The following definitions of terms used in this title shall be binding in the interpretation of this statute:

(a) The term "Commissioner" whenever used in this Act shall be taken to refer to the Commissioner of Indian Affairs, and the term "Secretary" to the Secretary of the Interior, and the terms "Commissioner" and "Secretary" whenever used in this Act in reference to the exercise of any power shall be construed as authorizing the delegation of such power to subordinate officials.

(b) The term "Indian" as used in this title to specify the persons to whom charters may be issued, shall include all persons of Indian descent who are members of any recognized Indian tribe, band, or nation, and all persons who are descendants of such members who were, on or about February 1, 1934, actually residing within the present boundaries of any Indian reservation, and shall further include all other persons of one fourth or more Indian blood, but nothing in this definition or in this Act shall prevent the Secretary of the Interior or the constituted authorities of a chartered community from prescribing, by provision of charter or pursuant thereto, additional qualifications or conditions for membership in any chartered community, or from offering the privileges of membership therein to

nonresidents of a community who are members of any tribe, wholly or partly comprised within the chartered community.

(c) The term "residing upon any Indian reservation" as used in this title to specify the persons to whom charters may be issued shall signify the maintaining of a permanent abode at the time of the issuance of a charter and for a continuous period of at least one year prior to February 1, 1934, and subsequent to September 1, 1932, but this definition may be modified by the Secretary of the Interior with respect to Indians who may reside on lands acquired subsequently to February 1, 1934.

(d) The term "charter" as used in this Act shall denote any grant of power by the United States, whether or not such power includes the privilege of corporate existence.

(e) The "three-fifths vote" required for ratification of a charter and the "three-fourths vote" required for proposal or ratification of any supplement thereto or transfer of any Federal function or service shall be measured with reference to the total number of votes cast; the chartered community, or, if the community has not yet been chartered, the Secretary of the Interior shall designate the time, place and manner of voting, shall declare the qualifications of voters, and shall be the final judge of the eligibility of voters and of the validity of ballots and may declare void any such vote in which less than two fifths of those eligible vote.

(f) The term "disposition of property" as used in this title shall denote any transfer of property by devise or intestate succession, as well as transfer inter vivos.

(g) The term "punish" as used in this title shall not be construed to affect the amount or extent of civil judgments.

(h) The term "public" as used in this title shall include all matters affecting either the property owned or controlled by a chartered community, or the health, morals, or welfare of a considerable part of the membership of such community.

(i) The term "dividend" as used in this title shall be construed to include any distribution of funds by a chartered community out of current or accrued income and any other distribution of funds which may be approved by the Secretary of the Interior.

(j) The power "to sue and be sued" as used in this title shall not be construed to grant to the courts of any State any jurisdiction over a chartered community or the members thereof not now possessed over an Indian tribe or its members, nor to sanction execution upon the assets of the community, nor shall this power be construed to deny the right of the United States to intervene in any suit or proceeding in which it now has the right to intervene, but one half of the net income of a chartered community in any year shall be subject to attachment and execution under any

judgment rendered against the community, for any debt or default of the said community, by a court of competent jurisdiction.

(k) The term "tribe" wherever used in this Act shall be construed to refer to any Indian tribe, band, nation, pueblo, or other native political group or organization.

(l) The term "reservation" wherever used in this Act shall be construed to comprise all the territory within the outer boundaries of any Indian reservation, including any pueblo grant, whether or not such property is subject to restrictions on alienation and whether or not such land is under Indian ownership.

(m) The term "territory of a chartered community" wherever used in this Act shall be construed to comprise all lands, waters, highways, roads, and bridges within the boundaries of an Indian community as fixed by charter, regardless of whether the title to such property is in the United States, an Indian tribe or community, a restricted Indian or the heirs of a restricted Indian, or whether it is in a fee-patent Indian, or any other person, agency, or government.

(n) The term "transfer" as used in this title to apply to any function or service shall designate the relinquishment by the Secretary of the Interior or the Commissioner of Indian Affairs of any rights and duties incident to the per-

formance of such function or service and the assumption of such rights and duties by the Indian community as an agency of the Federal Government.

(o) The term "Office of Indian Affairs" as used in this Act shall be construed to include any functions of the Secretary of the Interior, the Commissioner of Indian Affairs, or subordinate officials, relating to Indian affairs.

TITLE II—SPECIAL EDUCATION FOR INDIANS

SECTION 1. The Commissioner is authorized and directed to make suitable provision for the training of Indian members of chartered communities and other Indians of at least one-fourth degree of Indian blood, in the various services now intrusted to the Office of Indian Affairs and in any additional services which may be undertaken by a chartered Indian community, including education, public-health work, and other social services, the administration of law and order, the management of forests and grazing lands, the keeping of financial accounts, statistical records, and other public reports, and the construction and maintenance of buildings, roads, and other public works. The Commissioner may use the staffs and facilities of existing Indian boarding or day schools for such special instruction, and he may provide for the training and education of Indian students in universities, colleges, schools of medicine, law, engineering, or agriculture, or other institutions of

recognized standing and may subsidize such training and education under the following conditions:

(a) The Commissioner shall extend financial aid and assistance on the basis of financial need to qualified Indians for the payment of tuition and other costs of education, including necessary costs of support. One half of the amount so expended shall be a non-interest-bearing, reimbursable loan to be repaid in installments whenever the beneficiary shall have received employment anywhere, but the obligation shall be temporarily suspended during any period of unemployment.

There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $200,000 annually to defray subsidies made under the foregoing paragraph.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Commissioner may grant scholarships to any qualified Indian of special promise, no part of which shall be reimbursable.

There is hereby authorized to be appropriated, out of any funds in the United States Treasury not otherwise appropriated, a sum not to exceed $50,000 annually to defray the cost of scholarships awarded under the foregoing paragraph.

Formal contracts shall not be required for compliance with section 3744 of the Revised Statutes (U.S.C., title 41, sec. 16), with respect to the grants of subsidies or scholarships to Indian students under the foregoing provisions.

SEC. 2. It is hereby declared to be the purpose and policy of Congress to promote the study of Indian civilization and preserve and develop the special cultural contributions and achievements of such civilization, including Indian arts, crafts, skills, and traditions. The Commissioner is directed to prepare curricula for Indian schools adapted to the needs and capacities of Indian students, including courses in Indian history, Indian arts and crafts, the social and economic problems of the Indians, and the history and problems of the Indian Administration. The Commissioner is authorized to employ individuals familiar with Indian culture and with the contemporary social and economic problems of the Indians to instruct in schools maintained for Indians. The Commissioner is further directed to make available the facilities of the Indian schools to competent individuals appointed or employed by an Indian community to instruct the elementary and secondary grades in the Indian arts, crafts, skills, and traditions. The Commissioner may contribute to the compensation of such individuals in such proportion and upon such terms and conditions as he may deem advisable. For this purpose the Commissioner may use moneys appropriated for the maintenance of such schools,

TITLE III—INDIAN LANDS

SECTION 1. The process of allotment and inheritance of allotments of restricted Indian lands has caused the subdivision of such lands into units which are not capable of effective economic use. The difficulty and expense of administering such lands has led to the sale or leasing of such lands to non-Indians. The issuance of fee patents to Indians has resulted in the alienation of large areas of the Indian lands. It is hereby declared to be the policy of Congress to undertake a constructive program of Indian land use and economic development, in order to establish a permanent basis of self-support for Indians living under Federal tutelage; to reassert the obligations of guardianship where such obligations have been improvidently relaxed; to encourage the effective utilization of Indian lands and resources by Indian tribes, cooperative associations, and chartered communities; to safeguard Indian lands against alienation from Indian ownership and against physical deterioration; and to provide land needed for landless Indians and for the consolidation of Indian landholdings in suitable economic units.

SEC. 2. Hereafter no tribal or other land of any Indian reservation or community created or set apart by treaty or agreement with the Indians, act of Congress, Executive order, purchase, or otherwise, shall be allotted in severalty to any Indian.

SEC. 3. The Secretary of the Interior is authorized to withdraw from disposal the remaining surplus lands of any Indian reservation heretofore opened or authorized to be opened, to sale, settlement, entry, or other form of disposal by Presidential proclamation, or under any of the public land laws of the United States. Any land so withdrawn shall have the status of tribal or community lands of the tribe, reservation, or community within whose territorial limits they are located: *Provided, however,* That valid rights or claims of any persons to any lands so withdrawn existing on the date of the withdrawal shall not be affected by this Act.

SEC. 4. The existing periods of trust placed upon Indian allotments and unalloted tribal lands and any restriction of alienation thereof, are hereby extended and continued until otherwise directed by Congress. The authority of the Secretary of the Interior to issue to Indians patents in fee or certificates of competency or otherwise to remove the restrictions on lands allotted to individual Indians under any law or treaty is hereby revoked.

No lands, water rights, or other capital assets owned by an Indian community shall be voluntarily or involuntarily alienated: *Provided, however,* That the community may, with the approval of the Secretary, sell or contract to sell to a nonmember any standing timber, or

dispose of any capital improvements, owned by the community.

SEC. 5. No sale, devise, gift, or other transfer of allotted Indian lands held under any trust patent or otherwise restricted, whether in the name of the allottee or his heirs, shall be made or approved: *Provided, however,* That such lands may, with the approval of the Secretary, be sold, devised, or otherwise transferred to the Indian tribe from whose lands the allotment was made or to the chartered community within whose territorial limits they are located, or devised to any member thereof: *And provided further,* That the Secretary of the Interior may authorize exchanges of lands of equal value whenever such exchange is in his judgment necessary for or compatible with the proper consolidation of Indian lands.

SEC. 6. In order to bring about an orderly and sound acquisition and consolidation of lands and to promote the effective use of Indian resources and the development of Indian economic capacities, the Secretary is hereby authorized and directed to make economic and physical investigation and classification of the existing Indian lands, of intermingled and adjacent non-Indian lands and of other lands that may be required for landless Indian groups or individuals; to make necessary maps and surveys; to investigate Indian aptitudes and needs in the agricultural

and industrial arts, in political and social affairs and in education, and to make such other investigations as may be needed to secure the most effective utilization of existing Indian resources and the most economic acquisition of additional lands. In carrying out the investigations prescribed in this section the Secretary is authorized to utilize the services of any Federal officers or employees that the President may assign to him for the purpose, and is further authorized, with the consent of the States concerned, to enter into cooperative agreements with State agencies for similar services.

SEC. 7. The Secretary of the Interior is hereby authorized, in his discretion, and under such rules and regulations as he may prescribe, to acquire, through purchase, relinquishment, gift, exchange, or assignment, any interest in lands, water rights or surface rights to lands, within or outside of existing reservations, including trust or otherwise restricted allotments, whether the allottee be living or deceased, for the purpose of providing land for Indians for whom reservation or other land is not now available and who can make beneficial use thereof, and for the purpose of blocking out and consolidating areas classified for the purpose pursuant to the authority of section 11 of this title. The Secretary is authorized, in the case of trust or other restricted lands or lands to which fee patents have hitherto been issued to Indians and

which are unencumbered, to accept voluntary relinquishments of, and to cancel the patent or patents or any other instrument removing restrictions from the land.

There is hereby authorized to be appropriated, for the acquisition of such interests in lands, water rights and surface rights and for expenses incident thereto, including appraisals and the investigations provided for in section 6 of this title, a sum not to exceed $2,000,000 for any one fiscal year: *Provided,* That in the event the proposed Navajo boundary extension measures now pending in Congress and embodied in the bills (S. 2499 and H.R. 8927) to define the exterior boundaries of the Navajo Indian Reservation in Arizona, and for other purposes, and the bills (S. 2531 and H.R. 8982) to define the exterior boundaries of the Navajo Indian Reservation in New Mexico and for other purposes, become law, no part of such funds shall be used to acquire additional land for the Navajo Indians in Arizona and New Mexico.

The unexpended balances of appropriations made for any one year pursuant to this Act shall remain available until expended.

The Secretary of the Interior is hereby authorized to accept voluntary relinquishments from any Indian allottee or Indian homestead entryman, or from his heirs, of all rights in and to any land included in any Indian public domain allotment, homestead, or application therefor, which has here-

tofore or may hereafter be made, where such land lies within the exterior boundaries of any Indian reservation or area heretofore or hereafter set apart and reserved for the use and benefit of any Indian tribe or band; and the Secretary of the Interior is hereby authorized and empowered to cancel any patent which may have been issued conveying such land, or any interest therein, to any Indian allottee or Indian homestead entryman.

Title to any land acquired pursuant to the provisions of this section shall be taken in the name of the United States in trust for the Indian tribe or community for whom the land is acquired, but title may be transferred by the Secretary to such community under the conditions set forth in this Act.

SEC. 8. Any Indian tribe or chartered Indian community is authorized to purchase or otherwise acquire with the consent of the owner any interest of any member or nonmember in land within its territorial limits, and may expend any tribal or community funds, whether or not held in the Treasury of the United States, for this purpose, whenever, in the opinion of the Secretary of the Interior the acquisition is necessary for the proper consolidation of Indian lands.

An Indian tribe or community may issue, in exchange for land transferred to it by any member, a certificate evi-

dencing an undivided interest in tribal or community lands or other assets.

SEC. 9. The Secretary of the Interior may sell and convey to an Indian tribe or community, any unpartitioned interest in restricted lands inherited by any member, whenever, in his opinion, the sale is necessary for the proper consolidation of Indian lands.

The time and mode of payment of the purchase price of any lands authorized to be sold or purchased under this section shall be governed by the agreement between the parties.

SEC. 10. Wherever the Secretary shall find that existing State laws governing the determination of heirs, so far as made applicable to any restricted Indian lands by congressional enactment, are not adapted to Indian needs and circumstances, he may promulgate independent rules governing such determination, including such rules as may be necessary to prevent any subdivision of rights to lands or improvements thereon which is likely to impair their beneficial use.

The Secretary may delegate to a chartered Indian community the authority conferred by this section.

SEC. 11. The Secretary of the Interior is authorized and directed to classify for consolidation the areas of

restricted Indian lands in which economic forest, grazing, and farm units have been subdivided by the process of allotment and inheritance and which are reasonably capable of consolidation into economic units for Indian use. The Secretary shall also proclaim the exclusion from such areas of any lands not to be included therein. Any area classified for consolidation may be enlarged but not diminished by new classification.

On the death of the owner of restricted land, other than grazing or timber land, lying within an area classified for consolidation pursuant to the provisions of this section, the Secretary shall partition such land among the heirs or devisees, if the lands are capable of partition without impairment of the beneficial use of the lands. If the land cannot be so partitioned, each heir or devisee shall receive a certificate entitling him to an undivided interest in land or other assets equal in value to the parcel he would otherwise inherit, and the title of the decedent shall pass to the chartered community within whose territorial limits the land is located, or, if no community has been chartered, to the tribe from whose lands the allotment was made.

On the death of the owner of restricted grazing or timber land lying within an area classified for consolidation pursuant to the provisions of this section, each heir or devisee shall receive a certificate entitling him to an undivided

interest in land or other assets equal in value to the parcel he would otherwise inherit, and the title of the decedent shall pass to the chartered community within whose territorial limits the land is located, or, if no community has been chartered, to the tribe from whose lands the allotment was made.

It shall be the duty of the Secretary to determine what interests in lands or other assets shall be granted to such heirs or devisees in lieu of the parcels they would otherwise inherit. Any arbitrary and unreasonable determination may be set aside by any court of competent jurisdiction.

The Secretary may delegate to a chartered Indian community any authority conferred by this section.

Prior to the determination locating restricted land within or without an area classified for consolidation, the heirs or devisees shall receive a contingent interest in such land, and shall be entitled to the use and income accruing from any lawful disposition of such land. Title to such land shall vest in the tribe or community in the manner and on the conditions set forth above, when the Secretary shall determine that such lands lie within an area classified for consolidation. Title to such land shall vest in the heirs or devisees when and only when the Secretary shall determine that the lands lie outside an area classified for consolidation.

SEC. 12. Whenever any member of an Indian tribe or community shall be entitled to any special right to use or enjoy the income from any tract, amount, or share of community or tribal land or other assets, by virtue of any transfer or inheritance effected pursuant to this title, he shall receive a nontransferable certificate of special interest issued or approved by the Secretary of the Interior evidencing and guaranteeing such special right.

Each member of an Indian tribe or community, whether or not entitled to any special interest, as provided for in the preceding paragraph, shall be entitled to receive a nontransferable certificate of membership issued or approved by the Secretary of the Interior, evidencing and guaranteeing a general undivided interest in the land and other assets of the tribe or community.

Each member of a tribe or community shall be entitled, by virtue of such membership interest, after any prior obligations of the tribe or community have been met, to an equal share in the income of the tribe or community, whether received from rentals or from any other source, and to an equal right to make beneficial use of any lands owned by such tribe or community which are not leased: *Provided, however*, That where any new lands or other assets have been acquired for any tribe or community by the expenditure of appropriations authorized by this Act,

the general membership interest of any member in the assets of such tribe or community may be subject to a deduction not exceeding in value any special interest in tribal or community assets acquired or held by such member in exchange for property transferred or passing at death to the said tribe or community, or any restricted lands retained in severalty by said member: *And provided further*, That members under the age of eighteen may be entitled to less than an equal interest in the tribal or community property.

Rules governing the administration of the provisions of this section shall be promulgated by the authorities of the chartered community or, where no chartered community exists, by the Secretary of the Interior.

SEC. 13. Each certificate issued pursuant to the authority of any section of this title shall be issued in triplicate, one copy of which the Secretary of the Interior shall retain in a register to be kept for the purpose and the others of which he shall forward to the tribe or chartered Indian community. The said tribe or community shall deliver to the Indian in whose favor it is issued one of such certificates so forwarded and shall cause the other to be copied into a register of the tribe or community to be provided for the purpose, and shall file the same.

The Secretary may delegate to a chartered community the authority conferred by this section and may countersign

certificates of interest issued by such community to its members.

SEC. 14. The Secretary of the Interior is authorized to classify the lands owned or controlled by an Indian tribe or community into economic units suitable for farming, grazing, forestry, irrigation and other purposes, and may lease or permit the use of, and may regulate the use and management of, such lands whenever in his opinion necessary to promote and preserve their economic use.

The Secretary of the Interior is authorized and directed to make rules and regulations for the operation and management of Indian forestry units on the principle of sustained yield management, to restrict the number of livestock grazed on Indian range units to the estimated carrying capacity of such ranges, and to promulgate such other rules and regulations as may be necessary to protect the range from deterioration, to prevent soil erosion, and like purposes. The Secretary may delegate to a chartered Indian community any authority conferred by this section.

SEC. 15. No disposition of any tribal or community lands or any interest therein or any right of use thereto shall be made without the consent of the tribe or community. No disposition of any improved land beneficially used by any individual entitled to the possession thereof by title, assignment, or tribal custom, or of any interest or right of

use in such land, shall be made without the consent of such individual. Nothing herein shall be construed to qualify in any manner the provisions of section 11 of this Title.

SEC. 16. The Secretary of the Interior is authorized to proclaim new Indian reservations on lands purchased for the purposes enumerated in this Act, or to add such lands to the jurisdiction of existing reservations. Such lands, so long as title to them is held by the United States or by an Indian tribe or community, shall not be subject to taxation, but the United States shall assume all governmental obligations of the State or county in which such lands are situated with respect to the maintenance of roads across such lands, the furnishing of educational and other public facilities to persons residing thereon, and the execution of proper measures for the control of fires, floods, and erosion, and the protection of the public health and order in such lands, and the Secretary of the Interior may enter into agreements with authorities of any State or subdivision thereof in which such lands are situated for the performance of any or all of the foregoing functions by such State or subdivision or any agencies or employees thereof authorized by the law of the State to enter into such agreements, and for the payment of the expenses of such functions where appropriations therefor shall be made by Congress,

SEC. 17. Nothing contained in this title, except the provisions of section 4, shall be construed to relate to Indian holdings of allotments or homesteads upon the public domain outside of the geographic boundaries of any Indian reservation now existing or to be established hereafter.

SEC. 18. Whenever used in this title the phrase "a member of an Indian tribe" shall include any descendant of a member permanently residing within an existing Indian reservation.

SEC. 19. Whenever used in this title the phrase "lands owned or controlled by an Indian tribe or community" shall include all interest in land of any of its members.

SEC. 20. The provisions of this Act shall not be construed to prevent the removal of restrictions on taxable lands of members of the Five Civilized Tribes nor operate to effect any change in the present laws and procedure relating to the guardianship of minor and incompetent members of the Osage and Five Civilized Tribes, but in all other respects shall apply to such Indians.

SEC. 21. The Secretary of the Interior is hereby directed to continue the allowance of the articles enumerated in section 17 of the Act of March 2, 1889 (25 Stat.L. 894), or their commuted cash value under the Act of June 10, 1896 (29 Stat.L. 334) to all Sioux Indians

who would be eligible, but for the provisions of this Act, to receive allotments of land in severalty under section 19 of the Act of May 29, 1908 (35 Stat.L. 451), or under any prior Act, and who have the prescribed status of the head of a family or single person over the age of eighteen years, and his approval shall be final and conclusive, claims therefor to be paid as formerly from the permanent appropriation made by said section 17 and carried on the books of the Treasury for this purpose. No person shall receive in his own right more than one allowance of the benefits, and application must be made and approved during the lifetime of the allottee or the right shall lapse. Such benefits shall continue to be paid upon each reservation until such time as the lands available therein for allotment at the time of the passage of this Act would have been exhausted by the award to each person receiving such benefits of an allotment of eighty acres of such land.

SEC. 22. Nothing in this Act shall be construed to authorize any transfer of title or right to minerals, including gas and oil, without the consent of the owner.

TITLE IV—COURT OF INDIAN AFFAIRS

SECTION 1. There shall be a United States Court of Indian Affairs, which shall consist of a chief judge and six associate judges, each of whom shall be appointed by the President, by and with the advice and consent of the Senate,

and shall receive an annual salary of $7,500 payable monthly from the Treasury.

SEC. 2. The said Court of Indian Affairs shall always be open for the transaction of business, and sessions thereof may, in the discretion of the court, be held in the several judicial circuits and at such places as said court may from time to time designate. The authority of the court may be exercised either by the full court or by one or more judges duly assigned by the court to sit in a particular locality or to hold a special term for a designated class of cases.

SEC. 3. The Court of Indian Affairs shall have original jurisdiction as follows:

(1) Of all prosecutions for crimes against the United States committed within the territory of any Indian reservation or chartered Indian community, whether or not committed by an Indian;

(2) Of all cases to which any Indian tribe or chartered Indian community is a party;

(3) Of all cases at law or in equity arising out of commerce with any Indian tribe or community or members thereof, wherein a real party in interest is not a member of such tribe or community;

(4) Of all cases, civil or criminal, arising under the laws or ordinances of a chartered Indian community, wherein a real party in interest is not a member of such community;

(5) Of all actions at law or suits in equity wherein the pleadings raise a substantial question concerning the validity or application of any Federal law, or any regulation or charter authorized by such law, relating to the affairs or jurisdiction of any Indian tribe or chartered community;

(6) Of all actions, suits, or proceedings involving the right of any person, in whole or in part of Indian blood or descent, to any allotment of land under any law or treaty;

(7) Of all cases involving the determination of heirs of deceased Indians and the settlement of the estates of such Indians; of all cases and proceedings involving the partition of Indian lands, or the guardianship of minor and incompetent Indians; and of all cases and proceedings to determine the competency of individual Indians where the issuance or cancelation of a fee patent or the removal of restrictions from inherited or allotted lands, funds, or other property held by the United States in trust for such Indians may be involved: *Provided*, That the Court of Indian Affairs shall exercise no jurisdiction in cases over which exclusive jurisdiction has been granted by Congress to the Court of Claims, or to any other Federal court other than the United States district courts, or in cases over which exclusive jurisdiction may be granted by charter provision to the local courts of any Indian community.

SEC. 4. All jurisdiction heretofore exercised by the United States district courts by reason of the fact that a case involved facts constituting any of the grounds of jurisdiction enumerated in the preceding section, is hereby terminated, reserving, however, to such district courts complete jurisdiction over all pending suits and over all proceedings ancillary or supplementary thereto.

SEC. 5. The Court of Indian Affairs may order the removal of any cause falling within its jurisdiction as above set forth, from any court of any State or any Indian community in which such cause may have been instituted.

SEC. 6. The Court of Indian Affairs shall have jurisdiction to hear and determine appeals from the judgment of any court of any chartered Indian community in all cases in which said Court of Indian Affairs might have exercised original jurisdiction and in all other cases in which the judgment of the community court is one of imprisonment exceeding sixty days or fine exceeding $200.

SEC. 7. The procedure of the Court of Indian Affairs shall be determined by rules of court to be promulgated by it, existing statutes regulating procedure in courts of the United States notwithstanding. Such rules shall regulate the form and manner of executing, returning, or filing writs, processes, and pleadings; the removal of causes specified in section 5; the taking of appeals specified in section 6;

the joinder of parties and of causes of action, legal and equitable; the interposition of defenses and counterclaims, legal and equitable; the raising of questions of law before trial; the taking of testimony by examination before trial and other proceedings for discovery and inspection; the issuance of subpenas to summon witnesses and compel the production of documents at trial; the summoning of jurors and the waiver of jury trial; the form and manner of entry of judgments; the manner of executing judgments; the conduct of supplementary proceedings; the survival of actions and the substitution of parties; the amounts and manner of payment of fees to the clerk or the marshal of the court; the practice of attorneys; and such other matters as may require regulation in order to provide a complete system of procedure for the conduct of the court. In general the rules of court shall conform as nearly as possible to the statutes regulating the procedure in the district courts of the United States, the rules of the Supreme Court governing causes in said district courts, and the practice in the courts of the State in which the controversy arises, save that the rules shall, so far as possible, be nontechnical in character and fitted to the needs of prospective litigants.

SEC. 8. The court may provide, by rules to be promulgated by it, for appeals to the full court from judgments rendered on circuit by less than a majority of the full court.

SEC. 9. All substantial rights accorded to the accused in criminal prosecutions in the district courts of the United States shall be accorded in prosecutions in the Court of Indian Affairs. The trial of offenses punishable by death or by imprisonment for a period exceeding five years shall be had within or in the vicinity of the reservation or Indian community where the offense was committed.

SEC. 10. In both civil and criminal causes, the right to trial by jury and all other procedural rights guaranteed by the Constitution of the United States shall be recognized and observed.

SEC. 11. In criminal cases the rules of evidence shall be those prevailing in criminal cases in the United States district courts. In civil cases the common law rules of evidence, including the rules governing competency of witnesses, shall prevail: *Provided, however*, That the court shall have the power to amend such rules by rule of court or judicial decision to make them conform as nearly as possible to modern changes evidenced by the statutes and decisions of the United States and the several States, and to adapt them, where necessary, to the solution of problems of proof peculiar to the cases before the court.

SEC. 12. The statutes and decisions of the several States, except where the Constitution, treaties, or statutes of the United States, or the charters or ordinances of Indian communities or orders of executive departments thereunder

promulgated, otherwise require or provide, shall be regarded as rules of decision in all civil cases in the Court of Indian Affairs.

SEC. 13. The Court of Indian Affairs shall be a court of record possessed of all incidental powers, including the power to summon jurors, to administer oaths, to have and use a judicial seal, to issue writs of habeas corpus, to punish for contempt, and to hold to security of the peace and for good behavior, which may be exercised by the district courts of the United States, and such powers shall be subject to all limitations imposed by law upon said district courts. The orders, writs, and processes of the Court of Indian Affairs may run, be served, and be returnable anywhere in the United States. The said court shall perform such administrative functions as Congress may assign to it. The said court shall have the power to render declaratory judgments, and such judgments, in cases of actual controversy, shall have the same force as final judgments in ordinary cases.

SEC. 14. The judges of the Court of Indian Affairs shall hold office for a period of ten years; they may be removed prior to the expiration of their term by the President of the United States, with the consent of the Senate, for any cause.

SEC. 15. The final judgment of the Court of Indian Affairs shall be subject to review on questions of law in

the circuit court of appeals of the circuit in which such judgment is rendered. The several circuit courts of appeals are authorized to adopt rules for the conduct of such appellate proceedings, and, until the adoption of such rules, the rules of such courts relating to appellate proceedings upon a writ of error, so far as applicable, shall govern. The said circuit courts of appeals shall have power to affirm, or, if the judgment of the Court of Indian Affairs is not in accordance with law, to modify or reverse the judgment of that court, with or without remanding the case for a rehearing, as justice may require; the judgment of the circuit court of appeals shall be final, except that it may be subject to review by the Supreme Court as provided in the United States Code, title 28, sections 346 and 347.

SEC. 16. The fees of jurors and witnesses shall be fixed in accordance with the provisions of law governing such fees in United States courts generally as provided in the United States Code, title 28, sections 600 to 605.

SEC. 17. The costs and fees in the Court of Indian Affairs shall be fixed and established by said court in a table of fees: *Provided*, That the costs and fees so fixed shall not exceed, with respect to any item, the costs and fees now charged in the Supreme Court.

SEC. 18. The Court of Indian Affairs shall appoint a chief clerk, a reporter, and such assistant clerks and marshals as may be necessary for the efficient conduct of its business.

The said officials shall be under the direction of the court in the discharge of their duties; and for misconduct or incapacity they may be removed by it from office; but the court shall report such removals, with the cause thereof, to Congress, if in session, or if not, at the next session.

SEC. 19. The Attorney General shall provide the Court of Indian Affairs with suitable rooms in courthouses or other public buildings at such places as the court may select for its sessions.

SEC. 20. The chief clerk of the court shall, under the direction of the chief judge, employ such stenographers, messengers, or attendants and purchase such books, periodicals, and stationery as may be needful for the efficient conduct of the business of the court, and expenditures for such purposes shall be allowed and paid by the Secretary of the Treasury upon claim duly made and approved by the chief judge.

SEC. 21. The judges of the Court of Indian Affairs and the clerks and marshals thereof shall receive necessary traveling expenses, and expenses not to exceed $5 per day for subsistence while traveling on duty and away from their designated stations.

SEC. 22. With respect to all matters relating to the receipt of fines, costs, fees, bail, and other payments to officials of the court, the custody of funds and the rendering of accounts therefor, the bonding of court officials charged

with such custody, the payment of moneys for salaries, traveling expenses, clerical services, the publication of reports of opinions, and office expenses, the laws, departmental regulations, and rules of court applicable to similar matters in the Supreme Court shall apply to the Court of Indian Affairs except as otherwise provided in this chapter.

SEC. 23. The Secretary of the Interior is hereby authorized to appoint not to exceed ten special attorneys whose duty it shall be to advise and represent such Indian tribes or communities as the Secretary of the Interior may designate, and the individual members thereof or to represent the United States on behalf of such tribes or communities or the individual members thereof. Within ten days of the institution of any proceedings on behalf of such tribes or communities or members thereof, the special attorneys provided for herein shall serve upon the appropriate United States district attorney written notice of the pendency of any such proceedings, together with a copy of all the pleadings on file in any such proceeding.

SEC. 24. As used in this title, the term "circuit court of appeals" includes the Court of Appeals of the District of Columbia.

SEC. 25. Appropriations for the Federal Court of Indian Affairs and for incidental expenses shall be made annually based upon estimates submitted by the Attorney General, and appropriations for the special attorneys shall

be made annually based upon estimates submitted by the Secretary of the Interior.

TITLE V—MISCELLANEOUS

SECTION 1. The provisions of this Act shall not apply to any reservation wherein a majority of the adult resident Indians voting in an election duly called by the Secretary of the Interior shall vote against the application of these provisions. It shall be the duty of the Secretary to call such an election, to be held by secret ballot and upon due notice to all Indians eligible to vote, within thirty days after the receipt of a verified petition for such an election signed by one fourth of the adult Indians resident within any reservation, provided such petition is presented to the Secretary within three months after the passage of this Act.

SEC. 2. Nothing in this Act shall be construed to impair or prejudice in any way any claim or suit of any Indian tribe against the United States based upon any treaty obligation or other obligation heretofore incurred by the United States. It is hereby declared to be the intent of Congress that no expenditures for the benefit of Indians made out of appropriations specifically authorized by this Act shall be considered as offsets in any suit brought to recover upon any claim of such Indians against the United States.

SEC. 3. The provisions of this Act shall not apply to any of the territories, colonies, or insular possessions of the United States, except that the provisions of titles I and II of this Act shall apply to Alaska, and for the purposes of these titles Eskimos and other aboriginal peoples shall be considered Indians.

[COMMITTEE PRINT]

73D CONGRESS
2D SESSION

H. R.

A BILL

To grant to Indians living under Federal tutelage the freedom to organize for purposes of local self-government and economic enterprise; to provide for the necessary training of Indians in administrative and economic affairs; to conserve and develop Indian lands; and to promote the more effective administration of justice in matters affecting Indian tribes and communities by establishing a Federal Court of Indian Affairs.

By Mr. HOWARD

APRIL —, 1934

Referred to the Committee on Indian Affairs and ordered to be printed

Union Calendar No. 790

82d Congress, 2d Session - - - - - - House Report No. 2503

REPORT

WITH RESPECT TO

THE HOUSE RESOLUTION AUTHORIZING THE COMMITTEE ON INTERIOR AND INSULAR AFFAIRS TO CONDUCT AN INVESTIGATION OF THE BUREAU OF INDIAN AFFAIRS

PURSUANT TO H. RES. 698 (82d CONG.)

DECEMBER 15, 1952.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed with illustrations

UNITED STATES
GOVERNMENT PRINTING OFFICE
26496 WASHINGTON : 1953

VI. Selected References on the Quileute

(Including the Quileute proper and the Hoh)

Farrand, L. Quileute. Bulletin of the Bureau of American Ethnology, Vol. XXX, ii, pp. 340–1, 1910.
Krzywicki, Ludwik. Primitive Society and its Vital Statistics. London, 1934. p. 380.
Murdock Geo. P. Ethnographic Bibliography of North America. 1941. p. 30.

VII. Quileute Tribal Documents

Quileute Tribe of the Quileute Reservation. Constitution and by-laws of the Quileute Tribe of the Quileute Reservation, Wash. Approved November 11, 1936. Washington, U. S. Govt. Print. Off., 1937. 12 p.
Quileute Tribe of the Quileute Indian Reservation. Corporate charter of the Quileute Indian Tribe of the Indian Reservation. Ratified August 21, 1937. Washington, U. S. Govt. Print. Off., 1938. 6 p.

Quinaielt

A small tribe belonging to the Chehalis group of the Salishan stock and located since they were first known on the Quinaielt River and adjacent coast of western Chehalis County, Wash. In 1855 the Quinaielt Reservation was set apart for them. A portion of this tribe on the Quaitso River in Jefferson County, Wash., are called Quaitso.

I. Cultural, Economic and Social Conditions

QUINAIELT INDIANS, WASHINGTON, 1944

"A comparison of present cultural and economic conditions and standard of living of the Indian population living either on or off the reservation may be considered as equal to that of the non-Indians following similar occupations in the same area. As is characteristic of any group, Indians or non-Indians, a small percentage have no desire to improve their standard of living beyond a certain point even though an adequate income is available to do so. It may be stated that in general, Indians throughout this coastal area enjoy a fair standard of living. Indian children attending grade and high schools appear well dressed, and enjoy all of the advantages available to non-Indians in the same community."

Source: *Ten Year Program for the Quinaielt Reservation, Wash.*, p. 10.

II. Quinaielt Claim Filed in U. S. Court of Claims

Plaintiff: Quinaielt.
Docket No. L–231.
Date filed: Jan. 30, 1930.
Amount claimed: $8,500,000.
Nature of claim: For value of lands taken without compensation and general accounting.
Court action: 102 C. Cls. 22.

III. Quinaielt Claim Filed With the Indian Claims Commission

Docket No.	Claimant
242	Quinaielt Tribe. 1 claim. Filed August 9, 1951.

village of La Push, no other legislation of importance has been enacted. The Federal courts of the United States in 1946, rendered a highly important decision in favor of this tribe restoring to them the river and tidelands adjacent to the reservation which had heretofore been taken by the State of Washington. The tribe have provisions to maintain a tribal judge, but the law-and-order situation on the reservation is very unsatisfactory.

5. *Political and social cohesion.*—Factionalism among the group does not exist. In matters of importance the tribal council seeks and is guided by the advice and assistance of the agency officials. This group are a fully organized body under IRA, but lack, in some respects, technical ability to cope with some of the reservation problems. Alcoholism and disorganized family life exist to no greater extent than on other reservations of comparable population. No drug addiction has been found to exist.

6. *Ensemble of characteristics.*—The tribe is fairly well advanced, but are lacking in initiative in making the best opportunity of the reservation natural resources which are controlled by whites who lease all of the good water-front land of the reservation. Were it possible for the tribe to employ an experienced tribal resource manager, the Indians themselves could greatly profit and gain valuable experience by the operation of the various business enterprises now operated by the whites. This idea aptly applies to the management of reservation timber and its future process in marketable products. As a rule, able-bodied Indians have proven to be experts in logging, sawmills, and in the use of modern machinery.

With an active and intelligent governmental guidance, this tribe within 5 years could be capable of being a self-sustaining group and Government assistance could be reduced to a minimum.

Questions on Indian moneys of a particular tribe

1. Who has the title to the money (individuals, groups, or tribe)? Amounts for each: Tribe, $92,888.09.

2. What kinds of moneys are there in terms of depositary and depository: Federal, Treasury, local disbursing officers, banks, bonds, etc.: Treasury, $1,590.99; IIM, $91,378.10 (local disbursing officer).

3. What kinds of moneys in terms of sources: Treaty, judgment and compensation funds, proceeds of labor, other proceeds—rentals, water rights, royalties: Proceeds sale of timber.

4. Amounts disposed of per annum: by per capita distribution, by annuities, etc.: None.

5. Amounts received per annum in terms of sources: No fixed annual income.

6. Amounts in treasury funds: Subject to authorization, not subject to authorization, interest bearing, noninterest bearing: Subject to authorization, $1,590.99.

7. Draw up simple statements of the assets and liabilities of the tribe and of its group enterprises (cattle associations, sawmills, loan associations, etc.) and of its individual members, the latter in summary form. Distinguish moneys in tribal treasuries from restricted and unrestricted accounts. Has the tribe ever had a notarized accounting of its finances: Assets, $92,969.09; liabilities, none.

QUINAIELT RESERVATION

Questions for the evaluation of Indian tribal assimilation to full citizenship

1. *Degree of acculturation.*—All Indian children attend the public schools. Approximately only about one-fifth of public-school graduates complete a high-school education. Average level of education is approximately the eighth grade. On the whole, the population is fairly literate, not to exceed 10 or 15 of the real old members could be classed as illiterate. School attendance is only fair. Ninety-nine percent of the resident population speak, read, write, and understand English.

2. *Racial situation.*—Approximately 75 percent of the resident population are full-bloods. About 60 percent of the nonresident population are one-half or more white blood. Through Federal court decisions, other tribes won the right to acquire land allotments on the Quinaielt Reservation, these being Quileute, Chehalis, Chinook, and Cowlitz. The Quinaielts stubbornly resisted early efforts of such tribes to obtain allotments, and by reason of such court decisions these tribes secured allotments which created racial barriers which still exist.

3. *Economic self-sufficiency.*—The Quinaielt Reservation contains nearly 100,000 acres of valuable virgin timber of the estimated value of $22,000,000 consisting chiefly of merchantable fir, spruce, cedar, hemlock, and other species. A large unit of timber is now under cutting contract to be logged over a long term

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Questions on Indian mone

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Questions for the evaluation

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ervation contains nearly
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be logged over a long term

under selective sustained-yield program. Next of economic importance is the fishing industry. The choicest of fish inhabit the Quinaielt River which is wholly within the reservation. The average annual income to the Indians is approximately $100,000. Wild game is plentiful as also fur animals.

4. *Economic marginality and political dependency.*—Government assistance required for forest supervision and logging timber; collection and disbursement of forestry income; construction and maintenance of roads; cooperation with State in education and supervision and administration over trust and tribal lands with related inheritance problems and probate of estates. Aside of a jurisdictional bill to the tribe to sue the Government and for appropriations of tribal funds at intervals, little congressional action has been enacted. The Federal courts have rendered several important decisions for the Indians.

5. *Political and social cohesion.*—The tribe as a whole is fairly advanced toward assimilation. The reservation holds wonderful natural resources, which, if they could be utilized by the tribe itself through cooperative tribal enterprises, there would be little need for continued Government services. There is no addiction to drugs. Alcoholism and disorganized family life are somewhat more prevalent than on other reservations, due perhaps to large amounts of money regularly received by many as income from timber and fishing.

6. *Ensemble of characteristics.*—The tribe (residents of the reservation) are fairly advanced but lack initiative in putting into full cooperative production the many valuable natural resources of the reservation.

The Government pays the salary of one tribal judge and one policeman. However, law and order conditions are unsatisfactory. The laws of the State could well be made applicable to the reservation by Congress, however, with provision that the treaty rights of the Indians to hunting and fishing shall not be taken from them.

The nonresident members of the tribe who possess half or more of white blood should be completely emancipated at the earliest possible time. Such people have fully absorbed the ways of civilized life and are fully competent to manage their lands and business affairs. Such action would relieve the Government of what seems unnecessary supervision and expense.

Questions on Indian moneys of a particular tribe

1. Who has the title to the money (individuals, groups, or tribe?). Amounts for each: Tribe, $42,353.87 (in United States Treasury); $652,817.28 (IIM).
2. What kinds of moneys are there in terms of depositary and depository: Federal, Treasury, local disbursing officers, banks, bonds, etc.: Treasury, local disbursing agent.
3. What kinds of moneys in terms of sources: treaty, judgment and compensation funds, proceeds of labor, other proceeds—rentals, water rights, royalties: Sales of timber, fishing and boat permits.
4. Amounts disposed of per annum: by per capita distribution, by annuities, etc.: None.
5. Amounts received per annum in terms of sources: No fixed annual income.
6. Amounts in treasury funds: subject to authorization, not subject to authorization, interest bearing, noninterest bearing: $42,353.87, subject to authorization.
7. Draw up simple statements of the assets and liabilities of the tribe and of its group enterprises (cattle associations, sawmills, loan associations, etc.) and of its individual members, the latter in summary form. Distinguish moneys in tribal treasuries from restricted and unrestricted accounts. Has the tribe ever had a notarized accounting of its finances: Assets, $737,525.67; liabilities, none.

SHOALWATER BAY RESERVATION

Questions for the evaluation of Indian tribal assimilation to full citizenship

1. *Degree of acculturation.*—All Indian children attend the public schools. A very small percent of eighth grade graduates attend high school. Average educational level is approximately the eighth grade. On the whole, the Indian population is literate. School attendance is fair.
2. *Racial situation.*—The reservation population is mostly full-bloods or near full-bloods. No racial barriers exist. The able-bodied men of the group engage in various occupations, chiefly the fishing industry and in the lumber camps. They work side by side with the whites and little or no discrimination exists between whites and Indians so far as opportunities for employment are concerned.
3. *Economic self-sufficiency.*—The reservation for the most part is very rough and hilly and the land is of poor quality and there are practically no natural

IV. Quinaielt Funds

		Interest rate	Balance as of June 30, 1951
	QUINAIELT		
14X7282	Proceeds of Labor, Quinaielt Indians, Washington, May 17, 1926, 44 Stat. 560	4	$46,724.44
14X7782	Interest and Accruals on Interest, Proceeds of Labor, Quinaielt Indians, Washington, June 13, 1930, 46 Stat. 584		2,217.12
14X7078	Proceeds of Quinaielt Reservation, Wash., August 22, 1914, 38 Stat. 704	4	581.12
14X7578	Interest and Accruals on Interest, Proceeds of Quinaielt Reservation, Wash., June 13, 1930, 46 Stat. 584		508.61
	Tribe total		50,031.29

V. Selected References on the Quinault

(Including the Quinault proper and the Queets)

Krzywicki, Ludwik. Primitive Society and its Vital Statistics. London, 1934. p. 427.
McCullough, H. D. Taholah Agency Ten Year Program Summary 1944. 29 pp. (Bureau of Indian Affairs).
Murdock, Geo. P. Ethnographical Bibliography of North America. 1941. p. 31.
La Vatta, Geo. P. Taholah Agency Ten Year Program Report. 1944. 121 pp.
Olson, R. L. The Quinault Indians. University of Washington Publications in Anthropology, Vol. VI, pp. 1–190. 1936.
United States General Accounting Office. Report on the Quinaielt Claim Case L–23 forwarded to the Department of Justice June 4, 1932. 1 vol. 253 pp. mss.

Rappahannock

An Algonquian tribe in Colonial Virginia located on the River of the same name, in Richmond County. They were accounted in the Powhattan Confederacy. A group of mixed bloods in the area still bear the tribal name.

Redwood (*see* Huchnom Whilkut)

Rogue River or Tututni

I. Rogue River or Tututni Population

"Oregon Athapaskans. This is a group of eight small Athapaskan tribes and tribal groups, thrown together on a geographical basis. The most important of these tribes are the Rogue River or Tututni, the Tolowa, and the Umpqua, all Oregon tribes, except the Tolowa, who live mainly in California. The total number enumerated in 1930 was 504, a decrease from 656 in 1910. These Indians are largely of mixed tribal as well as racial blood, and, at least as far as their identity as Indians is concerned, are definitely decreasing in number. They were mainly located in 1930 in Lincoln and Curry Counties in Oregon."

Source: *The Indian Population of the United States and Alaska, 1930*, p. 40.

II. Rogue River and Affiliates Tribal Organization

Siletz Business Council. The Siletz Business Council consists of seven members elected for 2-year terms. There are no district organizations functioning under the tribal organization.

III. Rogue River

Plaintiff: Rogue River
Docket No. 45231.
Date filed: Aug. 6, 19
Amount claimed: $9,5
Nature of claim: Gen
unauthorized disbu
Court action: 105 C.

Round Valley (*see* Wail

Ruffey Indians

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Saiustkea (*see* Siuslaw)

Salina

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Esselen. Bulletin of
438, 1907.
Henshaw, H. W., and
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Krzywicki, Ludwik.
1934. Esselen p. 3
Mason, J. A. The E
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97–240, 1912.
Murdock, Geo. P.
p. 46.

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Quileute Reservation, Wash.
See Quileute Indians, Quileute Reservation

QUILLAYUTE OR QUILLEHUTE INDIANS
See Quileute Indians

QUINAIELT INDIANS
Quinaielt or Quinault Reservation, Washington and Oregon

There were 105 Chehalis, 281 Quileute, 1,293 Quinaielt, 120 Upper Chinook and 23 other Indians on these reservations in 1945 [1] and in 1950 there were 1,890 Indians on the reservation. In 1929, Quaitso Indians were listed as being on the reservation.[2] The original area was 196,645 acres.[3] In 1950, the area consisted of 174,920 acres (3,984 acres, trust allotted; 3,984 acres, tribal; 23 acres, reserved by the government).

A treaty of July 1, 1855 and January 25, 1856 with the Quinaielt and Quillehute Indians ceded certain lands in northwestern Washington to the United States in return for payment of $25,000 over a period of years. The President was to select a reservation for these Indians. The United States was to establish an agricultural school for the Indians, etc. (12 Stat. 971–974).

An executive order of November 4, 1873 set apart certain lands for the Quinaielt, Quilleheute, Hoh, Quit and other tribes of fish-eating Indians on the Pacific Coast (in Washington).

An act of March 4, 1911 directed the Secretary to make allotments on the Quinaielt Reservation, Washington, under the allotment laws to all members of the Hoh, Quileute, Ozette or other tribes of Indians in Washington who were affiliated with the Quinaielt and Quileute tribes in the treaty of July 1, 1855 and January 23, 1856, above, who might elect to take allotments on the Quinaielt Reservation rather than the reservations set aside for them. The allotments were to be made on surplus lands on the Quinaielt Reservation after the allotments to Indians thereon had been completed (36 Stat. 1345–1346, c. 246).

An act of August 22, 1914 authorized the Secretary to set aside lands on the Quinaielt Reservation for lighthouse purposes; payment therefor was to be deposited in the Treasury, for the benefit of the Indians; oil, gas and other minerals in these lands were reserved for the Indians on the reservation in common (38 Stat. 704, c. 269).

An act of July 8, 1916 authorized the Secretary to pay Indians for work on a certain school house on the reservation, payment to be reimbursed out of funds in the Treasury to the credit of said Indians (39 Stat. 353, c. 230).

An act of May 31, 1924 authorized the Secretary to set aside 43 acres within the reservation for lighthouse purposes; payment therefor was to be deposited in the Treasury to the credit of the Indians of the reservation, subject to expenditure for their benefit; oil, gas and other minerals in these lands were reserved for the Indians on the reservation in common. But this act was repealed by an act of February 4, 1932 (43 Stat. 247–248, c. 220; 47 Stat. 37, c. 18).

An act of February 12, 1925, amended July 24, 1947, authorized claims growing out of the treaty of July 1, 1855 and January 25, 1856 to be presented to the Court of Claims. The Quinaielt

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Quinaielt or Quinault
See Quinaielt India

Ramah Navajo Reserva
See Navajo Indian

Ramona Reservation,
See Mission Indian

Red Cliff Reservation,
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See Chippewa Indi

Redding (Clear Creek)
See California Ind

REDWOOD OR HU
on Round Valley
See Wailaki I

Tribe was declared to be the proper party plaintiff for Indians on this reservation. Proceeds of any judgment were to be deposited in the Treasury to the credit of the Indians on this reservation (43 Stat. 886–887, c. 214; 61 Stat. 416–417, c. 311).

An act of March 1, 1926 authorized expenditure of $50,000 from tribal funds of the Indians on this reservation for a road on the reservation (44 Stat. 135–136, c. 41).

An act of April 19, 1926 authorized expenditure of $3,000 from tribal funds of the Indians on this reservation for a water supply system (44 Stat. 303, c. 165).

Executive Order 5768 of December 30, 1931 extended the trust period on lands on this reservation for 10 years (until 1941), but since this reservation is subject to the benefits of the Howard-Wheeler Act,[11] the trust or restricted period is extended indefinitely.

An act of May 28, 1934 authorized the Secretary to issue patents for not more than two continuous lots within the Indian village of Taholah on this reservation to qualified Indians living in the village. If any Indian had received patent to one lot under an act of June 25, 1910 (36 Stat. 858), which had given the Secretary authority to issue patents for town lots within reservations, he was to be entitled to an additional lot wherever available. Lots so patented were to be disposed of as provided in § 1 of the act of June 25, 1910 (48 Stat. 811, c. 364).

An act of June 6, 1934 authorized the Secretary, with the consent of the Indians involved, expressed through a regularly called general council, to modify contracts for sale of Indian tribal timber on this reservation subject to certain conditions (48 Stat. 910, c. 407).

An act of March 9, 1940 directed the Secretary to pay attorneys of record for the Quinaielt Indians who received allotments on the Quinaielt Reservation, pursuant to certain judgments; $28,400 was authorized to be appropriated for this purpose, to be reimbursed from funds of the allottees from sale of his or her allotment or timber thereon (54 Stat. 48, c. 49).

Quinaielt or Quinault Reservation, Wash.
See Quinaielt Indians, Quinaielt Reservation.

Ramah Navajo Reservation, N. Mex.
See Navajo Indians, Ramah Navajo Reservation.

Ramona Reservation, Calif.
See Mission Indians, Ramona Reservation.

Red Cliff Reservation, Wis.
See Chippewa Indians, Red Cliff Reservation.

Red Lake Reservation, Minn.
See Chippewa Indians, Red Lake Reservation.

Redding (Clear Creek) Reservation, Calif.
See California Indians.

REDWOOD OR HUCHNON INDIANS
on Round Valley Reservation, Calif.
See Wailaki Indians, Round Valley Reservation.

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Congressional Record

United States of America

PROCEEDINGS AND DEBATES OF THE 84th CONGRESS, FIRST SESSION

Vol. 101 WASHINGTON, FRIDAY, JUNE 24, 1955 No. 107

ADMINISTRATION AND MANAGEMENT OF TIMBER ON PUBLIC LANDS

Mr. NEUBERGER. Mr. President, a recent small news item from the town of Montesano, Wash., dramatically points up a question of the administration of our national timber resources which is of vital importance to the Pacific Northwest, and which deserves the continued attention of the congressional committees charged with the supervision of our Federal land policies. I ask unanimous consent, Mr. President, that this story, entitled "Hemlock Brings Record Price," from the Seattle Post-Intelligencer of June 9, 1955, be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

HEMLOCK BRINGS RECORD PRICE

MONTESANO, June 8.—A record price of $31 a thousand board-feet for hemlock was recorded in a State timber sale here Tuesday.

Bay City Timber Corp. paid that figure in buying a total of 4,154,000 feet of timber, including more than 3 million feet of hemlock, on 231 acres northwest of Arctic. The total price was $117,985.

In a second sale of timber near Arctic the Wagar Lumber Co. paid $122,470 for 4,666,000 feet. The Wagar bid was $25 for hemlock, $33.50 for Douglas fir, $29 for spruce, and $30 for cedar.

Mr. NEUBERGER. Mr. President, this little story merely tells that at 2 timber sales in the State of Washington, 3 million board-feet of hemlock were sold at a record price of $31 a thousand, while Douglas fir brought $33.50, spruce $29, and cedar $30 per thousand respectively.

Yet elsewhere in the same area, agencies of the United States Government sell hundreds of millions of board-feet of the same varieties of timber to lumber companies which enjoy the benefit of long-term exclusive contracts, at prices ranging from $4.50 to perhaps $15 per thousand board-feet.

These figures, Mr. President, are a measure of the economic values which are at stake in the policies of Government agencies toward the vast federally held forest resources of the Northwest. Perhaps we should not wonder at the great pressures which are exerted toward opening up more forest lands, even within national parks, to logging under similarly generous administrative policies.

In the New York Times for Sunday, June 5, 1955, an article by John B. Oakes outlined some of the growing pressures under the Eisenhower administration against the conservation policies which we have carefully developed over half a century.

Among other symptoms of these pressures, the article mentions the continuing efforts to open to commercial logging parts of the great forests which have been incorporated in the Olympic National Park in the State of Washington. The latest sally against this great national park has come, once again, from the Rayonier Corp., which has a number of large sawmills in proximity to the park.

RAYONIER ATTACKS OUR NATIONAL PARKS

Rayonier, Inc., won a degree of national attention among conservationists last winter and an elaborate 2-page, multicolor advertisement in Time magazine attacking as economic waste the exclusion of logging or any other form of commercial use from the Olympic National Park. It still deplores the fact that, in this vast national park, big, beautiful, high-quality trees are permitted to mature, to die, eventually to fall, and to decompose in accordance with the primeval cycles of the forest, without economic utilization of the timber. Rayonier finds difficulty in recognizing other equal social values in maintaining, unspoiled and unimpaired by logging or other commercial use, forests large enough—not for picnic grounds—but so that men who enter them can leave our hectic civilization behind, and can see the same natural grandeur that met the first explorers of the West.

It is not as if the large lumber operators in the Northwest were being denied access to the annual yield of timber on the public lands, and were forced to rely on their own scientifically managed private tree farms. As a matter of fact, these large operators, by the very fact of their size, often benefit from policies of the Federal agencies which are charged with the management of the timber on the public lands.

These agencies sometimes feel, Mr. President, that, for one reason or another, perhaps differing from case to case, it facilitates the administration and management of these tremendous forest resources to make large-scale sale contracts with some of the biggest operators, even at the cost of giving up the benefits of open competitive bidding for this timber by all interested—large and small—operators in the vicinity.

WHY DOES INDIAN TIMBER BRING SO LITTLE?

As one example of the effect of such administrative policies, Mr. President, I might mention the case of the Quinault Indian Reservation, on the Pacific coast, north of Hoquiam, Wash. Facts which have been brought to my attention raise serious questions as to the wisdom of these policies.

Because of the scattered ownership patterns of Indian-trust allotments, the Bureau of Indian Affairs has thought it necessary to sell the timber on the Quinault Reservation by long-term contracts covering large areas. At the present time, such contracts, covering immense stands of Indian-owned timber for periods from 29 to 34 years, are in force with the Ozette Railway Co., the Aloha Lumber Co., and Rayonier, Inc. There is also a 5-year contract with Wagar Lumber Co., the company mentioned in the newspaper story. Under this contract, the Indian Bureau receives from $6.65 to $13 for the same varieties of timber for which the company bid from $25 to $33.50 at the sale reported by the Post-Intelligencer.

These contracts include provisions for frequent adjustment of the prices to be paid by the purchasers for different kinds of trees, the so-called stumpage rates, and other provisions for adjustment of the ratio of these prices to the going value of logs at the sawmill, on which the stumpage rates are based. Yet a comparison of the actual prices received by the Bureau of Indian Affairs, on behalf of the Indian tribes, with those paid for comparable Government timber at competitive sales elsewhere in the surrounding territories, indicates that such administrative adjustments in these vast, long-term sales have not, in fact, given the Indians and the public the protection which might be provided by the pressures of competitive bidding.

THIRTY-ONE DOLLARS PER THOUSAND VERSUS NINE DOLLARS TO FIFTEEN DOLLARS

Thus, to take some of the most common varieties of lumber on the Quinault

Reservation, hemlock is sold under the contracts at prices ranging from $4.50 to $7 per thousand board-feet. I have been told that at competitive sales by the United States Forest Service and elsewhere, it brings from $9 to $15, or exactly twice as much; and again I remind the Senate of the record $31 per thousand paid for 3 million board-feet at the recent sale near Montesano. The contract rates for cedar, spruce, and Douglas fir vary from about $10 to $15 per thousand board-feet; yet the competitive market prices for these varieties often run more than twice the respective amounts paid to the Indian Service by the large mills under their long-term contracts.

I repeat, Mr. President, these facts raise serious questions concerning the adequacy of present administrative policies toward these forests.

Are we discharging our responsibility toward the Indians to manage their valuable natural assets so as to bring them the largest available economic return? To many persons who have written me about the Quinault case, it does not look like it.

If, indeed, we fall short of this trust, is there not at least a possibility that the United States Government will find itself legally indebted to these Indians for their economic loss from the Government's low-price timber sales, and obliged to make up the difference to the Indians, so that, in effect, the taxpayers may end up subsidizing the big timber buyers with these cheap logs from the Quinault?

Finally, Mr. President, administrative policies, of whatever kind, which lead to timber sales of a duration or size, or to conditions of access which, in effect, divide Government-owned timber stands among a few great lumber operators, not only deprive the American people of the best return for their timber, but also have serious adverse effects on smaller independent mills, which depend on Government timber; on the communities in which these mills operate; and, in fact, on the economic efficiency of the whole industry, including the giants themselves.

Thus, Mr. President, I believe that we must continue to review our government policies toward the sale of timber from federally held forests. But there are many policies to review before we need to consider opening up the Olympic or any American national forest to logging or other forms of commercial use.

I call to the attention of the Indian Affairs Subcommittee of the Senate Committee on Interior and Insular Affairs—a subcommittee headed by the very able junior Senator from Wyoming [Mr. O'MAHONEY]—the absurdly low prices being received by the Government for the Indian timber on the Olympic Peninsula, as contrasted with the higher prices received for similar timber in nearby areas. The junior Senator from Wyoming is a champion of the welfare and rights of the American Indian. He will look into the matter carefully, I know. In addition, I take some satisfaction in the fact that I also am a member of his subcommittee.

In conclusion, Mr. President, I ask unanimous consent to have printed in the RECORD, along with my remarks, the article by John Oakes, from the New York Times of June 5, 1955. I call special attention to the section of the article entitled "Attack on Forests," in which Mr. Oakes refers to the desires of the Rayonier corporation to log the magnificent forests now protected with the borders of the Olympic National Park. One can only wonder whether Rayonier hopes to secure title to the trees of the Olympic Park for the same low prices it is paying the Indian agency for the timber belonging to our Indian tribes.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

CONSERVATION: GROWING PRESSURES—THREATS TO WORK OF FISH AND WILDLIFE SERVICE ON THE INCREASE

(By John B. Oakes)

News of the retirement of Albert M. Day after 36 years of Federal service seems strangely appropriate at this period when the philosophy of conservation is at so low an ebb in administration circles in Washington. Mr. Day entered the old Biological Survey in 1919 as a temporary field assistant in Wyoming and rose through the ranks to become director of the Fish and Wildlife Service in 1946, a post in which he served with distinction for 7 years until, in 1953, he was unceremoniously shoved aside in favor of a noncareer man who still holds the job.

Conservationists irrespective of party strongly protested the demotion of Mr. Day, who presumably had aroused the ire of some of the powerful pressure groups—notably duck hunters and salmon packers—affected by the strong but necessary conservation measures of the Fish and Wildlife Service. Mr. Day was described at the time by Rachel Carson, former editor in chief of the Service, as "and able and fair-minded administrator, with courage to stand firm against the minority groups who demanded that he relax wildlife conservation measures." For the past 2 years he has been assistant to the director.

SOURCE OF ALARM

His departure now comes at a moment when some conservation agencies have been expressing serious concern over the political and other pressures that are threatening the work of the Fish and Wildlife Service on at least two fronts. In both Maryland and Ohio powerful politicians have reportedly attempted to influence the Department of the Interior (of which the service is a part) to ease its rigorous enforcement of regulations against baiting of waterfowl, i. e., scattering food in strategic areas to bring the ducks within easy range of hidden guns. The question now is whether the Department is going to be pressured into modifying or removing its anti-baiting rules in the same way it was apparently pressured into easing other waterfowl-hunting regulations in the fall of 1953.

The Fish and Wildlife Service also is being faced with increasing demands to pare down or even to eliminate some of the nearly 300 national wildlife refuges for the administration of which it is responsible. The Wildlife Management Institute reports, for example, that Nevada game officials want to wipe out the Desert Game Range, home of a band of desert bighorn sheep, in order to open the area to public hunting. Other areas involved include national refuges in Nevada, Oregon, Washington, Maine, and Arizona, and the very important Tule Lake Refuge in northern California and the Wichita Mountains Wildlife Refuge in Oklahoma. The Army wants to cut into the last-named in order to extend an artillery range.

Created in 1905 by President Theodore Roosevelt, the Wichita Refuge includes about 800 bison, 300 elk, herds of antelope, and deer and some 350 Texas longhorn cattle, a strain that came within an ace of extinction a generation ago. As the land is already owned by the Government, it would cost nothing for the Army to acquire it—which makes it very tempting in any acquisition program. But every possible alternative ought to be explored before this tract, carefully built up for its present purpose over a period of 50 years, is lost permanently as a game refuge.

The efforts to chip away at such areas lend especial pertinence to a bill introduced by Representative LEE METCALF, of Montana. This bill (H. R. 5306) would require specific congressional approval before any national wildlife refuge is disposed of. The Secretary of the Interior now has the right to do so at will.

BILLBOARD REGULATION

The great respect in which Senator GEORGE of Georgia is held by his colleagues ought not blind them to the fact that, on occasion, Senator GEORGE can be wrong. In a recent debate on the Federal highway bill, Senator GEORGE reportedly rose up and singlehandedly killed a provision that would have facilitated governmental control of outdoor advertising signs along the projected highways. The provision has been introduced by Senator NEUBERGER, of Oregon. Senator GEORGE objected that the proposed extension of advertising control would be an unwarranted invasion of States rights. His prestige was so great and his opposition so emphatic that the proponents of the provision felt obliged to back down. Thus there was killed a hopeful attempt to protect this future highway system, which will cost the American people billions of dollars, from the blight of billboards that have already destroyed so much of the scenery and the pleasure of driving in virtually every State of the Union.

ATTACK ON FORESTS

The large cellulose chemistry corporation which some 6 months ago published a 2-page color advertisement that offended many conservationists throughout the country (see this column for January 2, 1955) has returned to the attack. Rayonier Inc. has just issued a publicity release again breathing defiance of the policy of "locking up" timber in national parks and attacking the Government for "allowing millions of board feet of prime commercial timber each year to mature, die, topple over and rot." The immediate target of this particular campaign is the Olympic National Park, which is in the vicinity of 3 of the corporation's large mills.

If this corporation limited its publicity campaign to stressing the admirable scientific forestry methods it practices, modern-minded conservationists would only applaud. But when it suggests that the merchantable timber in national parks is wasted by not being logged it shows failure to understand the whole philosophy behind the parks and a confusion between the purpose of national parks and of national forests. The latter are, of course, managed for sustained yield timber production, among other things, but the parks are meant to be preserved in perpetuity "unimpaired for the enjoyment of future generations," in the words of the basic law of 1916. The national park system would be destroyed overnight if ever the idea were accepted that any commercially valuable product contained within the parks should be exploited by either public or private agencies. The parks contain values of greater importance to our country and our people than the number of board feet of standing timber or the dollars and cents they represent.

Rehearsing draft for 31 C

RESOLUTION

AT A REFULAR MEETING of the Business Committee of the Quinault Tribal Council, held at the village of Taholah, Quinault Reservation, Washington, on the 15th day of January, 1962, the following resolution was duly adopted:

WHEREAS, Rayonier, Inc., is bound by a contract to log the Crane Creek Logging Unit of the Quinault Reservation, said contract expires April 1, 1986; and

WHEREAS, Aloha Lumber Corp. is bound by a contract to log the Taholah Logging Unit of the Quinault Reservation, said contract expires April 1, 1979; and

WHEREAS, stumpage prices to be in effect October 1 to December 31, 1961, have been computed on the basis of extablished ratios of stumpage to log prices. The rates are listed below with rates that were in effect during the past three months. It will be noted that there is little change in the stumpage rates for cedar and hemlock, which are the principal species on the Quinault:

Stumpage Rates per M Board Feet

	Crane Creek Unit		Taholah Unit	
Species	Past Quarter	Present Quarter	Past Quarter	Present Quarter
Western Redcedar	$10.25	$10.30	$ 8.79	$ 8.87
Sitka spruce	13.77	14.09	14.50	15.61
Douglas fir	35.23	34.69	33.60	32.65
Pacific silver fir	11.86	12.20	11.37	11.76
Western white pine	11.52	11.82	12.49	13.60
Western hemlock & others	9.10	9.18	9.36	9.43

and

WHEREAS, Rayonier, Inc., and Aloha Lumber Corp. protested to the Department of the Interior the above listed stumpage rates quoted; and

WHEREAS, Rayonier, Inc., and Aloha Lumber Corp. has retained an undetermined amount of Quinault Reservation Indian

timber allotment money totaling several thousands of dollars without interest;

NOW, THEREFORE, BE IT RESOLVED, By the Business Committee of the Quinault Tribal Council, That Rayonier, Inc., and Aloha Lumber Corp. shall not determine the stumpage rates of the Crane Creek and the Taholah Logging Unit; and

BE IT FURTHER RESOLVED, That Quinault Indian timber allotment monies held in escrow by aforesaid Rayonier, Inc., and Aloha Lumber Corp. be released to the Western Washington Indian Agency for distribution to the individual Indian allottees and heirs.

A quorum being present, the foregoing resolution was duly adopted by a vote of 4 for and None against.

Dated this 15th day of January, 1962.

Business Committee members of Quinault Reservation Tribal Council, State of Washington

ATTEST:

President
Quinault Tribal Council

Secretary
Quinault Tribal Council

TIMBER SALES—QUINAIELT INDIAN RESERVATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS

UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

FIRST SESSION

APRIL 12, 15, MAY 29, AND JUNE 3, 1957

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SEATTLE, WASH., April 10, 1967

Hon. HENRY M. JACKSON,
Subcommittee on Insular Affairs,
Senate Office Building, Washington, D. C.:

The Committee on Northwest Indian Affairs wishes to recommend a proposal that a survey and appraisal of Indian timber and stumpage prices be conducted by independent nongovernmental agencies. We feel this highly necessary.

Sincerely,

Dr. Erna Gunther, Chairman, Department of Anthropology, University of Washington; Harry Burks, Dr. Ernest Campbell, Rev. [illegible] Stanley, Mrs. Harriet Rivera, Mrs. McLeod, Jess Epstein, Mrs. Gann, Mrs. Hall, Bet Thygesen.

Senator JACKSON. I only have this final comment, Mr. Chairman.

I know that the Chair will conduct a fair and impartial hearing with the sole purpose of getting the facts. I think, when we get the record complete, the committee will be in a good position to make some firm and definite recommendations.

I only hope that the Department of Interior will take heed and see to it that any adjustments that need to be made in the contract will be made, or whatever other steps may be appropriate.

Thank you very much.

Senator NEUBERGER. Thank you, Senator Jackson. We know of your great interest in this cause and the Quinault timber reservation and most of the people are in your State.

I want to assure you that the purpose of this subcommittee, to as great a degree as we can possibly make it, is to get the facts which will bring a decision which is fair to the Indians, to the communities involved, and to the companies that are purchasing and logging this timber.

Senator JACKSON. Thank you. I appreciate it very much.

Senator NEUBERGER. We appreciate your coming.

Are there any questions of Senator Jackson?

Thank you so much for coming, Senator.

Senator NEUBERGER. The next witness is Mr. Malcolm McLeod, an attorney in Seattle, Wash.

I am going to have to make one ruling here that I hope nobody will object to. There are a good many long statements that have been submitted. All of these statements will appear in full in the record, where they can be read by the members of the subcommittee and by all the members of the full committee, as well as by the Members of the Senate if any legislation reaches the floor.

In the interest of time, because we have so many witnesses, some of whom are from out of the city and come here at considerable expense and trouble, I am going to suggest that those with long statements paraphrase them and highlight them rather than read them in detail, but they will appear in full in the record.

Mr. McLeod, we will hear from you now.

STATEMENT OF MALCOLM McLEOD, SEATTLE, WASH., ATTORNEY

Mr. MCLEOD. I would like to show the chairman a map of the area concerned.

My name is Malcolm McLeod. I am an attorney. I represent some 25 tribes in the State of Washington.

I have some 15 cases which I have tried before the Indian Claims Commission.

I am here today representing some of the off-reservation allottees and on the Quinault Reservation.

I have made a study of this contract and with Rayonier, Inc., and, with the Aloha Timber Co. on the Quinault Reservation.

I would like to point out to the chairman here some of the area that we are discussing. Here is another map, showing the species of timber to be found on the reservation and the area in question, which is the Crane Creek area, which, I believe, is indicated right here.

I will merely highlight my statement for the committee.

Senator NEUBERGER. These maps will be filed as exhibits.

Mr. MCLEOD. Yes, if you could make copies of them, if I could have the original back.

Senator NEUBERGER. I am informed by Mr. Coburn that there are no facilities for reproducing these maps.

Mr. MCLEOD. Could I make copies and return them to you?

Senator NEUBERGER. Will there be ample time?

Mr. COBURN. I would suggest he not file them. Just leave them for exhibit purposes now, and they will be returned to you.

Senator NEUBERGER. Will that be satisfactory, Mr. McLeod?

Mr. MCLEOD. Yes. I believe this map showing the species of timber was prepared in accord with the 1916 cruise.

I believe this was the cruise on which the sales were based.

Senator NEUBERGER. If this material is useful at all in the presentation you are making, it would be helpful if they could be left here as exhibits in case any controversy should arise in the subcommittee or full committee by members of the committees that are not present today.

Mr. MCLEOD. Yes; I can do that.

Just in summary, I would say that, from my investigation of this subject, these Indian allottees had no idea what they were doing or what contract they were entering into.

I represent Catherine Herrold, who was mentioned by Cleveland Jackson. He discussed the power of attorney, so I won't go into that again.

It was 5 or 6 years before entering the contract. It is my opinion that she knew nothing about it. She understood she was selling her timber.

Now, I believe that the subject of no consultation with Indian allottees has been adequately taken care of by prior witnesses, so I will go on to some of the other defects that I feel are in this contract.

First, there is no basis whatsoever in this contract for the Indians to check the scale taken by the timber companies.

They are left completely to themselves. They can go in there and cut the timber and do whatever they feel like. There is no check on the part of the Indians at all.

The Indian is never advised. In the first place, he was not advised of the terms of the contract. After the contract has been entered into, he has no voice or counsel as to what happens between the time that the contract was entered into and the timber is cut or when the sale is made or any of the details of the sale. This information is not made available to the Indians. This information is not made available to

their counsel. I have endeavored to get information on this contract and the facts surrounding it. So far there is nothing forthcoming from the Bureau.

Mr. Chilson did send me a wire last week—I believe I got it on the 8th or 9th of April—that the records were available to me.

Of course, I could not, in the time allotted between this hearing and the time I received his wire—I had no opportunity to consult with the files or the data on these sales with the new prices that were going into effect.

Mr. COBURN. Where did you go to get this information originally?

Mr. MCLEOD. I went to the Western Washington Indian Agency at Everett, Wash.

Mr. COBURN. What did they say to you?

Mr. MCLEOD. They said that this information was confidential; it was none of my business and I was not entitled to see it even though I represented some of the allottees.

Mr. COBURN. What sort of information did you ask them for?

Mr. MCLEOD. I asked for information on the stumpage prices.

Mr. COBURN. Did you ask for copies of the contract?

Mr. MCLEOD. Yes; I did. I was not given copies of the contracts.

Mr. COBURN. Did you have available to you copies of the individual powers of attorney?

Mr. MCLEOD. Yes.

Mr. COBURN. With a copy of the contract attached?

Mr. MCLEOD. Yes; I did.

Mr. COBURN. You knew what was in the contract, then?

Mr. MCLEOD. No; I didn't; because the contract isn't there. What was furnished to the allottees does not contain the contract. That is only a small part of what is in the contract.

Mr. COBURN. You wanted to see the whole thing?

Mr. MCLEOD. I wanted to see the contract between the Government and Rayonier. I had to send someone down to Aberdeen, Wash., to have it copied from the files of the agency there. It is a long contract; it was a very expensive operation.

Mr. COBURN. But you did get the facts?

Mr. MCLEOD. I finally got one.

Mr. COBURN. Which contract was that?

Mr. MCLEOD. That was the contract of 1952, with Rayonier.

Mr. COBURN. Were you also interested in the Aloha contract?

Mr. MCLEOD. Yes.

Mr. COBURN. Did you ever get that?

Mr. MCLEOD. No.

Mr. COBURN. What was the reason for giving you access to one and not giving you access to the other?

Mr. MCLEOD. The people that I sent down there were unable to get a copy of the Aloha contract. I don't believe they had one there completely at the agency. At least, that was the information we got.

Mr. COBURN. You say you went to the western Washington agency?

Mr. MCLEOD. Yes; in Everett.

Mr. COBURN. You yourself did?

And asked to see copies of the two master contracts?

Mr. MCLEOD. Yes.

Mr. COBURN. Were they refused you?

Mr. MCLEOD. They weren't refused exactly. I don't believe they have them there. At least, they indicated they were not available. I was not given a reason.

Mr. COBURN. They just refused?

Mr. MCLEOD. Yes.

Mr. COBURN. Did they say where this information could be obtained?

Mr. MCLEOD. From the Secretary's Office in Washington.

Mr. COBURN. In other words, did they advise you to write the Secretary for copies of the contract?

Mr. MCLEOD. They said that any release of any information concerning the contract or concerning the stumpage prices would have to come from Washington.

Mr. COBURN. So you sent some people, as you say, down to some other place to get them?

Mr. MCLEOD. Yes; to Mr. Libby, I believe, who was in charge of the agency at Aberdeen, Wash.

Mr. COBURN. There you obtained access to a copy of the Rayonier contract?

Mr. MCLEOD. Yes.

Mr. COBURN. You were permitted to copy that?

Mr. MCLEOD. Yes.

Mr. COBURN. But they didn't have available a copy of the Aloha contract?

Mr. MCLEOD. No; we were unable to get it.

Mr. COBURN. What other information did you ask for?

Mr. MCLEOD. I asked for stumpage prices and for——

Mr. COBURN. Current stumpage prices?

Mr. MCLEOD. Yes.

Mr. COBURN. What did they say about that?

Mr. MCLEOD. They indicated that that would have to be obtained through the Secretary's Office.

Mr. COBURN. What other information?

Mr. MCLEOD. I asked about the revision of the prices and they did not seem to have any information about that.

Mr. COBURN. You mean the proposed revision?

Mr. MCLEOD. Yes.

I also asked for the stumpage allotted for each year, the amount to be cut for each year.

I asked for information how much was cut since the contract was entered, for each year.

I also asked for what would happen if the timber company did not cut their full allotment of stumpage for 1 year, what happened to that, whether they were allowed to make it up next year, or what happened.

I have never been able to get an answer to that.

Further, I believe the matter of charging interest on advance payments is an unheard practice in the business world in any type of sale or transfer that I have ever been able to find.

I think it is an imposition where the purchaser can require the seller to pay interest on the advance payments. It is the most ridiculous thing I ever heard of.

Senator NEUBERGER. I would agree with you on that. That has long been a source of irritation to me, I assure you, Mr. McLeod.

Mr. McLEOD. Thank you.

My feeling is that this contract should be canceled and that the United States as trustee for these Indians should be held liable for damages for breach of trust because that is clearly, purely, and simply, what it is.

They completely forgot about the Indians.

Now, I see these Indians, I know them personally. They come into my office regularly and complain. Many of them are in the most dire straits of poverty and they still own several thousand dollars' allotments, but they are unable to get the money for them.

I might say that I think that the Bureau of Indian Affairs has made an appalling mess out of this particular handling of these timber sales.

Mr. COBURN. Are these allottees you represent under a timber sales contract at the present time?

Mr. MCLEOD. Yes; they are.

Mr. COBURN. All of them?

Mr. MCLEOD. Yes.

Mr. COBURN. Has any of their timber been cut?

Mr. MCLEOD. Some of them it has.

Mr. COBURN. Have they received their advance payments?

Mr. MCLEOD. Some of them have; yes.

Mr. COBURN. Not all of them?

Mr. MCLEOD. No. Some of them were also charged an additional, what they call, administrative fee. I have been unable to find the nature of that fee or the reason for charging it.

However, it seems to me that if they are going to give the Indian timber away they should at least allow the Indians to do it.

Furthermore, this particular contract the Government will recover more than $800,000 for the privilege of transferring the Indians' timber at a price that is in some cases only one-third of what they could get on the market.

Mr. COBURN. Now, this administrative fee for your information contemplates that the Indian Bureau is going to perform certain functions for the Indians, certain services to the Indians. That is why they charge the administrative fee.

In your experience what services has the Indian Bureau performed in behalf of the Indian allottees whose timber is under contract?

Mr. MCLEOD. I couldn't think of any services that were beneficial to the Indians.

Senator NEUBERGER. Let me ask an informational question here.

Does the Indian Bureau perform certain timber management or custodial functions for them?

Mr. COBURN. They are supposed to; yes.

Senator NEUBERGER. Do they do so?

Mr. MCLEOD. I have no information on what they actually do other than they do supervise submitting these contracts.

Actually, there are probably three purchasers in the State of Washington capable of entering into such a contract. That would probably be firms like the Weyerhaeuser Timber Co., Rayonier, and Crown-Zellerbach. They submit these sales in such large amounts,

like 500 allotments at 1 time, that there was only 1 bidder. That was Rayonier.

There is no competition there. When the timber is sold the real beneficiary owner of the timber never gets the benefit of it.

Many of these allottees are 65 and 70 years old. They are on a 35-year cutting schedule.

Many of them will never realize anything out of it.

When they are presented an opportunity to get something out of this timber they will take anything that is presented to them.

They were not provided with the facts on this contract and even if they were, it was an imposition.

It would seem to me obvious that if the Government is going to be paid $800,000 for giving away the timber it would be much better to let the Indians handle their own affairs.

I have some further statements to make with reference to the manner in which these sales were conducted.

Now, it is not that they could not do a good job because by comparison the Bureau of Land Management and the National Forest Service, companion Federal agencies, who are in the same business, can get much better prices, and have.

I believe that is already covered in your committee report. I do not want to go over it again.

I think that this contract should be canceled and that the Federal Government should be held liable for damages for breach of trust.

Senator NEUBERGER. What do you think as a lawyer of the legality of the advance interest charges? Do you think they are legal, or not?

Mr. MCLEOD. No; I don't think so. They are not.

Senator NEUBERGER. Do you know any precedent for these advance interest charges?

Mr. MCLEOD. I have never heard of any, nor have I been able to find such arrangement.

Senator NEUBERGER. How long have these been in effect to your knowledge?

Mr. MCLEOD. Since 1953. I believe on one contract——

Senator NEUBERGER. Mr. Coburn has mentioned to me a correction on it.

Mr. COBURN. I think it is 1955; is it not? I am talking about interest now.

Senator NEUBERGER. The interest charges on advance payments. When did those first commence?

Mr. MCLEOD. I believe it was 1955; yes, 1955.

Senator NEUBERGER. What circumstances brought them about? What circumstances added them to this picture?

Mr. MCLEOD. I have not been able to ascertain directly. However, my impression is that the Secretary of the Interior voluntarily allowed the purchaser to make these charges. I believe it was action by the Secretary of the Interior.

Senator NEUBERGER. Do you have anything further, Mr. McLeod?

Mr. MCLEOD. I have a statement here which I have prepared concerning the formation of an agricultural cooperative for the marketing of Indian-owned timber and forestry products. Roughly, that law

of the State of Washington, Revised Code, chapter 23.32, laws of 1921, allows for the formation of cooperatives for the purpose of marketing and for producing timber and forestry products.

It is my belief that an independently hired management in behalf of the Indians, forming such an organization, could properly get the best price for this timber.

There is no doubt in my mind but what they could do better than paying someone $500,000 to give it away. I am serious about that statement. I think it is accurate and I would like to challenge the Bureau or the purchaser, or anyone else, to tell me differently.

If the Indians had a marketing and timber forestry products co-op with an independently hired professional management devoted to a sustained-yield forest practice, they could obtain the maximum price for their timber.

This idea of having a sale which by its very nature restricts competition and destroys competition is one of the principal reasons why these Indians are getting practically nothing for their timber.

There are a number of these Indians who are in their seventies and eighties. They have received a very small amount of money for timber and that is probably all they will ever get.

I do not know how anyone could make a contract supposedly for the benefit of award that could be any more severe than this one is. It is amazing how both parties to the contract forgot about the Indian.

The Bureau has not consulted the Indian in the first place, and there is no safeguard for the Indian himself.

If you will read that contract you will be amazed that there are practically no provisions in it for the benefit of the Indians. It is completely one way.

I will not go into this statement that I have made with reference to——

Senator NEUBERGER. Would you like to have it included in the record?

Mr. MCLEOD. Yes; I would.

Senator NEUBERGER. Without objection, it will be included in the hearing record.

(The statement referred to, and other documents submitted by Mr. McLeod, are as follows:)

THE FORMATION OF AN AGRICULTURAL COOPERATIVE FOR THE MARKETING OF INDIAN OWNED TIMBER AND FORESTRY PRODUCTS

The organization of an agricultural cooperative association under the Washington statutes (RCW ch. 24.32, Laws of 1921) will provide a means through which the Quinault Indians and other Indians in the State of Washington will be able to secure maximum return from their forest lands. The Washington Agricultural Cooperative Act, differing from many other cooperative acts, includes "forestry products" and it permits not only the care and selling of timber as such, but its harvesting and processing and other utilization.

The general advantages of agricultural cooperatives are well known and proven by experience. The patronage dividends payable to those who market their products through such cooperatives are exempt from income taxes. The cooperative principle permits the member of the cooperative, in effect, to do his own marketing at cost and without the intermediate profit to others, payment of which reduces the net to the producer and in the long run increases the price at which the consumer purchases.

As applied to Indian timber holdings, the Washington Agricultural Cooperative Act would permit orderly marketing or sale and returns which would be higher than is probable where the owner makes an outright individual sale, or where there is a wholesale purchase of Indian timber by private corporations. The

bargaining power of a cooperative is obviously greater than that of individual owners. The sales can be made when the conditions warrant and the owners can thus secure the benefits of competition among prospective purchasers. Each owner would get return at the same rate as the other owners, though, of course, the amount of return to each owner would be in proportion to the amount of timber delivered to the cooperative.

An agricultural cooperative furnishes a long range plan for the Indian owners over and above the money return. The articles of such a cooperative should provide for the preferential hiring of Indians. This would give many qualified Indians remunerative occupation as long as they were willing and able to work.

Under the Washington act such cooperative could engage in:

(1) Forestry, maintenance and preservation of timber resources; creation of tree farms; sustained yield program.

(2) Logging of the timber and the marketing of the logs.

(3) Processing of the logs into lumber or other byproducts.

The last named activity would require careful planning, but the fact that the cooperative could manufacture its products and then compete with other lumber manufacturers would increase its ability to dispose of its timber or logs (if it so desired) to a greater advantage to the Indian owners. Moreover, such a cooperative might enter into arrangements with other cooperatives to their mutual advantage. Cooperative manufacture of lumber such as plywood or veneer has been generally successful in the State of Washington, although the form of the organizations engaged in such enterprises is not that of a true cooperative and consequently they have not been able to secure the maximum return possible to members of a cooperative organized under the agricultural act who might engage in the same kind of activity.

The Indians whose timber will be placed in an agricultural cooperative in the State of Washington would own and control the cooperative. As is the case of other cooperatives which have proved successful, it would be important, of course, to secure competent management. This could be done either through the employment of a skilled manager or of a management concern, through which a long range program could be worked out. Also an advisory committee might be provided in the articles or bylaws of the cooperative. This committee might be composed of outstanding, independent, competent individuals who are familiar with the various problems confronting a cooperative engaged in the disposal of forest products, among them, perhaps, a forestry expert, a man familiar with the problems of finance, a man generally familiar with logging and manufacture of lumber, and one who understands the marketing of the product.

Under the Washington Agricultural Cooperative Associations Act, Indians who have patents to timberlands which cannot be disposed of without the consent of the Secretary of Interior, are not eligible by virtue of their patents to become members of an agricultural cooperative. This is because in order to become a member of an agricultural cooperative, the owner of forest products must enter into a marketing contract, and this he cannot do until the Government permits him to sell his timber. Since the main reason for an agricultural cooperative is the return from timber now held subject to Government restraint on alienation, the only way that the program can be satisfactorily set up is to have the articles of incorporation, bylaws, marketing contract and all other plans for the starting of the cooperative worked out in advance of the legal creation of the cooperative. Such plans could then be presented to the Secretary of the Interior or the proper agency, and if it was decided that the plan would be for the benefit of the Indians transfer could be made practically simultaneously with the actual formation of the cooperative.

JANUARY 21, 1957.

Re Catherine Elfreda Herrold Troch, Allotment No. 1865, Crane Creek Logging Unit, Contract I-101-Ind. 1982 (132) With Rayonier, Inc.

C. W. RINGE, *Superintendent,*
Western Washington Indian Agency,
Everett, Wash.

The PRESIDENT, RAYONIER, INC.,
Skinner Building, Seattle, Wash.

GENTLEMEN: Please be advised that this office represents Catherine Elfreda Herrold Troch, allottee No. 1865 in connection with the subject contract and power of attorney.

You are hereby notified that the subject contract and power of attorney are hereby canceled and revoked and that Rayonier, Inc. has no further rights under

said contract and that said power of attorney shall be and void as of this date.

You are further advised that Rayonier, Inc., shall have no further rights in or upon or to the premises covered or described in said contract or power of attorney, and that all licenses and, or rights to enter upon said premises described below are hereby revoked. All equipment must be removed forthwith from said premists and all rights-of-way and easements are canceled on the following property:

SE¼, NE¼, Section 13, Tship. 23 N. Range 12 West, and NE¼, SW¼, Section 18, Tship. 23 North, Range 11 W, W. M. containing 80 acres more or less on Quinaielt Indian Reservation, in Grays Harbor County, State of Washington.

Yours very truly,

MALCOLM S. McLEOD.

Hon. FRED SEATON,
Secretary of the Interior,
Washington, D. C.
Senator HENRY JACKSON,
Senate Office Building,
Washington, D. C.:

Please be advised that the undersigned and other Quinault allottees have retained Attorneys Malcolm S. McLeod and Frederick Paul, Dexter Horton Building, Seattle 4, Wash., to secure a fair and reasonable price for their timber on contract No. I-101 Indian 1902 with Rayonier, Inc., and the contract with Aloha Timber Co. You are requested to consult said attorneys in adjusting all prices appraisals and future prices under these timber contracts, or any prices for appraisal now under consideration. You are also requested to consult the Quinault Tribal Council, which council controls at least 1 percent of the area and timber covered under these contracts. The present prices and the interest payment required on the advance payment are considered unconscionable by the undersigned.

Roland Charley, Catherine Herold Troeh, Mary Petit, Charlotte Herold Davis, Andrew Petit, John Hayden, Jr., Paul Petit, Catherine Charley, Betsy Trick, Frank Petit, Ida Petit, Myrtle Landry, Ann Koontz, Myrtle Colber.

Mr. McLEOD. If the Indians were allowed to provide their own professional management to harvest this timber on a sustained-yield basis, I am certain they could obtain the maximum price for their timber.

When they are put up in blocks of 500 allotments, 34,000 acres at a time, and restricted bidding to 2 or 3 bidders, none of us here are so naive to think that there isn't tacit agreement between big bidders, you take this sale, I will take the next sale.

I am not saying that happened in this case, but it could.

Senator NEUBERGER. Mr. McLeod, we have used up half of our time. We have people from out of town and we are not going to be able to help anybody unless we have a complete record.

Mr. McLEOD. I am from Seattle, myself. I appreciate the opportunity to present my views to the committee.

Senator NEUBERGER. Do you have any questions?

Mr. COBURN. Just one, I hope, Mr. Chairman.

I know the time factor is urgent.

Would you ever allow, as a legitimate cost of doing business, interest on money borrowed?

Mr. McLEOD. No.

Mr. COBURN. You would never allow it?

Mr. McLEOD. If I were conducting a business and I had to borrow money in conjunction with the conduct of that business, it would be legitimate cost of doing business.

However, if I was purchasing property from someone, I, the purchaser, pay the interest, not the seller. In this case the Indians are the sellers. They are paying the interest. That is a reversal of the usual business practice.

We all have homes here. We have mortgages on these homes. We have purchase contracts. We the purchasers pay the interest, not the seller.

It is an unheard of practice.

Senator NEUBERGER. Thank you, Mr. McLeod.

The next witness will be Mrs. Archie Slade.

Will you give your full name?

STATEMENT OF MRS. EVELINE DAISY BORG SLADE, TAHOLAH, QUINAULT INDIAN RESERVATION, WASH.

Mrs. SLADE. My name is Eveline Daisy Borg Slade. I am the wife of Archie Slade. I reside at the Village of Taholah, in Quinault Indian Reservation, Grays Harbor County, State of Washington. My tribal allotment number is 963.

I formerly owned 80 acres of timberland described as the east half of the southeast quarter, section 10, township 23 north, range 11 west, in the State of Washington, which, with other timberlands, was offered for sale by the Bureau of Indian Affairs on March 12, 1952, under sealed bids to be submitted to the superintendent, Western Washington Indian Subagency, Hoquiam, Wash., on or before June 17, 1952.

Senator NEUBERGER. Mrs. Slade, I do not know whether you heard me or not, but I said earlier that I would be glad to have these rather lengthy statements put in the record in full.

This will be put in the record in full and printed in the record, but I wondered if you could not give us a few of the highlights.

Mrs. SLADE. What I want, I just want to know how the Indian Bureau has treated us Indians down on the reservation. I sold my timber recently and I had to sell for just what Mr. John Libby said I had to sell it for.

I sold it to Rayonier, Inc., and they have to do just what Mr. John Libby said because he said that is what we have to do.

Senator NEUBERGER. Mr. Libby is whom?

Mrs. SLADE. He is the subagent down in Hoquiam, at the Forestry Department.

I was offered $92,000. You have it in that copy of the statement I have, all the things that I have written down here.

Senator NEUBERGER. You feel that the price that was offered to you through Mr. Libby was not a fair price for the timber?

Mrs. SLADE. No; because I was offered by Mr. John Taylor from Shelton, $92,000 and I only received $48,000.

Mr. John Libby was the one at the Hoquiam Indian office.

Senator NEUBERGER. You have a statement from Mr. Taylor, I see, included as exhibit A, which will be received.

Mrs. SLADE. Yes.

Senator NEUBERGER. This was sent to you on November 22, 1956, in which Mr. Taylor wrote to you and said that he would offer you $92,000 for your timber?

Mrs. SLADE. Yes.

REPORT OF

REPRODUCTION SURVEY

ON THE TAHOLAH LOGGING UNIT

QUINAULT INDIAN RESERVATION

WASHINGTON

BY

WAYNE D. TURNER, FORESTER

MARCH 20, 1942

REPRODUCTION SURVEY OF TAHOLAH LOGGING UNIT

In October 1960, a stocked quadrat reproduction survey was initiated on the Taholah Logging Unit, Quinault Indian Reservation. The purpose of this survey was to determine the extent of natural reproduction on cut-over lands. Areas logged prior to 1956, encompassing thirty logging blocks having a total area of approximately 2,600 acres, were examined. Non-trust lands were excluded from the survey.

The survey consisted of 1/250 acre plots located at speed intervals along strips. Each plot was sub-divided into quadrants, each quadrant being 6.6 feet square or one mil-acre. Strips were located five chains apart, with plots being located two chains apart along the strip. This spacing gives a 0.4% sampling. Established allotment corners were used for base control and compass and pacing was used to lay out the strips.

To determine stocking, each quadrant was examined and the predominant existing species recorded. The number of stems present was not recorded, but used only as a determinant for species representation. Bar stocking for a given area was determined by obtaining the ratio between the total number of quadrants and the number of stocked quadrants. Ten percent stocking is necessary to be considered 1-bar stocking, 40 percent for 2-bar stocking and 70 percent for 3-bar stocking. Type for a given area was determined by the greatest occurrence of one or more species, the primary species having the greatest number of occurrences. At least a 20% representation of the total number of stocked quadrants by any species is necessary for that particular species to be recognized as a secondary species. One tree on each strip was sampled to determine an average age of the stocking.

Strips and plot centers were located to scale on cross-section paper and stocking was recorded for each stocked quadrant. Other features such as cutting lines, roads, streams and ground cover were also recorded to give a more complete picture. A work sheet was then compiled showing individual cutting blocks and a color scheme was used to designate type and bar stocking. (See enclosed map showing cutting blocks surveyed and degrees of stocking encountered.)

Of the 2,600 acres surveyed, approximately 1,030 acres were found to be non-stocked, 1,010 acres support 1-bar stocking and 560 acres support 2-bar stocking. (See Fig. 1, page 3) Areas of 3-bar stocking were usually in small patches not large enough to indicate by type call.

The majority of the non-stocked area lies in the Quinsult River bottom. Here a dense cover of salmonberry (Rubus spectabilis), vine maple (Acer circinatum) and red alder (Alnus rubra) makes the likelihood of natural regeneration of conifers in the near future improbable. (See picture page 4) Due to the deep rich soil and plentiful moisture, the site was immediately occupied by these hardwoods and brush after logging, leaving little or no chance for establishment of coniferous species.

There are two possibilities to rectify the situation: (1) eliminate the ground cover and seed or plant, or (2) allow the red alder to occupy the site. In the past, red alder has been considered a non-commercial species, but with recent technological advancements, is now being utilized mainly as pulp material. (See picture page 9) Elimination of the existing ground cover by spraying or other silvicultural methods would be a costly undertaking, therefore, allowing the red alder to occupy the site would probably be the most practical form of management.

Logging blocks which had a high percentage of cedar are other critical non-stocked areas. Here large quantities of durable cedar residue prevents desirable stocking, particularly around landings. The Forest Officer in Charge of the Taholah Unit has done much to alleviate the situation by using a method of prescribed burning on many of these landings. While such a method removes most of the flash fuels and reduces the fire hazard as well as expose mineral soil, another factor encountered is distance from the landings to a seed source.

Areas of one and two bar stocking were usually encountered on upland areas. Here the density of ground cover is much lower than in the river bottom, therefore, natural regeneration had a better chance of becoming established after logging.

Of the 2,600 acres surveyed, approximately 2,040 acres (79%) were found to be of less than 2-bar stocking. The main factor observed contributing to this condition was density of ground cover - a factor not unique on the reservation. Observations on the unit bring out the fact that in many instances brush will occupy the site within two or three years after logging and prevent the establishment of conifers. A program of seeding and/or planting immediately following logging would insure good establishment of reproduction before competition becomes excessive.

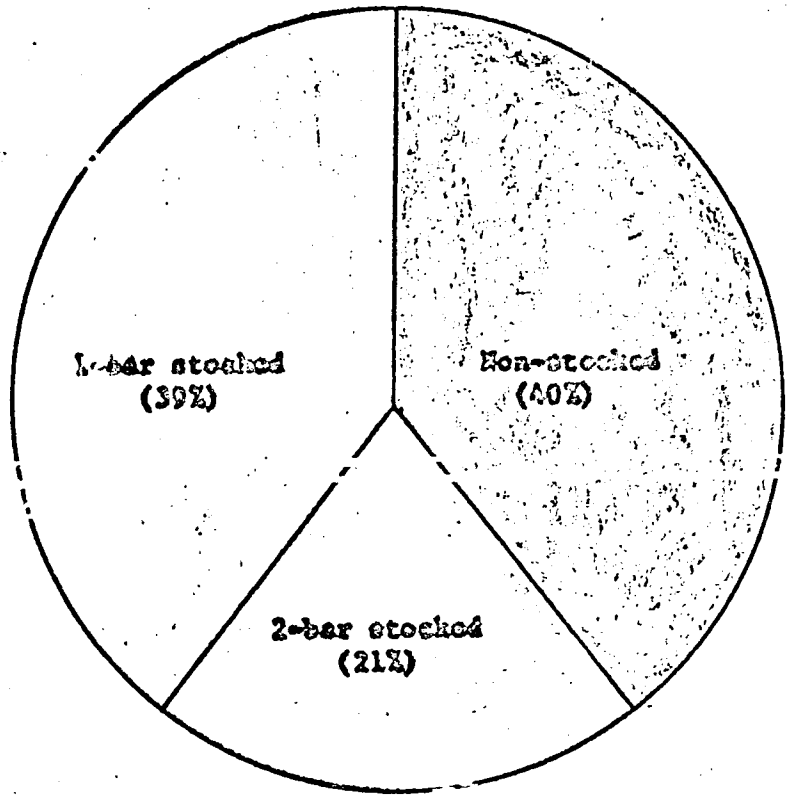

Fig. 1 - Bar stocking representation on cut-over lands on the Taholah Logging Unit.

TIMBER SALES—QUINAIELT INDIAN RESERVATION

HEARINGS

BEFORE THE

SUBCOMMITTEE ON INDIAN AFFAIRS

OF THE

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS UNITED STATES SENATE

EIGHTY-FIFTH CONGRESS

FIRST SESSION

APRIL 12, 15, MAY 29, AND JUNE 3, 1957

Printed for the use of the Committee on Interior and Insular Affairs

UNITED STATES
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93277 WASHINGTON : 1957

INDIAN BUREAU MOVING TO END FEDERAL SUPERVISION

The Bureau of Indian Affairs is moving to end Federal supervision over 41,300 Indians in the far western states, Commissioner Dillon S. Myer announced today.

Those involved are:

In California, 30,000 Indians living at various points throughout the State. Legislation is now being drafted to terminate Indian Bureau activities, with approval of most of the Indians involved.

In Oregon, approximately 1,800 Indians of the Klamath reservation on the Klamath River in south-central part of the state. Negotiations are now under way between the Indians and the Governor, and the Bureau, looking toward assumption by the State of some of the responsibilities for service to the Indians now being provided by the Federal Government.

Also in Oregon, some 2,100 Indians in 43 bands or tribes formerly under the jurisdiction of the Grande Ronde-Siletz Indian agency, including about 800 Indians in southwestern Oregon. Legislation, agreed upon by the Indians and the Bureau of Indian Affairs, will be introduced in the Congress in the near future. This legislation would clear the way for final withdrawal.

In western Washington, approximately 7,400 Indians under the Tahelah and Tulalip Agencies, recently combined into the Western Washington Agency, near Everett. Negotiations with this group are just now getting under way.

The Bureau's move is in line with its long-range policy to shift to the Indians themselves control of their trust property, to

give them access to the State and Federal courts, and to induce the States and local governments to assume a greater share of the responsibility for affording Indians services now provided by the Federal Government.

Commissioner Myer said that the Bureau is studying other Indian groups throughout the country that appear to be competent to handle their own affairs without supervision of the Federal Government.

In addition, he said that still other Indian tribes are ready for a partial withdrawal of Federal controls on a carefully planned basis.

"Our main objective since I took office has been to decrease rather than increase the controls exercised by the Bureau," Commissioner Myer said. "The whole problem is complicated by the fact that in some areas many of the Indians are competent to handle their own affairs, while others are in need of continued protection. For this and other reasons it is impossible to make a mechanical time-table for all groups."

Many of the Indians in the states named have attained sufficient skill and ability to manage their own affairs without special Federal assistance, Commissioner Myer said.

Cooperation of these groups in terminating Federal control has been marked. The Confederated Tribes of Siletz Indians adopted a resolution on November 12, 1950, requesting Federal withdrawal, and the Indians of the Grande Ronde Community adopted a similar resolution on August 22, 1951.

On December 10, 1951, the Klamath Indians adopted a resolution pointing out that because it had been 87 years since the Treaty of 1864 was signed between them and the United States, they felt their interests

would best be served by a transfer to the State of Oregon of Federal responsibilities for services to them. Klamath representatives planned to discuss the action with Governor Douglas McKay during mid-February.

Each withdrawal program will require approval by the Congress and upon its completion the Indians would be entitled to all services furnished by the States and their communities to American citizens in general.

The total amount of restricted land at Klamath is about 1,000,000 acres, with some 856,000 acres in tribal ownership, 137,000 acres trust allotted, and 108,000 acres fee patented. The average per family income, from all sources, is about $5,000. Of the 1800 persons, all can speak English, and only eight cannot read or write the language. The Klamath tribe consists of the Klamaths, the Modocs, and the Yahooskin Band of Snake Indians comprised of Pit Rivers and Paiutes.

The Western Oregon Indians have largely been integrated into the local society, through long association and inter-marriage with their non-Indian neighbors, education in public schools, employment in gainful occupations and dependence upon public institutions for public services. They participate without discrimination in community activities, such as Parent-Teacher Association meetings, labor unions, veterans' organizations and local political bodies. Their primary source of income is from wage work in the timber industry, but they also engage in farming, fishing, skilled trades and other economic activities. While their income is not high they are able to compete with their non-Indian neighbors on fairly equal terms.

The State of California and its subdivisions have been cooperating with the Bureau in working for the transfer of jurisdiction. Indian citizens of the state now generally receive the educational advantages, social security benefits, veterans' assistance and similar services, to the same extent as all other citizens. While Indian children now attend public schools in California, the State receives a yearly payment of about $300,000, under the terms of the Johnson-O'Malley Act of 1934.

There are about 30,000 Indians in California, and of these about 10,817 own or have an interest in tax-exempt trust land of 672,000 acres. The bulk of this acreage is semi-arid grazing land. Included also are about 30,000 acres of irrigable lands, 140,000 acres of forest lands containing about 1,400,000,000 board-feet of timber, some valuable residential and business property and a trust fund of more than $5,000,000, which is being paid out to the eligible Indians of California inper capita payments of $150.

The total area of the Indian holdings at Western Washington Agency - Taholah and Tulalip - is about 261,000 acres of which 229,000 acres are allotted in trust and about 32,000 acres in tribal ownership. In 1943, latest year for which figures are available, the per family income at Taholah was $2,374, or about 2.4 times the national average of Indian families, while at Tulalip it was $1,551, or about 45 per cent above the national average. The combined total of timberland in 1951 was 250,814 acres, of which 215,872 acres were in commercial stands, with an estimated volume of about three billion board feet.

PUBLIC PAPERS OF THE PRESIDENTS

OF THE UNITED STATES

Lyndon B. Johnson

Containing the Public Messages, Speeches, and Statements of the President

1968-69

(IN TWO BOOKS)

BOOK I—JANUARY 1 TO JUNE 30, 1968

UNITED STATES GOVERNMENT PRINTING OFFICE

WASHINGTON : 1970

and conditions of our Indian population.

I am therefore submitting legislation to open the door for more Indians to receive low-cost housing aid, and to extend the loan programs of the Farmers Home Administration to tribal lands.

In addition:

—The Secretary of Housing and Urban Development will review construction standards for Indian homes to ensure flexibility in design and construction of Indian housing.

—The Secretaries of the Interior and Housing and Urban Development will explore new low-cost techniques of construction suitable to a stepped-up Indian housing program.

Community Action

Programs under the Economic Opportunity Act have improved morale in Indian communities. They have given tribes new opportunities to plan and carry out social and economic projects. Community action programs, particularly Head Start, deserve strong support.

I am asking the Congress to provide $22.7 million in Fiscal 1969 for these important efforts.

Water and Sewer Projects

Shorter life expectancy and higher infant mortality among Indians are caused in large part by unsanitary water supplies and contamination from unsafe waste disposal.

The Federal Government has authority to join with individual Indians to construct these facilities on Indian lands. The government contributes the capital. The Indian contributes the labor.

To step up this program, I recommend that the Congress increase appropriations for safe water and sanitary waste disposal facilities by 30 percent—from $10 million in Fiscal 1968 to $13 million in Fiscal 1969.

Civil Rights

A Bill of Rights for Indians

In 1934, Congress passed the Indian Reorganization Act, which laid the groundwork for democratic self-government on Indian reservations. This Act was the forerunner of the tribal constitutions—the charters of democratic practice among the Indians.

Yet few tribal constitutions include a bill of rights for individual Indians. The basic individual rights which most Americans enjoy in relation to their government—enshrined in the Bill of Rights of the Constitution of the United States—are not safeguarded for Indians in relation to their tribes.

A new Indian Rights Bill is pending in the Congress. It would protect the individual rights of Indians in such matters as freedom of speech and religion, unreasonable search and seizure, a speedy and fair trial, and the right to habeas corpus. The Senate passed an Indian Bill of Rights last year. *I urge the Congress to complete action on that Bill of Rights in the current session.*

In addition to providing new protection for members of tribes, this bill would remedy another matter of grave concern to the American Indian.

Fifteen years ago, the Congress gave to the States authority to extend their criminal and civil jurisdictions to include Indian reservations—where jurisdiction previously was in the hands of the Indians themselves.

Fairness and basic democratic principles require that Indians on the affected lands have a voice in deciding whether a State will assume legal jurisdiction on their land.

I urge the Congress to enact legislation that would provide for tribal consent before such extensions of jurisdiction take place.

Off-Reservation Indians

Most of us think of Indians as living in their own communities—geographically, socially and psychologically remote from the main current of American life.

Until World War II, this was an accurate picture of most Indian people. Since that time, however, the number of Indians living in towns and urban centers has increased to 200,000.

Indians in the towns and cities of our country have urgent needs for education, health, welfare, and rehabilitation services, which are far greater than that of the general population.

These needs can be met through Federal, State and local programs. *I am asking the new Council on Indian Opportunity to study this problem and report to me promptly on actions to meet the needs of Indians in our cities and towns.*

Alaskan Native Claims

The land rights of the native people of Alaska—the Aleuts, Eskimos and Indians—have never been fully or fairly defined.

Eighty-four years ago, Congress protected the Alaska natives in the use and occupancy of their lands. But then, and again when Alaska was given statehood, Congress reserved to itself the power of final decision on ultimate title.

It remains our unfinished task to state in law the terms and conditions of settlement, so that uncertainty can be ended for the native people of Alaska.

Legislation is now pending to resolve this issue. I recommend prompt action on legislation to:

—Give the native people of Alaska title to the lands they occupy and need to sustain their villages.

—Give them rights to use additional lands and water for hunting, trapping and fishing to maintain their traditional way of life, if they so choose.

—Award them compensation commensurate with the value of any lands taken from them.

The First Americans

The program I propose seeks to promote Indian development by improving health and education, encouraging long-term economic growth, and strengthening community institutions.

Underlying this program is the assumption that the Federal government can best be a responsible partner in Indian progress by treating the Indian himself as a full citizen, responsible for the pace and direction of his development.

But there can be no question that the government and the people of the United States have a responsibility to the Indians.

In our efforts to meet that responsibility, we must pledge to respect fully the dignity and the uniqueness of the Indian citizen.

That means partnership—not paternalism.

We must affirm the right of the first Americans to remain Indians while exercising their rights as Americans.

We must affirm their right to freedom of choice and self-determination.

We must seek new ways to provide Federal assistance to Indians—with new emphasis on Indian self-help and with respect for Indian culture.

And we must assure the Indian people that it is our desire and intention that the special relationship between the Indian and

his government grow and flourish.

For, the first among us must not be last.

I urge the Congress to affirm this policy and to enact this program.

LYNDON B. JOHNSON

The White House
March 6, 1968

NOTE: For remarks of the President upon signing related legislation, see Items 195, 259.

On August 23, 1968, the President signed the Federal Aid Highway Act of 1968 amending the act of 1956 by authorizing appropriation of additional sums for Indian road construction (Public Law 90-495, 82 Stat. 815).

114 Remarks to the Members of the Joint Savings Bank-Savings and Loan Committee on Urban Problems. *March* 6, 1968

I WELCOME YOU here to the Cabinet Room today.

As leaders of America's great savings bank and savings and loan industries, you have provided the bulk of the capital that has built the homes, built the great suburbs and the residential areas which are the pride of the entire world.

America has served you well, and I understand that you are here this morning to serve the Nation by helping meet one of its most urgent problems—the rebuilding of the inner city.

To be effective will require commitment and ingenuity. The problems and needs are large indeed.

We have just ourselves completed—with the assistance of Secretary Weaver, Secretary Wood, Mr. Haar, and others in their Department, Mr. Brownstein and others—the cities message. We undertook everything that we could conceive of that we had the resources to undertake—and may have undertaken more than the Congress will really give us to undertake. But we dealt with it in some detail.

I think 20 years from now you will look at that message and see that we were not unaware of the problems.

I selected the most able city officials, private officials, chiefs of police, Governors, Congressmen, and Senators in the civil disorders study—they spent an unprecedented amount of money—millions of dollars in the period of several months—and I think made one of the most thorough and exhaustive studies ever made. It outlined not only what the situation was, but why it was, and what could be done about it.

Now, every Cabinet official and every independent agency is taking that study—and I recommend it to you—and they are evaluating and trying to see first, what we already have done that is pointed up—put that in this basket; see what we have not done and what they recommend to be done, what remains to be done—and put that in this basket. Then try to get it done.

There is no group in America that can try to do more to help us improve the cities and improve the quality of men's lives and offer them hope when they have only despair than you folks who have the financial horsepower to do something about it.

We need not only your words but your actions and we need your performance. You have shown that you can act or you would not be here. You have shown that you can perform or you would not have this program outlined.

The Government has been attacking the problems of the cities as best we can with our resources. I think you ought to know that right now we have, under the direction

UNITED STATES CODE ANNOTATED

Title 25
INDIANS

Cumulative Annual Pocket Part

For Use In 1976

Replacing prior pocket part in back of volume

Current Laws and Legislative History

Consult
United States Code
Congressional and Administrative News

ST. PAUL, MINN.
WEST PUBLISHING CO.

whose appeals are denied shall revert to the tribe from whose share the per capita would have been paid, to be expended for any purpose designated by such tribe and approved by the Secretary.
Pub.L. 92–557, § 6, Oct. 25, 1972, 86 Stat. 1172.

§ 1300e—6. Income tax exemption; protection of minors and persons under legal disability

None of the funds distributed per capita under the provisions of sections 1300e to 1300e—7 of this title shall be subject to Federal or State income taxes. Sums payable to persons under eighteen years of age or under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will protect the best interests of such persons.
Pub.L. 92–557, § 7, Oct. 25, 1972, 86 Stat. 1172.

§ 1300e—7. Rules and regulations

The Secretary is authorized to prescribe rules and regulations to effect the provisions of sections 1300e to 1300e—7 of this title, including the establishment of deadlines.
Pub.L. 92–557, § 8, Oct. 25, 1972, 86 Stat. 1172.

CHAPTER 15.—CONSTITUTIONAL RIGHTS OF INDIANS [NEW]

SUBCHAPTER I.—GENERALLY

SUBCHAPTER I.—GENERALLY

§ 1301. Definitions

For purposes of this subchapter, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

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Legislative Histor
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(3) "Indian court" means any Indian tribal court or court of Indian offense.

Pub.L. 90–284, Title II, § 201, Apr. 11, 1968, 82 Stat. 77.

Legislative History. For legislative history and purpose of Pub.L. 90–284, see 1968 U.S.Code Cong. and Adm.News, p. 1837.

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1. Construction

This chapter is concerned primarily with tribal administration of justice and the imposition of tribal penalties and forfeitures, and not with the specifics of tribal structure or officeholding. Slattery v. Arapahoe Tribal Council, C.A. Wyo.1971, 453 F.2d 278.

This chapter is not an affirmative declaration of rights but is negative in form and forbids certain tribal action and is directed at government rather than at individuals. Spotted Eagle v. Blackfeet Tribe of Blackfeet Indian Reservation, City of Browning, D.C.Mont.1969, 301 F. Supp. 85.

2. Pendent jurisdiction

Where court had habeas corpus jurisdiction and equitable jurisdiction over tribe and officers in their governmental capacity, court had pendent jurisdiction over judges and officers of tribe as individuals insofar as claims for damages under state law were concerned and on considerations of judicial economy, convenience and fairness to litigants, court would exercise the pendent jurisdiction. Spotted Eagle v. Blackfeet Tribe of Blackfeet Indian Reservation, City of Browning, D.C.Mont.1969, 301 F.Supp. 85.

3. Power of Congress

Congress has explicit and plenary power to enact legislation with respect to Indian tribes. Wounded Head v. Tribal Council of Ogalala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

This chapter applies to the Indian nations and the acts of their executive and judicial officials and their legislatures, but its limitations apply only to them, and not to the power of Congress to enact legislation with respect to Indian nations and tribes, and does not have the effect of repealing legislation by Congress with respect to Indian tribes. Groundhog v. Keeler, C.A.Okl.1971, 442 F. 2d 674.

Congress has exclusive and plenary power to enact legislation with respect to Indian tribes. Id.

The plenary power of Congress applied circumspectly in this chapter with a view toward enhancing Indian civil rights without undermining cultural identity and the tradition of judicial restraint in that area, grounded in part in a similar concern for tribal integrity, would compel the court to view the merits of complaint that plaintiffs were denied official recognition as governing business council of Confederated Tribes of the Goshute Reservation in light of tribal practices and circumstances; essential fairness in the tribal context, not procedural punctiliousness, is the standard against which disputed actions must be measured. McCurdy v. Steele, D.C.Utah 1973, 353 F. Supp. 629.

Federal government exercises plenary power over affairs of the Indian and that power of the federal government, when exercised, preempts state control over the field. U. S. v. Brown, D.C.Neb. 1971, 334 F.Supp. 536.

4. Law governing

The Constitution applies to Indian nations only to the extent it expressly binds them or is made binding on them by treaty or Act of Congress. Groundhog v. Keeler, C.A.Okl.1971, 442 F.2d 674.

An Indian tribe or nation is not a federal instrumentality and is not within the reach of U.S.C.A.Const. Amend. 5 and due process restraint places restrictions on the Indian tribes only when it is so provided by congressional enactment. Id.

Due process clause of U.S.C.A.Const. Amend. 5 and equal protection and due process clauses of U.S.C.A.Const. Amend. 14 and provisions of U.S.C.A.Const. Amend. 15 have not been made applicable to the Cherokee Tribe by passage of this chapter. Id.

United States Constitution does not apply to any Indian tribe. Jacobson v. Forest County Potawatomi Community, D.C.Wis.1974, 389 F.Supp. 994.

Law governing actions against individuals for damages under U.S.C.A.Const. Amends. 4 and 5 should be applied to this chapter. Loncassion v. Leekity, D. C.N.M.1971, 334 F.Supp. 370.

§ 1302. Constitutional rights

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of $500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Pub.L. 90–284, Title II, § 202, Apr. 11, 1968, 82 Stat. 77.

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¼. Construction

Although Congress used language in this section from Bill of Rights, the meaning and application of this section to Indian tribes must necessarily be somewhat different than the established Anglo-American legal meaning and application of the Bill of Rights on federal and state governments. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

U.S.C.A.Const. Amend. 1 imposes no greater restraint on Indian tribes through this section than it imposes on the federal government. Id.

The Congress did not limit in this chapter the concepts of equal protection and due process to criminal proceedings only since this chapter in addition to certain criminal procedures vouchsafes freedom of religion, speech, press and assembly, and prohibits the taking of private property for a public use without just compensation or the taking of property without due process of law, which guarantees, to be effective, must often operate in a civil context, and some, almost exclusively in such a context. McCurdy v. Steele, D.C.Utah 1973, 353 F. Supp. 629.

The usual meaning of equal protection and due process may be modified in light of federal concern for tribal cultural and governmental autonomy; thus usual standards of equal protection and due process may be modified where their imposition otherwise would threaten basic tribal interests; where plaintiffs seek compliance with existing tribal procedures, application of flexible equal protection and due process safeguards of this chapter appears appropriate. Id.

This chapter is properly considered in context of federal concern for Indian self-government and cultural autonomy; its guarantees of individual rights should, where possible, be harmonized with tribal cultural and governmental autonomy. Id.

⅝. Construction with other laws

U.S.C.A.Const. Amend. 26 does not apply to Indian tribal elections. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

Voting Rights Act of 1970, section 1973bb–1, 1973bb–2 of Title 42, is not applicable to this chapter, in that Indian tribes are neither states nor political subdivisions. Id.

Provisions of U.S.C.A.Const. Amends. 5, 6, 7, certain procedural provisions as well as some aspects of U.S.C.A.Const. Amend. 14 equal protection, were not meant to be included among the enumerated rights in this chapter. McCurdy v. Steele, C.A.Utah 1974, 506 F.2d 653.

½. Purpose

Purpose of this subchapter is to impose upon Indian tribal governments restrictions applicable to federal and state governments as well as to protect individual rights of Indians, while fostering tribal self-government and cultural identity. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

Object of this chapter was to protect individual members from arbitrary tribal action, but it was not intended that historic sovereignty of a tribe be abolished. Crowe v. Eastern Bank of Cherokee Indians, Inc., C.A.N.C.1974, 506 F.2d 1231.

This chapter is directed primarily at the administration of justice by tribal authority, rather than at tribal governmental structure, officeholding, or elections. McCurdy v. Steele, C.A.Utah 1974, 506 F.2d 653.

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Curdy v. Steele, D.C.Utah 1973, 353 F. Supp. 629.

The usual meaning of equal protection and due process may be modified in light of federal concern for tribal cultural and governmental autonomy; thus usual standards of equal protection and due process may be modified where their imposition otherwise would threaten basic tribal interests; where plaintiffs seek compliance with existing tribal procedures, application of flexible equal protection and due process safeguards of this chapter appears appropriate. Id.

This chapter is properly considered in context of federal concern for Indian self-government and cultural autonomy; its guarantees of individual rights should, where possible, be harmonized with tribal cultural and governmental autonomy. Id.

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The purpose of this chapter was to create substantive body of rights, patterned in part on Bill of Rights, to extricate individual Indian from decisions holding that a controversy between Indian and his tribal government was an internal controversy and by implication has waived whatever immunity Indian tribes had in such areas. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash.1973, 484 F.2d 200.

Congress, in enacting this section requiring Indian tribes to provide constitutional rights to Indians on reservation, wished to protect and preserve individual rights of Indian peoples, with realization that goal was best achieved by maintaining unique Indian culture and necessarily strengthening tribal governments, and Congress did not intend to detract from continued vitality of tribal courts. O'Neal v. Cheyenne River Sioux Tribe, C.A.S.D.1973, 482 F.2d 1140.

Congress in enacting this section intended to establish important individual rights for persons under jurisdiction of tribal governments, and also intended that these rights be harmonized with legitimate tribal interests. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

Purpose of this chapter is to enhance civil liberties of individual Indians without unduly undermining Indian self-government and cultural autonomy. Means v. Wilson, D.C.S.D.1974, 383 F.Supp. 378.

The congressional exclusion from this chapter of guarantees under U.S.C.A. Const. Amend. 5 was mandated by congressional desire to preserve the ethnic identity of Indian tribes from charges of racial discrimination and to preserve tribal governmental structure from attacks designed to install an election process where none existed; there is no indication of congressional purpose to allow tribal governments to ignore their own election rules by exempting them from the equal protection and due process guarantees of this chapter. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

This chapter creates sui generis a body of substantive rights, patterned in part on the federal Bill of Rights, to extricate the individual Indian from the legal no man's land resulting from decisions holding that controversy between an Indian and his tribal government was an internal controversy not subject to jurisdiction of the federal courts. Solomon v. LaRose, D.C.Neb.1971, 335 F.Supp. 715.

¾. Generally

Scope of individual rights contained in this section is to be determined by balancing them against the legitimate interests of the tribe in maintaining the traditional values of their unique governmental and cultural identity. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

By not including certain clauses of Bill of Rights and by modifying the clauses that were finally incorporated into this section Congress recognized as legitimate the tribal interest in maintaining traditional practices that conflict with constitutional concepts of personal freedom developed in a different social context. Id.

Indian Bill of Rights has not, as between a person and an Indian tribe, incorporated all individual rights guaranteed by the Constitution of the United States. Lohnes v. Cloud, D.C.N.D.1973, 366 F.Supp. 619.

While the Indian Bill of Rights has indeed encroached upon, and redefined, tribal sovereignty, this section does not substitute a federal forum for the tribal court. Id.

1. Persons eligible

This section applies also to non-Indians. Dry Creek Lodge, Inc. v. U. S., C.A.Wyo.1975, 515 F.2d 926.

Tribal council and its chairman were proper parties to action by members of Standing Rock Sioux Indian tribes to enjoin general tribal elections and to require reapportionment of elective districts, in view of provisions of constitution of tribe. White Eagle v. One Feather, C.A.N.D.1973, 478 F.2d 1311.

Procedure whereby four absentee ballots were invalidated by tribal counsel, whether classified as a "recount" or merely a "verification," was not violative of tribal election ordinance which did not provide specifically for such a procedure, where procedure was implicitly authorized through power of tribal election board to supervise general conduct of the election, settle all questions as to eligibility of voters, and resolve all disputes arising from tabulation of ballots cast in district polling places. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D.1975, 387 F.Supp. 1194.

Individual who was under a suspended sentence by reason of a plea of guilty to a felony in state court at time he ran for tribal office was not convicted under law of South Dakota absent an entry of a judgment of guilt and, therefore, was not a convicted felon ineligible to run st time of tribal election, and other candidates suffered no deprivation of their rights to due process under this section by reason of failure of tribal council to make a determination of individual's eligibility prior to election. Id.

Plaintiffs did not have standing to challenge the expenditure of tribal funds contemplated by the Seneca Council pursuant to contract with corporation relating to the location of a factory in an industrial park to be developed by the Seneca Nation on its reservation, since plaintiffs could allege no connection between the official action challenged and some legally protected interest of plaintiffs, and since it is established that a tribe has full authority to use and dispose of tribal property and that no individual Indian has an enforceable right in such property. Seneca Constitutional Rights Organization v. George, D.C.N.Y. 1972, 348 F.Supp. 51.

Plaintiff Indians did not have status as taxpayers to challenge the disposition of tribal funds to be used to implement certain contract, where the taxes paid by plaintiffs to the Seneca Nation were not being used to implement the contract but, rather, the funds for such were coming from the Seneca Rehabilitation Act. Id.

Failure to seek redress in tribal court did not preclude nonprofit legal service corporation organized to provide legal services for indigent Indians, its board of directors and executive director from bringing action under section 1301 et seq. of this title against tribal officers who barred executive director from reservation. Dodge v. Nakai, D.C.Ariz.1968, 298 F.Supp. 17.

Executive director of nonprofit legal services corporation, which was organized to provide legal assistance for indigent Indians, who was barred from Indian reservation was not precluded by his nonmembership in tribe from invoking provisions of this section barring Indian tribe from denying equal protection to any person within its jurisdiction. Id.

2. Jurisdiction

This section, which recognizes the right to be protected against deprivation of due process and equal protection of the laws, furnishes a jurisdictional basis which justified federal court's entertaining of case against Indian tribes, the joint business council and its agents who barricaded a dirt road which was the only access to plaintiffs' lodge. Dry Creek Lodge, Inc. v. U. S., C.A.Wyo.1975, 515 F.2d 926.

Note 2

Allegations to the effect that plaintiffs had a property right in access road to their lodge and that part of the road which was blocked was within tribal jurisdiction, and that the tribe summoned federal agents to maintain and supervise barricade of that road and that that constituted a violation of this chapter were sufficient to give the court jurisdiction to hear the merits so that court erred in disposing of the matter in a summary hearing. Id.

This section does not give rise to jurisdiction under section 1343 of Title 28 over individual tribal members, and hence trial court properly held that it lacked jurisdiction to afford damages or declaratory relief against individual members of tribes and Indian council or individual federal agents who blockaded a dirt road which crossed Indian properties and which was the only access to plaintiffs' lodge. Id.

Federal courts have jurisdiction to protect those intemized, substantive rights guaranteed by this section enacted in 1968. Jacobson v. Forest County Potawatomi Community, D.C.Wis.1974, 389 F. Supp. 994.

Doctrine of internal controversies operates to deprive federal courts of subject matter jurisdiction with respect to tribal matters, except in those areas specifically provided for in this chapter. Id.

District court had jurisdiction of class action brought against tribal council and others by six enrolled tribe members who complained that the council was malapportioned and that they were underrepresented on the council. Brown v. U. S., C.A.S.D.1973, 486 F.2d 658.

The district court could have assumed jurisdiction of suit by Indian who had rented out tract on reservation and who claimed that tribal governing body had not given him adequate notice or hearing in connection with termination of his interest in tract of land which had been assigned him. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash. 1973, 484 F.2d 200.

Federal district court was not without subject matter jurisdiction of class suit by three enrolled members of Crow Creek Sioux tribe complaining that tribal council was malapportioned and that such malapportionment denied equal protection of the laws as guaranteed by this chapter, because plaintiffs had failed to show that they had exhausted their tribal remedies, where there were no tribal remedies for plaintiffs to exhaust. Daly v. U. S., C.A.S.D.1973, 483 F.2d 700.

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That the Crow Creek Sioux tribe had not consented to the Indian Reorganization Act, section 461 et seq. of this title, did not operate to deprive federal district court of jurisdiction of class suit by three enrolled members of tribe complaining that tribal council was malapportioned and that such malapportionment denied them equal protection of laws as guaranteed by this section; since the tribe possesses power of self-government, it is subject to provisions of this section and its consent to Reorganization Act is unnecessary. Id.

Prior to the passage in 1968 of this chapter, United States District Court lacked jurisdiction to hear intratribal controversies. Luxon v. Rosebud Sioux Tribe of S. D., C.A.S.D.1972, 455 F.2d 698.

United States District Court had jurisdiction of action by enrolled member of the Rosebud Sioux Tribe for declaration that provision of the tribe constitution which disqualifies an employee of the Public Health Service from seeking and holding membership on tribal council to be unconstitutional. Id.

Whether federal district court had jurisdiction over subject matter of complaints pertaining to certain enrollment practices of Indian Tribes would be determined from the facts alleged in the complaints, without regard to any conclusory allegations of jurisdiction. Slattery v. Arapahoe Tribal Council, C.A. Wyo.1971, 453 F.2d 278.

Where pleadings showed clearly that several applications for enrollment of children in Indian Tribes were rejected by tribal councils acting in accord with a tribal enrollment ordinance which was not itself under attack, Indian Bill of Rights did not confer jurisdiction on federal district court. Id.

This section did not give federal district court jurisdiction of action wherein descendants of enrolled citizens of Cherokee Nation sought judgment declaring illegality of appointment of a particular person to office of Principal Chief of Tribe, since actions under this section are expressly limited to actions in nature of mandamus and an action for a declaratory judgment is not in nature of an action for mandamus. Groundhog v. Keeler, C.A.Okl.1971, 442 F.2d 674.

Affidavit which was filed by sister of person appointed by Secretary of Interior to be Principal Chief of Cherokee Tribe and which averred that she was one of heirs at law or legatees of a citizen of Cherokee Tribe and that, while her brother was born too late to be enrolled by Dawes Commission, his degree of Indian blood was 1/8 could not be regarded as a refutation of allegations in complaint for declaratory judgment that brother was not a citizen by blood of Tribe so as to deprive federal court of its jurisdiction, as question of jurisdiction was to be determined from allegations of complaint that were not conclusory in nature. Id.

Even though petitioners were free on bail following conviction in Indian Tribal Court, federal district court had jurisdiction to hear their petitions for writs of habeas corpus under Indian Civil Rights Act providing that writ shall be available to any person to test legality of his detention by order of Indian Tribe. Settler v. Lameer, C.A.Wash.1969, 419 F.2d 1311, certiorari denied 90 S.Ct. 1690, 398 U.S. 903, 26 L.Ed.2d 61.

Action whereln plaintiffs sought to enjoin defendants and their agents from implementing results of a tribal election on an Indian reservation by alleging a deprivation of their rights to liberty or property without due process of law was a "proper case" in which to exercise federal jurisdiction, where deprivation of a right guaranteed by Indian Bill of Rights was sufficiently alleged and, though tribal remedies were not exhausted, an attempt to secure such remedies would have been futile. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D. C.S.D.1975, 387 F.Supp. 1194.

Intervention in an intra-tribal controversy is an action that a court should take only with some hesitation absent a congressional mandate. Id.

A United States district court has jurisdiction to determine, in a proper case, whether an Indian tribe has denied to one of its members any of the rights given to the members by this section. White v. Tribal Council, Red Lake Band

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of Chippewa Indians, D.C.Minn.1974, 383 F.Supp. 810.

If true, allegations of fraudulent handling of Indian tribal council election, improperly denying elected representatives their seats on the council, etc., were in derogation of equal protection and due process rights of reservation Indians and would afford federal court jurisdiction under this section; however, a condition precedent to federal court jurisdiction was exhaustion of available remedies, including resort to tribal court of Indian offenses; such exhaustion requirement was not to be excused in absence of showing that resort to the tribal court, which allegedly was dominated by chairman of tribal council, would be futile. Id.

Action involving an internal controversy among Indians over tribal government is not a "proper case" under which federal court would have jurisdiction under this section. Means v. Wilson, D.C.S.D. 1974, 383 F.Supp. 378.

In view of failure to exhaust available tribal remedies, action wherein Indians and Indian reservation residents sought damages and injunctive and declaratory relief on basis of allegations that tribal election irregularities deprived plaintiffs of right to fundamentally fair election and that fraudulent and criminal acts allegedly committed during election period violated plaintiffs' right to vote was not a "proper case" under which federal government would have jurisdiction over tribe and its officers under this section. Id.

Jurisdiction of federal court under this section is limited to enforcing provisions contained therein and does not extend to insuring compliance with provisions of tribal law, unless failure to comply constitutes a violation of the guarantee contained therein. Id.

Membership provisions of Oglala Sioux Tribal Constitution would not, in absence of any allegation that such requirements were not uniformly applied, be in conflict with this section's guarantee of equal protection of laws; such requirements were one of those areas in which equal protection requirements of U.S.C.A.Const. Amend. 14 should not be embraced in the Indian Bill of Rights, so that court had no jurisdiction over action seeking, inter alia, to enjoin a portion of the tribal Constitution as applied to plaintiffs. Yellow Bird v. Oglala Sioux Tribe of South Dakota, D.C.S.D.1974, 380 F.Supp. 438.

Federal jurisdiction based on this chapter did not lie with respect to action against Crow Creek Housing Authority for breach of contract for drilling of artesian wells for the Authority in absence of any allegation of constitutional deprivation. Hickey v. Crow Creek Housing Authority, D.C.S.D.1974, 379 F. Supp. 1002.

Jurisdiction of suit brought by one Indian tribe member against another, both of whom were residents of the same reservation, for damages resulting from an automobile accident that occurred within the boundaries of the reservation was vested in the tribal court, and the district court was without jurisdiction on a federal question basis, notwithstanding plaintiff's claim that the tribal court, as instituted relative to civil proceedings, is unconstitutional in that it violates the due process provisions of the Indian Bill of Rights and of the United States Constitution. Lolnes v. Cloud, D.C.N.D.1973, 366 F.Supp. 619.

Court had jurisdiction of plaintiffs' action who sought official recognition as governing business council of Confederated Tribes of Goshute Reservation on review of actions by Bureau employees who, after election board declined to certify plaintiffs, refused to recognize and deal with plaintiffs even though administrative remedies had not been exhausted, where under circumstances utility of further administrative review was undermined, especially where legitimacy of plaintiffs' claim to office turned in large measure on whether the Goshute Constitution allowed write-in candidates which was a question of law for whose determination the courts are peculiarly well suited and for whose resolution it was unnecessary to await exhaustion of administrative remedies. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

The federal court was not without jurisdiction over civil actions brought under this chapter on ground that this chapter expressly granted jurisdiction to federal courts only in habeas corpus matters since it appeared that Congress included specific habeas corpus provision in order to overcome the apparent denial of such right under preexisting law while relying on similarly preexisting jurisdictional grant to implement new guarantees. Id.

Jurisdiction of the district court under this section relating to the constitutional rights of Indians is limited to enforcing the prohibitions contained therein and does not extend to ensuring compliance with provisions of Seneca law, including the Seneca Constitution, by instrumentalities of the Seneca Nation, unless failure to comply constitutes a violation of the guarantees enumerated in this section. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

Federal courts do not have jurisdiction over tribal elections unless a claim of election irregularity is supported by well-pleaded facts including facts showing that resort to tribal remedies has failed. Id.

By implication, this section relating to the constitutional rights of Indians waived the immunity of Indian tribes from suit, and federal courts accordingly have jurisdiction to hear suits against Indian tribes and their officials alleging that the tribe, in exercising powers of self-government, has denied a constitutional right of plaintiff. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 48.

Subject matter jurisdiction of action by five members of Indian tribe, elected to seats on tribal council, against tribal council and each member of council denying electees seats on council existed by virtue of allegations that electees were denied due process by virtue of fact that refusal to seat was not based on provisions of Indian constitution and was properly enforceable in the federal district court as a civil action to secure equitable or other relief under any act providing for the protection of civil rights. Solomon v. LaRose, D.C.Neb.1971, 335 F. Supp. 715.

Action for redress of alleged violations if rights created under this chapter was one arising under a law of the United States, and federal district court had jurisdiction. Loncassion v. Leekity, D.C. N.M.1971, 334 F.Supp. 370.

Internal matters of tribal government are not within bounds of federal jurisdiction unless jurisdiction is expressly conferred by congressional enactment. Pinnow v. Shoshone Tribal Council, D.C. Wyo.1970, 314 F.Supp. 1157, affirmed 453 F.2d 278.

Indian tribes were immune from suit and in absence of substantial federal question district court could not assume jurisdiction of actions by plaintiffs claiming that tribes' enrollment procedures

amounted to exogamus discrimination. Id.

Fact that under provision of this section barring Indian tribe from denying to any person within its jurisdiction the equal protection of its laws, court had jurisdiction of action by nonprofit legal services corporation, its board of directors and executive director against officers of tribe and area director of Indian reservation who barred executive director from reservation did not force conclusion that plaintiffs were entitled to relief under such section. Dodge v. Nakai, D.C. Ariz.1968, 298 F.Supp. 17.

3. "Any person"

Where enrolled member of Indian tribe did not at any time object to alleged irregularities in government of tribe, his acquiescence in alleged error removed his right to object to it. Letthand v. Crow Tribal Council of Crow Tribe of Indians of Mont., D.C.Mont.1971, 329 F.Supp. 728.

Term "any person" as used in this section prohibiting Indian tribe in exercise of its powers of self-government from denying equal protection of its laws to any person is not limited to any American Indian. Dodge v. Nakai, D.C.Ariz.1968, 298 F.Supp. 17.

4. Freedom of speech

Exclusion of nonmember from reservation because of allegedly contemptuous laughter at Advisory Committee meeting which provoked assault by member of committee was lacking in due process and was an abridgement of freedom of speech. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

4a. Assistance of counsel

Prior to the enactment of this chapter, constitutional rights, including right to professional counsel, were not applicable to Indian tribes and Indians living on reservations. Settler v. Lameer, C.A. Wash.1974, 507 F.2d 231.

Where proceedings in tribal court for violations of tribal fishing regulations occurred prior to enactment of this chapter, tribal court did not deprive member of tribe of his constitutional rights by denying him representation by professional counsel. Id.

In allowing the substitution of counsel for tribal council midway through the proceedings brought against the council and others by six enrolled tribe members who complained that the council was malapportioned and that they were underrepresented on the council, incumbent councilmen were not deprived of representation at and notice of all subsequent proceedings, since the tribe's constitution permitted the tribal chairman to substitute counsel, and since, moreover, substituted counsel fairly represented the council in the district court and made a reasonable effort to notify the councilmen of all proceedings. Brown v. U. S., C.A.S. D.1973, 486 F.2d 658.

Fact that lawyers were required to pay $300 license fee to practice before tribal courts did not establish that tribal code effectively denied assistance of counsel in proceedings before tribal courts. O'Neal v. Cheyenne River Sioux Tribe, C.A.S.D. 1973, 482 F.2d 1140.

4b. Political activities

Tribal ordinance prohibiting tribal government employees from engaging in partisan political activity did not violate this section. Janis v. Wilson, D.C.S.D. 1974, 385 F.Supp. 1143.

5. Bill of attainder

Tribal council order excluding from reservation the program director of nonprofit legal service corporation organized to provide legal assistance to indigent Indians constituted an unlawful bill of attainder. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

5a. Search warrants

Under Zuni law, Zuni Tribal Court lacked authority to issue warrant for a search of Zuni dwelling on Zuni Reservation. State v. Railey, N.M.App.1975, 532 P.2d 204.

6. Duties and limitations, generally

An Indian tribe may lawfully employ police officers to aid in the enforcement of tribal law and in the exercise of tribal power. Ortiz-Barraza v. U. S., C.A.Ariz. 1975, 512 F.2d 1176.

Indian nations or tribes are quasi-sovereign nations in sense that they are dependent political nations and wards of the United States but possess attributes of sovereignty insofar as they have not been taken away by Congress. Groundhog v. Keeler, C.A.Okl.1971, 442 F.2d 674.

Claims of terminated tribal employees, insofar as they were based on this section would not be measured by the same standards imposed by the Bill of Rights on state and federal governments, but rather these limitations would be applied with recognition of the tribe's unique cultural heritage, its experience in self-government, and the disadvantages or hurdens, if any, under which the tribal government was attempting to carry out its duties. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

An Indian tribe or nation is not a federal instrumentality and is not within the reach of U.S.C.A.Const. Amend. 5, and due process restraint places restrictions on the Indian tribes only when it is so provided by congressional enactment. Id.

An Indian tribe is not subject to the law of a state except insofar as the United States has given its consent. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

Right to be free from excessive injurious force, arbitrarily inflicted, is among rights protected by this chapter. Loncassion v. Leekity, D.C.N.M.1971, 334 F. Supp. 370.

Provisions of this chapter relating to Indians imposed new responsibilities upon Indian tribe with respect to both manner in which it could exercise its governmental powers and objectives that it could pursue through their implementation. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

This chapter, forbidding certain tribal action including violation of right to be secure against unreasonable searches and seizures, in no way creates a power in tribal government, such as the power to issue search warrants. State v. Railey, N.M.App.1975, 532 P.2d 204.

6a. Hearing

In class action brought against tribal council and others by six enrolled tribe members who complained that the council was malapportioned and that they, and those they sought to represent, were under-represented on the council, the district court was correct in holding further hearings and entering orders despite notice of appeal from the district court's grant of a preliminary injunction, since the tribal council had requested that the appeal be withdrawn and the appellant took no steps to protect his individual right to appeal. Brown v. U. S., C.A.S. D.1973, 486 F.2d 658.

Procedures adopted and followed by tribal officers in terminating employment of tribal employees were reasonable and fundamentally fair and did not deny employees rights granted under this section notwithstanding employees' claim that, absent a full adversary hearing before removal, they could not consistently with due process requirements be divested of their property interests or employment, or be deprive[d] erty to refute the charges [on] termination was based. Ja[ck] D.C.S.D.1974, 385 F.Supp. 11[43]

7. Conduct

Alleged conduct of tribe Indian of his assignment [to] ervation, and of his [re]meaningful opportunity to within prohibitions contain[ed] tion. Johnson v. Lower Community of Lower Elwh ervation, Washington, C.A. F.2d 200.

Fee permit system of tr granting fishing rights to [un]confederated tribes was n cause it was not approved dum of confederated tribes constitution required appro referendum only when ass cense fee was applied t tribes, and ordinance ap nonmembers, so that it w to obtain approval by a tribes. U. S. v. Pollmann, 364 F.Supp. 995.

Arbitrary action in gene ment officials is prohibite of due process of law. Leekity, D.C.N.M.1971, 334 [F.]

Where tribal council con membership of tribe and i bers of tribe did not have tribal property, complaint declaratory judgment con[-] irregularities in governm which alleged that plaintiff enrolled member of trib equal protection and due Indian Bill of Rights but allege that plaintiff, as an tinct from any other tribe fered arbitrary and intent nation failed to state a cla relief could be granted. Crow Tribal Council of Indians of Mont., D.C.Mo Supp. 728.

Even if nonmember of in such manner as to ev and scorn for Advisory so as to provoke assault committee such conduct thorize barring nonmembe tion. Dodge v. Nakai, D. F.Supp. 26.

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Under treaty between and Navajo Tribe of Ind power to exclude non-Nav vajo reservation with exc persons authorized to en virtue of treaty itself, States, or order of Presi States. Dodge v. Nakai 298 F.Supp. 26.

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An Indian tribe or nation is not a federal instrumentality and is not within the reach of U.S.C.A.Const. Amend. 5, and due process restraint places restrictions on the Indian tribes only when it is so provided by congressional enactment. Id.

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7. Conduct

Alleged conduct of tribe in depriving Indian of his assignment of land on reservation, and of his tenant, without meaningful opportunity to be heard fell within prohibitions contained in this section. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash.1973, 484 F.2d 200.

Fee permit system of tribal ordinance granting fishing rights to nonmembers of confederated tribes was not invalid because it was not approved by a referendum of confederated tribes, where tribes' constitution required approval by a tribal referendum only when assessment of license fee was applied to members of tribes, and ordinance applied only to nonmembers, so that it was unnecessary to obtain approval by a referendum of tribes. U. S. v. Pollmann, D.C.Mont.1973, 364 F.Supp. 995.

Arbitrary action in general by government officials is prohibited by concepts of due process of law. Loncassion v. Leekity, D.C.N.M.1971, 334 F.Supp. 370.

Where tribal council consisted of entire membership of tribe and individual members of tribe did not have vested right in tribal property, complaint which sought declaratory judgment concerning alleged irregularities in government of tribe, which alleged that plaintiff who was an enrolled member of tribe was denied equal protection and due process under Indian Bill of Rights but which did not allege that plaintiff, as an individual distinct from any other tribal member, suffered arbitrary and intentional discrimination failed to state a claim upon which relief could be granted. Lefthand v. Crow Tribal Council of Crow Tribe of Indians of Mont., D.C.Mont.1971, 329 F. Supp. 728.

Even if nonmember of tribe laughed in such manner as to evidence ridicule and scorn for Advisory Committee and so as to provoke assault by member of committee such conduct would not authorize barring nonmember from reservation. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

8. Exclusion, power of

Under treaty between United States and Navajo Tribe of Indians tribe had power to exclude non-Navajos from Navajo reservation with exception of those persons authorized to enter thereon by virtue of treaty itself, law of United States, or order of President of United States. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

Power to exclude non-Navajos from Navajo reservation was exercised by Advisory Committee of Navajo Tribal Council and was clearly an exercise of "powers of self-government" possessed by Navajo Tribe. Id.

Tribal council order excluding from reservation the program director of nonprofit legal services corporation organized to provide legal assistance to Indigent Indians was a "legislative act". Id.

8a. Exhaustion of remedies

Fact that Indian tribal procedures for handling internal political disputes are not specifically provided for in the tribal constitution would not justify immediate intervention by the federal courts in election dispute, since inherent in the authority to govern itself is the authority of the tribe to determine the manner in which differences are resolved and the manner in which its leaders are selected. McCurdy v. Steele, C.A.Utah 1974, 506 F. 2d 653.

Whether or not write-in candidates should be permitted to run at election of Indian business council presented a question of tribal concern upon which the tribe should make a decision before the federal courts should be allowed to intervene. Id.

Tribe members who brought a class action against the tribal council and others on ground that the council was malapportioned and that they, and those they sought to represent, were underrepresented on the council exhausted their tribal remedies where they sought relief in the tribal court and were denied an effective, timely remedy. Brown v. U. S., C.A.S.D.1973, 486 F.2d 658.

In determining whether exhaustion of tribal remedies is required before constitutional rights of Indian may be claimed in federal court, need to preserve cultural identity of tribe by strengthening of tribal courts must be weighed against need to immediately adjudicate alleged deprivations of individual rights. O'Neal v. Cheyenne River Sioux Tribe, C.A.S.D. 1973, 482 F.2d 1140.

Where parties had stipulated to dismissal of non-Indian defendants, fact that not all parties were originally amenable to tribal court jurisdiction did not preclude imposition of requirement that tribal remedies be exhausted before seeking relief in federal court. Id.

Individual Iudian plaintiffs who failed to exhaust tribal remedies in civil dispute with tribe were prohibited from bringing suit in federal court under Indian bill of rights; however, if tribal court did not reach merits of controversy in new action, federal court could proceed with trial and decide case on merits without reference to any further necessity of exhausting tribal remedies. Id.

In order to determine whether district court properly dismissed action against Indian tribe for failure to exhaust tribal remedies, Court of Appeals would consider what if any tribal remedies existed, whether exhaustion requirement should generally be applied in such cases, and whether if exhaustion were generally required it was appropriate to require exhaustion in instant case. Id.

9. Election of tribal leaders

One-man, one-vote principle was applicable, via equal protection clause of this section, to tribal elections of Indian tribe which had established voting procedures precisely paralleling Anglo-American procedures. White Eagle v. One Feather, C. A.N.D.1973, 478 F.2d 1311.

Whether facts alleged in petition iu action by tribal member for declaration of unconstitutionality of provision of tribal constitution which disqualified tribe member for election to the tribal council because of employment at Public Health Service stated cause of action and whether, if true, the member was entitled to judgment on the merits was determination which should be made by district court and not by reviewing court. Luxon v. Rosebud Sioux Tribe of S. D., C.A. S.D.1972, 455 F.2d 698.

Nothing in section 1301 et seq. of this title or its history discloses any implied requirement that a tribe select its leaders by elections, or that earlier acts authorizing presidential appointments of tribal officials have been repealed. Groundhog v. Keeler, C.A.Okl.1971, 442 F.2d 674.

Tribal council could not, without violating due process clause of this section, decide to hold a new tribal election and discard procedural requirements of election ordinance at will, and then, apparently as an afterthought, justify procedurally infirm election on basis of a pro-

vision authorizing it to make exceptions to ordinance. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D.1975, 387 F.Supp. 1194.

Tribal council failed to attempt compliance with tribal election ordinance when, upon being presented with question whether particular individual was eligible to seek and hold tribal office, it failed to remove individual's name from ballot and, after election, declared individual elected without a determination as to his eligibility to run. Id.

Federal court should not set aside tribal election under this section if comparable non-Indian local election under U.S. C.A.Const. Amend. 14 would not be set aside. Means v. Wilson, D.C.S.D.1974, 383 F.Supp. 378.

Plaintiffs' claim that their rights under due process clause of U.S.C.A.Const. Amend. 5 had been violated by defendant employees of the Bureau of Indian Affairs in refusing to recognize plaintiffs as members of tribal business council and defendants' advocacy of a new election to "clear the air" instead of conformance with election and recall procedures allegedly mandated by the Goshute Constitution was cognizable if supported by an appropriate grant of jurisdiction and if not barred by sovereign immunity. McCurdy v. Steele, D.C.Utah 1973, 353 F. Supp. 629.

Tribal sovereign immunity is a venerable doctrine which effectively insulates tribal culture and governmental autonomy, but the doctrine is subject to congressional modification, and this chapter which expressly limits every Indian tribe in exercising powers of self-government is such a modification. Id.

9a. Sovereignty

Indian tribes possess an inherent sovereignty except where it has been specifically taken away from them by treaty or act of Congress. Ortiz-Barraza v. U. S., C.A.Ariz.1975, 512 F.2d 1176.

Intrinsic in the sovereignty of an Indian tribe is the power to exclude trespassers from the reservation and a tribe needs no grant of authority from the federal government in order to exercise this power. Id.

10. Sovereign immunity

This section is a waiver by Congress of tribal immunity. Dry Creek Lodge, Inc. v. U. S., C.A.Wyo.1975, 515 F.2d 926.

Tribal council did not have sovereign immunity from class suit brought by six enrolled members of the tribe who complained that the tribal council was malapportioned and that they, and those they sought to represent, were underrepresented on the council. Brown v. U. S., C.A.S.D.1973, 486 F.2d 658.

This chapter evidences congressional exception to general policy of immunity of Indian tribes from suit. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash.1973, 484 F.2d 200.

This section impliedly abrogates sovereign immunity of Indian tribes. Daly v. U. S., C.A.S.D.1973, 483 F.2d 700.

Crow Creek Sioux tribe and council members did not have sovereign immunity from suit by three enrolled tribal members complaining that tribal council was malapportioned and that such malapportionment denied equal protection of the laws as guaranteed by this section. Id.

Fact that Indian tribe was clothed with sovereign immunity did not prevent appeal to superior court of tribe from order of junior court. O'Neal v. Cheyenne River Sioux Tribe, C.A.S.D.1973, 482 F.2d 1140.

Fact that Indian tribe was clothed with sovereign immunity did not render requirement of exhaustion of tribal remedies inappropriate in action predicated essentially upon Indian bill of rights. Id.

Principle that United States, as sovereign, is immune from suit save as it consents to be sued, is not affected by fact that government has voluntarily undertaken a trustee relationship with respect to Indians. Jacobson v. Forest County Potawatomi Community, D.C.Wis.1974, 389 F.Supp. 994.

This chapter abrogates by implication the sovereign immunity the Indian tribes enjoy from suit. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D. 1975, 387 F.Supp. 1194.

An Indian tribe cannot claim sovereign immunity from suit under this section. Loncassion v. Leekity, D.C.N.M.1971, 334 F.Supp. 370.

Where Indian tribe and the bureau of Indian affairs entered into an agreement whereby the tribe set up a law enforcement organization, and the bureau of Indian affairs provided about three-fifths of the funds, and among other things, the tribe agreed to "be responsible for all damages or injury to any person or to property of any character * * *," to pay attorney's fees, and to provide liability insurance to protect the tribe from suits brought because of wrongful conduct by tribal police officers, the tribe waived its claim to immunity from suits claiming wrongful conduct by tribal police officers. Id.

11. Damages

Limiting plaintiff Indian, who brought suit against a fellow tribe member to recover for damages resulting from an automobile accident that occurred on their reservation, to the tribal court with its alleged deficiencies was not violative of U.S.C.A.Const. Amends. 5, 7 and 14, nor of the due process guarantee of the Indian Bill of Rights. Lohnes v. Cloud, D. C.N.D.1973, 366 F.Supp. 619.

A claim for damages is allowable under this section; money damages are particularly appropriate where the plaintiff has suffered personal physical injury. Loncassion v. Leekity, D.C.N.M.1971, 334 F. Supp. 370.

Members of Indian tribe were entitled to claim money damages from tribal policemen for any injuries they suffered as a result of a violation by the policemen of this section providing that no Indian tribe in exercising powers of self-government shall violate right of people to be secure in their persons against unreasonable seizures. Id.

12. Complaint

Complaint in which Indians and Indian reservation residents alleged that persons not entitled to vote were permitted to vote in tribal election and that threats were made and action taken against those not supporting certain candidate and in which other claims were made without a showing of purposeful deprivation of protected rights by defendant tribe or defendant tribal officials acting within scope of their authority did not state claim on which relief could be granted under this section. Means v. Wilson, D.C.S.D.1974, 383 F.Supp. 378.

To state a proper claim under this section, the assaults or threats or whatever else claimed must be tied directly to the tribe or its officers acting within scope of their official tribal office. Id.

Allegations of members of Indian tribe that they were third-party beneficiaries of agreement which was entered into between the tribe and the bureau of Indian affairs and which provided, in part, that

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Allegations of members of Indian tribe that they were third-party beneficiaries of agreement which was entered into between the tribe and the bureau of Indian affairs and which provided, in part, that

the tribe would be responsible for all damages to persons or property during life of the agreement, and that they were entitled to recover damages for injuries caused by negligence of the tribe under the provisions of the agreement stated a claim upon which relief could be granted, which the court could hear as a pendant claim, in action brought under this section by members of tribe against tribal police officer and tribe itself for damages resulting from shooting of one of members by tribal policeman. Loncassion v. Leekity, D.C.N.M.1971, 334 F.Supp. 370.

13. Due process

Under this chapter, tribal member was entitled to right of procedural due process incident to division of her father's possessory holdings, as well as even-handed application of tribal customs, traditions and any formalized rules relative to tribal land, and, upon finding comportment with this chapter to be lacking, court properly set tribal action aside, but court was without power to go further and substitute its judgment on merits for that of tribe and restore to member the possessory holding in tract claimed by her under Land Division Agreement between heirs. Crowe v. Eastern Band of Cherokee Indians, Inc., C.A.N.C.1974, 506 F.2d 1231.

Under this chapter, proceedings of tribal council need not be conducted with all trappings of a court of law, since formality and procedural requisites are to be determined by circumstances of any particular case, but proceedings must be addressed to issues involved in a meaningful fashion and pursuant to adequate notice. Id.

Finding that Indian tribe, acting through its counsel, had assigned a part of Indian's 11-acre tract to another without giving Indian any notice thereof or conducting any hearing upon the proposed division required that tribe's action be set aside as violative of Indian's due process rights. Id.

Indian's interest in continued possession and use of his assignment of tract on reservation comes within due process protection of U.S.C.A.Const. Amend. 14. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash.1973, 484 F.2d 200.

Where pleadings showed that children of plaintiff mothers, in controversy pertaining to certain enrollment practices of Indian Tribes, did not meet tribal enrollment requirement that they possess one-quarter degree Indian blood, rejection of applications did not constitute arbitrary action taken by the tribal council without just cause, nor did the rejection amount to a denial of equal protection or constitute a taking of liberty or property without due process. Slattery v. Arapahoe Tribal Council, C.A.Wyo.1971, 453 F. 2d 278.

Due process clause of this section was of sufficient scope to require judicial consideration of action wherein plaintiffs sought injunctive relief against defendant tribal officials on ground that they failed to attempt compliance with and acted outside provisions of tribal constitution and ordinances adopted pursuant thereto. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D.1975, 387 F.Supp. 1194.

Limiting plaintiff Indian, who brought suit against a fellow tribe member to recover for damages resulting from an automobile accident that occurred on their reservation, to the tribal court with its alleged deficiencies was not violative of U.S.C.A.Const. Amends. 5, 7 and 14, nor of the due process guarantee of the Indian Bill of Rights. Lohnes v. Cloud, D.C.N. D.1973, 366 F.Supp. 619.

While the provisions of U.S.C.A.Const. Amend. 5 generally do not bind tribal governments, the federal government is limited, at least by a flexible application of that amendment, in its dealings with the Indians. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

Due process does not forbid the Seneca Nation of Indians from permitting appeals of determinations and decisions of the Peacemakers Court to the Seneca Council, with such appeals to be heard by a quorum of the Council upon the evidence taken in the Peacemakers Court. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

13a. Equal protection

Equal protection clause of this chapter did not limit power of Indian tribe to fix 21 as age for allowing tribal member to vote in tribal elections. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

Equal protection clause of this chapter is not coextensive with equal protection clause of U.S.C.A.Const. Amend. 14. Id.

Where an Indian tribe has adopted election procedures analogous to those found in Anglo-American culture, the equal protection clause of this section requires that the election procedures comply with the one-man, one-vote principle. Daly v. U. S., C.A.S.D.1973, 483 F.2d 700.

Crow Creek Sioux tribe had sufficient cultural interest in setting higher blood quantum requirement to hold office than for mere membership in the tribe; however, such requirement must be applied uniformly to avoid violating equal protection guarantee of this section. Id.

Provision of Indian tribal constitution insuring that at least one-half of councilmen from each district were one-half, or more, Indian blood would not, if applied uniformly, be in conflict with this section's guarantee of equal protection of the laws; such requirement is one of those areas in which the equal protection requirement of U.S.C.A.Const. Amend. 14, § 1 should not be embraced in this section. Id.

The Anglo-Saxon definition of "equal protection" is not to be embraced in its entirety by this section. Yellow Bird v. Oglala Sioux Tribe of South Dakota, D. C.S.D.1974, 380 F.Supp. 438.

13b. Vague and indefinite legislation

While tribal disorderly conduct statute appeared, if tested by standards applied to communities outside Indian reservation, to be facially vague and overbroad, Court of Appeals was not prepared to say that limiting construction of statute, well-known to Indian reservation society, would not, if made by tribal court, cure its facial vagueness and overbreadth. Big Eagle v. Andera, C.A.S.D.1975, 508 F. 2d 1293.

Despite contention that tribal law pertaining to contributing to delinquency of minor might be unconstitutionally vague as applied to other defendants or in other settings, statute was not vague as applied to defendants who pled guilty to providing intoxicated beverages for minors where record disclosed that minors were drunk when apprehended by police and that drunkenness was caused by defendants' supplying minors with intoxicants. Id.

14. Condemnation

Claims of plaintiff Indians that condemnation by the tribe of their use interest in certain property would be a taking for a nonpublic use and without just compensation were prematurely raised where condemnation proceedings, though

threatened, had not yet been held. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

Indian tribes possess the power of eminent domain. Id.

15. Allegations, sufficiency of

Complaint of female member of Indian community challenging sections of tribal constitution and bylaws which excluded women from holding office in tribal council, extended franchise only to those tribe members who are 21 years of age or over and provided for allegedly inadequate notice of special meetings of general tribal council failed to state cause of action against tribal defendants cognizable under this chapter. Jacobson v. Forest County Potawatomi Community, D.C. Wis.1974, 389 F.Supp. 994.

Complaint of female member of Indian community who challenged constitutionality of sections of tribal constitution and bylaws failed to state cause of action on theory that federal defendants' acts were ultra vires or unconstitutional. Id.

District court could not decide whether questioned ballots in tribal election on Indian reservation were invalid absent allegations of criminality, fraud, or discrimination. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D.1975, 387 F.Supp. 1194.

Bald, conclusory allegation that the Seneca Council, acting alone, does not possess the power to enter into a contract which requires an expenditure of tribal money failed to state a claim of violation of this section providing that no Indian tribe, in exercising powers of self-government, shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

16. Judicial notice

Judicial notice would be taken of the Constitution of the Seneca Nation of Indians. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

17. Injunction

Preliminary injunction was improvidently granted, in action by members of Indian tribes to enjoin general tribal election and require reapportionment of elective districts, where there was no evidence as to population other than votes cast in election of chairman of tribal council. White Eagle v. One Feather, C.A.N.D.1973, 478 F.2d 1311.

The Seneca Nation of Indians is a quasi-sovereign entity possessing all inherent rights of sovereignty except where restrictions have been placed thereon by the United States itself. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

There may be dispute over whether in certain circumstances an Indian tribe is an instrumentality of the federal government, but certainly an Indian tribe is not a state. Id.

The Seneca Nation of Indians and the corporate defendant, which intended to locate a factory in an industrial park to be developed by the Nation on its reservation, would not be preliminarily enjoined from proceeding with their plans, since it was unlikely that those plaintiffs having use rights in Nation lands within the area of the proposed industrial park would succeed in proving a denial of due process of law, since it was also unlikely that plaintiffs would succeed in establishing standing to challenge the disposition of tribal property, and since plaintiffs failed to show that the balance of hardships was decidedly in their favor. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 48.

18. Exhaustion of tribal remedies

Fact that father, an enrolled member of Indian tribe, failed to request a hearing before tribal judge who issued ex parte a temporary restraining order enjoining children's removal from reservation and that father did not appeal tribal restraining order to a special tribal appellate court did not preclude father from petitioning for a writ of habeas corpus in federal district court in order to secure release of his children, on theory that father had not exhausted his tribal remedies, where facts showed that father lacked meaningful remedy in tribal courts. U. S. ex rel. Cobell v. Cobell, C.A.Mont.1974, 503 F.2d 790, certiorari denied 95 S.Ct. 2396.

Amendment to tribal constitution was at least one tribal remedy which female Indian was required to exhaust prior to action under this chapter. Jacobson v. Forest County Potawatomi Community, D.C.Wis.1974, 389 F.Supp. 994.

A condition precedent to federal court jurisdiction is exhaustion of all available remedies within the tribal government; however, plaintiffs bringing suit under this section are not required to first exhaust futile or inadequate tribal remedies. White v. Tribal Council, Red Lake Band of Chippewa Indians, D.C.Minn. 1974, 383 F.Supp. 810.

Requirement that those bringing suit under this section first exhaust tribal remedies is not inflexible; its application depends in part on the balancing process of weighing the need for tribal responsibility against the need to immediately adjudicate claimed deprivations of constitutional rights. Id.

Generally, individual Indian plaintiffs must exhaust their tribal remedies before bringing action in federal court under this section. Means v. Wilson, D.C.S.D. 1974, 383 F.Supp. 378.

In determining whether to require exhaustion of tribal remedies before seeking judicial relief as regards civil disputes arising on an Indian reservation the need to preserve the cultural identity of the tribe by strengthening the tribal courts must be weighed with the need to immediately adjudicate alleged deprivations of individual rights. Clark v. Land and Forestry Committee of Cheyenne River Sioux Tribal Council, D.C.S.D.1974, 380 F.Supp. 201.

It is not for the federal courts to become a general clearing house for civil cases arising on Indian reservations but rather it is the function and affirmative obligation of the tribe, in view of their unique ethnic and cultural pattern, to exercise original jurisdiction in such matters; exhaustion of tribal remedies should be pursued whenever and wherever possible; however, exhaustion may not be necessary when the requirement would work irrevocable and immediate harm to the individual, when the individual's claim would be severely diminished or when a proper tribal forum does not exist. Id.

Under section of tribal ordinance giving consent of Crow Creek Housing Authority to sue and be sued in its corporate name, tribal court had jurisdiction over action by non-Indian against Housing Authority for breach of contract so that, even if federal jurisdiction over breach of contract action could be based on this section, plaintiff would be required to first exhaust his tribal administrative and judicial remedies. Hickey v. Crow Creek Housing Authority, D.C.S.D.1974, 379 F.Supp. 1002.

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20. Apportionment

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1. Exclusiveness of
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Plaintiffs seeking official recognition as the governing business council of Confederated Tribes of the Goshute Reservation were not precluded from maintaining the action on ground that they had not exhausted their tribal remedies, where record disclosed that Confederated Tribes of Goshute Reservation had no Goshute judge and relied instead upon referral use of a Shoshone judge, for penal matters at least, and judicial system for hearing of matters invoived in plaintiffs' action did not exist so that tribal remedies appeared inadequate and were not required to be exhausted. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

19. Parties

This section does not authorize cause of action against Indians named as individuals or as against officers of tribes as individuals. Means v. Wilson, D.C.S.D. 1974, 383 F.Supp. 378.

Protection guaranteed by this chapter is available to non-Indians as well as Indians. Hickey v. Crow Creek Housing Authority, D.C.S.D.1974, 379 F.Supp. 1002.

Defendants acting as business council and election boards of Confederated Tribes of the Goshute Reservation were sued because of acts performed in their official tribal capacities or in their purported official capacities and hence might be reached under this chapter which regulates the actions of tribal governments, and since disputed official acts were claimed to be ultra vires, in violation of the Goshute Constitution, it was not necessary to join the tribe itself. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

Since plaintiffs' claim was that defendant employees of Bureau of Indian Affairs in refusing to recognize plaintiffs as members of tribal business council of Confederated Tribes of the Goshute Reservation acted outside of authority of the United States and full relief was available from the named defendants, the United States was not required to be joined as an indispensable party. Id.

20. Apportionment

In light of quasi-sovereign status of Indian tribes, they are entitled to determine extent to which franchise to vote is to be exercised in tribal elections, absent explicit congressional legislation to the contrary. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

As tribe's constitution provided that apportionment could be based on either "population" or "qualified voters," the approved reapportionment plan, which was based on the "1972 Eligible Voter List" was valid only if it was established that the "1972 Eligible Voter List" substantially included all those qualified to vote or within the "voter population." Brown v. U. S., C.A.S.D.1973, 486 F.2d 658.

Apportionmnet plan governing election to seats on Indian tribal council was to be based on tribal population and not solely those eligible to vote; plan based solely on those eligible to vote did not comport with general principle of population equality with due regard to other relevant factors; however, whether to take into account members of the tribe who did not reside on the reservation was purely an internal decision to be made by the tribe itself. Daly v. U. S., C.A.S.D.1973, 483 F.2d 700.

In fashioning Indian tribal council apportionment plan so as to comport with general principle of population equality the tribal council was not limited to dividing reservation into equally populated districts or electing councilmen at large but could adopt weighted-voting plan under which each councilman would be accorded voting strength which would reflect the share of the population he represented. Id.

Indians, in designing their own apportionment plan and election rules, are entitled to set those requirements they find appropriate so long as they are uniformly applied; whatever rules are adopted must have the same effect in all districts. Id.

District court did not act improperly, upon finding that Indian tribal council was malapportioned, in eliminating blood quantum requiremeut for impending election where blood quantum provision in tribal constitution was designed for two-member district and did not fit plan which trial court adopted, viz., two single-member districts and one four-member district, scheduled election was imminent and plan was to be used only for that election. Id.

21. Double jeopardy

Even if member of Indian tribe was tried, found guilty and sentenced in tribal cause involving offense committed on July 14, the court discovered that prosecutor by mistake had testified to allegations in another case invoiving an offense committed on August 8, and the court then set aside the conviction in former case and proceeded to try tribal member on same charge but with a corrected recitation of allegations pertinent to July 14, the retrial did not constitute double jeopardy. Settler v. Lameer, C.A.Wash. 1974, 507 F.2d 231.

22. Remand

Even though tribal exclusion of non-Indians from forum in which to pursue their claim against Indian arising out of action occurring on reservation might violate equal protection and due process provisions of this section, inasmuch as issue was not raised in complaint nor was the Indian tribe on reservation, an indispensable party to such action, named as a defendant, court could not properly sua sponte remand case with directions to litigate action as a "civil rights" matter arising under this section. Schantz v. White Lightning, C.A.N.D.1974, 502 F.2d 67.

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

Pub.L. 90–284, Title II, § 203, Apr. 11, 1968, 82 Stat. 78.

Index to Notes

1. Exclusiveness of remedy

Writ of habeas corpus is not the exclusive jurisdictional basis for enforcement of rights under this chapter. Solomon v. LaRose, D.C.Neb.1971, 335 F.Supp. 715.

2. Jurisdiction

Existence of habeas corpus provision in this section does not limit federal court jurisdiction to those proceedings. Lonecassion v. Leekity, D.C.N.M.1971, 334 F. Supp. 370.

3. Moot questions

Even though, after federal district court had ordered that custody of chil-

dren be restored to father in accordance with state court rulings, tribal judge vacated his restraining order enjoining children's removal from reservation and ordered mother to release children to father at his request, and subsequently the children were obtained by father, habeas corpus proceeding by father had not become moot either as a matter of judicial administration or of constitutional dimension, where underlying conflict still existed, and there was a public interest in having issue resolved with some hope of finality. U. S. ex rel. Cobell v. Cobell, C.A.Mont.1974, 503 F.2d 790, certiorari denied 95 S.Ct. 2396.

4. Remand

In proceeding for habeas corpus brought by Indians convicted under tribal disorderly conduct statute, Court of Appeals would not rule on question whether statute was facially vague and overbroad where record failed to establish whether statute had been properly restricted in meaning by consistent and authoritative construction by tribal court, and case would be remanded for evidentiary hearing on that subject. Big Eagle v. Andera, C.A.S.D.1975, 508 F.2d 1293.

SUBCHAPTER II.—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

§ 1311. Model code

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this subchapter, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

Pub.L. 90–284, Title III, § 301, Apr. 11, 1968, 82 Stat. 78.

Legislative History. For legislative history and purpose of Pub.L. 90–284, see 1968 U.S.Code Cong. and Adm.News, p. 1837.

§ 1312. Authorization of appropriations

There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this subchapter.

Pub.L. 90–284, Title III, § 302, Apr. 11, 1968, 82 Stat. 78.

SUBCHAPTER III.—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

§ 1321. Assumption by State of criminal jurisdiction—Consent of United States; force and effect of criminal laws

(a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

PUBLIC PAPERS OF THE PRESIDENTS

OF THE UNITED STATES

Richard Nixon

Containing the Public Messages, Speeches, and Statements of the President

1970

UNITED STATES GOVERNMENT PRINTING OFFICE

WASHINGTON : 1971

and poorer countries. It represents people of differing religions and different languages and different backgrounds.

We have differences sometimes in our policies. Sometimes we have one government that differs in its form from another government; and one policy may not be popular in another country.

There is one thing I feel very deeply, and I know everybody in this room shares this feeling: The differences we have in the Americas are differences of the head and not of the heart, because we are truly one family as the Organization of American States would imply.

I had this brought home to me very eloquently by the trip that Mrs. Nixon took to Peru. Whatever differences nations may have, when one member of this family has problems, when children are orphaned, when families are homeless, when people suffer, the heart of America beats as one.

The point that I wish to emphasize is that our Government, the United States Government, is hopeful that its policies will be cooperative with the wishes and desires of the governments of all the people in the hemisphere.

But whatever those government policies may be, we want you to know that the people of the United States have a feeling of very great friendship and a feeling of being very close to all the people of the Americas, because I personally believe that more important than great amounts of money—and all the nations in the hemisphere have made their contributions to the suffering in Peru—more important than that is the fact that all of the people in this hemisphere, regardless of our other differences, found that our hearts were going out to the people of this country.

Sometimes it takes tragedy to bring a family together—and this is one family.

After our Fourth of July, when so many citizens of the United States were saying, "Long live the United States, long live America," I would like to say it in a different way today.

When I refer to America, I refer to all of America—to the United States of America, to North America, to Central America, to South America. And when I say, "Long live America," I say today, *"Viva la familia Americana!"*

NOTE: The President spoke at 5:48 p.m. in the East Room at the White House.

213 Special Message to the Congress on Indian Affairs. *July* 8, 1970

To the Congress of the United States:

The first Americans—the Indians—are the most deprived and most isolated minority group in our nation. On virtually every scale of measurement—employment, income, education, health—the condition of the Indian people ranks at the bottom.

This condition is the heritage of centuries of injustice. From the time of their first contact with European settlers, the American Indians have been oppressed and brutalized, deprived of their ancestral lands and denied the opportunity to control their own destiny. Even the Federal programs which are intended to meet

their needs have frequently proven to be ineffective and demeaning.

But the story of the Indian in America is something more than the record of the white man's frequent aggression, broken agreements, intermittent remorse and prolonged failure. It is a record also of endurance, of survival, of adaptation and creativity in the face of overwhelming obstacles. It is a record of enormous contributions to this country—to its art and culture, to its strength and spirit, to its sense of history and its sense of purpose.

It is long past time that the Indian policies of the Federal government began to recognize and build upon the capacities and insights of the Indian people. Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.

Self-Determination Without Termination

The first and most basic question that must be answered with respect to Indian policy concerns the historic and legal relationship between the Federal government and Indian communities. In the past, this relationship has oscillated between two equally harsh and unacceptable extremes.

On the one hand, it has—at various times during previous Administrations—been the stated policy objective of both the Executive and Legislative branches of the Federal government eventually to terminate the trusteeship relationship between the Federal government and the Indian people. As recently as August of 1953, in House Concurrent Resolution 108, the Congress declared that termination was the long-range goal of its Indian policies. This would mean that Indian tribes would eventually lose any special standing they had under Federal law: the tax exempt status of their lands would be discontinued; Federal responsibility for their economic and social well-being would be repudiated; and the tribes themselves would be effectively dismantled. Tribal property would be divided among individual members who would then be assimilated into the society at large.

This policy of forced termination is wrong, in my judgment, for a number of reasons. First, the premises on which it rests are wrong. Termination implies that the Federal government has taken on a trusteeship responsibility for Indian communities as an act of generosity toward a disadvantaged people and that it can therefore discontinue this responsibility on a unilateral basis whenever it sees fit. But the unique status of Indian tribes does not rest on any premise such as this. The special relationship between Indians and the Federal government is the result instead of solemn obligations which have been entered into by the United States Government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to provide

community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans.

This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the Federal government which arises from these agreements continues to carry immense moral and legal force. To terminate this relationship would be no more appropriate than to terminate the citizenship rights of any other American.

The second reason for rejecting forced termination is that the practical results have been clearly harmful in the few instances in which termination actually has been tried. The removal of Federal trusteeship responsibility has produced considerable disorientation among the affected Indians and has left them unable to relate to a myriad of Federal, State and local assistance efforts. Their economic and social condition has often been worse after termination than it was before.

The third argument I would make against forced termination concerns the effect it has had upon the overwhelming majority of tribes which still enjoy a special relationship with the Federal government. The very threat that this relationship may someday be ended has created a great deal of apprehension among Indian groups and this apprehension, in turn, has had a blighting effect on tribal progress. Any step that might result in greater social, economic or political autonomy is regarded with suspicion by many Indians who fear that it will only bring them closer to the day when the Federal government will disavow its responsibility and cut them adrift.

In short, the fear of one extreme policy, forced termination, has often worked to produce the opposite extreme: excessive dependence on the Federal government. In many cases this dependence is so great that the Indian community is almost entirely run by outsiders who are responsible and responsive to Federal officials in Washington, D.C., rather than to the communities they are supposed to be serving. This is the second of the two harsh approaches which have long plagued our Indian policies. Of the Department of the Interior's programs directly serving Indians, for example, only 1.5 percent are presently under Indian control. Only 2.4 percent of HEW's Indian health programs are run by Indians. The result is a burgeoning Federal bureaucracy, programs which are far less effective than they ought to be, and an erosion of Indian initiative and morale.

I believe that both of these policy extremes are wrong. Federal termination errs in one direction, Federal paternalism errs in the other. Only by clearly rejecting both of these extremes can we achieve a policy which truly serves the best interests of the Indian people. Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered.

This, then, must be the goal of any new national policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community. We must assure the Indian that he can assume control of his own life without being separated involuntarily from the tribal group. And we must make it clear that Indians can become independent of Federal control without being cut off from Federal concern and

Federal support. My specific recommendations to the Congress are designed to carry out this policy.

1. *Rejecting Termination*

Because termination is morally and legally unacceptable, because it produces bad practical results, and because the mere threat of termination tends to discourage greater self-sufficiency among Indian groups, I am asking the Congress to pass a new Concurrent Resolution which would expressly renounce, repudiate and repeal the termination policy as expressed in House Concurrent Resolution 108 of the 83rd Congress. This resolution would explicitly affirm the integrity and right to continued existence of all Indian tribes and Alaska native governments, recognizing that cultural pluralism is a source of national strength. It would assure these groups that the United States Government would continue to carry out its treaty and trusteeship obligations to them as long as the groups themselves believed that such a policy was necessary or desirable. It would guarantee that whenever Indian groups decided to assume control or responsibility for government service programs, they could do so and still receive adequate Federal financial support. In short, such a resolution would reaffirm for the Legislative branch—as I hereby affirm for the Executive branch—that the historic relationship between the Federal government and the Indian communities cannot be abridged without the consent of the Indians.

2. *The Right to Control and Operate Federal Programs*

Even as we reject the goal of forced termination, so must we reject the suffocating pattern of paternalism. But how can we best do this? In the past, we have often assumed that because the government is obliged to provide certain services for Indians, it therefore must administer those same services. And to get rid of Federal administration, by the same token, often meant getting rid of the whole Federal program. But there is no necessary reason for this assumption. Federal support programs for non-Indian communities—hospitals and schools are two ready examples—are ordinarily administered by local authorities. There is no reason why Indian communities should be deprived of the privilege of self-determination merely because they receive monetary support from the Federal government. Nor should they lose Federal money because they reject Federal control.

For years we have talked about encouraging Indians to exercise greater self-determination, but our progress has never been commensurate with our promises. Part of the reason for this situation has been the threat of termination. But another reason is the fact that when a decision is made as to whether a Federal program will be turned over to Indian administration, it is the Federal authorities and not the Indian people who finally make that decision.

This situation should be reversed. In my judgment, it should be up to the Indian tribe to determine whether it is willing and able to assume administrative responsibility for a service program which is presently administered by a Federal agency. To this end, I am proposing legislation which would empower a tribe or a group of tribes or any other Indian community to take over the control or operation of Federally-funded and administered programs in the Department of the Interior and the Department of Health, Ed-

ucation and Welfare whenever the tribal council or comparable community governing group voted to do so.

Under this legislation, it would not be necessary for the Federal agency administering the program to approve the transfer of responsibility. It is my hope and expectation that most such transfers of power would still take place consensually as a result of negotiations between the local community and the Federal government. But in those cases in which an impasse arises between the two parties, the final determination should rest with the Indian community.

Under the proposed legislation, Indian control of Indian programs would always be a wholly voluntary matter. It would be possible for an Indian group to select that program or that specified portion of a program that it wants to run without assuming responsibility for other components. The "right of retrocession" would also be guaranteed; this means that if the local community elected to administer a program and then later decided to give it back to the Federal government, it would always be able to do so.

Appropriate technical assistance to help local organizations successfully operate these programs would be provided by the Federal government. No tribe would risk economic disadvantage from managing its own programs; under the proposed legislation, locally-administered programs would be funded on equal terms with similar services still administered by Federal authorities. The legislation I propose would include appropriate protections against any action which endangered the rights, the health, the safety or the welfare of individuals. It would also contain accountability procedures to guard against gross negligence or mismanagement of Federal funds.

This legislation would apply only to services which go directly from the Federal government to the Indian community; those services which are channeled through State or local governments could still be turned over to Indian control by mutual consent. To run the activities for which they have assumed control, the Indian groups could employ local people or outside experts. If they chose to hire Federal employees who had formerly administered these projects, those employees would still enjoy the privileges of Federal employee benefit programs—under special legislation which will also be submitted to the Congress.

Legislation which guarantees the right of Indians to contract for the control or operation of Federal programs would directly channel more money into Indian communities, since Indians themselves would be administering programs and drawing salaries which now often go to non-Indian administrators. The potential for Indian control is significant, for we are talking about programs which annually spend over $400 million in Federal funds. A policy which encourages Indian administration of these programs will help build greater pride and resourcefulness within the Indian community. At the same time, programs which are managed and operated by Indians are likely to be more effective in meeting Indian needs.

I speak with added confidence about these anticipated results because of the favorable experience of programs which have already been turned over to Indian control. Under the auspices of the Office of Economic Opportunity, Indian communities now run more than 60 commu-

nity action agencies which are located on Federal reservations. OEO is planning to spend some $57 million in Fiscal Year 1971 through Indian-controlled grantees. For over four years, many OEO-funded programs have operated under the control of local Indian organizations and the results have been most heartening.

Two Indian tribes—the Salt River Tribe and the Zuni Tribe—have recently extended this principle of local control to virtually all of the programs which the Bureau of Indian Affairs has traditionally administered for them. Many Federal officials, including the Agency Superintendent, have been replaced by elected tribal officers or tribal employees. The time has now come to build on these experiences and to extend local Indian control—at a rate and to the degree that the Indians themselves establish.

3. *Restoring the Sacred Lands Near Blue Lake*

No government policy toward Indians can be fully effective unless there is a relationship of trust and confidence between the Federal government and the Indian people. Such a relationship cannot be completed overnight; it is inevitably the product of a long series of words and actions. But we can contribute significantly to such a relationship by responding to just grievances which are especially important to the Indian people.

One such grievance concerns the sacred Indian lands at and near Blue Lake in New Mexico. From the fourteenth century, the Taos Pueblo Indians used these areas for religious and tribal purposes. In 1906, however, the United States Government appropriated these lands for the creation of a national forest. According to a recent determination of the Indian Claims Commission, the government "took said lands from petitioner without compensation."

For 64 years, the Taos Pueblo has been trying to regain possession of this sacred lake and watershed area in order to preserve it in its natural condition and limit its non-Indian use. The Taos Indians consider such action essential to the protection and expression of their religious faith.

The restoration of the Blue Lake lands to the Taos Pueblo Indians is an issue of unique and critical importance to Indians throughout the country. I therefore take this opportunity wholeheartedly to endorse legislation which would restore 48,000 acres of sacred land to the Taos Pueblo people, with the statutory promise that they would be able to use these lands for traditional purposes and that except for such uses the lands would remain forever wild.

With the addition of some perfecting amendments, legislation now pending in the Congress would properly achieve this goal. That legislation (H.R. 471) should promptly be amended and enacted. Such action would stand as an important symbol of this government's responsiveness to the just grievances of the American Indians.

4. *Indian Education*

One of the saddest aspects of Indian life in the United States is the low quality of Indian education. Drop-out rates for Indians are twice the national average and the average educational level for all Indians under Federal supervision is less than six school years. Again, at least a part of the problem stems from the fact that the Federal government is trying to

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do for Indians what many Indians could do better for themselves.

The Federal government now has responsibility for some 221,000 Indian children of school age. While over 50,000 of these children attend schools which are operated directly by the Bureau of Indian Affairs, only 750 Indian children are enrolled in schools where the responsibility for education has been contracted by the BIA to Indian school boards. Fortunately, this condition is beginning to change. The Ramah Navajo Community of New Mexico and the Rough Rock and Black Water Schools in Arizona are notable examples of schools which have recently been brought under local Indian control. Several other communities are now negotiating for similar arrangements.

Consistent with our policy that the Indian community should have the right to take over the control and operation of federally funded programs, we believe every Indian community wishing to do so should be able to control its own Indian schools. This control would be exercised by school boards selected by Indians and functioning much like other school boards throughout the nation. To assure that this goal is achieved, I am asking the Vice President, acting in his role as Chairman of the National Council on Indian Opportunity,[1] to establish a Special Education Subcommittee of that Council. The members of that Subcommittee should be Indian educators who are selected by the Council's Indian members. The Subcommittee will provide technical assistance to Indian communities wishing to establish school boards, will conduct a nationwide review of the educational status of all Indian school children in whatever schools they may be attending, and will evaluate and report annually on the status of Indian education, including the extent of local control. This Subcommittee will act as a transitional mechanism; its objective should not be self-perpetuation but the actual transfer of Indian education to Indian communities.

We must also take specific action to benefit Indian children in public schools. Some 141,000 Indian children presently attend general public schools near their homes. Fifty-two thousand of these are absorbed by local school districts without special Federal aid. But 89,000 Indian children attend public schools in such high concentrations that the State or local school districts involved are eligible for special Federal assistance under the Johnson-O'Malley Act.[2] In Fiscal Year 1971, the Johnson-O'Malley program will be funded at a level of some $20 million.

This Johnson-O'Malley money is designed to help Indian students, but since funds go directly to the school districts, the Indians have little if any influence over the way in which the money is spent. I therefore propose that the Congress amend the Johnson-O'Malley Act so as to authorize the Secretary of the Interior to channel funds under this act directly to Indian tribes and communities. Such a provision would give Indians the ability to help shape the schools which their chil-

[1] Executive Order 11551, dated August 11, 1970, provided for additional Indian members on the National Council on Indian Opportunity. A White House release dated August 31, announcing the appointment of eight new members to the Council, is printed in the Weekly Compilation of Presidential Documents (vol. 6, p. 1132).

[2] Public Law No. 638, June 4, 1936 (49 Stat. 1458; 25 U.S.C. 452–455).

dren attend and, in some instances, to set up new school systems of their own. At the same time, I am directing the Secretary of the Interior to make every effort to ensure that Johnson-O'Malley funds which are presently directed to public school districts are actually spent to improve the education of Indian children in these districts.

5. *Economic Development Legislation*

Economic deprivation is among the most serious of Indian problems. Unemployment among Indians is ten times the national average; the unemployment rate runs as high as 80 percent on some of the poorest reservations. Eighty percent of reservation Indians have an income which falls below the poverty line; the average annual income for such families is only $1,500. As I said in September of 1968, it is critically important that the Federal government support and encourage efforts which help Indians develop their own economic infrastructure. To that end, I am proposing the "Indian Financing Act of 1970."

This act would do two things:

1. It would broaden the existing Revolving Loan Fund, which loans money for Indian economic development projects. I am asking that the authorization for this fund be increased from approximately $25 million to $75 million.

2. It would provide additional incentives in the form of loan guarantees, loan insurance and interest subsidies to encourage *private* lenders to loan more money for Indian economic projects. An aggregate amount of $200 million would be authorized for loan guarantee and loan insurance purposes.

I also urge that legislation be enacted which would permit any tribe which chooses to do so to enter into leases of its land for up to 99 years. Indian people now own over 50 million acres of land that are held in trust by the Federal government. In order to compete in attracting investment capital for commercial, industrial and recreational development of these lands, it is essential that the tribes be able to offer long-term leases. Long-term leasing is preferable to selling such property since it enables tribes to preserve the trust ownership of their reservation homelands. But existing law limits the length of time for which many tribes can enter into such leases. Moreover, when long-term leasing is allowed, it has been granted by Congress on a case-by-case basis, a policy which again reflects a deep-rooted pattern of paternalism. The twenty reservations which have already been given authority for long-term leasing have realized important benefits from that privilege and this opportunity should now be extended to all Indian tribes.

Economic planning is another area where our efforts can be significantly improved. The comprehensive economic development plans that have been created by both the Pima-Maricopa and the Zuni Tribes provide outstanding examples of interagency cooperation in fostering Indian economic growth. The Zuni Plan, for example, extends for at least five years and involves a total of $55 million from the Departments of Interior, Housing and Urban Development, and Health, Education and Welfare and from the Office of Economic Opportunity and the Economic Development Administration. I am directing the Secretary of the Interior

to play an active role in coordinating additional projects of this kind.

6. *More Money for Indian Health*

Despite significant improvements in the past decade and a half, the health of Indian people still lags 20 to 25 years behind that of the general population. The average age at death among Indians is 44 years, about one-third less than the national average. Infant mortality is nearly 50% higher for Indians and Alaska natives than for the population at large; the tuberculosis rate is eight times as high and the suicide rate is twice that of the general population. Many infectious diseases such as trachoma and dysentery that have all but disappeared among other Americans continue to afflict the Indian people.

This Administration is determined that the health status of the first Americans will be improved. In order to initiate expanded efforts in this area, I will request the allocation of an additional $10 million for Indian health programs for the current fiscal year. This strengthened Federal effort will enable us to address ourselves more effectively to those health problems which are particularly important to the Indian community. We understand, for example, that areas of greatest concern to Indians include the prevention and control of alcoholism, the promotion of mental health and the control of middle-ear disease. We hope that the ravages of middle-ear disease—a particularly acute disease among Indians—can be brought under control within five years.

These and other Indian health programs will be most effective if more Indians are involved in running them. Yet—almost unbelievably—we are presently able to identify in this country only 30 physicians and fewer than 400 nurses of Indian descent. To meet this situation, we will expand our efforts to train Indians for health careers.

7. *Helping Urban Indians*

Our new census will probably show that a larger proportion of America's Indians are living off the reservation than ever before in our history. Some authorities even estimate that more Indians are living in cities and towns than are remaining on the reservation. Of those American Indians who are now dwelling in urban areas, approximately three-fourths are living in poverty.

The Bureau of Indian Affairs is organized to serve the 462,000 reservation Indians. The BIA's responsibility does not extend to Indians who have left the reservation, but this point is not always clearly understood. As a result of this misconception, Indians living in urban areas have often lost out on the opportunity to participate in other programs designed for disadvantaged groups. As a first step toward helping the urban Indians, I am instructing appropriate officials to do all they can to ensure that this misunderstanding is corrected.

But misunderstandings are not the most important problem confronting urban Indians. The biggest barrier faced by those Federal, State and local programs which are trying to serve urban Indians is the difficulty of locating and identifying them. Lost in the anonymity of the city, often cut off from family and friends, many urban Indians are slow to establish new community ties. Many drift from neighborhood to neighborhood; many shuttle back and forth between reserva-

tions and urban areas. Language and cultural differences compound these problems. As a result, Federal, State and local programs which are designed to help such persons often miss this most deprived and least understood segment of the urban poverty population.

This Administration is already taking steps which will help remedy this situation. In a joint effort, the Office of Economic Opportunity and the Department of Health, Education and Welfare will expand support to a total of seven urban Indian centers in major cities which will act as links between existing Federal, State and local service programs and the urban Indians. The Departments of Labor, Housing and Urban Development and Commerce have pledged to cooperate with such experimental urban centers and the Bureau of Indian Affairs has expressed its willingness to contract with these centers for the performance of relocation services which assist reservation Indians in their transition to urban employment.

These efforts represent an important beginning in recognizing and alleviating the severe problems faced by urban Indians. We hope to learn a great deal from these projects and to expand our efforts as rapidly as possible. I am directing the Office of Economic Opportunity to lead these efforts.

8. *Indian Trust Counsel Authority*

The United States Government acts as a legal trustee for the land and water rights of American Indians. These rights are often of critical economic importance to the Indian people; frequently they are also the subject of extensive legal dispute. In many of these legal confrontations, the Federal government is faced with an inherent conflict of interest. The Secretary of the Interior and the Attorney General must at the same time advance *both* the *national* interest in the use of land and water rights *and* the *private* interests of Indians in land which the government holds as trustee.

Every trustee has a legal obligation to advance the interests of the beneficiaries of the trust without reservation and with the highest degree of diligence and skill. Under present conditions, it is often difficult for the Department of the Interior and the Department of Justice to fulfill this obligation. No self-respecting law firm would ever allow itself to represent two opposing clients in one dispute; yet the Federal government has frequently found itself in precisely that position. There is considerable evidence that the Indians are the losers when such situations arise. More than that, the credibility of the Federal government is damaged whenever it appears that such a conflict of interest exists.

In order to correct this situation, I am calling on the Congress to establish an Indian Trust Counsel Authority to assure independent legal representation for the Indians' natural resource rights. This Authority would be governed by a three-man board of directors, appointed by the President with the advice and consent of the Senate. At least two of the board members would be Indian. The chief legal officer of the Authority would be designated as the Indian Trust Counsel.

The Indian Trust Counsel Authority would be independent of the Departments of the Interior and Justice and would be expressly empowered to bring suit in the name of the United States in its trustee capacity. The United States would waive

its sovereign immunity from suit in connection with litigation involving the Authority.

9. *Assistant Secretary for Indian and Territorial Affairs*

To help guide the implementation of a new national policy concerning American Indians, I am recommending to the Congress the establishment of a new position in the Department of the Interior—Assistant Secretary for Indian and Territorial Affairs. At present, the Commissioner of Indian Affairs reports to the Secretary of the Interior through the Assistant Secretary for Public Land Management—an officer who has many responsibilities in the natural resources area which compete with his concern for Indians. A new Assistant Secretary for Indian and Territorial Affairs would have only one concern—the Indian and territorial peoples, their land, and their progress and well-being. Secretary Hickel and I both believe this new position represents an elevation of Indian affairs to their proper role within the Department of the Interior and we urge Congress to act favorably on this proposal.

Continuing Programs

Many of the new programs which are outlined in this message have grown out of this Administration's experience with other Indian projects that have been initiated or expanded during the last 17 months.

The Office of Economic Opportunity has been particularly active in the development of new and experimental efforts. OEO's Fiscal Year 1971 budget request for Indian-related activities is up 18 percent from 1969 spending. In the last year alone—to mention just two examples—OEO doubled its funds for Indian economic development and tripled its expenditures for alcoholism and recovery programs. In areas such as housing and home improvement, health care, emergency food, legal services and education, OEO programs have been significantly expanded. As I said in my recent speech on the economy, I hope that the Congress will support this valuable work by appropriating the full amount requested for the Economic Opportunity Act.

The Bureau of Indian Affairs has already begun to implement our policy of contracting with local Indians for the operation of government programs. As I have noted, the Salt River Tribe and the Zuni Tribe have taken over the bulk of Federal services; other projects ranging from job training centers to high school counseling programs have been contracted out to Indian groups on an individual basis in many areas of the country.

Economic development has also been stepped up. Of 195 commercial and industrial enterprises which have been established in Indian areas with BIA assistance, 71 have come into operation within the last two years. These enterprises provide jobs for more than 6,000 Indians and are expected to employ substantially more when full capacity is reached. A number of these businesses are now owned by Indians and many others are managed by them. To further increase individual Indian ownership, the BIA has this month initiated the Indian Business Development Fund which provides equity capital to Indians who go into business in reservation areas.

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proximately $80 million in projects on Indian reservations, including nearly $60 million in public works projects. The impact of such activities can be tremendous; on the Gila River Reservation in Arizona, for example, economic development projects over the last three years have helped to lower the unemployment rate from 56 to 18 percent, increase the median family income by 150 percent and cut the welfare rate by 50 percent.

There has been additional progress on many other fronts since January of 1969. New "Indian Desks" have been created in each of the human resource departments of the Federal government to help coordinate and accelerate Indian programs. We have supported an increase in funding of $4 million for the Navajo Irrigation Project. Housing efforts have picked up substantially; a new Indian Police Academy has been set up; Indian education efforts have been expanded—including an increase of $848,000 in scholarships for Indian college students and the establishment of the Navajo Community College, the first college in America planned, developed and operated by and for Indians. Altogether, obligational authority for Indian programs run by the Federal Government has increased from a little over $598 million in Fiscal Year 1970 to almost $626 million in Fiscal Year 1971.

Finally, I would mention the impact on the Indian population of the series of welfare reform proposals I have sent to the Congress. Because of the high rate of unemployment and underemployment among Indians, there is probably no other group in the country that would be helped as directly and as substantially by programs such as the new Family Assistance Plan and the proposed Family Health Insurance Plan. It is estimated, for example, that more than half of all Indian families would be eligible for Family Assistance benefits and the enactment of this legislation is therefore of critical importance to the American Indian.

This Administration has broken a good deal of new ground with respect to Indian problems in the last 17 months. We have learned many things and as a result we have been able to formulate a new approach to Indian affairs. Throughout this entire process, we have regularly consulted the opinions of the Indian people and their views have played a major role in the formulation of Federal policy.

As we move ahead in this important work, it is essential that the Indian people continue to lead the way by participating in policy development to the greatest possible degree. In order to facilitate such participation, I am asking the Indian members of the National Council on Indian Opportunity to sponsor field hearings throughout the nation in order to establish a continuing dialogue between the Executive branch of government and the Indian population of our country. I have asked the Vice President to see that the first round of field hearings are completed before October.

The recommendations of this Administration represent an historic step forward in Indian policy. We are proposing to break sharply with past approaches to Indian problems. In place of a long series of piecemeal reforms, we suggest a new and coherent strategy. In place of policies which simply call for more spending, we suggest policies which call for wiser spending. In place of policies which oscillate between the deadly extremes of forced termination and constant paternalism, we

suggest a policy in which the Federal government and the Indian community play complementary roles.

But most importantly, we have turned from the question of *whether* the Federal government has a responsibility to Indians to the question of *how* that responsibility can best be fulfilled. We have concluded that the Indians will get better programs and that public monies will be more effectively expended if the people who are most affected by these programs are responsible for operating them.

The Indians of America need Federal assistance—this much has long been clear. What has not always been clear, however, is that the Federal government needs Indian energies and Indian leadership if its assistance is to be effective in improving the conditions of Indian life. It is a new and balanced relationship between the United States government and the first Americans that is at the heart of our approach to Indian problems. And that is why we now approach these problems with new confidence that they will successfully be overcome.

RICHARD NIXON

The White House
July 8, 1970

NOTE: On the same day, the White House released a summary of the message and the transcript of a news briefing on it by Vice President Spiro T. Agnew and Leonard Garment, Special Consultant to the President.

214 Remarks on Presenting the Defense Distinguished Service Medal to General Earle G. Wheeler. *July 9, 1970*

Mr. Secretary, General Wheeler, Mrs. Wheeler, and distinguished guests:

This is a ceremony that will only come once in terms of this White House because General Wheeler has served longer as Chairman of the Joint Chiefs of Staff than any man in our history—6 years—probably longer than any man will serve in the future.

He also will receive for the first time a new decoration, a new medal, the Defense Distinguished Service Medal, which will be presented to him, the first of its kind.

After that, we will try to maintain the level and the distinction of the medal in terms of those to whom it is presented.

In talking about General Wheeler—and I know that he has been through many ceremonies over the past few days and weeks, looking toward his retirement as Chairman of the Joint Chiefs—there is not much that I can add, except to say this:

He is known as a soldier and he is proud of being known as a soldier. He is known among his colleagues at the Joint Chiefs as a great planner and strategist, and he is naturally proud of being so designated.

I know him as a statesman. In the meetings of the National Security Council he is a man who can wear his military hat, as he must always wear it in representing the views of the services, but who can also represent the views of the whole country in the best spirit of statesmanship; one who thinks deeply and very profoundly about national and international issues.

He has made an enormous contribution

said, "Let's go to Kalispell," I said, "Fine." But then people from Billings and Bozeman and Butte said, "Why didn't you come to our towns?"

Here, of course, it is expected that Portland, being the news center that it is, would be the logical place to go, but I could imagine that Eugene and a few other places might say, "Why not there?"

Actually, in this case, I welcome that we are going to Hanford, because it is the center for a significant announcement that we are going to make in the nuclear area, and it is an area where there is great interest statewide in what future programs will be.

The Chairman of the Atomic Energy Commission, Dr. Schlesinger, is coming there for the purpose of participating in the briefing. And I believe that what is good for Hanford is good for the whole State of Washington.

I would add, finally, this is not the last trip I will make to the Pacific Northwest, I trust, while I am in office, and certainly I would hope to visit Seattle on another occasion.

INDIAN AFFAIRS

[7.] Q. A great number of American Indian leaders, while still expressing satisfaction with your announced Indian policy last year, are extremely upset with the BIA [Bureau of Indian Affairs], and I know Chairman MacDonald of the Navajo tribe was in Washington last week to present the idea that the BIA should be moved from the Interior Department to direct jurisdiction of the White House. Would you comment on that?

THE PRESIDENT. Well, frankly, I have not been satisfied with the BIA, and I don't think the Secretary of the Interior is. As a matter of fact, we have been discussing this matter with various Indian leaders for some time. As the Secretary of the Interior—I don't know whether he responded to this question himself—may have told you—maybe he felt that he did not have the right to—I have told him that we should look at the whole bureaucracy with regard to our handling of Indian affairs and shake it up, and shake it up good.

That is what he is doing at this point.

So to answer your question: We are not satisfied. We are working on the problem, and we hope to do better. Frankly, when you look at how we have handled the Indian problem over the history of this country, it is a disgrace. And much of it is due to the fact that the bureaucracy feeds on itself, defends itself, fights for the status quo, and does very little, in my opinion, for progress in the field.

That doesn't mean there are not some good people in the Indian affairs department. It just means that bureaucracy itself has not been effective in this area.

MONTANA CONCERN OVER DOCK STRIKE DISCUSSIONS

[8.] Q. Mr. President, you noted the concern in Montana over the dock strike. Does that concern in Montana from the farmers have any bearing on what you told the strike principals here this afternoon?

THE PRESIDENT. Yes, it certainly does. It was only coincidental, the fact that, out in Montana, that farmers there, and, as a matter of fact, Senator Mansfield, who is a very powerful leader, the Democratic leader of the Senate—that they hit that issue very hard with me was a very per-

UNITED STATES CODE ANNOTATED

Title 25
INDIANS

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Current Laws and Legislative History

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United States Code
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whose appeals are denied shall revert to the tribe from whose share the per capita would have been paid, to be expended for any purpose designated by such tribe and approved by the Secretary.
Pub.L. 92–557, § 6, Oct. 25, 1972, 86 Stat. 1172.

§ 1300e—6. Income tax exemption; protection of minors and persons under legal disability

None of the funds distributed per capita under the provisions of sections 1300e to 1300e—7 of this title shall be subject to Federal or State income taxes. Sums payable to persons under eighteen years of age or under legal disability shall be paid in accordance with such procedures, including the establishment of trusts, as the Secretary determines will protect the best interests of such persons.
Pub.L. 92–557, § 7, Oct. 25, 1972, 86 Stat. 1172.

§ 1300e—7. Rules and regulations

The Secretary is authorized to prescribe rules and regulations to effect the provisions of sections 1300e to 1300e—7 of this title, including the establishment of deadlines.
Pub.L. 92–557, § 8, Oct. 25, 1972, 86 Stat. 1172.

CHAPTER 15.—CONSTITUTIONAL RIGHTS OF INDIANS [NEW]

SUBCHAPTER I.—GENERALLY

§ 1301. Definitions

For purposes of this subchapter, the term—

(1) "Indian tribe" means any tribe, band, or other group of Indians subject to the jurisdiction of the United States and recognized as possessing powers of self-government;

(2) "powers of self-government" means and includes all governmental powers possessed by an Indian tribe, executive, legislative, and judicial, and all offices, bodies, and tribunals by and through which they are executed, including courts of Indian offenses; and

(3) "Indian court"
offense.
Pub.L. 90–284, Title

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(3) "Indian court" means any Indian tribal court or court of Indian offense.

Pub.L. 90–284, Title II, § 201, Apr. 11, 1968, 82 Stat. 77.

Legislative History. For legislative history and purpose of Pub.L. 90–284, see 1968 U.S.Code Cong. and Adm.News, p. 1837.

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1. Construction

This chapter is concerned primarily with tribal administration of justice and the imposition of tribal penalties and forfeitures, and not with the specifics of tribal structure or officeholding. Slattery v. Arapahoe Tribal Council, C.A.Wyo.1971, 453 F.2d 278.

This chapter is not an affirmative declaration of rights but is negative in form and forbids certain tribal action and is directed at government rather than at individuals. Spotted Eagle v. Blackfeet Tribe of Blackfeet Indian Reservation, City of Browning, D.C.Mont.1969, 301 F. Supp. 85.

2. Pendent jurisdiction

Where court had habeas corpus jurisdiction and equitable jurisdiction over tribe and officers in their governmental capacity, court had pendent jurisdiction over judges and officers of tribe as individuals insofar as claims for damages under state law were concerned and on considerations of judicial economy, convenience and fairness to litigants, court would exercise the pendent jurisdiction. Spotted Eagle v. Blackfeet Tribe of Blackfeet Indian Reservation, City of Browning, D.C.Mont.1969, 301 F.Supp. 85.

3. Power of Congress

Congress has explicit and plenary power to enact legislation with respect to Indian tribes. Wounded Head v. Tribal Council of Ogalala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

This chapter applies to the Indian nations and the acts of their executive and judicial officials and their legislatures, but its limitations apply only to them, and not to the power of Congress to enact legislation with respect to Indian nations and tribes, and does not have the effect of repealing legislation by Congress with respect to Indian tribes. Groundhog v. Keeler, C.A.Okl.1971, 442 F. 2d 674.

Congress has exclusive and plenary power to enact legislation with respect to Indian tribes. Id.

The plenary power of Congress applied circumspectly in this chapter with a view toward enhancing Indian civil rights without undermining cultural identity and the tradition of judicial restraint in that area, grounded in part in a similar concern for tribal integrity, would compel the court to view the merits of complaint that plaintiffs were denied official recognition as governing business council of Confederated Tribes of the Goshute Reservation in light of tribal practices and circumstances; essential fairness in the tribal context, not procedural punctiliousness, is the standard against which disputed actions must be measured. McCurdy v. Steele, D.C.Utah 1973, 353 F. Supp. 629.

Federal government exercises plenary power over affairs of the Indian and that power of the federal government, when exercised, preempts state control over the field. U. S. v. Brown, D.C.Neb. 1971, 334 F.Supp. 536.

4. Law governing

The Constitution applies to Indian nations only to the extent it expressly binds them or is made binding on them by treaty or Act of Congress. Groundhog v. Keeler, C.A.Okl.1971, 442 F.2d 674.

An Indian tribe or nation is not a federal instrumentality and is not within the reach of U.S.C.A.Const. Amend. 5 and due process restraint places restrictions on the Indian tribes only when it is so provided by congressional enactment. Id.

Due process clause of U.S.C.A.Const. Amend. 5 and equal protection and due process clauses of U.S.C.A.Const. Amend. 14 and provisions of U.S.C.A.Const. Amend. 15 have not been made applicable to the Cherokee Tribe by passage of this chapter. Id.

United States Constitution does not apply to any Indian tribe. Jacobson v. Forest County Potawatomi Community, D.C.Wis.1974, 389 F.Supp. 994.

Law governing actions against individuals for damages under U.S.C.A.Const. Amends. 4 and 5 should be applied to this chapter. Loncassion v. Leekity, D. C.N.M.1971, 334 F.Supp. 370.

§ 1302. Constitutional rights

No Indian tribe in exercising powers of self-government shall—

(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any private property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of six months or a fine of $500, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

Pub.L. 90–284, Title II, § 202, Apr. 11, 1968, 82 Stat. 77.

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¼. Construction

Although Congress used language in this section from Bill of Rights, the meaning and application of this section to Indian tribes must necessarily be somewhat different than the established Anglo-American legal meaning and application of the Bill of Rights on federal and state governments. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

U.S.C.A.Const. Amend. 1 imposes no greater restraint on Indian tribes through this section than it imposes on the federal government. Id.

The Congress did not limit in this chapter the concepts of equal protection and due process to criminal proceedings only since this chapter in addition to certain criminal procedures vouchsafes freedom of religion, speech, press and assembly, and prohibits the taking of private property for a public use without just compensation or the taking of property without due process of law, which guarantees, to be effective, must often operate in a civil context, and some, almost exclusively in such a context. McCurdy v. Steele, D.C.Utah 1973, 353 F. Supp. 629.

The usual meaning of equal protection and due process may be modified in light of federal concern for tribal cultural and governmental autonomy; thus usual standards of equal protection and due process may be modified where their imposition otherwise would threaten basic tribal interests; where plaintiffs seek compliance with existing tribal procedures, application of flexible equal protection and due process safeguards of this chapter appears appropriate. Id.

This chapter is properly considered in context of federal concern for Indian self-government and cultural autonomy; its guarantees of individual rights should, where possible, be harmonized with tribal cultural and governmental autonomy. Id.

⅝. Construction with other laws

U.S.C.A.Const. Amend. 26 does not apply to Indian tribal elections. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

Voting Rights Act of 1970, section 1973bb–1, 1973bb–2 of Title 42, is not applicable to this chapter, in that Indian tribes are neither states nor political subdivisions. Id.

Provisions of U.S.C.A.Const. Amends. 5, 6, 7, certain procedural provisions as well as some aspects of U.S.C.A.Const. Amend. 14 equal protection, were not meant to be included among the enumerated rights in this chapter. McCurdy v. Steele, C.A.Utah 1974, 506 F.2d 653.

½. Purpose

Purpose of this subchapter is to impose upon Indian tribal governments restrictions applicable to federal and state governments as well as to protect individual rights of Indians, while fostering tribal self-government and cultural identity. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

Object of this chapter was to protect individual members from arbitrary tribal action, but it was not intended that historic sovereignty of a tribe be abolished. Crowe v. Eastern Band of Cherokee Indians, Inc., C.A.N.C.1974, 506 F.2d 1231.

This chapter is directed primarily at the administration of justice by tribal authority, rather than at tribal governmental structure, officeholding, or elections. McCurdy v. Steele, C.A.Utah 1974, 506 F.2d 653.

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1. Persons eligible

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Curdy v. Steele, D.C.Utah 1973, 353 F. Supp. 629.

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This chapter is directed primarily at the administration of justice by tribal authority, rather than at tribal governmental structure, officeholding, or elections. McCurdy v. Steele, C.A.Utah 1974, 506 F.2d 653.

The purpose of this chapter was to create substantive body of rights, patterned in part on Bill of Rights, to extricate individual Indian from decisions holding that a controversy between Indian and his tribal government was an internal controversy and by implication has waived whatever immunity Indian tribes had in such areas. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash.1973, 484 F.2d 200.

Congress, in enacting this section requiring Indian tribes to provide constitutional rights to Indians on reservation, wished to protect and preserve individual rights of Indian peoples, with realization that goal was best achieved by maintaining unique Indian culture and necessarily strengthening tribal governments, and Congress did not intend to detract from continued vitality of tribal courts. O'Neal v. Cheyenne River Sioux Tribe, C.A.S.D.1973, 482 F.2d 1140.

Congress in enacting this section intended to establish important individual rights for persons under jurisdiction of tribal governments, and also intended that these rights be harmonized with legitimate tribal interests. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

Purpose of this chapter is to enhance civil liberties of individual Indians without unduly undermining Indian self-government and cultural autonomy. Means v. Wilson, D.C.S.D.1974, 383 F.Supp. 378.

The congressional exclusion from this chapter of guarantees under U.S.C.A. Const. Amend. 5 was mandated by congressional desire to preserve the ethnic identity of Indian tribes from charges of racial discrimination and to preserve tribal governmental structure from attacks designed to install an election process where none existed; there is no indication of congressional purpose to allow tribal governments to ignore their own election rules by exempting them from the equal protection and due process guarantees of this chapter. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

This chapter creates sui generis a body of substantive rights, patterned in part on the federal Bill of Rights, to extricate the individual Indian from the legal no man's land resulting from decisions holding that controversy between an Indian and his tribal government was an internal controversy not subject to jurisdiction of the federal courts. Solomon v. LaRose, D.C.Neb.1971, 335 F.Supp. 715.

¾. Generally

Scope of individual rights contained in this section is to be determined by balancing them against the legitimate interests of the tribe in maintaining the traditional values of their unique governmental and cultural identity. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

By not including certain clauses of Bill of Rights and by modifying the clauses that were finally incorporated into this section Congress recognized as legitimate the tribal interest in maintaining traditional practices that conflict with constitutional concepts of personal freedom developed in a different social context. Id.

Indian Bill of Rights has not, as between a person and an Indian tribe, incorporated all individual rights guaranteed by the Constitution of the United States. Lohnes v. Cloud, D.C.N.D.1973, 366 F.Supp. 619.

While the Indian Bill of Rights has indeed encroached upon, and redefined, tribal sovereignty, this section does not substitute a federal forum for the tribal court. Id.

1. Persons eligible

This section applies also to non-Indians. Dry Creek Lodge, Inc. v. U. S., C.A.Wyo.1975, 515 F.2d 926.

Tribal council and its chairman were proper parties to action by members of Standing Rock Sioux Indian tribes to enjoin general tribal elections and to require reapportionment of elective districts, in view of provisions of constitution of tribe. White Eagle v. One Feather, C.A.N.D.1973, 478 F.2d 1311.

Procedure whereby four absentee ballots were invalidated by tribal counsel, whether classified as a "recount" or merely a "verification," was not violative of tribal election ordinance which did not provide specifically for such a procedure, where procedure was implicitly authorized through power of tribal election board to supervise general conduct of the election, settle all questions as to eligibility of voters, and resolve all disputes arising from tabulation of ballots cast in district polling places. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D.1975, 387 F.Supp. 1194.

Individual who was under a suspended sentence by reason of a plea of guilty to a felony in state court at time he ran for tribal office was not convicted under law of South Dakota absent an entry of a judgment of guilt and, therefore, was not a convicted felon ineligible to run at time of tribal election, and other candidates suffered no deprivation of their rights to due process under this section by reason of failure of tribal council to make a determination of individual's eligibility prior to election. Id.

Plaintiffs did not have standing to challenge the expenditure of tribal funds contemplated by the Seneca Council pursuant to contract with corporation relating to the location of a factory in an industrial park to be developed by the Seneca Nation on its reservation, since plaintiffs could allege no connection between the official action challenged and some legally protected interest of plaintiffs, and since it is established that a tribe has full authority to use and dispose of tribal property and that no individual Indian has an enforceable right in such property. Seneca Constitutional Rights Organization v. George, D.C.N.Y. 1972, 348 F.Supp. 51.

Plaintiff Indians did not have status as taxpayers to challenge the disposition of tribal funds to be used to implement certain contract, where the taxes paid by plaintiffs to the Seneca Nation were not being used to implement the contract but, rather, the funds for such were coming from the Seneca Rehabilitation Act. Id.

Failure to seek redress in tribal court did not preclude nonprofit legal service corporation organized to provide legal services for indigent Indians, its board of directors and executive director from bringing action under section 1301 et seq. of this title against tribal officers who barred executive director from reservation. Dodge v. Nakai, D.C.Ariz.1968, 298 F.Supp. 17.

Executive director of nonprofit legal services corporation, which was organized to provide legal assistance for indigent Indians, who was barred from Indian reservation was not precluded by his nonmembership in tribe from invoking provisions of this section barring Indian tribe from denying equal protection to any person within its jurisdiction. Id.

2. Jurisdiction

This section, which recognizes the right to be protected against deprivation of due process and equal protection of the laws, furnishes a jurisdictional basis which justified federal court's entertaining of case against Indian tribes, the joint business council and its agents who barricaded a dirt road which was the only access to plaintiffs' lodge. Dry Creek Lodge, Inc. v. U. S., C.A.Wyo.1975, 515 F.2d 926.

Allegations to the effect that plaintiffs had a property right in access road to their lodge and that part of the road which was blocked was within tribal jurisdiction, and that the tribe summoned federal agents to maintain and supervise barricade of that road and that that constituted a violation of this chapter were sufficient to give the court jurisdiction to hear the merits so that court erred in disposing of the matter in a summary hearing. Id.

This section does not give rise to jurisdiction under section 1343 of Title 28 over individual tribal members, and hence trial court properly held that it lacked jurisdiction to afford damages or declaratory relief against individual members of tribes and Indian council or individual federal agents who blockaded a dirt road which crossed Indian properties and which was the only access to plaintiffs' lodge. Id.

Federal courts have jurisdiction to protect those intemized, substantive rights guaranteed by this section enacted in 1968. Jacobson v. Forest County Potawatomi Community, D.C.Wis.1974, 389 F. Supp. 994.

Doctrine of internal controversies operates to deprive federal courts of subject matter jurisdiction with respect to tribal matters, except in those areas specifically provided for in this chapter. Id.

District court had jurisdiction of class action brought against tribal council and others by six enrolled tribe members who complained that the council was malapportioned and that they were underrepresented on the council. Brown v. U. S., C.A.S.D.1973, 486 F.2d 658.

The district court could have assumed jurisdiction of suit by Indian who had rented out tract on reservation and who claimed that tribal governing body had not given him adequate notice or hearing in connection with termination of his interest in tract of land which had been assigned him. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash. 1973, 484 F.2d 200.

Federal district court was not without subject matter jurisdiction of class suit by three enrolled members of Crow Creek Sioux tribe complaining that tribal council was malapportioned and that such malapportionment denied equal protection of the laws as guaranteed by this chapter, because plaintiffs had failed to show that they had exhausted their tribal remedies, where there were no tribal remedies for plaintiffs to exhaust. Daly v. U. S., C.A.S.D.1973, 483 F.2d 700.

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That the Crow Creek Sioux tribe had not consented to the Indian Reorganization Act, section 461 et seq. of this title, did not operate to deprive federal district court of jurisdiction of class suit by three enrolled members of tribe complaining that tribal council was malapportioned and that such malapportionment denied them equal protection of laws as guaranteed by this section; since the tribe possesses power of self-government, it is subject to provisions of this section and its consent to Reorganization Act is unnecessary. Id.

Prior to the passage in 1968 of this chapter, United States District Court lacked jurisdiction to hear intratribal controversies. Luxon v. Rosebud Sioux Tribe of S. D., C.A.S.D.1972, 455 F.2d 698.

United States District Court had jurisdiction of action by enrolled member of the Rosebud Sioux Tribe for declaration that provision of the tribe constitution which disqualifies an employee of the Public Health Service from seeking and holding membership on tribal council to be unconstitutional. Id.

Whether federal district court had jurisdiction over subject matter of complaints pertaining to certain enrollment practices of Indian Tribes would be determined from the facts alleged in the complaints, without regard to any conclusory allegations of jurisdiction. Slattery v. Arapahoe Tribal Council, C.A. Wyo.1971, 453 F.2d 278.

Where pleadings showed clearly that several applications for enrollment of children in Indian Tribes were rejected by tribal councils acting in accord with a tribal enrollment ordinance which was not itself under attack, Indian Bill of Rights did not confer jurisdiction on federal district court. Id.

This section did not give federal district court jurisdiction of action wherein descendants of enrolled citizens of Cherokee Nation sought judgment declaring illegality of appointment of a particular person to office of Principal Chief of Tribe, since actions under this section are expressly limited to actions in nature of mandamus and an action for a declaratory judgment is not in nature of an action for mandamus. Groundhog v. Keeler, C.A.Okl.1971, 442 F.2d 674.

Affidavit which was filed by sister of person appointed by Secretary of Interior to be Principal Chief of Cherokee Tribe and which averred that she was one of heirs at law or legatees of a citizen of Cherokee Tribe and that, while her brother was born too late to be enrolled by Dawes Commission, his degree of Indian blood was 1/16 could not be regarded as a refutation of allegations in complaint for declarotory judgment that brother was not a citizen by blood of Tribe so as to deprive federal court of its jurisdiction, as question of jurisdiction was to be determined from allegations of complaint that were not conclusory in nature. Id.

Even though petitioners were free on bail following conviction in Indian Tribal Court, federal district court had jurisdiction to hear their petitions for writs of habeas corpus under Indian Civil Rights Act providing that writ shall be available to any person to test legality of his detention by order of Indian Tribe. Settler v. Lameer, C.A.Wash.1969, 419 F.2d 1311, certiorari denied 90 S.Ct. 1690, 398 U.S. 903, 26 L.Ed.2d 61.

Action wherein plaintiffs sought to enjoin defendants and their agents from implementing results of a tribal election on an Indian reservation by alleging a deprivation of their rights to liberty or property without due process of law was a "proper case" in which to exercise federal jurisdiction, where deprivation of a right guaranteed by Indian Bill of Rights was sufficiently alleged and, though tribal remedies were not exhausted, an attempt to secure such remedies would have been futile. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D. C.S.D.1975, 387 F.Supp. 1194.

Intervention in an intra-tribal controversy is an action that a court should take only with some hesitation absent a congressional mandate. Id.

A United States district court has jurisdiction to determine, in a proper case, whether an Indian tribe has denied to one of its members any of the rights given to the members by this section. White v. Tribal Council, Red Lake Band of Chippewa Indians, F.Supp. 810.

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If true, allegations of fraudulent handling of Indian tribal council election, improperly denying elected representatives their seats on the council, etc., were in derogation of equal protection and due process rights of reservation Indians and would afford federal court jurisdiction under this section; however, a condition precedent to federal court jurisdiction was exhaustion of available remedies, including resort to tribal court of Indian offenses; such exhaustion requirement was not to be excused in absence of showing that resort to the tribal court, which allegedly was dominated by chairman of tribal council, would be futile. Id.

Action involving an internal controversy among Indians over tribal government is not a "proper case" under which federal court would have jurisdiction under this section. Means v. Wilson, D.C.S.D. 1974, 383 F.Supp. 378.

In view of failure to exhaust available tribal remedies, action wherein Indians and Indian reservation residents sought damages and injunctive and declaratory relief on basis of allegations that tribal election irregularities deprived plaintiffs of right to fundamentally fair election and that fraudulent and criminal acts allegedly committed during election period violated plaintiffs' right to vote was not a "proper case" under which federal government would have jurisdiction over tribe and its officers under this section. Id.

Jurisdiction of federal court under this section is limited to enforcing provisions contained therein and does not extend to insuring compliance with provisions of tribal law, unless failure to comply constitutes a violation of the guarantee contained therein. Id.

Membership provisions of Oglala Sioux Tribal Constitution would not, in absence of any allegation that such requirements were not uniformly applied, be in conflict with this section's guarantee of equal protection of laws; such requirements were one of those areas in which equal protection requirements of U.S.C.A.Const. Amend. 14 should not be embraced in the Indian Bill of Rights, so that court had no jurisdiction over action seeking, inter alia, to enjoin a portion of the tribal Constitution as applied to plaintiffs. Yellow Bird v. Oglala Sioux Tribe of South Dakota, D.C.S.D.1974, 380 F.Supp. 438.

Federal jurisdiction based on this chapter did not lie with respect to action against Crow Creek Housing Authority for breach of contract for drilling of artesian wells for the Authority in absence of any allegation of constitutional deprivation. Hickey v. Crow Creek Housing Authority, D.C.S.D.1974, 379 F. Supp. 1002.

Jurisdiction of suit brought by one Indian tribe member against another, both of whom were residents of the same reservation, for damages resulting from an automobile accident that occurred within the boundaries of the reservation was vested in the tribal court, and the district court was without jurisdiction on a federal question basis, notwithstanding plaintiff's claim that the tribal court, as instituted relative to civil proceedings, is unconstitutional in that it violates the due process provisions of the Indian Bill of Rights and of the United States Constitution. Lohnes v. Cloud, D.C.N.D.1973, 366 F.Supp. 619.

Court had jurisdiction of plaintiffs' action who sought official recognition as governing business council of Confederated Tribes of Goshute Reservation on review of actions by Bureau employees who, after election board declined to certify plaintiffs, refused to recognize and deal with plaintiffs even though administrative remedies had not been exhausted, where under circumstances utility of further administrative review was undermined, especially where legitimacy of plaintiffs' claim to office turned in large measure on whether the Goshute Constitution allowed write-in candidates which was a question of law for whose determination the courts are peculiarly well suited and for whose resolution it was unnecessary to await exhaustion of administrative remedies. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

The federal court was not without jurisdiction over civil actions brought under this chapter on ground that this chapter expressly granted jurisdiction to federal courts only in habeas corpus matters since it appeared that Congress included specific habeas corpus provision in order to overcome the apparent denial of such right under preexisting law while relying on similarly preexisting jurisdictional grant to implement new guarantees. Id.

Jurisdiction of the district court under this section relating to the constitutional rights of Indians is limited to enforcing the prohibitions contained therein and does not extend to ensuring compliance with provisions of Seneca law, including the Seneca Constitution, by instrumentalities of the Seneca Nation, unless failure to comply constitutes a violation of the guarantees enumerated in this section. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

Federal courts do not have jurisdiction over tribal elections unless a claim of election irregularity is supported by well-pleaded facts including facts showing that resort to tribal remedies has failed. Id.

By implication, this section relating to the constitutional rights of Indians waived the immunity of Indian tribes from suit, and federal courts accordingly have jurisdiction to hear suits against Indian tribes and their officials alleging that the tribe, in exercising powers of self-government, has denied a constitutional right of plaintiff. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 48.

Subject matter jurisdiction of action by five members of Indian tribe, elected to seats on tribal council, against tribal council and each member of council denying electees seats on council existed by virtue of allegations that electees were denied due process by virtue of fact that refusal to seat was not based on provisions of Indian constitution and was properly enforceable in the federal district court as a civil action to secure equitable or other relief under any act providing for the protection of civil rights. Solomon v. LaRose, D.C.Neb.1971, 335 F. Supp. 715.

Action for redress of alleged violations if rights created under this chapter was one arising under a law of the United States, and federal district court had jurisdiction. Loncassion v. Leekity, D.C. N.M.1971, 334 F.Supp. 370.

Internal matters of tribal government are not within bounds of federal jurisdiction unless jurisdiction is expressly conferred by congressional enactment. Pinnow v. Shoshone Tribal Council, D.C. Wyo.1970, 314 F.Supp. 1157, affirmed 453 F.2d 278.

Indian tribes were immune from suit and in absence of substantial federal question district court could not assume jurisdiction of actions by plaintiffs claiming that tribes' enrollment procedures

Note 2

amounted to exogamus discrimination. Id.

Fact that under provision of this section barring Indian tribe from denying to any person within its jurisdiction the equal protection of its laws, court had jurisdiction of action by nonprofit legal services corporation, its board of directors and executive director against officers of tribe and area director of Indian reservation who barred executive director from reservation did not force conclusion that plaintiffs were entitled to relief under such section. Dodge v. Nakai, D.C. Ariz.1968, 298 F.Supp. 17.

3. "Any person"

Where enrolled member of Indian tribe did not at any time object to alleged irregularities in government of tribe, his acquiescence in alleged error removed his right to object to it. Lefthand v. Crow Tribal Council of Crow Tribe of Indians of Mont., D.C.Mont.1971, 329 F.Supp. 728.

Term "any person" as used in this section prohibiting Indian tribe in exercise of its powers of self-government from denying equal protection of its laws to any person is not limited to any American Indian. Dodge v. Nakai, D.C.Ariz.1968, 298 F.Supp. 17.

4. Freedom of speech

Exclusion of nonmember from reservation because of allegedly contemptuous laughter at Advisory Committee meeting which provoked assault by member of committee was lacking in due process and was an abridgement of freedom of speech. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

4a. Assistance of counsel

Prior to the enactment of this chapter, constitutional rights, including right to professional counsel, were not applicable to Indian tribes and Indians living on reservations. Settler v. Lameer, C.A. Wash.1974, 507 F.2d 231.

Where proceedings in tribal court for violations of tribal fishing regulations occurred prior to enactment of this chapter, tribal court did not deprive member of tribe of his constitutional rights by denying him representation by professional counsel. Id.

In allowing the substitution of counsel for tribal council midway through the proceedings brought against the council and others by six enrolled tribe members who complained that the council was malapportioned and that they were underrepresented on the council, incumbent councilmen were not deprived of representation at and notice of all subsequent proceedings, since the tribe's constitution permitted the tribal chairman to substitute counsel, and since, moreover, substituted counsel fairly represented the council in the district court and made a reasonable effort to notify the councilmen of all proceedings. Brown v. U. S., C.A.S. D.1973, 486 F.2d 658.

Fact that lawyers were required to pay $300 license fee to practice before tribal courts did not establish that tribal code effectively denied assistance of counsel in proceedings before tribal courts. O'Neal v. Cheyenne River Sioux Tribe, C.A.S.D. 1973, 482 F.2d 1140.

4b. Political activities

Tribal ordinance prohibiting tribal government employees from engaging in partisan political activity did not violate this section. Janis v. Wilson, D.C.S.D. 1974, 385 F.Supp. 1143.

5. Bill of attainder

Tribal council order excluding from reservation the program director of nonprofit legal service corporation organized to provide legal assistance to indigent Indians constituted an unlawful bill of attainder. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

5a. Search warrants

Under Zuni law, Zuni Tribal Court lacked authority to issue warrant for a search of Zuni dwelling on Zuni Reservation. State v. Railey, N.M.App.1975, 532 P.2d 204.

6. Duties and limitations, generally

An Indian tribe may lawfully employ police officers to aid in the enforcement of tribal law and in the exercise of tribal power. Ortiz-Barraza v. U. S., C.A.Ariz. 1975, 512 F.2d 1176.

Indian nations or tribes are quasi-sovereign nations in sense that they are dependent political nations and wards of the United States but possess attributes of sovereignty insofar as they have not been taken away by Congress. Groundhog v. Keeler, C.A.Okl.1971, 442 F.2d 674.

Claims of terminated tribal employees, insofar as they were based on this section would not be measured by the same standards imposed by the Bill of Rights on state and federal governments, but rather these limitations would be applied with recognition of the tribe's unique cultural heritage, its experience in self-government, and the disadvantages or burdens, if any, under which the tribal government was attempting to carry out its duties. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

An Indian tribe or nation is not a federal instrumentality and is not within the reach of U.S.C.A.Const. Amend. 5, and due process restraint places restrictions on the Indian tribes only when it is so provided by congressional enactment. Id.

An Indian tribe is not subject to the law of a state except insofar as the United States has given its consent. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

Right to be free from excessive injurious force, arbitrarily inflicted, is among rights protected by this chapter. Loncassion v. Leekity, D.C.N.M.1971, 334 F. Supp. 370.

Provisions of this chapter relating to Indians imposed new responsibilities upon Indian tribe with respect to both manner in which it could exercise its governmental powers and objectives that it could pursue through their implementation. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

This chapter, forbidding certain tribal action including violation of right to be secure against unreasonable searches and seizures, in no way creates a power in tribal government, such as the power to issue search warrants. State v. Railey, N.M.App.1975, 532 P.2d 204.

6a. Hearing

In class action brought against tribal council and others by six enrolled tribe members who complained that the council was malapportioned and that they, and those they sought to represent, were under-represented on the council, the district court was correct in holding further hearings and entering orders despite notice of appeal from the district court's grant of a preliminary injunction, since the tribal council had requested that the appeal be withdrawn and the appellant took no steps to protect his individual right to appeal. Brown v. U. S., C.A.S. D.1973, 486 F.2d 658.

Procedures adopted and followed by tribal officials in terminating employment of tribal employees were reasonable and fundamentally fair and did not deny employees rights granted under this section notwithstanding employees' claim that, absent a full adversary hearing before removal, they could not consistently with due process requirements be divested of their property interests or ex- employment, or be deprived of erty to refute the charges on w termination was based. Janis v D.C.S.D.1974, 385 F.Supp. 1143.

7. Conduct

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Arbitrary action in general b ment officials is prohibited by of due process of law. Lon Leekity, D.C.N.M.1971, 334 F.Sup

Where tribal council consist membership of tribe and indiv bers of tribe did not have vest tribal property, complaint wh declaratory judgment concerni irregularities in government which alleged that plaintiff wh enrolled member of tribe w equal protection and due pro Indian Bill of Rights but wh allege that plaintiff, as an indi tinct from any other tribal me fered arbitrary and intentiona nation failed to state a claim u relief could be granted. L Crow Tribal Council of Crow Indians of Mont., D.C.Mont.19 Supp. 728.

Even if nonmember of trib in such manner as to evidenc and scorn for Advisory Comm so as to provoke assault by committee such conduct would thorize barring nonmember fro tion. Dodge v. Nakai, D.C.Ari F.Supp. 26.

8. Exclusion, power of

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8a. Exhaustion of remedies

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An Indian tribe or nation is not a federal instrumentality and is not within the reach of U.S.C.A.Const. Amend. 5, and due process restraint places restrictions on the Indian tribes only when it is so provided by congressional enactment. Id.

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Procedures adopted and followed by tribal officers in terminating employment of tribal employees were reasonable and fundamentally fair and did not deny employees rights granted under this section notwithstanding employees' claim that, absent a full adversary hearing before removal, they could not consistently with due process requirements be divested of

their property interests or expectancy in employment, or be deprived of their liberty to refute the charges on which their termination was based. Janis v. Wilson, D.C.S.D.1974, 385 F.Supp. 1143.

7. Conduct

Alleged conduct of tribe in depriving Indian of his assignment of land on reservation, and of his tenant, without meaningful opportunity to be heard fell within prohibitions contained in this section. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash.1973, 484 F.2d 200.

Fee permit system of tribal ordinance granting fishing rights to nonmembers of confederated tribes was not invalid because it was not approved by a referendum of confederated tribes, where tribes' constitution required approval by a tribal referendum only when assessment of license fee was applied to members of tribes, and ordinance applied only to nonmembers, so that it was unnecessary to obtain approval by a referendum of tribes. U. S. v. Pollmann, D.C.Mont.1973, 364 F.Supp. 995.

Arbitrary action in general by government officials is prohibited by concepts of due process of law. Loncassion v. Leekity, D.C.N.M.1971, 334 F.Supp. 370.

Where tribal council consisted of entire membership of tribe and individual members of tribe did not have vested right in tribal property, complaint which sought declaratory judgment concerning alleged irregularities in government of tribe, which alleged that plaintiff who was an enrolled member of tribe was denied equal protection and due process under Indian Bill of Rights but which did not allege that plaintiff, as an individual distinct from any other tribal member, suffered arbitrary and intentional discrimination failed to state a claim upon which relief could be granted. Lefthand v. Crow Tribal Council of Crow Tribe of Indians of Mont., D.C.Mont.1971, 329 F. Supp. 728.

Even if nonmember of tribe laughed in such manner as to evidence ridicule and scorn for Advisory Committee and so as to provoke assault by member of committee such conduct would not authorize barring nonmember from reservation. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

8. Exclusion, power of

Under treaty between United States and Navajo Tribe of Indians tribe had power to exclude non-Navajos from Navajo reservation with exception of those persons authorized to enter thereon by virtue of treaty itself, law of United States, or order of President of United States. Dodge v. Nakai, D.C.Ariz.1969, 298 F.Supp. 26.

Power to exclude non-Navajos from Navajo reservation was exercised by Advisory Committee of Navajo Tribal Council and was clearly an exercise of "powers of self-government" possessed by Navajo Tribe. Id.

Tribal council order excluding from reservation the program director of nonprofit legal services corporation organized to provide legal assistance to indigent Indians was a "legislative act". Id.

8a. Exhaustion of remedies

Fact that Indian tribal procedures for handling internal political disputes are not specifically provided for in the tribal constitution would not justify immediate intervention by the federal courts in election dispute, since inherent in the authority to govern itself is the authority of the tribe to determine the manner in which differences are resolved and the manner in which its leaders are selected. McCurdy v. Steele, C.A.Utah 1974, 506 F. 2d 653.

Whether or not write-in candidates should be permitted to run at election of Indian business council presented a question of tribal concern upon which the tribe should make a decision before the federal courts should be allowed to intervene. Id.

Tribe members who brought a class action against the tribal council and others on ground that the council was malapportioned and that they, and those they sought to represent, were underrepresented on the council exhausted their tribal remedies where they sought relief in the tribal court and were denied an effective, timely remedy. Brown v. U. S., C.A.S.D.1973, 486 F.2d 658.

In determining whether exhaustion of tribal remedies is required before constitutional rights of Indian may be claimed in federal court, need to preserve cultural identity of tribe by strengthening of tribal courts must be weighed against need to immediately adjudicate alleged deprivations of individual rights. O'Neal v. Cheyenne River Sioux Tribe, C.A.S.D. 1973, 482 F.2d 1140.

Where parties had stipulated to dismissal of non-Indian defendants, fact that not all parties were originally amenable to tribal court jurisdiction did not preclude imposition of requirement that tribal remedies be exhausted before seeking relief in federal court. Id.

Individual Indian plaintiffs who failed to exhaust tribal remedies in civil dispute with tribe were prohibited from bringing suit in federal court under Indian bill of rights; however, if tribal court did not reach merits of controversy in new action, federal court could proceed with trial and decide case on merits without reference to any further necessity of exhausting tribal remedies. Id.

In order to determine whether district court properly dismissed action against Indian tribe for failure to exhaust tribal remedies, Court of Appeals would consider what if any tribal remedies existed, whether exhaustion requirement should generally be applied in such cases, and whether if exhaustion were generally required it was appropriate to require exhaustion in instant case. Id.

9. Election of tribal leaders

One-man, one-vote principle was applicable, via equal protection clause of this section, to tribal elections of Indian tribe which had established voting procedures precisely paralleling Anglo-American procedures. White Eagle v. One Feather, C.A.N.D.1973, 478 F.2d 1311.

Whether facts alleged in petition in action by tribal member for declaration of unconstitutionality of provision of tribal constitution which disqualified tribe member for election to the tribal council because of employment at Public Health Service stated cause of action and whether, if true, the member was entitled to judgment on the merits was determination which should be made by district court and not by reviewing court. Luxon v. Rosebud Sioux Tribe of S. D., C.A.S.D.1972, 455 F.2d 698.

Nothing in section 1301 et seq. of this title or its history discloses any implied requirement that a tribe select its leaders by elections, or that earlier acts authorizing presidential appointments of tribal officials have been repealed. Groundhog v. Keeler, C.A.Okl.1971, 442 F.2d 674.

Tribal council could not, without violating due process clause of this section, decide to hold a new tribal election and discard procedural requirements of election ordinance at will, and then, apparently as an afterthought, justify procedurally infirm election on basis of a pro-

vision authorizing it to make exceptions to ordinance. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D.1975, 387 F.Supp. 1194.

Tribal council failed to attempt compliance with tribal election ordinance when, upon being presented with question whether particular individual was eligible to seek and hold tribal office, it failed to remove individual's name from ballot and, after election, declared individual elected without a determination as to his eligibility to run. Id.

Federal court should not set aside tribal election under this section if comparable non-Indian local election under U.S. C.A.Const. Amend. 14 would not be set aside. Means v. Wilson, D.C.S.D.1974, 383 F.Supp. 378.

Plaintiffs' claim that their rights under due process clause of U.S.C.A.Const. Amend. 5 had been violated by defendant employees of the Bureau of Indian Affairs in refusing to recognize plaintiffs as members of tribal business council and defendants' advocacy of a new election to "clear the air" instead of conformance with election and recall procedures allegedly mandated by the Goshute Constitution was cognizable if supported by an appropriate grant of jurisdiction and if not barred by sovereign immunity. McCurdy v. Steele, D.C.Utah 1973, 353 F. Supp. 629.

Tribal sovereign immunity is a venerable doctrine which effectively insulates tribal culture and governmental autonomy, but the doctrine is subject to congressional modification, and this chapter which expressly limits every Indian tribe in exercising powers of self-government is such a modification. Id.

9a. Sovereignty

Indian tribes possess an inherent sovereignty except where it has been specifically taken away from them by treaty or act of Congress. Ortiz-Barraza v. U. S., C.A.Ariz.1975, 512 F.2d 1176.

Intrinsic in the sovereignty of an Indian tribe is the power to exclude trespassers from the reservation and a tribe needs no grant of authority from the federal government in order to exercise this power. Id.

10. Sovereign immunity

This section is a waiver by Congress of tribal immunity. Dry Creek Lodge, Inc. v. U. S., C.A.Wyo.1975, 515 F.2d 926.

Tribal council did not have sovereign immunity from class suit brought by six enrolled members of the tribe who complained that the tribal council was malapportioned and that they, and those they sought to represent, were underrepresented on the council. Brown v. U. S., C.A.S.D.1973, 486 F.2d 658.

This chapter evidences congressional exception to general policy of immunity of Indian tribes from suit. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash.1973, 484 F.2d 200.

This section impliedly abrogates sovereign immunity of Indian tribes. Daly v. U. S., C.A.S.D.1973, 483 F.2d 700.

Crow Creek Sioux tribe and council members did not have sovereign immunity from suit by three enrolled tribal members complaining that tribal council was malapportioned and that such malapportionment denied equal protection of the laws as guaranteed by this section. Id.

Fact that Indian tribe was clothed with sovereign immunity did not prevent appeal to superior court of tribe from order of junior court. O'Neal v. Cheyenne River Sioux Tribe, C.A.S.D.1973, 482 F.2d 1140.

Fact that Indian tribe was clothed with sovereign immunity did not render requirement of exhaustion of tribal remedies inappropriate in action predicated essentially upon Indian bill of rights. Id.

Principle that United States, as sovereign, is immune from suit save as it consents to be sued, is not affected by fact that government has voluntarily undertaken a trustee relationship with respect to Indians. Jacobson v. Forest County Potawatomi Community, D.C.Wis.1974, 389 F.Supp. 994.

This chapter abrogates by implication the sovereign immunity the Indian tribes enjoy from suit. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D. 1975, 387 F.Supp. 1194.

An Indian tribe cannot claim sovereign immunity from suit under this section. Loncassion v. Leekity, D.C.N.M.1971, 334 F.Supp. 370.

Where Indian tribe and the bureau of Indian affairs entered into an agreement whereby the tribe set up a law enforcement organization, and the bureau of Indian affairs provided about three-fifths of the funds, and among other things, the tribe agreed to "be responsible for all damages or injury to any person or to property of any character * * *," to pay attorney's fees, and to provide liability insurance to protect the tribe from suits brought because of wrongful conduct by tribal police officers, the tribe waived its claim to immunity from suits claiming wrongful conduct by tribal police officers. Id.

11. Damages

Limiting plaintiff Indian, who brought suit against a fellow tribe member to recover for damages resulting from an automobile accident that occurred on their reservation, to the tribal court with its alleged deficiencies was not violative of U.S.C.A.Const. Amends. 5, 7 and 14, nor of the due process guarantee of the Indian Bill of Rights. Lohnes v. Cloud, D. C.N.D.1973, 366 F.Supp. 619.

A claim for damages is allowable under this section; money damages are particularly appropriate where the plaintiff has suffered personal physical injury. Loncassion v. Leekity, D.C.N.M.1971, 334 F. Supp. 370.

Members of Indian tribe were entitled to claim money damages from tribal policemen for any injuries they suffered as a result of a violation by the policemen of this section providing that no Indian tribe in exercising powers of self-government shall violate right of people to be secure in their persons against unreasonable seizures. Id.

12. Complaint

Complaint in which Indians and Indian reservation residents alleged that persons not entitled to vote were permitted to vote in tribal election and that threats were made and action taken against those not supporting certain candidate and in which other claims were made without a showing of purposeful deprivation of protected rights by defendant tribe or defendant tribal officials acting within scope of their authority did not state claim on which relief could be granted under this section. Means v. Wilson, D.C.S.D.1974, 383 F.Supp. 378.

To state a proper claim under this section, the assaults or threats or whatever else claimed must be tied directly to the tribe or its officers acting within scope of their official tribal office. Id.

Allegations of members of Indian tribe that they were third-party beneficiaries of agreement which was entered into between the tribe and the bureau of Indian affairs and which provided, in part, that the tribe would be respon
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13. Due process

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Allegations of members of Indian tribe that they were third-party beneficiaries of agreement which was entered into between the tribe and the bureau of Indian affairs and which provided, in part, that the tribe would be responsible for all damages to persons or property during life of the agreement, and that they were entitled to recover damages for injuries caused by negligence of the tribe under the provisions of the agreement stated a claim upon which relief could be granted, which the court could hear as a pendant claim, in action brought under this section by members of tribe against tribal police officer and tribe itself for damages resulting from shooting of one of members by tribal policeman. Loncassion v. Leekity, D.C.N.M.1971, 334 F.Supp. 370.

13. Due process

Under this chapter, tribal member was entitled to right of procedural due process incident to division of her father's possessory holdings, as well as even-handed application of tribal customs, traditions and any formalized rules relative to tribal land, and, upon finding comportment with this chapter to be lacking, court properly set tribal action aside, but court was without power to go further and substitute its judgment on merits for that of tribe and restore to member the possessory holding in tract claimed by her under Land Division Agreement between heirs. Crowe v. Eastern Band of Cherokee Indians, Inc., C.A.N.C.1974, 506 F.2d 1231.

Under this chapter, proceedings of tribal council need not be conducted with all trappings of a court of law, since formality and procedural requisites are to be determined by circumstances of any particular case, but proceedings must be addressed to issues involved in a meaningful fashion and pursuant to adequate notice. Id.

Finding that Indian tribe, acting through its counsel, had assigned a part of Indian's 11-acre tract to another without giving Indian any notice thereof or conducting any hearing upon the proposed division required that tribe's action be set aside as violative of Indian's due process rights. Id.

Indian's interest in continued possession and use of his assignment of tract on reservation comes within due process protection of U.S.C.A.Const. Amend. 14. Johnson v. Lower Elwha Tribal Community of Lower Elwha Indian Reservation, Washington, C.A.Wash.1973, 484 F.2d 200.

Where pleadings showed that children of plaintiff mothers, in controversy pertaining to certain enrollment practices of Indian Tribes, did not meet tribal enrollment requirement that they possess one-quarter degree Indian blood, rejection of applications did not constitute arbitrary action taken by the tribal council without just cause, nor did the rejection amount to a denial of equal protection or constitute a taking of liberty or property without due process. Slattery v. Arapahoe Tribal Council, C.A.Wyo.1971, 453 F. 2d 278.

Due process clause of this section was of sufficient scope to require judicial consideration of action wherein plaintiffs sought injunctive relief against defendant tribal officials on ground that they failed to attempt compliance with and acted outside provisions of tribal constitution and ordinances adopted pursuant thereto. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D.1975, 387 F.Supp. 1194.

Limiting plaintiff Indian, who brought suit against a fellow tribe member to recover for damages resulting from an automobile accident that occurred on their reservation, to the tribal court with its alleged deficiencies was not violative of U.S.C.A.Const. Amends. 5, 7 and 14, nor of the due process guarantee of the Indian Bill of Rights. Lohnes v. Cloud, D.C.N. D.1973, 366 F.Supp. 619.

While the provisions of U.S.C.A.Const. Amend. 5 generally do not bind tribal governments, the federal government is limited, at least by a flexible application of that amendment, in its dealings with the Indians. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

Due process does not forbid the Seneca Nation of Indians from permitting appeals of determinations and decisions of the Peacemakers Court to the Seneca Council, with such appeals to be heard by a quorum of the Council upon the evidence taken in the Peacemakers Court. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

13a. Equal protection

Equal protection clause of this chapter did not limit power of Indian tribe to fix 21 as age for allowing tribal member to vote in tribal elections. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

Equal protection clause of this chapter is not coextensive with equal protection clause of U.S.C.A.Const. Amend. 14. Id.

Where an Indian tribe has adopted election procedures analogous to those found in Anglo-American culture, the equal protection clause of this section requires that the election procedures comply with the one-man, one-vote principle. Daly v. U. S., C.A.S.D.1973, 483 F.2d 700.

Crow Creek Sioux tribe had sufficient cultural interest in setting higher blood quantum requirement to hold office than for mere membership in the tribe; however, such requirement must be applied uniformly to avoid violating equal protection guarantee of this section. Id.

Provision of Indian tribal constitution insuring that at least one-half of councilmen from each district were one-half, or more, Indian blood would not, if applied uniformly, be in conflict with this section's guarantee of equal protection of the laws; such requirement is one of those areas in which the equal protection requirement of U.S.C.A.Const. Amend. 14, § 1 should not be embraced in this section. Id.

The Anglo-Saxon definition of "equal protection" is not to be embraced in its entirety by this section. Yellow Bird v. Oglala Sioux Tribe of South Dakota, D. C.S.D.1974, 380 F.Supp. 438.

13b. Vague and indefinite legislation

While tribal disorderly conduct statute appeared, if tested by standards applied to communities outside Indian reservation, to be facially vague and overbroad, Court of Appeals was not prepared to say that limiting construction of statute, well-known to Indian reservation society, would not, if made by tribal court, cure its facial vagueness and overbreadth. Big Eagle v. Andera, C.A.S.D.1975, 508 F. 2d 1293.

Despite contention that tribal law pertaining to contributing to delinquency of minor might be unconstitutionally vague as applied to other defendants or in other settings, statute was not vague as applied to defendants who pled guilty to providing intoxicated beverages for minors where record disclosed that minors were drunk when apprehended by police and that drunkenness was caused by defendants' supplying minors with intoxicants. Id.

14. Condemnation

Claims of plaintiff Indians that condemnation by the tribe of their use interest in certain property would be a taking for a nonpublic use and without just compensation were prematurely raised where condemnation proceedings, though

threatened, had not yet been held. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

Indian tribes possess the power of eminent domain. Id.

15. Allegations, sufficiency of

Complaint of female member of Indian community challenging sections of tribal constitution and bylaws which excluded women from holding office in tribal council, extended franchise only to those tribe members who are 21 years of age or over and provided for allegedly inadequate notice of special meetings of general tribal council failed to state cause of action against tribal defendants cognizable under this chapter. Jacobson v. Forest County Potawatomi Community, D.C. Wis.1974, 389 F.Supp. 994.

Complaint of female member of Indian community who challenged constitutionallty of sections of tribal constitution and bylaws failed to state cause of action on theory that federal defendants' acts were ultra vires or unconstitutional. Id.

District court could not decide whether questioned ballots in tribal election on Indian reservation were invalid absent allegations of criminality, fraud, or discrimination. Williams v. Sisseton-Wahpeton Sioux Tribal Council, D.C.S.D.1975, 387 F.Supp. 1194.

Bald, conclusory allegation that the Seneca Council, acting alone, does not possess the power to enter into a contract which requires an expenditure of tribal money failed to state a claim of violation of this section providing that no Indian tribe, in exercising powers of self-government, shall deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

16. Judicial notice

Judicial notice would be taken of the Constitution of the Seneca Nation of Indians. Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 51.

17. Injunction

Preliminary injunction was improvidently granted, in action by members of Indian tribes to enjoin general tribal election and require reapportionment of elective districts, where there was no evidence as to population other than votes cast in election of chairman of tribal council. White Eagle v. One Feather, C. A.N.D.1973, 478 F.2d 1311.

The Seneca Nation of Indians is a quasi-sovereign entity possessing all inherent rights of sovereignty except where restrictions have been placed thereon by the United States itself. Seneca Constitutional Rights Organization v. George, D. C.N.Y.1972, 348 F.Supp. 51.

There may be dispute over whether in certain circumstances an Indian tribe is an instrumentality of the federal government, but certainly an Indian tribe is not a state. Id.

The Seneca Nation of Indians and the corporate defendant, which intended to locate a factory in an industrial park to be developed by the Nation on its reservation, would not be preliminarily enjoined from proceeding with their plans, since it was unlikely that those plaintiffs having use rights in Nation lands within the area of the proposed industrial park would succeed in proving a denial of due process of law, since it was also unlikely that plaintiffs would succeed in establishing standing to challenge the disposition of tribal property, and since plaintiffs failed to show that the balance of hardships was decidedly in their favor: Seneca Constitutional Rights Organization v. George, D.C.N.Y.1972, 348 F.Supp. 48.

18. Exhaustion of tribal remedies

Fact that father, an enrolled member of Indian tribe, failed to request a hearing before tribal judge who issued ex parte a temporary restraining order enjoining children's removal from reservation and that father did not appeal tribal restraining order to a special tribal appellate court did not preclude father from petitioning for a writ of habeas corpus in federal district court in order to secure release of his children, on theory that father had not exhausted his tribal remedies, where facts showed that father lacked meaningful remedy in tribal courts. U. S. ex rel. Cobell v. Cobell, C. A.Mont.1974, 503 F.2d 790, certiorari denied 95 S.Ct. 2396.

Amendment to tribal constitution was at least one tribal remedy which female Indian was required to exhaust prior to action under this chapter. Jacobson v. Forest County Potawatomi Community, D.C.Wis.1974, 389 F.Supp. 994.

A condition precedent to federal court jurisdiction is exhaustion of all available remedies within the tribal government; however, plaintiffs bringing suit under this section are not required to first exhaust futile or inadequate tribal remedies. White v. Tribal Council, Red Lake Band of Chippewa Indians, D.C.Minn. 1974, 383 F.Supp. 810.

Requirement that those bringing suit under this section first exhaust tribal remedies is not inflexible; its application depends in part on the balancing process of weighing the need for tribal responsibility against the need to immediately adjudicate claimed deprivations of constitutional rights. Id.

Generally, individual Indian plaintiffs must exhaust their tribal remedies before bringing action in federal court under this section. Means v. Wilson, D.C.S.D. 1974, 383 F.Supp. 378.

In determining whether to require exhaustion of tribal remedies before seeking judicial relief as regards civil disputes arising on an Indian reservation the need to preserve the cultural identity of the tribe by strengthening the tribal courts must be weighed with the need to immediately adjudicate alleged deprivations of individual rights. Clark v. Land and Forestry Committee of Cheyenne River Sioux Tribal Council, D.C.S.D.1974, 380 F.Supp. 201.

It is not for the federal courts to become a general clearing house for civil cases arising on Indian reservations but rather it is the function and affirmative obligation of the tribe, in view of their unique ethnic and cultural pattern, to exercise original jurisdiction in such matters; exhaustion of tribal remedies should be pursued whenever and wherever possible; however, exhaustion may not be necessary when the requirement would work irrevocable and immediate harm to the individual, when the individual's claim would be severely diminished or when a proper tribal forum does not exist. Id.

Under section of tribal ordinance giving consent of Crow Creek Housing Authority to sue and be sued in its corporate name, tribal court had jurisdiction over action by non-Indian against Housing Authority for breach of contract so that, even if federal jurisdiction over breach of contract action could be based on this section, plaintiff would be required to first exhaust his tribal administrative and judicial remedies. Hickey v. Crow Creek Housing Authority, D.C.S. D.1974, 379 F.Supp. 1002.

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19. Parties

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20. Apportionment

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§ 1303. Habeas co

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Pub.L. 90–284, Title I

Index to No

1. Exclusiveness of remed

Writ of habeas corpus
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Requirement that those bringing suit under this section first exhaust tribal remedies is not inflexible; its application depends in part on the balancing process of weighing the need for tribal responsibility against the need to immediately adjudicate claimed deprivations of constitutional rights. Id.

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Plaintiffs seeking official recognition as the governing business council of Confederated Tribes of the Goshute Reservation were not precluded from maintaining the action on ground that they had not exhausted their tribal remedies, where record disclosed that Confederated Tribes of Goshute Reservation had no Goshute judge and relied instead upon referral use of a Shoshone judge, for penal matters at least, and judicial system for hearing of matters involved in plaintiffs' action did not exist so that tribal remedies appeared inadequate and were not required to be exhausted. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

19. Parties

This section does not authorize cause of action against Indians named as individuals or as against officers of tribes as individuals. Means v. Wilson, D.C.S.D. 1974, 383 F.Supp. 378.

Protection guaranteed by this chapter is available to non-Indians as well as Indians. Hickey v. Crow Creek Housing Authority, D.C.S.D.1974, 379 F.Supp. 1002.

Defendants acting as business council and election boards of Confederated Tribes of the Goshute Reservation were sued because of acts performed in their official tribal capacities or in their purported official capacities and hence might be reached under this chapter which regulates the actions of tribal governments, and since disputed official acts were claimed to be ultra vires, in violation of the Goshute Constitution, it was not necessary to join the tribe itself. McCurdy v. Steele, D.C.Utah 1973, 353 F.Supp. 629.

Since plaintiffs' claim was that defendant employees of Bureau of Indian Affairs in refusing to recognize plaintiffs as members of tribal business council of Confederated Tribes of the Goshute Reservation acted outside of authority of the United States and full relief was available from the named defendants, the United States was not required to be joined as an indispensable party. Id.

20. Apportionment

In light of quasi-sovereign status of Indian tribes, they are entitled to determine extent to which franchise to vote is to be exercised in tribal elections, absent explicit congressional legislation to the contrary. Wounded Head v. Tribal Council of Oglala Sioux Tribe of Pine Ridge Reservation, C.A.S.D.1975, 507 F.2d 1079.

As tribe's constitution provided that apportionment could be based on either "population" or "qualified voters," the approved reapportionment plan, which was based on the "1972 Eligible Voter List" was valid only if it was established that the "1972 Eligible Voter List" substantially included all those qualified to vote or within the "voter population." Brown v. U. S., C.A.S.D.1973, 486 F.2d 658.

Apportionmnet plan governing election to seats on Indian tribal council was to be based on tribal population and not solely those eligible to vote; plan based solely on those eligible to vote did not comport with general principle of population equality with due regard to other relevant factors; however, whether to take into account members of the tribe who did not reside on the reservation was purely an internal decision to be made by the tribe itself. Daly v. U. S., C.A.S.D.1973, 483 F.2d 700.

In fashioning Indian tribal council apportionment plan so as to comport with general principle of population equality the tribal council was not limited to dividing reservation into equally populated districts or electing councilmen at large but could adopt weighted-voting plan under which each councilman would be accorded voting strength which would reflect the share of the population he represented. Id.

Indians, in designing their own apportionment plan and election rules, are entitled to set those requirements they find appropriate so long as they are uniformly applied; whatever rules are adopted must have the same effect in all districts. Id.

District court did not act improperly, upon finding that Indian tribal council was malapportioned, in eliminating blood quantum requirement for impending election where blood quantum provision in tribal constitution was designed for two-member district and did not fit plan which trial court adopted, viz., two single-member districts and one four-member district, scheduled election was imminent and plan was to be used only for that election. Id.

21. Double jeopardy

Even if member of Indian tribe was tried, found guilty and sentenced in tribal cause involving offense committed on July 14, the court discovered that prosecutor by mistake had testified to allegations in another case involving an offense committed on August 8, and the court then set aside the conviction in former case and proceeded to try tribal member on same charge but with a corrected recitation of allegations pertinent to July 14, the retrial did not constitute double jeopardy. Settler v. Lameer, C.A.Wash. 1974, 507 F.2d 231.

22. Remand

Even though tribal exclusion of non-Indians from forum in which to pursue their claim against Indian arising out of action occurring on reservation might violate equal protection and due process provisions of this section, inasmuch as issue was not raised in complaint nor was the Indian tribe on reservation, an indispensable party to such action, named as a defendant, court could not properly sua sponte remand case with directions to litigate action as a "civil rights" matter arising under this section. Schantz v. White Lightning, C.A.N.D.1974, 502 F.2d 67.

§ 1303. Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

Pub.L. 90–284, Title II, § 203, Apr. 11, 1968, 82 Stat. 78.

Index to Notes

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1. Exclusiveness of remedy

Writ of habeas corpus is not the exclusive jurisdictional basis for enforcement of rights under this chapter. Solomon v. LaRose, D.C.Neb.1971, 335 F.Supp. 715.

2. Jurisdiction

Existence of habeas corpus provision in this section does not limit federal court jurisdiction to those proceedings. Loncassion v. Leekity, D.C.N.M.1971, 334 F. Supp. 370.

3. Moot questions

Even though, after federal district court had ordered that custody of chil-

dren be restored to father in accordance with state court rulings, tribal judge vacated his restraining order enjoining children's removal from reservation and ordered mother to release children to father at his request, and subsequently the children were obtained by father, habeas corpus proceeding by father had not become moot either as a matter of judicial administration or of constitutional dimension, where underlying conflict still existed, and there was a public interest in having issue resolved with some hope of finality. U. S. ex rel. Cobell v. Cobell, C.A.Mont.1974, 503 F.2d 790, certiorari denied 95 S.Ct. 2396.

4. Remand
In proceeding for habeas corpus brought by Indians convicted under tribal disorderly conduct statute, Court of Appeals would not rule on question whether statute was facially vague and overbroad where record failed to establish whether statute had been properly restricted in meaning by consistent and authoritative construction by tribal court, and case would be remanded for evidentiary hearing on that subject. Big Eagle v. Andera, C.A.S.D.1975, 508 F.2d 1293.

SUBCHAPTER II.—MODEL CODE GOVERNING COURTS OF INDIAN OFFENSES

§ 1311. Model code

The Secretary of the Interior is authorized and directed to recommend to the Congress, on or before July 1, 1968, a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Such code shall include provisions which will (1) assure that any individual being tried for an offense by a court of Indian offenses shall have the same rights, privileges, and immunities under the United States Constitution as would be guaranteed any citizen of the United States being tried in a Federal court for any similar offense, (2) assure that any individual being tried for an offense by a court of Indian offenses will be advised and made aware of his rights under the United States Constitution, and under any tribal constitution applicable to such individual, (3) establish proper qualifications for the office of judge of the court of Indian offenses, and (4) provide for the establishing of educational classes for the training of judges of courts of Indian offenses. In carrying out the provisions of this subchapter, the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

Pub.L. 90–284, Title III, § 301, Apr. 11, 1968, 82 Stat. 78.

Legislative History. For legislative history and purpose of Pub.L. 90–284, see 1968 U.S.Code Cong. and Adm.News, p. 1837.

§ 1312. Authorization of appropriations

There is hereby authorized to be appropriated such sum as may be necessary to carry out the provisions of this subchapter.
Pub.L. 90–284, Title III, § 302, Apr. 11, 1968, 82 Stat. 78.

SUBCHAPTER III.—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

§ 1321. Assumption by State of criminal jurisdiction—Consent of United States; force and effect of criminal laws

(a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

PUBLIC PAPERS OF THE PRESIDENTS

OF THE UNITED STATES

Lyndon B. Johnson

Pres., U.S.

Containing the Public Messages, Speeches, and Statements of the President

1968-69

(IN TWO BOOKS)

BOOK I—JANUARY 1 TO JUNE 30, 1968

UNITED STATES GOVERNMENT PRINTING OFFICE

WASHINGTON : 1970

I have always believed that the answers to a labor dispute must be found in free collective bargaining.

I urge the parties to get on with their bargaining on an urgent, intensive around-the-clock basis.

I ask the parties to consider very carefully the proposals of the Taylor panel as a framework for constructive bargaining.

I have asked Secretaries Wirtz, Clifford, and Smith and the Taylor mediation panel to assist you in any way they can in finding just and fair answers to this dispute.

So now, as you begin your negotiations across the street, I urge you to take the Nation's interest into your hearts and into your minds as you speed the search for a fair and just settlement.

I have asked the Secretaries to keep in touch with me on the progress of the bargaining.

Before you begin your bargaining, I think it would help you realize how deeply the Nation's interest is involved as you hear from Secretary Clifford and Secretary Fowler.

NOTE: This is the text of the White House press release made public in connection with the meeting held in the White House at 4 p.m. The President commented on the terms of a proposed settlement in his news conference of March 30, 1968 (see Item 169[21]). The strike was settled in early April 1968.

113 Special Message to the Congress on the Problems of the American Indian: "The Forgotten American." *March 6, 1968*

To the Congress of the United States:

Mississippi and Utah—the Potomac and the Chattahoochee—Appalachia and Shenandoah . . . The words of the Indian have become our words—the names of our states and streams and landmarks.

His myths and his heroes enrich our literature.

His lore colors our art and our language.

For two centuries, the American Indian has been a symbol of the drama and excitement of the earliest America.

But for two centuries, he has been an alien in his own land.

Relations between the United States Government and the tribes were originally in the hands of the War Department. Until 1871, the United States treated the Indian tribes as foreign nations.

It has been only 44 years since the United States affirmed the Indian's citizenship: the full political equality essential for human dignity in a democratic society.

It has been only 22 years since Congress enacted the Indian Claims Act, to acknowledge the Nation's debt to the first Americans for their land.

But political equality and compensation for ancestral lands are not enough. The American Indian deserves a chance to develop his talents and share fully in the future of our Nation.

There are about 600,000 Indians in America today. Some 400,000 live on or near reservations in 25 States. The remaining 200,000 have moved to our cities and towns. The most striking fact about the American Indians today is their tragic plight:

—Fifty thousand Indian families live in unsanitary, dilapidated dwellings: many in huts, shanties, even abandoned automobiles.

—The unemployment rate among Indians is nearly 40 percent—more than ten times the national average.

—Fifty percent of Indian schoolchildren—

and conditions of our Indian population.

I am therefore submitting legislation to open the door for more Indians to receive low-cost housing aid, and to extend the loan programs of the Farmers Home Administration to tribal lands.

In addition:

—The Secretary of Housing and Urban Development will review construction standards for Indian homes to ensure flexibility in design and construction of Indian housing.

—The Secretaries of the Interior and Housing and Urban Development will explore new low-cost techniques of construction suitable to a stepped-up Indian housing program.

Community Action

Programs under the Economic Opportunity Act have improved morale in Indian communities. They have given tribes new opportunities to plan and carry out social and economic projects. Community action programs, particularly Head Start, deserve strong support.

I am asking the Congress to provide $22.7 million in Fiscal 1969 for these important efforts.

Water and Sewer Projects

Shorter life expectancy and higher infant mortality among Indians are caused in large part by unsanitary water supplies and contamination from unsafe waste disposal.

The Federal Government has authority to join with individual Indians to construct these facilities on Indian lands. The government contributes the capital. The Indian contributes the labor.

To step up this program, I recommend that the Congress increase appropriations for safe water and sanitary waste disposal facilities by 30 percent—from $10 million in Fiscal 1968 to $13 million in Fiscal 1969.

Civil Rights

A Bill of Rights for Indians

In 1934, Congress passed the Indian Reorganization Act, which laid the groundwork for democratic self-government on Indian reservations. This Act was the forerunner of the tribal constitutions—the charters of democratic practice among the Indians.

Yet few tribal constitutions include a bill of rights for individual Indians. The basic individual rights which most Americans enjoy in relation to their government—enshrined in the Bill of Rights of the Constitution of the United States—are not safeguarded for Indians in relation to their tribes.

A new Indian Rights Bill is pending in the Congress. It would protect the individual rights of Indians in such matters as freedom of speech and religion, unreasonable search and seizure, a speedy and fair trial, and the right to habeas corpus. The Senate passed an Indian Bill of Rights last year. *I urge the Congress to complete action on that Bill of Rights in the current session.*

In addition to providing new protection for members of tribes, this bill would remedy another matter of grave concern to the American Indian.

Fifteen years ago, the Congress gave to the States authority to extend their criminal and civil jurisdictions to include Indian reservations—where jurisdiction previously was in the hands of the Indians themselves.

Fairness and basic democratic principles require that Indians on the affected lands have a voice in deciding whether a State will assume legal jurisdiction on their land.

I urge the Congress to enact legislation that would provide for tribal consent before such extensions of jurisdiction take place.

Off-Reservation Indians

Most of us think of Indians as living in their own communities—geographically, socially and psychologically remote from the main current of American life.

Until World War II, this was an accurate picture of most Indian people. Since that time, however, the number of Indians living in towns and urban centers has increased to 200,000.

Indians in the towns and cities of our country have urgent needs for education, health, welfare, and rehabilitation services, which are far greater than that of the general population.

These needs can be met through Federal, State and local programs. *I am asking the new Council on Indian Opportunity to study this problem and report to me promptly on actions to meet the needs of Indians in our cities and towns.*

Alaskan Native Claims

The land rights of the native people of Alaska—the Aleuts, Eskimos and Indians—have never been fully or fairly defined.

Eighty-four years ago, Congress protected the Alaska natives in the use and occupancy of their lands. But then, and again when Alaska was given statehood, Congress reserved to itself the power of final decision on ultimate title.

It remains our unfinished task to state in law the terms and conditions of settlement, so that uncertainty can be ended for the native people of Alaska.

Legislation is now pending to resolve this issue. I recommend prompt action on legislation to:

—Give the native people of Alaska title to the lands they occupy and need to sustain their villages.

—Give them rights to use additional lands and water for hunting, trapping and fishing to maintain their traditional way of life, if they so choose.

—Award them compensation commensurate with the value of any lands taken from them.

The First Americans

The program I propose seeks to promote Indian development by improving health and education, encouraging long-term economic growth, and strengthening community institutions.

Underlying this program is the assumption that the Federal government can best be a responsible partner in Indian progress by treating the Indian himself as a full citizen, responsible for the pace and direction of his development.

But there can be no question that the government and the people of the United States have a responsibility to the Indians.

In our efforts to meet that responsibility, we must pledge to respect fully the dignity and the uniqueness of the Indian citizen.

That means partnership—not paternalism.

We must affirm the right of the first Americans to remain Indians while exercising their rights as Americans.

We must affirm their right to freedom of choice and self-determination.

We must seek new ways to provide Federal assistance to Indians—with new emphasis on Indian self-help and with respect for Indian culture.

And we must assure the Indian people that it is our desire and intention that the special relationship between the Indian and

his government grow and flourish.

For, the first among us must not be last.

I urge the Congress to affirm this policy and to enact this program.

LYNDON B. JOHNSON

The White House
March 6, 1968

NOTE: For remarks of the President upon signing related legislation, see Items 195, 259.

On August 23, 1968, the President signed the Federal Aid Highway Act of 1968 amending the act of 1956 by authorizing appropriation of additional sums for Indian road construction (Public Law 90–495, 82 Stat. 815).

114 Remarks to the Members of the Joint Savings Bank-Savings and Loan Committee on Urban Problems. *March 6, 1968*

I WELCOME YOU here to the Cabinet Room today.

As leaders of America's great savings bank and savings and loan industries, you have provided the bulk of the capital that has built the homes, built the great suburbs and the residential areas which are the pride of the entire world.

America has served you well, and I understand that you are here this morning to serve the Nation by helping meet one of its most urgent problems—the rebuilding of the inner city.

To be effective will require commitment and ingenuity. The problems and needs are large indeed.

We have just ourselves completed—with the assistance of Secretary Weaver, Secretary Wood, Mr. Haar, and others in their Department, Mr. Brownstein and others—the cities message. We undertook everything that we could conceive of that we had the resources to undertake—and may have undertaken more than the Congress will really give us to undertake. But we dealt with it in some detail.

I think 20 years from now you will look at that message and see that we were not unaware of the problems.

I selected the most able city officials, private officials, chiefs of police, Governors, Congressmen, and Senators in the civil disorders study—they spent an unprecedented amount of money—millions of dollars in the period of several months—and I think made one of the most thorough and exhaustive studies ever made. It outlined not only what the situation was, but why it was, and what could be done about it.

Now, every Cabinet official and every independent agency is taking that study—and I recommend it to you—and they are evaluating and trying to see first, what we already have done that is pointed up—put that in this basket; see what we have not done and what they recommend to be done, what remains to be done—and put that in this basket. Then try to get it done.

There is no group in America that can try to do more to help us improve the cities and improve the quality of men's lives and offer them hope when they have only despair than you folks who have the financial horsepower to do something about it.

We need not only your words but your actions and we need your performance. You have shown that you can act or you would not be here. You have shown that you can perform or you would not have this program outlined.

The Government has been attacking the problems of the cities as best we can with our resources. I think you ought to know that right now we have, under the direction

Calendar No. 849

94TH CONGRESS
2d Session

SENATE

REPORT
No. 94-893

NATIONAL FOREST MANAGEMENT ACT OF 1976

REPORT

OF THE

COMMITTEE ON AGRICULTURE AND FORESTRY UNITED STATES SENATE

TO ACCOMPANY

S. 3091

MAY 14, 1976.—Ordered to be printed

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REPORT
No. 94-893

NATIONAL FOREST MANAGEMENT ACT OF 1976

MAY 14, 1976.—Ordered to be printed

Mr. HUMPHREY, from the Committee on Agriculture and Forestry, submitted the following

REPORT

[To accompany S. 3091]

The Committee on Agriculture and Forestry, to which was referred the bill (S. 3091) to amend the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 476) and the Act of June 4, 1897 (30 Stat. 35), having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

SHORT EXPLANATION

S. 3091, as amended by the Committee, makes significant changes in laws governing Forest Service programs designed to improve the management of the forest resources of the National Forest System. The major provisions of the bill—

(1) require the Secretary of Agriculture to issue regulations setting out the process for the development and revision of land management plans with specified guidelines and criteria for the protection, use, and development of the renewable resources of the National Forest System. The regulations and required guidelines are to be developed with public participation and in accordance with the Multiple-Use Sustained-Yield Act of 1960 and National Environmental Policy Act of 1969;

(2) set out new provisions governing timber sales on National Forest System lands; and

(3) insure that counties in which National Forest System lands are located will receive 25 percent of the total income from Forest Service timber sales.

Background and Need for Legislation

I.

A nation is not born great. It grows to greatness by fulfilling its promise. It grows great by learning.

The conservation of natural resources was not a central issue of concern 200 years ago, when our Nation was founded. There was an abundance of all resources.

It took a century of rapid expansion, industrial growth, and wasteful use for the concepts of conservation to take solid form and meaning. When they did, they emerged as three main streams of action: the idea of individual private responsibility and stewardship; the concept of preservation of certain publically held land; and the concept of wise use of public lands set into designated areas.

President Theodore Roosevelt in 1907 set forth the conservation philosophy that evolved:

> The reward of foresight for this Nation is great and easily foretold. But there must be a look ahead, there must be a realization of the fact that to waste, to destroy, our natural resources, to skin and exhaust land instead of using it so as to increase its usefulness, will result in undermining in the days of our children the very prosperity which we ought by right to hand down to them amplified and developed.

One of the Nation's most precious possessions is its National Forest System lands. 187 million acres of forest and rangeland held for and managed for the people. The lands serve the public by providing, among other things, timber resources, scenic areas, wildlife and fish habitats, and watershed areas.

S. 3091 is directed toward improving the management of the National Forest System. The bill is grounded on the concepts so ably set forth by President Roosevelt. The protection and enhancement of the land is basic to our national survival. It is upon the quality of our stewardship of that land that our society will ultimately be judged.

II.

Much of the basic authority for the management of the National Forests stems from the Act of June 4, 1897. The purposes of the National Forests as stated in that Act are "to improve and protect the forest within the boundaries, or for the purpose of securing favorable conditions of water flows, and to furnish a continuous supply of timber for the use and necessities of citizens of the United States." Those purposes have been shaped and refined by a number of other Acts over the years.

The Weeks Act of March 1, 1911, for example, provides the authority to acquire lands and led to the establishment of most of the

eastern National Forests. The Weeks Act directed the Secretary to identify for purchase "such forested, cutover or denuded lands within the watersheds of navigable streams as in his judgment may be necessary to the regulation of the flow of navigable streams or for the production of timber." Under these and other Acts, the mission of the Forest Service in the management of the National Forests has been one of land stewardship and management for multiple-resource values.

The policy of multiple-use management was clearly stated in the Multiple-Use Sustained-Yield Act of 1960. As used in the 1960 Act, the term "multiple use" means "the management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some land will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairment of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output."

Subsequent legislation such as the Wilderness Act, the Wild and Scenic Rivers Act, the National Environmental Policy Act, along with pesticide control, water quality, and air quality laws have further served to shape management based on a concept of land stewardship and management for multiple use and sustained yield of goods and services. The Forest and Rangeland Renewable Resources Planning Act of 1974 provides the framework to draw together a national Renewable Resource Assessment and a recommended program for the activities of the Forest Service.

The role of the Forest Service in the management of the National Forest System is to act as a steward of the land, fully utilizing the scientific knowledge gained by research and experience on the forest and rangelands of this and other countries. The land is to be managed for multiple-use and sustained-yield benefits.

III.

Recent developments have underscored the need for legislative changes to enable the Forest Service to perform its proper role of management.

On August 21, 1975, the Fourth Circuit Court of Appeals affirmed a decision of the Federal District Court for West Virginia pertaining to three planned timber sales on the Monongahela National Forest. The decision, based on a strict interpretation of the Act of June 4, 1897, allows sale of only dead, physiologically mature, or large trees which have been individually marked and which will be completely removed. *Izaak Walton League of America* v. *Butz*, 522 F.2d. 945 (4th Cir. 1975). As a result of the decision the Forest Service was forced to reduce its timber sales program in the States of Virginia, West Virginia, North Carolina, and South Carolina to 10 percent of that planned for fiscal year 1976, thereby threatening the existence of the lumbering and related industries in those States.

On December 23, 1975, the Federal District Court for Alaska in the case of *Zieske* v. *Butz*, 406 F. Supp. 258 (D. Alaska, 1975), adopted the conclusion of the Court of Appeals for the Fourth Circuit, and applied the same standards to an existing 50-year timber sale executed in 1951 with the Ketchikan Pulp Company.

IV.

Great strides have been made, and continue to be made, in the field of silviculture and the studies of related forest resources, the 1897 Act and the court decisions based on the wording of that Act do not take this progress into account and do not allow for the most beneficial management of resources.

The requirement in the 1897 Act allowing only the sale of "dead, physiologically mature, or large" trees is a prescription which does not recognize the need to periodically thin trees to provide growing space or the natural diversity of land characteristics and variation in management objectives between areas. This requirement eliminates a number of environmentally and economically sound prescriptions or practices necessary to grow and perpetuate trees for many purposes.

The strict interpretation of the 1897 Act prohibits commercial thinning and intermediate cuts undertaken to improve the growth and vigor or species composition of the stand, or to open it up to improve browse and forage conditions, or favor other resource uses. These limitations on vegetation management affect all the resource values in a complex and interrelated manner.

V.

Based on the constraints on the type of trees that can be harvested under the courts' interpretation, the Department of Agriculture estimates that the volume of timber which can be harvested from the predominantly immature eastern National Forests in the next few decades will be only 10 percent of current harvest levels. In the mature forests of the West, the Department estimates that harvest levels will be reduced to about 50 percent of current harvest levels.

These estimates of reduced timber harvest are based on the application of the courts' interpretation to new sales and do not assume a requirement to revise sales presently under contract. If present contracts had to be revised, it would almost completely stop harvesting from the National Forest System until contracts were revised or new sales developed, and the Government would face the possibility of major lawsuits based on breach of contract arguments.

VI.

On a nationwide basis, National Forests are most important as a source of softwood sawtimber, the raw material base for softwood lumber and plywood. Forest Service lands currently account for nearly one quarter of the softwood sawtimber harvest and contain about 50 percent of the Nation's inventory of this raw material.

A reduction in softwood timber output from National Forests will be quickly felt in the Nation's softwood sawlog markets. At current production levels, a 30-percent reduction in harvest from the National

Forests would immediately result in about a 6-percent reduction in national softwood sawtimber supply. A 50-percent reduction would result in about a 10-percent immediate reduction in total supply. In a relatively short time, the Department estimates that supplies from other sources would rise and offset about half the initial reduction in national supplies.

A reduction in the amount of timber products offered to consumers would quickly result in increased prices. A number of studies and historical experience indicate that market prices of the major timber products are quite responsive to changes in quantities supplied to the market. The Department of Agriculture's preliminary estimate indicates that a 50-percent reduction in available Forest Service softwood timber would result in more than a 15-percent increase in wholesale lumber prices and a larger increase in wholesale plywood prices for the period 1980–90. The immediate impact on lumber and plywood prices could even exceed the above projections. The impact of a shortage in supply would be particularly critical if it occurred at a time when the housing market was expanding.

In addition to these national impacts, a major reduction in the supply of softwood sawtimber from the National Forests would have a severe impact on certain local economies. Many areas in the West are dependent on the National Forests for a major part of their supply of raw material. A loss or major reduction in supply would likely force certain mills out of business with accompanying impacts on employment and community stability. Although National Forests supply less than 5 percent of the total hardwood sawtimber, a loss or major reduction in supply would also have a severe impact on local dependent industries and the related communities.

To the extent that the reduction in National Forest harvest leads to substitution by imports or by products with less labor-intensive production processes, there would be a reduction in employment opportunities which would add to the current national unemployment problem.

VII.

Timber production and sale are important aspects of the overall management of the National Forest System lands. However, they are not the sole objectives of management planning.

Congress has been alert to changing land management philosophies as evidenced by the enactment of the Multiple-Use Sustained-Yield Act of 1960 and the Forest and Rangeland Renewable Resources Planning Act of 1974. However, no single, comprehensive piece of legislation has been enacted that would provide the framework for the development and implementation of management plans developed through an interdisciplinary approach consistent with the principles of multiple-use and sustained-yield.

The other resources of the forests, wildlife and fish habitats, water, air, esthetics, wilderness must be protected and improved. Consideration of these resources is an integral part of the planning process.

The Court of Appeals in the Monongahela case recognized that the 1897 Act might be outdated. The Court concluded:

> We are not insensitive to the fact that our reading of the Organic Act will have serious and far-reaching consequences,

and it may well be that this legislation enacted over seventy-five years ago is an anachronism which no longer serves the public interest. However, the appropriate forum to resolve this complex and controversial issue is not the courts but the Congress.

It is, therefore, time for Congress to act in order to insure that the resources found in our National Forests can be used and enjoyed by the American public, now and in the future. Only by managing National Forest System lands in a manner aimed at maximizing all the renewable resources, air, soil, and water can this objective be achieved. S. 3091 will establish the mechanism for achieving this objective.

Section-By-Section Analysis

Short Title

The first section provides that the Act may be cited as the "National Forest Management Act of 1976."

Section 2. Findings

Section 2 of the bill (1) adds a new section 2 to the Forest and Rangeland Renewable Resources Planning Act of 1974, which sets forth seven Congressional findings regarding the Nation's renewable natural resources; and (2) redesignates sections 2 through 11 of the 1974 Act as sections 3 through 12, respectively.

The first finding recognizes that the management of renewable resources is highly complex and that the uses, demand for, and supply of such resources will not remain constant but will vary over time.

In the second finding, the Congress finds that an assessment of the Nation's renewable resources and a national program for such resources prepared by the Forest Service, in cooperation with other agencies, is in the public interest.

The third finding is that in order to serve the national interest the program for the Nation's renewable resources must rest on a sound, comprehensive assessment of present and anticipated uses, demand for, and supply of renewable resources from public and private forest and rangelands. Furthermore, the program must carefully analyze both environmental and economic impacts and must coordinate multiple-use and sustained-yield opportunities as provided by the 1960 Multiple-Use Sustained-Yield Act. Finally, the public is to have an opportunity to participate in the program's development.

The fourth finding recognizes that a sound technical and ecological information base for effective management, use and protection of the Nation's renewable resources results from increased knowledge gained through coordinated public and private research.

In the fifth finding, Congress recognizes that since the majority of the Nation's forest and rangeland is in private, State or local ownership, non-Federally owned land has the major capacity to produce the goods and services derived from renewable resources and that the Federal Government, consistent with the principles of multiple use and sustained yield, should be a motivating force in promoting the efficient long-term use and improvement of the renewable resources of non-Federally owned lands.

The sixth finding recognizes that the Forest Service, by virtue of its authority for management of the National Forest System, for programs of cooperative forestry and research, and its role as an agency of the Department of Agriculture, has a responsibility and an opportunity to be a leader in assuring that the Nation maintains a natural resource conservation posture to meet the needs of future generations of Americans.

The seventh finding recognizes that recycled timber product materials are as much a part of our renewable forest resources as the trees

vision of that Act specifying sixty calendar days of continuous session for Congress to adopt a resolution disapproving the President's Statement of Policy is changed to ninety calendar days of continuous session. Unchanged is the provision of redesignated section 8 that, in computing calendar days of continuous session, the days on which either House is not in session because of an adjournment of more than three days to a day certain are not counted. Also unchanged is the provision that the only way the continuity of session can be broken is by an adjournment without setting a day certain for reconvening.

Section 6 of the bill also amends redesignated section 8 by adding a provision to subsection (b) requiring the Director of the Office of Management and Budget to appear before the Senate Committees on Agriculture and Forestry, Interior and Insular Affairs, and Public Works, and the House Committees on Agriculture, Interior and Insular Affairs, and Public Works and Transportation, to explain the failure to request funds to meet the policies approved by the Congress for the management of the renewable resources of the National Forest System.

Section 7. Restoration of Vegetative Cover

Section 7 of the bill amends redesignated section 9 of the Forest and Rangeland Renewable Resources Planning Act of 1974 by adding a new provision relating to the restoration of vegetative cover. The Secretary of Agriculture is required, within five years after removal of vegetative cover from any forest or rangeland by man or natural causes, to report to Congress either the funds needed to properly restore useful vegetative cover or to report that such lands are not in need of revegetation. The report requirement does not apply to areas which are to be used for specific purposes, such as rights-of-way, campgrounds, reservoirs, and the like, or to areas where permits or other provisions are made which assure that revegetation will be undertaken.

Section 8. Transportation System

Section 8 of the bill amends redesignated section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974 by adding two new subsections relating to the National Forest Transportation System.

New subsection (b) requires that roads authorized to be constructed on National Forest System lands in timber sale contracts or in other permits or leases are to be designed with the goal of reestablishing vegetation on the roadway and areas where road construction disturbs vegetative cover. Unless the need for roads constructed in connection with the timber sale contracts, or other permits or leases, as permanent roads is identified in the forest development road system plan, the vegetative cover is to be reestablished by artificial or natural means within ten years after the termination of the contract, permit, or lease. Reestablishment is not required if it is determined prior to the expiration of the ten-year period following contract, permit, or lease termination that the road is needed for use as a part of the forest development road system. The provisions of new subsection (b) are prospective and apply only to future sales.

New subsection (c) requires that all roads constructed on National Forest System lands be designed to standards which are appropriate for the intended uses. Factors of safety, transportation cost, and im-

pacts on land and resources are to be considered in designing road standards.

Section 9. National Forest System

Section 9 of the bill amends redesignated section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 by adding a provision which, in effect, gives Congressional status to National Forest lands reserved from the public domain. Other National Forest lands already have Congressional status through specific Acts, such as the Weeks Act. The new provision states that, notwithstanding the authority conferred on the President to revoke, modify, or suspend proclamations or executive orders setting apart and reserving public domain land as National Forests, public domain lands which are now or may hereafter be reserved as National Forests are not to be returned to the public domain except by an act of Congress. This does not affect the President's authority to combine National Forests, separate a forest into two or more National Forests, or change the boundary lines of a forest, providing such changes do not remove lands from National Forest status. Also unaffected are existing authorities regarding exchanges of lands involving public domain National Forests.

Section 10. Renewable Resources

Section 10 amends redesignated section 12 of the Forest and Rangeland Renewable Resources Planning Act of 1974 to provide that the term "renewable resources" is to be construed to involve those matters within the scope of responsibilities and authorities of the Forest Service on the date of the Forest and Rangeland Renewable Resources Planning Act of 1974 and on the date of enactment of acts which amend or supplement the 1974 Act. Thus, the scope of the Forest Service's responsibilities and authorities respecting "renewable resources" will encompass those matters covered by the amendments in the National Forest Management Act of 1976, as well as any future act affecting such responsibilities and authorities.

Section 11. Limitations on Timber Removal; Public Participation and Advisory Boards

Section 11 amends the Forest and Rangeland Renewable Resources Planning Act by adding new sections 13 and 14 relating to the sustained yield of the timber resource and to public involvement in land management planning.

Subsection (a) of new section 13 restricts the sale of timber from each National Forest to a quantity equal to or less than a quantity which can be removed from that forest annually in perpetuity on a sustained-yield basis. The Secretary of Agriculture is permitted, however, to exceed, from time to time, this sale limitation on timber quantity from each National Forest, provided the average sales from the forest over any ten-year period do not exceed the quantity limitation. The Secretary may combine two or more National Forests as the area for which to determine the sustained yield where a forest has less than 200,000 acres of commercial forest land.

Subsection (b) of new section 13 provides that the Secretary is not precluded by the quantity sales limitation from salvaging timber stands which are substantially damaged by fire, wind throw, or other catastrophes (such as insect infestation or disease).

COMMITTEE CONSIDERATION

I.

The Committee on Agriculture and Forestry, as part of its oversight function, has been continuously reviewing the actions of the Forest Service. With the passage of the Forest and Rangeland Renewable Resources Planning Act of 1974, new direction was provided for the management of National Forest System lands.

In the period since enactment of that legislation, it has become clear to the Committee that changes are needed in order to manage these lands in a manner consistent with the principles of multiple use and sustained yield.

Great advances have been made in the field of silviculture and its related effects on the forests' renewable resources. These advances are being accomplished through research and development, both public and private.

In 1975 the decisions by the Fourth Circuit Court of Appeals and the Federal District Court of Alaska, further focused attention on the need for legislative reform of Forest Service management practices. These decisions, based on a strict interpretation of the 1897 Organic Act, allow the sale of only dead, physiologically mature, or large trees on National Forest System lands which have been individually marked and which will be completely removed.

The growing interest in the management of National Forest System lands is evidenced by the introduction of three major bills: S. 3091 (the Humphrey bill), S. 2926 (the Randolph bill), and S. 2851 (the Stevens and Gravel bill).

II.

The Humphrey bill and the Randolph bill provide for comprehensive management of the National Forest System lands, consistent with the principles of multiple use and sustained yield. Both bills enunciate the need for the interdisciplinary approach to land management and establish the mechanism for such management.

The Gravel and Stevens bill aims at temporary resolution of the situation in Alaska that resulted from the decision of the District Court.

III.

The Subcommittee on Environment, Soil Conservation, and Forestry, held three days of joint hearings with the Subcommittee on Environment and Land Resources of the Committee on Interior and Insular Affairs, on March 15, 16, and 22, 1976.

These hearings were most instructive. The views of the Department of Agriculture, the timber industry, various conservation and wildlife groups, State and local officials, interested citizens, professional foresters, and the deans of the schools of forestry at various universities were received.

ROADS ISSUE

An adequate transportation system is a basic requirement for effective multiple-use management and protection of renewable resources.

The subject of roads on the National Forests has been a matter of continued concern to the public and to the Committee.

Concerns expressed at the hearings cover a wide range

The concerns expressed at the hearings on S. 3091, S. 2926, and S. 2851 cover a wide range:

Roads are often built at too high a standard which creates more land disturbance and cost than is required to provide adequate, safe transportation;

Roads are often a major sources of soil and water degradation and remove forest land from production of resources;

More roads are needed to effect better management;

Fewer roads are needed (roads have been used to prevent creation of wilderness);

More roads are needed to effectively manage and protect the forest and to secure the best yield of goods and services;

Timber purchasers are made to build too many high cost roads for uses well beyond the particular timber sale.

Timber purchaser roads are often not designed for effective land management;

Roads are closed off to recreational use after timber harvest and should remain open to use;

Roads not needed should be closed off and allowed to revert to vegetative cover;

More roads should be built as a part of the timber sale process despite the impact on purchasers and payments to counties. More roads should be built with appropriated funds in advance of active development; and

The issue focused

Roads impact on resources and program objectives. Their location and timing for installation have direct impacts on programs for resources.

Roads are financed in two ways:

(1) Direct appropriations are made, the road is constructed in advance of need. When timber is sold, its value is greater than an identical tract not served by roads. Thus, the "cost" of the road is recaptured by increased revenue; and

(2) The timber contract requires the successful bidder on the timber to construct the road. Its estimated cost for the needed road is deducted from the price of the timber. While appropriations are avoided, revenues are reduced, thus the budgetary impact is similar to using a direct appropriation. However, under current law the secondary fiscal impact is to reduce payments from revenues to counties by 25 percent of the estimated road cost. Thus, this system has two problems, not only does it require the purchaser to initially advance the capital to build the road, recapturing the advance through reduced timber prices, but also the counties' payments are affected. Further, the road network may not meet broad management needs.

There has been a major shift away from use of appropriated funds for permanent road construction to requiring timber purchasers to build the roads as a condition of the timber sale contract. This lowers the selling price of the timber and thus reduces the revenue sharing payments to States and counties.

Large volumes of timber are lost because they cannot be reached on a timely basis. A sustained-yield harvest at optimum levels cannot be achieved if, in fact, substantial annual losses occur in unroaded areas.

Pricing—Sale economics

Many factors affect the "value" of timber. The less risk associated with a sale, the greater its salability. Where values are low, utilization opportunities are limited, costs to convert are high, and delays may occur due to absence of a road. The appraised value may therefore be low and risk allowances would be greater.

In some cases, the condition of the forest requires action to remove those trees which can impact on the rest of the forest. The "value" of the timber in any case should be determined in the market, with every effort to make marginal sales as risk free as possible.

The 1964 provision on road costs

The Act of October 13, 1964 authorized the reduction in the price of timber to cover the estimated cost of permanent roads to be constructed by timber purchasers. That Act also stated that timber purchasers would not be required to bear the part of the cost of such roads needed to provide a road of a higher standard than needed to harvest and remove the timber on that particular sale. This has been commonly referred to as the "prudent operator" approach. The language of the Act was, in this regard, unfortunate. The practice, prior to the specific authorization and subsequent to the passage of the Act, was not to have purchasers bear the cost. What has become the cost of roads is the timber.

DIRECT ROAD CONSTRUCTION COST[1]

[Dollar amounts in millions]

	Direct appropriations	Timber purchaser credit	Total	Direct funding (percent)
Fiscal year:				
1970	$94.4	$82.6	$177.0	53
1971	108.4	102.2	210.6	51
1972	110.5	116.8	227.3	49
1973	56.8	146.9	203.7	29
1974	13.3	157.4	170.7	8
1975	21.8	187.4	209.2	10
1976 estimate	11.9	210.0	221.9	5
1977 estimate	18.2	200.0	218.2	8

[1]Excludes survey, design and engineering costs.

It was never contemplated when the 1964 Act was enacted that the timber purchasers' device, which then covered constructing roads with a "value" and revenue impact estimated at about $50 million (with negative impacts on counties at $12.5 million) would grow 12 years later to one with over $210 million in revenue impact (and a $52.5 million negative impact on counties).

Nor was it contemplated that the 50-50 balance between direct appropriation and purchaser construction would change to a 5-95 ratio, as is now the case.

Reasonable Standards

The Committee's intent is that roads shall be well planned, and that they will be carefully designed for intended uses. The management plan and the transportation plan will be integrated documents assuring that permanent roads will be built where needed and temporary roads where needed. These plans will set proper standards so that overbuilding will be avoided.

The on-site and off-site impact of roads on soil, water, and renewable resources is a matter of growing concern. For natural resource roads, there is a substantial need to recognize that the problems created are far different from those that result from decisions on major arterial highways.

The Committee action

The Committee adopted several changes in National Forest road policy. Sections 8 and 16 of S. 3091, operating in conjunction with redesignated section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974, and the Act of October 13, 1964, will operate as follows:

1. Road funding devices will be evenly considered since there will no longer be a presumed advantage to favoring a system with fiscal impacts disadvantageous to local governments.

2. Road network decisions will be based on long-term needs. Multiple-use roads will be planned for a sustained yield of multiple resources.

3. Road standards will be better tailored to intended uses, considering safety, cost of transportation, and impacts on lands and resources.

4. Timber purchasers who have been tying up working capital in excess of $200 million annually will no longer be expected to build major roads as a condition of purchasing timber. The issue has not been whether they are or are not compensated for building such roads. Timber purchasers are compensated. The issue is whether this system of timber revenue reduction to finance road construction should be relied on so heavily and used so indiscriminately.

5. Timber purchasers will be expected to construct only those roads, permanent and temporary, where such roads are the best available alternative.

6. The network of needed roads will be planned and well executed, using non-permanent and permanent roads, as appropriate. Non-permanent roads and roadways will be designed to the extent feasible for early return to the resource production base.

7. The impact of roads and roadways as contributors to erosion, soil, and watershed losses should be a stronger factor in design, location and construction of roads.

Inappropriate road standards result in unnecessary expenditures of appropriated funds or reduced revenues to the Treasury for construc-

tion and may cause environmentally harmful impacts. The Committee concluded that more effective reforms are needed to assure that road standards are properly determined so that excessive construction is avoided while providing an efficient transportation facility.

The limitation on the standard of road which a timber purchaser could be required to construct under section 4 of the Act of October 13, 1964, has led to the construction of some roads of a lower standard than needed for future use of the road. Later reconstruction of such roads creates additional costs and possible environmental impacts. The Committee decided that the standard of roads to be built rests squarely with the Secretary as part of his responsibility for management of the National Forest.

The timber purchaser does not pay for these roads; they are paid for by the Government as a credit which reduces the price paid into the Treasury for the timber.

Section 4 of the 1964 Act was intended to minimize the impact of constructing roads for the permanent transportation system as part of a timber sale. With the change in the method of calculating payments to States proposed in section 16 of the Committee bill, the need for this provision is removed.

In those cases where the needed standard of road would result in a sale with less than a normal profit opportunity, the Secretary can use his authority to allocate appropriated funds for all or part of the cost of building roads in the approved transportation plan.

Payments to States for Schools and Roads—Section 16.

The Act of May 23, 1908, and the Act of March 1, 1911, require that 25 percent of all moneys received from each National Forest be paid, at the end of each fiscal year, to the State in which the National Forest is located. The payments must be expended as the State legislature prescribes for the benefit of public schools and public roads of the counties in which the National Forest is located. For the purpose of calculating the required payments, receipts from the sale of forest products are based upon the stumpage payment of the timber sold.

Section 16 of S. 3091 would revise the base from which the 25-percent payments to counties are calculated by including, as moneys received—

(1) Deposits collected under the Act of June 9, 1930 (the so-called Knutson-Vandenberg Act) which are used for reforestation and timber stand improvement within the National Forests timber harvest areas; and

(2) Credits earned and used in payment for timber by purchasers of National Forest timber and other forest products upon satisfactory construction or reconstruction of permanent roads on National Forest System lands which are specified in the timber sale contracts.

The Committee recognizes the complexities which surround existing payments to States and local governments from receipts generated by the National Forest System and other Federal lands. A broad range of alternative adjustments was considered by the Committee. The two adjustments agreed to would, in the Committee's judgment, provide a much needed increase in payments to States and counties in which there are National Forests, with minor effects on the Federal budget.

The inclusion of timber purchaser road credits in the base for the 25-percent payments would help correct an inequity to the States and counties that has developed during recent years as the Forest Service has increasingly relied on the timber purchaser road credit mechanism for road construction within the National Forests. While the Committee agrees that counties should receive 25 percent of timber purchaser road credits actually utilized in payment for National Forest timber and other forest products, the Committee does not intend to provide payments in excess of the amounts that would have been made had no timber purchaser credits been utilized. In other words, section 16 of the Committee bill will require the Secretary of Agriculture to include, in the base for the 25-percent payments, timber purchaser road credits actually utilized in lieu of cash during each fiscal year for the payment of timber and other forest products.

However, timber purchaser road credits earned or allowed but not actually utilized in payment for timber during each fiscal year, will not be included in the base for the 25-percent payments for that fiscal year. Such credits shall be included in the base for the 25-percent payment for a subsequent year in which they are actually utilized.

VIII.

The Committee wishes to emphasize that S. 3091 does not change the basic national forest management objectives and policies set out in the 1897 Organic Act and the Multiple Use-Sustained-Yield Act of 1960.

Other issues addressed by the Committee included the following items:

Findings (Sec. 2)

The Committee adopted seven findings as an amendment to the Forest and Rangeland Renewable Resources Planning Act of 1974. Findings (5) and (6) recognize the importance of private and public land ownerships in achieving national interests.

The Committee does not in any way intend the Forest Service to assume the management of private timber lands. However, the Committee does intend that the Forest Service will make its knowledge and experience available to the private land owners toward improved management on these lands.

Report on Fiber Potential (Sec. 3)

The Committee in its consideration of findings strongly supported the need for the Assessment which covers both public and private land. Also of concern to the Committee was the need to improve the utilization of the forest and forest products. One of the steps necessary to this improved utilization is a comprehensive assessment of the additional opportunities to expand the potential of the National Forest System to provide fiber for the Nation. The Committee is aware that information is collected on forest mortality, growth, and salvage potential. It is, however, the Committee's intent in providing for a specific report on the additional fiber potential in the National Forest System, to go beyond the present procedures and consider all the various factors relating to fiber utilization including mortality, growth, salvage potential, potential increased forest products sales,

[APPENDIX]

Analysis of Timber Growth Patterns

[Prepared by Robert E. Wolf, Assistant Chief, Environment and Natural Resources Policy Division, Congressional Research Service, Library of Congress]

The forests of the United States are extremely heterogeneous in species composition and age classes. This is why forest managers face complex, on-the-ground considerations in selecting appropriate harvesting levels, rates, timing, and systems in order to achieve sustained yield management.

Time as a factor

The concept of sustained yield management is based on adopting growth cycles, for example, of 50 years, 100 years or 200 years, and the forest is managed so that relatively equal periodic harvests are made throughout the cycle. In those instances of a small ownership of 100 acres, 5 or 10 harvests may occur in a century. In larger properties, of perhaps 100,000 or 1,000,000 acres, harvests would be made annually on several parts of the ownership. The National Forest System is composed of these large management units and the Committee is therefore, dealing with the management of large areas.

In the United States, neither the natural forests nor the managed forests contain the combination of age classes or pattern of distribution that makes it simple to chart a regular annual harvest level, sustaining yields and multiple uses. The natural forest is seldom found this way and the managed forest has not existed long enough to contain these distributions.

Timber management systems

Forest management decisions are complicated by other considerations. For example, there are two basic forest management systems. In an even-aged system, the property is formed into a series of blocks, each of which contain trees of approximately the same decadal age. The total forest is all-aged, but the trees in any one block are essentially of one age. Conversely, the all-aged forest is one where the entire property is made up of stands with trees of many ages.

Another aspect which requires attention is the forest situation created for multiple-use management goals. This may require adjustments between composition of species, age distribution, or tree condition to achieve water, wildlife or wood goals.

Activities in the first rotation cycle must not only accommodate multiple-use and sustained-yield objectives, but also must assist the transition to the next cycle so that composition and distribution of species and age classes will not adversely affect management objectives.

Most National Forest management units are in their first rotation cycle and thus are not in the pattern proposed for long-term sustained-yield multiple-use management.

Roads, manpower, funding

Further complicating factors are the frequent absence of early construction of the planned basic road network which inhibits management flexibility, and funding levels and allocations. Still another consideration that must be taken into account in renewable resource management on forested land is site capability, which is a major determinant of growth capacity. Unless there is relatively even distribution throughout the forest of lands by site capability in age classes, future decadal yields will be affected.

Thus, even before one considers some of the economic and related ecological consequences of possible actions, the issue of regulation of yields requires consideration of a number of factors.

Sustained yield is a goal that is attained only by good, basic data, well planned actions and timely execution.

Forests vary widely

In many of the Eastern National Forests, for example, the lands were acquired in a cut-over condition following decades of abuse. Their composition is far different from the original cover, both in ecologic and economic utility. Soils are depleted, output levels are far below site potential, and species are ecologically inferior. The land manager faces the challenge of increasing these outputs and realizing the inherent potential of the land.

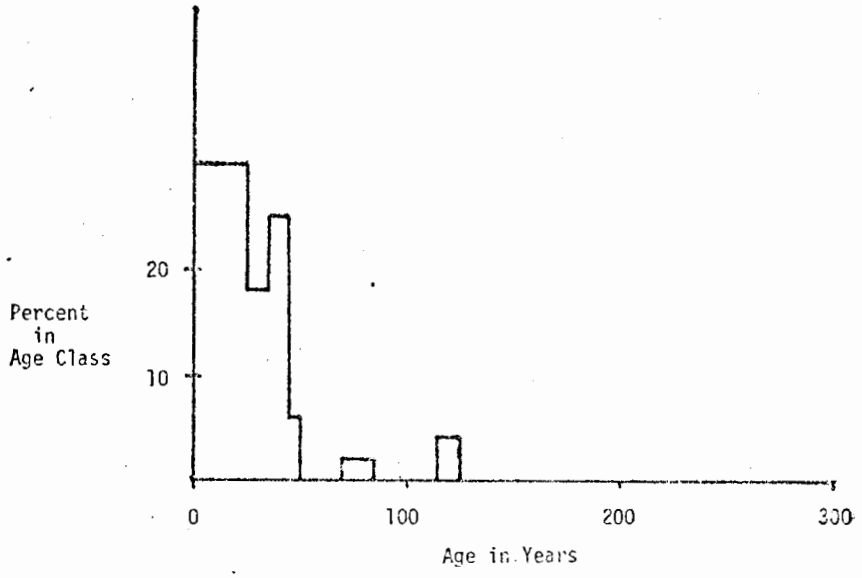
In contrast, in many of the Western National Forests, natural stands prevail. While in the main their condition and distribution and composition have been affected more by natural events than by man, there has already been sufficient intervention by man so that securing a sustained yield presents another set of complications. Some of these Western forests are immature, while others are in a state of decay. Conifers and single species [illegible]. Insects, disease, fire, and natural mortality complicate management.

The managed forest concept is not based on growing the majority of trees to a state of physiological maturity. Forests management programs, in general, are conceived using management cycles that span one-half or less the time required to have a tree reach physiological maturity. But in this period with well executed choices overall, an increased yield of all benefits can be realized.

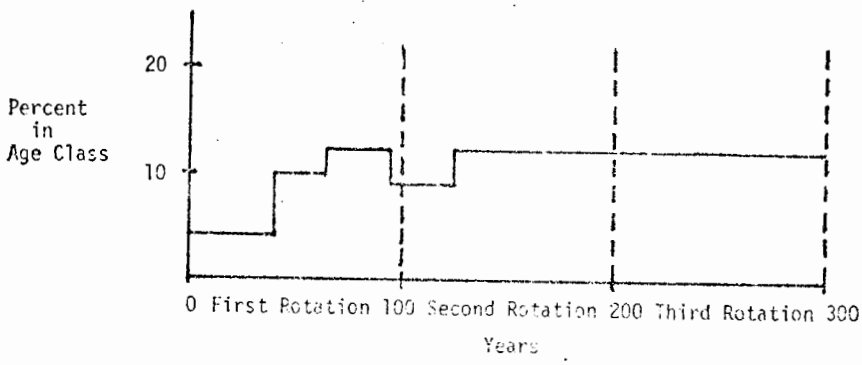
Opportunities to increase yields

East or west, north or south, there are a series of management options—planting genetically superior stock, thinnings, stand improvement, and intermediate cuttings—when applied wisely in the managed forest can increase yields of usable material in shorter cycles of management—enhance species and tree quality and enhance socially desirable and environmentally needed multiple-use benefits.

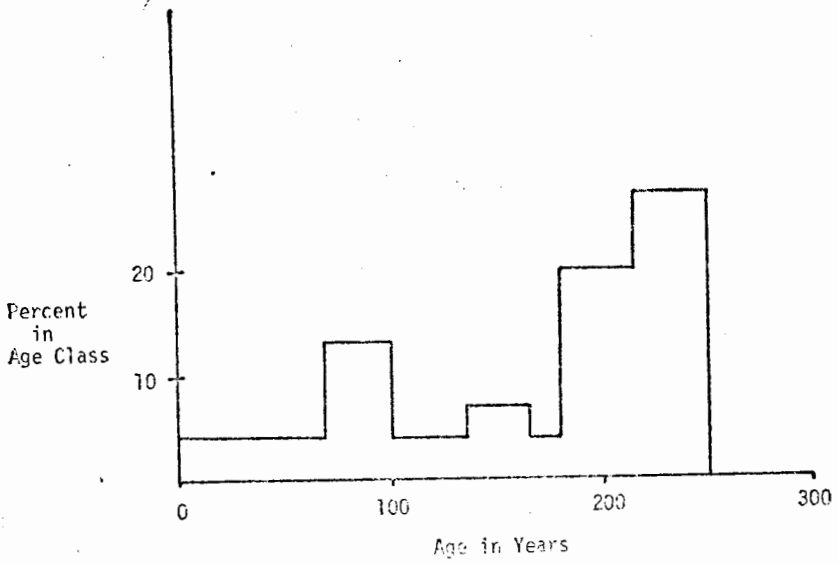
PRESENT:
A YOUNG UNMANAGED FOREST



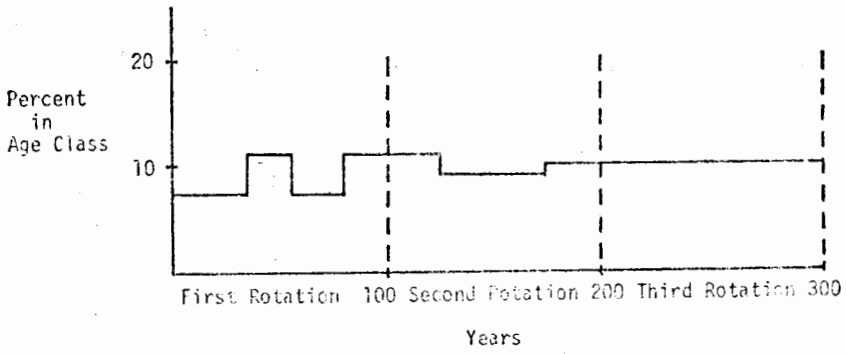
FUTURE:
MANAGED FOREST WITH AN EVEN DISTRIBUTION
OF AGE CLASSES (EXAMPLE - 100 YEAR ROTATION)



PRESENT:
AN OLD UNMANAGED FOREST



GOAL:
MANAGED FOREST WITH AN EVEN DISTRIBUTION
OF AGE CLASSES (EXAMPLE - 100 YEAR ROTATION)



As the above graphs show, the shift from an unmanaged to a managed forest presents complex problems when the goal is a perpetual and continuous supply of timber. The difficulties are large, whether dealing with young or old, previously unmanaged forests.

The other issue is level of output. Obviously, if the first constraint of continuity of supply is going to be observed, increased yields are possible. However, the time of its effective attainment will be affected by when one can effectively increase growth.

An early bunching of rapid growth will not aid the continuity of future supply. If output levels are set too low, however, achieving feasible increases will be delayed.

Supply continuity

In practical terms over time, timber removals cannot exceed growth and sustain a high rate of removal. A forest owner starting with a zero inventory who planned a 100 year forest rotation would not harvest the first finished crop until the 10th decade. Where an owner has an existing stand of older timber and is converting the forest to a 100 year rotation, he has two basic alternatives: (1) rapidly liquidate the present stand but in the future have a gap in output; or (2) plan the removal of the present stand over 10 decades, choosing the rate and location of removals so that at the 10th decade the forest is so arranged that in each decade thereafter he will have the opportunity to cut one-tenth of the forest. The level of growth planned and attained in each decade will control the future harvest level 10 decades hence.

The closer one gets to the point where the existing stand is removed, the less flexibility one has to make adjustments for the next cycle, since reserves will be made up mainly of young immature stands growing for the future.

Forest Service survey data in the Pacific Northwest demonstrate the problems emerging in that region. These problems account for the pressures to rapidly increase National Forest harvest levels.

DDUGLAS FIR REGION—WASHINGTON AND OREGON[1] COM. FOR ACREAGE, VOLUME, GROWTH AND REMOVALS
[Per acre—board feet]

Owner classes	Acres millions	Volume	Volume	Growth	Removals	Removal growth ratio	Growth on volumes percent	Decades to cut vol. excl. of growth
Bil b.f.[2]								
Washington:								
Nat. for	2.3	90.2	39,200	195	435	2.24	0.5	10
Other pub	1.8	42.5	23,600	550	820	1.49	2.3	3
For ind	3.6	67.3	18,700	445	1,100	2.47	2.4	2
Farm and miscellaneous	2.2	21.8	9,900	430	375	.87	4.4	
Total	9.9	221.9	22,400	400	735	1.85	1.8	3
Oregon:								
Nat. for	4.6	155.6	36,000	230	600	2.60	.7	6
Other pub	2.9	64.5	22,250	255	540	2.15	1.1	4
For ind	3.6	52.5	14,600	175	850	5.10	1.2	2
Farm and miscellaneous	3.2	28.9	9,000	250	150	.60	2.8	
Total	14.4	311.6	21,600	225	500	2.50	1.0	4

[1] Source: "Timber Resource Statistics for Washington," Jan. 1, 1973, USDA FS. Pambul 53, "Timber Resource Statistics for Oregon, Jan. 1, 1973, USDA FS. Pambul 56.
[2] International ¼-in rule.

The sustained yield practicalities for each class of owner is thus affected by the various age class relationships. They are also conditioned by present stocking, inventories, cutting rates and by what happened in the past.

The generally held notion is that the lands in small holdings have the lowest order of management and thus growth, while it is said industry lands have the highest order of management and growth. Yet when one looks at growth rate data, both as a percentage of volume and per acre growth in the Pacific Northwest, this does not appear to be true. The farm lands in Washington compare very favorably with industry lands, and in Oregon their rate of growth and percent of growth on the farm lands substantially exceeds that on industry lands. Another factor of significant impact is that the rate of harvest on industry lands is the highest, far above growth rates. Also this is more so in Oregon than in Washington. Further, the rate of growth on industry lands does not appear to be as great as one would expect, especially in Oregon, given the point in the liquidation process that has been reached.

The significance is that a rate of cutting that liquidates the inventory is acceptable, in sustained yield terms, if the time span is long enough to permit the in-growth to replace it.

On farm lands in the Pacific Northwest, the inventory is low, the rate of growth is low, and the sustained yield is low. This demonstrates, by comparison with the industry lands, that sustained yield can mean many things. The data on industry lands show removals in excess of growth and a low rate of growth. The same condition exists on the public forests, thus emphasizing the need to rapidly enhance productivity on lands previously cutover. A more effective picture would be revealed if the growth rates were depicted by decadal periods, thus permitting better evaluation of future sustained-yield levels. However, on a regional basis, the data provided herein demonstrates the reason for urging more rapid cutting of mature overstory timber on the National Forests. The long range regional impacts, however, would be to adversely affect outputs since neither the farm or industry groups of lands, half the production area and more than half of the productivity base, are being positioned rapidly enough to increase their outputs 2 to 5 decades ahead.

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